

WHERE DO I GO FROM HERE?

A GUIDE TO THE MISSISSIPPI COURT AND LEGAL SYSTEM FOR VICTIMS OF FAMILY VIOLENCE



MISSISSIPPI
COALITION AGAINST
DOMESTIC VIOLENCE
www.mcadv.org

OUR MISSION

The mission of the Mississippi Coalition Against Domestic Violence (MCADV) is to bring about social change through advocacy, technical assistance, and public awareness.

ACKNOWLEDGEMENTS

The Mississippi Coalition Against Domestic Violence gratefully acknowledges the assistance of Connie Smith, Senior Attorney, Shows & Smith Law Firm, PLLC in the writing of this publication.

This publication was made possible with funds from the U.S. Department of Health and Human Services, Administration for Children and Families, Family and Youth Services Bureau (FYSB).



CONTENTS

INTRODUCTION	1
DEFINITION OF DOMESTIC VIOLENCE	
SECTION ONE	2
HOW THE LAWS CAN PROTECT YOU	
Mississippi Criminal Laws Related To Domestic Violence	2
Physical Violence	2
Simple Assault and Simple Domestic Violence	2
Aggravated Assault and Aggravated Domestic Violence	2
Physical Abuse of Children	3
Abuse of a Vulnerable Adult	3
Sexual Assault.....	4
Rape and Sexual Battery of an Adult	4
Rape, Sexual Battery, or Fondling of a Minor.....	4
Psychological Abuse	5
Stalking.....	5
Cyberstalking.....	5
Harassment.....	5
Kidnapping.....	5
Interstate Removal of a Child	6
Federal Laws.....	6
SECTION TWO.....	7
CIVIL PROTECTION ORDERS	
SECTION THREE	9
LAW ENFORCEMENT ASSISTANCE	
Law Enforcement Response to Calls for Assistance in Domestic Violence.....	9
Domestic Violence Shelters	10
SECTION FOUR.....	11
COMMONLY ASKED QUESTIONS REGARDING DOMESTIC VIOLENCE	
Table of Statutes	14
Dynamics of Domestic Violence	15
What is Domestic Violence?	15
Cycle of Domestic Violence	15
Red Flags in Abusive Relationships.....	15
What to Do if You Are Being Hurt by Someone You Love	16
What To Take When You Leave.....	16
Mississippi Coalition Against Domestic Violence Member Shelters.....	17
Shelter Services	17

INTRODUCTION

DEFINITION OF DOMESTIC VIOLENCE

Domestic violence is known by many different names: wife beating, spousal abuse, family violence. Domestic violence involves the use of abuse by one person in a relationship to get power and control over another person or persons, and then to keep that control. Domestic violence consists of intentional, repeated acts, most often committed by a current or former intimate partner, but can also be used against family members.

Mississippi law defines domestic violence in its Domestic Abuse Protection Act. It begins by defining “abuse” as an occurrence of one or more of the following acts:

1. attempting to cause or intentionally, knowingly, or recklessly causing serious bodily injury with or without a deadly weapon;
2. placing, by physical menace or threat, another in fear of imminent serious bodily injury;
3. criminal sexual conduct committed against a minor (fondling a minor);
4. stalking;
5. cyberstalking; and
6. rape and sexual battery (including statutory rape).

To be considered domestic violence under Mississippi law, these acts must occur between spouses, former spouses, persons living as spouses or who formerly lived as spouses, persons having a child or children together, other individuals related by blood or marriage who reside together or who formerly resided together, or between individuals who have a current or former dating relationship. A dating relationship is defined as a social relationship of a romantic or intimate nature between two individuals; it does not include a casual relationship or ordinary fraternization between two or more individuals in a business or social context.

If you are in one of these relationships with a violent person who is committing any of these acts against you or your children, **there are both criminal and civil laws designed to protect you.** In the **first section** of this booklet, we will give you an overview of domestic violence-related crimes and the penalties for those crimes. In the **second section**, we will discuss the civil laws that are in place to help protect you against further violence and how you can get this kind of protection from a Mississippi court. The **third section** covers assistance available through law enforcement, and the **fourth section** covers commonly asked questions regarding domestic violence.

PLEASE NOTE: This document is intended to provide general legal information only and is not to be considered legal advice in any manner. If you, a friend, or a family member are experiencing any of the crimes or situations described in this manual, it is imperative that you contact the authorities and also seek legal advice through an attorney who will be able to represent your interests regarding the legal issues contained herein.

Domestic violence is a crime that not only impacts women. Men can be victims of violence at the hands of women. Violence also occurs between individuals of the same gender. However, for ease of written conversation in this manual, the batterer will be referred to as “he” and the victim as “she”.

SECTION ONE

HOW THE LAWS CAN PROTECT YOU

Mississippi Criminal Laws Related To Domestic Violence

Criminal laws are generally divided into two categories according to the seriousness of the crime: misdemeanors and felonies. Misdemeanors are less serious crimes and are usually punishable by a fine and/or by a term in the county jail of not more than one year. Felonies are punishable by imprisonment in the state penitentiary for terms of one year to life, according to the severity of the act and the injuries caused by it. Most domestic violence acts start as misdemeanors but often become felonies if the pattern of abuse continues. In this section, we will discuss the criminal laws that may be broken by acts of domestic violence and the punishment for each. We will include only a short discussion of each law, not the exact text; but a list of the statutes discussed is provided at the end of this booklet. If you would like a copy of any of the laws discussed, you may check with your local library, the domestic violence shelter in your area, or with other victim advocacy organizations, including the Mississippi Coalition Against Domestic Violence (MCADV).

PHYSICAL VIOLENCE

Simple Assault and Simple Domestic Violence

Simple assault means causing or attempting to cause bodily injury to another person, either on purpose or recklessly. This may include hitting, slapping, punching, kicking, or other forms of physical attack. Simple assault includes actually causing bodily injury as well as attempting to cause injury, which means that something may qualify as simple assault even if no injury occurs. A person can also be guilty of simple assault if he or she attempts by physical menace to put another person in fear that his life is in danger. This is true even if the defendant does not actually touch the person, as long as the defendant's action causes a reasonable fear that he may cause serious or bodily harm to your person.

Simple assault qualifies as **simple domestic violence** if the person who is assaulted is the spouse or the former spouse of the defendant (the person accused of the crime); a person with whom the defendant is currently living with as a spouse or who formerly lived with the defendant as a spouse; a family member related by blood or marriage to the defendant who lives with the defendant or who used to live with the defendant; a person who has a child in common with the defendant; or a person who is currently dating the defendant or who formerly dated the defendant.

Simple assault and simple domestic violence are both considered misdemeanors and are punishable by a fine of up to \$500 and a term of not more than six months in the county jail if the defendant is convicted. One difference between these two crimes is that if a person is convicted of two or more charges of simple domestic violence, and is charged with a third act of simple domestic violence within a seven-year period, the third offense may be treated as a felony. If convicted of that offense, the person could be sent to the penitentiary for a term of five to 10 years.

Aggravated Assault and Aggravated Domestic Violence

Aggravated assault occurs when a person either intentionally or recklessly causes or attempts to cause serious bodily harm. In other words, if a person is hit or kicked so hard that a bone is broken, this could be aggravated assault. If a person is choked, this could be aggravated assault. Aggravated assault also occurs if a person uses or attempts to use a deadly weapon or other means likely to produce death or great bodily injury. If a person injures another person with a weapon such as a gun or knife, or attempts to injure a person with a weapon, this could be aggravated assault. It is not necessary that a gun or a knife be used, however. There have been several Mississippi cases where a person has been convicted of aggravated assault by using other objects, such as a mop handle or an automobile, to inflict injury on his victim. In both of these situations, the items mentioned were used by the defendant (person committing the crime) in order to do serious bodily harm to the victim.

Aggravated assault qualifies as aggravated domestic violence if the person who is assaulted is the spouse or the former spouse of the defendant; a person with whom the defendant is currently living with as a spouse or who formerly lived with the defendant as a spouse; a family member related by blood or marriage to the defendant who lives with the defendant or who used to live with the defendant; a person who has a child in common with the defendant; or a person who is currently dating the defendant or who formerly dated the defendant.

Aggravated assault and aggravated domestic violence are considered felonies. A person suspected of having committed either of these felonies can be arrested without the need for a warrant. They are punishable by a prison sentence of one to 20 years in the state penitentiary if the defendant is found guilty. If there is a third conviction of aggravated domestic violence within seven years, the sentence must be no less than ten years in prison and no more than 20 years. If there is a fourth conviction of aggravated domestic violence, the sentence must be no less than fifteen years in prison and no more than twenty years.

When a judge is sentencing a defendant for either simple domestic violence or aggravated domestic violence, he must take into consideration whether the crime was committed in the presence or hearing distance of any children of the family under the age of 16. If any children were present or within hearing distance of the altercation, the judge may impose a stricter sentence than he might have otherwise.

As part of the sentencing for simple domestic violence or aggravated domestic violence, a judge may also issue a criminal protection order prohibiting the defendant from any contact with the victim. Municipal and justice court judges may issue criminal protection orders for a period of not more than one year. Circuit and county court judges may issue a criminal protection order for any period of time deemed necessary.

Physical Abuse of Children

Under the law, children receive special protection from abuse. If a child is intentionally hurt or injury occurs to a child, the crime is reported as child abuse, which is a different crime than simple or aggravated assault or domestic violence. If a child is injured and allegations of child abuse are made, the Department of Human Services (DHS) performs an investigation to determine what has occurred and who was responsible for the abuse. The case may then be referred for prosecution of the person who abused the child. Child abuse is not always committed by a parent of the child. Child abuse does not apply to parents spanking or providing discipline to a child, as long as the disciplinary actions are reasonable. However, this may be deemed abusive if marks are left on the child or the child requires medical care as a result.

Certain severe actions when taken against a child constitute felony child abuse regardless of whether harm actually results to the child. Such actions include burning, torturing, strangling, poisoning, starving, or using any type of deadly weapon on the child. Other actions such as striking a child on the face or head, disfiguring or scarring a child, whipping, striking or otherwise abusing a child require serious bodily injury to the child to be considered felony abuse. Should the child incur some bodily injury as the result of being thrown, kicked, bitten, cut, or hit a person may also be found guilty of felony child.

Abuse of a Vulnerable Adult

It is a serious crime to cause physical pain to a vulnerable adult. Mississippi law defines vulnerable adults as persons who are unable because of age or any other infirmity to protect themselves from harm. The infirmity may be a physical disability or a mental disability. The physical injury does not have to be life threatening or even serious. Any hitting, slapping, biting, choking, etc., of a vulnerable adult – anything that causes pain – is punishable by up to 20 years in prison. If you or anyone living with you is disabled because of age, a physical or mental infirmity, or is bedridden due to illness, that person may be considered a vulnerable adult under Mississippi law. Allegations of abuse of a vulnerable adult in a home setting are investigated by the Mississippi Department of Human Services, and a report should be made to that agency by anyone who has reason to believe a vulnerable adult is being abused. Allegations of abuse of a vulnerable adult in a care facility, such as a nursing home, are investigated by the Office of the Attorney General, Medicaid Fraud Division.

SEXUAL ASSAULT

Rape and Sexual Battery of an Adult

It is against the law in Mississippi for one person to force another to have sexual intercourse. This is true even if the two people are married to each other. Anytime physical violence or the threat of physical violence is used to force a person to submit to an act of sexual intercourse that is unwanted, the crime of rape has been committed. It is also considered rape if someone administers a substance, such as alcohol or a drug that renders a person unable to consent, and engages in sexual intercourse with them. Sexual intercourse is defined to include sex as well as the insertion of objects into the genitals of a male or female. Sexual battery is also a form of sex offense and involves other types of sexual behavior that do not necessarily rise to the level of sexual intercourse, such as oral sex.

For the crime of rape, a jury can give a sentence of life in prison. If the jury does not set the sentence as life in prison, the judge can give any number of years up to life in prison as punishment for this crime. The maximum punishment for the crime of sexual battery of an adult is 40 years in prison. In Mississippi, there is no parole for sex crimes. If a judge sets a sentence of 40 years, that means that the defendant spends 40 years in prison, with no hope of parole before that time.

Rape, Sexual Battery, or Fondling of a Minor

The penalties for having any kind of sex with a minor are very strict. Under the law, a child under the age of 16 is too young to consent to an act of sex with any adult or older teenager 17 years or older. Having sex with a child under age 16 is against the law, even if the child “wanted” to have sex with the person, unless parties are married to each other. If the child is 13 years of age or younger, any person more than 24 months older than the child having sexual intercourse with that child has committed statutory rape. In other words, if a female or male child is 12 years and six months old, any person older than 14 years and six months who has sexual intercourse with that child, even if the child “wants” to have sex with that person, has committed the crime of statutory rape. As another example, if the child is age 14 or 15, any person more than 36 months older than the child who has sexual intercourse with that child has committed statutory rape. The same definitions of sexual intercourse as discussed with adults apply here.

The sentence for these crimes varies depending upon the facts and circumstances. If the person committing the act is at least 18 years of age but under 21, he or she can be sentenced up to five years in prison and fined up to \$5,000. If the person committing this act is over the age of 21, he or she can be sentenced to 30 years in prison and fined up to \$10,000. If any person 18 years of age or older has intercourse with a child 13 years old or younger, the sentence is life imprisonment. A judge may give a lighter sentence if the person committing the act is between the ages of 13 and 18 years old.

If the defendant does not have sexual intercourse with a child but engages in other sexual activities such as oral sex, the crime is sexual battery and the same age limits and penalties apply as apply to the crime of rape. If the minor is 16 or 17 years old, a person holding a position of authority (such as a teacher, coach, school resource officer, choir director, etc.) who has sexual relations with that child commits sexual battery, regardless of whether or not the minor consented.

If there is no sexual penetration of any part of the child’s body but there is any kind of sexual touching or rubbing of a child under the age of 16 by a person over the age of 18, the crime charged is fondling. The penalty for this crime is not less than two years or more than 15 years in the penitentiary and/or a fine of not less than \$1,000 or more than \$5,000. As part of the sentencing, the judge may issue a criminal sexual assault protection order for a minimum of two years after the expiration of any sentence.

PSYCHOLOGICAL ABUSE

Stalking

Any person who willfully, maliciously, and repeatedly follows or harasses another person, or who makes a credible threat with the intent of placing that person in reasonable fear of death or great bodily harm, is guilty of the crime of stalking. This crime is a misdemeanor and carries a penalty of time in the county jail of up to one year, a fine of up to \$1,000, or both. If there is a protective order in effect ordering the defendant to stay away from the person he is stalking, the fine may be increased. If the person is convicted of stalking the same victim twice within seven years, the crime becomes a felony and may be punished by up to three years in the penitentiary and a fine of up to \$2,000.

Although the law requires that the act of following or another harassing act must be done more than once in order for the crime of stalking to be established, just one threat of death or great bodily harm can bring a conviction. The threat must be "credible," meaning that the defendant must have the ability to carry out the threat and that it must be intended to put you in reasonable fear for your safety. For example, if you have left your husband or boyfriend and he continues to follow you around at your workplace or drive by your house after you have told him not to, you can report him to the police for stalking. If he calls you from somewhere near – near enough that he could get there as soon as or sooner than the police – and threatens to kill you, he may have committed the crime of stalking and may be subject to arrest.

Cyberstalking

Cyberstalking has also been included as a crime punishable under the Domestic Violence Protection Act of Mississippi. Cyberstalking is defined as the use of electronic mail or electronic communication to communicate any words or language that threatens to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent. It also includes threats made suggesting physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person. In addition, cyberstalking includes using electronic mail to repeatedly communicate to another, or to knowingly make any false statements concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to threaten, terrify, or harass. Remember that "electronic mail" or "electronic communication" can include using text messages, e-mails, phone calls (cell phone or land lines), fax machines, and other electronic devices used for purposes of communication.

Cyberstalking, which is a felony, is punishable by imprisonment for not more than two years, or a fine of not more than \$5,000, or both. However, if the person commits cyberstalking in violation of a current temporary restraining order, violation of a condition of probation, parole, pretrial release or release on bond pending appeal, the crime is punishable by imprisonment for not more than five years, or a fine of not more than \$10,000, or both.

Harassment

A separate law makes it a crime to send a threatening letter or notice to another person with the intent of terrorizing or intimidating that person. This is a misdemeanor punishable by up to six months in the county jail, a fine of up to \$500, or both.

Kidnapping

If someone takes you and holds you anywhere against your will, you have been kidnapped. Even if the place you are being held is your own home, if you are not allowed to leave when you want to, the crime is kidnapping. You do not have to be tied up, handcuffed, or otherwise restricted. If a victim is not allowed to leave a place where he or she does not want to be, and is held there either by violence or threat of violence, that may be defined as kidnapping. This also applies to vulnerable persons, a child under sixteen (16) years of age against the will of the parents and/or guardian or person having legal custody of the child. If a defendant is found guilty of kidnapping, a jury can sentence the defendant to life in prison. The judge can sentence the person to up to 30 years in prison.

Interstate Removal of a Child

If there is no custody order in place between parties, both parents share the joint physical and legal custody of the child or children. This means that each parent is entitled to equal amounts of time and access to the children. It is a felony for a noncustodial parent or other relative to take or hold a child under the age of 14 across state lines in violation of a custody order. If a victim has custody of the children and the abuser takes them out of the state without permission, or if the children are on visitation in another state and the noncustodial parent refuses to return them after the court-ordered period of visitation is over, a crime may have been committed. The penalty is up to three years imprisonment and/or a fine of up to \$2,000.

FEDERAL LAWS

Federal laws similar to the state laws outlined above were passed to protect persons who have moved to another state to escape violence in their homes. These laws make it a federal offense to cross state lines for the purpose of committing domestic violence, stalking, or to violate a protective order. There is also a federal law prohibiting anyone who has been convicted of a qualifying crime of domestic violence from owning or carrying a firearm or ammunition. If you have come from another state to Mississippi and you have been followed here and stalked, assaulted, or harassed, or if you know that a person who has been convicted of domestic violence--either here or in any other state--has a firearm, you can call your local police department or sheriff's office and ask them to help you contact federal authorities.

SECTION TWO

CIVIL PROTECTION ORDERS

A person who is a victim of domestic abuse may also seek civil remedies against her or his abuser. Domestic abuse for purposes of seeking this protection involves people who are related in the manner discussed in Section One. Those relationships are: spouses or former spouses; people living as spouses or who formerly lived as spouses; family members related by blood or marriage who reside together or who formerly resided together; people with a child in common; and people in a current dating relationship or who formerly dated. Remember, “abuse” is defined under Mississippi law as attempting to cause or causing physical harm, threatening physical harm, sexual assault or rape, sexual abuse of a minor, or stalking. A victim of abuse -- or someone acting on that victim’s behalf-- can obtain a domestic abuse protection order from the municipal court, justice court, county court, or the chancery court. Depending upon where the victim lives, a person may not have access to all of these courts.

There is no requirement in state law that a victim must hire an attorney to file for a domestic abuse protection order, nor is there any cost to file the necessary documents to obtain a domestic abuse protection order. Each court will be able to provide standardized forms to assist the victim in requesting a domestic abuse protection order from the court. The clerks of the courts (municipal, justice, county, or chancery) may be able to help a person seeking a domestic abuse protection order fill out the forms, but court clerks cannot give out legal advice. If a victim has trouble completing the form and has questions the court clerk cannot answer, the local domestic violence shelter may be able to assist in filing the forms with the court. These forms will ask specific information, such as:

1. Names and addresses of parties involved (this information can be excluded, if necessary, for safety purposes);
2. The facts and circumstances concerning the alleged abuse;
3. The relationships between the petitioners (victims) and the individuals alleged to have committed the abuse; and
4. A request for a protection order.

If there are any pending court actions, such as divorce or custody petition, these types of documents should be attached to the petition.

There are three types of domestic abuse protection orders available under Mississippi law: emergency protection orders; temporary protection orders; and final protection orders. Emergency protection orders can be granted by a judge in very dangerous circumstances and can be issued without prior notice to the abuser. Emergency orders are valid for 10 days. At the end of that 10-day period, a hearing will be held by the judge. Notice must be given to the abuser of the date and time of the hearing, and both the victim and the abuser will have the chance to give evidence to a judge. As a result of that hearing, a temporary protection order may be issued. Temporary protection orders may be valid for up to 30 days, or for one-year if the parties have minor children together. If protection is needed for longer period of time, a victim may wish to obtain a final protection order. Only the county and chancery courts can issue final protection orders. The victim must file a new petition in the county or chancery court. Final orders can be valid for as long as the judge decides.

In order to obtain any type of domestic abuse protection order, the victim must be able to prove to the judge that he or she is in the proper relationship to the abuser and has been a victim of violence. The judge will need to be made aware of specific incidents of physical and mental violence that have put the victim in fear of suffering bodily harm. If there are witnesses to the assaults or threats, they should attend the hearing. If they will not come willingly to court, they can be issued a subpoena by the court ordering them to come to the hearing. It is the responsibility of the parties to make sure all witnesses are present at the hearing; the court will not do this for you.

If a judge makes the decision to issue a domestic abuse protection order, that order can provide any of the following relief for you and your family's protection:

1. Directing the abuser to remain a certain distance from the victim's person, home, and place of employment;
2. Directing the abuser to limit or prohibit communication with the victim;
3. Prohibiting the transfer of marital property, assets, or mutually owned property;
4. Granting the victim temporary sole possession of the marital home, free from the abuser; and/or
5. Restricting the abuser from having contact with others in the home, including children.

Depending upon a victim's facts and circumstances, the protection order may spell out other protections that the victim needs. The discretion a judge has in issuing an order for the protection of domestic violence victims is broad and can be adapted to each particular situation.

Once a victim receives a protective order, several copies of the order should be made as soon as possible. Copies should be kept with the victim at all times, including at home, the workplace, at the children's school or daycare, in the victim's car, with a friend and in the victim's purse, and anywhere else that might be handy. If the victim has security at her workplace, she should provide a copy of the order to the security guard to make sure that he is aware of the protective order. It may also be a good idea to provide him with a photo of the abuser. If security is not provided at the workplace, the victim's supervisor(s) should know of the existence of the protective order, so they can immediately call the police if the abuser shows up at the workplace.

Victims should take a copy of the protective order to the police station or to the sheriff's office, depending upon where the victim lives, to inform the officers who patrol the neighborhood about the protection order issued by the court. A person who knowingly violates the terms of a domestic abuse protection order can be charged with a crime and arrested by law enforcement on the spot. Law enforcement officers were provided warrantless arrest authority for a violation of a criminal protection order when there is probable cause that a violation occurred within 24 hours.

A domestic abuse protection order is valid and enforceable anywhere in the United States. If a victim moves to another state after a protective order is issued in Mississippi, the victim is entitled to protection by law enforcement in that state. If the victim has moved into Mississippi and has a protective order issued by a judge in another state, he or she is entitled to have that order enforced in this state. The victim has the option of filing the out-of-state order with the chancery clerk of the county into which they have moved; however, it is not necessary that a protection order be "registered" in the new location for it to be enforceable. The order from another state is valid until the date on the face of the order, or if there is no date, it is presumed to be effective indefinitely.

Obtaining a protective order from a court can be confusing if you are not familiar with the court system, and most people aren't. Don't be afraid or ashamed to ask for help. If you need help, contact the domestic violence shelter in your area for assistance. If you need information on how to contact a shelter, you can call the Mississippi Coalition Against Domestic Violence or see listing of shelters in this booklet.

SECTION THREE

LAW ENFORCEMENT ASSISTANCE

If a victim has been forced to leave her home because of violence or threats of violence, she is entitled to have a law enforcement officer go back to the home to assist her in retrieving clothes, food, medication, or other personal property necessary for the victim and the victim's family to live away from the home until the matter can be decided in a court. The officer who responds to this request for help is required to take whatever steps are necessary to protect the victim from harm during the trip back to her home. An officer is not required to accompany a victim into another city or another county to offer this assistance.

This law also requires that the officer advise victims of any sources available in the community for shelter, medical care, counseling, and other services. If the victim needs transportation to these facilities, the officer must provide this service if the facilities are within his jurisdiction.

In situations where law enforcement officials are not able to assist a victim in retrieving personal property, the victim should seek assistance in obtaining a Writ of Assistance. A Writ of Assistance is an order, usually granted by justice court and chancery court judges, that allows victims to retrieve specific items needed to survive and maintain themselves and their children, while they are no longer residing in the home. Writs of Assistance can usually be requested in conjunction with requests for domestic abuse protection orders. Although lawyers are not needed to obtain a domestic abuse protection order, if the victim realizes that she needs to retrieve certain items, it might be best for that victim to seek the assistance of an attorney.

Law Enforcement Response to Calls for Assistance in Domestic Violence

It can be very frightening when the police or sheriff's deputies come to a victim's home, even if the victim has called for help. It can be much easier if the victim and her family members are familiar with what generally should occur when a law enforcement officer arrives on the scene of a domestic violence call.

Under Mississippi law, as well as the laws of most other states, a law enforcement officer is mandated to make an arrest if he or she has probable cause to believe that domestic violence has occurred at any time during the past 24 hours. Probable cause can be determined by interviews of the victim(s), the abuser(s), and any/all other eyewitnesses. A warrant is not needed for a police officer to arrest a person for domestic violence. If a police officer is called and there is a current domestic abuse protection order in place, then the person violating the order should be arrested if the order has been violated. When an officer makes an arrest within that 24-hour period, the officer should file the affidavit on behalf of the victim.

Many times, it is not very clear who may or may not be a victim or abuser. For example, there may be circumstances where a victim has been attacked and she scratched an abuser in self-defense, leaving a scar on the abuser. In this instance, where both the victim and the abuser are alleging that one has hurt/abused the other, the police officer must determine the "principal aggressor." The principal aggressor is the person who is the most significant aggressor, or who poses the most serious ongoing threat in the situation. The principal aggressor is not always the person "who hit first." When an officer is making this decision, several factors are considered, such as:

- prior calls to the residence for domestic violence
- arrest records of the parties involved
- extent of injuries to both the victim and the abuser
- the likelihood of further violence occurring if no arrest is made
- observations of the parties involved.

After considering these and other factors, the police officer makes a determination as to which person is the principal aggressor. Only the principal aggressor should be arrested. However, an officer may find that both parties are principal aggressors and may arrest both parties. The only time both parties should be arrested is when the officer makes the finding that both are a principal aggressor.

Law enforcement officers are required by law to provide victims of domestic violence with a packet of information entitled "The Crime Victim's Bill of Rights." This packet will contain information regarding the criminal justice system, a list of community services that may assist a victim, contact information for the law enforcement agency and prosecutor, and other helpful information. It also contains a summary of the rights that victims have in the criminal justice system. To be entitled to these rights, a person must request them. A form is also contained in the packet for a person to request that they receive their rights.

Domestic Violence Shelters

By law, there must be at least one domestic violence shelter in each of the nine Mississippi Highway Safety Patrol Districts. These shelters not only provide victims and their children with a place to stay and food, but may also provide counseling and other assistance, such as assistance in the court system as discussed above. The shelters often provide services for individuals who do not stay in the shelter. The addresses of the shelters are undisclosed to protect the residents, but the phone numbers and addresses are known to local law enforcement officers and to others (hospitals, clinics, etc.) who may be called upon to provide help to domestic violence victims. To find the location of the shelter serving the county in which you reside, you may contact the Mississippi Coalition Against Domestic Violence, go to the website or view listing in this publication.

SECTION FOUR

COMMONLY ASKED QUESTIONS REGARDING DOMESTIC VIOLENCE

1. Can a wife testify against her husband if he is being charged with domestic violence?

Yes. The general rule is that one spouse cannot be forced to testify against the other; this is called the "spousal privilege." However, there are several exceptions to this rule. In situations where a crime has been committed against one spouse by another, the spousal privilege rule does not apply.

2. When I call the police, am I required to file domestic violence charges against the abuser?

No, you are not required to file domestic violence charges if the police are called. The police officers who are called to the home or location actually press the domestic violence charges if an arrest is made. Despite the fact that you are not required to press the charges, you will be required to come to court to provide testimony regarding the incident. If you do not attend court to testify, it is very possible that the domestic violence charges will not be prosecuted.

3. Who will courts favor more in ordering custody: a victim who may be living in a shelter with no income or the abuser who has access to all the finances?

In determining custody, the court looks at "Albright" factors. These factors include the health, morals, and economic status of the parents; parenting skills of the parents; relationship of the child or children with the parents; the child's performance in school; and other factors. All of these factors mentioned are weighed "in the best interest of the child." It should be noted that Mississippi case law prohibits a person who is an abuser from having physical custody of children in a relationship. If the parent victim has no other issues that compromise the child's well-being, such as drug addiction or child abuse, then the court, considering Mississippi law, will most likely grant physical custody to the victim.

4. What is the difference between physical custody and legal custody?

Physical custody consists of where the child or children live. If a parent has physical custody, then the children will be living with that parent. Legal custody is the authority to make decisions about the child or children's well-being, including, but not limited to, decisions about schooling and medical treatment.

5. What is the difference between a peace bond and a protection order?

A peace bond is issued to guarantee that the person named on the bond will "keep the peace." If that person commits any violent act while the peace bond is active, he or she must pay the amount of the bond to the court. Peace bonds are issued in justice court and are not free of charge. A domestic abuse protection order is a direct order from a judge ordering an abuser to not harass, abuse, or intimidate a victim. If a domestic abuse protection order is violated, law enforcement has the duty to arrest the violator, and that person can be charged with a crime and prosecuted. Protection orders, if filed under the Domestic Violence Protection Act, are free of charge and are enforceable wherever the victim travels in the United States.

6. What do I need to take with me if I am planning to leave my home and go to a domestic violence shelter?

Careful preparation should be taken when making a decision to leave a violent situation. A victim can contact a domestic violence advocate to help develop a safety plan. If a victim is unable to speak to an advocate, she should take important documents such as:

- Pictures
- Driver's license
- Social security cards (for yourself and the children)
- Birth certificates
- Tax documents (of the abuser)
- Check stubs (of the abuser)
- Photo of the abuser
- Any current divorce or custody orders.

Although this list is not exhaustive, these items are definitely needed in order to assist an advocate handling your case and help possible legal counsel in obtaining child support for your children.

7. What type of evidence is needed to prove domestic violence in court?

Many things can be used in court to prove domestic violence: medical records; pictures of abuse; eyewitness accounts of altercations; eyewitness accounts of the aftermath of an altercation (for example: if a person saw a black eye, but did not see how or when the injury occurred); police reports; and even copies of old or expired orders previously granted (even though they may be expired, they show a pattern of the victim seeking assistance and protection). Again, this is not an exhaustive list, but does comprise the most common types of evidence presented during hearings.

In the context of a divorce, the most compelling evidence can come from the witness herself through credible testimony. A chancellor can award a divorce on the grounds of habitual cruel and human treatment based solely on the testimony of the victim should the chancellor find the victim to be truthful. The divorce statute also recognizes that there is more to abuse than physical assaults. Abusive behavior such as threats, intimidation, emotional abuse, verbal abuse, forced isolation, sexual extortion or sexual abuse, and stalking can also be demonstrative of grounds for divorce if it "rises above the level of unkindness or incompatibility or want of affection."

8. What is the Victims' Compensation Program?

The Victim's Compensation Program administers funds set aside from fines and assessments paid by convicted criminals. This money is available for victims of violent crimes to pay hospital and medical bills, lost wages, and other expenses caused by the crime. It can also be used for mental health counseling for victims, for funeral expenses for deceased victims, and for other expenses related to the crime. A victim (or the family of a deceased victim) must meet certain requirements to be eligible to receive benefits from this fund. The Victim Compensation Office is located in the Attorney General's Office. The number to call is 1-800-829-6766. There are applications available at every law enforcement agency in the state and in the district attorney's offices of the counties in your area. They are also available at hospitals, doctor's offices, and other social service agencies.

9. If I leave my home during a pending divorce proceeding, or if I leave and my spouse files after I leave, is that grounds for desertion?

This is a very complicated question and we will consider the answer in two parts. The general theory in these situations is that if a victim has fled an abusive situation for her and her children's safety, then there are no grounds for desertion. However, this opinion can change. For example, if you leave the home in January 2008 because of abuse and your spouse files in February 2009 for desertion, then that situation would be grounds. In order to have grounds, a spouse must consistently be away from the marital home for a year or more. Even if a victim is fleeing a violent situation, it is best to act as quickly as possible to resolve family law meaning that the acts of the abusive spouse caused the victim spouse to leave the marital home.

10. If there aren't any custody papers and I leave with my children, can I be charged with kidnapping?

Before a custody order is filed, it should be clearly understood that BOTH parents have joint physical and legal custody of a child. With that being said, if a parent flees a violent home and takes the children, this person cannot be charged with kidnapping. This is only applicable if NO COURT ORDER has been issued. If a court order has been issued, the parties must comply with every detail of the order.

Failure to follow a court order could result in your being arrested, spending the night in jail, and your children being taken into custody by the Department of Human Services. So make sure that if you are fleeing and going elsewhere, there are no current or pending court orders providing custody to one parent over the other. If a victim is fleeing a violent situation and does not have custody of her children, she should immediately seek safe shelter and contact an attorney so that the attorney can request emergency custody of the children for her.

11. What do I do if no judge will sign the protective order?

If the judge denies your request for a temporary protective order, you should immediately request a hearing on a permanent protective order. If the request is granted, yet your request for the protection order is still denied, you must make sure that you are in a safe area. Contact one of the shelters located in your area for assistance.

12. I have called the police to my home before but I did not follow through with the hearing to charge my abuser with domestic violence. Will the police arrest us both if I call again?

No. A police officer, if called to a domestic violence call, must always determine if the crime of domestic violence has been committed and which party was the principal aggressor. Both parties going to jail should never be the first option expressed by a police officer arriving on the scene of a domestic violence call. If this occurs, you should contact the local police precinct.

TABLE OF STATUTES

Miss Code Annotated §43-47-19	(Abuse of Vulnerable Adults)
Miss Code Annotated §93-21-1 through 23	(Domestic Violence Protection Act)
Miss Code Annotated §93-21-28	(Response by Law Enforcement Officials)
Miss Code Annotated §97-3-51	(Interstate Removal of a Child)
Miss Code Annotated §97-3-53	(Kidnapping)
Miss Code Annotated §97-3-65	(Rape)
Miss Code Annotated §97-3-85	(Harassment)
Miss Code Annotated §97-3-95	(Sexual Battery)
Miss Code Annotated §97-3-107	(Stalking)
Miss Code Annotated §97-5-23	(Fondling of a Child)
Miss Code Annotated §97-5-39	(Physical Abuse of Children)
Miss Code Annotated §97-45-15	(Cyberstalking)
Miss Code Annotated §99-43-1 through 49	(Crime Victim’s Bill of Rights)
18 USC 2261.....	(Interstate Domestic Violence and Stalking)
18 USC 2262.....	(Interstate Violation of a Protection Order)
18 USC 992.....	(Possession of Firearms)

DYNAMICS OF DOMESTIC VIOLENCE

What is Domestic Violence?

Domestic violence is a **pattern** of coercive behavior in which one person attempts to **control** another person through threats of abuse or actual abuse. Some examples of abuse include:

- **Physical violence:** hitting, choking, or pushing **Emotional abuse:** name calling, threats, and intimidation
- **Psychological abuse:** physical or social isolation from work, family, and friends; stalking and cyberstalking
- **Financial abuse:** preventing access to bank accounts, credit cards, or other financial resources
- **Sexual abuse:** any forced sexual activity
- **Spiritual abuse:** keeping someone from going to a place of worship or using scriptures to justify abuse
- **Forced Isolation:** preventing social relationships and interaction with society

Domestic violence is a learned behavior--learned through observation, experience and reinforcement, culture, family, and/or communities. There is no excuse for domestic violence, and it is never the victim's fault.

Cycle of Domestic Violence

Domestic violence occurs in a cycle characterized by three phases:

- **Tension-Building Phase:** Minor incidents of abuse gradually escalate. The victim may cope by accepting the abuse as legitimate. The abuser, aware that his behavior is wrong, fears that his partner will leave and often becomes jealous and possessive. As a result, the victim tends to withdraw. The abuser then increases the abuse to gain attention and maintain control.
- **Violent/Acute Battering Incident Phase:** Explosive rage is intended to teach the victim a lesson and emphasize the abuser's power. The type of violence, when and where it will occur, and its severity become impossible to predict. Both partners--in shock, denial, and disbelief--often minimize the seriousness of the incident.
- **Honeymoon Phase:** The tension is gone and the abuser, now kind and loving, asks for forgiveness. The abuser may honestly believe that he will not abuse again, often because he believes the partner has learned her lesson. All of his actions are geared toward reconciliation.

Red Flags in Abusive Relationships

The following behaviors typically indicate the potential for lethality:

abuse of pets or children

playing with fire or setting items on fire in front of the victim

- choking
- threatening suicide
- use of firearms

If a victim sees any of these behaviors, it is imperative that she seek outside help and safety.

What to Do if You Are Being Hurt by Someone You Love

Leaving an abusive relationship is often difficult due to a lack of social, financial, spiritual, and other resources. **There is a way out** with help from crisis hotlines, domestic violence shelters, restraining orders, counseling, and court advocacy. Domestic violence almost always gets worse; it never lessens in severity. A victim is in greater danger when she leaves the relationship. Careful safety planning is a necessity when leaving an abusive relationship.

- Call the National Domestic Violence Crisis Line: 1-800-799-SAFE, Mississippi Coalition Against Domestic Violence 1-800-898-3234, or a local Mississippi shelter (see listings).
- Talk with someone you trust.
- Make a safety plan: Safety planning for someone involved in an abusive relationship is a necessary and important step. Planning can be used while you are still with your abuser or after the relationship has ended. While still in an abusive relationship, **safety is of primary importance**. Some aspects of safety planning include: creating a secret emergency kit (described below); establishing a method to call for help using code words or signals; and leaving when it is safe to do so.

WHAT TO TAKE WHEN YOU LEAVE

- Identification
- Birth certificates: yours and your children's
- Social security cards
- School and medical records
- Money, bankbooks, credit cards, food stamps
- Keys: house, car, office
- Driver's license/registration
- Medications
- Medicare cards
- Passports
- Green cards
- Work permits
- Address book
- Lease/rental agreement
- House deed
- Mortgage payment book
- Insurance papers
- Current unpaid bills
- Personal hygiene products
- Pictures
- Items of sentimental value
- Children's diapers, formula
- Pre-paid cell phones

MISSISSIPPI COALITION AGAINST DOMESTIC VIOLENCE MEMBER SHELTERS

Angel Wings Outreach Center	Crisis Line: 1-866-847-5802
Mendenhall, MS	
Care Lodge	Crisis: 1-888-593-4673
Meridian, MS	
Catholic Charities, Inc.	Crisis: 1-800-273-9012
Domestic Violence Services Center	601-366-0750
Jackson, MS	
The Center for Violence Prevention	Crisis: 1-800-266-4198
Pearl, MS	
Domestic Abuse Family Shelter.....	Crisis: 1-800-649-1092
Laurel, MS	
The Guardian Shelter	Crisis: 1-800-273-6938
Natchez, MS	
Gulf Coast Center for Nonviolence	Crisis: 1-800-800-1396
Biloxi, MS	
Haven House Family Shelter.....	Crisis: 1-800-898-0860
Vicksburg, MS	
Our House, Inc.	Crisis: 1-662-332-5683
Greenville, MS	
S.A.F.E., Inc.....	Crisis: 1-800-527-7233
Tupelo, MS	
Safe Haven, Inc.	Crisis: 1-800-890-6040
Columbus, MS	

These Mississippi shelters provide direct services to families affected by domestic violence.

Services include:

- 24-hour crisis line
- Temporary Housing
- Advocacy (Court & Social Services)
- Counseling
- Transportation
- Community Education
- Child Care
- Safety Planning
- Referral Services

INDEX

A

Acute Battering Incident Phase **15**
Aggravated Assault **2**
Aggravated Domestic Violence **2**
Albright Factors **11**

C

Calls for Assistance **9**
Children **3**
Choking **15**
Civil Protection Orders **7**
Commonly Asked Questions **11**
Crisis Line **16**
Custody Papers **13**
Cyberstalking **5**
Cycle of Domestic Violence **15**

D

Desertion **13**
Domestic Abuse Protection Act **1**
Domestic Violence **1**
Domestic Violence Shelters **10**
Dynamics of Domestic Violence **15**

E

Emergency Protection Orders **7**
Evidence **12**

F

Federal Laws **6**
Felonies **2**
Final Protection Orders **7**
Financial Abuse **15**
Firearms **15**
Fondling **4**
Forced Isolation **15**

H

Harassment **5**
Honeymoon Phase **15**

I

Interstate Removal of a Child **6**

K

Kidnapping **5**

L

Law Enforcement Assistance **9**
Legal Custody **11**

M

Minor **4**
Misdemeanors **2**

P

Peace Bond **11**
Physical Custody **11**
Physical Violence **15**
Preparation **12**
Psychological Abuse **5, 15**

R

Rape **4**

S

Safety Plan **16**
Services **17**
Sexual abuse **15**
Sexual Assault **4**
Sexual Battery **4**
Simple Domestic Violence **2**
Spiritual Abuse **15**
Spousal Privilege **11**
Stalking **5**
Suicide **15**

T

Table of Statutes **14**
Temporary Protection Orders **7**
Tension-Building Phase **15**

V

Victims' Compensation Program **12**
Violence Member Shelters **17**
Violent Battering Incident Phase **15**
Vulnerable Adult **3**

W

What is Domestic Violence? **15**
What to Do if You Are Being Hurt
by Someone You Love? **16**
What To Take When You Leave **16**



MISSISSIPPI
COALITION AGAINST
DOMESTIC VIOLENCE
www.mcadv.org

Mississippi Coalition Against Domestic Violence

P.O. Box 4703

Jackson, MS 39296

(601) 981-9196 or (800) 898-3234

www.mcadv.org