HOW CAN I OBTAIN A DIVORCE?

No informational brochure can ever substitute for competent legal counsel on a subject as important as divorce. You should seek such counsel if you are contemplating a divorce.

There are numerous specific fault-based grounds for divorce in Tennessee. These grounds range from those which are very specific - adultery, bigamy, drunkenness, and the like - to less specific, such as inappropriate marital conduct.

Tennessee also has a ground for divorce called "irreconcilable differences" which does not require either spouse to give evidence of anything derogatory about the other. However, the parties must be in agreement on all aspects of the divorce, including child custody and support, division of all property and debt, together with any other significant issues arising out of the marriage and this agreement must be filed with and approved by the court. The court is obligated to make sure that the parties' agreement is in compliance with the state's guidelines for child support. In an irreconcilable differences divorce there is a waiting period of sixty days from the date the complaint is filed if there are no children and ninety days if there are children of the marriage. At the final hearing on an irreconcilable differences divorce it is not necessary to bring witnesses to appear on your behalf. One party, usually the plaintiff, must appear and testify that the marriage is beyond repair and that the proposed agreement is fair.

In any event, you must have been a resident of the state of Tennessee for a period of at least six months before filing for either type of divorce, unless the specific grounds for divorce occurred within the state.

If the divorce is contested in any respect, the defendant must file an answer within thirty days after he or she is served with the papers. Either of the parties can request a date, or the court will set a trial date at which time the judge will hear the evidence and decide any disputes, such as alimony, custody, child support, visitation rights, division of property, and the like. If an answer is not filed within 30 days of being served, the moving party can file a motion of default and, if that is not answered in a timely manner, then a default judgement can occur.

No matter how the divorce is obtained, you are divorced on the date the judge signs the document granting the divorce. However, there is a thirty-day period after the judge has signed the final judgment during which either party may appeal the decision to a higher court. Neither party should remarry until after the time for appeal has passed.

Mediation is now required to take place within 180 days of the filing of a divorce unless the parties settle their differences before that time. Even though participation is mandatory, mediation is generally a voluntary process where an impartial third party facilitates discussions between the couple. This is different from arbitration. In arbitration, the neutral third party will decide the case like a Judge, and the decision is binding. The mediator will never decide the case. He or she will try to help the parties reach their own settlement of the case.

A law modernizing this state's divorce laws went into effect on January 1, 1999. The law creates a statutory procedure for obtaining a legal separation. In a legal separation the parties may divide property and debts and establish a parenting plan for minor children. However, after the legal separation is approved the parties are still married and cannot remarry. A legal separation can become a divorce if the parties agree.

LEGAL SEPARATION - WHAT HAPPENS?

Legal separation is an alternative for people who no longer wish to live together as husband and wife, but do not presently want a divorce. Sometimes, they are not certain that the marriage cannot be saved. In other cases, parties do not want to divorce because of religious or family concerns.

Regardless of the motivation, legal separation is a procedure through which a court can declare the husband and wife to be separated in the eyes of the law. The court can address problems that need to be dealt with during the separation in order to protect the interests of each party. These include child custody, visitation, child support, alimony, and property issues.

The grounds for a legal separation are the same as the grounds for divorce. To obtain a legal separation, a person must file a complaint with the court, similar to a divorce complaint, and must allege the existence of grounds, such as the other spouse's inappropriate marital conduct. Even if the other party denies that grounds exist, unless he or she specifically objects to a legal separation, the court must grant one. If the other party does object to the legal separation, it will be up to the judge to decide whether it should be granted.

The granting of a legal separation is significant in several ways. First, it allows the establishment, under a court order, of the ground rules the parties will follow regarding their children, their property and their money. It gives the parties the legal status of being separated in the eyes of the law. Additionally, being legally separated for more than two years without a reconciliation is a basis for granting a divorce.

After two years have passed since the legal separation, either party can ask the court to turn their legal separation into a divorce. The court will, at that time, address and resolve any remaining issues between the couple. However, the granting of a legal separation does not prevent the granting of a divorce in less than two years if a complaint for divorce is filed and divorce grounds are established.

While a legal separation is in effect, the husband and wife are still married but are not compelled to live together. The law is relatively new and is unclear in some ways. For example, it is not clear to what extent a spouse who obtains significant property from earnings during the legal separation will be required to share it with the other spouse. Similarly, it is unknown how a spouse's adultery or other marital misconduct during the legal separation will be viewed by a divorce judge.

DO I HAVE GROUNDS FOR ANNULMENT OF MY MARRIAGE?

Annulment is the process through which a marriage is set aside, as if it never occurred. It is a very unusual remedy and is only permitted if certain specific requirements are met. Unlike a divorce, which is the dissolution of a marriage, an annulment is the determination that, because of some problem at the time of the marriage, it is not valid and it therefore never existed.

There are several grounds for annulling a marriage:

Typically, one must be eighteen years old to marry, or at age sixteen or seventeen with permission of a parent or guardian. Failure to meet this requirement may be grounds for annulment.

Another basis for annulment is the inability of either spouse, at that time of the marriage, to understand the nature of the marriage contract. For example, if a marriage partner was intoxicated or was mentally ill to the extent that he or she did not understand the step being taken, the marriage was not entered into with sufficient knowledge and might be set aside. However, if that spouse later gains the ability to understand and continues to live with the spouse, this annulment ground might not apply.

If a person is coerced into marriage by force or by fraud, there can be grounds for annulment. Force involves the use or threat of violence. Fraud means not telling the truth, but must involve a significant issue to constitute deceit sufficient to set aside the marriage.

The inability to physically enter into the marriage, which is typically defined as a lack of ability to engage in sexual intercourse, can be grounds for annulment if it existed at the time of the marriage and continues to the time of the suit. Conversely, if the wife is pregnant with another man's child and the husband does not know that the child is not his, he will have grounds for annulment.

Although an annulment determines that the marriage never existed, any children born of the marriage are still considered to be legitimate.

Another grounds for annulment is someone being married to another party. One cannot legally enter into marriage if he or she is married to another person at the time. Also, one cannot legally marry a sibling, parent, or other close relative.

CHILD CUSTODY

Frequently, the most important and difficult issue facing parents when divorcing is the living arrangements for their children. In many instances, the parents enter into an agreement that is known as a Permanent Parenting Plan. This Plan sets out all of the rights and responsibilities of the parents with respect to the children. Ideally, it sets forth a plan which allows the children frequent and continuing contact with both parents, and affords each parent the opportunity to share the responsibilities and rewards of raising their children.

When parents cannot agree, the court will craft the Permanent Parenting Plan itself either based on one proposed by one of the parents, or it can craft a Plan that is different from that proposed by either parent. Sometimes, the court designates one of the parents to be the legal custodian. Other times, the Court can establish equal parenting time and joint decision making between the parties. There has been more of a push towards equal parenting time in the past few years, and some Judges use this as their starting point in custody litigation.

In making a custody order, the court follows the principle that custody must be determined on the basis of what is in the best interest of the children. This determination is made on all relevant factors including the following:

1) The love, affection and emotional ties existing between the parents and child;

2) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary care giver;

3) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

4) The stability of the family unit of the parents;

5) The mental and physical health of the parents;

6) The home, school, and community record of the child;

7) If the child is twelve or older, the preference of the child, if the child wishes to express a preference;

8) Evidence of physical or emotional abuse to the child, to the other parent or to any other person;

9) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child.

In rare cases, the court may award custody to a non-parent if that person shows that substantial harm will result to the child if one or both of the parents is awarded custody.

Keep in mind that divorce may be the most traumatic event in the life of children. How parents deal with issues which arise in divorce will have a lasting effect on the children's mental health. Community mental health professionals specialize in all phases of family counseling. There are trained staff who will provide counseling to couples who are finding it difficult to get along. If you need help, call Helen Ross McNabb Center at (865)637-9711.

The statutes governing child custody jurisdiction were rewritten during the 1999 legislative session. An important provision is titled "The Uniform Child Custody Jurisdiction and Enforcement Act" (UCCJEA). The purposes of the UCCJEA are to avoid jurisdictional competition and conflict with courts of other states in matters of child custody, to promote cooperation with courts of other states, to discourage the use of the interstate system for continuing controversies over child custody, to deter the abduction of children, to avoid relitigation of custody decisions of other states in Tennessee, and to facilitate the enforcement of custody decrees from other states.

Among other things, the UCCJEA provides for the registration in Tennessee of child custody determination issued by a court of another state. A Tennessee court may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

The UCCJEA also provides that, upon the filing of a petition seeking enforcement of a child custody determination, the court will issue an order directing the other parent to appear in person with or without the child at a hearing. Upon a finding that the petitioning parent is entitled to immediate physical custody of a child, the Court will order that the petitioning parent may take immediate custody.

The UCCJEA also permits a petitioning parent to file a sworn application for the issuance of a warrant to take physical custody of a child if the child is immediately likely to suffer serious physical harm or be removed from the state. For more specific information concerning the UCCJEA and its potential applicability to you, you should consult an attorney of your choice.

It is noteworthy that the Juvenile Court has exclusive jurisdiction in all child abuse cases. Should an allegation of abuse be made, the divorce court will not hear it or provide any ruling until the case is completed in the Juvenile Court. However, the divorce or any property issues may be resolved in the divorce court while things are still pending in Juvenile Court. Any questions about how an allegation of abuse might affect a divorce case should be directed to an attorney.

ALIMONY AND CHILD SUPPORT

Alimony and child support are two different types of support payments that may be ordered by a court. Alimony is money paid for the support of a spouse or former spouse and is ordered in some divorce and legal separation actions. Child support is usually paid for the support of children who do not live with the payor. It can be ordered in a divorce, legal separation action, custody proceeding, or action to establish the parentage of a child.

Alimony

Alimony is not ordered in every case. Its purpose is to provide for a spouse who has less financial resources than the other, and it is generally intended to rehabilitate that economically disadvantaged spouse. Rehabilitative alimony provides financial support, giving the person receiving it the opportunity to get more education or training in order to better support himself/herself.

There are many factors to be considered in setting alimony, including the relative earning ability of each spouse, their income from all sources, the relative education and training of each party, the age, health and mental state of each, the length of the marriage, the property of each, and the standard of living established during the marriage. The court has the discretion to also consider marital fault in setting alimony, although this does not happen in every case. Alimony cannot be ordered to punish a misbehaving spouse.

The length of time that payments will be required is usually proportional to the length of the marriage, with a longer stream of payments after a longer marriage. In some cases, alimony can be awarded indefinitely, until the recipient's death or remarriage. This is typical if a spouse cannot work due to health problems, or if the marriage is very long and the spouse has no ability to support himself or herself.

With some types of alimony, if a person is receiving alimony but begins living with another adult, it is presumed that alimony is not longer needed, because the roommate is either supporting or being supported by the person receiving the alimony. This is true regardless of whether there is a romantic relationship with the roommate. There are many other circumstances in which alimony can be increased or decreased if circumstances change; ask an attorney about your particular situation.

Child Support

The amount of child support that must be paid by a parent without custody is usually based on child support guidelines from the State of Tennessee. These guidelines were rewritten in 2020 and take into account the incomes of both parties, the amount of time the children spend with each party, any work related childcare, any health insurance paid for the children, and other similar variables. This is a complex analysis, so consult an attorney for better guidance.

In most cases, child support stops when a child turns eighteen and his or her class graduates from high school. If your daughter turns eighteen in January of her senior year, the child support obligation will continue until she graduates in May.

Once a court order has been entered setting child support, it takes another support order to change it; your agreement with the other parent is not binding. This means that, even if the other parent agrees that you can cut your support in half because your pay was cut, the court will hold you to whatever support amount is in the most recent court order. Child support can be increased or decreased by the court if a petition is filed and it is shown that there is a difference of at least 15% between the current court order and the payor's obligation under the guidelines.

In some cases the guidelines do not apply. This is determined on a case-by-case basis. As with most issues involving child support and alimony, legal representation is a good investment.

You can download a child support calculator program at this website: https://www.tn.gov/humanservices/for-families/child-support-services/child-support-guidelines-downloads.html

WHAT IF CHILD SUPPORT OR ALIMONY IS NOT PAID?

If your former spouse has fallen behind, either in alimony or child support payments, there are several legal steps you may take to enforce your rights to those payments which the court has awarded to you.

In order to enforce your child support, you can contact Tennessee Child Support Services at (865)862-0366 (for Knox County), or you can go to the office of the court clerk in the court where child support was ordered and request that the clerk issue a garnishment against the supporting parent's wages. Make certain that you have complete information on the supporter's place of employment and address as well as his or her Social Security number. If the supporter is at least one month behind in payments, the court can send out a garnishment to the employer and the support amount will be taken out of the supporter's income. You may wish to take into consideration the possibility that the garnishment process may cause the employer to look with disfavor on the garnished employee and look for legitimate reasons to terminate the employee; however, a federal law provides that no person can be fired because of a garnishment.

You may also execute on the supporter's property; in general, a car or a house. However, execution takes a long time and is less fruitful since most cars and houses have mortgages.

Another action you can take is to file a petition for contempt and obtain an order to show cause why the payments are not being made. This will bring the supporter back in front of the court that granted the divorce or in front of the child support magistrate. You need to have exact addresses and places of where the supporter can be served with the papers when the petition is filed.

You can file this petition through the child support agency for the county in which you live at no cost, or you can have a private attorney do the job for you. The supporter can be placed in jail for nonsupport if the judge finds that he or she willfully chose not to pay the support. You can also get an order for the amount of the support which was not paid, which is called an arrearage. Additionally, you may ask the court to order that future child support or alimony be paid directly to you by the employer through a wage assignment order. A statute provides that this is the appropriate way for child support to be paid and the court may elect to use this payment method for alimony as well, particularly if there has been a previous failure to comply with timely payment of the alimony.

If the supporter has moved out of this area, you need to file a petition using the Uniform Interstate Family Support Act called "UIFSA." The local child support agency will send the petition to an office of the city where the supporter lives, and a court action will be filed against that person. Again, it is important to have the exact addresses and, if known, the employer as well as the supporter's Social Security number for tracing. This is a lengthy process, so you need to start it as soon as possible. All people are eligible for services through Tennessee Child Support Services, regardless of their income. You do not have to be receiving welfare benefits to be eligible. You can also go to Child Support Services and file an Internal Revenue Service

intercept which will take any refund $500 and above due the supporter from income tax for payment of child support arrearages. This must be done by June 30th for that particular tax year.

It is best if you can calculate exactly how much money the supporter owes you. You can do this by showing month by month the amount of support he or she owes and multiplying that by twelve for the year. If the court order states a weekly amount, you multiply the weekly amount by 4.3 weeks in order to get a monthly amount, as using four weeks will be incorrect because there are some months with five weeks. Try to be accurate in your records since you will have to swear under oath that your figures are correct.

You can also file criminal sanctions against the supporter for nonsupport. To do so, you would go to the criminal court clerk and/or the prosecutor's office and request that they file warrants for nonsupport.

HOW WILL THE PROPERTY OF MY MARRIAGE BE DIVIDED IN A DIVORCE?

You may be concerned about dividing marital property. Marital property can include possessions, real property and money.

If you and your spouse cannot agree in writing on how to divide your property, the court will divide it for you.

If it is necessary for the court to become involved, the judge generally divides the property in the following manner:

First, the court must identify what property is marital property and what property is separate. Separate property is property brought into the marriage and property inherited or received as a gift while married. Marital property is all the property that the parties acquire during the marriage, regardless of which party's earnings paid for the property. The growth in value of a party's separate property can, under certain circumstances, be classified as marital property. Each party will be allowed to keep his or her separate property. After the marital property is identified, the divorce court will "equitably" divide the marital property. This does not mean "equally," but actually means "in a fair way." Frequently, the court determines that an equal division is fair. The court does not consider who is at fault in the divorce in the division of property.

The court may order that certain property be sold and the money received be divided as the court feels is fair. This often happens when the husband and wife cannot agree on who keeps certain items.

Each case is different, and the court will base its decision on the wishes and needs of those persons involved. An example of a non equal distribution might be where the property in part consists of a business in which the husband is the only active participant. If it is impractical for both the husband and the wife to share this business property, the court may decide to award it to the husband and award the wife other property of an equal value, or the court may order the business sold and any proceeds of the sale divided between the parties.

In general, the court can consider the entire situation of both parties involved in a marital dispute. The court attempts to divide the property as fairly as possible based on all the facts and circumstances. In doing this, the court tries to consider the interest and needs of the parties and custody of any minor children. For instance, the court may grant possession of the marital residence to the parent who has custody of the minor children, either while the children are under eighteen and order it sold when the youngest child turns eighteen, or may award the residence to the custodial parent and offset the equity of the marital residence against other property.

The court also must consider the allocation of the marital debts.

The court may consider fault and the condition of the parties and award alimony in solido, that is lump sum alimony, where after an equitable division of the property, the court determines that one spouse needs more than the property to support himself or herself.

WHO IS RESPONSIBLE FOR THE DEBTS OF A HUSBAND OR WIFE?

You do not have to pay the debts of your spouse which were incurred before the marriage, and a husband or wife is not responsible for repayment of a debt incurred by the other spouse after the marriage, except to the extent that the debt is for necessaries. Necessaries include those things required for survival, including reasonable food, clothing, medical care, and shelter.

In addition, a spouse of an applicant for credit is ordinarily not liable for any debts where that spouse has not signed the application for credit, unless the credit was used for furnishing necessaries for which the spouse was liable under common law.

Under Tennessee law, either or both spouses may hold property separately. Property held jointly by husband and wife is presumed to be held as tenants by the entirety, but this presumption may be rebutted. As tenants by the entirety, each of the spouses has the right to the use and occupancy of the property and also a right of survivorship. This "right of survivorship" means that when a spouse dies, the surviving spouse automatically owns the property free and clear of the claims of heirs or the deceased spouse's creditors.

If debts are incurred after marriage by only one spouse, the creditors are limited in their recovery to that spouse's individual property or his or her right of survivorship in property held as tenants by the entirety. If the spouse who owes the debts does not have any property of his or her own and dies before the other spouse, creditors would be entitled to no interest in the property owned by the surviving spouse.

Until now, we have discussed debts owed as part of a purchase of something. It is also possible for a problem to develop if one of the marriage partners becomes involved in a lawsuit stemming from an accident or injury. Generally, a married person is not liable for any injury or damages caused to another by his or her spouse. The one exception, however, is a case where that married person would be liable regardless of the marriage.

A person injured in an accident is treated no differently than any other creditor. If only one spouse is found liable to the injured person, then the injured person must seek recovery from property held by the debtor spouse individually or be limited to that spouse's right of survivorship in property held as tenants by the entirety.

As you can see, the problems of debts incurred by husband and wife can be complicated.

CHILD VISITATION

In some cases where the custody of children is involved, the court provides that one parent has custody and the other parent has rights of visitation. In other cases, the Court may establish equal parenting time for both parents. If you are awarded primary custody, you are called the primary residential parent, and the other parent is called the alternate residential parent. Once you are on a Parenting Plan or one is ordered by the Court, you cannot deny visitation because you have hard feelings against the noncustodial parent; or you plan activities which conflict with the other parent's visitation time. You may not deny visitation simply because the noncustodial parent refuses to pay child support, and neither can a non-custodial parent refuse to pay child support because the custodial parent denies visitation. Both the denial of visitation and the failure to pay support would constitute contempt of court.

Parents can be creative in developing an agreed parenting plan, and courts will generally approve any plan submitted by agreement. If the parents cannot agree to a plan, the court will create one which maximizes the involvement of both parents in the child's care, and consistent with what the court determines is in the child's best interest.

What happens if you don't live up to the visitation schedule? No one can force parents to visit their children, but the Court can require you to permit visitation. If the non-custodial parent fails to exercise visitation, the Court may increase the non-custodial parent's child support obligation because of underutilization of visitation.

Unless there is a serious reason, such as a real danger to the health or welfare of the children, the excuse that the children do not want to visit is not a valid reason to refuse visitation. It is not the child's choice, and you must comply with court ordered visitation, despite your personal feelings about the other parent. The courts take interference with visitation very seriously and unjustified denials of visitation can result in time spent in jail.

Another excuse for denying visitation is that the children are upset when they return from visiting. A change in routine will normally produce some changes in a child's behavior. Again, unless there is a substantial threat to their health or welfare, visitation must follow the court's order.

The whole idea of visitation is to make children realize that they have two parents and that both parents, despite their personal differences, are entitled to love and to be loved in return. In addition, visitation maintains the bond between the noncustodial parent and the children even though the matrimonial bond has been broken by divorce.

HOW DO I ENFORCE VISITATION RIGHTS?

Until a court order on custody and/or visitation has been made, a married father and mother have equal rights with regard to their children. This situation can be confusing. Frequently, one of the first things to be resolved in the dissolution of a marriage is the custody and/or visitation arrangement pending the final hearing of divorce. It may become necessary to obtain a temporary order regarding custody and visitation, and this should be discussed with your attorney.

A custodial parent who refuses to honor a visitation schedule may be held in civil or criminal contempt. To initiate a contempt proceeding, you must file a Petition for Contempt requesting that the custodial parent be held in contempt of court for not allowing you visitation as ordered. This is customarily accomplished in the court that granted your divorce.

The purpose of a civil contempt proceeding is to coerce the custodial parent into complying with the court's order. The proceeding is intended to benefit the non-custodial parent, and civil contempt sanctions end when the custodial parent complies with the court's order. In contrast, criminal contempt proceedings are intended to impose punishment for past misconduct. The punishment for criminal contempt is statutorily limited to the imposition of a fine of $50.00 and imprisonment up to 10 days for each act of contempt. Punishment for criminal contempt may be imposed immediately once a judge sees or hears evidence of willful misconduct. Some Judges are very draconian about this, so parents should recognize the possibility of serving jail time here is very real.

To have the custodial parent found in contempt, you must show that the parent has knowledge of the order of visitation and knowingly refused visitation to you. If the custodial parent can show that reasonable efforts were made to comply with visitation, then the parent may be found not to be in contempt.

Tennessee also has a set of laws (often referred to as the "move-away" bill), which provide a blueprint on how courts are to address issues that arise when parents geographically relocate. The move-away law requires notice of a parent's intent to move, lists conditions under which a parent with whom the child spends a majority of his or her time will be allowed to relocate, and lists factors a court will consider in making a custody decision if a parent chooses to relocate after the court has determined the move is not in the child's best interests. Under the law, when a parent who is spending intervals of time with the child desires to relocate outside the state or move more than 50 miles from the other parent within the state, the relocating parent must send, by registered or certified mail, a notice to the other parent no later than 60 days prior to the move. Unless the parents can agree on a new visitation schedule, the relocating parent must file a petition seeking to modify visitation. The court will assess the cost of transporting the child for visitation and determine whether a deviation from the child support guidelines should be considered.

If the parents are not spending substantially the same amount of time with the child and the parent spending the greater amount of time with the child proposes to relocate with the child,

the other parent may, within 30 days of receiving notice, file a petition in opposition to the relocation of the child. Ordinarily, the parent spending the greater amount of time with the child will be permitted to relocate with the child unless the court finds that the relocation does not have a reasonable purpose, or would pose a threat of harm to the child, or if the parent's motive for relocating is intended to defeat or deter the visitation rights of the non-custodial parent.

Both the petition for contempt and the petition to modify usually require the help of an attorney. Generally, you will be held responsible for your own attorney fees and expenses, although in some instances, the court orders the other parent to pay all of the attorney fees and expenses.

Don't forget that sometimes there are very legitimate reasons why visitation is denied on a specific occasion. Bringing a contempt action can bring back emotional tension from the past on the part of not only the parents involved, but also on the part of the children.

Try to be as objective as you can before pursuing any legal remedies for denial of visitation.

CHILD ABUSE

Every child has the right to grow up in an environment which promotes his or her health and safety, free from abuse and neglect. When we talk about abuse and neglect, we are not merely talking about physical abuse but also mental and sexual abuse.

Tennessee law requires the reporting of suspected child abuse and protects the identities of the person reporting the abuse. Tennessee also allows the state to intervene in the parental rights to raise the child, and also provides criminal sanctions when a child is abused or neglected.

The cycle of abuse is often repeated from generation to generation and may require professional intervention to break the chain. Also, many instances of child abuse or neglect go unreported because people do not want to get involved, or believe that it will disappear in time, or are simply afraid of legal liability. The laws of Tennessee are specifically aimed at these problems.

Tennessee Code Annotated, Title 37, Chapter One, Part Four requires that any person having knowledge of child abuse or neglect must report the abuse to the Juvenile Court Judge, or the Department of Human Services, or the Sheriff or Chief of Police. Failure to report child abuse or neglect is a crime. Reports of child abuse are confidential and if the report is made in good faith, the person making the report cannot be sued or charged with crime for reporting.

The report leads to an immediate investigation and if the situation calls for it the child may be removed from the home.

If the authorities believe that there is a need for court intervention, a petition will be filed in Juvenile Court asking the court to intervene and protect the child. This is called a dependency and neglect action. It is not a criminal action and no one is charged with a crime. A separate criminal action can be instituted. In a child abuse case in Juvenile court the petition alleges that the home of the child is unfit by reason of neglect, cruelty, depravity, or physical abuse by the parent, guardian or other person having custody.

The petition alleges certain facts, which if the court finds are true, could cause the child to be declared dependent and neglected.

If it is possible that a parent may lose parental rights, they have a right to be represented by an attorney. If they cannot afford an attorney the court will appoint one.

After a finding that the child is “dependent and neglected,” the court may make an order to protect the child. The court has the power to remove the child from the custody of persons otherwise entitled to custody and to order participation in counseling and psychiatric sessions. The court also has the power to place the child in the home of a relative or into foster placement.

The dependency cases are reviewed from time to time to determine the current status. At these review hearings, the court reviews the case and determines what will best serve the minor at that time. Once the court assumes jurisdiction over a child, it may continue to intervene until the child reaches 18 years of age.

In some instances, the investigation leads to a criminal complaint being filed. The basic child abuse provision in Tennessee is Tennessee Code Annotated Title 29 - Chapter 15, Part 4. Generally stated, the section proscribes willful cruelty toward a child, and endangering life, limb, or health of a child. The charges in this sort of case are not limited to this basic provision, but may include charges of other crimes as well.

To report child abuse, call the Department of Children's Services at (877)237-0004. Under Tennessee law if you have knowledge of child abuse or neglect you must report it.

It is worth noting that the Juvenile Court has exclusive jurisdiction in all child abuse cases. Should an allegation of abuse be made in a divorce action, will not hear it or provide any ruling on the divorce case until the abuse case is completed in the Juvenile Court. Any questions about how an allegation of abuse might affect a divorce case should be directed to an attorney.

RIGHTS OF BATTERED WOMEN

Any violent act committed within a “family-like” setting involving the police is considered domestic violence. Those included within the definition of “family” are persons who are related, either now or in the past, by blood or marriage; the parent of the child; a person with whom the victim is having a sexual relationship where either person is currently pregnant; any persons living together in the same dwelling; and any person engaged, now or in the past, in a dating relationship.

If you or anyone you know is a victim of domestic violence and the situation is an emergency, call 911 immediately. Even if the call is interrupted, 911 will know from where the call was placed and will call you back and/or will send the police to the address to investigate. If the situation is not an emergency, the victim or someone who knows the victim, should call the Knoxville Police Department or the Knox County Sheriff's Department, on non-emergency lines.

What Happens After The Police Are Called?

When the police are sent, especially after a 911 call is placed, an arrest is highly likely. The law states, "If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or a felony, or was committed within or without the presence of the officer, the preferred response of the officer is arrest."

The officer determines whether or not there is probable cause to believe that a person has committed a crime by observing the victim, speaking with the victim and witnesses, and speaking with the alleged abuser if that person is available. If the officer believes that two or more persons have been violent toward each other, then the officer shall exercise his/her best judgment in determining whether to make an arrest and whom to arrest.

Upon responding to a domestic violence call, officers must consider arrest as a possibility. In deciding whom to arrest, the officer will first determine who was the primary aggressor. In making that determination, the officer will consider: the history of abuse between the parties (including Orders of Protection); the severity and type of injury inflicted upon each party's person; evidence from the parties and their witnesses; the likelihood of future injury to either party; and whether or not one of the persons acted in self-defense.

The officer will not decide whether to make an arrest based on the willingness of the victim or witnesses to testify or participate in court hearings.

The officer shall not "threaten, suggest, or otherwise indicate the possibility of arrest of all parties to discourage future requests for intervention by law enforcement personnel..." In fact, unlike in the past when victims were required to swear out warrants, officers now are being trained to swear out all warrants involving domestic violence themselves. The policy of all policing agencies in Knox County, as well as that of the District Attorney General, is that the State is now responsible for prosecuting all crimes, including crimes of domestic violence. The State wants every citizen to know that a crime is a crime, whether the perpetrator is a stranger or

someone known and loved by the victim. In addition, the State wants every citizen to know that every victim will be protected from violence even if that violence happens at home.

When the police answer a domestic violence call, they should immediately collect as much evidence as possible. Evidence will include weapons, torn or bloody clothing, and broken items. They should take photographs or have their criminal investigations department come to the scene to take photographs, and/or ask the victim to come to their office for photographs to be taken. They should talk to all witnesses, including others in the residence, children, neighbors and whoever called 911.

When a domestic violence investigation is made, officers must seize all weapons that may have been used in the violence. Officers may seize any weapon that is in plain view or discovered pursuant to a consensual search. Law enforcement officers are not required to remove a weapon if the officer believes that it is needed by the victim for self-defense.

How Can the Victim Assist The Police?

The victim should:

- remain as calm as possible.
- not be afraid to ask the police to make a report.
- tell the police about the incident in detail.
- show the police any injuries, bruises or damaged property.
- let the police know if there were any witnesses to the violence.
- tell the police about any other incidents of domestic violence in the past.
- tell the police whether he or she has an Order of Protection or a Restraining Order from any court and if so, show the court documents to the officer.
- be sure to receive and keep the information card given by the police officer;
- listen carefully to the explanation about shelters and safe houses;
- listen carefully to information about counseling and resources in the community. In Knox County, the Family Justice Center is a centralized point of assistance for victims;
- demand a lawyer if he or she is arrested as well or instead of the alleged abuser; and
- remember that if he or she cannot afford a lawyer, the court will appoint one.

If the officers fail to respond to a call for help or if the victim is not treated with respect, a complaint may be filed with the Chief of Police, Sheriff or Special Domestic Violence Unit about the officer's conduct.

The law requires officers to give the victim information on how to get help and to offer safe transportation to a shelter or safe house. Much of this information is contained on a card which the officer should give to each victim. This card will also have the name of the officer making the investigation as well as the number of the officer's offense report.

Every officer is required by law to make an offense report of every domestic violence call that he or she answers. These offense reports must explain the officer's actions, especially if the officer decides not to make an arrest or if the officer decides to arrest two or more parties. If the

officer decides not to make an arrest, the officer should explain to the victim how to get a copy of the offense report and how to get a criminal warrant.

When An Arrest Is Made

If an arrest is made, the officer should provide the victim with an opportunity to sign a request to get notice if the defendant bonds out of jail. The law also allows conditions to be placed on a defendant's bond in domestic violence cases. The conditions may include a notice that the defendant may not abuse or threaten to abuse the victim while on bond; an order restraining the defendant from contacting the victim, either directly or indirectly through third parties or by mail; an eviction of the defendant from the residence of the victim; or an order restraining the defendant from using any alcohol while on bond or possessing any firearms.

When people are arrested, they are entitled to a bond. Bond in Tennessee is imposed primarily to assure a defendant's appearance in court. These bonds are often set rather low. The victim should expect a defendant to be able to bond out after twelve hours in custody. In response, often it is the period immediately after the abuser is released from jail that the victim is in the most danger. The bond release notification form signed by the victim should ensure that she or he is notified when the defendant is released from jail, allowing the victim to make a plan for personal safety.

At the time they are released from jail, defendants may be told that they have conditions connected to their release. Those conditions may include no contact with a victim, no use of alcohol or firearms, and/or temporary eviction from a shared residence. Defendants who have such conditions and violate them can be arrested by the police without another warrant. These conditions continue until the case is adjudicated or until a judge makes changes in a courtroom.

Conditions that may be imposed include, an order:

- enjoining the defendant from threatening to commit or committing specified offenses against the alleged victim;
- prohibiting the defendant from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, either directly or indirectly;
- directing the defendant to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
- prohibiting the defendant from using or possessing a firearm or other weapon specified by the magistrate;
- prohibiting the defendant from possession or consumption of alcohol or controlled substances; and
- Any other order required to protect the safety of the alleged victim and to ensure the appearance of the defendant in court.

If the police make an arrest, a criminal warrant will be issued on the police officer's own affidavit. These warrants should list the victim as a witness so that the victim will receive a subpoena for the appropriate court dates.

The Preliminary Hearing

If the defendant is unable to make a bond and remains in jail, the preliminary hearing date will be scheduled within ten days of the defendant's arrest. If the defendant is able to bond out of jail, the hearing date will be approximately three to five weeks after the arrest. If the victim knows that the defendant cannot make bond, she or he should contact the General Sessions Court Clerk or District Attorney General's office to obtain the preliminary hearing date.

At the preliminary hearing, the District Attorney will prosecute the defendant's case. The victim should contact the Domestic Violence Unit of the District Attorneys' office in order to talk with the Assistant District Attorney who will be prosecuting the case, or with the Victim Witness Coordinator.

One of several things may happen at the preliminary hearing. If the defendant is charged with a misdemeanor, he or she may plead guilty to that misdemeanor in the Sessions Court. Most domestic violence charges are Class A misdemeanors, which carry an 11-month, 29-day sentence. Most defendants are given the opportunity to plead at the first preliminary hearing date. After a guilty plea, the sentence may be suspended, and the defendant may be placed on probation unless he or she has a past history of domestic violence or is on probation for prior charges.

Many domestic violence defendants are required to attend a 45-week intervention program for batterers. Batterers programs are not "anger management" programs. In most cases abusers only become dangerous with persons who care about them; it is learned behavior. Participating in these programs will not "cure" the abuser.

Victims are encouraged to enter a support group for victims of domestic violence. Victims only have control over their own behavior. Support groups help victims achieve better self-esteem, therefore enlightening them so that there is no need to continue an abusive relationship. Many victims have been caretaking their abusers for so long that they have often forgotten to take care of themselves.

A defendant charged with a felony may be given the opportunity to plead to a misdemeanor charge. The decision to amend a charge from a felony to a misdemeanor may be based on the defendant's history and the seriousness of the offense. Whenever possible, a defendant who has more than one charge pending will be sentenced to consecutive terms. If the defendant is sentenced on one 11-month, 29-day misdemeanor charge and he or she gets into trouble again, the defendant may be taken off probation and sent to jail to serve the 11-month, 29-day term. A defendant sentenced on domestic violence charges must complete 75%, or nine (9) months, of the time before he or she is eligible for early release. A defendant who violates his or her probation and is sent to jail will be ordered to enter, and complete, a batterer's program and/or alcohol and drug treatment programs at the detention facility, if available.

If a defendant is charged with a felony and that offense is so egregious that it cannot be pled as a misdemeanor, after a hearing and in the absence of a waiver, the charges will be bound over to the Grand Jury. If a preliminary hearing is required, the State must only show that there

was probable cause to believe a crime was committed and that the defendant committed it. If the judge believes a crime probably was committed, the warrant will be sent to the Grand Jury for review. If the judge believes there is not enough evidence that a crime probably was committed, the warrant will be dismissed.

After a case is presented to the Grand Jury, it may be rejected and dismissed, or a criminal indictment may be signed. Once a case enters the Criminal Court, either an agreement is reached between the District Attorney and the defense attorney or a jury trial is set.[30] At all stages of the criminal prosecution, either the Assistant District Attorney assigned to the case, or the Victim Witness Coordinator for the District Attorney General's Domestic Violence Unit, stays in contact with the victim and witnesses. The District Attorney also wants to know if the victim relocates, gets a new telephone number, or has any more trouble with the defendant.

Potential actions the judge may take:

- If either side is not ready, and the case is not too old, the judge may continue the hearing for a later date.
- The judge may dismiss the charges if the victim and the District Attorney cannot prove the defendant did what he or she is accused of doing.
- After a hearing, or upon agreement, the judge may find the defendant guilty and either send him or her to jail or suspend the jail sentence, putting the abuser on supervised or unsupervised probation and setting conditions on the probation, including restitution and/or counseling. (If the defendant does not follow the conditions of the probation, the judge will have another hearing to determine whether the defendant should go to jail.)
- The judge may order the charges bound over to the Grand Jury for review.

A victim does not have to talk to the defendant's lawyer. If a victim does talk with the defense attorney, what is said may be used in court for impeachment purposes.

Orders of Protection

In addition to the criminal process, there is a civil procedure for obtaining assistance when domestic violence occurs. If the person who is abusing the victim or the victim's children is one of the people listed below, the victim may be able to use a Civil Order of Protection to stop the abuse. The order is available if the abuser is a: spouse; person living as your spouse; person related by blood or marriage; person who is a parent of the child; person whose sexual relationship has resulted in a current pregnancy; person with whom the victim has had a dating relationship; and/or a person who is 18 years of age or older and resides in the same dwelling unit. In stalking and sexual assault cases, the victim does not have to be related in any of the ways above to the respondent.

Although the respondent (the person against whom the order is sought) must be 18 years or older, the petitioner (the one seeking protection) may be a minor.

The person seeking the OP is called the petitioner and is not required to pay any costs when petitioning. All costs for a final OP will be assessed to the respondent, the person against

whom the OP is entered. No petitioner shall ever be charged unless the court makes a finding that the petitioner's claims were false and the petitioner knew that the claims were false when they filed the petition.

The application will request information about the petitioner, the petitioner's residence, and about the respondent. The petitioner should be prepared to provide a detailed description, including the reasons and events causing her or him to seek an OP, and when those events occurred. Once the petition is complete, the petitioner will be asked to sign it under oath, and court personnel will take it to the judge or other authorized person for review.

After review, the judge may sign an "ex parte" Order of Protection. An "ex parte" means the order is issued before the respondent is aware of it or has had a chance to be heard. The Clerk's office should give the victim a certified copy of the Order of Protection once it has been signed by the judge. **The petitioner should keep this copy with him or her at all times.** This ex parte OP will tell the respondent to stop abusing, threatening to abuse, or committing acts of violence against the petitioner, and may direct the respondent to cease all contact with the Petitioner. It will also notify the respondent when to appear for a hearing on the allegations brought against him or her. The ex parte OP may require the respondent to leave the petitioner's home and it may also keep the respondent away from the petitioner. Because abuse often increases immediately after the ex parte OP is served, the petitioner may want to find safe shelter before taking out the OP. The police should be called if abuse occurs after the client has obtained the ex parte OP.

Once signed by the judge, the ex parte OP must be served on the respondent. Service on the respondent can be done in two ways. The first is by the court's process servers. The petitioner should provide the process server with the best and most complete information about where the respondent may be found: where the respondent lives, works or generally hangs out. If the Court's process servers cannot find the respondent, but the petitioner should see him or her, the second method of service may be used.

Any uniformed police officer can serve the respondent with the copy of the ex parte order of protection given to the petitioner by the clerk's office. If the petitioner sees the respondent, the police should be called and asked to send an officer to serve the ex parte OP. When papers are served this way, the petitioner should get the name and badge number of the officer; note the day and time of service; and call the court clerk with this information. The officer must give the clerk written proof of the service. **If the original copy was used to serve the respondent, the petitioner should get another copy of the ex parte OP from the court clerk.**

Once the respondent has been served, a hearing will be held approximately 5 to 12 days after the respondent is served with process. Some cases do not actually have hearings because the parties are able to agree beforehand to an Agreed Order of Protection. However, if there is no agreement, then a hearing must be held so that each of the parties have the opportunity to tell their story to the court. The court will then decide whether or not to issue a Final Order of Protection. In deciding whether or not to issue such an order, the judge will want to hear or see any evidence either side has, such as hospital and/or doctor's reports, witnesses or photographs. If the court finds that abuse occurred, the court will issue the final order. The Final Order of

Protection may last up to one year. A petition to extend the OP may be filed with the court, which will set a hearing to decide whether to grant the extension request.

An Order of Protection is a civil legal document given by the court, which helps protect you from physical violence, threats of physical violence, intentional destruction of your personal property, intentional harm to your pets, being held against your will, sexual assault or stalking. It can last for one year. An Order of Protection can order your abuser not to bother you; make your abuser move to or pay for another place for you and your children to live; give you temporary custody of your children; give you support money for yourself and/or the minor children you have together, and order your abuser into counseling.

The two types of Orders are a "No Contact" Order of Protection and a "Social Contact" Order of Protection:

- A "No Contact Order" demands your abuser not to telephone, contact, or otherwise communicate with you directly or indirectly. Indirectly means your abuser cannot e-mail you, text you, contact you on social media, write you letters, contact your work, use a third party to send you messages, etc.
- A "Social Contact Order" states that you can communicate with your abuser, and even live with your abuser, but your abuser may not hurt you, attempt to hurt you, or threaten to cause you harm.

If the respondent reoffends or does not follow the court's order, the judge can send the respondent to jail for ten days for each violation of the order. The judge may become aware of any violations of the OP in two ways. First, the police may arrest a respondent and notify the court of the arrest under the OP. Second, the petitioner may contact the Family Justice Center ("FJC") or an attorney for assistance in filing a "show cause motion" (demanding that the respondent show cause why he or she has not violated the OP). If the respondent is arrested, the petitioner should be notified by the court to file detailed information about the circumstances of the violation. That filing may be prepared by an attorney, an advocate at the FJC, or by the petitioner at the court clerk's desk in the Knoxville City/County Building.

When an abuser is charged with violating an Order of Protection, he or she is entitled to be represented by an attorney. If he or she is poor, one will be appointed. Because of this, all victims are advised to seek legal counsel when a Show Cause or Violation is filed. Legal Aid is available to help most victims. Information about finding an attorney is also available from the Knoxville Bar Association.

Restraining Orders

Restraining Orders are different from Orders of Protection. They are not limited to just domestic violence or family-like relationships. Restraining Orders are most often used when a divorce is first filed and may include restraints from contact and restraints from hurting marital assets. Sometimes the Sessions or Criminal Court judges also impose restraints on defendants. If the victim has a Restraining Order and the police come, he or she should show the Order to them. If the police are not called, but the abuser violates the Restraining Order, the victim should contact the civil lawyer who filed the petition, or the District Attorney General, if the

Order was imposed by the Sessions or Criminal Court Judge.

NOTE: This article has given you some information about your legal rights as a victim of domestic abuse. Naturally, no general summary can tell you everything you need to know. In addition, every situation is different. For those reasons, you should talk with a lawyer or domestic violence advocate for more information.

A more comprehensive and detailed resource prepared specifically for Domestic Violence issues is available for viewing or download at www.knoxbar.org/DV

GENERAL INFORMATION ABOUT ADOPTIONS

A successful adoption is probably one of the happiest of all legal proceedings. The adoptive parents become the parents of the child as if the child had been born to them.

Adoptions may be arranged privately or through an adoption agency operated or licensed by the state. Probably the most common type of adoption is adoption of a child by a stepparent, grand parent or aunt and uncle. Whether the adoption is through an agency, by private arrangement or adoption by relatives or stepparents, the legal procedures are very similar. Some states allow adoptions to be arranged by "facilitators," persons or agencies that assist with matching, but are not licensed placement agencies. Tennessee does not permit adoptions to be arranged by facilitators. In many adoptions, the court may appoint a guardian ad litem who is to look out for the best interests of the child. The guardian ad litem reports to the court, and is an expense to the potential adoptive parents.

Termination of the biological parents' rights is the first step toward adoption. The biological parents can agree to termination and sign a legal document for that purpose, or a court can terminate their parental rights. For a court to terminate a biological parent's parental rights the parent must have notice of the legal action and an opportunity to be heard by the court. If the court finds legal grounds for termination and that termination is in the child's best interest, the court can order the parent's rights terminated without the parent's consent. There are a number of grounds for termination of parental rights but the most commonly used ground is abandonment. A parent has abandoned a child if they willfully fail to visit or willfully fail to support the child for four consecutive months immediately prior to when the adoption petition is filed.

For adoptive parents, other than stepparents or close relatives, the court will require a home study before the adoption petition is filed. A home study is an investigation and education process conducted by, in most cases, an adoption agency selected by the prospective adoptive parents. The cost of a home study is usually between $800 - $1500 dollars. It usually takes several months for an agency to conduct the home study. At the conclusion of the home study the agency submits a report to the court including a description of the information obtained and makes a recommendation about whether the family is a suitable adoptive home for the child.

After the birth parents' rights are terminated, the child has been in the adoptive parents' home for six months, and a number of other technical requirements are met, a court can order that the prospective adoptive parents are the child's adoptive parents. As part of this process the child's name can be changed, if the adoptive parents ask for that. After the adoption is finished the adoptive parents with their attorney's assistance can have the division of vital records issue the child a new birth certificate with their names as parents and the child's new name.

Relative adoptions are treated a little bit differently than other cases. Where the child is a grandchild, nephew or niece of one of the adoptive parents or the step child of the adopting parent, the court may decide to waive the six month probationary period and home study and

adoption can be finalized soon after the court proceedings begin.

Stepparent adoptions also have some unique issues. Often a stepparent has lived with the child a number of years, feels a closeness to and a responsibility for the child, and wants to make the relationship legal and permanent. It may seem a mere formality, but adoption is necessary if the stepparent wants the step-child to have all the same rights and legal relationship his or her biological child would have. In Knox County, most judges will not finalize a stepparent adoption unless the adoptive parent has been married to the child's parent for at least one year. The divorced natural parent must also either join in the petition to give consent or have his or her parental rights terminated as part of the adoption proceedings.

In stepparent adoptions, as with all other adoptions, if the child is fourteen years of age or older, he or she must consent to the adoption.

Children are available for adoption from the Tennessee Department of Children's Services. Most of these children are special needs children and are often adopted by their foster parents. The cost of adoption through the Tennessee Department of Children's Services is minimal. To obtain more information or to begin the process call your county's Tennessee Department of Children's Services office.

Most adoptions involve children; however, there is nothing which prohibits an adult from adopting another adult. The legal procedure is similar to that involved in other types of adoptions but simpler.

Adoption law has changed substantially in recent years and is fairly complex. You should seek the assistance of a competent lawyer who is familiar with the type of adoption you are planning.

If you want to adopt a related child or a step child the first step is to contact an attorney.

If you are thinking of placing a child for adoption you may contact an attorney, an adoption agency or both.

If you are looking for a child to adopt there are basically only four methods to adopt an unrelated child: independent adoption, domestic agency adoption, international agency adoption and state agency adoption. The types of children available, costs, risks and benefits vary between the types.

INDEPENDENT ADOPTION

Independent adoptions are a popular way to adopt in Tennessee. A typical independent adoption costs between $5,000 and $7,000 dollars. The waiting time varies from a week or less to two years or more. The length of wait depends on how aggressively the family looks for a birth mother and how lucky they are. Independent adoptions are often set up through family, friend, or church connections.

The primary benefit of adopting a child without agency placement is reduced cost. Additionally, some agencies have placement restrictions (such as age) that exclude some adoptive parents.

Disadvantages include increased emotional risk, increased financial risk, the need to contract with private or adoption agency counselors for the birth parents' counseling rather than the ease of using "built-in" agency counselors, lack of availability of adoption preparation classes for the adoptive parents normally mandatory in agency adoptions, and the initial awkwardness of establishing a mutually comfortable pre-placement relationship with the birth mother. The adoptive family locates the birth mother and therefore they must be willing to commit significant time and effort to this part of the process. They must also make a number of choices about their adoption plan. To make good choices, they must become more educated about the legal and psychological aspects of adoption than is generally necessary for participants in other types of adoption. Because independent adoptions are supervised by attorneys, the quality of the parties' experience and the success of the adoption are tied closely to the competence and experience of the attorney.

DOMESTIC AGENCY ADOPTION

The children available through domestic agency adoption are generally the same as those available through independent adoption. The birth parents are similar as well. Most agencies base their fees on a sliding scale tied to the adoptive parents' income. Commonly, agency fees range from $12,000 to $18,000 dollars.

Advantages of agency adoption are that the adoptive family can be fairly passive. They are not required to locate their own birth parents or direct their adoption plan. Meeting with the birth parents is often possible and sometimes required. An ongoing relationship during pregnancy is less common, thus avoiding the task of setting appropriate boundaries for that relationship. Generally the financial risk in an agency adoption is more limited. Agencies charge various fees at the onset of the adoption process but the bulk of the fees are not paid until the child is placed with the family. Agencies generally provide good counseling services both for the adoptive family and the birth family and adoption preparation classes are usually required for the adoptive family. Agencies often maintain physical custody of the child, in foster care, until the child is legally free for adoption. When this is done it dramatically limits the family's emotional risk. Obviously, however, the couple in such a case will not take a newborn home from the hospital, as they do when foster care is not used.

Disadvantages of domestic agency adoption are that the adoptive parents' and birth parents' adoption planning is often restricted by or directed by agency policy or the social worker's judgments.

The waiting time for agency adoption can vary widely but is often in excess of two years. Access to agency adoptions is often limited by factors like the adoptive parents age, religion, length of marriage, whether there are already children in the home, etc.

The quality of an agency adoption experience is largely dependent on the quality of the agency.

INTERNATIONAL AGENCY ADOPTION

International adoptions have dropped dramatically in recent years because of changes in international treaties. International adoptions are significantly more expensive, often costing over $30,000. If an agency is used, the agency must be specifically licensed for international adoptions. In addition to the issues that exist in a domestic adoption, international adoptions may also include issues related to the citizenship of the person being adopted.

STATE AGENCY ADOPTION

In Tennessee, state agency adoption generally means adopting through the Tennessee Department of Children's Services. However, the Department has also begun contracting with private agencies for placement services for children in the Department's custody. Children in state custody in other states are also often available for adoption by Tennessee residents. Advantages of state agency adoptions are as follows: It is the most fulfilling type of adoption for those who feel called to adopt children in order to provide a home for a child that might not otherwise have one; it is usually free; the family often has an opportunity to establish a relationship with the child, either through visits or through fostering the child prior to making the decision regarding adoption of the child; Federal adoption assistance is often available to the families to financially assist them in caring for the child and to cover any expenses of the adoption.

The primary disadvantage of adopting through the state is that most children in state custody have been involuntarily removed from their parents. The parents usually have severely neglected or abused the children. Therefore, the children are often emotionally disturbed as a result of the time spent with their parents. Some of the children suffer from physical impairments as well. These children are rarely under 4 or 5 years of age. Some have emotional scars from the foster care system as well. The children are often in need of psychological services post-placement. These children are particularly difficult to parent as a result; however, parenting success with these children is particularly rewarding.

SELECTING THE "RIGHT" TYPE OF ADOPTION

There is no one type of adoption that is appropriate for everyone. Each type of adoption is appropriate for someone. It is important when choosing the appropriate type of adoption for you to carefully consider at least the following factors:

- The type of child desired
- The patience level of the family
- The family's tolerance of emotional risk
- The family's tolerance of financial risk

- The family's budget
- The family's personality with respect to how much control and responsibility they want over their adoption plan
- How much time you have to dedicate toward pursuing adoption and
- Whether their age, religion, family size or other similar factors limit your choices

It is not unusual for a family to pursue two or more types of adoption simultaneously in order to shorten the length of time they will wait for a child.

There is a lot of good information about adoption available from books, organizations, the Internet, other adoptive parents, agencies and adoption attorneys.

YOUR NAME -- KEEPING IT OR CHANGING IT

Adults living in Tennessee are permitted to use any name they wish without going to court, unless they defraud someone by doing so. This is true regardless of the adult's marital status or gender. If a person uses a name other than the one the person was given at birth or took upon marriage, however, it will not be the person's formal legal name.

This topic discusses three matters relating to formal legal names: a married woman's name, court procedures to change an adult's legal name, and special rules for changing the legal name of a minor.

A woman who marries may accept the last name of her husband or may keep her prior name, whichever she prefers. Either name she selects and uses automatically will become her legal name. A married woman is entitled to obtain a credit card and other business accounts in the legal name she selects and uses. No business or agency in Tennessee should refuse to provide services to a woman because she chooses to use her former name instead of her husband's last name.

A woman who has chosen to use her husband's last name but who later receives a divorce, annulment, or dissolution may request that the court officially restore her former name. The court usually will grant such a request. A woman who receives a divorce or remarries may not change the legal name of the children, however, without filing a separate petition in court to do so. There is no additional court cost if a woman restores herself to her former name in a divorce proceeding.

Following the procedure provided by Tennessee law to petition a court for a change of name creates a legal record of a name change. This may benefit people who choose a name other than the name they were given at birth, if they must prove their name. For example, a legal record of a name change would help those who wish to obtain passports in their adopted names.

A petition for change of name should be filed in the Chancery Court of the county where the petitioner resides. The petition generally will include such information as the petitioner's place of birth, current name and address, proposed new name, reason for wanting to change names, and the names and addresses of the petitioner's parents or nearest living relatives.

The court will schedule a hearing on the proposed name change. Interested people may appear at the hearing to support or oppose the change. The court normally will approve a petition for a name change, unless there is evidence that the change is intended to defraud someone, to interfere with the rights of others, or to avoid criminal prosecution.

If the court approves a petition, it will issue a judicial decree changing the petitioner's name. To complete the change, the petitioner should send a certified copy of the decree to the agency where his or her birth certificate is recorded. For someone born in Tennessee, the agency is the Tennessee Department of Health, Bureau of Vital Statistics.

A child under the age of 18 may not file a petition to change his or her legal name, but an adult parent, guardian, relative, or friend may petition the court on behalf of the minor child. A child's name may also be changed as part of an adoption or legitimation procedure in court.

A court which receives a petition to change a child's name may require that a child's parents be notified. The father of a minor child has some legal interest in the child's last name, and the father can assert such a right at the court hearing.

If a court issues a judicial decree changing a child's name, a certified copy of the decree should be sent to the agency where the child's birth certificate is recorded.

PATERNITY AND LEGITIMATION

When a child is born out of wedlock, certain steps must be taken to establish a legal relationship between the child and the father. Sometimes, this is initiated by the mother, who wishes to collect child support. Sometimes it is initiated by the father, who wishes to establish co-parenting time and to have a relationship with his child. Frequently, the process is done by agreement.

If the parties agree that the man is the child's father, they can sign documents at the time of the child's birth to have him listed on the birth certificate. This is often called a Voluntary Acknowledgement of Paternity. If this is not done, but the parties are in agreement, they can ask the court to enter an agreed order establishing that the man is the child's father.

If a man does not believe the child is his, if he does not want to pay child support, or if he has a bad relationship with the mother, he may not be willing to cooperate in an agreed order. Then the mother must file a petition with the court asking that paternity be established. The alleged father can request DNA testing, which might show that the child is not his. These test results frequently establish a 99% or greater probability that a man is the child's father. The test results are usually conclusive.

If a man is shown to be the father, the court will determine how much child support he should pay, taking into account the child support guidelines. The court will also determine whether he should be required to provide health insurance coverage for the child, contribute to the mother's expenses related to her pregnancy, confinement and recovery, or to her attorney fees. The court can also set a visitation schedule.

The court will address these same issues if the lawsuit is brought by the father. This can occur when a mother refuses to allow a father to have access to the child, or when the parties cannot agree on matters involving the child. The biological father generally has the right to establish a legal relationship with his child, to enjoy the companionship of the child, and to participate in the responsibilities of fatherhood, including support.