

Domestic Violence: We Can Live Without It ***Rights and Options Available Under the Law***

INTRODUCTION

Violence done to us by someone we love is frightening and degrading. *It is also against the law.* If you have been abused, you have a right to stop the abuse. Every year in the United States, more than 4,000,000 individuals are beaten by their partners . . . some leave, some stay and hope it will end, some go to shelters, some go to battered persons' support groups or counseling, some petition for protective orders through the court, some press criminal charges against the abuser, and some are killed or kill their partners.

Domestic abuse means committing abuse against a domestic victim, defined as adults or minors who are current or former spouses; adults or minors who live together or have lived together; adults or minors who are dating, have dated, or have had a sexual relationship; adults or minors related by blood or adoption; adults or minors who are related or were formerly related by marriage; or adult or minor children of a person in one of these relationships.¹ Domestic violence is a misdemeanor in Tennessee.² The violence can be physical, sexual, or psychological, with the primary purpose of controlling, dominating, or hurting another within the relationship. Most cases of domestic violence are never reported to the police.

According to recent studies, one in four women in the United States will experience domestic violence in her lifetime, and 1.3 million women are victims of physical assault by an intimate partner each year.³ Although the great majority of domestic violence victims are women, approximately fifteen percent are men. Females who are 20-24 years of age are at the greatest risk of encountering non-fatal violence from an intimate partner. Estimating rates of domestic violence continues to be a difficult task, in part, because many factors inhibit individuals from reporting these crimes. The private nature of the event, the perceived stigma, and the belief that no purpose would be served in reporting the problem keep an unknown portion of the victims from talking about the event. Domestic violence occurs at all levels of society and in all classes and communities, regardless of social, economic, or cultural backgrounds.

In addition, studies show that dating violence is on the rise. One in five teens in a serious relationship reports having been hit, slapped, or pushed by a partner. Fourteen percent of teens report having either received a threat of physical harm or a threat that a partner will self-inflict harm to avoid a break-up. One in ten teens has been verbally or physically abused by a boy/girlfriend who was drunk or high. Fifty-one percent of college males admit perpetrating one

¹ See Tenn. Code Ann. § 36-3-601 (2014).

² See Tenn. Code Ann. § 40-14-109 (2012).

³ Unless otherwise indicated, the source for statistical information in this Introduction is the "Facts" section of the Knoxville Family Justice Center website, available at <http://www.fjcknoxville.com>. Specific, original sources for these facts are included on the website.

or more sexual assault incidents during college.

Instances of domestic violence are far from unknown to our community. Violent crime against women consists predominately of sexual assault and domestic violence crime.⁴ In 2018, the Knoxville/Knox County dispatch received 17,657 calls related to domestic violence. Similarly, the dispatch received 18,250 domestic violence-related calls in 2017 and 17,843 in 2017. During this period, the calls that dispatch received related to domestic violence averaged to one call every thirty minutes.

Statewide, the Tennessee Bureau of Investigation reported that in 2018, simple assault was by far the most frequently reported domestic offense, accounting for 67.2% of all domestic violence offenses, outnumbering all other offenses by more than three to one.⁵ Boyfriend/girlfriend relationships were involved in the most frequently reported incidents in Tennessee, accounting for 46.2% of all domestic violence.⁶ Juveniles in Tennessee accounted for approximately 9.8% of domestic violence victims in 2018.⁷

It is no coincidence that domestic violence tends to correlate with economic losses and higher rates of unemployment. Despite shortages in housing for victims and in funding and personnel needed to provide support to places like Legal Aid and the Young Women's Christian Association ("YWCA"), Knoxville has some advantages when it comes to domestic violence. The city began addressing victims' advocacy in the 1980s and has been moving forward since. Knoxville is one of only about fifteen cities across the country to serve domestic violence victims through a family justice center. In 2018 alone, Knox County's Fourth Circuit Court granted 2,191 orders of protection to alleged victims of domestic violence.

⁴ Rose Kennedy, *Knoxville's Growing Crisis of Domestic Violence*, [Metro Pulse](http://www.metropulse.com/news/2011/feb/23/knoxvilles-growing-crisis-domestic-violence), (February 23, 2011), available at <http://www.metropulse.com/news/2011/feb/23/knoxvilles-growing-crisis-domestic-violence>.

⁵ Tennessee Bureau of Investigation, *Domestic Violence 2018*, available at https://www.tn.gov/content/dam/tn/tbi/documents/tibrs/2018%20Domestic%20Violence_Final.pdf

⁶ *Id.*

⁷ *Id.*

POTENTIAL INDICATORS OF DOMESTIC ABUSE

The following are some of the warning signs that indicate the possibility of domestic violence:

Does Your Partner Ever:

- Put you down, call you names, or make you feel bad about yourself
- Make you do something humiliating or degrading, or embarrass you in front of others
- Control what you do, whom you see or talk to, or where you go
- Stop you from seeing your friends or family members
- Take your money, make you ask for money, or refuse to give you money
- Intentionally damage your possessions or threaten to do so
- Tell you that you are a bad parent or threaten to take away or hurt your children
- Prevent you from working or attending school
- Act like the abuse is no big deal, is your fault, or even deny inflicting it
- Make all the decisions and/or control the money
- Intimidate you with guns, knives, or other weapons
- Shove you, slap you, choke you, or hit you
- Force you to try and drop charges you have filed
- Threaten to commit suicide
- Threaten to kill you
- Use drugs and alcohol as an excuse for saying hurtful things or abusing you
- Pressure you sexually for things you are uncomfortable doing
- Tell you that you are nothing without him or her

Do You:

- Ever feel like you are walking on egg shells
- Sometimes feel scared of how your partner will act
- Constantly make excuses to other people for your partner's behavior
- Believe that you can help your partner change if only you change yourself
- Try not to do anything that would cause conflict or make your partner angry
- Always do what your partner wants you to do instead of doing what you want
- Stay because you are afraid of what your partner would do if you broke up

If have observed any of these warning signs in your life, you may be in an abusive relationship. If you know of an individual who is being abused, you may be the best, and perhaps the only, helper your battered friend or acquaintance has. The strain battered persons live with makes them very unsure of themselves. How individuals are treated by others they thought might help, but didn't, may make them believe that they are helpless and that no one cares.

Domestic violence is everyone's concern. The long-term effects of domestic violence have not begun to be fully documented, but what we do know is shocking, long-lasting, and a drain on all of society. The emotional and psychological abuse inflicted by batterers may be more costly to treat than the physical injuries inflicted. The problems abound.

- Many of the physical injuries sustained by women seem to cause medical difficulties as women grow older. Battered women have identified arthritis, hypertension, and heart disease as directly caused by aggravated domestic violence experienced early in their lives.
- Battered women lose their jobs because of absenteeism due to illness as a result of the violence. Absences occasioned by court appearances also jeopardize women's livelihood. Battered women may have to move frequently to avoid violence.
- Some battered women have lost their religious communities when separating from abusers because religious doctrine prohibits separation or divorce, whatever the severity of the abuse.
- Many battered women have had to forego financial security during divorce proceedings to avoid further abuse. As a result, they are impoverished as they grow older.
- One-third of the children who witness the battering of their mothers demonstrate significant behavioral and/or emotional problems, including psychosomatic disorders, anxiety and fears, sleep disruption, excessive crying, and school problems.
- Boys who witness their fathers' abuse of their mothers are more likely to inflict severe violence on others as adults. Girls who witness abuse of their mothers may tolerate abuse as adults more than girls who do not. These negative effects may be diminished if children benefit from intervention by the law and domestic violence programs.

The Knoxville Bar Association recognizes that finding solutions to the problem of domestic violence is everyone's job. It is the hope of the Knoxville Bar Association that the information contained in this handbook will be one step toward a solution. The goal of the handbook is to provide victims of domestic violence or individuals attempting to assist victims of domestic violence the means to effectively and efficiently use the resources available in our community and to determine if legal counsel or advice is needed.

Seeking Medical Treatment: *The Rights & Responsibilities of Patients & Health Care Providers*

Sometimes injured people are afraid to seek medical help because of shame or fear. They may be ashamed of the fact that they are being abused or beaten or afraid that if they tell someone else and the abusive person finds out, the abuse will only get worse.

Don't Let Fear or Shame Prevent a Victim from Getting Medical Help

Victims' health and safety, and that of their children, are too important to be ignored. Money worries should not be allowed to stand in the way of needed medical treatment. Victims owe it to themselves (and their children if they are parents) to seek treatment as quickly as possible. Broken bones do not always heal properly, and cuts or bruises can become infected if left on their own. Stitches may be urgently needed to close a wound. Head injuries, in particular, can have drastic consequences if not attended quickly. If a woman is beaten while pregnant, her baby may be harmed as well. If a victim doesn't have transportation to the doctor or hospital, she or he should call a friend, relative, or neighbor for help. If the injuries are severe enough, a victim should call 911 and ask for an ambulance. **In the long run, it is better to give full details of how the injury occurred.**

Where to Go

If a victim is badly injured, she or he should go to the nearest hospital emergency room. "Badly injured" may mean broken bones, major cuts and bruises, a head injury, or severe bleeding, for example. If a victim is pregnant, a blow to the abdomen could hurt her baby. She should be seen by a doctor without delay, especially if she is bleeding or feeling contractions. If a victim is not sure whether an injury constitutes an emergency condition, she or he should go to the hospital to be evaluated. In the long run, there is no sense in taking chances with health.

Victims who are sure that they can wait to be seen at a doctor's office or clinic should go there at the earliest opportunity. If they have private insurance or have the funds to pay for care, they can go to a regular family doctor, pediatrician, or OB/GYN, depending on the nature of the injuries. Some insurance plans, such as TennCare, will require a patient to be seen by a specific primary care doctor. Some plans do not pay for emergency room visits unless a true emergency condition exists. If victims have no insurance and no funds, they can call the InterFaith Health Clinic at 315 Gill Avenue, Knoxville, (865) 546-7330, www.interfaithhealthclinic.org.

What to Expect

By law, a hospital emergency room must provide every patient “medically appropriate screening” to find out whether in fact the patient has an emergency condition.⁸ This is true regardless of whether the patient has insurance or money to pay for care. If the screening procedure determines that an emergency condition exists, the emergency room personnel must stabilize the patient before discharging or transferring her or him. (Transfer may be necessary if the problem cannot be adequately cared for at that hospital.) The initial screening exam may be performed by a nurse, a physician’s assistant, or a physician. Remember that patients will be screened regardless of their insurance or payment status. Hospital personnel are allowed to ask about insurance, however, if their inquiry does not delay screening.

If the screening determines that a patient does not have an emergency condition (or in the case of pregnancy, is not in labor), the patient may be discharged and advised to follow up with her or his regular doctor. This means that the injuries can safely be treated in a less “intense” setting than an emergency room or, perhaps, need no further care. If at all possible, a victim should stay away from the person who inflicted the injury and avoid anything that would prevent healing. It is important to carefully follow all instructions given by medical personnel.

Confidentiality of Medical Records

Patients’ medical records are private, and whatever patients tell nurses or doctors in confidence will not be repeated. Remember, though, that doctors and nurses are required by law to report certain types of injuries to the authorities. In Tennessee, these include the following:

Child Abuse

Suspected child abuse must be reported immediately to a juvenile court judge, the Department of Children’s Services (“DCS”), or the Sheriff’s Department.⁹ Everyone in Tennessee is a mandated reporter under state law. Any person with reasonable cause to believe a child is being abused or neglected must, under the law, immediately report to the Tennessee Department of Children’s Services or to local law enforcement. The reporter can remain anonymous. If the physician believes that the child’s life, physical, or mental health could be in danger of further harm, he or she may contact DCS to arrange for protective custody, even if the parents do not consent. Reports of suspected child abuse are kept strictly confidential.

⁸42 U.S.C., § 1395dd.

⁹Tenn. Code Ann. §§ 37-1-403 (2014), 37-1-605 (2014).

Abuse of an Elderly or Impaired Person

Physicians must report suspected abuse against adults who, because of advanced age or mental or physical disability, are unable to manage their own affairs or live without assistance.¹⁰

Injuries Inflicted by a Deadly Weapon

Doctors and nurses must report to the police all injuries inflicted by means of a knife, pistol, gun, other deadly weapon, suffocation, other means of violence, or poison. Victims seen at a hospital or a doctor's office will be asked how they came to be hurt. If a victim is afraid to tell the truth, no one can force the victim to say exactly what happened. (They may be able to guess anyway.) It is better for victims to give full details of how they were injured to ensure accuracy of records. Someday, the records may be needed as evidence to prove that abuse occurred. If a victim feels strongly that reporting the situation to the police will do more harm than good, the victim can ask the doctor or nurse to consider those wishes. Depending on the circumstances, they may be persuaded not to report in rare cases. If a child or an elderly or impaired person is involved, however, the health care provider is required by law to report the abuse.

Victim Compensation

The State of Tennessee has a fund to reimburse innocent victims of violent crimes or their dependents that have suffered out-of-pocket expenses due to physical injuries, loss of income, or death.

- A written claim must be filed within one (1) year after the date of the criminal offense.
- The victim must fully cooperate with the law enforcement officials in their investigation and the prosecution of such crime.
- The victim must report the crime to the proper authorities within 48 hours after it occurred.
- A person may not be eligible for these benefits if that individual contributed to his or her own victimization in anyway, such as participating in the criminal act which led to injury or death.
- This fund does not pay for personal property that was stolen or destroyed by a crime.

For additional information about filing for victim's compensation, call the Division of Claims Administration at (615)741-2734, the Victim/Witness Coordinator in the Knox County DA's Office at (865)215-2515, or visit the website of the [Tennessee Department of Treasury](#).

¹⁰ *Id.* Tenn. Code Ann. § 71-6-103 (2012).

When Violence and Abuse Affects Children

*Startling Statistics*¹¹

Many victims of abuse do not realize the lasting effects that the abuse has on their children even when the children themselves are not actually physically abused. Statistics show that children who live with domestic violence may not be able to deal with the stress of everyday life and are more likely to commit crimes and have substance abuse problems.

Domestic violence is defined as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, and/or psychological. It involves actions or threats of actions that influence another person, including any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.¹²

FACT:

Every year, approximately 3.3 million children in the United States between the ages of three and seventeen witness domestic violence.¹³

FACT:

In homes where domestic violence occurs, children run a high risk of suffering from physical abuse.

FACT:

More than one-half of the men who abuse their partners also abuse their children.

FACT:

A major study at battered women's shelters found that approximately 70% of the children at these shelters were victims of physical abuse or neglect and that 30% had been sexually assaulted.

¹¹ American Bar Association Commission on Domestic and Sexual Violence, *Domestic Violence Statistics*, available at http://www.americanbar.org/groups/domestic_violence/resources/statistics.html; National Coalition Against Domestic Violence, *National Statistics*, available at <http://www.ncadv.org/learn/statistics>.

¹² The United States Department of Justice Office on Violence Against Women, *What is Domestic Violence?* available at <http://www.ovw.usdoj.gov/domviolence.htm>.

¹³ National Children's Alliance, *National Statistics on Child Abuse*, available at <http://www.nationalchildrensalliance.org/media-room/media-kit/national-statistics-child-abuse>.

FACT:

Being abused or neglected as a child increases the likelihood of arrest as a juvenile by 53%. Adults who were abused or neglected as children are 38% more likely to be arrested or to commit a violent crime.

FACT:

Children raised in violent and abusive homes have a higher risk of abusing alcohol and drugs, as well as a higher risk of delinquency.

Physical Effects of Abuse

Studies show that children from violent homes often experience developmental delays; stress-related physical ailments such as headaches, ulcers, and rashes; and hearing and speech problems. Often children who are not the focus of the physical abuse are injured when trying to protect the victim of the abuse or, if younger, may be injured unintentionally during the incident.

Emotional Effects of Abuse

Emotional effects of domestic violence on children include the following: feeling guilt for the abuse, constant anxiety that another beating will occur, guilt for not being able to stop the abuse, guilt for loving the abuser, and fear of abandonment.

What is “Abuse and Neglect”?

Abuse and neglect occur when a parent or custodian of a child under the age of eighteen (18) knowingly, not accidentally, treats that child in such a way as to inflict harm or neglects the child in such a manner as to adversely affect the child’s health or well-being.¹⁴ It is a crime for a parent or custodian to abuse or neglect a child. It can also be a crime to witness child abuse and not report it. **Abuse and neglect of a child eight years old or younger is a felony.**

What is “Aggravated Child Abuse”?

Aggravated child abuse is child abuse or neglect that results in serious bodily harm. Aggravated child abuse can also be child abuse or neglect when a deadly weapon is used.¹⁵ Aggravated child abuse is a crime with which the abuser can be charged, but the “innocent” parent also commits a crime if he or she fails to report abuse to the Department of Children’s Services or the police.¹⁶ **Aggravated child abuse is a felony.**

¹⁴Tenn. Code Ann. § 39-15-401 (2014).

¹⁵ *Id* at Tenn. Code Ann. § 39-15-402 (2014).

¹⁶*Id.*

SOME COMMON QUESTIONS:

Where should child abuse be reported?

Child abuse and neglect should be reported to the Tennessee Department of Children’s Services (“DCS”) at the following address:

**Tennessee Department of Children’s Services
2600 Western Avenue
Knoxville, TN 37921
865-329-8879
Fax: 865-594-6193
TOLL-FREE ABUSE REPORT HOTLINE: 1-877-237-0004**

What are the legal ramifications for failing to report suspected child abuse to DCS?

Every individual has a legal duty to protect a child from abuse and/or neglect. A custodial person who does not timely report abuse and/or neglect of a child to DCS risks losing custodial rights. Even a parent who merely suspects that his or her child may be the victim of abuse and/or neglect has a legal duty to report that abuse. Failure to report abuse and/or neglect can result in **criminal action**. In addition, the innocent parent who fails to report suspected child abuse and/or neglect could lose custody of his or her children.

What steps can a parent take to protect a child from an abuser?

DCS can assist in making sure that court action is taken to keep the abuser from the children. It is very imperative to contact DCS and take the necessary steps to petition the Juvenile Court for an order to protect the children. DCS can also find treatment and counseling programs to assist children with any mental or physical problems related to domestic violence exposure. Also, the parent may request an **Order of Protection**, which requires the abuser to leave the household or further refrain from contact with those protected by the order. In that proceeding, the parent seeking protection may request a custody order setting out reasonable, perhaps supervised, visitation with the minor children.

What if the parent cannot support the family without a partner’s income?

If the non-abusive parent is granted custody of the children, the abusive parent may be ordered to pay child support. Child support in Tennessee is determined by the state child support guidelines, specifically by the income of the parents, how often each parent has the child(ren), and the number of children being supported.

Does an allegedly abusive partner have a right to visitation with the children?

If the parent seeking protection and the abuser are not married, and there is no court order stating that the abuser is the parent of the innocent parent's minor children, the abuser has no right to visit with or have custody of the children, unless supervised visitation privileges are in place.

What are the long-term effects of domestic violence on children?

Domestic violence takes its toll on the family and the future of all children who are abused or have witnessed abuse. Remember, children who have witnessed abuse or who have been abused themselves are a thousand times more likely to abuse a spouse or a child when they become adults than are children raised in non-abusive homes.

How to Use the Law - Both Criminal and Civil

Domestic violence is any violent act committed within a “family-like” setting that ultimately involves the police. [Those included within the definition of “family” are: persons who are related to the victim by blood or marriage either now or in the past; the other parent of the victim’s child; a person with whom the victim is having a sexual relationship when either person is currently pregnant; any person living together with the victim in the same dwelling; and any person engaged in a dating relationship with the victim now or in the past.]

If a domestic violence situation is an emergency, 911 should be called immediately. Even if the call is interrupted, 911 will know from where the call was placed and will call back and/or 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 a non-emergency line.

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.”¹⁷

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 committed the crime, the officer will exercise his or her best judgment in determining whether to make an arrest and whom to arrest.

Upon responding to a domestic violence call, an officer must consider an arrest a possibility. In deciding whom to arrest, the officer will first determine the primary aggressor. Factors the officer will consider in determining the primary aggressor include: 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 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”¹⁸ In

¹⁷Tenn. Code Ann. § 36-3-619(a) (2014).

¹⁸*Id.*

fact, unlike in the past, when victims were required to swear out warrants, officers are now being trained to swear out all warrants involving domestic violence themselves. The policy of all Knox County policing agencies, including 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, regardless of 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, but is not limited to, weapons, torn or bloody clothing, and broken items. They should take photographs, 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 separately, including others in the residence, children, neighbors, and whoever called 911.

When a domestic violence investigation is conducted, 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. A law enforcement officer is not required to remove a weapon if the officer believes that the victim needs it for self-defense.

How Can the Victim Assist the Police?

When subject to an investigation, 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;
- 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 Knox County Chief of Police, Sheriff, or Special Domestic Violence Unit about the officer's conduct.

The law requires officers to give victims information about how to get help as well as 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 have the name of the investigating officer, as well as the number of the officer's offense report.

Every officer is required by law to complete 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 how to obtain a copy of the offense report and how to get a criminal warrant.

Criminal Prosecution and the Courts

Victims and their attorneys are encouraged to reach out to the Family Justice Center ("FJC") for resources in monitoring the corresponding criminal case. The district attorney assigned to prosecute the case as well as many other resources can be accessed at the center.

In Knox County, the General Sessions Court has jurisdiction over the criminal side of domestic violence cases.¹⁹ If a criminal warrant is received, the defendant will be required to appear in General Sessions Court to answer the charges brought against him or her. Most domestic violence charges are for the following crimes: domestic assault,²⁰ assault,²¹ aggravated assault (assault with a weapon, assault from which serious bodily injury results, assault involving strangulation, or assault that violates an existing restraining order or order of protection),²² reckless endangerment,²³ kidnaping,²⁴ stalking,²⁵ harassment,²⁶ rape,²⁷ and/or vandalism.²⁸

¹⁹Tenn. Code Ann. § 36-3-601(3)(B) (2014).

²⁰*Id.* at Tenn. Code Ann. § 39-13-111 (2014).

²¹*Id.* at Tenn. Code Ann. § 39-13-101 (2014).

²²*Id.* at Tenn. Code Ann. § 39-13-102 (2014).

²³*Id.* at Tenn. Code Ann. § 39-13-103 (2014).

²⁴*Id.* at Tenn. Code Ann. § 39-14-303, 304, 305 (2014).

²⁵*Id.* at Tenn. Code Ann. § 39-17-315 (2014).

²⁶*Id.* at Tenn. Code Ann. § 39-17-308 (2014).

²⁷*Id.* at Tenn. Code Ann. § 39-13-503 (2014).

²⁸*Id.* at Tenn. Code Ann. § 39-14-408 (2014).

When an Arrest Is Made

If an arrest is made, the officer should provide the victim with an opportunity to sign a request to receive notice when the defendant is released from 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.²⁹ 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:

1. If either side is not ready, and the case is not too old, the judge may continue the hearing for a later date.
2. 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.
3. 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.)
4. The judge may order the charges bound over to the Grand Jury for review.³¹

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.

²⁹Tenn. R. Crim. P. 6.

³⁰Tenn. R. Crim. P. 5.

³¹Tenn. R. Crim. P. 5.1.

Orders of Protection

In addition to the criminal process, there is a civil procedure for obtaining assistance when domestic violence, harassment, stalking, property damage, or sexual assault 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 obtain a civil order of protection ("OP") to stop the abuse. The order is available if the abuser is a spouse, person living as the victim's spouse, person related by blood or marriage, a parent of an abused child, person with whom a sexual relationship has resulted in a current pregnancy for the victim, 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 as the victim. In stalking and sexual assault cases, the victim does not have to be related in any of the ways above to the respondent

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.³²

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" OP. An "ex parte" is a temporary order of protection that is issued before the respondent is aware of it or has had a chance to be heard. The court clerk's office should give the petitioner a certified copy of the OP once the judge has signed it. **The petitioner should keep this copy with her or him 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.³³

Once signed by the judge, the ex parte OP must be served on the respondent. Service on the respondent can be accomplished 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

³² See Tenn. Code Ann. §36-3-617 (2011)

³³ See Knox County Fourth Circuit Court, *Types of Orders—Domestic Violence*, available at http://knoxcounty.org/fourthcircuitcourt/types_of_orders.php.

where the respondent may be found, including where the respondent lives, works, or generally hangs out. If the court's process servers cannot find the respondent, but the petitioner sees 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 OP given to the petitioner by the court clerk's office. If the petitioner sees the abuser, 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 abuser, the petitioner should obtain another copy of the ex parte OP from the court clerk.**

Once the respondent has been served, a hearing will be held approximately five to twelve 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 OP. However, if there is no agreement, a hearing must be held so that both parties have the opportunity to tell their stories to the court. The court will then decide whether to issue a final OP. In deciding whether 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 OP 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.³⁴

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 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.

³⁴See Tenn. Code Ann. § 36-3-605 (2014).

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 City/County Building.

Restraining Orders

Restraining orders are different from orders of protection. They are not limited to domestic violence or family-like relationships. A restraining order is most often used when a divorce is first filed and may include restraints from contact and restraints from damaging 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, the victim should show the order to the officers. 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.

Family Justice Center ("FJC") Procedures

If the officer determines that there is no probable cause that a crime was committed, the officer is required to complete a police report reflecting the evidence collected and the reasons for not making an arrest. A report number will be given the victim along with information about finding safety. The victim has a right to receive a copy of the offense report as prepared by the officer. A victim who does not call 911 may later make a report of a domestic violence incident with the appropriate policing agency at the FJC.

Knoxville offers a unique opportunity for victims of domestic violence, their families, and their attorneys. Since 2006 the City and County have operated the Knoxville FJC at the Randall E. Nichols Building at 400 Harriet Tubman Avenue. Co-located at this building visitors will find the Knox County Sheriff Office ("KCSO") Family Crisis Unit, the Knoxville Police Department ("KPD") Special Crimes Unit, Legal Aid of East Tennessee ("LAET"), an Assistant District Attorney General, and Tennessee Child Protective Services ("DCS"), as well as advocates from shelters, Helen Ross McNabb, and the YWCA. In addition, the FJC partners with approximately

³⁵City of Knoxville, Knoxville Police Department, https://www.knoxvilletn.gov/government/city_departments_offices/police_department/criminal_investigations/special_crimes_unit/domestic_violence_help/legal_information

55 other community agencies that may provide services to victims of domestic violence. Having all of these agencies in a single location means a victim need only go to one place for assistance.

Investigators or detectives who are responsible for conducting investigations of all family crimes, including child abuse, neglect and rape, staff the policing agencies and the DCS units. In addition, the policing agencies (KPD and KCSO) have advocates on site every day.

Victims are given information about the FJC whenever a police report is made. They are advised to contact the appropriate policing agency for follow-up assistance. Both of the policing agencies have a system in place to contact victims as close to the time of the report as possible.

When a victim comes to the FJC, she or he will be asked to sign in at reception, be given a visitor's ID, and directed to the third floor to speak to an intake person. During the intake process, the visitor will be helped to discover what assistance is needed and available. When the intake is complete, an advocate will see the visitor.

One of the most often used services is preparation of a petition for an order of protection ("OP"). The LAET staff at the FJC attend each OP hearing date and handle multiple cases each week. If the abuser has been arrested and there are conditions of release, filing for an OP will require the victim to be in court at least one additional time. An OP can address issues that the criminal court cannot, including custody, child and spousal support, and temporary possession of the marital home.³⁶ Furthermore, a respondent is subject to immediate arrest if found in violation of an OP, which may not be the case for violations of the terms of a probationary order.³⁷

³⁶ See Tenn. Code Ann. § 36-3-606 (2017)

³⁷ See Tenn. Code Ann. § 36-3-611 (2017)

IMPORTANT TELEPHONE NUMBERS:

ALL EMERGENCIES	911
24/7 FAMILY VIOLENCE HELPLINE	521-6336
FAMILY JUSTICE CENTER (business line)	215-6800
Knoxville City Police Department Family Crimes Unit	215-6810
Knox County Sheriff's Department Family Crisis Unit	215-6820
Knox County District Attorney General - Domestic Violence Unit	215-2515
Legal Aid of East Tennessee at the Family Justice Center	215-6830

SHELTERS

Serenity Shelter	971-4673
Family Crisis Center	637-8000
Salvation Army	522-4673 or 525-9401

Divorce, Child Custody, Visitation & Child Support

MARITAL DISSOLUTION

Grounds for Divorce

It is important to consult with an attorney before deciding whether any particular grounds for divorce are appropriate to a specific situation. Tennessee law provides the following fifteen grounds for divorce or legal separation:³⁸

- (1) impotency at the time of marriage;
- (2) a prior existing marriage;
- (3) adultery;
- (4) desertion for one year;
- (5) conviction of a crime that renders the spouse infamous;
- (6) conviction of a felony and imprisonment;
- (7) a malicious attempt on a spouse's life;
- (8) refusing to follow a spouse to Tennessee for two years;
- (9) pregnancy by another person at the time of marriage without the husband's knowledge;
- (10) habitual drunkenness or drug abuse, provided the habit began after marriage;
- (11) irreconcilable differences;
- (12) continuous separation for two years when there are no minor children of the parties;
- (13) cruel and inhuman treatment;
- (14) indignities; and
- (15) abandonment and non-support.

Evidence in divorce cases ordinarily must be corroborated. The trial court is given wide discretion in the admission of evidence, and on appeal a presumption exists that the evidence supports the trial court's decree.³⁹

Defenses

The statutory defenses to adultery are recrimination, condonation, and connivance. The statutory defenses to cruel treatment are recrimination and provocation. There are no common law defenses to the grounds for divorce, but the defendant may assert defenses of existing prior marriage of plaintiff, laches, insanity, and res judicata. The court can refuse to grant a fault divorce for collusion of the parties. The fact that the acts alleged as grounds for divorce occurred after the separation of the parties is not a defense to a divorce action.⁴⁰

³⁸Tenn. Code Ann. § 36-4-101 (2014); 19 Tenn. Prac.: Divorce, Alimony & Child Custody § 6:1 (2013 ed.).

³⁹19 Tenn. Prac.: Divorce, Alimony & Child Custody § 6:3 (2013 ed.).

⁴⁰*Id.* at § 7:1.

PROCESS FOR GETTING A DIVORCE

Finding a Lawyer

If an individual wants a divorce, it is in his or her best interest to retain a lawyer. If you or someone you are trying to help is unsure whether to retain a lawyer, you can reference the instructions to Court-Approved [Agreed] Divorce Forms on the Tennessee Administrative Office of the Courts (“AOC”) website.⁴¹ Sometimes the other spouse in a divorce will suggest that both parties use the same lawyer, but this is not a good idea because the other spouse’s lawyer represents only that spouse’s interests. It can be hard to find a lawyer, and it may be helpful to obtain advice from relatives, friends, acquaintances, co-workers, or other lawyers. When asking such people for lawyer referrals, it is important to explain to the type of legal problem at issue. If someone had a similar type of problem and was satisfied with his or her lawyer, it might make sense to consult with that lawyer. On the other hand, even though the problem was different, the former client’s satisfaction with the lawyer’s representation may be a good indication that the lawyer can help or at least offer a referral to another lawyer who can.

When filing for divorce, it is permissible to give a mailing address, rather than a home address, to prevent an abusive spouse from finding the individual seeking a divorce. Either the husband or wife must have resided in Tennessee for at least six months before filing a divorce complaint unless the grounds for divorce occurred in Tennessee.⁴² If a spouse contests the divorce, he or she must file an answer within 30 days after being served with the complaint.⁴³ The court will set a trial date when the judge will hear evidence and decide issues of alimony, custody and visitation, child support, division of property, and division of debts.

The divorce takes effect on the day the judge signs the final decree of divorce. However, the parties may want to wait to remarry until the time for filing an appeal has passed because it is possible for either party to appeal the judge’s decision for 30 days.⁴⁴

Mediation

Mediation is a voluntary process by which a trained mediator helps a married couple arrive at a mutually acceptable agreement about child custody and visitation, child support, spousal support, division of property, and division of debts. The Community Mediation Center (“CMC”) offers mediation services on a sliding-fee scale. In mediation, the husband and wife will work with a trained mediator to discuss their problems and make their own decisions. Mediators do not make decisions for the parties. They provide a safe environment where the husband and wife can each communicate confidentially.

⁴¹Available at <http://www.tncourts.gov/node/622453>.

⁴²Tenn. Code Ann. § 36-4-104 (2014).

⁴³Tenn. R. Civ. P. 12.01.

⁴⁴Tenn. R. App. P. 4.

Mediation is **rarely** appropriate, however, if there has been violence or intimidation between spouses. The spouse who has committed the violence or intimidation often continues to exert power over the abused spouse during mediation so that the parties do not have equal power in reaching decisions. For this reason, if one spouse has an order of protection, if a court has found domestic abuse between the spouses, or if one spouse has been criminally convicted of domestic abuse, Tennessee law requires that a court can order mediation only if the abused spouse consents to mediation. If the abused spouse consents, he or she may have a support person of his or her choice present during the mediation. The support person may be an attorney or an unpaid advocate. The mediator in such a case must be trained to deal with domestic and family violence, and the mediation must be conducted in a way that protects the abused person's safety.⁴⁵ These safeguards are intended to make mediation possible when one spouse has abused the other, but an abused spouse should seek advice from an attorney, counselor, or mediator before agreeing to mediate under these circumstances.

CMC mediators are trained volunteers from various backgrounds. They include University of Tennessee faculty, attorneys, social workers, corporate executives, teachers, business persons, retirees, and other community members. Mediation can be quicker and less costly than litigation. To be divorced, parties still need to file a suit in court, but mediation can help spouses reach an agreement to present to the court so that a trial is unnecessary.

Community Mediation Center Information

Address: 912 South Gay Street, Suite L300, Knoxville, TN 37902
Telephone: 865-594-1879
Hours of Operation: 8:00 a.m. to 4:30 p.m., Monday through Friday.

Irreconcilable Differences Divorce

Irreconcilable differences may be asserted as a sole ground for divorce or as an alternate ground for divorce with any other ground set out in Tennessee Code Annotated § 36-4-101 or § 36-4-102 (2014).⁴⁶

Divorce based on “irreconcilable differences” does not require either spouse to present evidence of anything negative about the other.⁴⁷ The spouses must agree, however, about child custody, visitation, child support, division of property, and division of debts. They must file a written agreement called a “Marital Dissolution Agreement” with the court, and the court must approve the agreement. The court must ensure that the agreement conforms to the state’s guidelines regarding the appropriate amount of child support and that it equitably divides the parties’ assets and debts.⁴⁸

⁴⁵Tenn. Code Ann. § 36-4-131 (2014).

⁴⁶See Tenn. Code Ann. § 36-4-103(f) (2014).

⁴⁷19 Tenn. Prac.: Divorce, Alimony & Child Custody § 30:2 (2013 ed.).

⁴⁸Tenn. Code Ann. § 36-4-103(b)-(e) (2014).

To obtain an irreconcilable differences divorce, the parties must wait 60 days from the date the complaint is filed if there are no minor children of the marriage and 90 days if there are children.⁴⁹ At the final hearing on an irreconcilable differences divorce, the parties do not need to bring witnesses to testify on each person's behalf.⁵⁰ This is different from the final hearing in a fault-based divorce when each party needs one and sometimes two witnesses to appear on his or her behalf even if the other party does not contest the need for a divorce.

Legal Separation

In Tennessee, there is an alternative for married couples who cannot live together as husband and wife but who do not want an absolute divorce. A Tennessee statute allows courts to grant a "legal separation," which is sometimes called separate maintenance or a "divorce from bed and board."⁵¹ In an action for legal separation, the parties remain legally married, but the court can award custody of the children to one party, grant visitation rights to the other party, order child support and alimony, and divide the property of the parties.⁵²

When a spouse files a complaint for legal separation, the court may grant temporary relief, including a protective order prohibiting the other spouse (the defendant) from molesting or harassing the filing spouse (the plaintiff), an injunction ordering the defendant to move out of the house, temporary custody of minor children, and child support.⁵³ The court can also prohibit any property transfers until property rights are established.⁵⁴

A spouse may ask the court for a legal separation based upon any of the reasons set forth above for which a divorce can be sought.⁵⁵ If the court grants a legal separation, the court can change the decree to an absolute divorce after two years upon the request of either party if the parties have not reconciled.⁵⁶ The Court is not required to wait two years to grant a divorce if either party can establish grounds for divorce prior to that time.⁵⁷

If the reasons for divorce did not occur in Tennessee, the parties must have resided in Tennessee for at least six months before filing a complaint for legal separation.⁵⁸ The complaint must be filed in the county where the spouses resided at the time of separation or the county in

⁴⁹Tenn. Code Ann. § 36-4-103(c) (2014).

⁵⁰Tenn. Code Ann. § 36-4-103(d) (2014).

⁵¹Tenn. Code Ann. § 36-4-102 (2014).

⁵²Tenn. Code Ann. § 36-4-102(c) (2014).

⁵³Tenn. Code Ann. § 36-4-106(d) (2014).

⁵⁴19 Tenn. Prac.: Divorce, Alimony & Child Custody § 6:3 (2013 ed.).

⁵⁵Tenn. Code Ann. § 36-4-102(d) (2014).

⁵⁶Tenn. Code Ann. § 36-4-102(b) (2014).

⁵⁷*Id.*

⁵⁸Tenn. Code Ann. § 36-4-104(a) (2014).

which the defendant spouse resides.⁵⁹ If the defendant is out of state, the complaint should be filed in the county where the plaintiff resides.⁶⁰

Alimony

One spouse may be ordered to pay alimony to support the other.⁶¹ The court awards alimony based on a wide variety of factors but most importantly on how much money the financially less advantaged spouse needs, how much each spouse earns, each spouse's ability to earn income in the future, the relative fault of the parties in causing the divorce, and the standard of living the spouses each enjoyed during the course of the marriage.⁶²

In Tennessee, there are four types of alimony:

- Rehabilitative or temporary alimony
- Periodic alimony or alimony in future
- Transitional alimony
- Alimony in solido or lump-sum alimony⁶³

Temporary support or alimony, often called alimony pendente lite, may be awarded pending the grant of a divorce and is distinguished from an award of alimony after the divorce has been finalized.

CHILD CUSTODY, CHILD SUPPORT, & VISITATION RIGHTS

Child Custody

Custody of any minor children will be decided as part of a divorce. The court may decide to award custody to either party or to both parties in joint custody or shared parenting.⁶⁴ Residential custody is the right to have a child live with the parent, and legal custody is the right to make important decisions about how the child will be reared. The parent with residential custody usually controls decisions about the child's education, health care, and spiritual upbringing. In shared parenting, the primary residential parent is the one with whom the child will reside the majority of the time, and the alternate residential parent is the other parent. In shared parenting, major decision-making authority will often be joint, even if the child resides with one parent more than the other during the year. Even if a parent is not awarded residential parenting time with a child, the parent typically will still have visitation rights.

When making a decision about custody, the court looks at many factors, including who

⁵⁹Tenn. Code Ann. § 36-4-105(a) (2014).

⁶⁰*Id.*

⁶¹Tenn. Code Ann. § 36-5-101 (2014).

⁶²19 Tenn. Prac.: Divorce, Alimony & Child Custody § 13:1 (2013 ed.).

⁶³Tenn. Code Ann. § 36-5-121 (2014).

⁶⁴Tenn. Code Ann. § 36-6-101 (2014).

has taken care of the children in the past, whether either parent has a problem with drugs or alcohol, whether either parent is violent, whether either parent is living with someone else without the benefit of marriage, and whether the parents are morally fit. No matter what, though, the court's standard in granting custody is the best interest of the child.⁶⁵ Sometimes the court may order that the person with custody may not move out of state without obtaining the court's permission or the other party's permission.

All divorcing or separating parents in Tennessee must attend a parenting education seminar and must suggest a plan for how their children will be brought up after the divorce. The plan should talk about how the parents will make decisions about the children's education, health care, out-of-school activities, and religious upbringing. Although the court expects most parents to make these decisions together, joint decision-making may not be possible when one parent has abused the other. Parents who cannot agree on a plan will usually have to participate in mediation to decide on a plan. Parents can ask the court not to require them to agree on a parenting plan or to participate in mediation; however, most often this request will only be granted when one parent has abused the other. If the parents cannot agree on a parenting plan, each one must suggest a plan separately.

When it comes to the custody of their children, married parents have equal rights to enjoy the maximum participation possible in the lives of their children unless and until a court orders otherwise.⁶⁶ This means that police will not interfere to take children away from one parent unless the other parent has a custody order. If one parent leaves the children with the other parent, it may be used against the parent who left later during the divorce proceedings.

If a spouse who has been abused leaves the abusive spouse, it can be difficult to keep the children while the abused spouse tries to get on her or his feet. Sometimes relatives who keep children get attached to them and request custody of them from the court. The laws allow anyone to ask for custody. If a parent leaves the children with someone else, the court may decide that the parent does not have enough interest in the children to be awarded custody.

It is especially important for a spouse who has been abused to take the children when leaving an abusive spouse. When the abused spouse leaves, there will be no one left at home to protect the children from the abuser. When an abuser loses his or her first victim, he or she may abuse anyone else who is available, even his or her own children.

If a parent gives up custody in court to a spouse or anyone else, it is hard to get the children back later. The court does not like to move children around without a good reason. Once a parent gives up custody of children, the court will not award that parent custody unless the parent shows that there has been a material change in circumstance since the custody order was entered that makes it undesirable for the children to continue living with the person who has

⁶⁵19A Tenn. Prac.: Divorce, Alimony & Child Custody § 24:1 (2013 ed.).

⁶⁶Tenn. Code Ann. § 36-6-106 (2014).

custody. The parent attempting to regain custody will have to show that something serious, like child abuse or neglect, has occurred since he or she gave up custody.

Visitation

The enactment of the Parenting Plan statute has not changed the legislative and judicial policy that visitation is for the benefit of the child.⁶⁷ It enables the non-custodial parent to maintain a traditional parent-child relationship with the child as nearly as is feasible.⁶⁸

As part of the divorce decree, the court may order when and where a parent without custody may visit the children.⁶⁹ The court may even refuse to allow visits if visits would harm a child, and it may order supervised visits to protect the child.⁷⁰ Visitation is important, however, because in most situations children need to spend time with both parents.

Parents typically put into the decree a detailed plan for co-parenting time or visitation. This plan may say, for example, that the parent without custody will have co-parenting time with the children every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m. and on alternating major holidays. Major holidays include Christmas, Easter, and Thanksgiving, as well as any other holidays the parents decide to include. School-age children may also reside with the alternative residential parent for a couple of weeks or a month during the summer, as well as during the school spring break period.⁷¹

Parents may agree privately to have reasonable and liberal visitation. However, if a schedule for visits is not in the divorce decree, either parent may refuse to follow the oral agreement.⁷²

Tennessee law gives noncustodial parents the following rights:⁷³

- the right to telephone conversations with the children at least twice a week, at reasonable times;
- the right to send mail to the children that the custodial parent will not open;
- the right to know within 24 hours if the children are hospitalized, have a major illness, or die;
- the right to receive school records from the children's school;
- the right to receive medical records from the children's health care providers;
- the right not to have the custodial parent make derogatory remarks about the noncustodial parent or the noncustodial parent's family in front of the children;

⁶⁷Tenn. Code Ann. § 36-6-401 (2014).

⁶⁸19A Tenn. Prac.: Divorce, Alimony & Child Custody § 26:4 (2013 ed.).

⁶⁹Tenn. Code Ann. § 36-6-301 (2014).

⁷⁰“Protective Parent Reform Act,” Tenn. Code Ann. § 36-6-112 (2014).

⁷¹19A Tenn. Prac.: Divorce, Alimony & Child Custody § 26:4(1)-(2) (2013 ed.).

⁷²Tenn. Code Ann. § 36-3-302 (2014).

⁷³Tenn. Code Ann. § 36-6-101(a)(3)(A) (2014).

- the right to receive 48 hours' notice, whenever possible, of all the children's extracurricular and athletic activities;
- the right to receive a trip itinerary from the other parent whenever the other parent is taking the children out of state for more than 48 hours; and
- the right to access and participation in the children's education, including legal and reasonable access to the children at lunchtime.

The failure of the custodial parent to comply with a visitation order may be sanctioned by revocation of a license held by the custodial parent and covered by the act.⁷⁴

Child Support

The primary residential parent may receive child support from the other parent. The court sets the amount of child support.⁷⁵ In addition to ordering a parent to make cash payments, the court can order a spouse to pay child support by paying for rent, daycare, children's doctor bills, children's insurance premiums, children's clothes, and transportation for visits with the children.⁷⁶

The court sets child support according to the Tennessee Child Support Guidelines. Under these guidelines, the amount of child support depends on the amount of the alternative residential parent's income, the amount of the primary residential parent's income, and the number of children.⁷⁷ If you wish to use the state calculator to determine child support payments, visit the Tennessee Department of Human Services website and search "Child Support Services."⁷⁸

A parent may request temporary child support during the pendency of a divorce. If a parent needs child support but is not involved in divorce proceedings, he or she may seek the help of the Child Support Enforcement (IV-D) Agency. The IV-D office will help the parent fill out the forms, and the parent is not required to have a lawyer.

If the parent who owes child support, the "obligor parent," works, the receiving parent may ask the court to order child support to be paid by "income assignment."⁷⁹ This means that the obligor parent's employer will take the support money out of the parent's paycheck and mail it directly to the court clerk.⁸⁰ The receiving parent can pick it up from the court clerk, or the court clerk can mail it. The parent receiving support can also have it paid by income assignment if the obligor parent has regular income from real estate, pensions, etc.

⁷⁴Tenn. Code Ann. § 36-6-502(b) (2014); 19 Tenn. Prac.: Divorce, Alimony & Child Custody § 26:4 (2013 ed.).

⁷⁵Tenn. Code Ann. § 36-5-101(a) (2014).

⁷⁶19 Tenn. Prac.: Divorce, Alimony & Child Custody § 14:10 (2013 ed.).

⁷⁷Tenn. Code Ann. § 36-5-101(e)(4)(b) (2014).

⁷⁸available at http://www.tn.gov/humanserv/cs/cs_main.html.

⁷⁹Tenn. Code Ann. § 36-5-103(e) (2014).

⁸⁰Tenn. Code Ann. § 36-5-116 (2014).

If the obligor parent does not work, the court can still order him or her to pay the child support through the court. The obligor parent will be responsible for getting the child support to the court clerk, and the receiving parent can pick it up from the court clerk or have it mailed. Having the child support go through the court clerk means that the court keeps a record of when and how much child support is paid. Having the child support paid to the court clerk also gives the obligor parent fewer opportunities to abuse or intimidate the receiving parent when paying the child support.⁸¹

If the obligor parent pays child support directly to the receiving parent, it is important to write down how much is paid and when. Keeping a record will help the receiving parent testify to the court later if payments get behind.

If Child Support is Not Paid

If payments are behind more than **30 days after** they are due, and the obligor parent has regular income, the receiving parent can ask the court to order child support paid by income assignment.⁸² This can be done without a lawyer, but the parent seeking payment needs to know where the obligor parent can be found so that he or she can be served. The receiving parent also needs to know the obligor parent's employer and the employer's address if the obligor parent does not come to court. If the obligor parent has personal property, such as a house or boat, the other parent can ask the court to require a bond or place a lien on the property to make sure the child support is paid.⁸³ To obtain an income assignment, call the court clerk or the Child Support Enforcement (IV-D) Agency. They can provide the needed forms, and the IV-D Agency will help with filling out the forms as necessary. They can also help the parent seeking payment file to have the obligor parent's income tax refund paid for past due child support.

If you have questions about issues discussed in this section, you should contact an attorney. The Knoxville Bar Association Lawyer Referral & Information Service (522-7501) can refer you to an attorney who handles the kind of legal problem you are experiencing. Other options are listed in the local resources section at the back of the handbook.

⁸¹Tenn. Code Ann. § 36-5-103(e) (2014).

⁸²Tenn. Code Ann. § 36-5-101(f)(2) (2014).

⁸³Tenn. Code Ann. § 36-5-901 (2014).

When Victims Feel They “can’t afford to leave”

Many victims of abuse stay with their abusers because they believe that they “can’t afford to leave.” They may fear the financial strain of moving out as much as they fear the abusers. But the law and various community resources can provide the assistance necessary to meet this challenge.

When the victim’s first priority is to get out of a dangerous situation, she or he may seek temporary housing in a shelter or with friends or relatives. At some point, however, the victim will probably look for a more permanent solution—either renting or buying an apartment or a condo or a house.

The Victim’s Responsibility for Housing Left Behind

Breaking a Lease

If the victim is leasing the home left behind, she or he may still owe some responsibility to the landlord. If the victim has leased a residence along with a partner, and the partner stays there, the landlord will *probably* rely on the partner to pay the rent. But if the partner fails to pay, the landlord could demand that the victim pay if she or he signed a lease. There is an exception for federally subsidized properties governed under the Violence Against Women Act (“VAWA”).⁸⁴

Dealing with a Mortgage

If the victim is buying the home and has a mortgage, she or he will still be liable to pay the debt if she or he signed the promissory note to the lender. If the loan was made only in the partner’s name, the victim may have signed only the “deed of trust,” which means that the victim does not have to repay the loan.

Tips for Renting

The law protecting tenants depends on the county in which the tenants live. A very specific list of rules, called the “Uniform Residential Landlord and Tenant Act” or “URLTA,” applies to certain types of housing located in certain larger counties.⁸⁵ Currently, it applies to all counties in Tennessee that have a population of more than 75,000.⁸⁶ These counties in East Tennessee include: Anderson, Blount, Bradley, Hamilton, Knox, Sevier, Sullivan, and Washington.

⁸⁴42 U.S.C. § 13925 *et seq.*

⁸⁵Tenn. Code Ann. § 66-28-102 (2014).

⁸⁶*Id.*

For other applicable counties, refer to the 2010 federal census or any other subsequent federal census. Landlords in all other counties should abide by Tennessee common law.

The ULTRA does not apply to all situations. For example, it does not apply to:

- mobile home *lots* (although it does apply to rental of a mobile home),
- rental of a motel room or boarding house room for less than 30 days, or
- leasing under a contract of sale.

In the other smaller counties, the law is a little different, but a variety of protections still apply.⁸⁷

Tips for Tenants – before they move in, sign a lease, or pay money

Inspect

Inspect the property. If repairs need to be made, the tenants should make a written list of what needs to be repaired and have the landlord sign a statement agreeing to (1) exactly what the landlord will do, (2) when it will be finished, and (3) what happens if the repairs are not made on time. If the landlord agrees to give a rent credit if the tenant cleans up or makes repairs, the landlord should sign a statement giving the details of this arrangement.

Take Photos

If possible, the tenants should take pictures of the condition of the property, especially if something was damaged before they moved in.

Investigate Utility Service

The tenants should make sure they can afford any deposits and monthly bills that will be charged for utility services. If the landlord says that utility service will not be in the tenants' names, it may mean that several homes are connected to one meter. If this is the case, the rent should include utilities rather than letting the landlord divide the bill among several tenants. In addition, if the landlord requires the tenants to have utilities turned on in their names and the tenants fail to do so within three (3) days, the landlord may have utility services terminated if the existing utility service is in the name of the landlord.⁸⁸

When Tenants Sign or Pay Money

The tenants should be sure to get a copy of everything signed. It is not enough that the tenants signed a document. The landlord must sign too. Every time they pay money for a deposit or rent, the tenants should demand a receipt showing when the payment was made and

⁸⁷*Id.*

⁸⁸Tenn. Code Ann. § 66-28-521 (2014).

what it covered. In particular, the tenants should be sure the receipt for a security deposit is labeled “security deposit” and not “cleaning fee,” “last month’s rent,” or some other term that might mean that they do not get it back when the lease is over.

Leases

A lease defines the tenants’ contract with the landlord. According to Tennessee Code Annotated § 66-28-104(11) (2014), the lease agreement may be oral. There are some disadvantages to an oral lease. An oral agreement is only good for one month at a time. Therefore, with advance notice, a landlord can either raise the rent or break the lease. Also, it is hard to prove what the agreement was if it is not in writing. Therefore, even though most leases are valid even if they are not in writing, it is always a good idea to put all lease agreements in writing. If the landlord promises to do something and does not want to put the agreement in writing, the tenants should send the landlord a letter setting out the terms of the promise.

Health and Safety

The Tennessee Department of Health created the Rental Premises Unsafe for Habitation regulations in order to help define what an unsafe dwelling is. The list of regulations can be found at Chapter 1200-01-02, available at <https://publications.tnsosfiles.com/rules/1200/1200-01/1200-01-02.pdf>.

Security Deposit

A security deposit may be required to give the landlord a fund from which to repair damages beyond normal wear and tear. If the landlord requires a deposit, the landlord must keep the deposit in a bank account reserved only for security deposits. After the lease ends, the landlord must return all of the security deposit that is not used to pay for damages, unpaid rent, and other amounts due. Before the tenants move out, they should ask the landlord to walk through to check for damage to the property. If the tenants ask for a walk-through, the landlord must give a list of damages to the property for both the tenants and the landlord to sign. If the tenants do not agree with some damages on the list, they must give the landlord a written note explaining why they do not agree with the damages. If the tenants request a walk-through and fail to show, they may lose their right to dispute the damages. If the landlord does not make this list and does not keep the deposit in a special account, the landlord may not keep the deposit. However, the landlord could still sue the tenants for damages. If the landlord does give the tenants a list of damages, they may dispute it in writing. If the landlord’s description of damages is inaccurate and the tenants give the landlord a written objection to the damages list, they may sue the landlord to recover the security deposit.⁸⁹

⁸⁹Tenn. Code Ann § 66-28-301 (2014).

Late Fees

No matter what the lease states, under Tennessee law there must be a five-day grace period after the day the rent was due before the landlord may charge a late fee. The date the rent was due must be included in the calculation of the five-day grace period. If the last day of the five-day grace period occurs on a Sunday or legal holiday, as defined in Tennessee Code Annotated § 15-1-101 (2011), the landlord shall not impose any charge or fee for the late payment of rent, provided that the rent is paid on the next business day. Any charge or fee, however described, that is charged by the landlord for the late payment of rent shall not exceed ten percent (10%) of the amount of rent past due.⁹⁰

Insurance

A landlord is not responsible for tenants' personal property in the event it is damaged or stolen, and a landlord is not required to provide fire or casualty insurance to cover tenants' personal property. Tenants should buy insurance to cover their personal property located in the home.

Landlord "Liens"

The landlord cannot normally take a "lien" on the tenants' property, even if the tenants have failed to pay rent. This is true even if the written lease allows the landlord to take such a lien. The one exception to this rule is if the landlord perfected the lien by a Uniform Commercial Code filing with the Secretary of State. All other liens are expressly prohibited.⁹¹ If the landlord does obtain a lien, the landlord is responsible for releasing the lien at expiration or termination of the lease.⁹²

"Term" of the Lease

The "term" is the period that the lease lasts, e.g., one year, six months, one month, or one week. If the tenants stay in the property after the lease ends, the landlord may be able to hold them as the tenants responsible for an additional term, lasting as long as the original term.

Landlord Inspections

In general, the landlord must have the tenants' consent to enter the home. However, as long as the landlord's request is reasonable, tenants must give the landlord permission to come inside to inspect the property, make repairs, or show the property to future tenants, buyers, or contractors. In addition, the landlord may come inside without the tenants' consent in case of an emergency, if utilities have been terminated due to no fault of the landlord, if the tenants have

⁹⁰Tenn. Code Ann. § 66-28-201(d) (2014).

⁹¹Tenn. Code Ann. § 66-28-509 (2014).

⁹²*Id.*

abandoned the premises, or if the tenants are deceased, incapacitated, or incarcerated.⁹³ If the landlord abuses this right to enter, tenants may obtain a court order restricting the landlord, or they may be able to cancel the lease.

Eviction

The landlord may not evict the tenants as long as the lease is in effect unless the tenants have violated the lease. If the landlord tries to evict the tenants and they have not violated the lease, the tenants may obtain a court order prohibiting the eviction. The landlord may not evict someone for complaining about the condition of the property (or reporting the landlord for violating the building code or another law). Even if the tenants have violated the lease, in most cases the landlord must give them written notice before eviction.

Locking Out Tenants and Cutting Off Utility Service

The landlord may not lock tenants out or cut off their utility services (or other “essential services”) without a court order, even if they have not paid rent.

Three-Day Notice to Leave

The landlord may evict the tenants after only three days’ notice if they commit (or someone else on the property with a tenant’s consent commits) any of the following acts:

- Willful or intentional commission of a violent act;
- Behavior in a manner that constitutes or threatens to be a real and present danger to the health, safety, or welfare of the life or property of other tenants or persons on the premises; or
- Creation of a hazardous and unsanitary condition on the property that affects the health, safety, or welfare or the life or property of other tenants or persons on the premises.

The three-day notice period begins when the tenants get the notice and the notice must specifically detail the violation that has been committed. They may then immediately ask a judge to halt the eviction if the landlord has falsely accused them of threatening violence.⁹⁴

Defenses to Eviction

Even if the tenants have not paid the rent, they may have a defense to an eviction action.

⁹³Tenn. Code Ann. § 66-28-403 (2014).

⁹⁴Tenn. Code Ann. § 66-28-517 (2014).

Failure to Pay Rent

The most common reason that a landlord tries to evict tenants is because the tenants fail to pay rent. However, the landlord may not actually have the right to evict tenants for non-payment of rent. If the lease does not say that the landlord must ask for the rent every time it is due or set out other rules regarding payment of rent, the landlord must actually demand the rent. This demand should be made at the front door of the leased property, on the date the rent is due, at a convenient time before sunset. However, most written leases free the landlord of this duty.

Failure to Pay Rent on Time

If the tenants paid the rent but were late, the landlord may try to cancel the lease. However, if the landlord has accepted late rent payments for several months and then suddenly refuses to accept a late payment, the landlord is said to have “waived” the right to demand payment on time for that month. To evict for late payments, the landlord would have to accept the late payment for the current month and tell the tenants that they will be evicted if future payments are late.

Other Landlord Waivers

If the eviction is based on something other than failing to pay rent, the landlord might also have “waived” the right to complain. If the landlord knows that the tenants violated the lease, but the landlord still accepts rent, the landlord cannot later complain about the violation, at least until after the landlord notifies the tenants that future violations will not be tolerated. In addition, if the landlord has ignored the violation for a long time, the tenants may be able to argue that the landlord agreed that the problem does not actually violate the lease.

Who Has the Right to File Suit for the Landlord?

The landlord, not a “rental agent,” must bring the lawsuit. If the property is owned by a corporation, the corporation must have a licensed lawyer bring the suit. The non-lawyer “manager” or individual who runs the corporation may not represent the landlord corporation in court.

Grace Period

The landlord must give tenants fourteen days to correct a problem, remediable by payment of money, before eviction is permitted.⁹⁵

⁹⁵Tenn. Code Ann. § 66-28-505 (2014) (Tenant Noncompliance)

Is the violation “serious”?

Sometimes the landlord will try to evict tenants because of a minor violation. Generally, the landlord is really trying to get rid of the tenants for another reason and is using a minor violation as an excuse. In some cases, a court will not let the landlord evict the tenants in such a case, especially if the “violation” can be easily corrected.

Canceling the Lease

Many leases have a “term” of one year or longer. The tenants normally must pay rent until the end of the term. If the tenants want to cancel the lease early, the lease might give them that right in certain circumstances (such as a job transfer). Typically, though, unless the lease gives them the right to cancel early, the tenants remain obligated to pay rent for the entire lease term. The landlord does have a duty to try to find a new tenant for the property. If the landlord does find a new tenant, the old tenants are no longer obligated to pay rent. If tenants are locked into a lease they want to cancel, they should consider these possible solutions:

- **Negotiate:** Perhaps the landlord will agree to cancel the lease if the tenants (for example) give up the security deposit or pay one additional month’s rent. If the landlord does agree to cancel the lease, the tenants should be certain to get this agreement in writing.
- **Investigate whether the landlord has violated the lease:** If so, the tenants may have the right to cancel the lease. If the landlord violates the lease, inform the landlord in writing. In URLTA counties, the landlord has fourteen days to correct the problem after notice is given.
- **Misrepresentation:** Did the landlord make a false claim about the condition of the property? If so, the tenants may be able to cancel the lease and recover some or all of the rent previously paid.
- **Failure to make repairs:** If the property was in a very bad state of disrepair, the lease may be an illegal and therefore unenforceable contract. Tenants may owe the “reasonable” rental value of the property, which may be less than the rent being charged. They may also be able to make the landlord refund some or all of what they previously “overpaid” for rent.
- **Sublease:** A lease may prohibit the tenants from letting someone else take over the lease. If the lease does *not* contain this rule, the tenants may find a substitute tenant. However, the original tenants are still liable if the new tenant does not pay the rent. The tenants should try to get the landlord to cancel the original lease and enter a new lease with the new tenant. If the original lease prohibits letting someone else take over the lease, the landlord still has a duty to try to find a new tenant. The landlord would not have to accept a substitute tenant who did not meet the landlord’s usual standards (such as having acceptable credit if the landlord routinely checks tenants’ credit), but the landlord *must* accept a *suitable* substitute tenant.

Public Assistance Housing

“Subsidized” housing is available to some extent in all counties in Tennessee.⁹⁶ In general, there are two types of subsidized housing: public housing and Section 8 housing. Both programs use federal funds to help low income persons pay rent and utilities. Persons who qualify for subsidized housing pay 30% of their household income in rent. In Section 8 housing, persons with very low income may pay no rent; in public housing, the minimum rent is \$25 per month. In both programs, very low income households may qualify for assistance to pay for utilities.⁹⁷

Public housing is operated by a local housing authority, which is responsible for taking applications and determining whether a person is eligible. Public housing is usually limited to large apartment complexes, although some housing authorities also have individual houses scattered throughout residential neighborhoods. Section 8 housing is privately owned and operated. Each Section 8 landlord is responsible for his or her own application process. In urban areas where there are many Section 8 landlords, the prospective tenant may have to make many separate applications.

Most public housing authorities and Section 8 landlords have waiting lists for available apartments or houses. The length of the wait required to obtain housing may vary from a few days to months or even years. Some programs have rules that will put persons in “special circumstances” at the top of the waiting list. These rules vary from program to program. “Special circumstances” may include having been evicted from existing housing, homelessness, disability, or being forced to flee a home because of domestic violence. Some programs operate separate apartment complexes that are available only to disabled persons. Virtually all programs will provide housing for all applicants with children before making apartments available to persons without children. Because of this, it is often difficult for persons who are not disabled and who have no children to qualify to receive subsidized housing.

All public housing and Section 8 housing programs are limited to persons who meet income eligibility standards set by the U.S. Department of Housing and Urban Development. To apply for public housing, the prospective tenant should contact the local housing authority in his or her county. To apply for Section 8 housing, the prospective tenant should obtain a list of Section 8 landlords from the housing authority and apply with each individual landlord.

⁹⁶Tenn. Code Ann. § 13-20-113 (2011).

⁹⁷Knoxville’s Community Development Corporation, “Section 8,” *available at* <http://www.kcdc.org/en/Housing-Opportunities/Section8.aspx>

The law is changing rapidly regarding how people may obtain assistance with rent, and even more changes are being proposed. To seek assistance in Knoxville or Knox County, contact:

For housing inside the City of Knoxville:

Knoxville’s Community Development Corporation
901 Broadway, Knoxville, TN 37917
(865) 403-1100 TDD 1-800-403-1117

For housing in Knox County:

Knox County Housing Authority
6333 Pleasant Ridge Road, Knoxville, Tennessee 37921
(865) 637-7942 TDD (865) 521-9430

Tips for Buying a Home

Many people incorrectly assume that they cannot afford to buy a home and are surprised to find a variety of programs that will enable them to purchase rather than rent. Likewise, many people assume that buying is always better than renting, which is not necessarily true. Potential home buyers should investigate which option is best for their situation, considering the monthly rent or mortgage payment, taxes and insurance, and maintenance expenses. Most of us have to borrow money to buy a home. The most common way to finance is through a bank or mortgage company, but that is not the only option.

New Loans

The buyers should talk to a bank or mortgage company to see if they qualify for a loan. The lender can help the buyers figure out how a mortgage would affect their budget. The lender will give an estimate of the loan fees and other closing costs. Typically, closing costs will be higher for a new loan than for one of the alternatives described below.

Assuming a Loan

The seller may let the buyer “assume” the seller’s mortgage in order to save costs that would be charged on a new loan. However, the seller’s lender may be able to prohibit assumption, so the buyer should check with the lender to make sure the loan is assumable.

Owner Financing

Sometimes the seller will finance the purchase.

Using a Real Estate Agent

A licensed real estate agent can provide valuable assistance in finding a home, obtaining a mortgage, and making the closing go smoothly. If the agent is a member of the “Multiple Listing Service,” the agent will be able to tell potential buyers about any house that is listed for sale through other real estate companies that also belong to the Multiple Listing Service. Most agents receive a commission paid by the seller, but a buyer should discuss with the agent how the agent will be paid.

A real estate contract is not enforceable unless it is in writing. Generally, the buyer makes a written “offer” to the seller. It becomes a “contract” if the seller accepts the offer. If the seller changes a part of the offer (such as increasing the price offered), the seller has canceled the buyer’s offer and made a “counter-offer,” which the buyer is free to accept or reject (by walking away or by making a new offer).

Earnest Money

This is a deposit given to the seller (or the seller’s real estate agent) to show the buyer’s “good faith” intent to buy the property. The deposit is applied toward the purchase price at closing. There is no law requiring any particular “minimum” deposit—or any deposit at all.

Spouses’ Rights

A married person may buy property without the other spouse’s knowledge or consent. However, the other spouse will acquire a “homestead” right to the couple’s “principal residence.” Because of this rule, a creditor (such as the mortgage company that loans the buyer money to purchase the house) cannot foreclose against the property unless the other spouse agrees. It is impossible to tell whether a particular property is “homestead” property just by looking at the deed, so a lender will almost always demand that the buyer’s spouse sign the mortgage before the buyer can obtain a loan, even if the buyer is buying the property solely in his or her own name.

Contract Terms

When the buyers sign the contract, they are obligated to buy the house. The buyers should insist that the contract include a paragraph saying that if something should happen that would prevent them from buying the house, they can cancel the sales contract and get their earnest money back.

Inspection

If the buyers want a “home inspector” or engineer to examine the property before they buy it, the contract should include a requirement that if the buyers are not satisfied with the inspector’s report, the buyers may cancel the contract and get their earnest money back.

Financing

Unless the buyers are paying cash for the property, the contract should include a paragraph that lets the buyers out of the deal if they cannot get a loan. The buyers should be sure to specify the terms of the loan they need (minimum amount, length, maximum interest rate, and maximum points the buyers will pay).

Sale of Existing Residence

If the buyers need to sell their existing house before they will have the money to buy the new house, the buyers should ensure that the contract lets them do this.

Fair Housing Rules

Who is Regulated?

The law prohibits the following people from certain types of discriminatory behavior in connection with providing housing:

- Landlords
- Sellers of homes
- Real estate agents
- Banks and mortgage companies
- Newspapers and other advertisers

Who Is Protected?

People are protected against discrimination in housing if the basis for the discrimination is any of the following reasons:⁹⁸

- Race
- Sex
- Color
- Religion
- Handicap
- National Origin
- “Family Status” (such as the fact that there are children in a family)

⁹⁸Tenn. Code Ann. § 4-21-601 (2011).

Exceptions to the Laws

The protections provided by the Fair Housing laws do not apply in all situations. Here are some exceptions:⁹⁹

- The owner of one single-family house may discriminate for any reason other than the race of a buyer or renter. However, even if an individual is exempt under the law (for example, the home owner who refuses to sell to Methodists), this does not make anyone else involved in the transaction exempt. The advertising cannot make discriminatory references, and real estate agents may not cooperate with the discrimination.
- In apartment buildings or duplexes containing fewer than five units, discrimination is permitted for any reason *other than race* and **ONLY if the owner of the building lives in the building.**
- In some cases, church groups may show a preference to tenants of the same religion *unless membership in the church is restricted by race, color, or national origin.*
- Clubs that are not open to the general public may limit use of their private rooms to members *unless the rooms are rented for profit-making purposes.*
- Even though discrimination based on “family status” is ordinarily prohibited, the law does permit housing designed for the elderly, as long as at least 80% of the units are occupied by at least one person over age 54 and the property is intended for use primarily by elderly persons.

NOTE: Racial discrimination is never permitted under the law.

Examples of Violations

Here are some common examples of violations of the Fair Housing laws:

- Refusing to sell or rent a home to someone because of her race or because she has children.
- Claiming that no apartments are available to someone of a particular nationality, even though units really are available.
- Requiring different payments from certain people, e.g., demanding a larger deposit from women than from men.
- Threatening people to keep them out of the neighborhood because of their color.
- Evicting someone because he had friends of a different race visiting.
- Making sexual comments, gestures, or contact to create an offensive environment.

⁹⁹Tenn. Code Ann. § 4-21-602 (2011).

- Refusing to permit a tenant in a wheelchair to make modifications to an apartment in order to make it more accessible. (However, the landlord is permitted to require the tenant to pay for the changes and return the property to its original condition after the lease expires.)
- Using deception, such as saying a price is firm when it is really negotiable, to discourage a pregnant woman from moving in.
- Vandalism of a house because one of the occupants is mentally handicapped.

To obtain information if you believe the Fair Housing laws have been violated, consult a lawyer or contact any of these offices:

U.S. Department of Housing and Urban Development
 1-800-669-9777
 TDD 1-800-927-9275
 (865) 545-4379 (Knoxville Office)

Tennessee Human Rights Commission
 (865) 594-6500
 Knoxville Department of Community Development
 Fair Housing Assistance Program
 (865) 215-2120

Dealing with Creditors

People with a lot of debt may feel that the hardest part about dealing with creditors is just figuring out what their debts are. The debtor may have to dig up some old paperwork and make a few phone calls, but when the debtor has this information, the debtor will be able to move forward to protect his or her credit and reduce the debt.

STEP ONE: Make a list. The debtor should make a list of all the debts he or she has and determine whether those debts are “secured” or “unsecured.”

Secured Debts

Secured debts give the creditor the right to take certain property if the debt is not paid. For example, your house payment is probably secured by the house, and your car payment is probably secured by the car. Sometimes people get a “second mortgage” on their home to pay off credit card debts or other bills. Even though the money was not used to buy the house, the house is still “collateral” for the debt. This makes it a “secured” loan.

Unsecured Debts

Unsecured Debts are those that have no collateral. Typically, credit card debts and medical bills are unsecured.

STEP TWO: Identify any co-debtors. Did anyone other than the debtor sign the credit agreement?

Individual Debts

If the debtor signed alone, he or she is responsible for repaying the debt individually.

Joint Debts

If the debtor signed with another person, such as a spouse, both of the signees are equally obligated to the creditor.

Co-Signers

If the debtor had a “co-signer,” such as a parent, the co-signer guaranteed that the debtor would pay. If the debtor does not pay, the creditor may demand payment from the co-signer, but the creditor will probably try to collect the money from the debtor first. If the primary debtor does not pay, however, the creditor may demand that the co-signer pay the debt.

STEP THREE: Divide the debts. Ideally, the debtor’s co-debtors, such as an ex-spouse, will agree to pay some of the bills. However, the debtor must plan for what will happen if a co-debtor refuses to pay or initially agrees to pay but then fails to do so.

STEP FOUR: How much can the debtor pay? After the debtor knows what bills have to be paid, he or she can figure out if there is enough money to pay them. Because the debtor is likely to face unexpected expenses, the debtor should not assume that all of his or her income can be devoted to paying bills. One of those “unexpected” expenses may be a debt that the debtor’s co-debtor ex-spouse promised to pay. If the debtor signed the credit agreement, he or she is responsible to the creditor. It does not matter to the creditor that the co-debtor agreed to pay the debt. The creditor may still demand payment from the debtor.

NEXT: After finishing Step Four, the debtor may feel like his or her finances seem hopeless, especially if there is not enough money to pay the bills. However, there are actions the debtor can take to solve this problem.

Defining the Problem: The Consequences of Not Paying Bills

First, the good news: There is no such thing as “debtor’s prison” in the United States. Debtors cannot be sent to jail just because they can’t pay all their bills. But there are consequences for failing to pay bills, including receiving nasty letters and phone calls from the creditor, losing property to repossession or foreclosure (if the loan is secured), or being sued. We will discuss each of these consequences later, but for now let’s look at how to avoid them.

Does the debtor want to keep the collateral?

If a debt is secured, the lender may take whatever property is collateral if the debtor does not pay. Sometimes the debtor will want to give up this property and simply let the lender have it. However, giving up the property does not always mean that the debtor will not owe any more money. If the property the debtor is giving up is not worth as much as is owed, the lender may demand additional money. If the lender demands more money and the debtor does not voluntarily pay it, the only way the lender may collect the money is to bring a lawsuit against the debtor.

Negotiation with Creditors

Sometimes a creditor will agree to reduce a debtor's monthly payment. In most cases, the creditor will insist that the debtor pay part of the payment every month. If the debtor makes such an agreement with a creditor, the debtor should be sure to have the creditor put it in writing.

Letters from Creditors

When a debtor has been late in making payments, most creditors will notify the debtor by mail. At first, the letter may be a gentle reminder to make a payment. Eventually the letters may seem very hostile and threatening. The intent of such letters is to make the debtor afraid of what will happen to them if they do not pay, but the letters themselves cannot hurt the debtors.

Phone Calls

If a letter campaign does not make the debtor pay, the creditor often follows up with phone calls that are usually even more unpleasant than the letters. Once again, however, the calls can make the debtor feel bad, but that is the only thing the phone calls can do. Only the next step—a lawsuit—has any real consequences.

Federal and state law protects debtors from creditors who are too aggressive. Debtors can take steps to protect their income and assets from aggressive creditors who:

- threaten violence,
- use obscene language,
- communicate by a postcard,
- call frequently (so often that the only real purpose is to annoy the debtors),
- call the debtors without identifying who is calling,
- pretend to be connected with the government,
- lie to the debtors about the debt or the creditor's rights,
- lie to someone else to get information about the debtors, or
- threaten to put debtors in jail for not paying their bills.

Some of these rules apply only to collection agencies and not when the original creditor contacts a debtor directly. Still the debtor may be able to sue for damages if the creditor violates the law.

Foreclosure & Repossession

If the debt is secured, the creditor has the right to take the collateral. When the creditor takes real estate, it is by foreclosure. When the creditor takes other types of property (such as a car or television set), it is by repossession.

Foreclosure

A creditor may ask a court to order a foreclosure, but this is rare. Usually a foreclosure is handled by the following procedure: The creditor sends a letter demanding that the entire debt must be paid in full.¹⁰⁰ Depending on the loan agreement, sometimes the creditor will not be required to send the debtor this letter, but most creditors do. Until that letter was sent, the debtor owed only monthly installments. Now the creditor is demanding all of the debt. After that demand is made, the creditor might agree to let the debtor catch up payments, but the creditor does not have to let the debtor catch up—the creditor can insist that the entire debt be paid. If the debtor cannot pay the entire debt, the creditor may begin the foreclosure.

The actual manner in which the foreclosure is conducted is set out in the contract with the creditor, but it usually works like this: The creditor will put an ad in the local newspaper announcing that the property will be sold. (Sometimes the ad is not placed in a widely read paper but is placed in a paper devoted to “legal notices.”) The ad usually appears three times over a three- or four-week period. The ad will explain when the sale will take place (usually at the main entrance to the courthouse in the county where the property is located). At the sale, a “trustee” representing the creditor (usually a lawyer) will read the ad aloud from the paper and then ask if anyone wants to buy the property. Usually the creditor bids the amount of the debt (plus the cost of the ad and the trustee’s fee). If no one else bids, the creditor gets the property. If someone bids more, that person pays the trustee, who pays the costs of the foreclosure, then pays the creditor holding the first mortgage, and then pays any other creditors who have a mortgage against the property. If any money is left over, the debtor will receive it.

If the debtor is in danger of foreclosure, there are two organizations in Knoxville that may be able to help:

Homesource of East Tennessee
109 Winona Street
Knoxville, Tennessee 37917
(865) 637-1670

¹⁰⁰Tenn. Code Ann. § 66-3-101 (2014).

Knox Area Urban League
1514 East 5th
Knoxville, Tennessee 37917
(865) 524-5511

Both of these organizations provide foreclosure prevention counseling and may be able to assist the debtor in stopping a foreclosure. The earlier that the debtor contacts these organizations, the more likely it is that the organizations will be able to prevent the foreclosure.

Repossession

The debtor's contract with the creditor will say what rights the creditor has. In most cases, the contract will allow the creditor to take the property by whatever non-violent means are available. The creditor is allowed to trespass upon the debtor's property to retake possession of the property. The creditor is not allowed to break into the debtor's home, cut padlocks, use the assistance of law enforcement, or make threats. After the creditor takes the property, the creditor is normally obligated to sell it to raise the money to pay the debt.¹⁰¹ However, the creditor could ask the debtor to allow the creditor to keep the property and not sell it. The debtor may object to this plan. If the creditor is selling the property, the sale must be conducted in a "reasonable" manner—that is, the creditor must try to get a good price. In addition, the creditor must send the debtor a written notice telling the debtor the time and place of the sale. The creditor must use the money from the sale first to pay the expenses of the sale, then to pay the first lien against the property, and then to pay any other liens against the property. Again, the debtor is entitled to receive anything left over.

Lawsuits

A creditor may sue the debtor in order to collect a debt. If the creditor wins the lawsuit, the creditor receives a "judgment" against the debtor, and if that happens, the creditor can get the court's help to make the debtor pay the debt. In addition to the debt itself, the judgment could include interest and "court costs."

If the creditor receives a judgment against the debtor, several things could happen:

Garnishment

Garnishment means that the creditor may require someone who owes the debtor money to pay the creditor instead of paying the debtor. The most common form of garnishment is against the debtor's wages. However, there are limits on the amount of a debtor's wages that can be garnished. These limits are discussed below in the "Exempt Income" Section.

¹⁰¹Tenn. Code Ann. § 66-11-114 (2014).

Credit Rating

A judgment may affect the debtor's credit rating. Several companies keep track of people's credit so that future creditors may decide who is a good risk for a loan. Usually a judgment will show up on a credit report, which could affect whether the debtor can obtain a loan or credit card in the future.

Homestead Exemption

As discussed above, the creditor can put a lien on all of the debtor's real estate after judgment. The creditor can enforce this lien by forcing a sale of the real estate. However, in most cases, creditors do not choose to do this. Also, the debtor's ownership interest in his or her home is partially exempt under Tennessee law. In Tennessee, an individual debtor under 62 can claim up to \$5000 of the equity in his or her home as exempt. Co-debtors who own a home together can claim a total of \$7500 as exempt. Debtors with minor children in the home can claim a homestead exemption of \$25,000, and debtors over age 62 can claim an exemption of \$12,500.

Exempt Personal Property

A creditor may not take all of the debtor's personal property. In most cases, all or most of the debtor's personal property can be claimed as exempt. If property is exempt, the creditor cannot seize it¹⁰² Under Tennessee law, debtors are allowed to keep all of their clothing, portraits, photographs, school books, insurance proceeds, child support, state pensions and most private pensions and retirement accounts. A debtor is also entitled to protect up to \$1900 in tools or equipment required for the debtor's work. In addition to these specific items, the debtor is also entitled to exempt up to \$10,000 in personal property. In order to claim this \$10,000 exemption, the debtor should complete and file a Notice of Exemption with the court clerk.

Exempt Income

In addition, some forms of income are also exempt, including social security and unemployment benefits, child support, many insurance and pension plan payments, and portions of money paid to the debtor under a judgment for personal injury or wrongful death. There are also limits on how much of the debtor's wages may be taken by garnishment. The creditor may take whichever is the lower of these amounts:

- 25% of the net income or
- An amount calculated as follows:
 - ✓ Federal minimum wage x 30 = ? (*At publication, this figure is \$217.50*)
 - ✓ Subtract that amount from the debtor's net weekly income.
 - ✓ The creditor may take what is left over.

¹⁰²Tenn. Code Ann. § 26-2-202 (2000).

The debtor may also add \$2.50 to the exempt amount for each dependent child under age sixteen. If the debtor has to pay alimony or child support, some of these exemptions do not apply. Regardless of the exemptions, if the property is collateral for a secured loan, the creditor may take it, but certain rules apply for how and when it may be taken.

Bankruptcy

The bankruptcy laws are designed to give people a “fresh start” when their debts become too burdensome. There are two types of bankruptcy protection commonly used by individuals:

Chapter 7 Bankruptcy

Chapter 7 bankruptcy pools all of the debtor’s property (other than exempt property) to be sold to raise money for creditors. Secured creditors may take back their collateral, and unsecured creditors are paid from the pool of money collected from the sale of the debtor’s non-exempt property. In many cases, none of the debtor’s unsecured property is actually sold, and it is all treated as “exempt property.” In addition, the debtor may keep the collateral used for secured debts by entering into an agreement with the creditor to continue paying that debt after the bankruptcy case is over. The debts to other creditors, however, are canceled. There are limits on how often an individual may use the “Chapter 7” laws.

Chapter 13 Bankruptcy

Chapter 13 bankruptcy is available to anyone who has a regular income. For secured debts, in most cases the debtor may either keep the collateral and continue paying the debt or return the collateral and cancel the debt. All unsecured debts are then added together, and the court decides how much of the debtor’s income could be used to pay those debts. The debtor then pays that amount to the court, which distributes a portion of it to each creditor. At the end of a certain period of time (usually three years), the case is closed, the debtor stops paying money to the court, and any debt still due to the creditors is canceled.

Automatic Stay

One of the greatest benefits of the bankruptcy law is the “automatic stay.”¹⁰³ This is a rule that makes it illegal for a creditor to make any effort to collect a debt from the moment that the debtor files the proper papers with the bankruptcy court. If a foreclosure sale is scheduled, for example, or the debtor is receiving a lot of phone calls from creditors, the automatic stay will stop these actions; and creditors will not be able to do anything with the debtor’s property or contact the debtor about a debt, except through the bankruptcy court, as long as the debtor’s case is active.

¹⁰³See 11 U.S.C. § 362(a)(6), (c).

Employment Law

Right of the Abused Person on the Job

Domestic violence has many far-reaching effects. If the victim is employed, domestic violence can often result in the victim being late or absent from work. When a victim is late or absent from work because of domestic violence, the employer's policies and procedures pertaining to sick leave, personal leave, absences and tardiness, which are often contained in the employee handbook, employment agreement, or collective bargaining agreement, will generally control. The physical and mental effects of domestic violence can also impair job performance. In these situations, it is important that the victim communicate with her or his supervisors and/or the human resources department regarding the situation. In some instances, the employer may be required to provide assistance and necessary accommodations.

“The effects of domestic violence often spill over into the victim’s work place.”

Employment at Will

Tennessee is an “employment-at-will” state. Under this general rule, the employer or the employee has the right to terminate the relationship at any time for good cause, bad cause, or no cause.¹⁰⁴ Although the vast majority of employment relationships in Tennessee are “at will,” there are exceptions to this rule.¹⁰⁵ Sometimes the employment-at-will rule can be overcome by employer guarantees or promises established or formalized by an employment contract for a definite term.¹⁰⁶

Employee Manuals, Employment Contracts, & Collective Bargaining Agreements

In some instances, employers will have neither a written employee manual nor established policies regarding absences. These situations are the purest forms of the “employment-at-will” relationships. Because there is no set policy regarding how an employer will handle a certain situation, such as excessive tardiness or absences, an employer will most likely deal with each employee on a case-by-case basis. Without a standardized policy, an employee may not be able to anticipate how an employer will react in certain situations.

Because Tennessee continues to adhere to the employment-at-will rule, there is a presumption that an employee is an at-will employee.¹⁰⁷ Therefore, in circumstances when the employer provides an employee manual, there is the presumption that the provisions in the manual do not bind the employer. In fact, the provisions of the employee manual will be binding on an employer only if the manual contains language explicitly guaranteeing the provisions as a

¹⁰⁴See *Guy v. Mut. of Omaha Ins. Co.*, 79 S.W.3d 528, 534-35 (Tenn. 2002).

¹⁰⁵Chad E. Wallace, *Tennessee's Employment-at-Will Doctrine and the Need for Change When Telling the Truth Costs You Your Job*, Tenn. B.J., April 2003, at 18-19.

¹⁰⁶See *Crews v. Buckman Labs. Int'l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002).

¹⁰⁷See *King v. TFE, Inc.*, 15 S.W.3d 457, 460 (Tenn. Ct. App. 1999).

condition of employment. Through a disclaimer, an employer may reserve the unilateral right to modify such provisions within an employee handbook and thus preclude such provisions from creating a binding contract for employment.¹⁰⁸ The disclaimer may also state that nothing contained in the manual is intended to alter an employee's "at-will" status.¹⁰⁹ If such disclaimer language is present in the employee manual, the provisions contained in the manual may or may not control the terms of employment.

If the employee is a member of a union, his or her employer will have a collective bargaining or union agreement with specific provisions. In either a union agreement or employment contract, the policies contained in the agreement regarding sick leave, personal leave, absences, and tardiness will govern the rights and duties of the employer and the employee. Most employee handbooks, employment contracts, or collective bargaining agreements, will provide some guidance on reporting concerns and/or a grievance procedure. If employees feel that they have been treated unfairly or not in accordance with established policies, they should utilize these procedures to seek relief.¹¹⁰ In union situations, employees may also pursue remedies under grievance arbitration proceedings.¹¹¹

In all instances, but especially when no written employment policy exists, an employee should be encouraged to discuss the situation with the employer and request a mutually agreeable solution. The employee may not want to disclose personal details of domestic abuse to the employer, but it may be in the employee's best interest to do so in order to avoid potential discipline, complications, and misunderstandings in the future.

When all available leave time has been used

Despite legislative proposals,¹¹² there is no federal mandate for unconditional paid or unpaid sick leave.¹¹³ Therefore, once the employee has no paid leave time available, the employer has the discretion to allow additional unpaid leave or to follow the procedures outlined in the employee manual or union agreement regarding discipline and termination. If the employer does not have an employee manual, which either outlines such procedures or explains its leave policy, the employer is generally free to handle the situation as it sees fit. However, all actions of the employer must meet the requirements of applicable federal and state law regarding discrimination in employment practices.¹¹⁴

Applicable federal and state laws include, but are not limited to:

¹⁰⁸*Id.* at 461.

¹⁰⁹*See generally id.*

¹¹⁰Tenn. Code. Ann. § 50-3-409 (2014).

¹¹¹Tenn. Comp. R. & Regs. 0800-01-08-.08.

¹¹²H.R. 1286, 113th Cong. (2013-2014).

¹¹³24 No. 8 Tenn. Emp. L. Letter 5.

¹¹⁴ Tenn. Code. Ann. § 50-3-409 (2014).

- The Tennessee Human Rights Act (“THRA”) is a comprehensive anti-discrimination law, with the goal of furthering the policies embodied in similar federal laws against employment discrimination.¹¹⁵
- Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits discrimination based on race, color, sex, religion, or national origin. This includes disparate treatment based on stereotypes of a particular race, color, sex, religion, or national origin.¹¹⁶
- The Americans with Disabilities Act (“ADA”) prohibits discrimination on the basis of a qualifying disability. In addition, the ADA may require an employer to provide reasonable accommodations to a qualified employee with a disability, which may include physical or mental impairments arising from domestic violence. The ADA also prohibits certain medical inquiries and the disclosure of confidential medical information by the employer.¹¹⁷

The Equal Employment Opportunity Commission (“EEOC”) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of race, color, religion, sex, national origin, age, disability, or genetic information. The Tennessee Human Rights Commission is the state equivalent to the EEOC and is responsible for enforcing Tennessee state laws pertaining to employment discrimination. Under both state and federal law, it is illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Other state laws and exceptions to the employment-at-will doctrine may provide some additional protections to employees who are victims of domestic violence. For example, the Tennessee Public Protection Act (“TPPA”) prohibits employers from terminating employees **solely** for refusing to participate in or remain silent about illegal activities.¹¹⁸ Similarly, employers may not terminate an employee if the discharge contravenes important public policies or if the discharge is solely in response to the employee engaging in activity protected by state or federal law. Likewise, Tennessee law bars government employers from taking adverse actions against public employees due to their assistance with the prosecution and conviction of domestic violence offenders.¹¹⁹

In 1984, the Tennessee Supreme Court first recognized a cause of action for retaliatory discharge in *Clanton v. Cain- Sloan Co.*, 677 S.W.2d 441 (Tenn.1984). Since then, the Court has further recognized that an at-will employee “generally may not be discharged for attempting to exercise a statutory or constitutional right, or for any other reason which violates a clear public policy which is evidenced by an unambiguous constitutional, statutory, or regulatory provision.”

¹¹⁵Tenn. Code Ann. § 4-21-101 *et seq.* (2011).

¹¹⁶42 U.S.C.A. § 2000e-3; Tenn. Code Ann. § 4-21-301 (Supp. 2014).

¹¹⁷42 U.S.C.A. § 12132.

¹¹⁸Tenn. Code Ann. § 50-1-304 (Supp. 2013).

¹¹⁹ Tenn. Code Ann. § 4-4-122 (2013).

See Stein v. Davidson Hotel Co., 945 S.W.2d 714, 716-17 (Tenn.1997). However, under Tennessee law, the employee must prove that discharge was solely motivated by the fact that the employee engaged in a protecting activity.

Moreover, many of these laws do not specifically prohibit employment discrimination against victims of domestic violence. Consequently, employment discrimination on the basis of domestic abuse often goes unnoticed.¹²⁰

Family Medical Leave Act

If an employee will be absent from work for several days due to injuries resulting from domestic violence or treatment for those injuries, she or he may be eligible for unpaid leave under the Family Medical Leave Act (“FMLA”).¹²¹ This federal law entitles eligible employees of covered employers to take unpaid, job-protected leave for specific family and medical reasons.

A covered employer is one who has at least 50 employees within a 75-mile radius. There are two exceptions: (1) public agencies are covered employers without regard to the number of employees, and (2) public as well as private elementary and secondary schools are also covered employers without regard to the number of employees.¹²²

Furthermore, for FMLA to apply, the employee must meet eligibility requirements. To qualify, the employee must have been employed

- for at least 12 months – however, the 12 months of employment are not required to be consecutive in order for the employee to qualify for FMLA leave. In general, only employment within seven years is counted unless the break in service is (1) due to an employee’s fulfillment of military obligation, or (2) governed by a collective bargaining agreement or other written agreement.
- at least 1,250 hours with her employer during the previous 12 months, and
- at a worksite where the employer employs at least 50 people within 75 miles.¹²³

The FMLA requires covered employers to provide their qualified employees with up to 12 weeks of unpaid leave in any 12-month period for several reasons.¹²⁴ These reasons include

¹²⁰See also U.S. Equal Opportunity Commission, *Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees who Experience Domestic or Dating Violence, Sexual Assault, or Stalking*, available at www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm.

¹²¹FAMLV-LH 1, 1993 WL 13148777 (A.&P.L.H.); United States Department of Labor Wage and Hour Division (WHD), *Family and Medical Leave Act*, available at <http://www.dol.gov/WHD/fmla/index.htm>.

¹²²See 29 C.F.R. §825.600.

¹²³See 29 C.F.R. §825.110.

¹²⁴An employer is permitted to choose any one of the methods for determining the 12-month period in which the 12 weeks of leave entitlement occur. See 29 C.F.R. §825.200(b).

an absence from work due to a serious health condition of the employee or a family member of the employee.

The definition of a “serious health condition” is an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital or continuing treatment by a health care provider. Inpatient hospital care is considered an overnight hospital stay followed by a period of incapacity that prevents the employee’s ability to work, attend school, or perform other regular daily activities. Continuing treatment by a health care provider includes both incapacities for a period of more than three consecutive calendar days and any subsequent treatment under the supervision of the healthcare provider.

The FMLA does not specifically categorize domestic violence as a serious health condition. However, a victim may still be eligible under the FMLA if the injuries received from domestic violence and abuse satisfy any of the defined categories, such as severe physical injury or mental health trauma.

The requirements for FMLA leave can be very complex and detailed. If an employee has a qualified family or medical reason, the employee is usually required to provide notice to the employer for FMLA leave. The amount of notice is based on whether the leave is foreseeable and could require notice of up to 30 days. Depending on her or his circumstances, a domestic violence victim may be eligible for leave under the FMLA. The victim should be encouraged to contact her or his workplace’s human resource department as soon as possible.

Absence from work to appear in court

Because a victim may be subpoenaed to appear in court as a witness in a domestic violence case, she or he may be required to miss work. Tennessee law does not require an employer to give an employee paid leave for a court appearance. However, most employers will allow an employee to take a sick day or personal day for a court appearance.

A victim may also be required to appear in court in order to obtain a restraining order against the abuser. When the restraining order is granted, the victim must inform her or his employer as soon as possible so that the employer can help with enforcement of the order. The employer may inform the relevant departments, such as human resources and security. The employer also may implement appropriate safety measures. In any situation involving domestic violence, communication between the victim and the employer is essential to ensure the employee’s safety in the workplace.

In summary, because Tennessee is an employment-at-will state, a Tennessee employer can terminate employment for any legitimate non-discriminatory reason absent a written contract that provides otherwise. Therefore, the victim should communicate with her or his employer as soon as possible once it appears that domestic violence may adversely affect the victim’s job performance.

Financial Assistance

Families First

Families First replaced the Aid to Families with Dependent Children (“AFDC”) program in Tennessee.¹²⁵ Families First works in compliance with the Federal Temporary Assistance for Needy Families (“TANF”) program to provide cash benefits to needy families with children.¹²⁶ In order for children and their caretakers to qualify for benefits:

- There must be a deprived child under the age of 18 in the family;
- U.S. citizenship and Tennessee residency must be verified;
- The guardian and child must be related by blood or marriage; and
- The household must satisfy income and asset requirements.

Each family receiving benefits must sign a personal responsibility contract. This contract may include requirements that adults in the household either work or participate in education or training programs for up to 30 hours a week.¹²⁷ School-age children in the household may be required to attend school.¹²⁸ Families First will provide free child care if needed for the household members to meet these requirements.¹²⁹ Families First will also provide transportation assistance to attend school or go to work as needed.¹³⁰ Work or education requirements may be waived if family members cannot complete them due to disruptions caused by domestic violence or if family members are unable to work due to health problems.¹³¹

Families First benefits are limited to eighteen months of continuous benefits, and individuals in the household are limited to five years of lifetime eligibility.¹³² These time limits do not include receipt of benefits under the old AFDC program. In addition, these time limits can be paused or waived in certain circumstances.¹³³

Persons who apply for and receive Families First benefits are required to assist the Child Support Enforcement Agency with collection of child support.¹³⁴ In most cases, this requirement includes identifying possible parents of a child, providing information about the absent parent,

¹²⁵Tenn. Code Ann. § 71-3-104 (2012).

¹²⁶Tennessee Department of Human Services, *Families First/TANF*, available at http://www.tennessee.gov/humanserv/adfam/afs_tanf.html.

¹²⁷Tenn. Code Ann. § 71-3-104(h)(2)(A) (2012).

¹²⁸Tenn. Code Ann. § 71-3-104(g)(9)(B) (2012).

¹²⁹Tenn. Code Ann. § 71-3-104(h)(2)(D) (2012).

¹³⁰*Id.*

¹³¹Tenn. Comp. R. & Regs. 1240-01-49-.04.

¹³²Tenn. Code Ann. § 71-3-104(d)(1) (2012).

¹³³Tenn. Code Ann. § 71-3-104(d)(3) (2012).

¹³⁴Tenn. Code Ann. § 71-3-124(e)(1)(A) (2012).

and participating in court hearings.¹³⁵ However, if the absent parent has been abusive to the person who receives benefits, these requirements may be waived.

Applications for Families First benefits are made at the local Department of Human Services (“DHS”) office. To receive benefits, an applicant must provide DHS with a great deal of information about the household and must tell DHS when that information changes. If applicants report changes to DHS, it is a good idea to do so in writing and keep a copy or have a witness and get a receipt if information is dropped off at a DHS office. TennCare (Medicaid) benefits automatically come with Families First benefits.

A recipient may appeal any decision by DHS about eligibility or the amount of benefits if the decision does not seem to be correct. Recipients should carefully read any notice for appeal deadlines and procedures. After an appeal is requested, a hearing will be scheduled at which the applicants can tell their side of the issue and present witnesses or evidence in support. A decision by a hearing officer can be appealed to a higher agency level and then to Chancery Court if necessary.

Women, Infants, and Children (“WIC”)

WIC is a federally funded program that provides supplemental food to indigent pregnant, postpartum, and breastfeeding women, as well as to infants and children under the age of five. In addition to necessary extra food, the program provides nutrition education, health care referrals, and breastfeeding promotion and support. The cash and food vouchers issued to participants can be used to purchase approved food items at any of the participating WIC authorized grocery stores and pharmacies.

To be eligible for WIC, individuals must:

- be Tennessee state residents,
- meet the applicable gross income guidelines, and
- be at nutritional or medical risk.

The contact information for WIC is:

1 800-DIAL-WIC (1-800-342-5942)
Knoxville Health Department
140 Dameron Avenue, Knoxville, TN 37917
(865) 215-5000
Website: <http://health.state.tn.us/wic/>

¹³⁵Tenn. Code Ann. § 71-3-124(e)(1)(A) (2012).

Earned Income Tax Credit

The Earned Income Tax Credit (“EITC”) is a special tax benefit for people who work full or part time.¹³⁶ People who qualify will either owe less tax or receive a larger refund than they would without it. Even a worker who does not have to pay income tax can still get the credit and a refund. However, a worker must file a federal tax return to receive the credit.

Many workers who would be eligible for this tax credit do not file the return needed to claim it. Workers can call 1-800-829-1040 for free help with how to file a tax return. The EITC does not affect the amount of benefits received under food stamps, Supplemental Security Income, TennCare, or subsidized housing.

A worker does not have to wait for a tax return to be filed to begin collecting the credit. There is an advance payment option. A W-5 form can be filed with the employer, and 60% of the credit can be received throughout the year in paychecks. A tax return must then be filed, and the rest of the tax credit would be received after the worker files the return. This option should probably not be used for those who have more than one job, have a spouse who also works, will get married during the year, or will increase their earned income significantly during the year.

Food Stamps

Food stamps (“SNAP”) are available to low-income people no matter what their age or health. The food stamp program issues benefits to a household¹³⁷ (as defined by the program) through a Benefit Security Card or “EBT” card that allows the funds to be accessed electronically. To qualify for food stamps, the household’s income and resources must be under federal limits. The income amount varies with the size of the household. Countable financial resources (as defined by program rules) may not be greater than \$2,000 for most households or \$3,250 if a person in the household is disabled or at least 60 years of age. There are many assets not counted as financial resources. Those assets include, but are not limited to, the applicant’s current residence, income-producing property, real estate that is up for sale, personal property, retirement accounts, vehicles with equity value under \$1,500, and any veteran’s education benefits¹³⁸ received by an applicant. Countable assets include cash on hand, money in checking and savings accounts, certificates of deposit, stocks, bonds, property other than the resident’s home not up for sale, and lump-sum payments.

To receive food stamps, one must apply at the county Department of Human Services (“DHS”) office and give the required information, including citizenship or immigration status and Social Security number.¹³⁹ Someone receiving benefits must report information about

¹³⁶Tennessee Department of Human Services, *Earned Income Credit*, available at http://www.tn.gov/humanserv/adfam/eitc/afs_eitc.html.

¹³⁷Tennessee Department of Human Services, *Food Stamp Online Policy Manual, Household Concept*, available at http://tn.gov/humanserv/adfam/fs_olm/2.0%20Household%20Concept.htm.

¹³⁸Tenn. Code Ann. § 71-5-315 (2012).

¹³⁹Tenn. Code Ann. § 71-5-307 (2012).

certain changes in the household and must register for work unless exempt. Reasons for exemption include being under age 18 or over age 59, having a disability, or taking care of young children. In order to determine eligibility for the program, DHS caseworkers may also ask for documentation such as birth certificates, check stubs, bank statements, utility bills, rent receipts, tax returns, and insurance policies.

Someone who applies and qualifies for food stamps will be notified by mail within 45 days of the date of the application. Emergency food stamps are available within seven days¹⁴⁰ for those who have less than \$100 in liquid resources and less than \$150 in countable gross monthly income, a combined gross income and liquid resources totaling less than the applicant's housing costs, or \$100 or less in liquid resources if the applicant is a migrant or seasonal farmer.¹⁴¹

There are limits to the amount of time some people can receive food stamps. There is no limit on the length of time persons employed 20 or more hours per week can receive food stamps. Able-bodied adults between the ages of 18 and 60 who have no dependents and who are not employed at least 20 hours per week can receive food stamps for only three months in a three-year period. The State of Tennessee can apply to have this three-month time limit removed in some counties where unemployment is high. Individuals not employed 20 hours or more per week who are between the ages of 18 and 60 should ask their local DHS office whether the three-month time limit applies to them. There are a number of exemptions that would allow longer periods of eligibility. There are periodic recertification requirements for all who received benefits; a household will be assigned the longest certification period possible based on its circumstances. Certifications must last for at least three months¹⁴² but may not extend beyond one year.

If the applicant is residing in a shelter for battered women and children, there are different requirements to qualify for food stamp benefits. The shelter must meet the definition as set out by the DHS Policy Manual.¹⁴³ Residents of a shelter for battered women and children are eligible to apply as a separate household from the household containing the person who subjected them to abuse and are also exempt from the prohibition against participation in more than one county a month. When determining expenses for residents of shelters for battered women and children, only expenses for which the applicants are responsible can be deducted. Income and resources available to the applicants' former household will not be considered, and these include resources held jointly by an applicant and her or his former household.¹⁴⁴

¹⁴⁰The application would need to be completed on or before the fourth calendar day to ensure that the benefits would be received by the seventh calendar day.

¹⁴¹Tenn. Rules of DHS Family Assistance Div. § 1240-1-5-04 (a997).

¹⁴²Except as discussed in Tenn. Rules of DHS Family Assistance Div. § 1240-1-7-.01(2)-(b).

¹⁴³Department of Human Services Food Stamp Online Policy Manual, *Special Living Arrangements: Shelters for Battered Women and Children*, available at http://tn.gov/humanserv/adfam/fs_olm/41.3%20Shelters%20for%20Battered%20Women%20and%20Children.htm.

¹⁴⁴Tenn. Rules of DHS Family Assistance Div. § 1240-1-4 (1997).

Additionally, these households are limited to a one-month certification period due to the typically short time that applicants stay in such facilities.¹⁴⁵

Supplemental Security Income

Supplemental Social Security Income (“SSI”) benefits are available to persons who are disabled or age 65 or older and lack sufficient income or resources.¹⁴⁶ The program allocates benefits to people who have not worked enough to be fully covered by the Social Security disability or retirement benefits.¹⁴⁷ If a person is unable to perform full-time work for at least one year, he or she is considered disabled. A child is disabled if the child is unable to perform activities that children the same age can typically perform.

To receive SSI benefits, individuals apply at the local Social Security office and must meet the income and resource standards. Depending on the amount of the individual’s and spouse’s income, if applicable, the amount of benefits will vary. Moreover, a disabled person who was previously denied SSI benefits because of an abusive spouse’s income may be eligible for benefits if the abuser is no longer in the household. Alternatively, the amount of benefits available for a person who is already eligible may increase.

Should an application for SSI benefits be turned down, the applicant can appeal and request reconsideration. An appeal is usually better than a new application because benefits are paid only from the date of the application. In the event that an application is denied a second time, the next appeal level is before an administrative law judge. An attorney will generally take these cases on a contingent-fee basis, meaning that the attorney is paid out of back pay only if the client wins.

Generally, SSI benefits cannot be obtained quickly. If the application is denied and the applicant appeals, it could take as long as one to two years before the applicant receives benefits.

Unemployment Compensation Benefits

Unemployment compensation benefits are generally available for workers who have quit with good cause connected to the work or who have been laid off or fired for reasons other than misconduct. Repeated absences from work due to domestic abuse are not considered misconduct, so if an employee is fired for this reason, she or he would most likely qualify for benefits.

If someone applies for unemployment compensation benefits and is turned down, an appeal can be requested. Similarly, if benefits are approved, the employer can appeal. An appeal from the initial decision must be made within 15 days from the date of the decision. A

¹⁴⁵Tenn. Rules of DHS Family Assistance Div. § 1240-1-7 (1997).

¹⁴⁶Tenn. Code Ann. § 71-2-203 (2012).

¹⁴⁷Tenn. Code Ann. § 71-4-1103 (2012).

hearing is then scheduled before an appeals referee. If a case is appealed to the Commissioner's designee, another hearing will be held only if either side has new evidence to present and has good reason that the evidence was not presented before the Appeals Tribunal. If another hearing is not held, the Commissioner's designee will make a decision based on the record and transcript of the Appeals Tribunal hearing.

Tennessee 211

Tennessee residents can call 2-1-1 for information about specific community assistance in their local areas (such as the YWCA and church organizations and programs). This number will connect residents to a United Way representative who can provide further information.

Medical Benefits

TennCare

TennCare is Tennessee’s Medicaid program.¹⁴⁸ Adults who have no insurance must fit into one of the TennCare eligibility categories. Those eligible for Families First or SSI benefits automatically receive TennCare coverage. Other eligibility categories include some children and pregnant women who are low-income or have medical bills, some families with minor children, some women with breast or cervical cancer, some people who have received SSI in the past and now receive Social Security benefits, and some people in nursing homes or under long-term care.

Managed Care Organizations under TennCare

Persons covered by TennCare sign up for a Managed Care Organization (“MCO”). Once in a given MCO, an enrollee can only be treated by doctors or hospitals that have signed up with that group. When enrollees sign up for TennCare, they should find out to which MCOs their medical providers belong. If an enrollee is having trouble getting treatment approved or paid by an MCO, he or she can file a grievance with the MCO, and the MCO must respond within 30 days. A grievance can be further appealed to TennCare and then to the Department of Health. Problems with eligibility and premiums can be appealed directly to TennCare.

Prescription Drugs under TennCare

Prescription drug coverage is limited under TennCare. Depending on the medications, only a certain number of prescriptions per month will be paid by TennCare. Only the drugs on TennCare’s list are automatically approved for TennCare coverage. Other drugs can be approved if they are medically necessary, but the doctor has to obtain approval from TennCare. However, if a doctor prescribes a drug not on the list, a pharmacist must give a three-day supply of the medicine to allow time to request approval. The MCO should pay for the three-day supply even if the drug is not on the list. Some drugs do not count against the monthly limit. People should work with their pharmacists so that the most expensive medications are covered.

Long-Term Care

TennCare also offers long-term services and support through nursing facilities and home and community-based services. TennCare “CHOICES,” which was implemented in 2010, is a program providing long-term care to elderly persons and persons with disabilities. CHOICES aids elderly persons and persons with disabilities in everyday activities through in-home care and nursing homes. To qualify for CHOICES, the applicant must need the level of care provided in a nursing home or meet the “at risk” criteria for nursing home level of care and qualify financially for Medicaid long-term care.

¹⁴⁸See State of Tennessee TennCare, *What’s New with TennCare*, available at <http://www.tn.gov/tenncare>.

Applying for TennCare

Most applications for TennCare must be filed through the Health Insurance Marketplace. Applications are available online at www.healthcare.gov. Each local DHS office sets aside a computer and usually has someone available to help applicants who do not have Internet access. If you are denied TennCare or have questions about TennCare appeals, you can contact the Tennessee Justice Center at 877-608-1009.

Affordable Care Act

Some people who are not eligible for TennCare may be eligible for subsidies or tax credits to help pay for insurance under the Affordable Care Act. To apply, go online at www.healthcare.gov or call 1-800-318-2596. To get help to apply, call 1-844-644-5443 to schedule an appointment with an independent certified navigator.

Places to Go for Possible Free or Low-Cost Medical Assistance

- Knox County Health Department
865-215-5000
140 Dameron Avenue
Knoxville, TN 37917

- Interfaith Health Clinic
865-546-7330
315 Gill Avenue
Knoxville, TN 37917

- Cherokee Health System
865-544-0406
2018 Western Avenue
Knoxville, TN 37921

- Peninsula Mental Health Center
865-970-9800
1451 Dowell Springs Boulevard
Knoxville, TN 37909

- Helen Ross McNabb Mental Health
865-637-9711
201 W. Springdale Avenue
Knoxville, TN 37917