

A LEGAL HANDBOOK FOR WOMEN IN NEW HAMPSHIRE



**STATE OF NEW HAMPSHIRE
COMMISSION ON THE STATUS OF WOMEN**

2009

The NH Commission on the Status of Women is grateful for the ongoing support of these organizations and their enduring commitment to equal treatment for all.

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STATE OF NEW HAMPSHIRE COMMISSION ON THE STATUS OF WOMEN

The New Hampshire Commission on the Status of Women is a non-profit, non-partisan state agency established by the New Hampshire Legislature in 1969 with the following legislative mandates (per RSA 19-B):

- I. Stimulate and encourage throughout the state study and revision of the statutes relative to women;
- II. Recommend methods of overcoming discrimination against women in public and private employment and civil and political rights;
- III. Promote more effective methods for enabling women to develop their skills and continue their education; and
- IV. Secure, so far as possible, appropriate recognition of women's accomplishments and contributions to the state.

The Commission is comprised of 15 members who are appointed by the Governor and Executive Council to two, three-year terms. Two full time staff, the Executive Director and Program Assistant, manage the Commission office and all ongoing projects.

Additional copies of this handbook may be obtained on the Commission website, www.nh.gov/csw, or by contacting the Commission office.

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**COPIES OF THE LEGAL HANDBOOK MAY BE DOWNLOADED
AND VIEWED AT WWW.NH.GOV**

PREFACE

A Legal Handbook For Women In New Hampshire is designed to provide the women of New Hampshire with information about state and federal laws related to:

- ▶ Education
- ▶ Employment
- ▶ Housing
- ▶ Interpersonal violence
- ▶ Family law
- ▶ Criminal law

An extensive **Resource Directory** (found at the back of the Handbook) provides information on low-cost and pro bono legal services, a listing of New Hampshire superior, district, and family courts, and contact information for other useful agencies and organizations. A **Glossary of Terms** provides an easy-to-use reference for unfamiliar legal terms. Terms in bold throughout the Handbook are defined in the **Glossary**.

The goal of the Handbook is to provide basic knowledge of the law to women in the state. It is meant to serve as a starting point for women who need to take legal action for themselves or for their families. No special legal training is required to use this Handbook.

While the handbook may contain answers to legal questions, it is not a complete guide to the law, and it will not replace the services of a lawyer. Please seek legal advice for your particular situation.

This Handbook has been revised to include the many changes to New Hampshire Law, most especially with respect to Family Law and Interpersonal Violence. Support services in all areas have also significantly changed since our last revision. Past revisions of the Handbook recognized and incorporated certain issues that are relevant and important to immigrant women. **Immigrant women** are women from other countries who have entered the United States. Immigrants can be documented or undocumented (see **Glossary** for more information). The Handbook attempts to address issues facing women from both perspectives.

The material in this Handbook was current as of June 2009. Changes in legislation can occur at any time. Please contact the agencies involved if you have any questions about the material or to verify that the laws described in this Handbook have not changed. New Hampshire statutes also are available at the New Hampshire state website at www.nh.gov.

TABLE OF CONTENTS

	Page
1. EQUAL PROTECTION UNDER THE LAW	9
2. EMPLOYMENT	11
❖ Forms of Employment Discrimination	11
❖ New Hampshire State Law	11
❖ Federal Employment Laws	11
❖ Sexual Discrimination – Specific Cases	13
❖ Filing a Charge of Discrimination	15
❖ Other Important Employment Laws	18
3. EDUCATION	21
❖ Forms of Educational Discrimination	21
❖ Procedures for Filing Complaints	28
4. HOUSING	31
❖ Housing Discrimination.....	31
❖ Tenants’ Rights and Responsibilities	31
❖ The Eviction Process	35
❖ Lead Paint Exposure.....	35
5. DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING	39
❖ Domestic Violence.....	40
❖ Power and Control Checklist	40
❖ Personalized Safety Plan	45
❖ Internet and Computer Safety.....	48
❖ Sexual Assault	61
❖ Stalking.....	70
❖ Safety Checklist - Stalking	73
❖ Address Confidentiality Program.....	76
Statewide Crisis Centers see List at Resource Directory page:	147-148
6. FAMILY LAW	77
❖ Marriage.....	77
❖ Same Sex Marriage formerly Civil Unions	78
❖ Paternity	78
❖ Parental Rights and Responsibilities.....	81
❖ Child Support	89
❖ Divorce.....	93

7. CRIMINAL LAW	105
❖ Victim Support in the Criminal Justice System	105
❖ Address Confidentiality Program	107
❖ Your Rights and Law Enforcement Officers	108
8. GLOSSARY OF TERMS	111
9. RESOURCE DIRECTORY	121
❖ Service Providers: Working With Trained Language Interpreters ...	122
❖ The Earned Income Tax Credit	124
❖ Legal Services In New Hampshire	125
❖ State, Federal Agencies and Private Organizations	132
❖ New Hampshire Courts.....	141
DIRECTORY OF NEW HAMPSHIRE VISITATION CENTERS	134
NEW HAMPSHIRE VICTIM/WITNESS ASSISTANCE PROGRAMS ..	146
DIRECTORY OF NEW HAMPSHIRE CRISIS CENTERS	147-148
HANDBOOK EVALUATION AND FEEDBACK	151

CHAPTER 1. EQUAL PROTECTION UNDER THE LAW

Equality of rights under the law shall not be denied or abridged by this state on account of race, religion, color, sex, or national origin.

NEW HAMPSHIRE STATE CONSTITUTION, ARTICLE 2

June 2, 1784. Amended 1974

The general court hereby finds and declares that practices of discrimination against any of its inhabitants because of age, sex, race, religion, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants. In addition, the agencies and councils so created shall exercise their authority to assure that no person be discriminated against on account of sexual orientation.

NEW HAMPSHIRE LAW AGAINST DISCRIMINATION

Creation of the New Hampshire Commission for Human Rights
under RSA 354A:1

All persons have the right to engage in lawful activities and to exercise and enjoy the rights secured by the United States and New Hampshire Constitutions and the laws of the United States and New Hampshire without being subject to actual or threatened physical force or violence against them or any other person or by actual or threatened damage to or trespass on property when such actual or threatened conduct is motivated by race, color, religion, national origin, ancestry, sexual orientation, gender, or disability.

NEW HAMPSHIRE CIVIL RIGHTS ACT

RSA 354-B:1

CHAPTER 2. EMPLOYMENT

❖ EMPLOYMENT DISCRIMINATION

Unlawful employment discrimination occurs when an individual is denied employment or is harassed in an employment setting based on sex, race, religion, color, marital status, physical or mental disability, pregnancy, age, national origin, or sexual orientation. Not being hired because the employer prefers a man to do the job or firing or forcing a worker to retire because she is “over the hill” are examples of employment discrimination. Women can be discriminated against if they receive less pay because of their sex, or if they are not hired, or are fired, because they are pregnant.

A number of state and federal laws prohibit employment discrimination. Which laws apply depend on different factors, such as the number of employees an employer has.

NEW HAMPSHIRE STATE LAW

New Hampshire’s state law against discrimination in employment states in part that it shall be an unlawful discriminatory practice for an employer, because of the age, sex, race, color, marital status, physical or mental disability, national origin, or sexual orientation of a worker, to deny an equal opportunity for employment.

State employers with six or more employees are subject to this law. Labor organizations, employment agencies, state government agencies and non-profit organizations are also subject to this law.

Fraternal and private social clubs are not covered by this law, nor are positions when it is a job requirement, as, for example, that the applicant be female to work in the New Hampshire State Women’s Prison as a corrections officer.

It is unlawful for any employee to be required as a condition of employment that they retire upon reaching a certain age or number of years of service. However, it is not unlawful for an employer to establish a normal retirement age based on chronological age or length of service or both, provided it is not used to justify retiring an employee or failing to hire a prospective employee. The New Hampshire employment discrimination law applies to all ages, unlike federal law, which applies only to workers who are 40 years old or older. Also, unlike the various federal laws, New Hampshire’s law extends protection on the basis of marital status and sexual orientation.

New Hampshire’s employment discrimination law is enforced by the New Hampshire Commission for Human Rights, a state agency working in partnership with the U.S. Equal Employment Opportunity Commission (EEOC).

FEDERAL EMPLOYMENT LAWS

- ◆ **The Civil Rights Act of 1964**, as amended, Title VII, prohibits workplace discrimination based on sex, race, national origin, color, or religion.

There must be a minimum of 15 employees for employers to be subject to the law. This includes labor organizations, employment agencies, and advertising.

Prohibited discriminatory conduct by an employer based on the above categories includes:

- ▶ recruitment, hiring, and firing decisions
- ▶ assignments and classifications of employees
- ▶ compensation and benefits
- ▶ promotion and advancement opportunities
- ▶ disability leave

These are referred to as the Terms and Conditions of Employment.

Employees who complain to their supervisor or their employer's personnel or human resources representative about harassment or discrimination, or who suffer "adverse job action", such as being fired, having hours or shifts changed, or receiving poor reviews, as a result of reporting harassing behavior, are protected under the legal category of "Retaliation". Reporting discrimination of any kind is considered a "protected activity". A workplace should be a place with equal opportunity for all. Employees should feel safe and encouraged to report harassment. Any employee who participates in an investigation, or who opposes discriminatory practices by reporting harassment is protected. For example, in a Charge of Discrimination, a person can check Race Discrimination and separately check Retaliation.

- ◆ **The Age Discrimination In Employment Act of 1967 (ADEA)** prohibits discrimination based on age for individuals who are 40 years old and older. There must be a minimum of 20 employees for employers to be subject to this law. Some specific examples of prohibited acts are

- ▶ Hiring notices or advertisements that include statements or specifications of age preference and limitations.
- ▶ Running an apprenticeship program that allows people to participate based on their age.
- ▶ Denying benefits to older employees. An employer may reduce benefits based on age only if the cost of providing the reduced benefits to older workers is the same as the cost of providing benefits to younger workers.

Americans With Disabilities Act (ADA) prohibits employers with 15 or more employees from discriminating in the workplace against workers with a disability both in private work and state and local government work.

An individual with a disability is a person with a physical or mental impairment that substantially limits one or more major life activities that an average

person can perform with little or no difficulty. Such activities include walking, breathing, seeing, hearing, speaking, learning, and working. If an individual with a disability satisfies all skill, experience, education, and other job-related requirements of employment, it is illegal for that person to be dismissed or not hired solely on the basis of a disability.

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability, nor may a job offer be conditioned on the results of a medical examination that is not job-related, consistent with business necessity, or required of all entering employees in the same job category.

Employers are required to make reasonable accommodations upon request so that a person with a disability may apply for a job, perform job functions, or enjoy the benefits and privileges of employment that are enjoyed by people without a disability. An employer is not required to make such accommodations if they impose an undue hardship on the operation of the employer's business in terms of cost, difficulty, and production.

- ◆ **The Rehabilitation Act of 1973** prohibits employers from discriminating at work against people with disabilities who work in federal government.

❖ **SEXUAL DISCRIMINATION – SPECIFIC CASES**

Sexual harassment can be a discriminatory employment practice and is prohibited by both federal and state law. Sexual harassment can take many forms, including requests for sexual favors, *unwelcome* sexual advances, or other conduct of a physical, verbal, or visual nature that is *unwelcome* and offensive. It can be done by a supervisor who either explicitly or implicitly requires sexual activity or intimacy in order to keep a job or to receive a promotion. It can come from co-workers who create a hostile working environment. The gender or sexual orientation of the person harassing and the person being harassed is not the determining factor – sexual harassment can occur between members of the same sex or of the opposite sex.

Sexual harassment exists particularly when one or more of the following conditions are met:

- ◆ You are forced to deal with the harassment in order to get a job;
- ◆ Your giving in to or rejecting the harassment is used to make decisions about your employment;
- ◆ The harassment interferes with your employment; or
- ◆ The conduct creates an “intimidating, hostile, or offensive” work environment.

Sexual harassment can include, but is not limited to:

- ◆ Whistling or lewd gestures;

- ◆ Deliberate bumping or leaning against a person, massaging their body, grabbing their private parts;
- ◆ Sexual assault and rape;
- ◆ Verbal comments about your body, your clothing;
- ◆ Non-verbal staring, leering, and gesturing;
- ◆ Sexual notes, phone messages, email messages, graffiti, dirty jokes, offensive cartoons, or gossip about another person;
- ◆ Inappropriate touching or grabbing of clothing;
- ◆ Demands for dates or sexual acts, or threats for not complying with the demands;
- ◆ Gay bashing;
- ◆ Harassment through the Internet or phone system, including emails, voice mail, and text messages;
- ◆ Harassment with postings on MySpace, Facebook, or blogs;
- ◆ Sending or leaving another person pornographic material; or
- ◆ Exposure of him or herself.

No matter who is doing it, the harassment should be reported **immediately** so that the employer can stop it. There are several steps you can take if you believe you are being sexually harassed:

- ◆ You have the option to let the harasser know that the conduct is offensive and to demand that it stop. You can do this in writing if you are uncomfortable doing it in person. If you do feel comfortable confronting the harasser in person, focus on the person's behavior, not on them personally. Be clear about what behavior you want stopped.
- ◆ If this does not help, or is not a step you feel comfortable taking, **review the company policy on sexual harassment and follow its grievance procedure as outlined.** The company's policy will tell you who in the company to notify in the event you experience sexual harassment.
- ◆ Remember that sexual harassment is a form of illegal employment discrimination under state and federal law. If the suggestions above are not effective, you can file a formal employment discrimination complaint, as described below.

Pregnancy-based discrimination means that pregnancy, childbirth, and related medical conditions must be treated in the same way as other temporary illnesses or conditions. Employers who have six or more employees (full or part-time) are covered. Such employers must grant a female employee leave for the period of time she is physically disabled due to pregnancy, childbirth or related medical conditions.

There is no set period of time for maternity leave. It is based on the period of disability as determined by a physician, usually the employee's personal doc-

tor. An employer cannot set a pre-determined point in time when a pregnant employee can be forced to stop working. An employee can work until she physically is unable to perform her job. If morning sickness or other conditions in the early stages of pregnancy disable the employee, she may need temporary leave and then return to work until the end of the pregnancy.

Whether or not the employee receives pay or benefits while out on maternity leave depends on the way the employer treats other employees with temporary physical disabilities. If the employer continues to pay other temporarily disabled employees while on leave, the employer must also pay pregnant women who are out on maternity leave. If the employer requires use of vacation or sick leave for temporary disabilities, then the employer may require the same for pregnancy. If an employer provides health insurance coverage for temporary disabilities, then coverage also must include pregnancy, childbirth, and related medical conditions. If the particular policy purchased by the employer excludes pregnancy, the employer will be considered to be self-insured regarding pregnancy and thus be responsible for all pregnancy-related costs equal to costs covered by the policy for other temporary physical disabilities.

When the employee is physically able to return to work, the employer must make her original job or a comparable position available to her, unless business necessity makes this impossible or unreasonable. An employer's preference for one employee over the other cannot be a factor in deciding what job the returning employee gets.

An employee cannot be laid off or fired while pregnant or on maternity leave for reasons related to her temporary disability. However, an employee, while pregnant or on maternity leave, is not immune from a general and legitimate lay off of employees. Pregnancy itself is not covered by worker's compensation or unemployment compensation benefits in New Hampshire, but if there is a lay off, an employee who is out on maternity leave may be eligible for unemployment compensation benefits due to the lay off.

An employer is not required to grant leave for the purposes of childcare and bonding, but only for the actual period of time during which the employee is disabled. However, if an employer permits childcare leave, it must be granted equally to both men and women employees.

❖ FILING A CHARGE OF DISCRIMINATION

If you feel that you have been discriminated against or sexually harassed under state or federal law, you can file a complaint with your employer. Remember that **retaliation** against an employee who makes a complaint with the employer or files a Charge of Discrimination in good faith with the New Hampshire Commission for Human Rights or the EEOC is illegal. Therefore, it is very important that you document any adverse actions that are taken as a result of your complaint or charge.

- ◆ **Write down what happened.** Keep a personal journal of all that happens. After each incident, write down the date, day, time, who did it, what he or she did, and where it happened. It is very important to keep accurate track of these dates. Make a note of any witnesses. Write down how you felt, such as, “I was depressed,” or “I was not able to concentrate on my work.” Were you discriminated against based on your sex, pregnancy, race, religion, sexual orientation, or something else? Write down why you believe so.
- ◆ **Talk to the person in charge.** Some companies and organizations have specific policies that deal with discrimination and unlawful harassment. Review the company’s policy and follow its grievance procedures. Keep a log of all conversations with supervisors. If you are employed by a small business in which your boss is the person discriminating against you, and in which there is no one else to whom to report the situation, contact the New Hampshire Commission for Human Rights or the EEOC as soon as possible.
- ◆ **Continue to do a good job at work.** It is important that the person harassing or discriminating against you does not have any other reasons to explain his or her actions. Keep a journal of the work you perform. Keep copies of performance evaluations to show that you do a good job at work. The harasser may question your job performance in order to defend his or her own behavior.
- ◆ **Ask any witnesses to give you a statement,** in writing or on tape, of what they saw and heard. Make sure they are as detailed as possible.
- ◆ **Save any notes, messages, gifts, posters, and answering machine tapes** that you have received from the person harassing you. Even if the items are disgusting or upsetting, it is important that you keep them for evidence. However, **do not tape record conversations (in person or by telephone) without the knowledge and consent of the person you are taping as this is a criminal act under New Hampshire law.**
- ◆ **Get emotional support** from family, friends, a crisis center advocate, a therapist, or clergy. This often can be the most important, and sometimes most difficult, action you take. Some people feel depressed or get physically ill as a result of discrimination. New Hampshire law makes getting help safer for you. The law states that information shared with a **crisis center advocate** shall remain confidential unless the crisis center has received written permission from you. This means you can disclose information about your situation to a crisis center advocate and receive help and support without any of the conversation being revealed to the government, your harasser, or any other third party.
- ◆ **File a Charge of Discrimination.**

The New Hampshire Commission for Human Rights and the United States Equal Employment Opportunity Commission (EEOC) have a partnership where each can mediate, investigate, and enforce employment discrimination claims.

New Hampshire has jurisdiction over claims which are filed 180 days after the last date of discrimination. The EEOC in Boston has jurisdiction over claims which are filed 300 days after the last date of discrimination. The EEOC will not have jurisdiction over some types of discrimination, such as for marital status or sexual orientation, but New Hampshire will; New Hampshire will not have jurisdiction, for example, over fraternal organizations, social clubs, and religious based places of employment, but the EEOC will.

To start the formal complaint process, a Charge of Discrimination must be completed. In New Hampshire, the Commission for Human Rights has an employment questionnaire on their web site (www.nh.gov/hrc/), which helps individuals gather the information necessary to form the basic information needed for the Commission to screen a Charge. The questionnaire itself is not a Charge. However, it can be sent to the Commission electronically, mailed in, or can be handy when calling on intake days. New Hampshire has Discrimination Investigators who conduct intake on Tuesdays and Thursday. Contact the New Hampshire Commission for Human Rights at 603-271-2767.

The closest office of the United States Equal Employment Opportunity Commission (EEOC) is located in Boston, Massachusetts. You can contact them at JFK Federal Building, Room 475, Boston, MA 02203; 1-800-669-4000.

Individuals who need an accommodation in order to file a charge (for example, sign language, interpreter, print materials in an accessible format) should inform the EEOC or Commission for Human Rights so appropriate assistance can be provided.

Federal employees or applicants for federal employment should see the fact sheet about Federal Sector Equal Employment Opportunity Complaint Processing, found at www.eeoc.gov.

To file a complaint against a state or local government employer with a practice or pattern of illegal discrimination, contact the Employment Litigation Section in the Office of Civil Rights with the **U.S. Department of Justice**.

In addition, individuals with a disability should contact the Disability Rights Center located at 18 Low Ave. Concord, NH 03301, 603-228-0432, www.drchn.org, which represents individuals with disabilities in legal and administrative matters that arise because of their disabilities.

If your employer requires specific documents, such as a green card, or rejects such documents only from applicants of certain national origins, you also can contact the Office of Special Counsel at the **U.S. Department of Justice**.

Information required to file a Charge of Discrimination:

When filing a Charge of Discrimination, you will need to provide:

- ▶ your name, address, and telephone number
- ▶ the name, address, and telephone number of your employer, and the number of employees, if known

- ▶ a short description of the incident(s)
- ▶ the date(s) of the incident(s)

Be aware that the **statute of limitations** is short. Under New Hampshire law, you have only 180 days (six months) from the date of the last incident to file a formal complaint. If your employer has more than 15 employees, federal law may also cover your case. In that case, you have up to 300 days to file a complaint.

It is important to remember that all laws enforced by the EEOC require filing a charge with the EEOC before a private lawsuit may be filed in court.

Available remedies when discrimination is found to have occurred:

Remedies are available for employment discrimination, whether caused by intentional acts or by practices that have a discriminatory effect. Some examples of remedies are:

- ▶ Back pay
- ▶ Hiring
- ▶ Promotion
- ▶ Reinstatement
- ▶ Front pay
- ▶ Reasonable accommodation
- ▶ Other actions that will make an individual “whole” (in the condition she would have been in but for the discrimination)
- ▶ Attorneys fees
- ▶ Expert witness fees
- ▶ Court costs

When intentional discrimination can be proven, an employee may also be awarded money damages to compensate for any actual financial losses, for future financial losses, and for mental anguish and inconvenience. If an employer acted with malice or reckless indifference, an employee may also be awarded punitive damages as a means of punishing the employer.

❖ OTHER IMPORTANT EMPLOYMENT LAWS

The Equal Pay Act

Both New Hampshire and the federal laws have an Equal Pay Act (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination. Both the state and federal law prohibit discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.

The EPA covers virtually all employers. The law includes the following specific provisions:

- ◆ Employers may not reduce wages of either sex to equalize pay between men and women.
- ◆ A violation of the EPA may occur where a different wage was or is paid to a person who worked in the same job before or after an employee of the opposite sex.

Unlike other laws enforced by the EEOC, the EPA does not require filing a charge with the EEOC before a private lawsuit may be filed. New Hampshire EPA claims must be filed with the New Hampshire Department of Labor Wage and Hour Division or in Superior Court. Federal EPA claims may be filed with the EEOC or in federal court (See **Resource Directory**). Wage discrimination charges must be filed within one year of the alleged violation. If you believe that you have experienced a violation under the EPA, you should contact an attorney who specializes in this area of the law.

Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) of 1993 is a federal law that allows women and men who are employed by companies with 50 or more employees to take up to 12 unpaid weeks a year for the following reasons:

- ◆ Employee's serious health condition which renders the employee unable to perform an essential function of his or her position;
- ◆ To care for a child, spouse, or parent with a serious medical condition; or
- ◆ Following childbirth, adoption, or placement of a foster child.

Employees must have worked for the employer for at least a total of 1,250 hours (7.5 months) during the past 12 months preceding the request for leave. Leave can be taken all at once or spread throughout the year. However, there is no wage replacement provided under FMLA and employers may require employees to use up accrued vacation and sick time. Employees should provide employers notice of the need for family and medical leave at least 30 days in advance of foreseeable events and as soon as possible for unforeseeable events (usually within one or two business days of learning of the need for a leave).

When an employee returns from FMLA, the employer must reinstate the employee to the same position, if it is available, or to an equivalent position for which the employee is qualified with the same pay, benefits, and terms and conditions for employment.

Under certain limited circumstances, the employer may not be required to restore an employee to his or her position after termination of leave if the employee is among the highest paid ten percent of employees of the employer.

It is important to note that the rights provided by FMLA are *in addition to and do not replace* the rights that are provided under New Hampshire state law to women who are pregnant as described earlier in this chapter, or any other rights an employer may provide by contract, policy, or otherwise.

The U.S. Department of Labor enforces FMLA. To file a FMLA complaint, individuals should contact the Wage and Hours Division, Employment Standards Administration, U.S. Department of Labor, in New Hampshire contact:

Manchester Area Office
US Department of Labor
ESA Wage & Hour Division
1750 Elm Street - Suite 111
Manchester, NH 03104-2907
Phone: (603) 666-7716
1-866-487-9243
www.dol.gov/esa

TAKING CARE OF YOURSELF

If you feel you are being sexually harassed or discriminated against, do not blame yourself. It is not your fault. Many people hope that ignoring the problem will make it disappear. Rarely does that happen. Discrimination and harassment can be emotionally damaging. It is important to take care of yourself.

- ◆ **Know that you have done nothing to provoke or cause the harassment or discrimination.** What is happening to you is not your fault and is not because of anything that you have or have not done.
- ◆ **Join a support group.** Local crisis centers can assist you in locating a support group in your area.
- ◆ **Get emotional support from family and friends.** Keep in touch with friends who are supportive and understanding. Tell someone about each encounter with the harasser. You also can call your local **crisis centers** for support 24 hours a day, 365 days a year.
- ◆ **You may experience stress and trauma and may want to seek professional assistance.** You may begin to experience feelings like rage, terror, suspicion, an inability to trust anyone, depression, changes in sleeping and eating patterns, exhaustion, or frequent crying spells. You are not going crazy. Your body and mind are reacting to the stress caused by the harassment. Talking to someone who is trained to work with victims and survivors may help you deal with the experience.

CHAPTER 3. EDUCATION

❖ FORMS OF EDUCATIONAL DISCRIMINATION

Unlawful discrimination in education occurs when a person is denied equal access to education or is harassed in an educational setting based on sex, race, religion, color, marital status, physical or mental disability, pregnancy, age, national origin, or sexual orientation. Several state and federal laws prohibit educational discrimination and harassment. These laws cover any school receiving federal funds, including public and nonpublic schools, colleges, and universities.

This chapter provides a brief overview of the following types of discrimination:

- A. **National Origin Discrimination:** Title VI of the **CIVIL RIGHTS ACT OF 1964** prohibits discrimination in schools based on race, color, and national origin.
- B. **Sex Discrimination:** Title IX of the **EDUCATIONAL AMENDMENTS OF 1972** prohibits discrimination based on sex in any educational program or activity receiving federal money. New Hampshire state law requires: 1) protection from discrimination in public schools on the basis of sex, race, religion, color, marital status, or national origin, and 2) that no person is denied the benefits of educational programs or activities on the basis of sex, race, creed, color, marital status or national origin.
- C. **Homeless Students:** The **MCKINNEY-VENTO HOMELESS ASSISTANCE ACT OF 1986** sets forth certain rights for homeless students.
- D. **Sexual Harassment:** TITLE IX of the **EDUCATIONAL AMENDMENTS OF 1972** prohibits sexual harassment in schools.
- E. **Bullying: PUPIL SAFETY AND VIOLENCE PREVENTION ACT OF 2000**
This state law requires that each school board adopt a pupil safety and violence prevention policy that addresses pupil harassment, or “bullying.”
- F. **Students with Disabilities:** Section 504 of the **REHABILITATION ACT OF 1973** protects qualified individuals with disabilities from discrimination in programs or activities receiving federal funds. The Act requires that students with disabilities have an equal opportunity to participate in a free, appropriate public education, through completion of high school or age 21, whichever occurs first, including, to the maximum extent appropriate, participation in non-academic settings and extracurricular activities. Although not a discrimination law, the **INDIVIDUALS WITH DISABILITIES EDUCATION ACT OF 2004** (IDEA) requires that school districts provide eligible students up through Grade 12 with disabilities with a free appropriate public education.

This chapter concludes with an overview of the process for filing discrimination complaints.

A. National origin discrimination: TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

It is illegal to discriminate in education against people because of their birthplace, ancestry, culture, or linguistic characteristics common to their specific ethnic group. National origin discrimination includes discrimination against persons with limited-English proficiency (LEP).

If you (as a student) or your child has LEP, the law requires the school district to provide alternative language services to allow the student to learn English. The school district also must provide students with LEP with meaningful access to the same education available to all other students, including appropriate special education and related services, as well as honors courses and advanced placement classes.

Children who are not citizens have a constitutional right to receive public education through grade 12, including access to appropriate special education programs, on the same basis as citizens. This includes individuals who are permanent residents, as well as documented and undocumented immigrants.

It is illegal to discriminate against a student based on his/her immigration status. You should contact an immigration advocate right away if your child's school:

- ▶ Asks about your child's immigration status or requests documentation;
- ▶ Denies admission to your child during initial enrollment or at any other time because of immigration status;
- ▶ Treats your child differently from other children because of his or her immigration status; or,
- ▶ Requires you or your child to apply for a social security number.

Students without social security numbers should be given a number created by the school. Adults without social security numbers who are applying for a free lunch or breakfast program for a student need only state on the application that they do not have a social security number. Verification of immigration status may be requested when applying for financial aid.

For more information, contact the INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE at 603-647-1500 or the PARENT INFORMATION CENTER at 1-800-947-7005 or 603-224-7005.

B. Sex Discrimination: Title IX of the Educational Amendments of 1972 was the first federal law to prohibit sex discrimination in schools that receive federal funding. Section 1681 of Title IX says:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...

Title IX covers all areas of education, including admission into vocational education programs, professional education, graduate education, and public institutions of undergraduate higher education. Recruitment, educational programs and activities, facilities and housing, scholarships, counseling, course offerings and access, financial aid, athletics, health insurance benefits and services are also covered by Title IX. The law also protects against discrimination based on the marital and parental status of students. These rules apply to schools that receive federal funds. In addition, **RSA 186:11** requires that the **NEW HAMPSHIRE STATE BOARD OF EDUCATION** (see **RESOURCE DIRECTORY**) ensure that students in public schools are protected from discrimination on the basis of sex. The State Board must also ensure that students are not denied the benefits of educational programs or activities on the basis of sex. Each local school board must have a policy that prohibits sex discrimination and sexual harassment.

Each school district must have a **Title IX Coordinator** who investigates gender discrimination complaints. The name of the Title IX Coordinator must be made available to the public by the local school district office and publicized to parents, students, and teachers.

Recruitment

All classes, except those involving sex education and contact sports, should be open to both sexes. The above two exceptions may be taught separately as long as the same opportunity is offered to students of both sexes. A school district must not use any test or criterion that tends to lead one sex into a program or activity and lead the other sex away, thus causing unequal enrollment.

Athletics and Physical Education

Each school district must ensure that equal opportunity and equal funding are provided for both sexes in interscholastic, intercollegiate, club, or intramural athletics. Equal equipment, supplies, facilities, number of games, practice times, travel allowance, and compensation to coaches are necessary under Title IX. Separate teams for contact sports, or in sports where competitive skill is involved, are allowed.

Counseling and Guidance

Schools may not discriminate against any person on the basis of sex in the counseling or guidance of students. Career information and career choice should be based on a student's abilities and interests, not the student's sex. Financial assistance, awards, scholarships, and testing must show equal opportunity to both sexes. In addition, schools may not discriminate on the basis of sex in providing medical, hospital, accident, life insurance, services, or policies to any student.

Marital Status

Schools may not punish students because of their marital status. Also, schools cannot require married students to use a specific name. Married persons have the same rights as unmarried persons and may not be excluded from activi-

ties and full participation in school. Also, Title IX states that a rule may not be established concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

Pregnancy

Pregnant students may not be discriminated against or excluded from school, programs, or activities unless the student voluntarily requests to participate in a separate activity.

Additional items:

Although not specifically covered by Title IX, the following areas are central to a school environment free of gender bias:

Textbook and Curricular Materials

Sexual stereotyping and sexual bias often occur in school activities, textbooks, classroom materials, and testing. Teachers, principals, and local school boards choose textbooks and materials. Title IX does not apply to this area. However, public awareness and pressure has resulted in eliminating some sexism in textbooks. Parents should encourage schools to develop policy statements and guidelines to examine possible sex bias in textbooks and instructional materials.

Dress Codes

Schools may adopt reasonable dress codes. Students have the right to freedom of expression and freedom of association; however, those rights may be limited by the school's legitimate safety and educational concerns. A public school cannot adopt a dress code that applies to one sex and not the other. For example, a school cannot insist boys wear short hair and allow girls to wear long hair. Most dress codes must be broad and flexible to be considered legal.

- C. **Homeless Students:** The McKinney-Vento Homeless Assistance Act of 1986 sets forth certain rights for homeless students. Homeless students are "individuals who lack a fixed, regular, and adequate nighttime residence," such as children sharing housing due to economic hardship or loss of housing, children living in motels, hotels, trailer parks, or camp grounds because of a lack of alternative, adequate housing, children living in emergency or transitional shelters, children awaiting foster care placement, children living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, migratory children, and children whose primary nighttime residence is not ordinarily used as a regular sleeping accommodation.

Schools are required to register homeless children, even if they lack certain documents such as immunization records or proof of residence. In addition, homeless students are afforded certain rights, such as, to the extent feasible, the right to attend the school that they attended before they became homeless. This is known as the school of origin. At the request of the parent or guardian, schools are required to provide transportation to the school of origin. When a

homeless student is attending a school other than his or her school of origin, the school must provide homeless students with transportation comparable to that provided to students with homes.

If you are a homeless child with a disability without parents, you may be entitled to an educational surrogate parent. You should contact your local school district's homeless liaison for more information.

Each local educational agency must designate a staff person to serve as a homeless liaison. The liaison's duties include: identifying homeless children and youth, ensuring that families and children receive educational services for which they are eligible, ensuring that enrollment disputes are mediated, and assisting with accessing transportation.

- D. **Sexual Harassment:** Title IX of the Educational Amendments of 1972 makes sexual harassment in school illegal. Anyone can be a victim of sexual harassment in a school setting, including, but not limited to: teenagers, children, and those who are physically or mentally disabled. Victims of sexual harassment may also be targeted because of their race, gender, sexual orientation, national origin, or economic status. Anyone can be guilty of engaging in unlawful sexual harassment: a teacher, administrator, coach, staff person or other student. Some forms of sexual harassment can also constitute bullying. (Bullying is discussed below in part E of this chapter). The gender or sexual orientation of the person harassing, and the person being harassed, do not determine whether unlawful harassment has occurred. (Teachers and employees can be victims of sexual harassment. See Chapter 2 for laws relevant to harassment in an employment setting).

What Is Sexual Harassment In Schools?

Sexual harassment can take many forms, including, but not limited to:

- ▶ Whistling, cat calls, or dirty gestures;
- ▶ Deliberate bumping or leaning against another person;
- ▶ Comments about a person's body;
- ▶ Sexual phone calls, e-mails, text messages, notes, messages, graffiti, or gossip;
- ▶ Inappropriate touching or grabbing of clothing;
- ▶ Demands for dates or sexual acts, or threats for not complying with the demands;
- ▶ Gay bashing;
- ▶ Harassment through the Internet;
- ▶ Sending or leaving another person pornographic material; or
- ▶ Indecent exposure.

If this conduct is interfering with a student's education, it may be unlawful harassment.

Each school board must adopt a policy prohibiting sexual harassment and a rule prohibiting unlawful discrimination in educational programs and activities on the basis of sex, race, age, religion, color, marital status, national origin or disability. The school's anti-discrimination and sexual harassment policies must be publicized to students, teachers, and parents.

If you (as a student) or your children are being sexually harassed or discriminated against by a teacher, staff member or another student, it is important to speak up. Also, you should know that you do not have to be a victim of discrimination or harassment yourself to file a complaint.

- E. **Bullying:** New Hampshire Pupil Safety and Violence Prevention Act of 2000 requires each local school board to adopt a pupil safety and violence prevention policy that addresses "bullying." Examples of bullying include:
- ▶ Hitting, punching, or other physical contact;
 - ▶ Spreading rumors about people;
 - ▶ Teasing people; and
 - ▶ Other behavior that is likely to intimidate, threaten, or provoke a response from another person.

The policy must describe the action to be taken by the local school board to resolve pupil harassment. At the beginning of each school year, school districts must give parents written notice of their pupil safety and violence prevention policy and the appeals process available at the local and state levels. If your child tells you that he or she is being bullied at school, it is important to speak to a school official.

School employees who witness or have reliable information that a pupil has been subjected to insults, taunts or challenges which are likely to intimidate or provoke a violent or disorderly response, must report such incident to the principal or other designated person, who in turn must report the incident to the superintendent. Within 48 hours after the incident occurs, the principal, or his/her designee, must report the incident to the parents or legal guardians of all pupils involved. The report must advise the parents about their due process rights, including the right to appeal to the state board of education, and the report must be made by telephone and in writing. The superintendent may, within the 48 hour period, grant the principal a written waiver from the notification requirement if the waiver is in the best interest of the child.

- F. **Students With Disabilities:** Section 504 of the Rehabilitation Act of 1973 provides schools cannot discriminate against qualified students with disabilities. A student has a disability under Section 504 when: 1) he or she has a physical or mental impairment that substantially limits one or more major life activities; 2) he or she has a record of such impairment, or 3) he or she is regarded as having such an impairment. Major life activities include: walking, seeing, hearing, speaking, breathing, and learning.

Under Section 504 of the Rehabilitation Act of 1973, school districts must provide qualified students with disabilities with equal access to educational opportunities. This is usually accomplished by providing qualified students with disabilities with a free, appropriate public education (FAPE). Under Section 504, a FAPE is “the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met.” There are also specific procedural requirements that school districts must comply with. One way of meeting these requirements is through the implementation of an Individualized Education Program, as described by the Individuals with Disabilities Education Act. This requirement is discussed in more detail below.

The Section 504 Accommodation Plan is the tool that school districts use to meet their obligation to provide a FAPE to a qualified student with a disability. With the Section 504 Plan, qualified students with disabilities can receive reasonable accommodations to provide equal access to educational opportunities.

The **INDIVIDUALS WITH DISABILITIES EDUCATION ACT of 2004** (IDEA) requires that school districts provide eligible students up through Grade 12 with disabilities with an individualized education program (IEP) that allows the student to receive a FAPE in the least restrictive environment. The IDEA also requires that parents be given the opportunity to be involved in the educational planning for their children with disabilities. The school district must make a reasonable effort to ensure that parents understand, and are able to participate in, any group decisions relating to the educational placement of the student, including arranging for an interpreter for parents whose native language is not English.

In New Hampshire, written parental consent is required for student evaluations, determining or changing a disability classification, the IEP, placement, and changing the nature or extent of a child’s special education or related services. If a parent fails to respond to a request for consent, the school district can implement the proposed changes, as long as it has taken reasonable measures to obtain parental consent.

A school district should evaluate a child who may have limited-English proficiency by evaluating the child’s proficiency in English as well as in his or her native language to distinguish language proficiency from disability needs. These evaluations should be selected and administered non-discriminatorily and in the child’s native language or other mode of communication unless it is not possible to do so. If parents disagree with the results of a school’s evaluation, they may request that the school pay for an independent evaluation. Students **must** be reevaluated by the school district at least once **every three years**, or more frequently if the parent or teacher requests it.

Once a child has an IEP, it **must be annually** reviewed by the IEP Team and be in place at the beginning of each school year. Among the many components of an IEP is an explanation of how parents will be informed regularly of their child’s progress. In addition, parents must receive a written invitation to an IEP meeting at least ten days before the meeting occurs. Parents may invite other individuals to the meeting who have special expertise or knowledge about the child.

The New Hampshire Rules for the Education of Children with Disabilities, Ed. 1100, outline clear timelines for each step of the special education process – from identification, to evaluation, to placement. For more information on the special education process, contact the **DISABILITY RIGHTS CENTER** at 1-800-834-1721 or 603-228-0432 or the **PARENT INFORMATION CENTER** at 1-800-947-7005 or 603-224-7005.

PROCEDURES FOR FILING COMPLAINTS:

If you are a student and feel uncomfortable talking about your situation alone, then ask a friend, a parent or another adult with whom you feel comfortable to attend the meeting with you. If English is not your native language, or if you need other special accommodations, be sure to request that these arrangements be made.

Write down what happened. Make a note of how you felt when you were harassed or discriminated against. Were you depressed, scared, ashamed, shocked? Note details, including names of witnesses and the approximate date of the incident and if it is still occurring. Remember to make a copy to keep for your own records.

TITLE IX

If the harassment or discrimination is based on your sex, contact the **Title IX Coordinator** in your school district. This person has been designated by your school district and is responsible for handling complaints about Title IX violations. Once notified, the Title IX Coordinator will investigate the complaint.

You may also contact the Office for Civil Rights at 617-635-2500 or OCR. Boston@ed.gov, or bring a lawsuit under federal or state law. However, you may need to exhaust administrative remedies before filing a lawsuit.

SECTION 504

If you (as a student) or your child has been the subject of disability discrimination you may file a complaint with your district's **Section 504 Coordinator**. You also have the right to request an impartial hearing with respect to actions regarding the identification, evaluation, or educational placement of your child. Your district's Section 504 Coordinator will have a copy of the hearing procedures adopted by your school district.

You may also file a complaint with the **Office for Civil Rights** at 617-635-2500 or **OCR.Boston@ed.gov**, or bring a lawsuit under federal or state law. However, you may need to exhaust administrative remedies before filing a lawsuit.

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT OF 2004 (IDEA)

Procedural safeguards provide for resolution of disputes, first by informal methods and then, if this is not successful, through complaint and investigation. Complaints that a school has violated state or federal special education requirements, including not following an IEP, may be filed with the

NEW HAMPSHIRE DEPARTMENT OF EDUCATION Complaints Office at **603-271-3730**. The complaint will be reviewed by the Complaints office of the Bureau of Special Education, and if the issues presented are appropriate for complaint procedures, then it will be investigated by the Department of Education. The Department may require that the school district take steps to remedy any violations. You may also file a request for due process.

In addition, you may file a request for due process on any matter pertaining to the identification, evaluation, educational placement, or provision of FAPE to your child. If you file a request for due process, you will have certain obligations, such as the need to participate in a resolution session with your school district. For more information, contact the **NEW HAMPSHIRE DEPARTMENT OF EDUCATION**, Office of Legislation and Hearings at **603-271-2299**.

TAKING CARE OF YOURSELF

If you feel you are being harassed or discriminated against, do not blame yourself. It is not your fault. Many people hope that ignoring the problem will make it disappear. Rarely does that happen. Discrimination and harassment often can be emotionally damaging. It is important to take care of yourself.

Know that you have done nothing to provoke or cause the harassment. What is happening to you is not your fault and is not because of anything that you have or have not done.

Join a support group. Local crisis centers can assist you in locating a support group in your area.

Get emotional support from family and friends. Keep in touch with friends who are supportive and understanding. Tell someone about each encounter with the harasser. You also can call your local crisis centers for support 24 hours a day, 365 days a year.

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Useful resources for advocacy and information include the **DISABILITY RIGHTS CENTER** at **800-834-1721** or **603-228-0432**, the **PARENT INFORMATION CENTER** at **800-947-7005** or **603-224-7005**, and your **local crisis center** listed in the **Resource Directory** of this Handbook.

CHAPTER 4. HOUSING

❖ HOUSING DISCRIMINATION

TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968 makes it illegal to treat a person differently in housing based on race, color, national origin, disability, sex, religion, and familial status (the number and ages of children in a family). New Hampshire's fair housing law also protects residents against housing discrimination based on a person's age, marital status, or sexual orientation. These laws cover housing owners, landlords, housing managers, real estate agents and others involved directly or indirectly in the rental or sale of housing or housing lots. Advertising of an available apartment, home or housing lot; the rental, sale or negotiation for the rental or sale of housing; and the provisions of home financing or real estate brokerage services all are covered by these anti-discrimination laws.

If you believe you have been a victim of housing discrimination under federal or state law, you can file a complaint with the **NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS** at **603-271-2767** or with the **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)** at **1-800-669-9777**. If you need legal assistance, you can contact **NEW HAMPSHIRE LEGAL ASSISTANCE** at **603-668-2900** or **1-800-562-3174**, which provides legal services to low-income residents. If you believe there is a pattern or practice of discrimination that extends beyond you as an individual, contact the **HOUSING AND CIVIL ENFORCEMENT SECTION OF HUD** at **1-800-669-9777**.

❖ TENANT RIGHTS AND RESPONSIBILITIES

As in any contractual agreement, a housing lease stipulates the rights and responsibilities of the contracting parties – in this case, tenant and landlord. It is important to note, however, that no lease can override a specific provision of New Hampshire law that provides tenant protections.

NOTE: New Hampshire state law provides substantial additional rights to tenants of manufactured housing, not covered in this handbook.

RIGHTS AND RESPONSIBILITIES UNDER A LEASE

Although a rental agreement can be written or oral, “lease” usually means a written rental agreement for a specific time, usually one year. As long as you abide by the lease, you cannot be evicted during that year and your rent cannot be raised. However, you may be obligated to pay the rent for that entire year even if you move.

Read the lease carefully before you sign it and ask about anything that you do not understand. If rent is shared, anyone who signs the lease may have to pay the total rent, not just his or her portion. If your lease expires and you are not offered a new one, you then become a month-to-month tenant. Even then, in most situations, you cannot be evicted without good cause.

If you do not have a lease, the landlord can increase the rent but must give you written notice of increase 30 days before the increase is due to take effect.

SAFE AND SANITARY HOUSING

Under New Hampshire law, landlords are required to provide safe, sanitary housing for tenants. State law also sets forth the minimum standards for rental property. The following may be examples where these standards are not being met:

- ▶ Bugs, mice or rats, and the landlord is not conducting a routine inspection and extermination program;
- ▶ Internal plumbing that does not work, or a back-up of sewage caused by a faulty septic or sewage system;
- ▶ Bad wiring, including exposed wires, defective switches, or anything else that creates a danger of fire;
- ▶ Leaking roof or walls, plaster falling off walls or ceiling;
- ▶ Not enough water or the water heater is not working properly;
- ▶ Leaks in gas lines, dangerous holes, accumulation of garbage
- ▶ Heating facilities are not properly installed, safely maintained, and in good working condition, or cannot safely and adequately heat all livable rooms and bathrooms to average temperature of at least 65 degrees; or
- ▶ The premises are not kept at a minimum average temperature of 65 degrees in all livable rooms when heat is included in the rent.

MAKING A COMPLAINT ABOUT THE LACK OF SAFE AND SANITARY HOUSING

You should make all complaints and requests for repairs in writing to the landlord and keep signed, dated copies. If the landlord fails to make proper repairs, report any serious problems to proper authorities, usually the code enforcement officer or building inspector in your town or city. Report any fire hazards to the local fire chief. If the town does not address these problems, you can contact the **STATE OFFICE OF HEALTH MANAGEMENT** at **603-271-4501** or the **STATE FIRE MARSHAL** at **603-271-3294**. The landlord cannot evict you for making these complaints (see below in this chapter, “Retaliatory Eviction”).

WITHHOLDING RENT

If you choose to withhold rent, it is best that you consult an attorney before doing so. Lawfully, you may withhold your rent if *ALL* the following conditions are met:

1. You gave your landlord notice (preferably written notice) of the violations while you were not behind in rent (you will need proof of these violations); AND
2. The landlord failed to take corrective actions within 14 days of your written complaint. (In an emergency, you may not have to wait 14 days before you begin withholding); AND

3. Your family or guests did not cause the violation; AND
4. Extreme weather conditions did not prevent the repairs; AND
5. You did not refuse to let the landlord into your apartment to make the repairs.

If you choose to withhold rent, you must put aside the rent money you have withheld so that it is available to pay to the court. If the landlord tries to evict you because of non-payment of rent, and you have satisfied all of the above conditions, the court can dismiss the eviction.

OTHER TENANT PROTECTIONS

New Hampshire law prohibits a landlord from certain acts:

- ▶ Shutting off your utilities;
- ▶ Locking you out of your rented premises without a court order;
- ▶ Entering your premises without permission, except to make emergency repairs. (You should not refuse your landlord's reasonable request to enter the premises if you are given enough notice); and
- ▶ Taking any other action to force you out of your home without going through the eviction process.

If your landlord has done any of the actions listed above, you can get an order to make your landlord stop, and to award you damages, by filing a **540-A petition** at your local DISTRICT COURT (see **RESOURCE DIRECTORY** for a listing of New Hampshire courts). You do not need a lawyer. Ask the clerk to help you. You also may want to ask for a **temporary order** if there is an immediate threat of serious harm. The court will schedule a hearing to hear both sides and then will decide if you should get damages and if the order should be continued.

SECURITY DEPOSITS

Under New Hampshire law, a security deposit is any money that you give to your landlord other than your monthly rental payment. Even if your landlord calls the money a deposit for cleaning, pets or keys, or the last month's rent, it still is treated under the law as a security deposit. This law protects all tenants EXCEPT:

- ▶ Tenants who rent a single family home from a landlord who does not own any other rental property;
- ▶ Tenants under the age of 60 who live in a building with less than six apartments and whose landlord lives in the same building; and
- ▶ Tenants in business, vacation or recreational rentals.

Even if the law does not cover your tenancy, your landlord still is obligated to return your deposit after you move out, minus unpaid rent and repair costs. If your security deposit is not returned, you still may sue your landlord but may not be entitled to certain penalties provided by New Hampshire law.

Your landlord cannot require you to pay a security deposit in an amount that is greater than one month's rent or \$100.00, whichever amount is larger. FOR EXAMPLE, ALTHOUGH A COMMON PRACTICE, IT IS ILLEGAL FOR A LANDLORD TO CHARGE FIRST AND LAST MONTH'S RENT IN ADDITION TO A SECURITY DEPOSIT.

Whenever you pay a security deposit, the landlord is required to give you a signed receipt, which must tell you in which bank your deposit is held.

You also are entitled to receive interest earned on the money in the savings account where it was deposited if your landlord holds your deposit for more than one year.

When you move out, you should notify your landlord in writing of your new address as soon as possible, preferably on or before the day you move. Your landlord has 30 days from the end of the tenancy to return your full deposit with any interest owed, or return your deposit minus any permitted deductions.

Your landlord is permitted to deduct the following expenses from your security deposit:

- ▶ Any rent that is still owed;
- ▶ The cost to repair any damages to the apartment or leased premises caused by you or your guests (excluding reasonable wear and tear); and
- ▶ Your share of increases in real estate taxes (but only if a written agreement requires this).

Your landlord is required to provide you with an itemized list of any expenses deducted from your deposit and further must provide proof that the repairs, if any, have been or will be completed.

The landlord is not permitted to charge you for "normal wear and tear" to the premises. Whether or not something is considered to be "normal wear and tear" or damage depends on the facts. Worn carpeting or linoleum usually will be considered "normal wear and tear," while broken glass and holes in walls will be considered damage.

You have five days to give your landlord a list of defects and damages that were in the apartment when you moved in. Your list should be dated and a copy should be kept. Also, it is important to inspect the premises when you move out. You should make both inspections with a witness and photos should be taken.

You may be able to sue your landlord for damages in small claims court if you do not get your security deposit within 30 days. Before you file a lawsuit, write to your landlord requesting the return of your security deposit. Be sure to include your new address in your letter. Keep a copy of the letter for yourself.

If you decide to sue, call **LEGAL ADVICE & REFERRAL CENTER** at **1-800-639-5290** or **603-224-3333** for more information regarding the legal process or to request informational brochures on "Tenant Rights" and "Security Deposits." In addition, contact **NEW HAMPSHIRE LEGAL ASSISTANCE**, at **603-668-2900** or **1-800-562-3174**, which provides legal services to low-income residents for housing issues.

❖ THE EVICTION PROCESS

REASONS FOR EVICTION

In most rental situations, your landlord must prove good cause to evict you; you cannot be evicted without a reason. Lawful reasons to evict must be stated on the eviction notice. Some specific examples follow.

- ▶ Non-payment of rent;
- ▶ Substantial damage to the premises;
- ▶ Violation of the lease;
- ▶ Behavior of the tenant or guests that adversely affects the health or safety of other tenants or the landlord;
- ▶ Failure of the tenant to accept suitable temporary relocation due to the abatement of lead paint hazards;
- ▶ Repairs for a lead hazard that will take more than 30 days or will be more than a temporary measure, or that, after the repairs, the unit will be no longer rented; and
- ▶ Other good cause – your landlord must provide written notice and state a lawful cause.

LEAD PAINT AND YOUR FAMILY'S HEALTH

The presence of lead paint in an apartment may cause the inhabitants, and especially children, to have high levels of lead in their blood which may cause serious health problems.

There is no law to require a landlord to inform a tenant of the lead levels in the paint in an apartment. However, if an individual has a blood test that shows a high lead level, then the town or city can obtain an abatement order. This is a court order that requires the landlord to take all necessary steps to eliminate the tenants' exposure to lead paint in the apartment.

If you or a member of your household has a blood test that reveals a high lead level, you should immediately contact your town's health department or health officer and let them know of the problem. They can then take the necessary steps to force the landlord to clean up any lead paint. If you have questions or concerns about this type of problem, you can also contact New Hampshire Legal Assistance (see Resource Directory).

EXCEPTIONS TO GOOD CAUSE EVICTION

If you live in one of the types of properties set forth below *and* you do not have a lease, your landlord does not need good cause to evict you. However, even if you do live in such a property, the landlord still must go through all the steps of the eviction process.

- ▶ The rental unit is a single-family house and the owner does not own more than three single-family houses at one time.

- ▶ The rental unit is in an owner-occupied building containing a total of four units or fewer.
- ▶ The rental unit is in a vacation or recreational dwelling, rented during the off-season for non-recreational purposes.
- ▶ The rental unit is a single-family house acquired by a bank or other mortgage holders through foreclosure.

RETLIATORY EVICTIONS

It is unlawful for a landlord to evict you for reporting housing code violations, filing a fair housing complaint, or organizing a tenant association. Evicting a tenant when he or she lawfully is withholding rent as described in the tenant rights section above also is a form of retaliatory eviction and is illegal. In addition, a landlord may not evict you on the basis of race, age, sex, national origin, sexual orientation, or any other protected category.

THE EVICTION PROCESS

In order to evict, a landlord must follow the correct procedure and, in most situations, must prove that there is a good cause to evict. The law requires a written notice and the opportunity for a court hearing. If a landlord fails to take the steps required by law, a tenant may request that the court dismiss the eviction.

In nonpayment evictions, a **demand for rent** is the first notice you will receive. A demand for rent will tell you how much rent you owe, and cannot ask for more rent than is actually owed. The demand must be served personally (given to you in hand) or left at your home prior to or at the same time as the “eviction notice”.

An **eviction notice** must be in writing, be served on you personally or at your door, and state specifically the reason for the eviction. If the reason for the eviction is nonpayment of rent, behavior adversely affecting the health and safety of other tenants or the landlord, or that you have caused substantial damage to the premises, the notice must give you at least seven days to leave. In all other cases, a landlord must give you at least 30 days notice to leave. Further, the notice must notify you of your right to cure, if the reason is nonpayment of rent. The **right to cure** means that you can avoid eviction by paying all of the back rent, plus \$15.00, by the date the eviction notice expires. If you pay on time, you cannot be evicted. It is important to note that you can cure only three times within a twelve-month period.

After the eviction notice has expired and you have not left, the landlord can begin a legal action against you. In this case, a sheriff will serve a **writ**, either on you personally or at your home. Read the writ carefully. It will indicate a **return date**. If you want a hearing to challenge the eviction or to ask for more time, you must file an **appearance** with the court and ask for a hearing before the return date.

NOTE: the return date stated by the court is not a hearing date. There will not be a hearing unless you request one from the court.

You can obtain an **appearance** form at the DISTRICT COURT from the clerk (see **RESOURCE DIRECTORY** for a listing of New Hampshire courts). Fill it out and leave it with the clerk. You also will need to send a copy of the form to the landlord or the landlord's attorney. After you file your appearance form, you will receive a notice letting you know the date of the hearing. If you do not file an appearance form, you will lose your eviction case and the court can issue a **writ of possession** against you three days later, which authorizes your landlord to take back possession of the property. (See more information about a **writ of possession** further in this chapter).

You can send discovery requests to your landlord or the landlord's attorney within five days following the return date on the writ. During the **discovery process**, you can find out what evidence your landlord plans to use against you so that you can prepare for the hearing. You have the right to send written interrogatories or questions about the specifics of the case. Your landlord has 14 days to respond, so you will need to ask the court in writing to postpone the hearing to give your landlord time to reply. If your landlord does not respond within 14 days, you can inform the court and ask for another postponement of the hearing to give you time to get the information.

At the hearing, the court has the power to decide who should have possession of the property and how much money is owed between you and the landlord. If the landlord has requested money damages on the writ, the hearing may result in a financial judgment that can be enforced against you if it is not paid. Therefore, if you disagree with the amount the landlord claims you owe, you should go to the hearing, even if you have already moved.

To win the right to stay in the rental property, you must convince the court:

- ▶ That the landlord does not have good cause to evict you (see Reasons for Eviction on previous page)
- ▶ In the case of non-payment of rent, that you do not owe the money or that the landlord owes you more money than you owe the landlord; or
- ▶ That the landlord did not take the proper legal steps to evict you.

For information on the hearing and the defenses that you can raise, call **LEGAL ADVICE & REFERRAL CENTER** at **1-800-639-5290** or **603-224-3333** for advice or to request the informational brochure, "The Eviction Process." In addition, **NEW HAMPSHIRE LEGAL ASSISTANCE** provides legal services to low-income residents and can be reached at **603-668-2900** or **1-800-562-3174**.

In the event that you lose at the hearing, you should ask the court to grant a **discretionary stay** at the end of your hearing. The court has the discretion to grant a stay of up to three months, during which time the writ of possession is stayed, or delayed, by the court. You must pay weekly rent during this time. Failure to make a timely payment may result in the landlord going back to the court asking for a writ of possession.

The judge uses a variety of factors to decide whether or not to grant a stay, including:

- ▶ The difficulty you will have in moving;
- ▶ Whether your children will have to change schools;
- ▶ Your ability to pay rent during the stay;
- ▶ Whether you have a definite date for moving; and
- ▶ Whether a delay will hurt the landlord.

At the end of the stay period, the court will issue a writ of possession if you have not yet moved.

A **writ of possession** authorizes your landlord to take back possession of the property. This is the final step in the eviction process. You may receive a warning from the sheriff, and a few days later the sheriff will return to remove you from the property. It is best to remove your personal property before that happens. However, your landlord is obligated to take care of your personal property for 28 days after you vacate the premises and cannot charge you payment for any rent or storage fees.

NOTE: Until the writ of possession is served on you or at your home, it is unlawful for your landlord to force you to leave the property. If your landlord unlawfully attempts to make you leave the property without using the eviction process, you can go to the District Court, ask for a 540-A petition, and request the court to order your landlord to stop. (See Resource Directory for a list of the NH District Courts).

THE APPEAL PROCESS

You can appeal your case to the New Hampshire Supreme Court **IF AND ONLY IF** you file a **notice of intent to appeal** with the District Court within seven days of the court's decision. If the eviction is based on non-payment of rent, you must pay one week's rent into the court at the time you file your notice of intent to appeal, and you must pay your rent weekly into the court thereafter.

For more information on appealing your case, contact **LEGAL ADVICE AND REFERRAL CENTER** at **1-800-639-5290** or **603-224-3333**. In addition, **NEW HAMPSHIRE LEGAL ASSISTANCE**, provides legal services to low-income residents and can be reached at **603-668-2900** or **1-800-562-3174**.

CHAPTER 5. DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING

Anyone can be a victim of violence – women, men, teenagers, children, people with disabilities, and the elderly, regardless of race, national origin, sexual orientation or economic status. If you are an immigrant or a refugee, you too have legal rights to protect you from abuse.

It is against the law for someone to threaten or assault you, even if that person is your spouse, partner, someone you are dating, or someone you once dated. This includes acts or attempted acts of:

- ▶ Assault or reckless conduct;
- ▶ Criminal threatening;
- ▶ Sexual assault;
- ▶ Interference with freedom or kidnapping;
- ▶ Destruction of property;
- ▶ Unauthorized entry;
- ▶ Harassment; and
- ▶ Stalking.

If you are in danger now, stop reading and call for help.

POLICE: 9-1-1

NH DOMESTIC VIOLENCE HOTLINE: 1-866-644-3574

NH SEXUAL ASSAULT HOTLINE: 1-800-277-5570

TTD/VOICE: 1-800-735-2964

Request an interpreter or other accommodation if necessary.

ARE YOU IN A MEDICAL EMERGENCY?

Call 9-1-1 immediately, or go to the nearest hospital. The emergency room in any public hospital must give you emergency medical care, even if you are an undocumented immigrant or do not have insurance. Inform hospital staff if you need special accommodations, such as an interpreter, sign language, or print materials in an accessible format.

NOTE: Sexual and physical abuse of children under 18 is considered child abuse. Anyone suspecting or knowing of such abuse is required by law to report it to the Division of Children, Youth and Families (In New Hampshire at 1- 800-894-5533; Outside New Hampshire at 1-603-271-6562. If you need to report an incident before 8am or after 4:30 pm on a week day, or any time on a weekend, call your local police.

NOTE: Anyone suspecting sexual and/or physical abuse, neglect or exploitation of an Elder or Incapacitated Adult over the age of 18 is required by law to report it the Bureau of Elderly and Adult Services at 1-800-949-0470 or 1-603-271-7014. If you need to report an incident before 8am or after 4:30pm, or anytime on the weekend, call your local police.

❖ DOMESTIC VIOLENCE

If you find yourself in a relationship in which you are being hurt or intimidated, or where there is a threat of harm to you, you may be a victim of domestic violence. Domestic violence includes physical, sexual, verbal, or emotional abuse between partners, including current or former sexual, intimate, or dating partners. It occurs in families from all backgrounds and happens to individuals regardless of education, economic status, race, religion, national origin, physical or mental ability, gender, or sexual orientation. The law protects people of all ages, including minors. Additionally, the law protects you regardless of your immigrant status.

Abuse or battering is a pattern of coercive behavior used by one person to control another person's actions and feelings. Below is a Power And Control Checklist, adapted from the Domestic Abuse Intervention Project 1-218-722-2781, <http://www.thedvlvthmodelR3>. It illustrates methods batterers may use to exert power over you. You may find this useful in evaluating your own situation.

Emotional Abuse

- a. Telling your family or friends lies about you
- b. Belittling, embarrassing, or humiliating you in front of family and friends
- c. Making you feel bad about yourself
- d. Calling you racist, sexist or other demeaning names
- e. Playing mind games or making you think you're crazy
- f. Making you feel guilty
- g. Accusing you of trying to attract, flirt or sleep with other people

Economic Abuse

- a. Preventing you from getting or keeping a job
- b. Forcing you to work "under the table" when you don't have a work permit or threatening to report you if you do work "under the table"
- c. Preventing you from getting job training or schooling
- d. Forcing you to sign papers that you do not understand, or written in a language that you do not understand, or printed in a format that is inaccessible to you, including IRS forms, court papers, and immigration papers
- e. Making you ask for money or taking your money
- f. Not letting you know about, or not letting you have access to family income

Intimidation

- a. Making you afraid by using looks, actions, gestures
- b. Destroying property, including items with special meaning to you
- c. Abusing pets
- d. Displaying weapons
- e. Hiding or destroying important papers, including health care cards, or your driver's license, passport, or green card

Coercion and Threats

- a. Making or carrying out threats to do something to hurt you, your children, your friends, or family members
- b. Threatening to harm or harass your employer or co-workers
- c. Threatening to leave you or to commit suicide if you leave
- d. Threatening to report you to welfare or to the INS
- e. Threatening to withdraw immigration papers
- f. Threatening to take the children away or out of the country

Isolation

- a. Controlling what you do, who you see, what you read, where you go
- b. Limiting your involvement outside the home
- c. Not allowing you to learn English or keeping you from friends or family who speak your language
- d. Using jealousy to justify actions

Minimizing, Denying & Blaming

- a. Making light of abuse and not taking your concerns about it seriously
- b. Saying the abuse didn't happen
- c. Shifting responsibility for the abusive behavior
- d. Saying you caused it

You can discuss your situation with a trained professional. Call the **New Hampshire Domestic Violence Hotline** 24 hours a day, 365 days a year at **1-866-644-3574 (TDD/VOICE 1-800-735-2964)**. The call is free and translation is available. The hotline will connect you to one of 14 **crisis centers** throughout the state established to provide services to victims and survivors of domestic violence and their children. Information you share with a **crisis center advocate** shall remain strictly confidential, unless you give written permission for its release. This means you can disclose information about your situation and receive help and support without any part of the conversation being revealed to the government, your abuser or another third party.

GETTING HELP FOR DOMESTIC VIOLENCE

What Can the Police Do?

The police can provide you with immediate intervention and protection. Call 9-1-1 for help. Make sure to state your name and address clearly, and indicate that you want to report an assault. Inform the operator if you need special accommodations, such as English-language translation.

When law enforcement arrives, it is their job to make sure that you and your children are safe. They should physically separate you and your abuser to find out what happened. If needed, you may ask for help such as an English language or sign language interpreter so that you can understand the police officer and the police officer can understand you. Do not rely on your abuser to interpret for you. If the police ask about your immigration status or where you were born, you do not legally have to answer.

If you were assaulted within the past 12 hours, the police must arrest the abuser unless there is a good reason not to. If it has been longer than 12 hours since the abusive incident, the police must get a warrant to make an arrest.

A police officer can make an arrest even if you do not want them to. Although this may seem frightening, the police are there to protect you and your children, and it is in your best interest to cooperate.

There are other things law enforcement can do to help make you safe. If you left home because of the violence, they can go with you to your home to pick up clothing, toiletries and important papers. They can also transport you to a safe place such as a shelter or safe house, a friend's house, the police station, or the hospital. The police will assist you to contact a local crisis center for further help.

What is a Domestic Violence Shelter?

A shelter is a safe home where you and your children can live for a time if you are trying to leave an abusive relationship. The physical address of most of the Domestic Violence Shelters is kept strictly confidential for your safety. Please see further information on **“open shelters”** listed in the note that follows.

NOTE: There are two shelters in New Hampshire that are considered “open shelters” – New Beginnings located in Laconia and The Support Center at Burch House located in Littleton. An “open shelter” means that while the services provided are strictly confidential, the physical location of the shelter is not. The community is aware of the physical location of the shelter. If you feel that you are in danger or are being stalked, speak with an advocate about going to the safest location.

You can receive these services even if you are an undocumented immigrant. If you do not understand or speak English, ask a staff person at the shelter if they have an interpreter. You may also request other help, such as finding a sign language interpreter and helpful print materials.

You can find the shelter nearest to you by calling the statewide **Domestic Violence Hotline (1-866-644-3574; TDD/VOICE 1-800-735-2964)**. The call is free and interpretation in many languages is available. A list of local crisis centers also can be found in the **Resource Directory** of this Handbook. The services provided at crisis centers are free and available to all people regardless of race, gender, sexual orientation, national origin, religious or political beliefs, mental or physical ability, 365 days a year. Services include:

- ▶ Twenty-four hour crisis lines
- ▶ Emergency shelters
- ▶ Transportation to emergency shelters
- ▶ Court advocacy in getting protective orders against abusers
- ▶ Hospital and court accompaniment for support
- ▶ Information and help in getting public assistance

A state law makes getting help safer for you and states that information shared between a victim of a sexual assault or domestic abuse and a **crisis center advocate** shall remain confidential. This information is never given out, unless the crisis center has received written permission from you. This means you can disclose information about your situation and receive help and support without any of the conversation being revealed to the government, your abuser, or another third party. However, crisis center advocates are required to report suspected or known incidences of child abuse to authorities.

NOTE: Some advocates work for the hospital or police department. Information you share with them is not confidential. Be sure to ask if the advocate is covered under confidentiality rules.

IF YOU ARE IN DANGER AND LEAVE HOME

If you are in danger you may consider leaving your home and going to a friend's house or a domestic violence shelter. If you stay with a friend or a family member, it is important to keep your location secret if possible. If you go to a shelter discuss with the shelter advocate your need for the safest location.

See information about the Address Confidentiality Program at the end of this chapter.

If you leave your home, you should make every effort to take your children with you. If you have time you also should consider bringing any identification documents that you have, such as:

- ▶ Driver's license;
- ▶ State identification;
- ▶ Passports;
- ▶ Green cards;
- ▶ Visas for yourself and your children;
- ▶ Immigration papers and correspondence;

- ▶ Copy of any documents that establish your residence with your spouse;
- ▶ Copy of any documents that establish you live in the United States;
- ▶ Any police, doctor and other records of the abuse;
- ▶ Birth certificates;
- ▶ Documents from any public assistance programs;
- ▶ Rental agreements;
- ▶ Checkbooks;
- ▶ Credit cards;
- ▶ Paycheck stubs;
- ▶ Marriage license;
- ▶ Family pictures; and
- ▶ Copies of tax returns for yourself and your partner

It also may be helpful to bring information with you regarding your partner. Make a copy of your partner's driver's license, alien card or certificate of naturalization, or copy the information on a piece of paper.

THE PERSONALIZED SAFETY PLAN

Whether or not you are ready to leave your partner, it is a good idea to work out a personalized safety plan *before* you are in the position of having to quickly flee from danger. The safety plan contains suggested tips for increasing your safety while you are in an abusive relationship. You should keep your safety plan in a secure place, along with the identification documents listed above.

A representative from your local crisis center can help you to fill out the plan. Call the statewide **Domestic Violence Hotline at 866-644-3574 (TDD/VOICE 800-735-2964)** or see the **Resource Directory** of this Handbook to locate the crisis center nearest to you.

PERSONALIZED SAFETY PLAN

(You may want to tear these pages out to use them.)

(Please note: Internet & Computer Safety Reminders page 49)

I can get help:

I can tell _____ & _____ about the violence and request they call the police if they hear noises coming from my house.

I can teach my children how to contact the police. I will make sure they know our address & telephone number.

I can teach my children how to go to _____ (e.g., neighbor, business, etc.) for help if it is not possible to use the telephone.

If I have a programmable phone, I can program emergency numbers and teach my children how to use the autodial.

I can use my judgment:

When I expect my partner and I are going to argue, I will try to move to a space that is lowest risk, such as _____.
(Try to avoid arguments in the bathroom, garage, and kitchen, near weapons or in rooms without an outside exit.)

I can also teach some of these strategies to some/all of my children, as appropriate.

At work and in public:

My workplace security office number is _____.

When traveling to and from work, I can vary my route. If there's trouble, I can _____.

I can tell _____ & _____ that I am no longer living with my partner and ask them to call the police if they believe that I am in danger.

I can leave:

If I decide to leave, I will _____.
(Practice how to get out safely.)

I can keep my purse and car keys ready and put them _____
_____ to leave quickly.

I will leave money and an extra set of keys with _____
so I can leave quickly.

I will keep copies of important documents or keys at _____.

If I have to leave my home, I will go to _____.
(List at least three places.)

Planning to leave:

I can leave extra clothes with _____.

I will keep important numbers, change for phone calls and a calling card with me at all times. Since my partner can learn whom I've been talking to by looking at phone bills, I can see if friends will let me use their phones.

I can leave my pets with _____.

I will check with _____ & _____ to see who would be able to let me stay with them or lend me some money.

I can increase my independence by opening a bank account and getting credit cards in my own name; taking classes or getting job skills; getting copies of all the important papers and documents I might need and keeping them with _____.

Other things I can do to increase my independence include: _____

I can rehearse my escape plan and, if appropriate, practice it with my children.

With an order of protection:

I will keep my order of protection _____.
(Always keep it on or near your person.)

I will always give copies of my order of protection to police departments in the communities where I visit friends and family.

I will give copies to my employer, my closest friend, my children's school, day care center, & _____.

If my partner destroys my order of protection or if I lose it, I can get another copy from _____.
(The court that issued it)

If my partner violates the order, I can call the police and report a Violation, contact my attorney, call my advocate, and/or advise the court of the violation.

I can call a domestic violence program if I have questions about how to enforce a court order or if I have problems getting it enforced.

My emotional health:

If I am feeling down, lonely, or confused I can call _____ or the domestic violence hotline 1-866-644-3574.

I can take care of my physical health needs by getting a checkup with my doctor, gynecologist and dentist. If I don't have a doctor, I will call the local clinic or _____ to get one.

If I have concerns about my children's health and well-being I can call _____

If I have left my partner and am considering returning, I will call _____
or spend time with _____ before I make a decision.

I can attend support groups, workshops, or classes at the local domestic violence
program or _____ in order to build a support system,
learn skills or get information.

I will look at how and when I drink alcohol or use other drugs.

If I need help around my drinking or drug use, I can call _____.

I can read one or more of the books that were written for battered women.

I will remind myself daily of my best qualities. They are: _____
_____.

Other things I can do to feel stronger are: _____
_____.

Important Telephone Numbers:

Police Department (home) _____

Police Department (school) _____

Police Department (work) _____

Crisis Service – Domestic Violence: 1-866-644-3574 or Sexual Assault: 1-800-
277-5570

Work Number _____

Supervisor's Home Number _____

Other _____

I will keep this document in a safe place and out of reach of my potential
attacker.

See Internet & Computer Safety on next page.

INTERNET & COMPUTER SAFETY

- ▶ Computers create records in hundreds of ways of everything you do on the computer and on the Internet.
- ▶ If you are in danger, please try to use a safer computer where someone abusive does not have direct access, or even remote (hacking) access. Email is not a safe or confidential way to talk to someone about the danger of abuse in your life; please use the domestic violence hotline instead.
- ▶ It might be safer to use a computer in a public library, at a community technology center (CTC) www.ctcnet.org (national directory), at a trusted friend's house, or at an Internet Café.
- ▶ If you think your activities are being monitored, you are probably right. Abusive people are often controlling and want to know your every move. You don't need to be a computer programmer or have special skills to monitor someone's computer activities – anyone can do it and there are many ways to monitor.
- ▶ Computers can provide a lot of information about what you look at on the Internet, the emails you send, and other activities. It is not possible to delete or clear all computer "footprints".
- ▶ If you think you may be monitored on your home computer, you might consider no home Internet use or "safer" Internet surfing. Example: If you are planning to flee to California, don't look at classified ads for jobs and apartments, or bus tickets for California on a home computer or any computer an abuser has physical or remote access to. Use a safer computer to research an escape plan.

TAKING CARE OF YOURSELF

- ▶ **Know that you have done nothing to provoke or cause the abuse.** What is happening to you is not your fault and is not because of anything that you have or have not done. The abuser alone is responsible for the abusive behavior.
- ▶ **Join a support group.** Local crisis centers are great resources and can assist you in locating a group in your area.
- ▶ **Develop a support system.** Consider keeping in touch with friends who are supportive and understanding. Tell someone about each episode of abuse. And remember, you can call your local crisis center for support 24 hours a day, 365 days a year.
- ▶ **You may experience stress and trauma and might want to seek assistance.** You may begin to experience some things like rage, terror, suspicion, an inability to trust anyone, depression, changes in sleeping or eating patterns, exhaustion, or frequent crying spells. Your body and mind may be reacting to the stress caused by the abuse. Talking to someone who is trained to work with victims or survivors may help reduce or stop some of the symptoms that are interfering in other parts of your life. Your local crisis center has a list of people skilled in this work.

LEGAL HELP FOR DOMESTIC VIOLENCE

There are both civil and criminal options available to you to protect yourself from abuse.

If you call the police for assistance, they are expected to make an arrest unless there is good reason not to. Once the abuse has been reported to the police, it becomes a **crime against the state**, and the decision of whether the case goes forward is up to the police and the prosecutor. It is not your choice. You may be asked to testify as a witness. You do not need to be alone during this process. Call your local crisis center for support. (See below, **“Criminal Cases”**, for more information).

If the police do not make an immediate arrest, you may file a complaint yourself. To help yourself through the court process, consider writing down details of the assault, such as:

1. Date and time of the attack, what happened, where it happened, and what your injuries were;
2. Police involvement, when they were called and what they did;
3. Property damage; and
4. Names and addresses of witnesses. Save evidence such as torn clothing, and take pictures of your injuries.

To file a complaint, go to the police station serving the city or town where the assault took place. Once the complaint is filled out a summons may be served on the abuser to appear in court or a warrant may be issued for an arrest.

NOTE: Even if arrested, there is a good chance that the abuser will not stay in jail. The abuser may be released on bail on the condition that he or she returns to court for the hearing, or, in many cases, on his or her written promise to return to court for the hearing.

DOMESTIC VIOLENCE PROTECTIVE ORDERS

Whether or not an arrest is made, you can file for a protective order from the court. A domestic violence protective order under RSA 173-B is available if you have been subject to actual or threatened physical violence or other forms of abuse by a family or household member or someone with whom you are a current or former intimate partner. There is no cost for this type of order. When you file a petition for a domestic violence protective order, you will be the plaintiff, and the abuser will be considered the defendant.

You do not need to be an adult or be with an adult to file for a domestic violence protective order. The following list includes minors as well as adults who are able to file a petition:

- ▶ Spouses or ex-spouses;
- ▶ Family members;
- ▶ Persons who live or have lived together; and
- ▶ Persons who are dating or have dated, including minors.

You do not need to be a citizen or legal permanent resident to get a domestic violence protective order. If you are uncomfortable about filing a petition because you are undocumented or unsure about your immigration status, you should seek the assistance of an immigration attorney before filing any document. For immigration advice, call the **International Institute Of New Hampshire** at **1-603-647-1500** (See **Resource Directory**). Until then, you should do what you need to do to make yourself safe.

If you are in fear of immediate danger during a period of time when the courts are closed, you should seek the help of the police for an **emergency protective order**, sometimes referred to as a telephonic order. The police will fill out the necessary paperwork and contact a judge by telephone. If the judge issues the emergency protective order and the plaintiff wants to remain protected under a court order, the plaintiff then must go to the court before 4:00 PM on the next business day to file a petition for a domestic violence protective order. For example, if you receive an emergency order on Friday night, you must appear in court by 4:00 PM on Monday.

WHAT CAN DOMESTIC VIOLENCE PROTECTIVE ORDERS DO?

Through a domestic violence protective order from the court, you can request certain help. You will need to show the court immediate and present danger of abuse. Obtaining a domestic violence protective order is a two-step process, which begins with a **temporary domestic violence protective order**, which is good for 30 days or until the time of your hearing. If you file a Temporary Order, you may ask the court to:

1. Order the defendant to stop abusing, threatening, harassing, or intimidating you or your household members, other relatives or friends;
2. Restrain the defendant from entering or attempting to contact you at the place you live, work, or attend school;
3. Restrain the defendant from taking or damaging your property;
4. Order the defendant to turn over any and all weapons he or she may have to a police officer (You should list the number, locations and kinds of weapons the defendant has); and
5. Award you temporary decision-making and/or residential responsibility of the minor children that you and the defendant have together. In most cases, the defendant will still have visitation rights with the children. The court may refer you to a supervised **visitation center**, especially in an unsafe situation. See **Resource Directory** on page 134 for a list of statewide visitation centers.

On the petition for a temporary domestic violence protective order, you also can request additional orders to be granted at the time of final hearing. These include:

1. Directing the defendant to pay child support if applicable;
2. Directing the defendant to follow a court approved visitation plan;
3. Giving you use of the home, furniture or car. (If the property is in the defendant's name only and you do not have children together, and you are not married, you most likely will not receive this);
4. Ordering the defendant to pay for costs caused by the most recent incident of abuse, such as medical fees, loss of wages, moving expenses, emergency shelter, damaged property, and attorney fees;
5. Ordering the defendant to attend personal counseling, a parenting class or a batterer's intervention program;
6. Other relief, including ordering the defendant to turn over any documents, such as those related to your immigration status, passports of the children, and health insurance information. You also may request under "Other" ordering the defendant to make automobile, insurance, health care, utilities, rent, or mortgage payments.

It is important to note that the judge will consider requests for the final hearing *if and only if* you check off the box on the original petition. You will not have the opportunity to make requests for additional orders at the final hearing, so be sure to check off each box on the petition that you think may

be needed for your protection. For example, if your partner has threatened to take the children away or out of the country if you report abuse, be sure to consider requesting decision-making and/or residential responsibility (custody) and child support on the petition.

WHERE DO I GO FOR A PROTECTIVE ORDER?

You apply for a domestic violence protective order in the Family Court serving the city or town where you live, the city or town where your abuser lives, or the city or town where you went for safety. If you do not have a Family Court in any of those towns or cities you may go to the Superior Court. There is no cost for filing the domestic violence protective order or for serving the papers on your abuser. You do not need an attorney, but if you have access to one you should consider contacting them. The **RESOURCE DIRECTORY** at the end of this Handbook has a listing of New Hampshire courts.

Your local crisis center may be able to provide you with an advocate during this process. While the advocate cannot serve as a legal representative or attorney, the advocate will be able to offer you support and answer any questions you have about the procedure. Crisis centers will provide services regardless of your immigration status.

FILING THE PETITION

Before you file a petition please be aware that your abuser will be given a copy of what you write in your petition when he or she is served with the paperwork. However, your contact information will not be given to the abuser.

- ▶ **At the courthouse, go to the clerk's window and request a Domestic Violence Petition.** The Domestic Violence Petition is an application that will be reviewed by a judge. After you file your paper work with the clerk, the judge or marital master will decide whether there is enough information to show that you are in immediate and present danger of abuse as defined by New Hampshire law.
- ▶ **The petition requests information about your relationship with your partner** (married, living together, etc.), any children you may have together or on your own, and where you live. Check the boxes or fill in the lines that apply to you.
- ▶ **On the application, describe in detail the most recent incident of physical abuse,** or threat of physical abuse, and also any history of abuse that may have occurred in this relationship. In describing the abuse, make sure to mention injuries, dates of abuse, hospital visits, threats to harm or kill you, the use of weapons or threats to use weapons, or whatever you feel best describes your fear and the need for protection. *If there have been other acts of violence, be sure to provide dates, times and as much detail as possible of the other abuse. If you run out of space on the lines provided, ask the clerk for additional paper.*

- ▶ **If the defendant has access to weapons**, consider providing the court with information about the location and description of the weapons. Let the clerk know where the defendant is. If the defendant is on the way to the courthouse, court security will need to be notified. If the defendant is living in another location, that address should be provided to the clerk if available.
- ▶ **The court will ask you to fill out a defendant information sheet** that will be given to law enforcement so they can serve the order on the defendant. Provide the police with the defendant's place of employment, date of birth, and address where he or she can be located.
- ▶ **At the bottom of the petition is a series of boxes.** The statements next to these boxes are requests to court for specific orders. The first set of boxes applies to requests to be included in the temporary domestic violence protective order. The second set of boxes applies to requests for additional orders to be granted at the final hearing. See the section above, "What Can Domestic Violence Protective Orders Do?" for more information about the specific orders you can request on the petition.

You will need to sign the Domestic Violence Petition in front of the court clerk. A judge will then review the petition. The process is called **ex parte**, which means you are seeking immediate, emergency relief without the defendant being present. After receiving your petition, the judge may or may not want to see you to ask further questions. If the petition is granted, you will receive a temporary order.

The clerk will assign you a court date for the final order and will provide you with a certified copy of the temporary protective order. *These papers should be kept on your person at all times.* If you feel comfortable you may consider making copies of the orders for your employer, children's school or childcare provider. Before leaving the court, be sure the clerk has your current contact information. The court will keep this information confidential.

Immediately upon issuing the temporary domestic violence protective order, the clerk will fax forms to the police department responsible for serving the order on the defendant: a copy of the temporary order for the defendant, a completed Defendant's Information Sheet (on which you describe the defendant so the police know who to look for), and a Return of Service Form (which the police return to the court to inform them that the defendant has indeed received a copy of the temporary order). The clerk also must notify the State Registry and Gun Line. **Under no circumstances should you bring the paperwork to the defendant.**

According to the law, the domestic violence protective order goes into effect as soon as it is signed. Be aware that most police departments will not act upon a complaint of violation until the defendant has been served; however, the police

still should be notified of any violations. For this reason, the court is very careful to get the paperwork to the police right away. You can call the police to find out when and if the order has been served to the defendant. You may also consider contacting the police to tell them about your situation so they will have as much information as possible to help keep you and your children safe.

NOTE: It is important to keep in mind that a domestic violence protective order is a piece of paper. There is no guarantee that your abusive partner will comply with the order, although many abusers do so in order to avoid further court action. Even if you have a domestic violence protective order, you still must take the steps necessary to keep you and your children safe.

Upon being served the domestic violence protective order, the defendant has the right to request an immediate hearing instead of the hearing that was scheduled within 30 days. The hearing will be held three to five business days after a written request from the defendant is received by the clerk. You may check with the court clerk to verify whether or not the defendant has requested an immediate hearing. Remember to be sure the court always has your most current contact information, and to update them if that information changes. The court will keep this information confidential. If at any point before your final hearing you would like to add additional information to your petition, you may go back to the court and ask for a motion to amend your petition. It is important to do this because the judge will only let you speak about what you wrote in your petition at the time of the final hearing. Remember, a copy of your motion will be given to the defendant, so it is important that you do not write down any confidential information.

PREPARING FOR THE FINAL HEARING

It is critical that you prepare for the final hearing. At the final hearing both you and the defendant will be asked to state your positions to the judge. You must provide the court with evidence that you are in immediate and present danger of abuse and have been a victim of domestic violence as defined by New Hampshire law. You should be as specific and as detailed as possible regarding incidents of abuse.

In preparing for your final hearing collect all the evidence you can to support your case. Get copies of medical records, medical bills, police documents, photographs of damages or injuries, receipts, partner's pay-stubs, etc. Also, gather all forms of contact the defendant has had with you (such as printed e-mail messages, letters, cards, answering machine messages) that refer to the violence or that threaten you. Bring copies for the court and keep a set for yourself. You may consider asking witnesses to attend the hearing.

You cannot be forced to have contact with the defendant before, during, or after the hearing. If the defendant or the defendant's attorney attempts to communicate with you before the hearing you should call the police. If you are

in the court house and the defendant or his/her attorney tries to talk to you, tell the court security officer. You cannot be forced to settle the case or to sign anything without the court's involvement, or to talk to the defendant or his/her attorney or private investigator.

LEGAL SERVICES

If the defendant has an attorney, or if you have issues around the custody of your children or possessions, or if you have any other pending legal issues, **YOU SHOULD SEEK THE HELP OF AN ATTORNEY**. See the **RESOURCE DIRECTORY** at the end of this Handbook for information on legal services in New Hampshire. If you cannot afford a lawyer, you may be eligible for help through the agencies below.

- ▶ **LEGAL ADVICE & REFERRAL CENTER (LARC) (1-800-639-5290 or 1-603-224-6934)** provides legal services to low-income residents in New Hampshire, with a concentration on family law.
- ▶ **DOVE PROJECT (1-800-639-3574)** provides free legal representation for qualifying survivors of domestic violence at final restraining hearings. The DOVE Project **MUST** be accessed through your local crisis center. There are financial guidelines that determine whether or not you are eligible, and you will be asked to answer questions about your finances.
- ▶ **Domestic Violence Advocacy Project (DVAP) (1-800-562-3174)**, operated through New Hampshire Legal Assistance, provides legal services for low income survivors of domestic violence, focusing on cases involving custody of children.
- ▶ **International Institute of New Hampshire at 1-603-647-1500** offers immigration attorneys if you are uncomfortable about attending the final hearing because you are undocumented or unsure about your immigration status.

What follows is what you can expect at the hearing itself and what you will need to do to be adequately prepared:

- ▶ **Submit your evidence.** When your case is called, follow the instructions of the bailiff. The judge or other court personnel will swear you in. Hand any documents, pictures, etc., to the bailiff to bring to the judge or marital master. The court will give the defendant copies of your evidence.
- ▶ **Describe the incident.** First, explain the most recent incident of abuse, and then describe past abuse. While it may be painful, it is necessary to provide detailed accounts for each incident. It may be helpful to describe the abuse in the order that it happened. You can read from your original

petition or a statement that you wrote before the hearing. A judge may ask that you discuss only the statements you made on the original petition. You must do this while providing as much detail as possible of the abuse.

- ▶ **Tell the court about any costs that you have incurred as a result of the abuse.** Show medical bills, estimates to repair damages, lost time at work, etc.
- ▶ **Submit a Parenting Plan, a financial affidavit and a Uniform Support Order.** If you have children, you will need to consider child support, parental responsibility, and residential responsibility (where your children will live). To get child support, you must complete a financial affidavit and the top portion of a Uniform Support Order. Request these forms from the court clerk prior to the final hearing. Present your completed forms at the time of the final hearing.
- ▶ **Make recommendations for reasonable visitation.** Think about visitation times for the abusive partner and the children:
 - how often, where, supervised or unsupervised? A number of supervised visitation centers are located throughout the state, and are described in CHAPTER 6 of this Handbook and listed in the Resource Directory on page 134.
- ▶ **Outline your basic needs.** Do you want or need the home, furnishings or a vehicle? Make a list of any basic needs with costs, such as food, shelter, transportation, job expenses, and childcare. Based on the evidence presented during the final hearing the judge will make a decision as to whether or not to grant a final order. If the order is granted, it will last for one year from the date it is signed. If it is denied, the temporary order is no longer in effect. Sometimes, a judge will notify parties of decisions by mail; in these cases, the temporary order remains in effect until notification is received.

IF THE FINAL ORDER IS NOT GRANTED

If the final order is not granted, there are other options to keep you and your children safe. A domestic violence protective order is only one of the many tools available to you if you are in a domestic violence situation.

- ▶ Contact your local domestic violence crisis center. The crisis center is available to you 24 hours a day, seven days a week and can help you make plans to maximize your safety. Services are free and available regardless of your immigration status or age.
- ▶ Complete the safety plan included earlier in this chapter. If you are unsure of the services available to you, contact your local domestic violence crisis center to assist you with your options.
- ▶ If the abuse continues and you are in fear for your safety, call 9-1-1. Record the details of all abusive incidents. Include what happened, where you were, the date and time of the incident, and how you were feeling. Talk with a domestic violence advocate and discuss the information.

- ▶ If your final order is denied, and the abuse continues, you always have the option of applying for a new temporary domestic violence protective order. There is no limit as to the number of times you can apply for a domestic violence protective order.

IF THE FINAL ORDER IS GRANTED

If a final order is granted, you will receive your copy at the final hearing or you will be notified by mail.

When you receive your final order consider making several copies. You should keep a copy with you at all times. If you have been awarded decision-making and/or parental responsibility for your children, you may consider providing a copy of the final order to your children's school principal, teachers, or day care provider.

If your partner has ever threatened to take your children away or out of the country, and you have been granted decision-making and/or residential responsibility of the children as part of the domestic violence protective order, the defendant is prohibited from removing the children without your knowledge. If your children are U.S. citizens, you should send a copy of the final protective order to the **U.S. Department of State (See Resource Directory)** to prevent issuance of passports and visas for the children.

If you have been given use of the house, the defendant will need to get personal belongings from the home. The defendant may not come to your home to get these items unless accompanied by a police officer and with reasonable notice to you. You are obligated to not damage, sell or dispose of these items in any way.

NOTE: If the final order is granted, the court must take away any firearms, ammunition, or deadly weapons in the defendant's possession.

CHANGING THE FINAL ORDER

If your situation changes, or you feel a change to your protective order is necessary, you have the right to request an amendment of your protective order at any time, even after the final order has been granted. Only a court can amend the order. You must make your request in writing to the court that issued the order. A copy of your request will be sent to the defendant. He or she will have ten days to object to the changes. If the court receives an objection from the defendant, a hearing will be scheduled to discuss the request and the objection. If the defendant does not object to your requested changes, the court will schedule a hearing to discuss the changes or will grant them without a hearing. The order is then issued against the defendant.

NOTE: Protective Orders are designed to protect the victim from the defendant. The prohibited actions on the order only apply to the defendant and NOT to the victim. It is not possible for you to be in viola-

tion of the order and under no circumstances should a police officer threaten to or arrest you (the victim) for violating a protective order. Temporary reconciliation does not revoke the order. If you choose to initiate contact with the defendant you must contact the court to amend the protective order.

EXTENDING THE FINAL ORDER

It is very important that you are aware of the order's expiration date. Your final order is effective for one year, but it may be extended by a court order if there is good cause. To do this, you should ask the court for an extension at least one month before the original order expires. If you ask the court to extend your final domestic violence protective order after it has expired, you will have to file a motion to re-open the order. While you will not need new facts to re-open the order, the motion may or may not be granted.

In either case, your request must be done in writing. A copy of your written request will be sent to the defendant. (Remember to keep a copy for yourself.) He or she will have ten days to object to your request. If the court does not receive an objection from the defendant, your protective order will be extended for another year. If the defendant does object to an extension of your domestic violence protective order, the court will schedule a hearing to be held within 30 days. Your current domestic violence protective order will remain in effect until the hearing date.

If you feel the need to extend your order a second time you can request that the judge make the order valid for up to five years.

DROPPING A FINAL ORDER

You can drop your domestic violence protective order at any point during the year that it is in effect. If you choose to drop the order before the final hearing, you still must go to the scheduled hearing. When your case is called, you may explain to the judge why you are requesting that the order be dropped. If you choose to drop your domestic violence protective order after the final hearing, you need to go to the courthouse where it was issued and explain to the clerk that you would like to drop your order. The clerk may bring you in to see a judge, and you may be asked to tell the judge why you want the order dropped. This might happen in the courtroom or in judge's chambers. If a judge is not available, the clerk may schedule a hearing at a later date.

If you have a Protective Order from Another State or Leave the State of New Hampshire

Every state is required to recognize and enforce a valid protective order that was issued by any other state or U.S. territory. [If you have a protective order from another state, you can protect yourself by filing a **certified** copy of this order in any FAMILY COURT or SUPERIOR COURT in New Hampshire (see **Resource Directory** for a listing of New Hampshire courts). If you do not have a certified copy, the court can have a copy of the order faxed from the court

that issued the order (the defendant will not be notified of your location). The clerk then will forward the order to the Administrative Office of the Courts to enter the order into the state database.

Even if you have not filed a copy of your order with a New Hampshire court, the order still is enforceable by the police. If you call the police to report that you have been abused, followed, threatened or intimidated, be sure to tell them you have a protective order from another state. Your valid New Hampshire order is enforceable in other states as well. Be sure to inform the police department and courts in other states about the protective order issued in New Hampshire.

VIOLATING A PROTECTIVE ORDER

It is a crime for the defendant to violate a temporary or final domestic violence protective order. Such violations should be reported to your local law enforcement agency immediately. Examples of violations could include, but are not limited to:

- ▶ phone calls, e-mails, phone text messages;
- ▶ Following you;
- ▶ Yelling obscenities at you;
- ▶ Coming to your place of residence, employment, or school; or
- ▶ Further physical abuse.
- ▶ Sending you gifts or cards.
- ▶ Leaving messages on your windshield.

In Addition, It Is Against The Law For Someone To Own Or Carry A Firearm While There Is A Protective Order Issued Against Him Or Her.

Police are mandated to make an arrest in situations of protective order violations. This begins a criminal action against the defendant.

CRIMINAL CASES

A criminal case is a court action made by the state against a person who has been charged with committing a crime, such as violations of a protective order. When a protective order is violated, criminal charges will be brought in court against the violator by the police. This is done at no cost to the victim. If the court finds the defendant guilty, a punishment (or sentence) will be issued. The sentence depends upon the defendant's criminal record as well as the severity of the injuries to the victim. All states must enforce a valid protective order from any other state or US Territory.

Although sentences do not always include jail time, a criminal action is part of the defendant's criminal record. See **Chapter 7** of this Handbook for more information on criminal cases.

Immigrants and refugees are entitled to many of the same legal rights as U.S. citizens in criminal case proceedings. Further, if you are not married to a U.S. citizen or legal permanent resident, but you have been a victim of a crime

and you assist in the prosecution of your abuser, you may be able to apply for a U Visa. However, it is best not to submit an immigration application on your own without first consulting an immigration attorney. For immigration advice, contact the **International Institute of New Hampshire at 1-603-647-1500 (See Resource Directory)**.

BAIL CONDITIONS & PROTECTIVE ORDERS

When the defendant is arrested for committing a crime, he or she will usually be released on bail. A **bail order** will be issued, which requires the defendant, who has been placed under arrest for a crime, to pay money to ensure that he or she will appear in court. If the defendant cannot pay the bail, he or she will remain in jail. It is a crime for the defendant to violate a temporary or final domestic violence protective order. Such violations should be reported to your local law enforcement agency immediately. If the crime is one committed against you, the defendant often will be ordered to stay away from you. This is called “no contact” and is part of his or her **bail conditions**. If the defendant makes contact with you in any way, he or she will be sent back to jail until the trial.

Bail conditions are different from a **domestic violence protective order**. While both may prohibit the defendant from having any form of contact with you, bail conditions do not give you temporary decision-making or residential parenting rights, use of the home, or any of the other assistance a domestic violence protective order can provide. In addition, bail conditions only remain in effect during the criminal case. **Therefore, it is advisable to get a restraining order in addition to having the protection of bail conditions.**

GAINING IMMIGRATION STATUS FOR IMMIGRANT WOMEN WHO ARE ABUSED BY A SPOUSE OR PARENT

The Violence Against Women Act (VAWA) of 1994 allows self-petitioning for abused immigrant spouses and children of lawful U.S. residents or U.S. citizens to gain immigration status without their abuser’s help or knowledge.

You must meet certain requirements to qualify.

- ▶ You must be the abused spouse or the abused child (unmarried and under 21) of a lawful permanent resident (“green card” holder) or U.S. citizen. If the abuser had a green card but has been deported since the abuse, you still may qualify.
- ▶ You must be married to your abuser OR have a parent-child relationship with your abuser. Stepchildren also may qualify.
- ▶ You must file immigration papers before the two-year anniversary of your divorce if you have been divorced.
- ▶ You must not have been married just to get a green card, but instead you must have married in “good faith” (that is, because you really wanted to be married).

You will not need any specific evidence to prove to the INS that you have been abused, although proof of a **domestic violence protective order** or criminal action against your abuser may help to establish your case. In some situations, your own statements may be enough.

If you think you qualify for VAWA or have any questions about VAWA, contact an immigration attorney. If you do not qualify to self-petition under VAWA, you still may be eligible to gain immigration status under other laws. For immigration advice, call the **International Institute of New Hampshire at 603-647-1500 (See Resource Directory)**.

NOTE: Persons who have legal immigration status cannot have that status taken away by reporting the abuse of their spouse or partner. Also, your spouse or partner does not have the power to deport you. Only the INS can deport someone, and you have the right to see an immigration judge before deportation.

❖ SEXUAL ASSAULT

Anyone can be a victim of sexual assault – adult women and men, teenagers, children, people with mental and physical disabilities, and the elderly, regardless of race, national origin, sexual orientation or economic status. Sexual offenses can include several kinds of crimes: sexual assault, incest, child molestation, marital sexual assault, so-called “date rape,” indecent exposure and voyeurism. Rape is no longer a legal term in New Hampshire. It is now classified as Sexual Assault. Under New Hampshire criminal law, there are three levels of sexual assault:

AGGRAVATED FELONIOUS SEXUAL ASSAULT (AFSA)

This is the most serious of the sexual assault crimes. It carries a maximum penalty of 10-20 years in state prison. There are three ways in which a person can commit AFSA:

1. Sexual penetration accomplished under an aggravating circumstance:

This variety of AFSA requires the State to prove that the perpetrator engaged in sexual penetration of the victim under one of several aggravating circumstances.

Sexual penetration has a broad definition, including intercourse as well as fellatio (oral stimulation of the male genitals), cunnilingus (oral stimulation of the female genitals), anal penetration, digital penetration, any intrusion, however slight, into the genital or anal opening of the victim or actor and any act which forces the victim to engage in penetration of another.

Aggravating circumstances that make penetration a crime include the following:

- **Force** - Penetration accomplished through the actual application of physical force, physical violence or superior physical strength.

- **Helpless victim** - Penetration accomplished when the victim is physically helpless to resist.
 - **Threat of force** - Penetration accomplished under threat of force, whether actual force is used or not.
 - **Threat of retaliation** - Penetration accomplished through threat to retaliate.
 - **Kidnapping** - Penetration accomplished under circumstances involving kidnapping or false imprisonment.
 - **Drugged victim** - When the perpetrator, without knowledge of the victim, administers a substance to the victim that mentally incapacitates him or her.
 - **Medical treatment or therapy** - When the perpetrator is providing therapy or medical treatment and accomplishes penetration either through the use of the relationship to coerce the victim to submit or in a manner not professionally recognized.
 - **Mentally defective victim** - Where the victim is mentally defective to such an extent that he or she cannot appreciate the physical and social consequences of sexual penetration and the perpetrator knows the victim is mentally defective.
 - **Concealment or surprise** - Penetration accomplished through concealment or surprise.
 - **Age 13-15 and related or in the same household** - Where the victim is 13 years of age or older and under 16 and related to the perpetrator or a member of the same household.
 - **Age 13-17 and in a position of authority** - Where the victim is 13 years of age or older but under 18 years of age and the perpetrator uses a position of authority to coerce the victim to submit to penetration.
 - **Victim under 13** - Penetration accomplished of any person under the age of 13.
 - **Consent not freely given** - Penetration accomplished after the victim has indicated by speech or conduct that consent is not freely given.
 - **Correction Officer or Probation/Parole Officer** - Penetration accomplished where the victim is incarcerated and the perpetrator is a corrections officer, or where the victim is a probationer/parolee and the perpetrator is supervising the victim.
- 2. Fondling the genitals of a child under age 13** – A second form of AFSA involves the touching of the genitals, whether over or under the clothing, of a person under thirteen years of age. In proving this variety of AFSA, it must be shown that the perpetrator acted with the purpose of sexual arousal or gratification.

3. Pattern of sexual assault - Many children are the victims of multiple acts of sexual abuse by the same perpetrator, such as when the perpetrator lives in the victim's home and has frequent access to the victim. In such cases, a "pattern" of sexual assault may be charged even when the victim may not be able to recall details of each individual act of sexual abuse. This charge requires proof that the victim is under 16 and that more than one act of felony-level sexual abuse has occurred within a specified time period.

FELONIOUS SEXUAL ASSAULT (FSA)

Felonious sexual assault has four varieties. This crime carries a maximum penalty of 3½ to 7 years in state prison:

- 1. Sexual penetration of a person age 13, 14, or 15** – This is what is commonly referred to as "statutory rape."
- 2. Sexual contact with a person under age 13** – This form of FSA requires proof that the perpetrator touched the victim's sexual or intimate parts, or the victim touched the perpetrator's sexual or intimate parts, including breasts and buttocks, for the purpose of sexual arousal or gratification.
- 3. Sexual contact by Corrections Officer or Probation/Parole Officer** – This form of FSA requires proof of sexual contact under circumstances in which the victim is incarcerated or on probation and the perpetrator uses the corrections officer or probation officer role to coerce the victim to submit to the contact.
- 4. Sexual contact under an aggravating circumstance causing serious personal injury** – This variety of FSA requires proof that sexual contact was accomplished through any of the aggravating circumstances listed above and resulted in serious physical or psychological harm to the victim.

SEXUAL ASSAULT

This is a misdemeanor carrying a maximum penalty of 12 months in jail. It has three varieties:

1. Sexual contact with a person 13 years of age or older, under one of the above aggravating circumstances.
2. Penetration as defined above of a person 13, 14, or 15, where there is an age difference between the perpetrator and the victim of 3 years or less.
3. Sexual contact or penetration by a Probation Officer or Corrections Officer with an inmate or probationer/parolee. This crime differs from the felony level varieties in that it need not be shown here that the perpetrator used the position of authority to coerce the victim to submit to the sexual activity.
 - ▶ Immigrants have the same legal protections as U.S. citizens in the crime of sexual assault.

SEXUAL ASSAULT IS A CRIME

Sexual assault is forced, manipulated, or coerced sexual activity in which the assailant uses sex to inflict humiliation upon or to exert power and control over the victim.

In New Hampshire, the legal age of sexual consent is 16. It is always a crime for a person to have sexual relations with:

- ▶ Any person under the age of 16;
- ▶ Another person who does not consent; or
- ▶ Any family member under 18, other than a spouse.

Additionally, sexual assault may include:

- ▶ Coercion for sexual activity with threats of physical violence;
- ▶ Threats to retaliate;
- ▶ Using a position of authority or power to gain sexual activity;
- ▶ Providing intoxicating substances, alcohol and drugs to gain sexual activity (see below, **“Rape Drugs”**).

SEXUAL ASSAULT IS A CRIMINAL ACT OF VIOLENCE

A sexual offender can be anyone. Sexual offenders may be strangers to their victims but, more often, the victim knows the offender. The sexual offender may be an acquaintance, partner, spouse, or other family member. In over half of all reported sexual assaults, the victim and assailant know each other. Child victims know their assailant in 80 % of all cases.

Being sexually assaulted by someone you know does not make the crime any less serious or traumatic. In fact there may be additional trauma associated with acquaintance rape due to the violation of trust, shared social space, and common friends.

NOTE: Sexual and physical abuse of children under 18 is considered child abuse. New Hampshire law requires that anyone knowing or suspecting of child abuse must report it to the Division of Children, Youth and Families (In New Hampshire at 1-800-894-5533; outside New Hampshire at 1-603-271-6556).

NOTE: Anyone suspecting sexual and/or physical abuse, neglect or exploitation of an Elder or Incapacitated Adult over the age of 18 is required by law to report it the Bureau of Elderly and Adult Services at 1-800-949-0470 or 1-603-271-7014. If you need to report an incident before 8am or after 4:30pm, or anytime on the weekend, call your local police.

NOTE: Regardless of whether a couple is legally married (same sex marriage or joined in civil union), it is a crime in New Hampshire for a spouse to force you to engage in any kind of sexual contact or activity. It is also against the law for your spouse to injure you or threaten you so that you fear for your physical safety.

GETTING HELP FOR SEXUAL ASSAULT

What is a Sexual Assault Crisis Center?

Confidential, free support is available to you 24 hours a day, 365 days a year through local sexual assault crisis centers. **Crisis center advocates** will accompany victims to the hospital and to court, provide emotional support, and explain legal and other options to sexual assault victims and their parents, partners, or friends. Services are free, confidential, and available to everyone regardless of gender, age, health status (including HIV-positive), physical, mental or emotional ability, sexual orientation, gender identity/expression, socio-economic status, race, national origin, immigration status or religious or political affiliation. For the crisis center nearest to you, call:

**STATEWIDE SEXUAL ASSAULT HOTLINE 1- 800-277-5570
(1-800-735-2964 TDD/VOICE)**

The call is free and interpretation is available. A list of local crisis centers also can be found in the **Resource Directory** located at the back of this Handbook.

Information you share with a crisis center advocate must remain confidential unless you provide written permission for the information to be released. You can disclose information about your situation and receive help and support from an advocate without fearing that this information will be shared with anyone. Crisis center advocates are required to report child, elder and incapacitated adult abuse to authorities.

NOTE: Some advocates work for the police department or prosecutor's office. Information you share with them is NOT confidential.

Steps You Can Take if You Are Sexually Assaulted

If you are sexually assaulted:

- ▶ Go to a safe place. Call the police at 9-1-1. If necessary, request a language interpreter or other special accommodation.
- ▶ Call a sexual assault crisis center. It is helpful to have a crisis center advocate nearby when the police arrive to inform you of your legal options. Advocates will also accompany you to the hospital or, if the case proceeds, offer support during the court process.
- ▶ Do not change your clothes, bathe, brush your teeth, douche or wash away any evidence.
- ▶ Go to the nearest hospital emergency room to be examined. The emergency room in any public hospital must give you emergency medical care, even if you are an undocumented immigrant or do not have insurance. It is important to do this as a measure to take care of yourself. Request that the hospital provide an interpreter or other accommodation, if necessary. Unless you are a minor, medical personnel will not report your case automatically to the police without your permission.

- ▶ Most hospitals participate in the Sexual Assault Nurse Examiner Program (SANE). A SANE is a specially trained medical provider who gives complete care to the sexual assault victim. You should request that a SANE be called if possible.
- ▶ If the assault is reported to police, it must be made to the police department in the city or town in which the assault occurred. Request a language interpreter or other special accommodations, if necessary, so that you fully understand the police and the police fully understand you. If you are unsure about how to report the assault to the police, or if you would like a crisis center advocate to go with you, contact your local crisis center 24 hours a day, 365 days a year.

THE SEXUAL ASSAULT MEDICAL EXAM

At the emergency room, you will be given a **Sexual Assault Medical/Forensic Exam** and a crisis center advocate will be called. This standardized exam is designed to assess your physical condition as well as to gather physical evidence of the assault. It is important that this evidence be collected as soon as possible. The sexual assault medical exam can be done up to five days after the assault. You have the right to refuse any part of the exam without it affecting your hospital care. If possible, bring a change of clothing with you, as clothing worn at the time of the assault may be considered evidence. The hospital will document any injuries you may have received. The evidence collected will be used in investigating the crime should you choose to report it to the police. If you choose to report the crime, the hospital will call the local police. The hospital also will contact **DIVISION FOR CHILDREN, YOUTH, AND FAMILIES** in any case involving the abuse of a child under the age of 18.

Who Pays for the Exam?

Victims of sexual assault are not required to pay for the medical exam and should not be sent a bill for the exam. There are three possible methods of payment.

1. If you ask for the process to be kept anonymous, then the State of New Hampshire is responsible for paying for the medical/forensic exam. The anonymous reporting procedure allows the sexual assault kit to be turned over to the State Police Forensic Laboratory, where it will be held for 60 days while you decide whether or not to report the crime. It is important to note that the evidence will not be analyzed until you report the crime.
2. If you choose not to be anonymous and you have insurance, then the state will bill your insurance company.
3. If you choose not to be anonymous and have no insurance, then the state will pay for the exam.

The state will also pay up to \$200 for one follow-up exam.

Sexually Transmitted Diseases and Pregnancy Testing

The sexual assault exam may include tests for sexually transmitted diseases. While the results of these tests will not be available for three to five days, antibiotic medications are routinely offered as a preventative measure against acquiring gonorrhea and chlamydia. The medication should be administered before the patient leaves the hospital, or dispensed at the time of discharge with instructions on how to take them. The local crisis center can arrange for immediate funding for some post-sexual assault medications.

A baseline pregnancy test is done at the hospital to determine your eligibility for emergency pregnancy prevention (the “morning after pill”), which may prevent you from getting pregnant if it is taken within five days of the assault. Be sure to receive the medication while you are in the hospital, otherwise the expense may not be covered as part of the exam. Your local crisis center can provide you with referrals for a physician or clinic in your area for additional follow-up testing.

HIV Testing

Although an HIV test can be done at the time of the sexual assault medical exam, it is NOT routinely part of the exam. If you choose to have an HIV test done at the hospital, the results will become part of your hospital record. The HIV test done at the hospital is a baseline test and will determine if you were infected prior to the assault. It will not indicate if the offender infected you. Follow-up testing is important. HIV post-exposure prophylaxis medication may be offered to you depending on the circumstances of the assault and how quickly you receive care. These medications decrease the chance of you acquiring HIV if you were exposed.

The defendant is required to have an HIV/AIDS test ONLY if he or she is found guilty of sexual assault. He or she cannot be forced to be tested prior to the trial or if found not guilty. Once convicted and sent to state prison, the defendant is tested automatically and the results of the test are sent to the **Victim/Witness Program**, who will contact you with the results.

“RAPE DRUGS”

Many people mistakenly think that they cannot report a sexual assault or press charges for assault if they have been drinking or were intoxicated. The use of alcohol or drugs does NOT give someone the right to assault you. Being intoxicated can make you incapacitated or helpless to resist. If you have been sexually assaulted while intoxicated you are protected under New Hampshire law. The same is true for victims who were using drugs prior to the assault.

While alcohol remains the most prevalent rape drug, some assailants use other rape drugs to make victims helpless. Such drugs include Rohypnol (“Roofies”), Gamma-hydroxybutyrate (“GHB”), Ketamine (“Special K”), and MDMA (“Ecstasy”). Often times these drugs are slipped into a victim’s drinks, and are tasteless, odorless and colorless. Signs that you may have been drugged include:

- ▶ Feeling a lot more intoxicated than you usually do when drinking the same amount of alcohol;
- ▶ Waking up very hung over, feeling “fuzzy,” experiencing memory lapse and being unable to account for a period of time;
- ▶ Being able to remember taking a drink, but not being able to recall what happened for a period of time after you had the drink; or
- ▶ Feeling as though someone had sex with you, but not being able to remember either part of or the entire incident.

It is illegal to distribute or administer any drug to another person without that person’s knowledge and with the intent to commit a crime.

If you believe the person who assaulted you used a rape drug, inform police and medical personnel right away. A special urine test can be done to check for rape drugs in your system. The test must be done immediately and will be paid for by the state.

REPORTING THE CRIME OF ASSAULT

If you are 18 years of age or older when a felony sexual assault occurs, the criminal **statute of limitations**, or the time limit for reporting, is six years. That means you have up to six years from the date of the assault to report it. If you are under the age of 18 when the assault occurs, you have until age 40 to report the crime. There have been a number of changes made in the law over the years, so always check with the county attorney to see if your case falls within these guidelines. Keep in mind that prosecutions of any kind become more difficult to prove the more time passes between the crime and the reporting of it. If you are uncertain of what action to take, talk to a local **crisis center advocate**.

LEGAL HELP FOR SEXUAL ASSAULT

If your case goes to the **County Attorney’s** office, a **victim/witness advocate** will be assigned to provide you with support. Victim/witness advocates are part of the prosecutor’s office and will keep you informed about what is happening with your case. Please be aware that the confidentiality statute only applies to **crisis center advocates** and NOT to victim/witness advocates. If you have confidential information or concerns, you should seek the help of your local crisis center advocate. More information about the **VICTIM/WITNESS ASSISTANCE PROGRAM** and your rights in the criminal justice system can be found in **CHAPTER 7** of this handbook.

Other Legal Options

Below are other legal options available to you under New Hampshire law.

- ▶ **Civil Suits.** Sexual assault victims may choose to sue the sexual offender for damages and emotional harm in a civil case even if there is not a criminal case. Bringing a civil suit will require the help of an attorney. Your local

sexual assault crisis center can provide you with more information and a list of attorneys who may be able to help you with your case. You may wish to pursue a civil suit even if you have not been involved in a criminal case and have suffered long-term costs as a result of the assault.

- ▶ **Victim Compensation.** Victims of sexual assault and other personal injury crimes also may be eligible to apply to the New Hampshire Victim's Compensation Board for compensation of medical/dental expenses, mental health therapy expense, lost wages or other out-of-pocket expenses not covered by insurance or other resources available to the victim. The compensation must be related directly to the victim's condition as a result of the crime. Property loss and pain and suffering are not covered. In order to qualify, the victim must report the crime to law enforcement. For more information call **1-800-300-4500** (toll free in NH only) or **1-603-271-1284**. More information about the **VICTIM'S ASSISTANCE COMMISSION** can be found in **CHAPTER 7**.

TAKING CARE OF YOURSELF

Everyone reacts in different ways following a sexual assault. Common reactions include fear that the attacker may come back; feelings that the victim did something to cause the assault; fear of being alone or in crowds; fear that no one will believe the assault happened or that friends and family will find out about the assault. Anger, frustration, isolation, powerlessness, and helplessness are common feelings that victims experience. Reactions to the assault may vary widely. Nothing is "normal" in this situation.

Healing from sexual assault begins when the victim is able to deal with what has happened. It often is helpful to talk about the assault with a trusted individual — a friend, family member, professional counselor, or an advocate from a sexual assault crisis center. But be assured that, as a victim, you have the right to follow your own path to healing from the event.

- ▶ **Know that you have done nothing to provoke or cause the attack.** What happened to you is not your fault and is not because of anything that you have or have not done. The assailant alone is responsible for the abusive behavior.
- ▶ **Join a support group.** Local crisis centers are great resources and can assist you in locating a support group in your area. These groups are places where you can interact with other survivors of sexual assault.
- ▶ **Develop a support system.** Keep in touch with friends who are supportive and understanding. Tell someone about the assault. You can call your local crisis centers for support 24 hours a day, 365 days a year.
- ▶ **You may experience stress and trauma and might want to seek assistance.** You may begin to experience feelings of rage, terror, suspicion, an inability to trust anyone, depression, changes in sleeping or eating patterns, exhaustion, or frequent crying spells. Your body and mind may

be reacting to the stress caused by the sexual assault. Talking to someone who is trained to counsel victims and survivors may help stop some of the symptoms that are interfering in other aspects of your life. Your local crisis center has a list of people skilled in this work.

❖ STALKING

Anyone can be a victim of stalking – women, men, teenagers, children, people who are mentally or physically disabled, and the elderly, regardless of race, national origin, sexual orientation or economic status. Stalking is behavior involving a course of conduct by a person that places another person in fear for his or her safety. Immigrants and refugees have many of the same legal protections as U.S. citizens in the crime of stalking.

Stalking is not a one-time criminal act but a series of repeated acts of victimization, a pattern of behavior, and/or a course of conduct. It may involve a mix of criminal acts and behavior that, in another context, would be considered non-criminal. A stalker can commit any type of crime, from vandalism, to kidnapping, to homicide. Stalking laws also criminalize what look to be innocent acts that would normally be considered non criminal, such as sending letters, delivering unwanted gifts, or making phone calls to the victim if they form part of a course of conduct or that threatens the victim and causes fear.

Common stalking behaviors include, but are not limited to:

- Violations of any protective order by visits to the victim's home or any other location frequented by the victim
- Telephone calls to the victim (harassing, threatening, obscene or otherwise)
- Mail, cards, letters or gifts to the victim
- Trespassing
- Burglary of the victim's home (often there is no forced entry because the stalker may have a key)
- Following the victim on foot or in a vehicle
- Showing up at the victim's place of employment or other frequented establishments
- Spying or monitoring of the victim's activities
- Making slanderous statements or false reports concerning the victim
- Delivery of objects to the victim intended to cause fear to that victim (these objects, taken out of context, may seem innocent to outsiders)
- Threats made to the victim (either direct, veiled, or conditional)
- Vandalism or theft of the victim's property, home, vehicle, workplace, or vandalism to the property, etc. of any friend or family member who helps the victim

- Vandalism affecting the security of the victim’s home, such as unscrewing outside lights or disabling the alarm system
- Disabling the victim’s vehicle
- Transferring the victim’s phone line to another line in order to monitor messages or disabling or planting listening devices in the victim’s home
- Filing “change of address” forms at the post office under the victim’s name in order to intercept the victim’s mail
- Harassing or threatening the victim by use of computers, Internet, and other technologies. (Examples: Spyware, “Spoofcard”, Global Positioning Systems (GPS))
- Harm to pets or animals belonging to the victim

GETTING HELP FOR STALKING

If you are being followed from place to place, or if you are being threatened or intimidated by someone, it is important that you take the necessary steps to maximize your safety. This may mean temporarily moving or seeking safe shelter and then reporting the stalking to the police. You also may choose to stay in your home and seek help from the police and the courts. Depending on your relationship with the stalker, you may be able to help the police or courts know if the stalker will be violent. This will help to decide what actions need to be taken. The first concern is for your safety.

Confidential, free support is available to you 24 hours a day, 365 days a year through your crisis center. Locate the center nearest you in the directory on the inside back cover of this Handbook. Services and support provided by crisis centers are available to all people regardless of gender, age, health status (including HIV-positive), physical, mental or emotional ability, sexual orientation, gender identity/expression, socio-economic status, race, national origin, immigration status or religious or political affiliation. If you need a language interpreter or other special accommodation, be sure to make this request.

Information you share with a crisis center advocate must remain confidential, unless you provide written permission for the information to be released. You can disclose any information about your situation and receive help and support from an advocate without fearing that this information will be revealed to the government or any other third party. However, crisis center advocates are required to report child and elder or incapacitated adult abuse to authorities.

WHAT STEPS SHOULD YOU TAKE IF YOU ARE BEING STALKED?

The following is a list of steps you can take if you are being stalked:

Secure Personal Safety

The Safety Checklist, on page 73, will help you to identify precautions you can take to maximize your safety.

Notify the Police

If you are being followed from place to place, threatened or intimidated by someone, call the police at 9-1-1. Request a language interpreter or other special accommodation, if necessary, so that you fully understand police and the police fully understand you. Be sure to tell the police about previous calls you have made and the results of the calls (for example, a **protective order** was served or the stalker was warned to stay away from you). File a complaint with the police, providing any evidence you can about your situation. The police will file a report. Be sure to request and keep a copy of the report along with the name of the officer taking the complaint.

When you call the police, they can make an arrest without a warrant if the officer has reason to believe that a new stalking episode has occurred within 12 hours of your filing a report. If you have a **stalking protective order** (see below), the police *must* arrest the person. The police can make an arrest even if they do not see the events you describe.

In the event of an arrest, the stalker will be considered for bail in a court proceeding in which the stalker is the **defendant**. The bail hearing is an opportunity for law enforcement and for you to provide the court with information on whether the defendant poses such a danger that he or she should be held in jail. In assessing this danger, the court will consider factors such as threats of suicide, acute depression, history of violating protective orders, possessing or attempting to possess a deadly weapon in violation of an order, death threats or threats of possessiveness toward another person, and cruelty or violence to pets. In the event the court determines the defendant does not pose a danger, the defendant will be released either on a written promise to appear in court or on a **bail order** that directs the defendant to pay money to ensure that he or she will appear in court. The defendant may be told to have no contact with you as part of the **bail conditions**.

Make sure to get copies of any papers from the police and courts, including arrest records, the charges that have been filed against the defendant, and the bail conditions. Write down the names of any law enforcement officers and judges involved in your case.

Obtain a Stalking Protective Order

Any person, regardless of age or immigration status, may request a **stalking protective order** from the district or superior court. In addition to prohibiting the defendant from continuing the stalking behavior, the court also may consider ordering monetary compensation for losses suffered as a direct result of the stalking. This compensation may include the cost of moving and shelter expenses; lost wages; reasonable attorney's fees; medical and dental expenses; the cost of changing phone numbers; the cost of obtaining caller ID, an unlisted number or an answering machine; the cost of new locks and other security; and mental health or counseling expenses. The court also may consider prohibiting

the defendant from owning or possessing firearms, ammunition or other deadly weapons. Unlike a **domestic violence protective order** (see above), the court does not have to find that the defendant poses a credible threat before issuing a protective order.

Document Everything

If it is safe to do so, you should write down dates, times, places, and witnesses' names. Write what the stalker was doing, saying, and wearing. Note the kind of car the stalker was driving and the license plate number. If it can be done safely, take pictures of your stalker. If you need to give this documentation to the police be sure to keep a copy for your records.

Tell Family, Friends, Neighbors and Co-Workers about the Stalking

Describe the stalker to them. Ask them to watch for the stalker, to write down everything they see, and to give this account to you. Ask your Human Resources Director, Employee Assistance Program professional, or supervisor about your company's policies and resources to help keep you safe at work. On a college campus, ask your campus security about your school's policies and procedures.

Save all Written Material, Legal Papers and Telephone Messages Recorded on Answering Machines

Collect evidence of the stalking. Save and date all cards, letters, notes, e-mails, text messages, and envelopes from the stalker. Save and date all messages left on answering machines. (You should know, however, that it is a crime to tape record any conversation between you and your stalker unless the stalker knows the conversation is being recorded.) Obtain and keep copies of things like warrants, protective orders, and court orders.

SAFETY CHECKLIST - STALKING

If you are being stalked, you can maximize your safety by taking certain precautions. Your local crisis center is an important resource for safety suggestions as well as support and assistance in understanding protective legal options available to you. See the Resource Directory at the end of this Handbook to find the crisis center nearest you. See page 48 for Internet & Computer Safety guidelines.

- Change your locks, both at home and in your car.
- Avoid walking alone. Be aware of what is around you.
- Obtain a post office box and give your address and phone number to as few people as possible. If you have a rural mail delivery box, do not put your first name on the box.
- Change your daily driving routes, and keep your car doors locked at all times, whether or not the car is in use.

- Park your vehicle in well-lit areas. Get a locking gas cap, and always look in the front and rear areas before entering your vehicle.
- Know the locations of the nearest police and fire stations.
- If you are being followed go to a well-lit public place and seek help
- Keep an emergency bag packed with clothing, money, telephone numbers, toys for children, and important papers, such as social security numbers, birth certificates, passports, and immigration papers.
- If possible, alert neighbors and have a pre-arranged code or signal if the stalker is near or at your home.
- Post a “NO TRESPASSING” sign on the edge of your property where it is clearly visible.
- Call the Social Security Office and discuss the possibility of changing your social security number if you feel that the stalker is using it to find you.
- Report to the telephone company any threatening calls that you, or anyone you know, receive from the stalker.
- Ask for their help on ways to protect your phone lines or to trace the stalker’s calls. If possible, change your current telephone number to an unlisted telephone number. Ask the phone company to remove your name and phone number from both the phone book and directory assistance.
- Report all threats sent by mail, e-mail, and text messaging to your local police.
- If you move, avoid leaving a “paper trail.” Do not give permission to the post office to forward mail to your new address. Make the necessary notification of your new address directly to family, friends, and businesses. Take all medical records with you rather than have them forwarded via mail by the medical office. Pick up personally any security deposit or rent money owed to you. Do not leave a forwarding address with your old landlord.
- Change your e-mail address(s)
- Close your pages on any social networking web sites
- Do not post information about yourself on web sites
- Do not give permission to the telephone company to refer calls to your new number.
- Take necessary steps to be safe at work and school:
- Tell security that you are being stalked.

- If possible, ask for a change in your work schedule or site.
- Have the receptionist screen your calls.
- Distribute a photograph of your stalker to your co-workers, classmates, friends.
- Obtain a copy of your company or school's safety policy. If the company does not have one, request that the local crisis center is contacted for assistance in drafting a safety policy.

TAKING CARE OF YOURSELF

- Know that you have done nothing to provoke or cause the stalking.** What is happening to you is not your fault and is not because of anything that you have or have not done.
- Join a support group.** Local crisis centers are great resources and can assist you in locating a support group in your area.
- Develop a support system.** Keep in touch with friends who are supportive and understanding. Tell someone about each encounter with the stalker. Remember, you can call your local crisis centers for support 24 hours a day, 365 days a year.
- You may experience stress and trauma and might want to seek assistance.** You may begin to experience feelings of rage, terror, suspicion, an inability to trust anyone, depression, changes in sleeping or eating patterns, exhaustion, or frequent crying spells. Your body and mind may be reacting to the stress caused by the stalking. Talking to someone who is trained to work with victims and survivors may help stop some of the symptoms that are interfering with other aspects of your life. Your local crisis center has a list of people skilled in this work.

**Exercise extreme caution when providing
personal information on the internet.**

See: Internet Safety Guidelines on page 48

ADDRESS CONFIDENTIALITY PROGRAM

Frequently, victims attempting to escape from violent situations often must move and establish new addresses in order to prevent their abuser or assailant from locating them. Unfortunately, victims can be tracked by their stalker as a result of their address being part of a public record. The New Hampshire Address Confidentiality Program (ACP), located in the Attorney General's Office, was designed to assist victims of stalking, domestic violence, sexual assault or stalking to maintain the secrecy of their home, work or school address.

The ACP allows victims who have permanently moved and are seeking to have their location remain confidential, to receive a substitute address designated by the Attorney General. This address is used as if it were the victim's actual address when accessing state and local services. State and local agencies are required by law to accept the ACP address for a victim, therefore keeping their actual address from appearing in government and other public documents. The ACP address has no relation to the victim's actual physical address. Private companies, business and federal agencies do not have to accept the ACP address for a participant.

Victims in the ACP designate the Attorney General as their agent for service of process and receipt of mail. Therefore any first class mail addressed to the victim through the ACP is accepted by the Attorney General and then forwarded to the victim. This allows the victim to continue to have mail service while maintaining the confidentiality of their actual residential address. Victims interested in applying for the ACP need to be referred to their local crisis center (*See Resource Directory, Crisis Center List*). Advocates will help victims in determining if the program may be of value to their individual situation and assist them with the application process.

CHAPTER 6. FAMILY LAW

This chapter on Family Law covers topics relating to New Hampshire's laws that apply to marriage, including same sex marriage and civil unions, paternity, parenting rights and responsibilities (formerly referred to as "custody") for both married and unmarried parents, child support, and divorce.

NOTE: Parenting rights, paternity, child support, and divorce are very complicated areas of the law. If you have children, it is especially important to consult an attorney, as the outcome of the divorce will affect your life and the lives of your children for years to come. If you own property, have a pension, retirement accounts, other valuable assets, or joint debts with your spouse, or have questions about your immigration status, you should consult an attorney to assist you in getting a divorce. You should proceed carefully and not make hasty decisions or feel pressured to make decisions regarding the terms of your divorce or the parenting of your children. Some of the terms of a final divorce order and final parenting plans are extremely difficult to change once they are finalized.

❖ MARRIAGE

A couple may obtain a license to be married in New Hampshire, regardless of whether either one of them resides in New Hampshire. Before a **marriage license** is issued, the couple must file an application for a marriage license in any town or city in New Hampshire. The license, once issued by a town clerk, is valid for not less than three days or more than 90 days. New Hampshire does not require a couple to obtain blood tests before obtaining a marriage license. Individuals under the age of 18 must have the consent of a parent before they can obtain a marriage license or marry in New Hampshire.

Either member of the couple may, but is not required to, change his or her last name when getting married. Your spouse may adopt your last name, you may adopt your spouse's last name, or the two of you may combine last names. If you do change your name, it is important to notify the Social Security Office, the Division of Motor Vehicles if you have a driver's license, and banks and credit card companies.

All property acquired during a marriage is considered marital property even if title or deed is only in one spouse's name.

In a **common-law marriage** a couple lives together as though they are married without having gone through a legal ceremony. The law regarding common-law marriage in New Hampshire is unusual. New Hampshire does not recognize common-law marriage during the lifetime of either partner. Only in the case of death is a common-law marriage recognized. In New Hampshire, if a couple lives together for a period of more than three years and present themselves in their community as married, when one dies the surviving spouse may be entitled to a portion of the deceased partner's estate.

❖ **SAME SEX MARRIAGE (Formerly Known As Civil Unions)**

As of January 1, 2010, same sex marriage is recognized by New Hampshire law. This follows the recognition of civil unions that went into effect on January 1, 2008. New Hampshire recognizes the legal rights and responsibilities for same-sex couples who enter into a committed relationship, allowing gay and lesbian couples who marry to be treated the same as other married couples. All civil unions entered into in 2008 and 2009 automatically became marriages as of January 2011.

Entering into a same sex marriage is done in the same manner and with the same procedures as when a heterosexual couple gets married. Children born during a same sex marriage are presumed to be the children of the couple. Nonetheless, it is advisable for same-sex married couples to consider a formal adoption by the non-biological parent of children born to their relationship to ensure that the children's and the parents' rights are protected. If a married same-sex couple splits up, they are subject to the same laws relating to heterosexual divorce, including parenting rights and responsibilities, child support, and property division. Inheritance rights between married same sex couples are the same as those of any other married couple.

However, same-sex couples entering into a marriage must be cautious about laws outside of New Hampshire that may still affect them differently. Federal laws do not recognize same sex marriages. Therefore, for example, the IRS does not recognize same-sex marriages, so same-sex couples cannot file joint federal tax returns. COBRA laws relating to health insurance cannot be enforced for same-sex couples, so health and dental insurance benefits may not be available as they would be for a heterosexual married couple. Federal laws that govern the beneficiaries and the division of retirement plans at the time of divorce will not be in effect. Thus, at the time of divorce, a retirement account may not be able to be divided as it would be for a married heterosexual couple.

Also, most other states do not recognize same sex marriages. The states that do recognize civil unions include Massachusetts, Vermont, Maine, Iowa, New Jersey, and Connecticut. Other states, such as Hawaii and the District of Columbia, may grant some rights to gay and lesbian couples, although this changes regularly. If a married gay or lesbian couple plans to move to another state, they would be well advised to seek legal advice before the move so as to ensure their parenting rights, inheritance rights, and property ownership are protected and planned consistent with their desires.

❖ **PATERNITY**

Paternity means fatherhood. Establishing paternity means establishing that a man is biologically and legally the father of a child. By establishing paternity, a child will benefit:

1. Financially, by becoming legally eligible to receive child support, certain disability and Social Security benefits, and inheritance rights;
2. Medically, through rights to the father's health insurance benefits and access to information about the father's medical history; and

3. Emotionally, through gaining a sense of identity and belonging. Once paternity is established, the father is liable, to the same extent as the father of a child born to married parents, for the education and support of the child.

HOW TO ESTABLISH PATERNITY WITHOUT GOING TO COURT

Unmarried parents can establish the paternity of a child voluntarily and by agreement by filing a notarized affidavit with the clerk of the city or town where the child is born. The affidavit is a sworn statement in which both parents state under oath that the man is the biological father of the child. These affidavits can be completed and signed at the hospital immediately following a baby's birth, or at any time later at the city or town clerk's office. Parents should not sign the paternity affidavit if either has any doubts about the truth of the affidavit. Anyone signing a paternity affidavit is given 60 days to change his or her mind and rescind or revoke the affidavit.

The paternity affidavit has the same legal effect of establishing paternity as a court order. When a paternity affidavit is filed by agreement, the father's name is added to the child's birth certificate. Once this is done, any further modifications of the birth certificate must be done by a court order.

A mother cannot be required or forced by hospital personnel or anyone else to put a father's name on the birth certificate. A husband, however, is legally presumed to be the father of a child who is conceived or born during a marriage. If the husband is not actually the biological father, then paternity can be declared by the mother, biological father and husband by filing a three-way affidavit of paternity with the clerk of the city or town where the child was born. If all three parties cannot agree, the court must decide who should be on the birth certificate.

HOW TO ESTABLISH PATERNITY IF THERE IS A QUESTION OR DISAGREEMENT

If there is a question about paternity, a petition may be filed in the Family Division Court to determine paternity. (In Hillsborough and Cheshire Counties, the Superior Court will have jurisdiction of paternity cases until the end of 2009, at which time they are expected to also have Family Division courts.) The petition may be filed by either parent, by the child, or by an agency that has provided support for the child. The court can order paternity testing as may be necessary or if either party to the case requests it.

THE DIVISION OF CHILD SUPPORT SERVICES can assist applicants for services in establishing paternity by filing a petition, by funding paternity testing if the parties cannot afford it, and by scheduling court-ordered testing with a laboratory. A parent receiving public assistance benefits or Medicaid must cooperate in proving paternity unless excused because of **good cause**, as in situations where there has been domestic violence. Exemptions from cooperation for good cause can include cases where there is risk of serious harm to the child or the mother due to abuse of either or both, or if a child was conceived as a result of **incest** or **sexual assault**.

Once paternity has been established, both parents have parenting rights and responsibilities, which means that both parents have the right to see and be

with the child and to arrange for and know about medical and educational care of the child. Also, both parents have an obligation to provide for the financial support of the child until the child reaches the age of 18 or graduates from high school, whichever is later. (See sections below regarding parenting rights and responsibilities and child support.)

THE IMPACT OF PARENTAL SEPARATION AND/OR DIVORCE ON CHILDREN

Parental separation and/or divorce is traumatic to all members of a family, especially children who may not have the emotional and intellectual resources to fully understand the situation. If your divorce or separation was caused by domestic violence or child abuse, your family has the added burden of healing from these wounds, and you should take advantage of all of the special resources available to stabilize the family. If your marriage or relationship dissolved for differences – and not abuse – between yourself and your spouse or partner, you can take some steps to help ease the transition to a new family formation.

- Tell children about the divorce/separation in a calm manner appropriate to their age and basic understanding. If possible, both parents should be present for this initial conversation.
- Encourage children to express how they feel about the divorce/separation. Expect to see a variety of emotional reactions to the situation. Reassure children – frequently if necessary – that they are not the cause of the divorce/separation and that everything will turn out all right.
- Keep up with routines and schedules, and continue to enforce rules and boundaries in the household. Encourage children to continue their normal activities.
- Let the children know they should love both parents, and that both parents love them. Avoid blaming or disparaging the other parent while the children are present, or asking the children to take sides with you against the other parent.
- Keep interactions with the other parent businesslike and respectful. It may help to write down all agreements to avoid misunderstandings.
- Do not use your children to communicate with the other parent if at all possible.
- Do not rely on your child for emotional support regardless of maturity. Maintain the parent-child relationship even if you feel you can talk to your child like an adult.
- Let your child's teachers, coaches, childcare providers, pediatricians know that the parents are separating/divorcing so they can make the best recommendations and referrals for your children.

❖ PARENTAL RIGHTS AND RESPONSIBILITIES

New Hampshire law no longer refers to “custody” of minor children. Instead, the law refers to parental rights and responsibilities for the children of parents who are divorcing or, if not married, to those living separately. The terms of parental rights and responsibilities are used to stress the idea that children are not possessions to be fought over, or to be won or lost. The law states that the purpose of the parenting laws is as follows:

- “I. Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a child, to:
- (a) Support frequent and continuing contact between each child and both parents.
 - (b) Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced.
 - (c) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, unless there is evidence of domestic violence, child abuse, or neglect.
 - (d) Grant parents and courts the widest discretion in developing a parenting plan.
 - (e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.”

PARENTING PLAN

Parents, whether married or unmarried, are encouraged to develop a **Parenting Plan** by agreement. Court-appointed mediators are available at a reasonable cost to help parents work out all the terms of a Parenting Plan. The Parenting Plan is an agreement that addresses all issues relating to children who are under the age of 18, including **decision-making responsibility, residential responsibility**, a schedule of regular contact for both parents, a schedule for holidays and vacations, communications between the children and the parents by phone or email, and school placement. The Parenting Plan is signed by both parents and needs to be approved and amended by the Court. As noted above, the Court will require parents to attempt to resolve their differences about the Parenting Plan in mediation, using court-provided mediators.

Parents who cannot come to a mutual agreement about their parental rights and responsibilities by writing their agreement as a Parenting Plan may need to go to court to obtain appropriate orders. According to New Hampshire law, the Family Division Court has the authority to determine the parenting rights and responsibilities for children whose parents are in the process of obtaining a divorce or whose parents are not married and are separated. (See **Resource Directory** for a listing of Family Division Courts). (In Hillsborough and Cheshire

Counties, the Superior Court will have jurisdiction over cases involving parenting rights and responsibilities until the end of 2009, at which time they are expected to also have Family Division courts.)

Decision-making responsibility

Although there is no actual definition of decision-making responsibility, generally it means that both parents have the right to access a child's school and medical records and to participate in the major decisions of a child's life, including making medical and educational decisions. There is a presumption in New Hampshire that both of the parents of a child will share major **decision-making responsibility** for their minor (under age 18) children. For one parent to have sole decision-making responsibility, there must be compelling reasons to justify excluding the other parent from decision-making. For example, when there has been a history of domestic violence, or a severe inability of the parents to communicate with one another, then the court may award one parent sole decision-making responsibility.

Even when sole decision-making responsibility is awarded to one parent, the other parent may be awarded access to certain information, such as medical or educational records, but will not be allowed to have control over the other parent when making such important decisions. Both parents must be willing to be cooperative and reasonable with one another when making important decisions about their children, and to put the best interests of their children ahead of their own interests.

NOTE: Alert the court to the presence of violence and abusive behavior in the relationship. In the event of domestic violence or child abuse, the court must consider such abuse in determining whether joint decision-making responsibility is appropriate.

Residential Responsibility

Residential responsibility refers to the schedule of time that children spend in their separated parents' homes. What the actual schedule is for any particular family will depend first and foremost on what is in the best interests of the children. A schedule that is in the children's best interests will be determined based on the age of the children, the nature and quality of the relationship between each parent and the children, the distance between the parents' homes, the work schedule of the parents, the school and extracurricular activities of the children, the parents' relative abilities to care for and supervise the children, and a number of other factors.

With some families, if the parents live close to one another and both are involved, good parents, an equal or approximately equal schedule may be in the children's best interests. For other families, it may be best for one parent to have primary **residential responsibility**, while the other parent has residential responsibility at scheduled times, such as alternating weekends. Parenting Plan forms, including suggested language, are available on the New Hampshire

Judicial Branch web site (see **Resource Directory**). When parents can agree to a Parenting Plan, they can complete the Parenting Plan form, sign it, and submit it to the court for approval.

If parents cannot agree to a parenting schedule, the court will create one that it finds to be in the best interests of the children. The court considers many factors when determining residential responsibility, including:

- ▶ Skills, experience, and fitness of the parents;
- ▶ Ability to care for, nurture and discipline the children, both in the present and future;
- ▶ Age, health, and any special needs of the children;
- ▶ Environment of each parent's home and its likely influence on the children;
- ▶ Parents' ability or inability to get along with one another and to communicate with one another
- ▶ The practical considerations of the parents' work schedules, distance between homes and schools, and availability to the children;
- ▶ Any evidence of abusive or violent behavior by a parent against the child and/or the other parent;
- ▶ The recommendations of the guardian ad litem (*see below*), and
- ▶ The testimony of witnesses.

NOTE: Although children should not be the ones to choose where they will live, the courts will give serious consideration to a mature child's preference and point of view, especially as the child moves into later teenage years. However, it is never fair to the child to ask him or her to choose one parent over the other; in fact, such a question may actually be harmful to the child. A child will never be allowed to testify in court in his/her parents' dispute.

New Hampshire law allows grandparents to request visitation rights with their grandchildren. Grandparents or other interested persons also may apply to the PROBATE COURT for a guardianship over a child whose parents are unable to care for that child.

GUARDIAN AD LITEM (GAL)

When the court is confronted with parents who cannot agree on a Parenting Plan, it may appoint a **guardian ad litem (GAL)**, who is a trained and certified individual who will investigate the family's and children's circumstances and will make recommendations to the court about what is in the best interests of the child or children.

A GAL gathers information on the child's history, current circumstances, and concerns. The GAL speaks with both parents and meets with, observes, and may

speak with the child. The GAL also may speak with school representatives and teachers, therapists, day care providers, doctors, friends, relatives and others to get information about the child, the parents, and the family dynamics.

A GAL must undertake this investigation in a timely and effective manner. While acting in the best interests of a child, a GAL must be impartial, open-minded, and fair. Usually, a GAL will file a report with the court. The report will include recommendations regarding the issues that the court has asked the GAL to investigate. After the report and recommendations are shared with the parents, they can again attempt to reach an agreement, often with the GAL's help. If they cannot come to agreement, the court will hear evidence from both parents, the GAL, and other witnesses to reach a final decision. It is important to remember that *the GAL only makes recommendations, not decisions*. It is the court that makes the final decision about the Parenting Plan when the parents cannot agree.

Only the court can appoint a GAL, but the court will usually accept suggestions. Your attorney can help you identify a GAL to recommend to the court

Both parents are required to pay the GAL. If a parent cannot afford to pay the GAL, a court fund will be used to pay the GAL. The parent will be asked to submit financial forms to the state to determine his/her ability to repay the court fund.

DOMESTIC VIOLENCE & ABUSE: IMPACT ON PARENTING PLANS

At the time decision-making and/or residential responsibility is being determined, an abusive partner may argue that he or she has “never hurt the children.” Even if the children were never physically hurt, if they heard or witnessed **domestic violence**, they were affected by it. If abuse is or has been present in your relationship, the court should be made aware of such abuse. This may include times when a child was in the room during an assault; when something was thrown, broken, or punched when the child was present; or when the child witnessed screaming, swearing, or physically threatening behavior.

When domestic abuse has occurred in a relationship, the court will take that into account when determining how children will be transferred from one parent to the other. See below, under “Supervised Visitation,” for more information about such transfers.

If you are awarded sole decision-making and/or residential responsibility in a domestic violence case and your abusive partner does not have your current address, you may ask the court to have all records of your whereabouts sealed, thereby preventing the abusive parent from finding out your address. It is best to give the court the name and address of someone else to receive notices from the court.

The court, in determining decision-making and/or residential responsibility, also will consider child abuse. Child abuse and neglect proceedings will be held in the same court as the divorce or paternity or parenting case is filed.

There also may be criminal proceedings if the police or **County Attorney** has decided to prosecute the abuser criminally. Be sure to inform the court during the parental rights and responsibility proceedings of any open cases involving child abuse or neglect.

NOTE: Sexual and physical abuse of children under 18 is considered a crime. If you have reason to suspect abuse, you are required by law to report it to the Division of Children, Youth and Families (in New Hampshire at 800-894-5533; outside New Hampshire at 603-271-6556).

PARENTING RIGHTS AND RELOCATION

During or after a divorce or parenting rights proceeding, one parent may decide to relocate to a new town, state, or country for any number of reasons, including being closer to family or friends or for better job opportunities. Moving with or away from the children may have a significant impact on a Parenting Plan. Before moving, you must be sure to comply with the law regarding relocation of a child. If the divorce or parenting proceeding is not yet final, you should be sure to get the court's permission before moving with the child. The law requires that a parent who is moving a child out of the child's current school district and/or further away from the other parent must give the other parent reasonable (at least 60 days is considered reasonable) notice before making the move. This allows the other parent sufficient time to seek court orders about the move, or to come up with a new Parenting Plan that takes the move into consideration.

With some exceptions, if one parent moves, the original court maintains jurisdiction over the case as long as at least one of the parties remains in New Hampshire.

RELOCATION BECAUSE OF VIOLENCE & ABUSE

With court permission or as stipulated in a final Parenting Plan, a parent may relocate with the children because of **domestic violence** or **child abuse**. In such a case, procedures allow the parent to register parenting plans with the new state while keeping the family's location secret, if necessary. The original court will determine decision-making and/or residential responsibilities. However, if you meet certain requirements, you may be able to have the court transfer the case to the new state. If New Hampshire is the "new state," you will need to find a lawyer familiar with the **UNIFORM CHILD CUSTODY JURISDICTION ACT (UCCJA)**, the law that governs interstate parenting disputes. The lawyer also should be familiar with the **FEDERAL PARENTAL KIDNAPPING ACT** (see below).

Be sure to discuss with your lawyer ways to protect your confidentiality if your partner is abusive, while still fulfilling UCCJA requirements. Otherwise, when you file information in accordance with UCCJA requirements, your current address will be put on public record. This means that your partner has access to finding out your new location.

Parental Kidnapping

Any parent who takes a child in violation of a Parenting Plan, or who takes a child away from a parent without the benefit of a Parenting Plan or other court order, and conceals the location of that child from the other parent, is committing parental kidnapping. If the child is taken to another state, this becomes a federal offense under the **FEDERAL PARENTAL KIDNAPPING PROTECTION ACT**, which provides a federal parent locator service, serious penalties for kidnapping a child, and provisions for states to enforce Parenting Plans and related court orders from other states. If your ex-spouse or ex-partner has taken your child illegally, you should contact the police and then your lawyer immediately. The police will contact a U.S. Attorney in your federal district to begin the process of finding the child and, when found, prosecuting the parent. See below for more information on the steps to take for parental kidnapping.

In-state and Interstate Abduction

New Hampshire law protects children from parental kidnapping. A parent who moves to another state with the children, without the agreement of the other parent or in violation of the terms of a Parenting Plan, and/or takes the children without the court's permission, is committing the crime of **Interference with Custody**. Also, it is a crime for one parent to conceal the location within New Hampshire of the children from the other parent in violation of a Parenting Plan.

NOTE: If a parent interferes with decision-making and/or residential responsibility in order to protect the child from real or imminent danger, the court may consider this as a defense, but only if the parent was acting in good faith. In order to show such good faith, the parent must file a petition within 72 hours (3 days) of fleeing with the child with an appropriate court that documents the danger to the child and requests a modification of the parenting plan. This defense is NOT available to a parent who leaves the state with the children without the court's permission.

International Child Abduction

If your ex-spouse or ex-partner is a citizen of another country, you may be faced with the risk of him violating a Parenting Plan by taking your child back to his home country. Legal provisions may help to protect your child from **international child abduction**.

- ▶ Under federal law, both parents are required to sign a passport application for a child under the age of 14. You can send a copy of your Parenting Plan to the **U.S. DEPARTMENT OF STATE, OFFICE OF CHILDREN'S ISSUES (202-736-7000)** and that office will alert you if a passport application is filed for your child.
- ▶ If a passport was issued for a child before the parents' separation or divorce, you should stipulate in the final Parenting Plan that the court should hold the passport and that a parent may not remove a child from the country without permission from the court or the other parent.

Children of parents from other countries, whether or not the children are U.S. citizens, may be protected under the **HAGUE CONVENTION OF 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**. The Convention, signed by the U.S. and numerous (but not all) other countries, establishes procedures to return children to their home country if wrongfully removed. Contact a family law attorney, preferably one with experience in parental kidnapping, for more information.

Preventing and Responding to Abduction

Some simple steps may help to protect your children from parental abduction.

- ▶ Make copies of your final divorce decree and Parenting Plan, and keep them in a safe place for easy access.
- ▶ Provide a copy of the Parenting Plan to the child's school, daycare, and after school programs. Be sure to tell staff that the child is not to be picked up by anyone but yourself.
- ▶ Provide a copy of the parenting plan to the **U.S. DEPARTMENT OF STATE** to prevent or flag the issuance of passports for the children. If your ex-spouse or ex-partner is a citizen of another country, provide a copy of the Parenting Plan to the embassy of that country.
- ▶ Make sure to have recent photos of the child on hand, along with copies of the child's birth certificate and other important identifying documentation.
- ▶ Keep a list of current addresses and phone numbers of your ex-spouse's or ex-partner's relatives and friends, including those who live in another state or country.

If you have been awarded parental rights under the terms of a Parenting Plan, and you suspect that your ex-spouse or ex-partner has abducted or may be attempting to abduct your child, you should take the following steps:

If your divorce or parenting case is still pending or has not yet been filed, and the other parent leaves the state or country with the child:

- ▶ Go to court for an **ex parte order** (emergency) to have the child returned. You must show the court that the other parent is in violation of an existing parenting plan or that the removal of the child will cause him/her irreparable harm. If granted, the order is usually issued the same day and is enforceable by police and federal officials.

If your divorce or parenting case has been finalized, and the other parent leaves the state or country with the child in violation of the terms of the Parenting Plan:

- ▶ Call the police at 9-1-1 to request they issue a warrant for the arrest of the kidnapping parent.

- ▶ Insist that the police file a missing person’s report and that it be posted immediately on National Crime Information Center (NCIC) and Interpol computers. Local police departments may tell you that they need to see a final parenting plan before issuing a missing child report or that a waiting period is required. This is no longer true. The **NATIONAL CHILD SEARCH ASSISTANCE ACT** requires law enforcement to immediately enter a missing child report into the NCIC database.
- ▶ Contact the local FBI office at **617-742-5533**. If the FBI tells you that you first need a state warrant, point out that the **1993 INTERNATIONAL PARENTAL KIDNAPPING CRIME ACT** ended that requirement.
- ▶ Contact the **NEW HAMPSHIRE ATTORNEY GENERAL’S OFFICE** at **603-271-3658**. Ask that the office request the local U.S. Attorney to issue a federal Unauthorized Flight to Avoid Prosecution (UFAP) arrest warrant. In addition, if this is an international abduction, request that the U.S. Attorney’s Office revoke the passport of the kidnapping parent.

You will need to provide authorities with copies of your Parenting Plan, along with recent photos of the child and current contact information of the kidnapping parent’s family and friends.

Other resources available to you include:

- ▶ **THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN AT 1-800-843-5678 OR 1-703-235-3900**, www.missingkids.com. The center maintains a missing children’s database and publishes a booklet on preventing and responding to abduction.
- ▶ **THE STATE DEPARTMENT, OFFICE OF CHILDREN’S ISSUES at 202-736-7000**. Request the Department’s booklet, “International Parental Child Abduction” outlining what you should do and what the office can do for you if you are faced with this situation.

SUPERVISED VISITATION

In parenting cases where there is a reasonable and significant fear of abduction or of physical or emotional abuse to the child, or a history of domestic violence, the court may order supervised visitation. New Hampshire has a number of **visitation centers** for families who need assistance with fully supervised on-site visits, semi-supervised on-site visits; and supervised exchange of children. (See **RESOURCE DIRECTORY** on page 134)

There is a cost for services, so be sure the court order includes specific information about who will pay for the visits or exchanges.

Not all centers provide the same services, and not all centers can accommodate non-English speaking persons. Call the center first to be sure it can accommodate the specific services you require.

❖ CHILD SUPPORT

Both married and unmarried parents are responsible for providing financial support for their children. This is true even if the court has restricted a parent's parenting rights or if a parent is not able to see or have contact with his/her children. When one parent has care of the children most of the time, or has the responsibility of paying for most of the expenses for a child, or when there is a significant difference in the two parents' incomes, a parent will be ordered to pay child support to the other parent. Child support is paid until children are 18 or end their high school education, whichever happens later.

If you cannot afford legal representation, you can apply for assistance to the **DIVISION OF CHILD SUPPORT SERVICES (DCSS)** of the NH Department of Health & Human Services, a state agency charged with locating absent parents, determining paternity, establishing and enforcing a child support order, and collecting and distributing support payments. Also, if you are receiving governmental benefits such as TANF or Medicaid, DCSS is required to seek child support from the other parent. See the end of this section for more information about how to apply for the services of DCSS, and see the **RESOURCE DIRECTORY** for a list of DCSS offices throughout New Hampshire.

NOTE: Under certain circumstances, a parent may have good cause not to seek child support and may request that the Division of Child Support Services not pursue seeking a child support order. See below for more information about good cause exceptions.

CHILD SUPPORT GUIDELINES

To determine how much child support one parent should pay to the other parent, New Hampshire applies **child support guidelines** in all child support cases, including divorce, paternity, and unmarried parents' parenting cases. The child support guidelines use a formula that takes into consideration the number of minor children in the family and the parties' incomes. The formula is based on the **adjusted gross income** of both parents. Adjusted gross income means gross (before tax) income from all sources minus court-ordered support actually paid for other children, 50 percent of any self-employment tax paid, the cost of medical insurance premiums paid for the children only, mandatory retirement payments deducted from wages, state income taxes actually paid, and day care expenses.

Gross income includes income from all sources, which must be reported to the court (or DCSS) by each parent in a sworn financial affidavit. Either parent may request verification of the other's income through pay stubs, tax returns, and other relevant documents. Overtime income is included unless it is occasional or seasonal, as are bonuses and commissions, interest and dividends, disability payments, unemployment and workers' compensation, and all other forms of income.

The total support obligation is a percentage of both parents' adjusted gross income after standard withholding taxes are deducted. The number of children determines the percentage. For one child, the percentage is 25%; for two children, 33%; for three children, 40%; and for four or more children, 45%. The total child support obligation is then allocated between the parents in proportion to their respective adjusted incomes. The paying parent pays his/her portion to the other parent.

As part of determining what support must be paid for a child, the court also must decide what health insurance is to be provided and how uninsured medical expenses are to be paid.

**Visit the web site of the Division of Child Support Services
for forms and a child support calculator.**

www.dhhs.state.nh.us/DHHS/DCSS

Although the amount of the child support order is presumed to be the figure determined by the guideline formula, the court has the discretion to adjust the child support amount if it finds there are special circumstances making the guideline amount inappropriate or unjust. Reasons for adjustment include:

- ▶ Extraordinary medical expenses;
- ▶ Significantly high or low income of either parent;
- ▶ Equal or approximately equal parenting time for both parents;
- ▶ Extraordinary transportation costs for a parent when exercising parenting rights; or
- ▶ The presence of step-parents, step-children, or children from another relationship.

The parents themselves may agree to deviate from the guideline amount if there are special circumstances, but the court must make a written finding that the application of the guideline would be inappropriate or unjust. Note that a parent receiving public assistance benefits cannot agree to deviate from the guideline amount without the written consent of an attorney from the **DIVISION OF CHILD SUPPORT SERVICES**.

CHANGING A CHILD SUPPORT ORDER

The court may review and modify the amount of child support whenever either party experiences a significant change in financial circumstances, or after the passage of three years from the date of the previous child support order. Although the court may consider the needs of any additional children a parent may be required to support, the children in the initial family of the parent paying support are entitled to a standard of living equal to that of the parent's subsequent families.

ENFORCING A CHILD SUPPORT ORDER

Either parent can be ordered to pay child support. All parents who pay support must notify the court, in writing, of any change of address within 15 days of the change. Notification should be sent to the court that established the initial order of support.

INCOME ASSIGNMENT

All child support orders are subject to immediate **income assignment**, which means that the designated amount of child support is withheld automatically from the pay check of the person paying support and sent directly to the other parent. The income assignment may be suspended if both parties agree, or if an automatic direct deposit of support payments is established; or by court order if the court determines that income assignment is not in the best interest of the child. Income assignment may **not** be waived, however, if the children are receiving public assistance.

CONTEMPT OF COURT IN SUPPORT ORDERS

In cases where child support payments are not being made even though the payor has the ability to pay, the parent who is entitled to receive support can file a petition for **contempt** with the court. Based on this contempt petition, the court may do any or all of the following:

- ▶ Require the parent to make payments immediately for all past-due amounts, plus interest, or be jailed until support is paid;
- ▶ Impose an income assignment on the parent's earnings;
- ▶ Order property to be sold so that child support obligations can be satisfied; and/or
- ▶ Order support payments to come directly through the **DIVISION OF CHILD SUPPORT SERVICES**.

If the court finds that a parent is in contempt, the parent who filed the petition can request that the court order the other parent to pay all costs and attorney's fees.

THE DIVISION OF CHILD SUPPORT SERVICES

The **NEW HAMPSHIRE DIVISION OF CHILD SUPPORT SERVICES (DCSS)** provides services to individuals who otherwise cannot afford legal representation in establishing and enforcing child support. These services are available whether or not the parent who owes support lives in New Hampshire.

If a parent is receiving public assistance, such as TANF (welfare), child support services through DCSS are provided automatically. Any parent not receiving public assistance may apply for services by filling out an application and forwarding it to the nearest DCSS district office. Applications may be picked up at the local office or by calling **1-800-852-3345, ext. 4427**.

When child support orders are enforced by DCSS, the parent entitled to receive child support will need to provide DCSS as much information about the other parent as possible, including the parent's full name, nicknames, social security number, date of birth, current and previous addresses, and current and past employers.

DCSS has several ways in which to enforce an order, including but not limited to:

- ▶ Imposing an income assignment;
- ▶ Reporting delinquent support payers to credit bureaus;
- ▶ Intercepting IRS tax refunds, lottery winnings, financial institution accounts; or
- ▶ Revoking occupational, professional, and other licenses. This includes hunting and fishing licenses.

If the parent obligated to pay support lives in another state, the Division can ask the other state to enforce New Hampshire orders using the same methods available to collect support in state, through the use of the **UNIFORM INTER-STATE FAMILY SUPPORT ACT**. DCSS may take the parent who is obligated to pay support to court for contempt and seek an order for that parent to pay support immediately, or be jailed.

“GOOD CAUSE” IN DOMESTIC VIOLENCE CASES

If domestic abuse is or was part of your relationship with a parent ordered to pay child support, the services provided by DCSS may be of significant benefit to you. For example, you can ask the court to have support payments made through DCSS. In order to minimize your contact with the abusive partner and to prevent your address from being disclosed, you can request assistance through the Family Violence Option.

If you are a victim of domestic violence and you are applying for public assistance, you should seek the protection that DCSS can provide if you fear that pursuing child support may be dangerous to you and your children. When you have **good cause**, you can request that DCSS not contact your abusive partner to collect child support. Without such good cause, DCSS will expect your cooperation in establishing a child support order, and you will not be eligible for public assistance benefits or Medicaid until you provide the state with the name and address of the non-support paying parent.

**SEE LIST OF THE
OFFICES OF THE DIVISION OF CHILD SUPPORT SERVICES
IN THE RESOURCE DIRECTORY OF THIS HANDBOOK**

❖ DIVORCE

New Hampshire law provides three distinct options to couples seeking the help of the courts to reorganize their families. These options are **civil annulment**, **legal separation**, and **divorce**. There is no requirement that you be legally separated prior to getting a divorce.

A **civil annulment** of a marriage is granted only under very limited and specific circumstances. A marriage can be annulled if:

1. It was illegal to begin with, because the parties were close blood relatives;
2. One of the parties was too young, males under 14, females under thirteen 13, and anyone under 18 with no parental approval;
3. One party has a reported case of gonorrhea or syphilis;
4. One party has lied to the other about something important to the marriage; or
5. One party is not divorced from a previous marriage.

The only difference between **legal separation** and **divorce** is that, at the end of a divorce, the couple is no longer married and each party is free to remarry. At the end of a legal separation, the couple is still legally married, but, as in a divorce, they have divided between themselves, their assets, and their debts, including real estate, bank accounts, and retirement accounts.

If one spouse starts a legal separation and the other spouse cross-files for a divorce, the courts generally will grant the divorce. If a legal separation is granted, it may be changed later to a divorce. A petition must be filed with the court that granted the legal separation asking that it be changed to a divorce.

LEGAL HELP IN DIVORCE

There is no requirement that a lawyer must represent you in a divorce. **HOWEVER, IN MOST SITUATIONS, PROCEEDING WITH A DIVORCE WITHOUT A LAWYER PRESENTS A SERIOUS RISK.** You should seriously consider getting legal advice from a knowledgeable lawyer if your divorce involves issues regarding domestic violence; parenting rights and responsibilities for your children; support of yourself and/or your children; or real estate, retirement plans, businesses, or other significant assets. If you are an immigrant unsure of how the divorce will affect your status or the status of your children, you should consult an attorney before proceeding. If an attorney will represent your spouse in the divorce, you should obtain a different lawyer to represent you, or at least to advise you.

IN ALL DIVORCE CASES, it is highly recommended that you meet at least once with a lawyer to review your situation and to be sure that nothing important is missed in the permanent stipulation of the divorce. The Family Division courts maintain lists of attorneys who will provide such consultations.

COURT COSTS & LEGAL FEES

The total cost of a divorce varies widely depending on how complex and contested the divorce is. The court charges fees for filing petitions for divorce. Lawyers charge fees for providing legal services. Other expenses also may be incurred in your case (for example, paying for appraisals of property, for expert testimony and witnesses, for Guardians ad litem, for the Child Impact Seminar).

Each person usually pays for his or her own lawyer in a divorce, although there are exceptions if one spouse has enough money to pay and the other does not.

If one spouse is found by the Court to be in **contempt** of an existing court order, then the Court will award attorney's fees to the spouse who brought the contempt motion to the extent that they paid to enforce the terms of the order.

More detailed information about the fees and costs associated with a court case as well as how to find and hire a lawyer is available in the **RESOURCE DIRECTORY** at the back of this Handbook. The **RESOURCE DIRECTORY** also provides a comprehensive listing of legal services in New Hampshire.

PRO SE DIVORCE

In an **uncontested divorce**, where there are no or only minor issues relating to assets and/or debts, you can represent yourself. This is called being **pro se** (representing yourself without a lawyer). You should obtain a Pro Se Handbook at your local library, through the **NEW HAMPSHIRE BAR ASSOCIATION** or at your local Family Division court (see **RESOURCE DIRECTORY** for contact information for the New Hampshire Bar Association and for a listing of New Hampshire Family Division courts). There is a charge for the Pro Se Handbook. The New Hampshire Court website also has all divorce forms available. Go to www.courts.state.nh.us/.

The Pro Se Handbook includes the following checklist to determine the suitability of your situation to filing without a lawyer. If you answer "yes" to even one of the following questions, you should consult a lawyer before proceeding further.

Before Filing for Divorce:

- Do you and your spouse have minor children and disagree on any child issues?
- Does your spouse hit, kick, or punch you or your children?
- Does your spouse threaten to hit, kick or punch you or your children?
- Are you afraid of your spouse?
- Does your spouse drink excessively or take drugs?

Before the Divorce is Final:

- Are there disputed health insurance coverage issues affecting you, your spouse, or your children?
- If your spouse is in the military, do you disagree on any issues relating to the divorce?
- Do you or your spouse have any of the following?
 - Home or other real estate
 - A retirement plan (such as a 401K, IRA, or pension plan)
 - Stocks or other significant investments
 - Your own business
 - Family trusts or inherited wealth
 - Do you or your spouse need alimony (spousal support)?

If you answered “yes” to any of these questions, or if there are other difficult factors associated with your marriage, you should consult an attorney to protect your legal rights. Remember, some of the terms of the final divorce order cannot be changed at a later time. You should not make hasty decisions regarding the terms of your divorce, or feel pressured to make any decisions you are uncomfortable with, as the outcome of your divorce case will affect the lives of you and your children for years to come.

Remember, IN ALL DIVORCE CASES, even those that are pro se, it is highly recommended that you meet with a lawyer at least once to review your situation and to be sure nothing important is missed.

ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution (ADR) refers to various methods that are available as alternatives to going to court and having a judge decide the issues for you. The methods include mediation, neutral evaluation, and collaborative law. These ADR programs are available to help divorcing couples arrive at a settlement of issues relating to parenting rights and responsibilities, child support, alimony, and property division. Ideally, with ADR, the couple can come to an agreement without having to take their case to trial. ADR programs use cooperative rather than adversarial techniques to resolve disputes. Therefore, they are appropriate and successful only when both parties are equally cooperative.

In the Family Division courts, a judge will order parties to participate in mediation for at least for one session to try to resolve parenting conflicts before a case will be scheduled for any further hearings. You still should hire your own lawyer to help you with your divorce even if you and the other party decide to participate in ADR because you need to get independent legal advice. A mediator cannot give you legal advice or help you decide what is best for you. ADR is **not** a substitute for getting legal advice from your own lawyer.

NOTE: Under certain circumstances, alternative dispute resolution is not appropriate. The court may not order it, and parties should be cautious about participating in it, if there has been a history of domestic violence, serious psychological or emotional abuse, child abuse, alcoholism, or drug abuse. If you feel that alternative dispute resolution is not appropriate in your case, be sure to notify the judge of your concerns.

What follows are ADR options available to New Hampshire couples:

Marital Mediation

Marital mediation is an option for divorcing couples who wish to settle their disputes outside of the court. In mediation, a trained third party mediator assists couples in arriving at a fair settlement. The mediator is not on anyone's side and does not make any decisions. Instead, the mediator helps the parties to reach their own agreement. Remember that a mediator cannot give you legal advice or tell you whether an agreement is fair and reasonable for you.

Mediators usually charge an hourly fee, and many offer a sliding scale. The parties usually share the cost of mediation unless one person has much more money than the other. The total cost of mediation will depend on how much time is spent with the mediator. A current list of all New Hampshire-certified marital mediators is available in each court. The same information is available from the **MARITAL MEDIATION CERTIFICATION BOARD**, www.state.nh.us/marital/index.htm or **603-271-6593**.

Marital Neutral Evaluation

The FAMILY DIVISION oversees the Marital Neutral Evaluation Program. Specially trained attorneys are approved by the court to act as Neutral Evaluators at the request of divorcing parties. The Evaluator assists couples in resolving disputed issues and can provide a professional, impartial opinion on what the likely outcome of an unresolved issue may be, given the strengths and weakness of the case. Like a mediator, a neutral evaluator is not on either party's side and cannot give either party legal advice. Conversations that occur during the Neutral Evaluation are confidential and cannot be held against either party if the case goes to trial. Attorneys work as volunteers, and there is no charge for the program. For more information, contact the SUPERIOR COURT or FAMILY DIVISION in your area (see **RESOURCE DIRECTORY** for a listing of New Hampshire courts) or visit the New Hampshire court website, http://www.courts.state.nh.us/fdpp/fdpp/div_parent_neutral_eval.htm.

Collaborative Law

Although not supervised by the courts, collaborative law is an ADR method in which both parties and their lawyers agree from the outset to resolve disputes without going to court. Each party is represented by an attorney, and negotiations are held in a series of four way meetings (the two parties and their lawyers) to work out whatever issues are involved in the divorce. If the collaborative

process fails because one party decides to go to court and let a judge make the decisions, both parties must find new lawyers, as collaborative law attorneys are not permitted to handle the litigation in their collaborative cases. Not all lawyers practice collaborative law, and both parties must hire their own lawyer trained in collaborative law for the process to happen. For more information, contact the **COLLABORATIVE LAW ALLIANCE OF NEW HAMPSHIRE** at P.O. Box 2161, Concord, 03302. For more information and a listing of collaborative lawyers in New Hampshire, visit www.collaborativelawnh.org.

THE DIVORCE PROCESS

BASICS

If both spouses are residents of New Hampshire, either spouse can file for divorce at any time. If only one spouse lives in New Hampshire, that individual must have lived here for at least one year before filing for divorce, unless the non-resident spouse is served with the **Petition for Divorce** while physically present in New Hampshire. An individual who is not a resident of New Hampshire cannot initiate a divorce in New Hampshire.

In most counties and by 2009 in all counties, you will file for divorce in the FAMILY DIVISION (see **RESOURCE DIRECTORY** for a complete listing). (In Hillsborough and Cheshire Counties, the Superior Court will have jurisdiction of divorces until the end of 2009, at which time they are expected to also have Family Division courts.)

Once the divorce is filed, either spouse can move from New Hampshire without affecting the **jurisdiction** New Hampshire has over the divorce. This means that if either spouse moves out of New Hampshire the divorce case still will proceed and can be heard by the court where he or she formerly lived. Even if both spouses move away from New Hampshire before the divorce is final, the divorce still can proceed to the end in the New Hampshire court.

IMMIGRATION STATUS: If your spouse has filed for divorce, or if you are thinking about filing for divorce, and you have questions about your immigration status and how it will be affected by the divorce, you should contact an immigration expert for advice. You should do this before signing any papers related to the divorce. For more information, contact the International Institute of New Hampshire at 603-647-1500 (also see Resource Directory).

Filing the Petition

The first step to begin a divorce proceeding is to file a document called a **Petition for Divorce** in the appropriate court. There is usually no advantage to being the spouse who files the divorce first. The divorce process is designed to give both parties a fair chance to present their positions and arguments to the judge.

It is possible for couples who agree that they want to get divorced to file a **joint petition** for divorce, which eliminates the need for serving papers through the sheriff (as described below). If the parties file a joint petition for divorce, the petition is filed in the Family Division court where at least one of the parties resides. In that case, no further service or notice is required.

A fee is charged when a divorce petition is filed. Upon receipt of a Petition for Divorce from an individual (who is referred to as the **petitioner**), the court clerk docket the petition and opens a court file. The court will provide written instructions to the petitioner about how the other party (who is referred to as the **respondent**) is to be notified of the divorce. The notification papers are called **Orders of Notice**. The divorce cannot proceed until the respondent is officially notified in writing in accordance with court rules and procedures. If you do not know the respondent's whereabouts, be sure to let the clerk know this and you will be told of alternative forms of service.

A typical notification procedure involves the court mailing a notice to the respondent, informing him or her that a divorce has been filed, and enclosing forms and instructions about the necessary steps to take. The respondent or the respondent's attorney has ten days to go to the court clerk's office to pick up an official copy of the divorce petition. This process eliminates the need to have a sheriff serve papers to the respondent.

If the respondent fails to pick up the papers within the ten day time period, the clerk's office will send the petitioner instructions (**Orders of Notice**) on how to complete service through the sheriff. The sheriff's office may deliver the divorce papers to the respondent's home, or the respondent may pick up the papers at the sheriff's office. The petitioner must pay a small fee for service through the sheriff's office.

A divorce can remain on file with the court for a period of up to two years without any further court action. After two years, if no other documents are filed and no hearings are held, the court will dismiss the petition without granting a divorce.

In certain emergency circumstances, it may be necessary to request an **ex parte** (meaning one-sided) order from the court. Such orders will be granted only if the court determines, after review of the requesting party's sworn **affidavit**, that immediate and irreparable injury, loss or damage has occurred or is about to occur to the requesting party, the children of the requesting party, or the property of the requesting party before the adverse party or attorney can be heard in opposition to the order.

Protective Orders

If your marriage is abusive, you can request that a **restraining order** be part of the temporary and final divorce orders. However, it is often in your best interest to seek immediate or emergency protection under a **domestic violence protective order**. Domestic violence protective orders offer more protection

and are enforced more easily than restraining orders obtained through a divorce. For example, a domestic violence protective order can include the relinquishment of firearms and other weapons. See **CHAPTER 5, “DOMESTIC VIOLENCE,”** for more information on the protections offered and steps to take in obtaining a domestic violence protective order.

If you file for a divorce BEFORE filing for a domestic violence protective order, file the order in the same court where the divorce has been filed. If you file for a divorce AFTER filing for a domestic violence protective order, you must ask that the order be transferred to the court where the divorce will be filed.

First Appearance

Typically, the first court appearance for parties with minor children is called the First Appearance, which is generally scheduled within several weeks following the filing of the Petition for Divorce. The parties are notified of this First Appearance in writing, in the court papers that are sent out with the **Orders of Notice**. Both parties must attend the First Appearance. Failure to attend may result in delay or in the loss of certain rights. The purpose of the First Appearance is for the court to give general information about the divorce process, to assign a case manager to each couple, and to refer parties to mediation to assist them in developing a parenting plan. The case manager will schedule a mediation session with the couple at the First Appearance.

Temporary Court Orders

It can take a year or more for a divorce to become final. Divorcing couples may want to have **temporary court orders** in place during this time. Parties may be able to come to an agreement over the terms of temporary orders, eliminating the need for a hearing. Such an agreement is called a Temporary Stipulation. If the parties are unable to come to an agreement, either party may request a temporary hearing. Within 30 to 60 days of the request, the court will hold a hearing and make temporary orders regarding such issues as **parenting rights and responsibilities, child support, alimony**, use of vehicles, possession of real estate, and responsibility for paying bills. Temporary orders are enforceable court orders and will remain in effect until the final divorce orders replace them. A party can request a temporary hearing at the time the divorce is filed or at any time until the divorce is final.

Child Impact Seminar

All parties who have children under the age of 18 are required to attend a four-hour seminar given in each county on the impact of divorce on children. The program provides information on the changes divorce will bring to a child's life, and the proper ways for parents to cope with these changes. There is a fee for the program, but a family that cannot afford the fee may have it lowered or waived. The parties do not need to attend this seminar together. Information about the seminar is provided by the court clerk's office at the time the Orders of Notice are sent out.

Discovery & Settlement

After the divorce is filed, the parties must exchange financial information and other documentation. If one spouse is not willing to provide financial or other information that the other spouse is entitled to know, the law provides for **discovery** procedures, which can force the unwilling spouse to provide the necessary information and documentation.

NOTE: Your immigration status will not be considered relevant by the judge in a divorce case. If your spouse requests information about your immigration status during the discovery process, you may not have to comply. You immediately should inform your lawyer of such a request.

When both parties have all the information needed, they attempt to come to a final settlement. This can be done through the parties' lawyers, or by using one of the ADR methods described above. The entire agreement, called a **permanent stipulation**, then must be written out in a court-specified format and signed by both parties and their lawyers, if involved. The permanent stipulation then is submitted to the court for approval, and when approved, becomes the final divorce decree, or order.

When the parties are able to sign a permanent stipulation, the law does not require a hearing if both parties waive attendance. The divorce is effective immediately upon approval by the court. The vast majority of divorces in New Hampshire are completed in this way.

In cases where the parties cannot come to an agreement on all the issues, the court will schedule a **contested divorce trial**. The court often will hold a pretrial conference, at which the court will request from each party a list of what issues have not been resolved by agreement, what witnesses will be called, and what amount of time will be needed for the trial. At the time of the trial, the judge or **marital master** listens to the position of each party and the reasons why they are taking their position, including the history of the marriage, the parties' current living and financial circumstances, and the needs and desires of both parties. Several weeks after the trial, the court will issue a decision. The decision becomes final 30 days after the date of the order. This 30-day period allows time for either party to file an appeal with the New Hampshire Supreme Court.

NO-FAULT AND FAULT DIVORCE

In the 1970s, "irreconcilable differences" was introduced as a no-fault ground for divorce. Today, the vast majority of all divorces in New Hampshire are granted on no-fault grounds. No-fault grounds require little testimony or proof, and the divorce often is less hostile, less expensive, and faster to obtain.

New Hampshire law provides for nine **fault grounds**, the most common of which are adultery (having sexual relations with someone other than one's spouse while married), extreme cruelty, and treatment that endangers health or reason.

Fault grounds must be considered by the court when deciding issues relating to alimony or the division of assets and debts between the parties. In families where there are no assets, little income for alimony, and no immigration issues, filing for fault grounds serves no practical purpose. If the no-fault ground of irreconcilable differences is used, the court still will consider all of the arguments a party may make (other than fault) to justify an award of alimony or an unequal division of property. Violence and abusive behavior in the family will always be considered when addressing issues relating to children and parenting.

Alimony

New Hampshire law recognizes alimony. That is, it recognizes that one spouse may need financial support from the other spouse in addition to child support. **Alimony**, or financial support for a spouse, can be ordered for a specified number of years (there is no legal maximum or minimum period) or indefinitely. Alimony can help a spouse obtain a better job or an education. It is not necessary to have children from the marriage for a spouse to qualify for alimony.

To determine if court-ordered alimony is necessary, the two most important factors to be considered by the court are:

(1) The need of the spouse seeking alimony; and (2) the ability of the other spouse to pay alimony after meeting his or her own reasonable needs. Alimony is determined on a case-by-case basis. The law requires the court to consider a number of different factors such as the length of the marriage, the differences in the parties' income and assets, the incomes and financial resources of both parties, the needs of a homemaker or parent to maintain the home for children, fault grounds for the divorce, and tax consequences to the parties.

An alimony order can be made at the time of the divorce, in either or both the temporary order and the final order. It also can be made after the divorce is over, but the motion to the court for alimony payments must be made within five years of the divorce. If the court orders permanent alimony for a specific duration of time, the order may be extended if the petition to renew or extend alimony is filed within five years of the termination date of the permanent alimony order. Alimony automatically ends upon either party's death. It also may end when the recipient remarries.

IRS regulations state that alimony is taxable as income to the recipient on a tax return and is deductible from income by the party paying alimony. Child support, by contrast, is considered non-taxable.

Health Insurance

In addition to alimony, a spouse who has carried employer-provided health insurance coverage during a marriage for the other spouse may be required by court order to continue to carry that coverage for the former spouse even after the divorce. New Hampshire state law (RSA 415:18) requires health insurance companies in New Hampshire to make coverage available at no additional cost for up to three years following divorce to the former spouse of an employee.

Basically, the former spouse may stay on the family plan just as though the parties were still married. Remarriage of either party will cause this extended benefit to end. This can be of great benefit to a newly divorced spouse who does not have health insurance benefits otherwise available.

The federal COBRA law also requires most health insurance companies to make coverage available to a former spouse of an employee for an additional three years. However, with COBRA coverage, the employer will require that an additional premium be paid, but the cost will be at a favorable group rate. The three-year COBRA coverage can be added on after the three-year period of coverage required by state law has ended.

Property Division

Generally speaking, the goal at the time of divorce is to fairly divide all of the parties' assets (including real estate, personal property, savings, investments and retirement plans) and debts.

NOTE: While in the process of divorce, you are obligated to leave your spouse's things alone. Do not pack up, throw out, or destroy this property. Let the other party pack up his or her own belongings and remove them from the home. If necessary, ask for a police escort during the process.

The division of property requires the parties to take several steps. First, the **marital estate** must be identified. The marital estate includes everything — assets as well as debts — that both of the parties own. It may not matter who owns the asset or who incurred the debt. Both of the parties are obligated to disclose all assets and debts. Each item in the marital estate then must be valued, including but not limited to the following:

- ▶ Real estate
- ▶ Business interests
- ▶ Retirement accounts and pensions
- ▶ Balances on mortgages and loans
- ▶ Personal property (such as cars, furniture and furnishings).

Sometimes, an expert appraisal will be necessary to determine the true values of any of the above.

The final step of this part of the divorce is to divide the property **equitably**, or fairly, between the spouses. "Equitable" does not necessarily mean equal. The law says that there will be a presumption that an equal division is fair. However, New Hampshire law lists over 15 different factors that can be taken into consideration to justify varying from an equal, 50/50 division.

These factors include:

- ▶ Differences in income and ability to acquire income and assets in the future;

- ▶ The needs of the parent with residential responsibility to maintain a home for the children;
- ▶ The relative contributions of the parties to the marital estate (including contributions to homemaking and raising children);
- ▶ The receipt of inheritances or gifts during the marriage;
- ▶ The value of property owned prior to the marriage and brought into the marriage; and
- ▶ The fault of one of the parties that caused the breakdown of the marriage.

The home can be one of the most difficult assets to divide. It ultimately may be placed on the market and sold. However, when there are minor children in the family and there are sufficient financial resources, the courts may be supportive of having the spouse with residential responsibility maintain the house after the divorce as a home for the children until they are out of school.

NOTE: It is important to get competent legal advice about all available options of ownership, division of the value of a home, and responsibility for any mortgages and equity credit lines before the divorce proceedings are finalized.

Debt and Bankruptcy

Debt incurred during a marriage by either party may be considered the joint responsibility of both parties. Such debt can include credit cards, auto loans, tax liability (IRS), and home equity lines of credit. For example, credit card debt may be considered jointly owed, even if the card was issued to and used by only one party. This is particularly true when the debt was incurred for the benefit of the couple and/or the family.

NOTE: Creditors are not bound by divorce decrees and can and will pursue either party for payment of jointly-owed debt, regardless of whom the court order holds responsible for the debt after the divorce.

If your spouse receives a discharge in bankruptcy after the divorce, creditors for any debt that was owed jointly still may hold you responsible. It may be advisable for both parties to file a joint petition for bankruptcy and receive a discharge of debt. The decision to declare bankruptcy is a complicated one, so you should always obtain your own legal advice before making any decisions.

Retirement

All types of retirement plans that are earned during a marriage, including pension plans, 401(k) and Keough plans, profit sharing plans, thrift savings plans, Individual Retirement Accounts (IRAs), and any other kind of tax-deferred plans or accounts, are part of the marital estate to be divided between the parties. Both the employee's contributions and the employer's contributions into the plan during the marriage are included in the division.

To receive your share of your spouse's pension or retirement plan, you may need to obtain a separate court order called a **Qualified Domestic Relations Order** (often referred to as a **QDRO** – pronounced “quadrow”). Before the divorce is finalized, you or your attorney must obtain from the administrator of the plan its requirements for a QDRO. You then will have the QDRO prepared and approved, preferably at the time of the final divorce hearing. A certified copy of the QDRO is sent to the plan administrator, who must follow the terms of the order. Every retirement plan is different, and QDRO's can be very complicated. Be sure that your case is not closed until you know the QDRO is properly in place.

OTHER CONSIDERATIONS IN DIVORCE

Name Change

You can return to your former (maiden) name at no cost when the divorce is final. You can ask the court to make the change. If you decide to change your name later or even change your name to something completely different, you may file a request for a change of name with the PROBATE COURT in the county where you live. There is a fee to make the change after the divorce is final.

CHAPTER 7. CRIMINAL LAW

A criminal case is a court action brought by the state against a person who has been charged with committing a crime, such as violations of a **protective order** or **sexual assault**. If there is enough evidence, the state may prosecute the case. The state is represented by the local police, the county attorney's office, or the NH Attorney General's office, depending on the seriousness of the crime. This is done at no cost to the victim. If the court finds the **defendant** guilty, a punishment (or **sentence**) will be issued. The sentence depends upon the defendant's criminal record as well as the severity of injuries to the victim. Sentences do not always include jail time, but a criminal action is part of the defendant's criminal record.

New Hampshire also has a hate crime law (**RSA 651:6**), which may enhance or upgrade a sentence if the court finds that the defendant was motivated to commit the crime because of hostility toward the victim's religion, race, sexual orientation, national origin or sex.

If you are an immigrant, you are entitled to many of the same legal rights as U.S. citizens in criminal proceedings. Further, if you are not married to a U.S. citizen or legal permanent resident, but you have been a victim of a crime and you assist in the prosecution, you may be able to apply for a U Visa. However, it is highly recommended that you consult with an immigration expert before submitting a U Visa application. For immigration advice, contact the **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE** at **603-647-1500** (See **RESOURCE DIRECTORY** for more information).

If you are a victim of domestic violence, sexual assault, or stalking, please see **CHAPTER 5** of the Handbook for information on how these cases proceed through the courts.

Crimes are classified as either **misdemeanors** (crimes punishable by one year or less in jail or fines under \$2,000) or **felonies** (crimes punishable by more than one year in jail or fines higher than \$2,000). A member of the police force or a lawyer representing the city or town prosecutes misdemeanor cases in DISTRICT COURT. The **County Attorney's** office prosecutes felony cases in SUPERIOR COURT.

❖ VICTIM SUPPORT IN THE CRIMINAL JUSTICE SYSTEM

Anyone can be a victim of a crime – adult women and men, teenagers, children, people who are mentally or physically disabled, and the elderly, regardless of race, nation of origin, sexual orientation or economic status. Resources may be available if you are the victim of a crime in New Hampshire.

NEW HAMPSHIRE CRIME VICTIMS' RIGHTS

A victim of a **felony** crime in New Hampshire, is entitled to certain rights under the **NEW HAMPSHIRE CRIME VICTIM'S BILL OF RIGHTS (RSA 21-M:8-K)**.

According to state law, victims have the right to:

1. Be treated with fairness and with respect for their dignity and privacy throughout the criminal justice process;
2. Be informed about the criminal justice process and its progress;
3. Be free from intimidation and be reasonably protected from the accused throughout the criminal justice process;
4. Be notified of all court proceedings;
5. Attend all trials and other court proceedings the accused has the right to attend;
6. Confer with the prosecution and be consulted about the disposition of the case, including plea bargaining;
7. Have inconveniences associated with participation in the criminal justice process minimized;
8. Be notified if presence in court is not required;
9. Be informed about available resources, financial assistance, and social services;
10. Be given restitution under **RSA 651:62-67** or any other applicable state law, or victim's compensation, under **RSA 21-M:8-h** or any other applicable state law, for losses;
11. Be provided with a secure, but not necessarily separate, waiting area during court proceedings;
12. Be advised of the progress of the case and the final disposition;
13. Have home address, place of employment, and other personal information kept confidential;
14. Have property promptly returned once it is no longer needed as evidence;
15. Have input in the probation pre-sentence report;
16. Appear and make a written or oral **victim impact statement** at the sentence hearing of the defendant;
17. Be notified of the date and time of an appeal, have the appeal process clearly explained, attend the appeal hearing, and be told the result of the appeal;
18. Be notified of and allowed to attend sentence review hearings and sentence reduction hearings;
19. Be notified of any change of status such as prison release, permanent transfer from one area of the state to another, or escape and the date of the parole board hearing. This right must be requested in writing by the victim or through a victim/ witness advocate; and
20. Address or submit a written statement for consideration by the parole board on the defendant's release and be notified of the decision of the board. This right must be requested in writing by the victim or through a victim/witness advocate.

VICTIM/WITNESS ADVOCATES

If your case goes to the **County Attorney's** office for prosecution, a **Victim/Witness Advocate** will be assigned to you. Victim/Witness Advocates work as part of the prosecutor's office to assist victims in securing their rights under the **NEW HAMPSHIRE CRIME VICTIM'S BILL OF RIGHTS**. It is very important to keep your victim/witness advocate updated if your address, phone number, or other contact information changes

**SEE RESOURCE DIRECTORY FOR LIST OF:
NEW HAMPSHIRE VICTIM/WITNESS ASSISTANCE PROGRAMS**

NEW HAMPSHIRE VICTIMS' COMPENSATION PROGRAM

Victims and survivors of a violent crime in New Hampshire may apply for **compensation** from the **NEW HAMPSHIRE VICTIMS' ASSISTANCE COMMISSION**. Victims may request up to \$10,000.00 in compensation for hospital and medical expenses, funeral costs, loss of wages, other out-of-pocket expenses, or mental health therapy costs. In order to qualify, the victim must have no other form of third party payment (for example, medical insurance or life insurance). Property losses are not covered.

You may be eligible for compensation if:

1. The crime resulted in personal injury or death, or you were the victim of sexual abuse or stalking and under 18 at the time the claim was filed.
2. You or your loved ones did not contribute in any way to the personal injury or death;
3. Your compensable expenses are more than \$100;
4. A claim for compensation was filed within one year of the crime, unless circumstances beyond your control kept you from doing so.

For more information, or to request an application, contact the **NEW HAMPSHIRE VICTIM'S ASSISTANCE COMMISSION** at the **DEPARTMENT OF JUSTICE** at **800-300-4500** or **603-271-1284**.

The program also will cover up to ten days of imminent survival needs and relocation expenses for individuals fleeing sexual or domestic violence or stalking. These payments **MUST** be arranged through a local crisis center. See the **Resource Directory** at the back of this Handbook for the crisis center in your area.

❖ ADDRESS CONFIDENTIALITY PROGRAM

Frequently, victims attempting to escape from dangerous situations often must move and establish new addresses in order to prevent their assailant from locating them. Unfortunately, victims can be tracked as a result of their address being part of a public record. The New Hampshire Address Confidentiality Program

(ACP) located in the Attorney General's Office, was designed to assist victims of stalking, domestic violence, or sexual assault to maintain the secrecy of their home, work or school address. For more information on the **New Hampshire Confidentiality Program** see Chapter 5 of this handbook, page 76.

❖ YOUR RIGHTS AND LAW ENFORCEMENT OFFICERS

If you are accused of a crime, arrested, or asked to go to the police station by a police officer, remember the four rules outlined below.

1. **Do not resist arrest**, even if you think you have done nothing wrong. Resisting arrest is against the law and may lead to additional charges against you. Never run from an officer or other government agent. Even if you feel your legal rights are being denied, do not cause a confrontation that could be understood as resisting arrest.

By law, the police may detain you without arresting you. For example, the police may stop you on the street to question you if they have reasonable suspicion of a crime. While you are being detained, the police are entitled to pat down the outside of your clothes, or “frisk” you if they have a reasonable basis to believe you may have a dangerous weapon. If the police search you further, do not resist. At this point, the officer may let you go or may put you under arrest. An arrest occurs when the officer takes you into custody or otherwise deprives you of your freedom. Never resist arrest or interfere with the arrest of another person.

2. **You do not have to answer any questions**, except to give your name and address. You do not have to make or sign any statements. The fact that you refuse to answer questions cannot be used against you in court. Only a judge has the legal authority to order you to answer any questions.
3. **You have the right to a lawyer**. Request a lawyer immediately after being placed under arrest. Once you ask for a lawyer, the police cannot ask you any further questions until your legal counsel arrives. If you cannot afford a lawyer, the court will appoint one to represent you. You have the right to make a phone call. You also have the right to privacy during this phone call. If you do not have the phone number of a lawyer, call a person you can trust to find you a lawyer. (See the **RESOURCE DIRECTORY** for information on legal services in New Hampshire).
4. **You do not have to consent to a search** of your home or car. A **warrant** is an order issued by a judge, magistrate or justice of the peace directing the police to arrest a certain individual or to search a particular place. If a police officer wants to search your *home*, ask to see the search warrant. Read the warrant to be sure that the police are at the correct address.

A police officer may search you, your home, or your property without a warrant if you consent to the search. You have the right to refuse to consent, but the officer is not obligated to inform you of this right.

If you are arrested in your *car*, the officer may conduct, under certain circumstances, a limited search of your car without a search warrant. If you have not been arrested and an officer wants to search your car, tell the officer if you do not consent to the search.

It is important to know that a person in your house, such as a guest, can legally consent to a search of your house if the police believe that person has the authority to give consent. Also, an employer can consent to a search of your office without your permission.

If the officer has a search warrant, do not try to physically interfere with the search because you likely will get arrested. If you tell the officer that you do not consent to a search, the search should be limited to only those specific areas authorized in the warrant.

Documented and undocumented immigrants have many of the same legal rights as U.S. citizens. Follow the four rules above if you are arrested or otherwise detained by a government agent. You have the right not to answer questions asked by a police officer or government agent on the street, in your home, at your place of employment, or in a police station. If the police ask about your immigration status or where you were born, you have the right not to answer. You have the right to legal representation while being questioned by and before making any statements to the police. You do not have to sign any documents without having a lawyer present.

If you do not speak English, you have the right to an interpreter so that you fully understand the police officer and that the police officer fully understands you. Do not rely on a member of your family to interpret for you. It is the responsibility of the law enforcement agent to provide an interpreter for you.

What Are Miranda Rights?

Once you are under arrest, or in the presence of the police and not free to leave, the police must tell you about your Miranda rights before they can question you further. These rights are:

- ▶ The right to remain silent;
- ▶ The warning that anything you say can and will be used against you in court;
- ▶ The right to have an attorney; and,
- ▶ The right to have an attorney present before any questioning.

If police fail to follow the Miranda requirements, any information you give them may be inadmissible in court. However, failure to give Miranda warnings does not automatically make your arrest illegal or require that the charges against you be dismissed. Therefore, it is best to talk to an attorney before making any statements to law enforcement officials.

For more information, contact the **NEW HAMPSHIRE BAR ASSOCIATION** at **603-224-6942** to request the pamphlet, "You Are Under Arrest: Do You Know Your Rights?"

POLICE MISCONDUCT

Whenever a law enforcement officer stops you, you first should make sure the individual is an official agent by requesting to see a badge or identification card. Write down the officer's name and badge number.

Law enforcement officials may not discriminate because of national origin, race, color, religion, or gender. The **EQUAL PROTECTION CLAUSE** of the United States Constitution, the **OMNIBUS CRIME CONTROL AND SAFE STREETS ACT** of 1968, and Title VI of the **CIVIL RIGHTS ACT OF 1964** specifically prohibit such action by any police department receiving federal funds through the **U.S. DEPARTMENT OF JUSTICE**.

If you are injured by a police officer, see a doctor and get photographs of the injuries as soon as possible. Record, document and describe any case of police misconduct in a typewritten statement and have your summary of the incident notarized within 72 hours.

Police misconduct complaints can be filed through several avenues in the **OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF JUSTICE**:

TITLE VI INFORMATION LINE

P.O. Box 66560
Washington, D.C. 20035-6560
1-888-848-5306

OFFICE OF JUSTICE PROGRAMS

Washington, D.C. 20531
1-202-307-0690

SPECIAL LITIGATION SECTION

P.O. Box 66400
Washington, D.C. 20035-6400
1-202-514-6255

CHAPTER 8. GLOSSARY

❖ GLOSSARY OF TERMS

540-A Petition – a petition to be filed *with the court* if your landlord is doing something illegal and you want him or her to stop.

Adjusted Gross Income (RSA 458-C) – The income used to determine child support according to the guidelines; the total monthly before-tax income minus certain specified deductions such as mandatory retirement contributions, state income taxes, and child support paid for other children, etc.

Affidavit – a written declaration signed before an authorized official under the penalties of perjury.

Aggravated Felonious Sexual Assault (RSA 632-A:2) – sexual penetration, however slight, into any opening (vagina, mouth or anus) against a person’s will (with-out consent).

Alimony (RSA 458:19) – payment of financial support from one spouse to another.

Alternative Dispute Resolution (ADR) – refers to various methods that are available as alternatives to going to court and having a judge decide the issues. The methods include mediation, neutral evaluation, and collaborative law.

Annulment (RSA 458:1) – a court process establishing that a marriage never legally existed. This differs from a divorce in that a divorce terminates a legal marriage.

Appeal – A written request to a higher court to modify or reverse the judgment of a trial court.

Appearance – a court form used by any person to notify the court and other parties of one’s interest in a court case; an appearance must be filed in order to participate in a court case and receive notifications regarding the case from the court and opposing parties. Usually an appearance must be filed with the court before a “return date”, or deadline, set by the court or by the person filing the court action.

Arraignment – a court hearing when the accused is brought before a judge to plead to a criminal charge. He or she may plead “guilty” **or** “not guilty”.

Asset – property that is owned, including: real estate, bank accounts, savings, personal property (including furniture and furnishings), business interests, vehicles, and retirement accounts.

Asylee – a person physically present in the United States who is unable or unwilling to return to their country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion (e.g. a person who obtains their refugee status in the United States).

Bail Conditions – rules that a person who has been released on bail must follow. If these conditions are not met, bail will be revoked.

Bail Order – an order directed to a person who has been placed under arrest for a crime, requiring him or her to pay a monetary amount to ensure he or she appears in court.

Bankruptcy – a formal process whereby debts owed are administered and may be reduced or eliminated by a bankruptcy court.

Bona Fide Occupational Qualification (BFOQ) – necessary requirement for employment.

Certified – to have a signature on a document witnessed by a notary public or justice of the peace, or authenticated with a stamped signature by a court.

Child Abuse – the physical, emotional, or sexual mistreatment of children.

Child Impact Seminar – A mandatory four-hour class for all parents going through a divorce or parenting dispute. The classes are to help teach parents how to minimize the negative effects on children of the break-up of their parents' relationship.

Child Support – The entitlement of all children to be supported by their parents until the children reach the age of majority (18) or graduate from high school.

Child Support Guidelines – a formula used by the court to determine the amount of child support the parent without residential responsibility should pay to the other parent.

Civil Annulment – see **Annulment**.

Class B Felony – a crime punishable with three and a half to seven years in state prison.

Closed Session – a hearing which no one is allowed to attend except for the grand jury. The grand jury hears the evidence presented by the County Attorney's office against the defendant. The defendant is usually not present.

COBRA Law (NH equivalent law: RSA 415:18 VII) – a federal law which requires companies to allow former employees to remain on the company's insurance for up to 18 months, during which time the employee pays 100% of the insurance premium. In case of a Social Security designated disability, coverage may be extended to 29 months. For a spouse following a divorce, the benefit period runs up to 36 months. There may be federal programs that help pay portions of COBRA elected premiums.

Collaborative Law – an alternative dispute resolution technique for resolving conflicts and reaching agreements using cooperative strategies rather than adversarial techniques and litigation. It recognizes the need for each party to have an attorney, but avoids the involvement of the Court.

Common-Law Marriage (RSA 457:39) – a relationship in which a couple lives together as though they are married for three years or more, without having gone through a legal ceremony. It is recognized in NH only upon death.

Compensation (RSA 21-M:8-h) – financial reimbursement for any damages and suffering that a victim may have received as a result of abuse. This can be sought through civil action against the abuser.

Contempt – when a court order is willfully and knowingly violated.

Contested Divorce – a divorce where the parties are unable or unwilling to come to a mutual agreement and must have the court decide the issues in dispute.

County Attorney – an attorney employed by the county who prosecutes felony cases in the Superior Court.

Course of Conduct – two or more acts over a period of time, however short, which show a continuity of purpose.

Crime Against the State – once a crime has been reported to the police and an arrest has been made, the decision of whether the case continues in the court system, is up to the police and prosecutor.

Crisis Center – a program established to provide free 24-hour confidential emergency support and assistance, 7 days a week, to victims of domestic violence, stalking, sexual assault, and sexual harassment regardless of age, race, gender, sexual orientation, economic status, physical or cognitive ability, and political or philosophical beliefs. Reports of child abuse are not confidential and crisis centers and advocates are required by law to report them.

Crisis Center Advocate (RSA 173-C) – an individual from a crisis center who works with victims and survivors of domestic abuse, sexual violence, stalking and sexual harassment providing confidential (with the exception of reports of child abuse) emotional support and assistance with legal, social service and medical issues.

Custody – See Parenting Rights and Responsibilities.

Debt – money or something of value that is owed to another.

Decision-making Responsibility – parents' right to access a child's school and medical records and to participate in the major decisions of a child's life.

Defendant – the person who is accused of a crime.

Demand for Rent – the first notice in the eviction process.

Department of Justice – headed by the Attorney General, the Department of Justice acts as the chief law enforcement officer and prosecutor for the State of New Hampshire.

Disposition – final settlement or sentencing of a criminal case.

Discovery – process by which a party is granted the right, by the court, to have access to information needed for a court case, including access to income and assets information in divorces and other support cases, including evictions.

Discretionary Stay – a stay of up to 90 days granted by the court during which the writ of possession is delayed.

Discrimination – choosing or denying people on the basis of prejudice or unfair preference.

District Court – a state municipal court of general jurisdiction.

Divorce – the legal termination of marriage.

Documented Immigrant – lawful permanent residents, temporary residents under the IRCA amnesty program, in status aliens, refugees, asylees, persons granted cancellation of removal (formerly withholding of deportation) or paroled for at least one year; Cuban and Haitian entrants; and battered spouses and children with a pending or approved spousal visa, or petition for relief under the Violence Against Woman Act.

Domestic Violence – violence toward or physical abuse of one’s spouse or domestic partner.

Domestic Violence Petition – a court form that serves as an application for a protective order.

Domestic Violence Protective Order – a court order available to someone who has been subject to actual or threatened physical violence by a family or household member, or a current or former intimate or sexual partner.

DOVE Project – free legal representation for final protective order hearings in domestic violence proceedings accessed through domestic violence and sexual assault crisis centers.

Emergency Protective Order – a protective order that can be obtained when the courts are closed. The process can be completed by contacting local or state police. They will fill out the necessary paperwork and contact a judge via telephone.

Equitable Powers – the power of the courts to make orders other than awards of money in order to obtain a fair result; the power to issue restraining orders, injunctions, etc.

Equitably – fairly.

Evaluator – a neutral person who attempts to settle a divorce between two people through neutral evaluation.

Eviction Notice – a landlord’s written notice given personally to a tenant to vacate the premises for nonpayment or other material breach of a lease/rental arrangements. The notice must state the specific reason(s) for eviction.

Ex Parte – a request for emergency assistance from the courts under circumstances when someone is at immediate risk of personal harm or serious damage to property and where it is not possible or advisable to notify the other party before the court considers the request.

Family Division Court – the courts in which cases relating to family matters are heard and dealt with, including divorces, parenting disputes between unmarried parents, child support, abuse and neglect, juvenile delinquency, adoptions, and guardianships of minors.

Fault Grounds – When a spouse claims in a divorce proceeding that he/she has been a good and faithful spouse and the other party has committed one of approximately nine different faults that caused the breakdown of the marriage.

Fee Agreement – a document prepared with your lawyer that explains clearly the legal fees charged by the lawyer, including what services the lawyer will provide; the type and amount of fees for these services; and the billing practices of the lawyer.

Felonious Sexual Assault – a crime which involves unwanted sexual contact which causes serious bodily injury, sexual contact with a person under 13 years of age, and any sexual relations with a person between the ages of 13 and 16.

Felony – a criminal offense punishable by more than one year in jail and/or a monetary fine of more than \$2,000.

Final Stipulation – see “Stipulation.”

Good Cause – a parent with residential responsibility receiving public assistance or Medicaid can claim good cause not to have child support established if the parent can verify that cooperating with the Office of Child Support is not in the best interest of the child (for example, if there is risk of physical or emotional harm to the parent or child).

Grand Jury – a group of 12-23 citizens whose duty it is to hear the evidence and accusations that have been made against the defendant, and decide whether there is enough evidence to bring the case to trial.

Guardian Ad Litem – someone appointed by the court to represent minor children in a contested parenting dispute. The “GAL” investigates and makes recommendations to the court on parental rights and responsibility issues.

Hostile Working Environment – work site where victim is subject to repeated unwelcome sexual comments, innuendoes, and touching which alter conditions or interfere with school or work performance, as well as access to opportunities the employer provides.

Hung Jury – a jury unable to make a unanimous decision in a trial.

Immigrant – a person from another country who has entered the United States. Immigrants can be documented or undocumented. **Documented immigrants** can include, but are not limited to, lawful permanent residents, temporary residents under the IRCA amnesty program, in status aliens, refugees, asylees, persons granted cancellation of removal (formerly withholding of deportation) or paroled for at least one year; Cuban and Haitian entrants; and battered spouses and children with a pending or approved (a) spousal visa, or (b) petition for relief under the Violence Against Women Act (further explained in the domestic violence section of this Handbook). An **undocumented immigrant** is a person who has entered the U.S. without inspection or has entered lawfully and has overstayed his/her visa.

Impound – to take possession of property against the will of the owner for protective purposes.

Incest – sexual relations between persons so closely related that they are forbidden by law or religion to marry.

Income Assignment – when a designated amount of pay is withheld automatically from the paycheck of the person paying support and sent directly to the other parent.

Indictment – a formal charge against the defendant, if a Grand Jury believes a crime has been committed.

International Child Abduction – the violation of a parenting plan by taking the children to a different country.

Joint Petition – a court petition filed by both parties, thus eliminating the need for serving divorce papers through a sheriff.

Jurisdiction – the cities, towns or states over which a court has power to hear cases.

Legal Separation – a legal process similar to a divorce, addressing the same issues (decision-making and/or residential responsibility, support, etc.), but at the end of which the couple is still married but living separately.

Marriage License – A document that authorizes a couple to get married, usually available from the city or town clerk's office where the couple resides.

Marital Estate – all of the property of a married couple, including assets (e.g., real estate, automobiles, bank accounts, retirement accounts, pensions, vehicles, household goods, etc.) and debts, regardless of whose name the asset or debt is titled to.

Marital Master – a judge-like official who hears family-related cases that do not involve a criminal case in which the defendant could receive jail time.

Mediation – a non-adversarial process in which a neutral third party acts to encourage and help disputing parties reach a mutually acceptable agreement. (Mediation may not work well in relationships where physical or emotional abuse is occurring or has occurred. In these cases mediation may be dangerous).

Misdemeanor – a criminal offense punishable by a prison sentence of less than one year and a monetary fine of less than \$2,000.

Neutral Evaluation – an alternative dispute resolution method where a neutral third party assists in resolving disputed issues and providing a professional, impartial opinion on what the likely outcome of an unresolved issue may be, given the strengths and weakness of the case.

No Contact – an order which may be included in bail conditions, which states that the accused is prohibited from contacting you or your family.

No-Fault Grounds – a ground for divorce in which irreconcilable differences are cited as the cause for the breakdown of the marriage.

Notice of Intent to Appeal – allows a person to appeal an eviction ruling to the New Hampshire Supreme Court if filed with the district court within seven days of the court’s decision.

Orders of Notice –an order issued by the court at the beginning of a case requiring the party who filed a petition to ensure that the other party is given proper notification of the case, either by being served by a sheriff with copies of the “Petition for Divorce” or being mailed the notification by certified mail.

Parent with Residential Responsibility – parent with whom the children live most of the time.

Parenting Plan – a court order or agreement between parents that addresses all issues relating to children who are under the age of 18.

Parenting Rights and Responsibilities – New Hampshire law no longer refers to **custody** of minor children. Instead, the law refers to parental rights and responsibilities for the children of parents who are divorcing or, if not married, to those living separately. It is the legal authority to make decisions affecting a child’s interests (decision-making responsibility) and the responsibility of taking care of the child (residential responsibility).

Parole – the conditional release of a person from prison prior to the end of the sentence imposed.

Paternity – the fact of a biological relationship of a father with a child.

Permanent Stipulation – a final agreement settling a divorce dispute.

Personalized Safety Plan – A paper with the numbers of your local crisis center, contact persons, places where you (and your children) can go in the case of an emergency, and suggestions to help you insure your personal safety.

Petition for Divorce – a document stating the basic history of a marriage, the reason for divorce, and the requests being made of the court.

Petitioner – the person who initiates a divorce or other family related case.

Plaintiff – a person who begins a court action.

Plea Bargaining – the process where the accused in a criminal case and the prosecuting attorney work out a mutually satisfactory agreement, which then goes before the court for approval.

Pre-Sentence Investigation – an investigation of the defendant’s past behavior done by a probation officer for the benefit of the court. This information is used in considering the terms of the defendant’s sentence.

Primary Residential Responsibility – an arrangement where the children live with one parent most of the time.

Pro Bono – free legal representation.

Pro Se – representing oneself in a court action or procedure.

Probable Cause Hearing – a hearing in which it is determined whether or not there is enough evidence to proceed with a criminal trial.

Probation – the conditional release of an offender under the supervision of a probation officer.

Property Division – the division of the marital estate between a couple after a divorce.

Protective Order – see **Domestic Violence Protective Order**.

Qualified Domestic Relations Order (QDRO) – A court order that divides a pension or retirement plan at the time of a divorce.

Rape Drug (Drug-Induced Rape Prevention Act of 1996) – a drug, such as GHB or Rohypnol, which is used to render someone helpless or unconscious for the purpose of committing a sexual assault.

Reduced Fee Referral Program – a legal referral service provided by the N.H. Bar Association which provides statewide referrals to lawyers at a reduced fee to qualified individuals who can afford to pay something for an attorney’s services, but who cannot afford an attorney’s regular fees.

Refugee – a person outside of his or her country of nationality who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Residential Responsibility – refers to the schedule of time that children spend in their separated parents’ homes.

Respondent – *an individual* who is being sued and must respond to the petitioner’s complaint.

Restraining Order – An order from a court directing one person not to do something, such as make contact with another person, enter the family home or remove a child from the state.

Retaliation – the illegal firing or punishing of an employee who makes or files a complaint in good faith.

Return Date – a court deadline found on the orders of notice or writ delivered by law enforcement. An appearance must be filed before this date in order to avoid being defaulted.

Revised Statute Annotated – Abbreviated as RSA, these are the complete compilations of New Hampshire’s statutory law.

Right to Cure – the ability to avoid eviction if back rent plus \$15 is paid by the date the notice to quit expires.

SANE – sexual assault nurse examiner.

Sentence – punishment in a criminal case.

Sentencing Hearing – a hearing to impose the sentence of the accused in a criminal case.

Section 504 Coordinator - the individual in a school district who is in charge of complaints relating to disability discrimination and of protecting students with disabilities (Section 504 of the Rehabilitation Act of 1973) If you (as a student) or your child has been the subject of disability discrimination you may file a complaint with your district’s Section 504 Coordinator.

Settlement – The written agreement between the parties to a law suit resolving their differences without having a trial on the matter.

Sequester – to set apart.

Sexual Assault – formerly known as “rape,” is sexual contact with a person 13 years or older, against his/her will or without consent. It is punishable by up to one year in the House of Corrections.

Sexual Assault Medical Exam – a physical, gynecological exam performed to make sure the victim of a sexual assault is not physically hurt, and to collect evidence of a sexual assault.

Sexual Harassment – unwelcome sexual advances or conduct that create an intimidating, hostile or offensive environment.

Stalking – is behavior involving a course of conduct by a person such as following or harassing someone in a way that places another person in fear of his or her safety.

Stalking Protective Order – an order available from the court to someone who is being stalked.

Statute of Limitations – a declaration that no case will be brought forward after a certain amount of time (statutes vary depending on the type of case).

Stipulation – a legal agreement.

Superior Court – the county trial court.

Telephonic Order – an emergency protective order received at a police station, approved by a judge over the telephone.

Temporary Court Order – a court order, which is to last for a limited amount of time until the court can make a final order.

Temporary Protective Order – a protective order, which lasts for up to 30 days, or until the final hearing.

Title IX Coordinator – an individual appointed by a school district to investigate gender discrimination complaints.

Tort Lawsuit – a civil suit in which one sues another party because that party did something wrong that caused harm, seeking monetary compensation for pain and suffering, or damages caused.

Uniform Interstate Family Support Act – a law that covers the situation when the parent obligated to pay support lives in another state allowing the N.H. Division of Child Support Services to ask the other state to enforce New Hampshire orders.

Uncontested Divorce – a divorce where the parties are able to come to a complete agreement, in writing, about all of the issues in the divorce.

Undocumented Immigrant – a person who has entered the U.S. without inspection or has entered lawfully and has overstayed his/her visa.

Unwelcome – conduct not wanted or not willingly permitted.

Victim Compensation – see **Compensation**.

Victim Impact Statement – statement that is prepared by a sexual assault victim prior to a criminal hearing, such as a sentencing hearing.

Victim/Witness Advocate – advocates available through the prosecutor's office to assist victims with criminal processes.

Visitation Center – (also known as child access centers) are used by families where the parents are separated or divorced, and have difficulties exchanging the children due to domestic violence, sexual assault or substance abuse. These centers provide a neutral setting in which children can maintain contact with a parent while ensuring the safety of all family members. Visitation centers may charge fees for their services.

Warrant – a judicial writ authorizing an officer to make a search, seizure, or arrest or to execute a judgment.

Writ – legal action that a landlord can take if a notice to quit has expired and the tenant has not left the premises.

Writ of Possession – authorizes a landlord to take possession of the property.

RESOURCE DIRECTORY

SERVICE PROVIDERS: WORKING WITH TRAINED LANGUAGE INTERPRETERS	122
THE EARNED INCOME CREDIT	124
LEGAL SERVICES IN NEW HAMPSHIRE	
FINDING AND HIRING A LAWYER	125
LEGAL INFORMATION & REFERRALS	128
LOW COST & PRO BONO LEGAL SERVICES	128
OTHER LEGAL SERVICES	129
STATE, FEDERAL, AND PRIVATE AGENCIES	132
NEW HAMPSHIRE VISITATION CENTERS	134
NEW HAMPSHIRE COURTS	
SUPERIOR COURTS	141
DISTRICT COURTS	142
FAMILY DIVISION	144
NEW HAMPSHIRE VICTIM/WITNESS ASSISTANCE PROGRAMS	146
NH SEXUAL ASSAULT, DOMESTIC VIOLENCE AND STALKING SUPPORT SERVICES	147
EVALUATION OF HANDBOOK	151
DONATIONS	152

❖ SERVICE PROVIDERS: WORKING WITH TRAINED LANGUAGE INTERPRETERS

Language and cultural barriers can prevent individuals and families from full access to essential social services. Additionally, the quality of service often depends on clear communication. Without a shared language, communication only can be achieved through a trained interpreter.

TITLE VI OF THE U.S. CIVIL RIGHTS ACT OF 1964 states that “...no person in the United States shall, on grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” **THE DEPARTMENT OF HEALTH AND HUMAN SERVICES** considers lack of interpretation services a form of discrimination. The **OFFICE FOR CIVIL RIGHTS** states that failure to remove language barriers constitutes a violation of equal access and a denial of services: “To avoid such discrimination against LEP [Limited English Proficiency] persons, a recipient [of Federal funds] must assume the responsibility for providing bilingual staff or interpreters.”

Any agency that receives federal funds is obligated by Title VI to supply trained interpreters for clients who need them in order to acquire services equal to English-speaking clients. Federally assisted programs include the State Children’s Health Insurance Program (SCHIP), Medicare, Medicaid, Temporary Assistance to Needy Families (TANF), Head Start, public schools, basic health care such as hospitals and clinics, law enforcement and other governmental agencies.

INTERPRETER SKILL REQUIREMENTS

Studies have shown that many errors occur when service providers use untrained interpreters. Interpretation skills are much more than simple translation. They include:

- ▶ **Cultural knowledge.** Service providers and interpreters should have knowledge of cultural beliefs and practices and integrate this knowledge into service delivery.
- ▶ **Cultural interpretation.** Service providers and interpreters must be able to interpret western concepts into the cultural framework of the client and respond appropriately to client questions and concerns.
- ▶ **Language skills.** Interpreters must be fluent in English and the client’s primary language; familiar with formal and slang terms in the client’s language; and able to communicate with people of different economic classes and educational backgrounds.
- ▶ **Specialized terminology and concepts.** Interpreters must be familiar with the terminology and concepts of the field. Providers working with interpreters must be able to communicate in a way that clients can understand.

- ▶ **Consumer rights.** Service providers and interpreters must be familiar with client rights, particularly the right to confidentiality. This is particularly important in smaller communities where many people are related and tend to know each other.
- ▶ **Client — Service Provider — Interpreter dynamics.** Service providers and interpreters must understand and be sensitive to the dynamics involving clients, providers and interpreters. This can involve practical issues such as how to arrange seating, and emotional issues such as how to best discuss sensitive topics like sexuality or mental health problems.

GUIDELINES FOR SERVICE PROVIDERS WORKING WITH AN INTERPRETER

- ▶ Use an interpreter if you are not fluent in the client's language.
- ▶ Avoid recruiting other clients to translate. If you must use another client, ask each person separately if they are comfortable with the arrangement.
- ▶ Be cautious about using staff untrained in interpreting. They may be unfamiliar with your professional terminology or uncomfortable with serving as an interpreter.
- ▶ Be cautious about using family members to interpret, particularly members of different generations or genders.
- ▶ Use a professional translator whenever possible. Ideally the translator will be the same sex and same age or older as the client. Brief the interpreter about any necessary background ahead of time. Ask the interpreter to brief you on basic greetings and courtesies.
- ▶ Translation is not for in-person meetings only. Use telephone translation if you are not fluent in the client's language.
- ▶ When using a translator:
 1. Look at the patient, not at the translator. Address the patient directly.
 2. Avoid using “jargon” or specialized terms of your profession.
 3. Use nonverbal communication as much as possible. Your tone and facial expressions can convey important messages.
 4. Expect a translated conversation to take longer than it would to speak directly to your client. Expect the rhythm of the conversation to be slow. The client must first think through the translation, and then formulate a response. You, in turn, will need to do the same.
 5. Avoid long uninterrupted monologues. They are much more difficult to process and, therefore, to respond to.
 6. The client's response should be more than a yes or no. If not, ask for clarification and elaboration.
 7. Provide instructions in the form of lists, preferably in the client's own language.
 8. Avoid idioms.

9. Speak slowly and articulate each word. Avoid the tendency to speak loudly, as this may be interpreted as hostility.
10. Use short, simple, concrete sentences. Use active verbs with clear sentence subjects.
11. Expect mistakes.

TRANSLATION SERVICES

If you or a client is in need of a language interpreter in a non-emergency situation, you can contact the **LANGUAGE LINE** at **800-752-6096**. The service provides three way telephone interpretation in more than 150 languages 24 hours a day, seven days a week. Certified Medical Interpreters also are available through the service.

In an emergency, you should dial 9-1-1 and request a telephone translator. For urgent non-emergency services, dial **603-271-7081** and request a 9-1-1 supervisor.

❖ THE EARNED INCOME TAX CREDIT

The Earned Income Tax Credit (EITC) is a tax credit offered through the federal tax system intended to reward work among low-income families, especially those with children. Those who qualify can pay less federal tax, or no tax, or get a tax refund. To qualify, you must meet certain rules and file a tax return, even if you do not owe any tax or did not earn enough money to file a tax return.

In most cases, any EITC payments you receive will not be counted as income to determine eligibility for Medicaid, Supplemental Security Income (SSI), food stamps, low-income housing, WIC or most Temporary Assistance to Needy Families (TANF) payments. However, if you do not spend your EITC payment within a certain period of time, for TANF and Medicaid it may count as an asset (or resource) and affect your eligibility.

To qualify, the tax filer must meet the following criteria:

- ▶ Have a valid social security number;
- ▶ Cannot file taxes as “married filing separately;”
- ▶ Must be a U.S. citizen or a resident alien all year; or a nonresident alien married to a U.S. citizen or a resident alien and filing a joint return;
- ▶ Cannot file Form 2555 “Foreign Earned Income” or Form 2555-EZ;
- ▶ You cannot be a qualifying child of another person.
- ▶ Cannot have an investment income of more than \$2,950 for 2008 tax returns; and,
- ▶ Must have earned income from employment or self-employment

You also must meet certain income requirements. For 2008 tax returns, both earned income and adjusted gross income must be:

- ▶ Less than \$33,995 for a taxpayer with one qualifying child (\$36,995 for married filing jointly) to be eligible for a credit of up to \$2,917;
- ▶ Less than \$38,646 for a taxpayer with two or more qualifying children (\$41,646 for married filing jointly) to be eligible for a credit of up to \$4,824;
- ▶ Less than \$12,280 for a taxpayer with no qualifying children and between ages 25 and 64 before the end of the year (\$15,880 for married filing jointly) to be eligible for a credit of up to \$438. You must live in the United States for more than half the year, and not qualify as a dependent of another person.

It is possible to receive advance payment of next year's EITC throughout the year and receive a tax refund too rather than wait and get the credit after filing your tax return. If you have a qualifying child, you may be able to get some of the EITC in your paycheck. Request Form W-5, "Earned Income Credit Advance Payment Certificate" from your employer.

Please note that EITC rules and income levels are subject to change each tax year. For more information, see the worksheet in the instructions for the tax form you file, call the nearest IRS office (listed in the yellow pages), or visit www.irs.gov.

Resources: UNH Cooperative Extension Publications Center to request the "2009 Advance Earned Income Tax Credit" (603) 862-2346

Also visit: <http://www.nheitc.org> NH EITC Alliance

The Low Income Taxpayer Project (603) 228-6028 (between 8:30 AM and 5:00 PM)

❖ LEGAL SERVICES IN NEW HAMPSHIRE

FINDING AND HIRING A LAWYER

Before hiring a lawyer, you first must identify your legal problem and then decide what type of legal representation you need. Many lawyers specialize in certain areas of the law, and a lawyer with expertise in one area – for example, divorce – may not be the best choice for another area – for example, criminal proceedings.

A variety of referral programs, listed later in this section, have been established to help individuals find appropriate legal representation. Many of these programs not only provide referrals to lawyers with specific specialties, but also help to determine if other types of assistance may be of benefit to you – for example, a problem that can be addressed, for no charge, by a community or state agency.

Selecting a Lawyer

If at all possible, select a lawyer when you are not in crisis and in need of immediate legal representation. In many situations, doing some “comparison shopping” of lawyers will help you to find one with whom you can work comfortably and with full confidence. Some considerations in hiring a lawyer include:

- ▶ Do you and the lawyer have the same goal for the case?
- ▶ Do you believe the lawyer has the expertise and experience to handle your case?
- ▶ Do you understand the lawyer’s explanation of what your case may involve, including a timetable of the case, when and how often the lawyer intends to contact you, and how closely you will be involved in the lawyer’s work?
- ▶ Do you understand and agree with the lawyer’s billing practices?

The Consultation

Meeting with a few lawyers to discuss your case may help you decide which lawyer to hire. While some lawyers do not charge for an initial consultation, others do. Be sure to ask the lawyer if there is a fee for this visit and, if so, how much it will be. You can expect the first meeting to be short, usually no longer than a half-hour.

Your consultation will be most productive if you are fully prepared. Present your situation in an organized and concise way, being sure to include dates and times whenever possible. It may be helpful to write this information down, highlighting the most important points. Bring the names, addresses, and telephone numbers of everyone connected with the case, along with important documents related to the situation – photographs, accident reports, police reports, court documents, etc. The goal is to present your situation in such a way that the lawyer can determine quickly if the matter is the type that he or she is willing and able to handle.

You should feel free to ask the lawyer questions during this meeting, including what other cases like yours the lawyer has handled and the outcomes of these cases. Ask if the lawyer will work on your case personally. If not, request a meeting with the lawyer who will handle your case. How long can you expect the case to take, and how can or will you be expected to participate? Finally, be sure to understand fully how and for what services you will be charged.

The Fee Agreement

You always should ask for a written **fee agreement** from your lawyer. The fee agreement should explain clearly the legal fees charged by the lawyer, including what services the lawyer will provide; the type and amount of fees for these services; and the billing practices of the lawyer. See below for some common fee arrangements used by lawyers for legal services.

In addition to legal fees, you will be charged for the costs associated with your case. Costs include fees charged by the courts as well as expenses incurred by

the lawyer to prepare and present your case. Typical costs include court filing fees; consultant charges; witness fees; travel expenses related to the case, among others. You can ask, as part of your written fee agreement for an estimate of expected costs.

Some other issues to consider when writing a fee agreement include:

- ▶ Who else will be working on the case? (paralegals, legal assistants, and other support staff)
- ▶ How will that legal time be billed?
- ▶ How will costs incurred be paid? Will these be paid directly by you, or by your lawyer for later reimbursement from you?
- ▶ Are there ways to reduce legal fees and costs?
- ▶ How will you be billed and can a payment schedule be arranged?
- ▶ With a completed fee agreement, you will have a concrete sense of the lawyer's estimate of the total charges. However, remember that an estimate is simply a calculated guess and that the total amount may change as circumstances change.

Legal Fees

A lawyer's fees can depend on several factors, including the expertise of the lawyer and the complexity of your case. Not all lawyers charge the same fees, although there are a few common fee arrangements.

- ▶ **Fixed fee.** Most often used for routine legal matters, a fixed fee is a standard fee the lawyer may charge all clients—for example, drawing up a simple will. Be sure you know what the fee does and does not include and any other charges that may be added to the bill.
- ▶ **Hourly fee.** Many lawyers charge on an hourly basis. The hourly rate can vary widely from lawyer to lawyer, depending on the lawyer's years of experience, level of expertise, and reputation. If you will be paying hourly fees, ask your lawyer to estimate the amount of time your case will take.
- ▶ **Retainer fee.** Sometimes considered a “down payment” for legal services, legal fees are deducted from the retainer, at the agreed upon hourly rate, until the retainer is used up. Always ask if the retainer is refundable if it is not all used up.
- ▶ **Contingency fee.** When you are suing someone for money (for example, in an accident or personal injury case), a contingency fee agreement means that you will pay your lawyer a percentage of the money you recover. If you lose your case, the lawyer is not paid legal fees. All contingent fee agreements must be in writing, stating what percentage of the money recovered will be paid to the lawyer and whether this percentage is figured before or after costs associated with the case have been paid. Contingency fee percentages of 33% are common; any percentage in excess of 40% may

be unethical. You should note that, whether or not you win your case, you still have to pay any court costs and expenses related to your case. Also, you should note that, in New Hampshire, lawyers are not permitted to charge contingency fees in divorce cases.

- ▶ **Statutory fee.** For certain matters, the court either sets or must approve the fee you will pay.

This information has been adapted with permission from: “Selecting, Hiring, and Working With A Lawyer,” published by the Public Information Committee of the New Hampshire Bar Association. To request a copy of the brochure, free of charge, contact the NEW HAMPSHIRE BAR ASSOCIATION at 603-224-6942 or visit www.nhbar.org.

LEGAL INFORMATION & REFERRALS

The agencies listed below provide legal information – not legal advice or representation – for common issues.

- ▶ **LAWLINE OF THE NEW HAMPSHIRE BAR ASSOCIATION (603-224-6942 or 800-868-1212)** is staffed by volunteer lawyers on the second Wednesday of each month between 7:00 and 9:00 p.m.
- ▶ **LEGAL ADVICE LINE OF THE SENIOR CITIZEN’S LAW PROJECT (SCLP) (603-624-6000 IN MANCHESTER; 888-353-9944 STATE-WIDE)**, operated by **NEW HAMPSHIRE LEGAL ASSISTANCE**, is staffed by attorneys to provide free legal advice to senior citizens 60 and older regardless of income.

The following legal services provide legal advice, referrals or representation, some for reduced fees, or free legal services:

- ▶ **LAWYER REFERRAL SERVICE (LRS) (603-229-0002) LRSreferral@nhbar.org.** Created by the **NEW HAMPSHIRE BAR ASSOCIATION**, LRS will help you define and narrow your legal problem and refer you to a lawyer in your area who handles your type of case. A referral provides callers with a half-hour consultation with a lawyer for \$25.00, paid at the time of consultation. If a referral to a lawyer is not appropriate, staff may refer you to other service agencies. *Note that LSR is not a legal assistance program and offers no free services.*
- ▶ **REDUCED-FEE REFERRAL PROGRAM OF THE NH BAR ASSOCIATION (603) 715-3290 Reducedfee@nhbar.org.** The program is for individuals who need a lawyer but may have trouble paying legal fees. Panel members have agreed to negotiate reduced rates with the client based on the complexity of the case and the financial circumstances of the client. The program does not handle “fee-generating” cases, such as personal injury, and cannot provide referrals when court-appointed counsel is available. *There are no free legal services through the Reduced Fee Referral Program*

- ▶ **NEW HAMPSHIRE PRO BONO REFERRAL PROGRAM** Pro Bono links low-income people with volunteer attorneys who provide free legal services in family law, bankruptcy, consumer, housing, and senior citizen matters. Most individuals must apply through the Legal Advice and Referral Center at 1 (800) 639-5290 or 224-3333. If seeking help with bankruptcy and/or debt collection, callers should contact the Pro Bono Program directly at 224-5387.
- ▶ **The LOW-INCOME TAXPAYER PROJECT** assists qualified individuals with federal income tax disputes through referrals to volunteer attorneys for free advice and/or representation. 228-6028
- ▶ **The DOVE Project** – the Domestic Violence Emergency Project provides free legal representation for qualifying survivors of domestic violence at final restraining order hearings. Call your local crisis center or 866-644-3574 Domestic Violence Hotline.
- ▶ **IMMIGRATION LAWYER REFERRAL SERVICE (ILRS) (800-954-0254).** Operated by the **AMERICAN IMMIGRATION LAWYERS ASSOCIATION**, this service can help you find an immigration attorney in your area that specializes in your type of case. In addition, the **INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE (603-647-1500)** can provide referrals to lawyers throughout New Hampshire specializing in immigration law and in the representation of immigrants in the legal system.
- ▶ **ALTERNATE DISPUTE RESOLUTION.** Overseen by the SUPERIOR COURT and FAMILY DIVISION, Alternate Dispute Resolution includes mediators and neutral evaluators to work with parties in resolving disputed issues in civil cases, including divorce and parenting rights and responsibilities. A list of state-certified mediators and neutral evaluators is available in each SUPERIOR COURT or FAMILY DIVISION or at www.courts.state.nh.us/adrp/index.htm.
- ▶ **COLLABORATIVE LAW ALLIANCE OF NEW HAMPSHIRE.** The Alliance maintains a directory of lawyers trained in collaborative law for resolution of civil cases, including divorce and parental rights and responsibilities. Write P.O. Box 2161, Concord, NH, 03302 or visit www.collaborativelawnh.org.

❖ OTHER LEGAL SERVICES

LEGAL ADVICE & REFERRAL CENTER (LARC)

(800) 639-5290 (in-state only) (603) 224-3333

www.mv.com/ipusers/larc/index.htm

A private, non-profit legal service agency staffed by attorneys and paralegals, LARC assists individuals who meet financial eligibility requirements. Staff provides legal information, legal advice, referrals to other agencies and, in limited cases, direct representation. LARC concentrates on four main areas of law:

- ▶ Family (divorce/separation, unwed parenting rights and responsibilities, child support, guardianship);

- ▶ Public Benefits and Welfare (local welfare, Chapter 8, SSI, SSD, TANF);
- ▶ Housing (landlord/tenant disputes, evictions, and fair housing); and
- ▶ Consumer (debt collection, bankruptcy, consumer protection).

PROCEDURE. Intake for new clients is between 9:00 a.m. and 1:00 p.m., Monday, Tuesday, Thursday, and Friday; between 4:00 and 7:00 p.m. on Wednesdays. LARC speaks with approximately 125 people every day, so the lines are frequently busy. The phones are answered by an automated system that directs callers to a line for the area of law they need. A receptionist assists in selecting a line for those who do not know which line to select. *Callers with court hearings, or who are in danger, should speak with the receptionist.*

LARC also screens for and refers clients to the Pro Bono Program of the **NEW HAMPSHIRE BAR ASSOCIATION** and special programs of **NEW HAMPSHIRE LEGAL ASSISTANCE** when the case fits that program’s criteria or priorities.

NEW HAMPSHIRE LEGAL ASSISTANCE (NHLA)

(Regional offices listed below) www.nhla.org

NHLA is a non-profit law firm providing legal advice and representation in civil matters to people who cannot afford to pay for a lawyer. Attorneys and paralegals answer questions and provide high quality legal services to eligible callers on a broad range of legal issues, including:

- ▶ Domestic violence;
- ▶ Housing;
- ▶ Public benefits and assistance;
- ▶ Disability benefits; and
- ▶ Senior Citizen Law Project.

PROCEDURE. Intake for new clients is done Mondays, Wednesdays and Fridays from 9:00 a.m. to 12:00 p.m. Written and walk-in applications also are accepted. Calls are screened for problem type and financial eligibility. If NHLA cannot handle your case, you will be referred to other appropriate agencies.

BERLIN

1131 Main Street, Berlin, NH 03570
(800) 698-8969 (in state only) (603) 752-1102

CLAREMONT

24 Opera House Square, Claremont, NH 03743
(800) 562-3994 (in-state only) (603) 542-8795

CONCORD

117 North State Street, Concord, NH 03301
(800) 921

LITTLETON

58 Main Street Littleton, NH 03561
(800) 548-1886 (in-state only) (603) 444-8000

MANCHESTER

1361 Elm Street, Suite 307 Manchester, NH 03101
(800) 562-3174 (in-state only) (603) 668-2900

NASHUA

21 E. Pearl Street, Nashua, NH 03060
(800) 517-0577 (in-state only) (603) 598-3800

PORTSMOUTH

Simeon Smith House 412 The Hill, P.O. Box 778 Portsmouth, NH 03802
(800) 334-3135 (in-state only) (603) 431-7411

SPECIAL PROJECTS OF NEW HAMPSHIRE LEGAL ASSISTANCE (please note: most projects have different intake hours and some have different phone numbers than outlined above):

- ▶ **HOUSING JUSTICE PROJECT (HJP)** provides legal representation for victims of housing discrimination and conducts educational forums. The Project also helps disabled persons obtain reasonable accommodations for their disabilities and provides referrals to attorneys and agencies, when appropriate. For assistance call Monday through Friday 9:00 a.m. to 5:00 p.m. **800-921-1115** (in-state only) or **603-669-4960** (Manchester).
- ▶ **DOMESTIC VIOLENCE ADVOCACY PROJECT (DVAP)** provides civil legal services for low-income victims of domestic violence, focusing on cases involving decision-making and/or residential responsibility of children. The Project will assist victims in obtaining restraining orders, parenting plans, visitation orders, modifications, child support, and divorces. For assistance call Monday through Friday 9:00 a.m. to 5:00 p.m. **800-562-3174** (in-state only) or **603-668-2900** (Manchester).
- ▶ **SENIOR CITIZENS LAW PROJECT (SCLP)** offers legal advice and representation in areas such as: social security, supplemental security income, Medicaid/Medicare, nursing home resident rights, elderly housing issues, property tax relief including the Senior Advice Line on various civil law issues. NH residents over age 60 are eligible. 1-888-353-9944 or (603) 624-6000.

CIVIL PRACTICE CLINIC OF FRANKLIN PIERCE LAW CENTER

(603) 225-3350 www.piercelaw.edu

Primarily serving Merrimack County, students of the Franklin Pierce Law Center provide legal services to low-income clients under the supervision of lawyers and center faculty. Cases handled by the clinic include consumer fraud,

foreclosure and predatory lending, debt collection defense, landlord-tenant disputes, bankruptcy, business start-ups, copyright, intellectual property disputes, patent licensing, court appointed criminal cases, Department of Employment Security (unemployment), Department of Health and Human Services cases, Department of Safety, and issues of small, nonprofit organizations.

DISABILITY RIGHTS CENTER (DRC)

(800) 834-1721 (603) 228-0432 www.drcnh.org

DRC provides representation to individuals with disabilities in legal and administrative matters that arise because of their disabilities. Low-income persons are provided with free legal services; others with higher incomes may be asked to pay for some of the cost. DRC does not charge for brief assistance of less than two hours. For assistance, call **800-834-1721** or **603-228-0432**.

**NH SEXUAL ASSAULT, DOMESTIC VIOLENCE
AND STALKING SUPPORT SERVICES**

See end of this Resource Directory

NEW HAMPSHIRE DOMESTIC VIOLENCE HOTLINE

1-866-644-3574

Offers assistance 24 hours a day, 365 days a year. Services include 24 hour crisis lines, emergency shelters, transportation to emergency shelters and court advocacy.

NEW HAMPSHIRE SEXUAL ASSAULT HOTLINE

1-800-277-5570

Offers assistance 24 hours a day, 365 days a year. Services include 24 hour crisis lines, emergency shelters, transportation to emergency shelters and court advocacy.

NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS

2 Chenell Drive
Concord, NH 03301-8501

603-271-2767

www.nh.gov/hrc/

This state agency is dedicated to eliminating discrimination in employment, public accommodations and the sale or rental of housing or commercial property because of age, sex, sexual orientation, race, creed, color, marital status, familial status, physical or mental disability or national origin. The commission has the power to receive, investigate and pass upon complaints of illegal discrimination and to engage in research and education designed to promote good will and prevent discrimination.

INTERNATIONAL INSTITUTE OF NEW HAMPSHIRE

(603) 647-1500

www.iiboston.org

The International Institute of New Hampshire offers low-cost services to the immigrant community in the Greater Manchester Area and throughout New Hampshire. For information about immigration issues and how they may affect you or your family, you can arrange for a consultation with the Staff Attorney. The Institute also assists in filling out any forms you may need including refugee green card applications, citizenship applications, replacement green cards, refugee travel documents, re-entry permit applications, advance parole, affidavits of support, family visa petitions, fiancé visa petitions, simple family green card applications, visa lottery applications, and employment authorization applications. They can also assist with Asylum screening and referral, screening and referral for undocumented victims of domestic violence, and family reunification. Other services available include taking photos, notarizing documents, and assisting with translation of official documents. They will also refer you to other agencies as needed. Please call 1-603-647-1500 (Monday through Friday, 8:30 – 4:30) to make an appointment.

PARENT INFORMATION CENTER

(603) 224-7005 V/TDD

(800) 947-7005 (N.H. only)

www.parentinformationcenter.org

www.picnh.org

The Parent Information Center provides information, support, and educational programs for parents, family members, educators and the community. PIC is a recognized leader in building strong family/school partnerships along with promoting effective parent involvement in the special education process.

NEW HAMPSHIRE CATHOLIC CHARITIES

(603) 669-3030

(800) 562-5249

www.catholiccharitiesnh.org

The state's largest private, non-profit social service agency, New Hampshire Catholic Charities provides adoption and maternity services, immigration and refugee services, counseling, parenting classes, temporary or permanent homes for children and the elderly, services to persons with disabilities along with referrals and connections to other service agencies.

211 NEW HAMPSHIRE

2-1-1

1-866-444-4211

www.211nh.org

2-1-1 provides free information and referrals statewide for all human service needs.

SERVICELINK

Regional Offices listed below

www.state.nh.us/servicelink/index.html

Service Link provides information and supportive referrals about resources for older adults, adults living with disabilities, chronic illness, and their families and caregivers.

Belknap County		528-6945
Carroll County		323-9394
Coos County		752-6407
Grafton County	(Lebanon Office)	448-1558
	(Littleton Office)	444-4498
Hillsborough County	(Manchester Office)	644-2240
	(Nashua Office)	598-4709
Merrimack County		228-6625
Monadnock Region		357-1922
Rockingham County	(Portsmouth Office)	334-6594
	(Salem Office)	893-9769
Strafford County		332-7398
Sullivan County		542-5177

NEW HAMPSHIRE VISITATION CENTERS

<http://www.visitationcoop.org>

Hours & Services Vary. Please call Centers before visiting.

Visitation centers provide services needed to build safe and healthy relationships between children and their non-residential parents and/or other relatives. These services may include supervised visitation and exchange depending on the individual center.

All R Kids Supervised Visitation Center (ARK) (Serving the Monadnock Region)

24 Vernon Street
Keene, NH 03431
(603) 357-4661

Emerge Family Advocates (Serving NH in Sullivan and Southern Grafton Counties)

PO Box 1224
White River Junction, VT 05501
(802) 296-7663

**Merrimack County Visitation Center
(Serving Merrimack County)**

249 Pleasant Street, Suite 2
Concord, NH 03301
(603) 223-9907

**Greater Nashua Supervised Visitation Center
(Serving Southern Hillsborough County)**

15 Prospect Street
Nashua, NH 03060
(603) 598-7123 x3497

**YWCA Supervised Visitation & Child Exchange Center
(Serving Northern Hillsborough County)**

72 Concord Street
Manchester, NH 03101
(603) 625-5785

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

www.nhhfa.org
(603) 472-8623
1-800-640-7239

New Hampshire Housing promotes, finances and supports affordable housing opportunities and related services for New Hampshire families and individuals, and they serve as the primary source for housing data.

NEW HAMPSHIRE DEPARTMENT OF EMPLOYMENT SECURITY

The Department of Employment Security assists people to file for Unemployment Compensation benefits, along with helping with their career choices, changes and career adjustment. They will help employers find candidates that meet their job specifications.

10 West Street
PO Box 1140
Concord, NH 03302-1140
(603) 228-4100

518 White Mt. Highway
Conway, NH 03818-4205
(603) 447-5924

109 Key Road
Keene, NH 03431-3926
(603) 352-1904

426 Union St. Suite 3
Laconia, NH 03246-2894
(603) 524-3960

85 Mechanic St.
Lebanon, NH 03766-1506
(603) 448-6340

646 Union St. Suite 100
Littleton, NH 03561-5314
(603) 444-2971

300 Hanover St.
Manchester, NH 03104-4957
(603) 627-7841

6 Townsend West
Nashua, NH 03063-1217
(603) 882-5177

NEW HAMPSHIRE DEPARTMENT OF EMPLOYMENT SECURITY (cont.)

2000 Lafayette Rd.
Portsmouth, NH 03801
(603) 436-3702

243 Route 108
Somersworth, NH 03878
(603) 742-3600

29 So. Broadway
Salem, NH 03079-3026
(603) 839-9185

SOCIAL SECURITY ADMINISTRATION

www.ssa.gov

An independent government program that provides economic assistance to persons faced with unemployment, disability, or agedness, financed by assessment of employers and employees

New Hampshire social security offices:

70 Commercial St.
Suite 100
Concord, NH, 03301-5005

2 Wall St., Suite 301
Manchester, NH, 03101

34 Mechanic St.
Keene, NH, 03431

175 Amherst St.
Nashua, NH, 03064

177 Main St.
Littleton, NH, 03561

P.O. Box 209
Federal Bldg., Rm 200
Portsmouth, NH, 03802

Social Security decisions which are appealed to the Office of Disability Adjudication and Review for a decision before an Administrative Law Judge are held in the following locations:

Division of Adult Learning and Rehab
Disability Determination Services
21 South Fruit St., Suite 30
Concord, NH 03301

Office of Disability Adjudication
and Review
1750 Elm Street, Suite 303
Manchester, NH 03104

NEW HAMPSHIRE COMMISSION ON THE STATUS OF WOMEN

www.nh.gov/csw

Established by statute in 1969, the New Hampshire Commission on the Status of Women remains the only state agency exclusively devoted to enhancing opportunities and promoting positive change for the women of the state. Through policy analysis, legislative advocacy, and special programming, we work to strengthen the state as a whole by improving the lives of its women

25 Capitol Street, Room 212
Concord NH 03301-6312
(603) 271-2660

New Hampshire Department of Education

www.ed.state.nh.us/education

The Department of Education offers a wide variety of programs and services in support of New Hampshire's students, teachers, educators, administrators, families, and community members.

101 Pleasant Street
Concord, NH 03301-3860
(603) 271-3494

Citizens' Services Line: 1-800-339-9900

State Board of Education See:

<http://www.ed.state.nh.us/education/board/membership.htm>

NEW HAMPSHIRE DEPARTMENT OF JUSTICE

<http://doj.nh.gov>

New Hampshire Attorney General's Office	Office of Victim/Witness Assistance
33 Capitol Street	33 Capitol Street
Concord, NH 03301	Concord, NH 03301
(603) 271-3658	1-800-300-4500
	(603) 271-1284

US DEPT. OF LABOR

www.dol.gov/esa

Manchester Area Office
ESA Wage & Hour Division
1750 Elm Street - Suite 111
Manchester, NH 03104-2907
Phone: (603) 666-7716
1-866-487-9243

New Hampshire Department of Labor

www.labor.state.nh.us

The Department of Labor monitors Employers, Workers Compensation, and Insurance Carriers to insure that they are in compliance with NH Labor laws. These laws range from minimum wage, overtime, safety issues and workers compensation

Wage and Hours Division
95 Pleasant Street
Concord, NH 00301-3836
(603) 271-6294, (603) 271-1492

New Hampshire Department of Safety

www.nh.gov/safety

Enforces motor vehicle and highway safety laws, criminal laws, commercial vehicle regulations, fire safety, building and equipment safety laws and regulations, and boating safety laws and rules. They also provide enhanced 911 emergency communications statewide, and are responsible for homeland safety and emergency management activities.

Division of Fire Safety

33 Hazen Drive
Concord, NH 03301
(603) 271-3636

Division of Motor Vehicles

23 Hazen Drive
Concord, NH 03305

United States Department of Education

www.ed.gov

Office for Civil Rights
Customer Service Team
400 Maryland Ave. SW
Washington, DC 20202-1100
1-800-421-3481

United States Department of Labor Women's Bureau

www.dol.gov/wb/

Frances Perkins Bldg.
200 Constitution Ave. NW
Washington, DC 20210
Phone: 1-800-827-5335
or (617) 565-1988

JFK Federal Building
Room 525 A
Boston, MA 02203

United States Department of Justice

www.justice.gov

United States Department of State

www.state.gov

Office of Children's Issues
221 C Street, NW, SA-22, Room 2100
Washington, DC 20520-4818
1-888-407-4747

United States Equal Employment Opportunity Commission

www.eeoc.gov

JFK Federal Building
475 Government Center
Boston, MA 02203
1-800-669-4000
(617) 575-3196

National Center for Missing and Exploited Children

www.missingkids.com

A private, nonprofit organization, the National Center for Missing & Exploited Children's® (NCMEC) mission is to help prevent child abduction and sexual exploitation; help find missing children; and assist victims of child abduction and sexual exploitation, their families, and the professionals who serve them.

National 24-hour toll-free hotline, 1-800-THE-LOST® (1-800-843-5678), to take reports of missing children.

Charles B. Wang International Children's Building
699 Prince Street, Alexandria, VA 22304-3175

New Hampshire Department of Health & Human Services

www.dhhs.state.nh.us

Ombudsman 1-800-852-3345 ext. 6941
271-6941

The Ombudsman's Office assists clients, employees and members of the public to resolve disagreements related to matters within the jurisdiction of DHHS. The Ombudsman handles civil rights complaints against DHHS as well as DHHS employee grievances and disputes

Long Term Care Ombudsman 1-800-442-5460

271-4375

The Long-Term Care Ombudsman receives, services, investigates and resolves complaints or problems concerning residents of long-term health care facilities

Child Support Services
(603) 271-4745

Children, Youth & Families
(603) 271-4440

Abuse Reporting: 1-800-894-5533
(M-F 8-4:30; Emergency or After
Hours call local law enforcement)

Community Based Care Services
(603)271-8560

Behavioral Health
(603) 271-5007

Developmental Services
(603) 271-5034

Elderly and Adult Services
(603) 271-4394

Abuse Reporting: 1-800-949-0470

Public Health Services
1-800-852-3345 Ext. 4503
(603) 271-4501

Family Assistance
1-800-852-3345 Ext. 4238

Glenciff Home for the Elderly
(603) 989-3111

Juvenile Justice Services
(603) 625-5471

Medicaid Business & Policy
1-800-852-3345 Ext. 4334
(603) 271-4297

Homeless, Housing &
Transportation Services
1-800-852-3345 Ext. 5142
(603) 271-5142

Commission on Alcohol & Drug
Abuse Prevention
1-800-804-0909
(603) 271-6100

NH Department of Health & Human Services District Offices

The 12 District offices each provide residents of NH services through the divisions of: Child Support Services, Juvenile Justice Services, Children, Youth and Families, Elderly and Adult Services, and Family Assistance

231 Main Street
Berlin, NH 03570-2411
1-800-972-6111
(603) 752-7800

17 Water St. Suite 301
Claremont, NH 03743-2280
1-800-982-1001
(603) 542-9544

40 Terrell Park Dr.
Concord, NH 03301-7325
1-800-322-9191
(603) 271-6200

73 Hobbs St.
Conway, NH 03818-6133
1-800-552-4628
(603) 447-3841

809 Court St.
Keene, NH 03431-1712
1-800-624-9700
(603) 357-3510

65 Beacon St. W
Laconia, NH 03246-3468
1-800-322-2121
(603) 524-4485

80 N. Littleton Rd.
Littleton, NH 03561-3814
1-800-552-8959
(603) 444-6786

195 McGregor St. South Tower
Suite 110
Manchester, NH 03102-3749
1-800-852-7493
(603) 668-2330

19 Chestnut St.
Nashua, NH 03060-9311
1-800-852-0632
(603) 883-7726

30 Maplewood Ave. Suite 200
Portsmouth, NH 03801-3732
1-800-821-0216
(603) 433-8300

150 Wakefield St. Suite 22
Rochester, NH 03867-1300
1-800-862-5300
(603) 332-9120

154 Main St. Suite 1
Salem, NH 03079-3180
1-800-852-7492
(603) 893-9763

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

www.hud.gov

HUD's mission is to increase homeownership, support community development and increase access to affordable housing free from discrimination

451 7th Street, SW
Washington, DC 20410
(202) 708-1112

Manchester NH Field Office
275 Chestnut St. 4th Floor
Manchester, NH 03101-2487
(603) 666-7510

NEW HAMPSHIRE COURTS

<http://www.courts.state.nh.us>

Each of the websites for the following courts provides useful and updated information, forms and other material. Because of the current uncertainty of the funding of the courts, the following addresses may change at any time. Please check the NH Courts web site for any changes.

SUPERIOR COURTS

www.courts.state.nh.us/superior

The Superior Court has jurisdiction over a wide variety of cases, including criminal, and civil cases, and provides the only forum in this state for trial by jury. Some Superior Courts have jurisdiction over domestic relations, including divorce in areas where there is no family court.

Belknap County Superior Court

64 Court Street Suite 5
Laconia, NH 03246-3682
(603) 524-3570

Carroll County Superior Court

96 Water Village Rd, Box 3
Ossipee, NH 03864-0433
(603) 539-2201

Cheshire County Superior Court

12 Court Street
P.O. Box 444
Keene, NH 03431-0444
(603) 352-6902

Coos County Superior Court

55 School Street, Suite 301
Lancaster, NH 03584
(603) 788-4702

Grafton County Superior Court

3785 Dartmouth College Highway
RR 1 Box 65
North Haverhill, NH 03774
(603) 787-6961

Hillsborough County Superior Court Northern District

300 Chestnut Street
Manchester, NH 03101-2490
(603) 669-7410

Hillsborough County Superior Court Southern District

30 Spring Street
P.O. Box 2072
Nashua, NH 03061-2072

Merrimack County Superior Court

163 N. Main Street
P.O. Box 2880 Concord, NH 03302-2880
(603) 225-5501

Rockingham County Superior Court

10 Rt. 125 Brentwood, NH 03833
Mailing Address: PO Box 1258
Kingston, NH -03848-1258
(603) 642-5256

Strafford County Superior Court

279 County Farm Road, P.O. Box 799
Dover, NH 03820-0799
(603) 742-3065

Sullivan County Superior Court

22 Main Street
Newport, NH 03773
(603) 863-3450

DISTRICT COURTS

www.courts.state.nh.us/district

Cases within the jurisdiction of the district court involve families, domestic violence, juveniles, small claims, landlord tenant matters, minor crimes and violations and civil cases in which the disputed amount does not exceed \$25,000.

Note: The 2009 State Budget recommendations include closing the following courts: Hillsborough, New London, Plaistow, Claremont, Milford, Hooksett, Keene and Colebrook, please check with the courts.

Auburn District Court

5 Priscilla Lane Auburn, NH 03032
(603) 624-2084 (603) 624-2265

District Court For Northern Carroll County

35 E Conway Rd, Rte 302,
Center Conway, NH 03813
Mailing Address: PO Box 940,
Conway, NH 03818
(603) 356-7710

District Court For Southern Carroll County

96 Watervillage Rd., Box 2,
Ossipee, NH 03864
(603) 539-4561 539-5993

Berlin District Court

220 Main Street Berlin, NH 03570
(603) 752-3160

Claremont District Court *(Closure due to budget restrictions recommended – no date yet set)*

One Tremont Sq.-P.O. Box 313
Claremont, NH 03743
(603) 542-6064

Colebrook District Court *(Closure due to budget restrictions recommended – no date yet set)*

17 Bridge Street - P.O. Box 5
Colebrook, NH 03576
(603) 237-4229

Concord District Court

32 Clinton Street - P.O. Box 3420
Concord, NH 03302-3420
(603) 271-6400

Derry District Court

10 Manning Street Derry, NH 03038
(603) 434-4676

Dover District Court

25 Saint Thomas Street
Dover, NH 03820
(603) 742-7202

Durham District Court

All cases and pleadings now filed at
Dover District Court
25 St Thomas Street
Dover, NH 03820

Consolidated court: (603) 742-7202
Secure drop box at: Main Street
Durham, NH 03824
(603) 868-2323

Exeter District Court

Rockingham Justice Building- 10
Route 25
Brentwood, NH 03833
Mailing: P.O. Box 1149,
Kingston, NH 03848
(603) 642-9145

Franklin District Court

7 Hancock Terrace
Franklin, NH 03235-0172
(603) 934-3290

Goffstown District Court

329 Mast Road
Goffstown, NH 03045-0129
(603) 497-2597

Gorham District Court

See Berlin District Court

Hampton District Court

130 Ledge Road
Hampton, NH 03874
(603) 474-2637

Haverhill District Court

3785 Dartmouth College Highway
Box 10
North Haverhill, NH 03774
(603) 787-6626

Henniker District Court

Bldg 2, 41 Liberty Hill Rd
Henniker, NH 03242
(603) 428-3214

Hillsborough District Court

see Henniker District Court

Hooksett District Court

101 Merrimack Street
Hooksett, NH 03106
(603) 485-9220

Jaffrey/Peterborough District Court

84 Peterborough St – PO Box 39
Jaffrey, NH 03452 –0039
(603) 532-8698

Keene District Court

*(Closure due to budget restrictions
recommended – no date yet set)*

3 Washington Street
P.O. Box 364
Keene, NH 03431-0364
(603) 352-2559

Laconia District Court

26 Academy Square -P.O. Box 1010
Laconia, NH 03247-1010
(603) 524-4128

Lancaster District Court

55 School Street-Suite 201
Lancaster, NH 03584
(603) 788-4485

Lebanon District Court

38 Centerra Parkway
Lebanon, NH 03766-0247
(603) 643-3555

Littleton District Court

134 Main Street
Littleton, NH 03561
(603) 444-7750

Manchester District Court

35 Amherst Street -P.O. Box 456
Manchester, NH 03105-0456
(603) 624-6510

Merrimack District Court

Town Hall Building Baboosic
Lake Road
P.O. Box 324
Merrimack, NH 03054
(603) 424-9916
(603) 424-9917

Milford District Court

*(Closure due to budget restrictions
recommended – no date yet set)*

180 Elm Street – PO Box 943
Milford, NH 03055
(603) 673-2900

Nashua District Court

25 Walnut Street
Nashua, NH 03060
(603) 880-3333

New London District Court

*(Closure due to budget restrictions
recommended – no date yet set)*

Town Hall – 23 Seaman's Rd
P.O. Box 1966
New London, NH 03257
(603) 526-6519

Newport District Court

Courthouse Square –55 Main Street
Newport, NH 03773
(603) 863-1832

Plaistow District Court

*(Closure due to budget restrictions
recommended – no date yet set)*

Town Hall 14 Elm Street
P.O. Box 129
Plaistow, NH 03865
(603) 382-4651

Plymouth District Court
Courthouse - 26 Green Street
Plymouth, NH 03264
(603) 536-3326

Portsmouth District Court
111 Parrott Avenue
Portsmouth, NH 03801-4490
(603) 431-2192

Rochester District Court
76 North Main Street
Rochester, NH 03867-1905
(603) 332-3516

Salem District Court
35 Geremonty Drive
Salem, NH 03079
(603) 893-4483

Somersworth District Court
See Dover District Court

FAMILY DIVISION

www.courts.state.nh.us/fdpp/index.htm

The Family Division serves most counties in New Hampshire for judicial resolution to such family matters as divorce, parenting rights and responsibilities and visitation, child support, legal separation, paternity, domestic violence, juvenile delinquency, child abuse and neglect, and other child-related issues. (Note: The Family Division operates in 23 locations across the state in eight counties: Belknap, Carroll, Coos, Grafton, Merrimack, Rockingham, Strafford and Sullivan. In mid 2009, it is estimated that the Family Division will expand to Hillsborough and Cheshire counties. Cases are assigned to court locations based upon where parties live. All Family Division courts are open from 8 AM to 4 PM, Monday through Friday.

FAMILY COURTS

Berlin Family Division 220 Main Street Berlin, NH 03570	752-3160	Concord Family Division 32 Clinton Street Concord, NH 03301	271-0630
Brentwood Family Division PO Box 1208 Kingston, NH 03848-9998	642-6314	Conway Family Division 35 E. Conway Road, PO Box 448 Conway, NH 03818	356-7710
Claremont Family Division One Police Ct. Suite 2 Claremont, NH 03743	542-6064	Derry Family Division 10 Manning Street Derry, NH 03038	421-0077
Colebrook Family Division 17 Bridge Street, PO Box 5 Colebrook, NH 03576-0005	237-4229	Dover Family Division 25 St. Thomas Street Dover, NH 03820	743-5760
		Franklin Family Division 7 Hancock Terrace Franklin, NH 03235	934-3214

Goffstown		Littleton	
Family Division	627-2211	Family Division	444-3187
329 Mast Road		134 Main Street	
Goffstown, NH 03045		Littleton, NH 03561	
Henniker		Newport	
Family Division	428-3214	Family Division	863-1832
41 Liberty Road, Bldg 2		55 Main Street – Suite 2	
Henniker, NH 03242		Newport, NH 03733-0581	
Hooksett		Ossipee	
Family Division	485-9901	Family Division	539-4561
101 Merrimack Street		96 Water Village Road	
PO Box 16387		PO Box 4	
Hooksett, NH 03106-6387		Ossipee, NH 03864	
Haverhill		Plymouth	
Family Division	787-6820	Family Division	536-7609
3785 Dartmouth College Hwy		26 Green Street	
PO Box 9		Plymouth, NH 03264	
North Haverhill, NH 03774		Portsmouth	
Laconia		Family Division	433-8518
Family Division	524-7755	111 Parrott Avenue	
Belknap County Courthouse		Portsmouth, NH 03801-4490	
64 Court Street		Rochester	
Laconia, NH 03246		Family Division	742-5341
Lancaster		Grimes Justice &	
Family Division	788-4485	Administration Bldg.	
55 School Street – Suite 202		279 County Farm Road	
Lancaster, NH 03584		PO Box 799	
Lebanon		Dover, NH 03821-0799	
Family Division	643-3666	Salem	
38 Centerra Pkwy		Family Division	893-2084
Lebanon, NH 03766-0768		35 Geremonty Drive	
		Salem, NH 03079	

NEW HAMPSHIRE VICTIM/WITNESS ASSISTANCE PROGRAMS

These programs provide orientation, information and support throughout the judicial process within the Superior Courts and in some District Courts.

Office of Victim/Witness Assistance
Attorney General's Office
33 Capitol Street
Concord, NH 03301-6397
271-3671

Belknap County Victim/
Witness Program
64 Court Street
Laconia, NH 03246
527-5440

Carroll County Victim/
Witness Program
PO Box 218
Ossipee, NH 03864
539-7476

Cheshire County Victim/
Witness Program
PO Box 612
Keene, NH 03431
352-0056

Coos County Victim/Witness Pro-
gram
55 School St., Suite 102
Lancaster, NH 03584
788-3812

Grafton County Victim/
Witness Program
3785 Dartmouth College Highway,
Box 7
North Haverhill, NH 03774
787-2040

Hillsborough County North
Victim/Witness Program
300 Chestnut Street
Manchester, NH 03101
627-5605

Hillsborough County South
Victim/Witness Program
19 Temple Street
Nashua, NH 03060
594-3256

Merrimack County Victim/
Witness Program
4 Court Street
Concord, NH 03301
228-0529

Rockingham County Victim/
Witness Program
PO Box 1209
Kingston, NH 03848
642-4249

Strafford County Victim/
Witness Program
PO Box 799
Dover, NH 03821-0799
749-4215

Sullivan County Victim/
Witness Program
14 Main Street
Newport, NH 03773
863-8345

Victim's Assistance Commission
NH Attorney General's Office
33 Capitol Street
Concord, NH 03301
271-1284
1-800-300-4500

United States Attorney's Office
District of New Hampshire
James C. Cleveland Federal Bldg.
55 Pleasant St., Suite 312
Concord, NH 03301
225-1552

NH Department of Corrections
Victim Services
PO Box 1806
Concord, NH 03302-1806
271-1937

**NH SEXUAL ASSAULT, DOMESTIC VIOLENCE
AND STALKING SUPPORT SERVICES**

NH Statewide Domestic Violence Hotline: 1-866-644-3574

NH Statewide Sexual Assault Hotline: 1-800-277-5570

NH Coalition Against Domestic and Sexual Violence

PO Box 353, Concord, NH 03302-0353

603-224-8893 (Office)

General Web Site: www.nhcadv.org and

Teen Web Site: www.reachoutnh.com

The NH Coalition is comprised of 14 member programs throughout the state that provide services to survivors of sexual assault, domestic violence, stalking and sexual harassment. You do not need to be in crisis to call. Services are free, confidential, and available to everyone regardless of gender, age, health status (including HIV-positive), physical, mental or emotional ability, sexual orientation, gender identity/expression, socio-economic status, race, national origin, immigration status or religious or political affiliation. The services include:

- Support and information, available in person and through a 24-hour hotline
- Accompaniment, support, and advocacy at local hospitals, courts, and police departments
- Assistance with protective/restraining orders
- Referrals to legal services
- Peer Support Groups
- Access to emergency shelter
- Information and referrals to community programs
- Community and professional outreach and education

**RESPONSE to Sexual &
Domestic Violence**

54 Willow Street,

Berlin, NH 03570

1-866-644-3574 (DV crisis line)

1-800-277-5570 (SA crisis line)

603-752-5679 (Berlin office)

603-237-8746 (Colebrook office)

603-788-2562 (Lancaster office)

Turning Points Network

11 School Street

Claremont, NH 03743

1-800-639-3130 (crisis line)

603-543-0155 (Claremont office)

603-863-4053 (Newport office)

www.free-to-soar.org

**Rape and Domestic Violence
Crisis Center**

PO Box 1344

Concord, NH 03302-1344

1-866-644-3574 (DV crisis line)

1-800-277-5570 (SA crisis line)

603-225-7376 (office)

www.rdvcc.org

**Starting Point: Services for
Victims of Domestic & Sexual
Violence**

PO Box 1972

Conway, NH 03818

1-800-336-3795 (crisis line)

603-356-7993 (Conway office)

603-539-5506 (Ossipee office)

www.startingpointnh.org

**Sexual Harassment and Rape
Prevention Program (SHARPP)**

University of New Hampshire
Verrette House
6 Garrison Avenue
Durham, NH 03824
1-888-271-SAFE (7233) (crisis line)
603-862-3494 (office)
www.unh.edu/sharpp

**Monadnock Center for Violence
Prevention**

12 Court Street
Keene, NH 03431-3402
1-888-511-6287 (crisis line)
603-352-3782 (crisis line)
603-532-6288 (Jaffrey office)
603-352-3782 (Keene office)
603-209-4015 (Peterborough office)
www.mcvprevention.org

**New Beginnings Women's
Crisis Center**

PO Box 622
Laconia, NH 03246
1-866-644-3574 (DV crisis line)
1-800-277-5570 (SA crisis line)
603-528-6511 (office)
www.newbeginningsnh.org

WISE

79 Hanover Street, Suite 1
Lebanon, NH 03766
1-866-348-WISE (crisis line)
603-448-5525 (local crisis line)
603-448-5922 (office)

**The Support Center at
Burch House**

PO Box 965
Littleton, NH 03561
1-800-774-0544 (crisis line)
603-444-0624 (Littleton office)
www.tccap.org/supportcenter.htm

YWCA Crisis Service

72 Concord Street
Manchester, NH 03101
603-668-2299 (crisis line)
603-625-5785 (Manchester office)
603-432-2687 (Derry office)

**Bridges: Domestic and Sexual
Violence Support**

PO Box 217
Nashua, NH 03061-0217
603-883-3044 (crisis line)
603-889-0858 (Nashua office)
603-672-9833 (Milford office)
www.bridgesnh.org

Voices Against Violence

PO Box 53
Plymouth, NH 03264
603-536-1659 (crisis line)
603-536-3423 (shelter office)
603-536-5999 (public office)
www.voicesagainstvviolence.org

A Safe Place

6 Greenleaf Woods, Suite 101
Portsmouth, NH 03801
1-800-854-3552 (crisis line)
603-436-7924 (Portsmouth crisis line)
603-436-4619 (Portsmouth office)
603-330-0214 (Rochester crisis line)
603-890-6392 (Salem crisis line)

Sexual Assault Support Services

7 Junkins Avenue
Portsmouth, NH 03801
1-888-747-7070 (crisis line)
603-436-4107 (Portsmouth office)
603-332-0775 (Rochester office)
www.sassnh.org

NOTES

NOTES

New Hampshire Commission on the Status of Women

Room 212, State House Annex

25 Capitol Street

Concord, NH 03301

Phone: 603.271.2660

Fax: 603.271.4032

cmsweb@nh.gov

A Legal Handbook for Women in New Hampshire

SURVEY & EVALUATION

1. How did you obtain a copy of the Legal Handbook?
2. Did you use this book with anyone else?
3. On a scale of 1-5, one being the highest, how useful is this handbook to you?
4. Is the information in the handbook easy to understand?
Yes _____ No _____
5. Which section(s) did you find most useful and why?
6. Do you have any other comments about the legal handbook, including any ideas on how it can be improved?

Thank you for taking time to answer our questions.

Please return this completed form to the above address. or

This evaluation can be completed on our web site at www.nh.gov/csw

WE NEED YOUR HELP

The New Hampshire Commission on the Status of Women has generated this edition of *A Legal Handbook for Women in New Hampshire* in response to the need for a new edition. This fully revised handbook is primarily needed due to a number of changes in relevant NH laws, particularly in the area of family law. You are viewing the product of our work. Like all of our publications, this handbook is funded solely through grants and private donations. We want to be able to continue to share our resources at no cost with the women and girls of New Hampshire who need them most. With your support, we can continue to develop and distribute vital, educational, and useful information

If you would like, and are able to, please send your donation, with a check payable to NH Commission on the Status of Women (NHCSW) to:

NH Commission on the Status of Women
25 Capitol Street – Room 212
Concord, NH 03301

Please include your name and address so we can acknowledge your generosity.

Thank you for your support!