INTRODUCTION

Education enhances the knowledge and skills of the judiciary and, therefore contributes to the administration of justice.[1] To further assist in the administration of justice the Office of the State Courts Administrator, Office of Court Improvement, has developed a second benchbook that addresses the highly litigated legal issues of domestic violence. This Domestic Violence Benchbook was developed to assist both new and experienced judges in Florida who are assigned to hear Domestic Violence Cases.

The benchbook features –
- Charts
- Checklists
- Domestic Violence Colloquy
- Domestic Violence Legal Outline
- Summary of 2005 Legislative Session
- Comparison of Chapter 741 and 39 Injunctions, and
- Domestic Violence Related Articles and Publications.

The book includes not only provisions of chapter 741 that a judge would need to conduct domestic violence hearings but also applicable federal law and critical case law. Although the information encompassed in the book focuses primarily on civil domestic violence, the benchbook's Domestic Violence Legal Outline includes informative sections that address evidence and domestic violence in criminal proceedings. Due to the length of the legal outline, a separate table of contents and an index are included for that section. A table of contents is also included at the beginning for the complete benchbook.

Our office intends to update and supplement this book periodically. Accordingly, we invite suggestions regarding topics that need more detailed treatment and ways that this publication can be made more useful to judges hearing domestic violence cases. Please provide comments and suggestions to Dana L. Dowling in the Office of Court Improvement, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida, 32399-1900, dowlingd@flcourts.org, or 850/414.8389.

[1] In 2003 the the Office of Court Improvement developed a Dependency Benchbook, which began its introduction with the same sentence. Our office continues its efforts to assist in the administration of justice with the development of this benchbook.

ACKNOWLEDGMENTS

The Office of Court Improvement would like to extend sincere thanks to Judge Karen K. Cole, Judge John C. Cooper, Judge Robert Doyel, Judge Amy Karan, Judge Kathleen Kroll, Judge Frederick D. Smith, FSU College of Law Professor Robert Atkinson, the Department of Children and Families, FSU Law Review Office Manger Brenda Ellis, Tenth Judicial Circuit Family Court Manager Cherie Simmers and the other Domestic Violence Coordinators through out the state for their time, effort, and contributions to this project.

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DOMESTIC VIOLENCE BENCHBOOK
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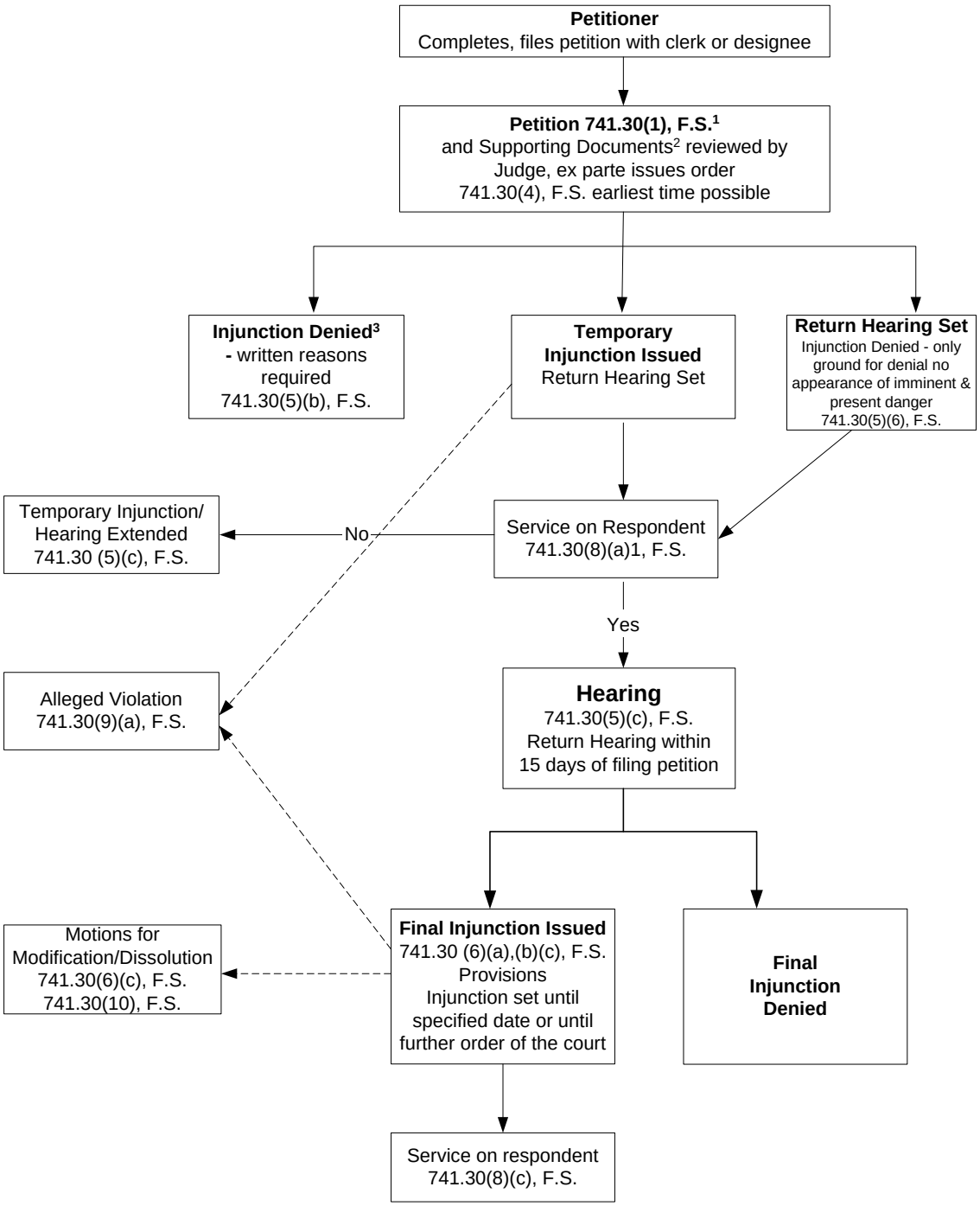
DOMESTIC VIOLENCE FLOWCHART



[1] Statutory citations are from the 2004 statutues

[2] Supporting Documents - UCCJEA, Financial Affidavit, Confidential Address, Child Support Guidelines Worksheet

[3] Petitioner may refile/submit supplemental affidavit

POSSIBLE WARNING SIGNS OF DOMESTIC VIOLENCE

- ✦ Prior Violence
- ✦ Psychological factors – acute depression, psychiatric history, extreme isolation, lack of support systems
- ✦ Increase in frequency and escalation in severity of violence
- ✦ Preoccupation, obsession, possessive with the victim
- ✦ Threats, Fantasies, or attempts to kill or harm self or others
- ✦ Prior criminal behavior or injunctions
- ✦ Weapons owned by perpetrator, threats to use weapons, or recent purchases of weapons
- ✦ Substance abuse
- ✦ Choking, strangling
- ✦ Child abuse
- ✦ Stalking
- ✦ Animal abuse

CONSEQUENCES ONCE A FINAL INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE IS ENTERED

- ✦ Injunction may require limited visitation with children, supervised visitation, the respondent to leave the residence, and/or pay support for minor children and/or petitioner.
- ✦ Under both state and federal law the respondent is prohibited from possessing firearms and ammunition.
- ✦ Law enforcement officers or anyone employed in a position that requires the use of weapons may be affected.
- ✦ Respondent's current employment status or employment applications may be affected.
- ✦ Professional licenses may be affected.
- ✦ Entry into the military may be affected.
- ✦ Admission to schools, colleges, and universities may be affected.
- ✦ Violation of a Permanent Injunction may affect a resident alien's application for citizenship, and may result in deportation if respondent is not a citizen.
- ✦ Permanent injunctions are enforceable in all fifty states, under the Full Faith and Credit Clause.
- ✦ Violation of a Permanent Injunction may result in arrest and charge of a first degree misdemeanor for each violation with a maximum sentence of one year under Florida law.

CIVIL DOMESTIC VIOLENCE/UNIFIED FAMILY COURT (UFC) BENCH CHECKLIST:

(1) Be aware of all related cases involving the same family.

(2) Domestic violence orders must be issued separately but be aware of related pending cases, to avoid entering orders that are inconsistent or conflict, and the legal precedent of conflicting orders.

(3) Be mindful of the petitioner's request to keep her or his home address confidential and take steps to ensure safe keeping of confidential information in all related cases.

(4) Determine if the petitioner and respondent have standing.

(5) Make sure the petition includes allegations which meet the definition of domestic violence and the appropriate burden of proof is met.

(6) Apply the appropriate burden of proof.

(7) Consider and follow the actions recommended by the Domestic Violence Subcommittee for entering orders and conducting hearings in civil domestic violence proceedings.

(8) Consider referring the parties to mediation, but only with the consent of the parties, and only in an attempt to resolve matters of use of the residence, temporary custody and visitation, and temporary spousal and child support. Do not refer the parties to mediation if a degree of past violence, potential for future lethality, or other factors that would compromise the mediation exist.

(9) Issue the ex-parte order the same day the petition is filed.

(10) Grant relief for the temporary injunction as listed under section 741.30(5)(a). If a temporary injunction has already been entered or denied, skip to number 12 below.

(11) Should you deny an injunction, it shall be by written order noting the legal grounds for denial. If the court finds no basis for the issuance of an injunction, the petition may be denied without a return hearing. But when the only legal ground for denial is no appearance of an immediate and present danger of domestic violence, the petition may be denied but the court shall set a full hearing on the petition for injunction, no more than 15 days from the day the petition was filed, with notice at the earliest possible time.

(12) Grant relief for a permanent injunction as listed under section 741.30(6)(a).

(13) For a final judgment on permanent injunctions, complete all the relevant sections of the order and sign the order at the conclusion of the hearing.

(14) Provide the petitioner and respondent with copies of the order immediately upon the conclusion of the hearing, or the sheriff's office for service on absent respondents, as required by Rule 12.610.

(15) Provide litigants with a list of batterers' intervention programs, which have been certified by the Department of Children and Families, and information about other programs in which the court orders them to participate.

(16) Ensure that appropriate protocols are established to monitor and enforce compliance.

CIVIL DOMESTIC VIOLENCE/UNIFIED FAMILY COURT (UFC) BENCH CHECKLIST:

Civil domestic violence proceedings are one of the many types of family law proceedings that are encompassed in the Florida Supreme Court's Unified Family Court comprehensive approach to handling all cases involving children and families.[2] The coordination of multiple cases involving a single family is an essential element of Unified Family Court. It effectively eliminates duplicate hearings, decreases the potential for conflicting orders, creates opportunity for alternative dispute resolution, provides prompt linkages to services, and promotes more informed judicial decision making. Judicial decisions in domestic violence proceedings may affect or conflict with orders entered in related cases involving the same family. Judges need to know the possible impact of a domestic violence injunction on related cases. The following checklist is designed to help judges coordinate domestic violence cases and related cases and illustrates circumstances when civil domestic violence proceedings and other related cases impact one another.

(2) Be aware of all related cases involving the same family.
It is important to be mindful of both pending and closed cases that may contain judgments and orders, which impact pending cases. The court must be aware of and consider any orders or judgments that affect jurisdiction, establish a precedence of orders, or contain potentially inconsistent rulings. *See also* Florida's Family Court Tool Kit: Volume I, pg. 47.

- When dealing with related cases, the best way to ensure consistency among orders is to assign all of a family's related cases to one judge. This makes the judge aware the family's interconnected cases and puts the judge in the best position possible to effectively coordinate proceedings and to create consistent and meaningful orders. *See also* Florida's Family Court Tool Kit: Volume II, pg. 11.

(2) Domestic violence orders must be issued separately but be aware of related pending cases, to avoid entering orders that are inconsistent or conflict, and the legal precedence of conflicting orders. (*See* section "Crossover/Related Cases" in the legal outline included in this benchbook for applicable caselaw.)
Although the court's focus should be on consistency, coordination and clarity, so as to prevent the entry of inconsistent orders, except as provided in chapter 39, the court must enter civil chapter 741 domestic violence orders separately. The court should not included domestic violence injunctions within orders or final judgments in dissolution of marriage, separate maintenance, child support or paternity cases.

[2] For materials about Unified Family Court see the section titled "Other Related Publications" in this benchbook.

Furthermore, Judges must be aware of orders entered in related cases and the precedence of the orders to mitigate the impact of inconsistent provisions. The Family Court Efficiency Bill, passed by the 2005 Florida Legislature, which will become effective July 1, 2005 provides clarification as to legal precedence of civil orders. The bill amends section 39.013, Florida Statutes, and sets out that chapter 39 orders pertaining to custody, visitation, etc. take precedence over similar orders in other civil cases. Additionally, the bill amends section 741.30, Florida Statutes, to mandate that the provisions of injunctions dealing with custody, visitation, and child support remain in effect until the order expires or an order on those matters is entered in a subsequent civil case.

The examples below occur daily in courtrooms across Florida and further illustrate the importance of judicial education regarding related cases and the precedence of orders. In each of the following circumstances domestic violence allegations may arise, separate domestic violence injunctions must be ordered, and multiple orders may impact one another.

- Domestic Violence Allegations during Dissolution of Marriage:
  Sometimes an injunction for protection will arise during a pending dissolution of marriage case. Judges should be aware that section 61.052(6), Florida Statutes, requires that "[a]ny injunction for protection against domestic violence arising out of the dissolution of marriage shall be issued as a separate order in compliance with chapter 741 and shall not be included in the judgment of dissolution of marriage." The separate injunction for protection against domestic violence is filed in national and state crime information systems so it is readily available to other courts and to law enforcement. No other type of order is filed under this system, so do not grant a mutual restraining order in dissolution of marriage actions. Law enforcement will not be aware of the provisions and therefore will not be able to properly protect litigants.

  Furthermore, even if both parties consent, the court is prohibited from entering mutual injunctions unless both parties have filed petitions. Section 741.30(1)(i), Florida Statutes. *See also* Hixson v. Hixson, 698 So.2d 639 (Fla. 4th DCA 1997)(reversing "mutual order of protection" where only one party had filed a petition for a domestic violence injunction).

- Domestic Violence Injunction Entered Prior to Dissolution of Marriage:

Inconsistent orders can arise when a party to a dissolution of marriage also has been issued an injunction for protection against domestic violence. The typical scenario is of a petitioner with an injunction for protection that prohibits all contact between the parties who then gets a subsequent order in the dissolution case that allows for contact to exchange children for visitation. According to section 741.30(1)(c), Florida statutes, orders entered in a subsequent action filed under chapter 61 take precedence over any inconsistent provisions of an injunction that address matters more appropriately governed by chapter 61.

Therefore the court hearing chapter 61 actions needs to be aware of the domestic violence issues between the parties to make decisions regarding visitation and to tailor safe and effective means for exchanging children for visitation. If contact for visitation purposes is allowed in a chapter 61 proceeding, the court may need to enter an amended injunction for protection that clarifies or modifies the contact the parties may have pursuant to the injunction for protection.

A paternity or dissolution of marriage action is the more appropriate forum in which to address permanent child support and custody obligations. Although section 741.30(6)(a), Florida Statutes, and Florida Family Law Rule of Procedure 12.610(c)(1)C provide for establishing temporary custody and support for any minor child or children connected with domestic violence proceedings, the domestic violence forum is not designed for establishing permanent custody and support obligations because custody and support determinations in domestic violence cases end on the termination date of the injunction. The primary focus of domestic violence matters is dealing with the violence between the parties.

- Modifying Bond Conditions to make Consistent with Provisions in Domestic Violence Injunction:

  A judge may modify bond conditions in a criminal case to make them consistent with the contact provisions of a domestic violence injunction. While the orders should be consistent in each case, the bond conditions should be in a separate order to maintain the integrity of the criminal proceeding and to provide effective notice of the conditions to law enforcement.

(3) Be mindful of the petitioner's request to keep her or his home address confidential and take steps to ensure safe keeping of confidential information in all related cases. *(See* rule 12.610(b)(4)(B), Family Law Rules of Procedure and sections 741.30(6)(a)(7) and 741.465,

Florida Statutes.) For further discussion on the topic of address confidentiality generally, read the section titled "Address Confidentiality" in the domestic violence legal outline that is included in this benchbook and Florida's Family Law Took Kit: Volume II, pg.17.

- Once the petitioner requests that her or his address be kept confidential, it shall remain confidential in the pending proceeding and in related case files. This will take some diligence on the part of the petitioner in alerting the court and clerk of the confidential address and not disclosing the address on his or her own in other court documents.
- Court personnel should work with the clerk of court staff and the sheriff's office to develop a method to ensure that the address is truly confidential.

(5) Determine if the petitioner and respondent have standing.

(a) They are family or household members – spouses, ex-spouses, relatives by blood or marriage, anyone who lives or has lived together in the same dwelling as a family unit AND

(b) They currently reside or have in the past resided together in the same dwelling as a family unit, OR

(c) They have a child in common, regardless of whether they have been married and regardless of whether they currently reside or have in the past resided together in the same dwelling.

- If the parties are relatives and no longer reside together or did not reside together in the past, they may want to file for an injunction under section 784.046, Florida Statutes.
- There is no minimum residency requirement, section 741.30(1)(j), Florida Statutes. Therefore a petition can be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the domestic violence occurred.

(5) Make sure the petition includes allegations which meet the definition of domestic violence and the appropriate burden of proof is met.

An assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any other criminal offense resulting in physical injury or death must have occurred and the appropriate burden of proof, which is set out below, must be met.

(6) Apply the appropriate burden of proof.

The burden of proof varies slightly depending on the type of domestic violence action that is pending. For example:

<u>Ex-parte Temporary Domestic Violence Injunctions</u>

- A temporary injunction may be granted when it appears to the court that an "immediate and present danger of domestic violence exists," section 741.30(5), Florida Statutes.
- The rule requires the same finding by the court, "an immediate and present danger of domestic. . . ." Florida Family Law Rule of Procedure, 12.610(c)(1)(A).
- The evidence must be "strong and clear" to balance the harm sought to be prevented against the respondent's right to notice and a hearing. Kopelovich v. Kepelovich, 793 So.2d 31, 33 (Fla. 2d DCA 2001).

Permanent Domestic Violence Injunctions

- The court may grant relief, including an injunction, when "it appears to the court" that petitioner is "either the victim of domestic violence . . . or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence." Section 741.30(6)(a), Florida Statutes.
- The evidence must be "strong and clear" to balance the harm sought to be prevented against the respondent's right to notice and a hearing. Kopelovich v. Kepelovich, 793 So.2d 31, 33 (Fla. 2d DCA 2001).

Violation of Domestic Violence Injunction

- The burden of proof in a hearing involving a violation of an injunction is beyond a reasonable doubt. Hunter v. State, 855 So.3d 677, 678 (Fla. 2d DCA 2003).
- In a case based entirely on circumstantial evidence, the party seeking the contempt finding has the burden of presenting evidence from which the court can exclude every reasonable hypothesis except that of guilt. Fay v. State, 753 So.2d 682, 683 (Fla. 4th DCA 2000).
- Willful violation of an injunction may be prosecuted criminally as a first degree misdemeanor pursuant to section 741.30(4), Florida Statutes.
- The person accused of violation does not have the burden of going forward at the outset of the hearing to show why he or she should not be held in contempt. Tide v. State, 804 So.2d 412, 413 (Fla. 4th DCA 2001).
- "Because criminal contempt is 'a crime in the ordinary sense,' a contemnor must be afforded the same constitutional due process protections afforded to criminal defendants." Id. (quoting Feltner v. Columbia Pictures Television, Inc., 789 So.2d 453, 455 (Fla. 4th DCA 2001)), (citation omitted). Therefore, the person seeking the order of contempt has the initial burden of going forward at the contempt hearing.

Civil Contempt

- The preponderance of the evidence burden of proof applies to civil contempt proceedings. Kramer v. State, 800 So.2d 319, 320 (Fla. 2d DCA 2001).
- Civil contempt is a remedy of a court "to coerce obedience to its orders which direct a civil litigant to do or abstain from doing an act or acts . . . ." Dowis v. State, 578 So.2d 860,862 (Fla. 5th DCA 1991).

Criminal Contempt

- The burden of poof in a criminal contempt proceeding is beyond a reasonable doubt. *See* Kramer v. State, 800 So.2d 319, 320 (Fla. 2d DCA 2001).
- Criminal contempt proceedings are subject to Florida Rules of Criminal Procedure 3.830 and 3.840 and to the "constitutional limitations applicable to criminal cases including due process requirement of a burden of proof 'beyond a reasonable doubt.'" Dowis v. State, 578 So.2d 860, 862 (Fla. 5th DCA 1991).

(7) Consider and follow the actions recommended by the Domestic Violence Subcommittee for entering orders and conducting hearings in civil domestic violence proceedings.

Below, excerpted from the 2004 Domestic Violence Court Action Plan, are actions recommended by the Domestic Violence Subcommittee of the Steering Committee on Families and Children in the Court, regarding judicial consideration when entering domestic violence orders and conducting hearings.[3]

(a) Judicial Consideration When Entering Orders:

1. Generally:

- Judges should recognize domestic violence injunction proceedings as emergency matters and review petitions for injunction immediately so that petitioners are not required to remain at or make multiple trips to the point of intake to obtain a temporary injunction.
- Courts should handle injunction cases in a timely manner by scheduling all original return hearings within the 15-day statutory time limit. If the respondent is not served on the first attempt, courts should consider whether extending the temporary injunction for longer than an additional 15 days would facilitate service on the respondent. Courts should schedule motion hearings on an expedited basis.
- Courts should refer petitioners to community support services and counseling, rather than mandate their attendance by court order.
- The court should make the safety of the parties and the children a

[3] A copy of the 2004 Domestic Violence Court Action Plan can be obtained from the Office of Court Improvement in the Office of the State Courts Administrator, Tallahassee, Florida.

primary factor in determining custody and parenting time arrangements.

- If the judge deems unsupervised parenting time appropriate, the judge should consider whether to require that parenting time be exercised at a location physically separate from the primary residential parent or that the transfer of the children between the parents be accomplished using a third party intermediary in a protected setting.
- Courts should take into consideration disabilities of parties and of children when structuring orders.
- Judges should ensure that provisions within an injunction do not conflict with each other.
- Judges should phrase all injunction orders in terms that litigants and law enforcement can understand.
- Courts should not enter an injunction with the respondent's consent unless, after a hearing, the court finds that the petitioner is a victim of domestic violence or is in imminent danger of becoming a victim of domestic violence and that the respondent has been fully advised of the ramifications of his or her decision, the possible consequences of a violation, and that he or she will be subject to the terms of the injunction.
- Do not order couples to attend counseling for their relationship or for the children; it can set up a dangerous situation.

2. **Treatment Provisions:** Courts should order treatment provisions for respondents whenever appropriate and enforce compliance with such orders.
   - Courts should order "partner" respondents to successfully complete Batterers' Intervention Programs (BIPs) if after a hearing the Court determines that such a program is statutorily mandated or otherwise appropriate.
   - Courts should ensure respondents are ordered to attend only those BIPs that comply with the minimum state standards for those programs.
   - Courts should order respondents for assessment and treatment for substance abuse and mental health issues when appropriate.
   - Courts should establish protocols to monitor compliance with and enforce injunction provisions regarding alcohol, substance abuse, and mental health treatment as well as batterers' intervention program enrollment and completion, and should utilize contempt and show cause proceedings as appropriate.

3. **Firearms Provisions:** The court should pay particular attention to the statutory requirements regarding possession of firearms and ammunition in cases where final injunctions are issued.

- Judges should require respondents in injunction cases to surrender firearms and ammunition in their possession in accordance with state and federal law.
- When surrender is ordered, injunction orders should contain instructions regarding surrender of firearms and ammunition, including the requirement that the respondent produce a receipt documenting the sale or surrender of the firearms and ammunition within a specified timeframe and direct law enforcement officers to execute the firearms surrender provision upon service of the order on the respondent.
- Circuits should track and enforce compliance with firearms surrender when surrender is included in final injunctions for protection against domestic violence.

(b) Judicial Consideration When Conducting Final Hearings:

- Judges should afford both parties the opportunity for a full, fair, and impartial hearing on all matters to be decided in injunction cases.
- An advocate from a state attorney's office, law enforcement agency, or certified domestic violence center should be allowed to be present with the petitioner or respondent during any court proceedings or hearings related to an injunction for protection, provided that the petitioner or respondent has made such a request and the advocate is able to be present.
- Courts should ensure the accurate recording of domestic violence hearings.
- Courts should not dismiss injunction cases at the petitioner's request without first conducting a hearing at which the court determines whether the petitioner initiated the request freely and voluntarily, is aware of community resources, and understands the requirements for filing a case in the future.
- Judges should maintain a serious and unbiased courtroom atmosphere.
- Judges should deal with unrepresented parties fairly, impartially, and effectively.
- Before the parties leave the final hearing, the court should explain its decision, the terms of the injunction, the possible consequences of violations, and how to proceed if the injunction is violated.
- Judges should advise the litigants of the full faith and credit provisions of the injunction which make the terms and conditions enforceable nationally.
- Judges should emphasize to the parties that decisions regarding the terms of an injunction are the court's and not the petitioner's.
- Mediation is not an appropriate mechanism for determining whether criminal charges should be filed or whether an injunction for protection should be issued.

(8) Consider referring the parties to mediation, but only with the consent of the parties, and only in an attempt to resolve matters of use of the residence, temporary custody and visitation, and temporary spousal and child support. Do not refer the parties to mediation if a degree of past violence, potential for future lethality, or other factors that would compromise the mediation exist.

A. Mediation in Domestic Violence Cases:

In the Florida Family Law Rules of Procedure, Rule 12.610, the Florida Supreme Court opined that mediation offered or ordered by the court in domestic violence injunction cases is to be performed as follows:

- The court conducts a hearing and makes a finding of whether domestic violence occurred or imminent danger exists. If the court determines that an injunction will be issued, the court shall also rule on such matters as contact between the parties, use of the residence, temporary custody and visitation, temporary child support and temporary child support. Rule 12.610 (c)(1)(C), Florida Family Law Rules of Procedure.
- With the consent of the parties, the court may refer the parties to mediation by a certified family mediator to attempt to resolve the details as to the use of the residence, temporary custody and visitation, and temporary spousal and child support. **This mediation shall be the only alternative dispute resolution process offered by the court**. Rule 12.610 (c)(1)(C), Florida Family Law Rules of Procedure.
- Any agreement reached by the parties through mediation shall be reviewed by the court and, if approved, incorporated into the final judgment. If no agreement is reached, the matters referred shall be returned to the court for appropriate rulings. Rule 12.610(c)(1)(C), Florida Family Law Rules of Procedure.
- According to the commentary to Rule 12.610, Florida Family Law Rules of Procedure, the court should not refer the case to mediation if there exists (1) a degree of past violence, (2) a potential for future lethality, or (3) other factors that would compromise the mediation.

(9) Issue the ex-parte order the same day the petition is filed.

Initial orders should be issued the same day that the petition is filed and will remain effective for a period of fifteen days. The timeliness of the court's actions in domestic violence cases is critical due to the potential danger to petitioners and their children. Violence will likely escalate in frequency and severity when a victim attempts to separate from the abuser – especially after the respondent receives notice that the victim has filed a petition seeking protection against domestic violence.

(11) Grant relief for the temporary injunction as listed under section 741.30(5)(a), Florida Statutes. If a temporary injunction has already been entered or denied, skip to number 12 below.

___ Restraining the respondent from committing any acts of domestic violence.

___ Awarding the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.

___ Granting the petitioner temporary custody of a minor child or children, on the same basis as provided in Florida Statutes Chapter 61.

- Do not grant child custody, support, or visitation rights to a man whose paternity has not been established. Note: Paternity may be established by hospital affidavit executed by both parents pursuant to sections 382.013 or 382.016, Florida Statutes; by affidavit or stipulation of paternity executed by both parents and filed with the clerks of the court; in a worker's compensation or similar hearing determining who is the dependent of an injured worker; or in an adjudicatory hearing in a probate case (addressing inheritance).

___ Granting the petitioner spousal support, on same basis as provided in chapter 61.

___ Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies.

___ Restraining respondent from contact with petitioner or any member of petitioner's immediate family or household. Florida Supreme Court Approved Family Law Forms 12.980(d)(1) and (d)(2).

___ Excluding respondent from petitioner's place of employment or school. Florida Supreme Court Approved Family Law Forms 12.980(d)(1) and (2).

___ Excluding respondent from places frequented regularly by petitioner or any named family or household member of petitioner. Florida Supreme Court Approved Family Law Forms 12.980(d)(1) and (d)(2).

___ Ordering respondent to surrender any firearms and ammunition in his or her possession to the specified sheriff's office pending further order of the court. Florida Supreme Court Approved Family Law Forms 12.980(d)(2).

(11) Should you deny an injunction, it shall be by written order noting the legal grounds for denial. If the court finds no basis for the issuance of an injunction, the petition may be denied without a return hearing. But when the only legal ground for denial is no appearance of an immediate and present danger of domestic violence, the petition may be denied but the court shall set a full

hearing on the petition for injunction, no more than 15 days from the day the petition was filed, with notice at the earliest possible time.
See 741.30(5)(b), Florida Statutes.

(12) Grant relief for a permanent injunction as listed under section 741.30(6)(a), Florida Statutes.

___ Restraining the respondent from committing any acts of domestic violence against petitioner or any member of petitioner's family or household members.

___ Awarding the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.

___ Granting the petitioner temporary custody of a minor child or children, on the same basis as provided in chapter 61.

___ Establishing temporary support for the petitioner (temporary alimony) or minor child or children (temporary child support), on the same basis as provided in chapter 61.

___ Ordering the respondent to participate in a treatment, intervention, or counseling services to be paid for by the respondent. *See infra* Batterers' Intervention Programs.

___ Referring a petition to a certified domestic violence center.

___ Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies.

___ Restraining respondent from contact with petitioner or any member of petitioner's immediate family or household. Florida Supreme Court Approved Family Law Forms 12.980(d)(1) and (d)(2).

___ Ordering counseling for any minor children and order any other provisions relating to minor children. Florida Supreme Court Approved Family Law Form 12.980(e)(1).

___ Excluding respondent from petitioner's place of employment or school. Florida Supreme Court Family Law Forms 12.980(d)(1) and (2).

___ Excluding respondent from places frequented regularly by petitioner and/or any named family or household member of petitioner. Florida Supreme Court Family Law Forms 12.980(d)(1) and (d)(2).

___ Ordering respondent to surrender any firearms and ammunition in his/her possession to the specified sheriff's office pending further order of the court. Florida Supreme Court Family Law Forms 12.980(d)(2).

___ Ordering a substance abuse and/or mental health evaluation for the respondent and order the respondent to attend any treatment recommended by the evaluation(s). Section 741.30(6)(a)5., Florida Statutes.

___ Specifying the type of contact or visitation the noncustodial parent may have with the minor child(ren). Florida Supreme Court Approved Family Law Form 12.980(2)(1).

(13) For a final judgment on permanent injunctions, orally explain the "no contact" terms in the injunction (unless the court has addressed it in its colloquy), complete all the relevant sections of the order and sign the order at the conclusion of the hearing.
Once the court has ruled on the petition, all relevant sections of the order should be completed, and the order should be signed at the conclusion of the hearing. The permanent injunction shall remain effective indefinitely; until modified or dissolved by the judge at either party's request, upon notice and hearing; or until the date set out on the final judgment as determined by the judge.

Note: Even if both parties consent, the court is prohibited from enter mutual injunctions. The court may issue separate injunction orders where each party has filed a petition and met the statutory requirements for an injunction. Section 741.30(1)(i), Florida Statutes. *See also* Hixson v. Hixson, 698 So.2d 639 (Fla. 4th DCA 1997).

(14) Provide the petitioner and respondent with copies of the order immediately upon the conclusion of the hearing, or the sheriff's office for service on absent respondents, as required by Rule 12.610.

- Consider having parties sign, in court, an acknowledgement of receipt of the final judgment.
- Consider issuing, simultaneously with the final judgment, an order to appear which requires that the respondent either: 1) file proof of compliance with the court order (for example, firearms surrender, batterers intervention program, substance abuse, counseling, child support); or 2) appear and show cause why he or she should not be held in contempt for non-compliance.

(15) Provide litigants with a list of batterers' intervention programs, which have been certified by the Department of Children and Families, and information about other programs in which the court orders them to participate.

(16) Ensure that appropriate protocols are established to monitor and enforce compliance.

PROTOCOL FOR DOMESTIC VIOLENCE INJUNCTION HEARINGS

DO:

- ☑ Use a Courtroom rather than chambers for domestic violence injunction hearings and do have law enforcement officers present.
- ☑ Physically separate the petitioners and respondents in the waiting area and in the courtroom to ensure that there is no communication between them.
- ☑ Have the petitioners leave the courtroom before the respondents in order to lessen the risk of post-hearing danger.
- ☑ Use the services of a victim advocate in the courtroom.
- ☑ Timely grant child support and award ancillary relief where it is appropriate.
- ☑ Carefully address visitation issues, keeping in mind safety of the parties and the children.
- ☑ Use the services of any available supervised visitation center where visitation must be supervised.
- ☑ Exercise your powers of indirect civil contempt and indirect contempt to enforce the domestic violence injunction.

DO NOT:

- ∅ Issue mutual injunctions.
- ∅ Substitute an anger control program for a statutorily required certified batterers' intervention program.

- ∅ Fail to order a respondent to complete a batterers' intervention program merely because the respondent has a job which requires out-of-town work or long hours.

- ∅ Refer any case to mediation if there is a significant history of domestic violence between the parties which would compromise the mediation process.

- ∅ Award child custody, child support, or visitation rights to a man whose paternity has not been established.

DOMESTIC VIOLENCE INSTRUCTIONS

(Colloquy)

Today we are holding return hearings on temporary injunctions for domestic, repeat and dating violence. I will be taking testimony and reviewing evidence to determine if a permanent injunction should be issued in your case. Based on the facts in each case, I will determine how long a permanent injunction will remain in effect. If a permanent injunction is issued, please read it carefully and become familiar with its terms, conditions, and time frame.

Petitioners should understand that if you leave here with a permanent injunction and later decide an injunction is not what you need or want, you may return to the courthouse and complete an affidavit stating why you desire to dismiss the injunction. The Court may, however, require a hearing on such a request. The law also allows either party to request a modification of the injunction at any time after it is issued.

Petitioners do not contact the Respondent. Respondents, please understand that the Petitioner cannot give you permission to violate the injunction. Do not be misled by thinking it is acceptable for you to talk to or visit with the Petitioner if he or she initiates the contact, IT IS NOT. Unless you have in your hands a copy of an Order Dismissing the Injunction which has been signed by a Judge, you are still required to abide by its terms. If you violate the terms of the injunction, you subject yourself to being arrested and charged with a crime known as "Violation of an Injunction", which is a misdemeanor punishable by up to one year in jail, and/or a $1,000.00 fine, in addition to possible civil penalties.

Additionally, it is possible that some of you in attendance today have been arrested or charged with domestic violence crime arising out of the same incident which is the basis for this injunction. As required by law, this hearing is being tape recorded. You have the right to remain silent inasmuch as your testimony here today relates to your criminal case because anything you say can and will be used against you in a court of law.

If you have been arrested or charged with a domestic violence crime, your release conditions probably include a provision of "NO CONTACT" with the victim, who is also the Petitioner in this injunction. This injunction hearing is a civil matter, separate from the criminal one, and regardless of whether or not the permanent injunction is issued or dismissed here today, **THE CONDITIONS OF RELEASE IN YOUR CRIMINAL CASE ARE NOT CHANGED. THAT CAN ONLY BE DONE BY THE JUDGE IN THE CRIMINAL CASE.** Please make certain you understand all of the conditions of your release in the criminal case because a violation of your conditions of release could result in your being arrested for a misdemeanor punishable by one year in jail, one year's probation and/or a $1,000.00 fine.

Petitioners are reminded that you signed your Petition under penalty of perjury, and, therefore, can be charged with a crime if you provided untruthful answers or allegations in your Petition. Perjury is a third degree felony punishable by up to 5 years in the State prison.

If a permanent injunction is issued, one or both of you may be ordered to attend a Batterer's Intervention program, victim program, mental health evaluation and treatment, substance abuse evaluation, parenting class, or other court ordered programs.

If a permanent injunction is issued against you, state and federal law prohibits you from possessing, buying or using a firearm or ammunition.

At the conclusion of your hearing, please remain in the courtroom so that we can have you sign the order entered in your case and provide you with copies of any necessary paperwork.

When your case is called, please come forward, with the Petitioner to my right and the Respondent to my left. I will first determine whether or not the Petitioner wishes to proceed with seeking a permanent injunction. If not, I will dismiss it without the need for further testimony.

If the Petitioner does not appear for the scheduled hearing today, it may be dismissed. If a Respondent doesn't appear because service of the temporary injunction was not obtained, we will reset the hearing for a later date.

All parties and witnesses are reminded that the signing of the Petition and any testimony today is sworn to under penalty of perjury. Any untruthful statements or answers can result in your being charged with a crime.

Please come forward when your names are called. Thank you.

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DOMESTIC VIOLENCE LEGAL OUTLINE

By: Dana L. Dowling, Esq.
dowlingd@flcourts.org

Introduction: This outline was created to assist judges in Florida who are assigned to hear Domestic Violence Cases. It has been made part of the 2005 Florida Domestic Violence Benchbook, which was developed and disseminated by the Office of Court Improvement in the Office of the State Courts Administrator. Although the information focuses primarily on civil domestic violence proceedings, it also includes sections on evidence and on domestic violence in criminal proceedings.

I. DOMESTIC VIOLENCE – Background and Definitions

A. FEDERAL LAW:

(1) Violence Against Women Act, 42 USC § 13981: Under section 5 of the Fourteenth Amendment and section 8 of

Article I of the Constitution, Congress enacted the Violence Against Women Act of 1994, a federal civil rights cause of action for victims of gender motivated violence. 42 U.S.C. § 13981.

(a) However, the Supreme Court held that Congress did not have the authority to enact the civil remedy provision of VAWA: *See* United States v. Morrison, 120 S.Ct. 1740 (2000). The Supreme Court held that the Commerce Clause did not provide Congress with authority to enact the civil remedy provision of VAWA (§ 13981), inasmuch as the provision was not a regulation of activity that substantially affected interstate commerce; gender-motivated crimes of violence were not economic activity, provision contained no jurisdictional element establishing that a federal cause of action was in pursuance of Congress' power to regulate interstate commerce; although state-sponsored gender discrimination could violate equal protection under certain circumstances, Fourteenth Amendment did not prohibit or provide a shield against private conduct, it prohibits only state action, and is directed at conduct of a State or state actor, and the conduct at issue in this case is that of a private individual.

(b) The Court further rejected the argument that Congress may regulate noneconomic violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce and stated that they "can think of no better example of police power which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims." Id at 1754.

(2) Federal Definition of Domestic Violence: A "crime of domestic violence" is defined as a misdemeanor under Federal or State Law that involves the use, attempted use, or threatened use of physical force against a person by a current or former spouse, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, or by a person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides. 18 U.S.C.A. § 2260, Part 1. § 16; 18 U.S.C.A. § 2266 (7)(B).

(3) Interstate Domestic Violence Statute, 18 U.S.C. § 2261(a):

(a) Offenses:

(1) Crossing a State Line. -- Under this provision a person who travels across a State Line or enters or leaves Indian Country with the intent to injure, harass, or intimidate that person's spouse or immediate partner, and who, in the cause of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner shall be punished as provided in subsection (b).

(2) Causing the crossing of a State Line. -- A person who causes a spouse or intimate partner to cross a State Line or to enter or leave Indian Country by force, coercion, duress, or fraud and, in the course or as a result of that conduct, intentionally commits a crime of violence and thereby causes bodily injury to the person's spouse or intimate partner, shall be punished as provided in subsection (b).

(b) Penalties: A person who violates this section or section 2261A shall be fined under this title, imprisoned—

(1) For life or any term of years, if death of the victim results;
(2) For not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
(3) For not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
(4) As provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
(5) For not more than 5 years, in any other case, or both fined and imprisoned.

(c) Enactment of 18 U.S.C. § 2261(a) does not exceed Congress' authority under the Commerce Clause.
See U.S. v. Bailey, 112 F.3d 758 (4th Cir. 1997)
The portion of the Violence Against Women Act that makes it a federal crime to cause bodily injury to one's spouse after crossing state lines with the intent to do so, 18 U.S.C. 2261(a)(2), does not exceed Congress'

authority under the Commerce Clause. The court pointed out that § 2261(a)(2) requires the crossing of a state line, and therefore placed the criminal activity squarely in interstate commerce.

(4) Full Faith and Credit, 18 USC § 2265:

The Violence Against Women Act requires all states and Indian nations to give full faith and credit to restraining orders and orders of protection against domestic violence that meet the federal definition if the respondent was given notice and an opportunity to be heard. The mandatory injunction forms used in Florida were created in part to qualify under the federal statute, including the written finding that the petitioner is a victim of domestic violence and/or petitioner has reasonable cause to believe that she or he is in imminent danger of becoming a victim of domestic violence.

B. FLORIDA STATE LAW:

(1) Application of Traditional Rule of Law of Injunctions to Domestic Violence Injunctions:

(a) Domestic Violence Injunctions are NOT Controlled by Traditional Rule of Law of Injunctions:

Domestic violence injunctions are created by statute, chapter 741, Florida Statutes, and therefore do not appear to be controlled by the traditional rule of law of injunctions. The Florida Family Law Rules of Procedure Rule 12.610(a), entitled "Injunctions for Domestic, Repeat, Dating, and Sexual Violence," specifically states that it applies to domestic, repeat, dating, and sexual violence injunctions; all other injunctions are controlled by Florida Rule of Civil Procedure 1.610.

1. No Requirement to First Exhaust other Remedies: Further indications that the traditional requirements for requesting an injunction do not apply to domestic violence injunctions is that a petition for injunction does not require a showing that no other adequate remedy available at law exists. Because the basis for a domestic violence injunction can be the commission of an act of domestic violence, and these include assault, battery, etc., criminal prosecution for these offenses provides another remedy at law. Additionally, when an individual is charged with these offenses, the court must order that the defendant have no contact with the alleged victim as a condition of pre-trial release. Section

903.047(1)(b), Florida Statutes. Therefore, the pre-trial realease conditions for these types of criminal offenses serve one of the injunctive purposes of a domestic violence injunction and provide another remedy at law.

2. No Requirement to Allege Irreparable Harm: Also, although one way to obtain a domestic violence injunction is by showing an imminent threat of domestic violence, this is not required if a petition is filed based on the petitioner already being a victim of domestic violence. Therefore, alleging irreparable harm is not a requirement to seeking an injunction against domestic violence.

(2) Florida Statutes Chapter 741.

(a) Chapter 741, Florida Statutes, Exclusive Method to Obtain an Injunction. The procedure outlined in chapter 741 is the *exclusive* method to obtain an injunction in Florida for protection against domestic violence. No other remedies, including an injunction under Florida Rule of Civil Procedure 1.610, may be utilized to obtain an injunction against domestic violence. Campbell v. Campbell, 584 So.2d 125 (Fla. 4th DCA 1991); see *Rule* 12.610(a), Florida Family Law Rules of Procedure and section 61.052(6), Florida Statutes.

(b) *See* Shaw-Messed v. Messed, 755 So.2d 776 (Fla. 5th DCA 2000).
The Fifth District held that the trial court erred in not conducting an evidentiary hearing on the issuance of an injunction for protection against domestic violence filed by the wife against the husband, and in entering a mutual injunction in the dissolution action, under Chapter 61, without any testimony that the husband had committed any conduct deserving such action. In reversing the lower court's ruling and remanding the case for further action, the Fifth District held that section 741.30, Florida Statutes, not Chapter 61, is the appropriate vehicle for a domestic violence injunction.

(c) In addition to Section 741.28, a number of Florida statutes address issues associated with domestic violence cases, including injunctions (Section 741.31), civil actions for damages (Section 768.35), confidentiality (Sections 39.908, 741.401, 741.465),

evidentiary issues (Section 90.5036) and mediation (44.102). These related sections will be discussed elsewhere in this outline.

(3) Domestic Violence Definitions in Florida Statutes:

(a) DOMESTIC VIOLENCE means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any other criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), Florida Statutes (2004).

(b) <u>Assault defined</u>:
Section 784.011, Florida Statutes. An assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

(c) An assault is a misdemeanor of the second degree, punishable as provided in section 775.082 or section 775.083. Section 784.011(2), Florida Statutes.

1. <u>Punishment for Assault under section 775.082(4)(b):</u> For a misdemeanor of the second degree, definite term of imprisonment not to exceed 60 days.
2. <u>Punishment for Assault under section 775.083(1)(e):</u> A person who had been convicted of assault may be sentenced to pay a fine in addition to the punishment under 775.082 above or he or she may be sentenced to pay a fine not to exceed $500.00 in lieu of the punishment described above.

(d) <u>Battery defined</u>:
Section 784.03, Florida Statutes. A person commits a battery if he or she (1) actually and intentionally touches or strikes another person against the will of the other, OR (2) intentionally causes bodily harm to an individual.

(e) A battery is a misdemeanor of the first degree, punishable as provided in section 775.082 or section

775.083, Florida Statues. Section 784.03(1)(b), Florida Statutes.

1. Punishment for Battery under section 775.082(4)(a): For a misdemeanor of the first degree, definite term of imprisonment not to exceed 1 year.
2. Punishment for Battery under section 775.083(1)(d): A person who had been convicted of battery may be sentenced to pay a fine in addition to the punishment under 775.082 above or he or she may be sentenced to pay a fine not to exceed $1,000.00 in lieu of the punishment described above.

(f) A person who has one or more prior convictions for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree, punishable as provided in sections 775.082, 775.083, or 775.084. Section 784.03(2), Florida Statutes.

1. Punishment for third degree felony under section 775.082(3)(d): definite term of imprisonment not to exceed 5 years.
2. Punishment for third degree felony under section 775.083(1)(c): A person who had been convicted of third degree felony may be sentenced to pay a fine in addition to the punishment under 775.082 above or he or she may be sentenced to pay a fine not to exceed $5,000.00 in lieu of the punishment described above.
3. Punishment for third degree felony under section 775.084(4)(b)3. – If defendant is found to be a habitual felony offender: term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.
4. Punishment for third degree felony under section 775.084(4)(d). – If defendant is found to be a violence career criminal: term of years not exceeding 15, with a mandatory minimum term of 10 years imprisonment.

(g) Felony Battery defined:

Section 784.041, Florida Statutes. A person commits felony battery if he or she (1) actually and intentionally touches or strikes another person against the will of the other; and (2) causes great bodily harm, permanent disability, or permanent disfigurement.

(h) Felony battery is a third degree felony and punishable as set out above as provided in sections 775.082, 775.083, or 775.084, Florida Statutes. *See also* section (f) above.

(i) <u>Aggravated Battery defined</u>:
Section 784.045, Florida Statutes. A person commits aggravated battery if he or she, while committing battery: (1) intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or (2) uses a deadly weapon. Furthermore, a person commits aggravated battery if victim of the battery was pregnant at the time of the offense and the offender know or should have known that the victim was pregnant.

(j) Aggravated Battery is a second degree felony, punishable as provided in sections 775.082, 775.083, and 775.084, Florida Statutes.
1. <u>Punishment for second degree felony under section 775.082(3)(c)</u>: definite term of imprisonment not to exceed 15 years.
2. <u>Punishment for second degree felony under section 775.083(1)(b)</u>: A person who had been convicted of aggravated battery may be sentenced to pay a fine in addition to the punishment under 775.082 above. The fine shall not exceed $10,000.00.
3. <u>Punishment for second degree felony under section 775.084(4)(b)2. – If defendant is found to be a habitual felony offender</u>: term of years not exceeding 30, and such offender shall not be eligible for release for 10 years.
4. <u>Punishment for second degree felony under section 775.084(4)(d). – If defendant is found to be a violence career criminal</u>: term of years not exceeding 40, with a mandatory minimum term of 30 years' imprisonment.

(k) The general view is that consent is not a defense to battery.
1. <u>Lyons v. State</u>, 437 So.2d 711, 712 (1st DCA 1983).
2. <u>State v. Conley</u>, 799 So.2d 400 (Fla. 4th DCA 2001), "A view of the law that a victim of domestic violence can consent to the batteries and injuries perpetrated

on him or her is incompatible with both the general law of battery and the specific legislative intent expressed in section 741.2901(2). . . ."

3. *See also* State v. Conley, 799 So.2d 400 (Fla. 4th DCA 2001). Judge Warner concurs in a separate opinion, finding that the lower court made an additional error in finding that consent to a battery is a defense. Consent is only a defense in cases of sexual battery, not domestic violence.

(l) Stalking defined:
Section 784.048(3), Florida Statutes: Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking.

(m) Stalking is a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083, Florida Statutes. *See also* section (e) above. For additional definitions of aggravated stalking see section 784.048(3),(4), and (5), Florida Statutes.

(n) Cyber-stalking defined:
Section 784.048, Florida Statutes. To engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

(4) Applicable Rules of Procedure:

(a) The Florida Family Law Rules of Procedure apply to domestic, repeat, dating and sexual violence proceedings. Florida Family Law Rule 12.010(1).

(b) Pre-trial discovery:
Pre-trial discovery is therefore available in injunction cases including: depositions (rule 12.290), interrogatories (rule 12.340), production of documents (rule 12.350), examination of persons (rule 12.360), and requests for admission (rule 12.370). However, the mandatory disclosure required under rule 12.285 for most family law cases is not available in domestic, repeat, dating and sexual violence injunction proceedings.

(c) Procedures for Temporary and Permanent Injunctions for Protection against Domestic Violence are governed by Florida Family Law Rule of Procedure 12.610. In conjunction with this rule, the Florida Supreme Court has approved a series of standardized domestic violence forms, which include petitions for various types of injunctions and mandatory injunction forms. Judges are required to use the injunction forms when making determinations in domestic violence cases. Modifications of the mandatory injunction forms themselves must be approved by the Supreme Court of Florida.

(5) Clerk Shall Provide Assistance to Petitioners:
The clerk of the court shall provide forms and assist petitioners in seeking both injunctions for protection against domestic violence and enforcement for a violation of an injunction. Section 741.30(2)(c)1., Florida Statutes. Florida Family Law Rule of Proceedure 12.610(4)(a) broadens this obligation to require that the clerk of court also provide forms and assistance to petitioners seeking injunctions for protection against repeat, dating and sexual violence.

(6) No Longer a Filing Fee:
As of October 1, 2002, the clerk of court can no longer assess a filing fee for petitions for injunction against domestic violence. Section 741.30(2)(a), Florida Statutes. Section 741.2902(2)(f), which previously required the court to consider whether the respondent should pay the court costs for a domestic violence injunction, was deleted in the 2002 Legislative amendments. Ch. 2002-55, § 11, at 791, Laws of Fla.

II. DOMESTIC VIOLENCE COURT – CIVIL PROCEEDINGS:

A. VALID ESTABLISHMENT OF DOMESTIC VIOLENCE COURTS:

(1) Holsman v. Cohen, 667 So.2d 769 (Fla. 1996). It is appropriate for circuits to establish domestic violence courts to enable family law judges to address all issues involving domestic violence in an expeditious, efficient, and deliberate manner.

(a) Rivkind v. Garcia, 650 So.2d 38 (Fla. 1995).

(b) In re Report of Comm'n on Family Courts III, 646 So.2d 178 (1994).

(2) Local rules and administrative orders regarding the implementation of family court divisions are both valid.

(a) Holsman v. Cohen, 667 So.2d 769 (Fla. 1996).

1. District courts lack authority to review administrative orders.
2. District courts' obligations do not include the approval of routine matters generally included in administrative orders such as the assignment of judges to divisions.

(b) In re Report of Comm'n on Family Courts III, 646 So.2d 178 (1994).

(c) Rivkind v. Patterson, 672 So.2d 819 (Fla. 1996).

(3) Judicial Assignments in Domestic Violence Court:

(a) Rivkind v. Patterson, 672 So.2d 819 (Fla. 1996), ("that judicial assignments at issue constitute a logical and lawful means to ensure the expeditious and efficient resolution of domestic violence issues . . .").

(b) Holsman v. Cohen, 667 So.2d 769 (Fla. 1996). County court judges may be assigned to hear circuit court work on a temporary or regular basis, provided that the assignment is directed to a specified or limited class of cases. Likewise, this applies equally to the assignment of circuit judges to handle county court matters.

B. JURISDICTION OF DOMESTIC VIOLENCE COURTS:

(1) The court must have jurisdiction before entering a final judgment of injunction for protection against violence and ancillary relief.

(a) Velez v. Selmar, 781 So.2d 1197 (Fla. 3d DCA 2001)(Trial court, which lacked jurisdiction, incorrectly entered an injunction against repeat violence and supplemental order to permanent injunction).

(b) *See also* Rinas v. Rinas, 847 So.2d 555 (Fla. 5th DCA 2003).
Trial court did not have jurisdiction to award custody, child support and alimony, in a domestic violence action, absent dissolution of marriage proceeding; section 741.30, Florida Statutes does not authorize such awards, under provisions of chapter 61, when petitioner in a domestic violence action is a minor child filing by and through her mother as "next best friend."

(2) Florida's courts lack authority to issue protective injunctions granting custody of children who are subjects

of foreign custody order. Baumgartner v. Baumgartner, 691 So.2d 488 (Fla. 2d DCA 1997).

(a) Florida courts likewise lack authority to prohibit children, who are subjects of foreign custody orders, from leaving Florida.

(b) Florida courts do have authority to issue protective orders to those persons within the state.

(c) Foreign Orders Which Prohibit Removal of Child from Other Countries:

1. *See* Abuchaibe v. Abuchaibe, 751 So.2d 1257 (Fla. 3d DCA 2000). The Third District held that the courts in Florida had no jurisdiction over a child for the purpose of making a custody determination under section 61.1308(1)(b) Florida Statutes, where the child did not have any *significant connection* with the state of Florida. The child was born in Florida, and later moved to Colombia. He had lived about half of his thirty-three months in Florida, and about half in Colombia. The father is a dual citizen of the U.S. and Colombia, where he resides. The mother is a Colombian citizen and has resided in the U.S. while attempting to qualify for residency. The child was present in Florida visiting his mother for six days prior to the mother filing an injunction for protection against domestic violence. The Florida court entered a domestic violence injunction, asserted jurisdiction over the child, awarded her temporary custody, and ordered the child returned from Colombia by the father, who had sent him back to Colombia the day after the mother filed for the injunction. The father commenced formal proceedings in Colombia to determine custody of the child some time after the final order of the Florida court in November 1998, awarding custody to the mother. Service of process on the mother for the Colombia proceedings was attempted, though unsuccessfully, through the Colombian Consulate in Miami. In December 1998, the mother filed for dissolution of marriage, seeking permanent custody of the child. The mother subsequently dismissed her dissolution petition while the issue of jurisdiction was being considered by the Family

Court. The domestic violence trial court later held the father in contempt for his failure to return the child to the mother, despite the father's argument that Colombian law prevented him from removing the child from the country while custody proceedings were pending. The Third District reversed the trial court's custody order, finding that the court erred in asserting jurisdiction. Further, the Third District reversed the contempt order, since the father was barred from removing the child from Colombia by Colombian law.

(3) Court's Authority in Consolidated Action Subsequent to Dismissal of Domestic Violence Injunction:
Court can not enter no contact directives in related and consolidated paternity action, once court dismisses the temporary injunction. *See* Taylor v. Taylor, 831 So.2d 240 (Fla. 2d DCA 2002). The trial court's sua sponte consolidation of the Mother's petition for an injunction with the Mother's subsequently filed paternity action did not confer authority on the court to enter no contact directives against the Father, where the court dismissed the temporary domestic violence injunction.

C. PARTIES/STANDING/RESIDENCY

(1) Petitioner Does Not Have to Vacate Residence:
A person's right to file a petition for injunction against domestic violence is not affected by whether that person has left the parties' residence or household. Section 741.30(1)(d), Florida Statutes. Likewise, a litigant may still be awarded exclusive use and possession of the parties' home, even if the litigant has left the home.

(2) Petition can be filed Pro Se:
A pro se litigant can file a petition for protection against domestic violence. Section 741.30(f), Florida Statutes.

(3) Standing:

(a) Section 741.30(1)(a), Florida Statutes: "Any person described in paragraph (e), who is either the victim of domestic violence as defined in section 741.28 or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence, has standing in the circuit court to file a sworn petition for an injunction for protection against domestic violence."

1. There is apparently no statutory distinction

between the standing to file a petition, conferred above by being a victim of domestic violence or having a reasonable belief of being in imminent danger of becoming a victim, and prevailing on the merits. Section 741.30(6)(a) permits the court to enter the injunction upon making either of the findings in section 741.30(1)(a). This interpretation of standing is also supported by case law. Cleary v. Cleary, 711 So.2d 1302 (Fla. 2d DCA 1998); Gustafson v. Mauck, 743 So.2d 614 (Fla. 1st DCA 1999).

2. However, other cases discuss standing in the context of the relationship required to exist between parties before an individual can petition for a domestic violence injunction. A petitioner lacks standing to file a petition for injunction if he or she does not meet the "residing together" requirement for seeking a domestic violence injunction. Partlowe v. Gomez, 801 So.2d 968 (Fla. 2d DCA 2001). Therefore, there are two aspects to the standing requirement in domestic violence injunction cases; the provisions under (a) above and (b) the "Family or Household Members" requirement below.

(b) Parties Must Be "Family or Household Members" to Request an Injunction for the Protection against Domestic Violence: Under the 2002 amendments to the chapter 741, an injunction for protection against domestic violence requires that the domestic violence or threat of domestic violence occur between "one family or household member" and "another family or household member" but the petitioner is not required to be the spouse of the respondent. Sections 741.28(2), 741.30(e), Florida Statutes. Any "family or household member" as defined under Section 741.30(1)(e), Florida Statutes, below, can file a petition for protection against domestic violence.

1. Section 741.28(3), Florida Statutes:
   FAMILY OR HOUSEHOLD MEMBER means:
   (d) They are family or household members – spouses, ex-spouses, relatives by blood or

marriage, anyone who lives or has lived together in the same dwelling as a family unit AND

(e) They currently reside or have in the past resided together in the same dwelling as a family unit, OR

(f) They have a child in common, regardless of whether they have been married and regardless of whether they currently reside or have in the past resided together in the same dwelling. (If the parties are relatives and no longer reside together or did not reside together in the past they may want to file for an injunction under section 784.046, Florida Statutes.)

2. Unless the parties have a child in common, the parties must have lived in the same single dwelling with the person against whom the injunction is sought. Therefore, a child who has never lived with his biological parent could not seek a domestic violence injunction against the parent.

3. Definition of "family or household member" under Florida law is broader than under federal statutes: Florida includes blood relatives and in-laws but federal law does not. Furthermore, a minor child can file by and through a parent as "next best Friend." However in such case ancillary relief may be limited.

   a. *See* Rinas v. Rinas, 847 So.2d 555 (Fla. 5th DCA 2003). Improper for trial court to award custody, child support, and alimony for petitioner's mother and sister in a domestic violence action where petitioner was a minor child filing by and through her mother as "next best friend."

4. *See also infra* D.1. Venue or Residency Requirement, there is no minimum residency requirement to petition for protection against domestic violence in Florida, section 741.30(1)(j), Florida Statutes.

(4) Lack of Standing Must be Raised Initially:

(a) Andrews v. Byrd, 700 So.2d 1250 (Fla. 1st DCA 1997). Respondent must raise lack of qualification to meet definition of "family or household member" before the permanent injunction is entered. The court affirmed the entry of a domestic violence injunction under Chapter 741 despite the claim that the respondent did not qualify as a "family or household member," where the issue was not raised until after the injunction was entered.

(5) Standing Requirement Met:

(a) Section 741.30 was intended to protect intimate (including same sex) partners and was not intended to exclude those who seek protection from someone of the same sex. Peterman v. Meeker, 855 So.2d 690 (Fla. 2d DCA 2003).

(b) Petitioner and respondent who are brother and sister have not lived together for 40 years. They still qualify for domestic violence relief. Rosenthal v. Roth, 27 Fla. L. Weekly D 576 (Fla. 2d DCA 2002). The statutes defining "domestic violence" and "family household member" were amended after this case in 2002.

(c) Temporary stay, of one week, with Aunt satisfied statutory requirement that the parties were residing in the "same dwelling." Koris v. Zipnick, 738 So.2d 369 (Fla. 4th DCA 1999).

(6) Standing Requirement NOT met:

(a) Petitioner lacked standing to file a domestic violence action although the parties' relationship was romantic in nature with overnight visits because both parties lived in separate residences. Slovenski v. Wright, 849 So.2d 349 (Fla. 2d DCA 2003).

(b) Petitioner who is maternal grandfather and who had custody of the grandchild requested domestic violence injunction against child's father. The Court found pursuant to section 741.28 that the grandfather and father did not share child in common and dismissed the petition. Partlowe v. Gomez, 801 So.2d 968 (Fla. 2d DCA 2001).

(c) Court found that statute required that parties lived together at some point; improper to enter injunction to sister-in-law, although related by marriage, where she and brother-in-law never resided together. Sharpe v. Sharpe, 695 So.2d 1302 (Fla. 5th DCA 1997). The statute was modified after Sharpe to make clear that

parties who have a child in common do not have to have lived together.

(7) **Alternative Procedure**: If the petitioner does not have standing to file a petition for an injunction against domestic violence, an injunction against repeat violence may be applicable, section 784.046, Florida Statutes. *See also* Florida Family Law Rule of Procedure 12.610(1)(B).

D. PROCEDURAL REQUIREMENTS FOR CLAIMS:

(1) **Florida Family Law Rule of Procedure 12.610** contains additional procedural sections that are titled Requirements for Use of Petitions, Consideration of Petitions by the Court, Forms, Orders of Injunction, Issuing of Injunction, Service of Injunctions, Permanent Injunctions, Duration, Enforcement, and Motion to Modify or Vacate Injunction.

(2) **Venue or Residency Requirement:**
Venue in domestic violence injunction cases used to be guided by the general venue statute, chapter 47. Hill v. Fields, 813 So.2d 212 (Fla. 2d DCA 2002). Under the 2002 amendments to chapter 741, venue is specifically discussed. Section 741.30(1)(j) of the Florida states:

(a) There is no minimum requirement of residency to petition for an injunction.

1. Section 741.30(1)(j), Florida Statutes states: Notwithstanding any provisions of chapter 47 [Venue], a petition for an injunction for protection against domestic violence may be filed in the circuit where the petitioner currently resides, where the respondent resides, or where the domestic violence occurred. There is no minimum requirement of residency to petition for an injunction for protection.

(b) Location of the Alleged Act of Domestic Violence:

1. Whether an injunction can be issued when the act of domestic violence or the alleged victim's basis for fearing he or she will become a victim of domestic violence occurs outside the State of Florida is a question that has not been answered by caselaw. However, a petition for a domestic violence injunction is a private cause of action, equivalent to a civil action, Tobkin v. State, 777 So.2d 1160 (Fla. 4th DCA 2001), and section 48.193(1)(b) states that a person submits to the

jurisdiction of this state by "committing a tortious act within this state." This indicates that the acts forming the basis for a domestic violence injunction must be committed in Florida.

2. However, when contemplating the issue discussed above, the court must recognize that the statutes do specifically state that Legislature's intent is to protect the victim. Therefore, when determining whether to issue an injunction the court must focus on the safety of the victim, the victim's children, and any other person who may be in danger, whether or not the alleged act occurred at home or just across the state line.

(3) Service Requirements of Pleadings and Other Documents: Florida Family Law Rule of Procedure 12.610(2)(A) requires petitions for protection against domestic violence, other required documents, and the temporary injunction (if one has been entered) to be served by a law enforcement agency and requires the clerk to furnish a copy of the petition and applicable forms to law enforcement for service.

(a) Temporary and Permanent Injunctions Must be Served: Silas v. State, 6 Fla. L. Weekly Supp. 628 (Fla. 20th Cir. Ct.1999). The Circuit Court, Appellate Division, of the Twentieth Judicial Circuit held that where the defendant was charged with violation of a permanent injunction for protection against domestic violence, he was entitled to a judgment of acquittal based on the fact that he was never personally served with the permanent injunction in accordance with Florida Family Law Rule of Procedure 12.610. The fact that the temporary injunction had been personally served does not change the requirement that the permanent injunction be personally served.

(b) Service Requirements for Subsequent pleadings and Orders:
All orders issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1., shall be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. In the event a party failed or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that

service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. Section 741.30(8)(a)3. *See also* Florida Family Law Rule of Procedure 12.080. The procedure for service of pleadings other than the petition, supplemental petitions and orders is governed by this rule except that service of a motion to modify or vacate an injunction should be by notice that is reasonably calculated to apprise the nonmoving party of the pendency of the proceedings. Florida Family Law Rule of Procedure 12.610(2)(C).

(5) Due Process Problems:

(a) Notice Problems:

1. Trial court's decision to permit psychologist's testimony, which was based on a child custody psychological report, during a hearing on a temporary domestic violence injunction issued against the father, deprived the mother of procedural due process. The report which recommended that the children be removed from the mother's custody due to severe alienation of the children from their father was 35 pages singles spaced and was not received by the mother until the day before the hearing. Schmitz v. Schmitz, 2005 WL 94749 (Fla. 4th DCA 2005).
2. Lab report, which was sent directly to the judge, was an ex-parte communication and the court must provide a copy to each party and allow each side to be heard before suspending visitation base upon report. Pierce v. Tello, 29 Fla. L. Weekly D710 (Fla. 4th DCA 2004).
3. Former Wife's due process rights were violated when trial court on its on its own motion modified "no contact" provision of the contempt order, domestic violence injunction, husband did not request a modification and agreed at that hearing that the only issues to be decided was the amount of child support. Swanson v. Swanson, 29 Fla. L. Weekly D2655b (Fla. 4th DCA 2004). *See also* White v. Cannon, 778 So.2d 467 (Fla. 3d DCA 2001).
4. Trial court erred in dismissing an injunction against domestic violence in the final judgment dissolving the parties' marriage where the

Petitioner did not move to vacate the injunction and where the parties were not noticed that the matter would be considered, thus failing to provide due process on the issue. Parties must have notice that dismissal will be considered. Farr v. Farr, 840 So.2d 1166 (Fla. 2d DCA 2003).

5. Court erred in hearing respondent's motion to modify temporary injunction concerning child custody at the same time as the final hearing. Petitioner claimed no notice and asked for continuance which was denied. Cervieri v. Cervieri, 814 So.2d 609 (Fla. 4th DCA 2002).
6. Conversion of ex-parte hearing on Motion to Quash Injunction into full evidentiary hearing infringed upon due process and therefore the injunction was vacated and the case remanded for a full hearing. Melton v. Melton, 811 So.2d 862 (Fla. 5th DCA 2002).
7. Respondent's right to due process violated where custody and visitation were terminated without a petition requesting such relief. Ryan v. Ryan, 784 So.2d 1215 (Fla. 1st DCA 2001).
8. By dismissing injunction without motion, notice or hearing, the court erred. Chanfrau v. Fernandez, 782 So.2d 521 (Fla. 2d DCA 2001).
9. Judge can not sua sponte modify injunction where no motion seeking modification was filed. Mayotte v. Mayotte, 753 So.2d 609 (Fla. 5th DCA 2000).
10. The trial court amended a domestic violence injunction and granted the paternal grandmother temporary custody of the child without motion, notice, or hearing afforded to the parties. The custody order was reversed and the court stated that the fact that the wife had obtained a hearing on a motion to dissolve the child custody order was not sufficient to satisfy due process requirements. Snyder v. Snyder, 685 So.2d 1320 (Fla. 2d DCA 1996).

(b) Opportunity to be Heard:

1. It was error to deny respondent the opportunity to present evidence. Oravec v. Sharp, 743 So.2d 1174 (Fla. 1st DCA 1999), Madan v. Madan, 729 So.2d 416 (Fla. 3d DCA 1999).
2. Full evidentiary hearing required. Cisneros v. Cisneros, 782 So.2d 547 (Fla. 4th DCA 2001),

Spurgiesez v. Graves, 753 So.2d 705 (Fla. 5th DCA 2000), Chanfrau v. Fernandez, 782 So.2d 521 (Fla. 2d DCA 2001).

3. Must allow evidence to be presented. Wooten v. Jackson, 812 So.2d 609 (Fla. 1st DCA 2002), Shaw-Messer v. Messer, 755 So.2d 776 (Fla. 5th DCA 2000), Cuiska v. Cuiska, 777 So.2d 419 (Fla. 1st DCA 2000).
4. It was error for the court to "cut hearing short" due to number of cases to be heard that day. Semple v. Semple, 763 So.2d 484 (Fla. 4th DCA 2000).
5. Petitioner requested emergency writ of certiorari for review of two separate orders which denied her ex-parte motion for a domestic violence injunction. The first petition was denied without a hearing. The second petition denied relief, holding that the first order issued by a different judge was controlling. The writ was granted and the judge issuing the first order admitted error because the petitioner's allegations were sufficient. The Fifth DCA quashed both orders and remanded the case to the first judge with instructions to issue the temporary injunction. Gonzales v. Clark, 799 So.2d 451 (Fla. 5th DCA 2001).

(c) Court Forced Defendant to Proceed to Hearing without Representation:

Defendant, against whom injunction for protection was sought, was denied due process when trial court granted her twenty days to obtain representation and at the same time required her to proceed pro se at a hearing in which all of the issues that required the assistance of an attorney were to be decided. Sheinheit v. Cuenca, 840 So.2d 1122 (Fla. 3d DCA 2003).

(6) Injunction Must be Issued as a Separate Order under Chapter 741:

(a) An injunction for protection against domestic violence must be issued as a separate order under the rules of Florida Statutes Chapter 741, including service of process, proper pleadings, and sufficient evidence to support an injunction or waiver. Guida v. Guida, 870 So.2d 222 (Fla. 2d DCA 2004).

(b) Section 61.052(6), Florida Statutes, mandates that an injunction must be a separate order from the final judgment of dissolution of marriage. *See also Fla. Fam.*

L. R. 12.610(a) and Campbell v. Campbell, 584 So.2d 125 (Fla. 4th DCA 1991).

(c) Practical Reasons for this Mandate: Protection by Police The Florida Supreme Court Approved Family Law Form final judgments, which pertain to domestic violence, are recognized due to their uniformity by law enforcement personnel, whereas individually created final judgments may not be registered or easily recognized. The form injunctions are registered in a statewide registry and may be verified by law enforcement personnel. A similar order under chapter 61 would not be registered.

(7) Entering and Interpreting Multiple or Inconsistent Orders:

(a) Provisions regarding support, custody, and exclusive use and possession of the home in Chapter 61 orders take precedence over inconsistent determinations in domestic violence injunctions, whether a chapter 61 case was filed and determined subsequent to the chapter 741 action or before. Section 741.30(1)(c), Florida Statutes; *see also* Cleary v. Cleary, 711 So.2d 1302 (Fla. 2d DCA 1998). Furthermore, The Family Court Efficiency Bill, which will become law once it is signed by Governor Bush amends chapter 741.30(1)(c) to be consistent with Cleary.

(8) Domestic Violence Hearings Must be Recorded:

(a) This applies to the injunction return hearing.

(b) Section 741.30(6)(h), Florida Statutes.

(c) Schmidt v. Hunter, 788 So.2d 322 (Fla. 2d DCA 2001). Initial hearing must be recorded for contempt to be adjudicated; otherwise, facially sufficient claim of error cannot be refuted by the record.

(9) Mediation in Domestic Violence Cases:

(a) A court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process. Section 44.102, Florida Statutes.

(b) Fla. Fam. L. R. P.12.610 prohibits mediation in domestic violence injunction cases until after all the issues involved in granting an permanent injunction have been resolved except for the issues listed in the rule under 12.610(c)(1)(C). "The court, with consent of the parties, may refer the parties to mediation by a certified mediator to attempt to resolve the details as to [issues listed in the rule 12.610(c)(1)(C).] This mediation shall be the only alternative dispute resolution process

offered by the court. Any agreement reached by the parties through mediation shall be reviewed by the court and, if approved, incorporated into the final judgment. If no agreement is reached the matters referred shall be returned to the court for appropriate rulings. Regardless of whether all issues are resolved in mediation, an injunction for protection against domestic violence shall be entered or extended the same day as the hearing on the petition commences." Florida Family Law Rule of Procedure 12.610(c)(1)(C).

(10) Bond is Not Required for Civil Domestic Violence Injunction:
No bond is required for issuance of a civil injunction for protection against domestic violence. 741.30(2)(b), Florida Statutes; *Rule* 12.610(c)(2)(B), Florida Family Law Rules of Procedure.

(11) Error for Trial Court to Enter Permanent Injunction When no Petition was Filed:
Orth v. Orndorff, 835 So.2d 1283 (Fla. 2d DCA 2003). Trial court's sua sponte entry of a permanent injunction where there was no petition before it was in "direct contravention of sections 741.30(1)(l), (4), and (6)(a), which require the filing of a petition and a hearing on such prior to the issuance of an injunction."

(12) Petition Requirements: The petition must be sworn, section 741.30(3)(b), Florida Statutes, and the petitioner must initial a statement in the petition acknowledging that he/she understands that the statements made in the petition are subject to the penalty perjury, section 741.30(3)(c), Florida Statutes. *See also* Section 741.30(1)(b), Florida Statutes (An injunction for protection against domestic violence may be sought regardless of whether any other actions are pending between the parties. However, the pendency of any other action must be alleged in the petition for protection against domestic violence).

(13) Required Forms for Filing:
Depending on the request of the petitioner, the following additional Florida Supreme Court Approved Family Law Forms must be filed in addition to the petition:

(a) If temporary child support is requested:
1. Notice of Social Security Number, Form 12.902(j), and

2. Family Law Financial Affidavit, Form 12.902(b) or (c).
3. Child Support Guidelines Worksheet, Form 12.902(e).

(b) If temporary custody of a minor child is requested:
1. Uniform Child Custody Jurisdiction and Enforcement Affidavit, Form 12.902(d).

(c) If temporary alimony is requested:
1. Family Law Financial Affidavit, Form 12.902(b) or (c).

(d) *See also infra* Sections J.(1)(b)1. Ryan v. Ryan; J.(1)(b)2. Blackwood v. Anderson.

(14) Perjury:

(a) If a petitioner makes false statements in a petition for an injunction against domestic violence, the petitioner is subject to perjury prosecution pursuant to the elements of section 837.02. Adams v. State, 727 So.2d 983 (Fla. 5th DCA 1999). The petitioner is made aware of this potential sanction when the petitioner signs the petition and takes the oath required under section 741.30(3)(c), Florida Statutes.
1. Adams v. State, 727 So.2d 983 (Fla. 5th DCA 1999). The wife was convicted of perjury by contradictory statement after filing a false affidavit in a domestic violence action against her husband. On appeal she contended that the trial court erred in not granting her motion for judgment of acquittal because 1) the evidence established that she did not sign the affidavit under oath, and 2) her defense of recantation was established as a matter of law. The Fifth District Court of Appeals affirmed the trial court finding that neither argument possessed merit and emphasized the criminal consequences attach to the false swearing of complaints, even where the affiant might have been motivated by the desire to benefit the person against whom the complaint was sworn.

(b) Additionally, in a dissolution action, the court can consider false allegations made by a party in an injunction proceeding under section 741.30 when determining parental responsibility and physical residence of the parties' children. Section 61.13(3)(k), Florida Statutes.

(15) Frivolous Allegations:

(a) Chapter 741 does not provide a sanction when a party to an injunction proceeding makes frivolous allegations.

However, one possible sanction could be the award of attorney's fees under section 57.105.

(b) Although no cases were located authorizing attorney's fees in such a case, section 57.105 permits an award of attorney's fees in a civil action if the court finds that "the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) Was not supported by the material facts necessary to establish the claim or defense; or (b) Would not be supported by the application of then-existing law to those material facts." *Cf.* Cisneros v. Cisneros, 831 So.2d 257 (Fla. 3d DCA 2002), (stating request for appellate attorney's fees under section 57.105 in domestic violence injunction case should be made by timely motion before appellate court)*; but cf.* Lewis v. Lewis, 689 So.2d 1271 (Fla. 1st DCA 1997) (stating attorney's fees may not be awarded in a domestic violence injunction case under section 61.16 (dissolution of marriage) where it did not involve enforcement or facilitation of an action under chapter 61).

(c) *See also* section II.P.(1), Attorney's Fees in Domestic Violence Proceedings.

(16) Failure to Appear:

No specific sanctions are provided under Chapter 741 when a petitioner or respondent fails to appear at a hearing on an injunction petition. The court generally dismisses the petition if the petitioner fails to appear. Filing fees can no longer be assessed for a domestic violence injunction.

E. SUBSTANTIVE REQUIREMENTS FOR CLAIMS:

(1) Legal Grounds Required to Enter an Ex-parte Temporary Injunction

The court is required to find that an immediate danger exists prior to issuing a temporary injunction. Section 741.30(5)(a) states that when a petitioner files a petition for injunction and "it appears to the court that an immediate and present danger of domestic violence exists" the court may grant a temporary injunction, ex parte. *See also infra section* 2(b).

(2) Legal Grounds Required to Enter a Permanent Injunction:

(a) There are two bases for obtaining a permanent injunction for protection against domestic violence: A petitioner must either show:

1. The petitioner is a victim of domestic violence, as defined under section 741.28, Florida Statues, OR
2. The petitioner has reasonable cause to believe that he or she is in imminent danger of becoming the victim for a court to issue an ex-parte temporary injunction and/or a permanent injunction for protection against domestic violence. Section 741.30(1)(a),(6)(a), Florida Statutes; *See also* Farrell v. Marquez, 747 So.2d 413 (Fla. 5th DCA 1999).
3. Physical Injury or Death Not a Pre-Requisite to Grant an Injunction: Definition does not require that the physical injury or death occur in connection with the offense. R.H. v. State, 709 So.2d 129 (Fla. 4th DCA 1998). *See also* Rey v. Perez-Gurri, 662 So.2d 1328 (Fla. 3d DCA 1995). Chapter 741 does not require a petitioner to demonstrate that he or she has already been a victim of domestic violence. The petitioner's evidence that her former husband recently threatened her was sufficient to establish "reasonable cause to believe that she was about to become a victim of domestic violence" in light of her former husband's prior violent threatening behavior.
4. The second basis for petitioning for an injunction requires the petitioner to show that he or she is in "imminent danger" of domestic violence. Taylor v. Taylor, 831 So.2d 240 (Fla. 2d DCA 2002) (stating court failed to find that either of the two statutory bases for issuing a domestic violence injunction existed).
5. Section 741.30(6)(b), Florida Statutes, sets forth specific factors the court should consider when determining whether there is immanent danger of domestic violence. *See infra* section (b).

(b) Court Must Consider; Section 741.30(6)(b), Florida Statutes:

In determining whether the Petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim, the court must consider all relevant factors alleged in the petition for injunction, including but not limited to:

1. The history between the petitioner and respondent, including threats harassment, stalking, and physical abuse.
2. Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.
3. Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child or children.
4. Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.
5. Whether the respondent has intentionally injured or killed a family pet.
6. Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement.
7. Whether the respondent has a criminal history involving violence or the threat of violence.
8. The existence of a verifiable order of protection issued previously or from another jurisdiction.
9. Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the petitioner.
10. Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that she or he is in imminent danger of becoming a victim of domestic violence.

(c) Remoteness of Incident(s) Forming Basis For Petition: There is no requirement that the incidents alleged to support the issuance of an injunction for protection against domestic violence occur within a certain time frame relative to filing of the petition. Section 741.30(6)(b), above, sets forth the factors the court should consider regarding whether a threat of domestic violence is imminent. Some factors indirectly address the proximity of the alleged acts to the filing of the petition: 1) the history of the parties; and 7) the prior criminal record of violence of the respondent.

(3) Fear of Imminent Danger Established:

(a) Moore v. Hall, 786 So.2d 1264 (Fla. 2d DCA 2001). The trial court erred in finding that the verbal statement

from the respondent saying, "I should have killed her," made to a process server (shortly before the petition for protection against domestic violence was filed), provided the petitioner with an objectively reasonable fear of imminent domestic violence. A pushing incident that occurred twelve years ago, along with a gift sent to the petitioner from the respondent containing a knife in the back of the statuette, may have given the petitioner a reasonable fear of imminent domestic violence sufficient to support the issuance of an injunction at that time. However, at the time of the injunction hearing twelve years had passed without further violence or threats (with the exception of the statement above) despite continued litigation between the parties. The decision of the trial court was reversed.

(b) Abravaya v. Gonzalez, 734 So.2d 577 (Fla. 3d DCA 1999). The Third District held that the testimony of a former girlfriend alleging that her former boyfriend threatened her well-being by driving his truck on the expressway in an erratic and threatening manner, intentionally preventing her from exiting the highway at her desired exit, and rear-ending her vehicle, was internally consistent and sufficient to support the entry of a permanent injunction for protection against domestic violence. The Third District held that the testimony of the girlfriend alone was sufficient and the court expressly recognized the general "cycle of violence."

(4) Fear of Imminent Danger NOT Established:

(a) Kopelovich v. Kopelovich, 793 So.2d 31 (Fla. 2d DCA 2001). Respondent *threatened to harm dog and petitioner in court by destroying her financially, brainwashing her and embarrassing her in front of her friends.* The Second District held that it was error for the trial court to grant initial ex parte injunction and amended temporary injunction against respondent where petitioner failed to establish "immediate or present danger" or threat of or actual "domestic violence," in accordance with section 741.30(5), Florida Statutes (1999), and Florida Family Law Rule of Procedure 12.610. In order to balance respondent's due process rights against harm sought to be protected, *evidence supporting an ex parte injunction should be*

"strong and clear." Additionally, it was error to enter a permanent injunction where petitioner amended her petition to include allegations sufficient to satisfy the statutory requirements, but where *petitioner's testimony at hearing still failed to satisfy the requirement* that she had "a reasonable cause to believe she was in imminent danger of domestic violence." Note: This case was decided before injuring or killing a family pet was added to the statute as a relevant factor.

(b) McMath v. Biernacki, 776 So.2d 1039 (Fla. 1st DCA 2001).
Receipt of letter and later flowers does not create "well-founded fear that violence is imminent."

(c) Giallanza v. Giallanza, 787 So.2d 162 (Fla. 2d DCA 2001).
General harassment of petitioner and/or her children insufficient.

(d) Cuiska v. Cuiska, 777 So.2d 419 (Fla. 1st DCA 2000).
The First District held that the trial court did not abuse its discretion in denying the entry of a temporary injunction for protection against domestic violence where the *allegations in the petition did not demonstrate the existence of an "immediate and present danger of domestic violence"* as required by section 741.30(5)(a), Florida Statutes. Although the appellate court did not rule on the issue of whether the trial court erroneously dismissed the petition without a hearing, due to the fact that such an order was not provided as part of the case on appeal, the opinion noted that in accordance with section 741.30(5)(b), Florida Statutes, a hearing on the allegations of the petition would clearly be required before the case could be dismissed.

(e) Gustafson v. Mauck, 743 So.2d 614 (Fla. 1st DCA 1999).
The First District held that the trial court erred in granting a permanent injunction for protection against domestic violence on the basis of *repeated telephone calls made to petitioner, where the calls did not give the petitioner objectively reasonable grounds to fear* that she was in imminent danger of violence from the respondent, and there was *no evidence of previous*

physical violence, although a permanent injunction had been previously entered which expired two years prior. The parties had not lived together for five years and the called subsided once the step-father asked the respondent to stop calling. The court reviewed the 1997 amendment to section 741.30(1)(a), Florida Statutes, which changed the standard for issuance of an injunction to require reasonable fear of *imminent* danger, as opposed to reasonable fear of violence at some indeterminate time in the future.

(f) Farrell v. Marguez, 747 So.2d 413 (Fla. 5th DCA 1999). Petitioner and respondent both students at University. He parked car in school lot near her, greeted her, offered her a birthday card and was seen on campus several times. No reasonable cause to believe about to become victim of domestic violence. *See infra* (5)(c) for further facts of this case.

(5) Sufficiency of Allegations and Evidence:

(a) Whether the conduct meets the statutory requirement is a question of fact for the trier of fact. Biggs v. Elliot, 707 So.2d 1202 (Fla. 4th DCA 1998).

(b) Sufficient Evidence to Grant an Injunction:

1. Gonzales v. Clark, 799 So.2d 451 (Fla. 5th DCA 2001). Petitioner requested an emergency writ of certiorari for review of two separate orders which denied her ex parte petition for a domestic violence injunction. The first petition was denied without a hearing. A different judge denied the second petition, holding that the first order was controlling. The writ was granted and the judge issuing the first order candidly admitted, by filing a response with the district court, error because the petitioner's allegations were sufficient to issue the injunction. The Fifth District quashed both orders and remanded the case to the first judge with instructions to issue the temporary injunction.
2. *See supra* section E.(4)(d), Cuiska v. Cuiska, 777 So.2d 419 (Fla. 1st DCA 2000).
3. *See supra* section E.(3)(b), Abravaya v. Gonzalez, 734 So.2d 577 (Fla. 3d DCA 1999).

4. Biggs v. Elliot, 707 So.2d 1202 (Fla. 4th DCA 1998). Following the petitioner, repeatedly telephoning her, and stalking her constitutes grounds for a permanent injunction.
5. Rey v. Perez-Gurri, 662 So.2d 1328 (Fla. 3d DCA 1995). Chapter 741 does not require a petitioner to demonstrate that he or she has already been a victim of domestic violence. The petitioner's evidence that her former husband recently threatened her was sufficient to establish "reasonable cause to believe that she was about to become a victim of domestic violence" in light of her former husband's prior violent threatening behavior. Note: The 1997 statutory change requires that petitioner must either be a "victim of domestic violence or have reasonable cause to believe he or she is in imminent danger of becoming a victim…" Notwithstanding such change, the reasoning of this case should apply, provided the imminent standard is met.

(c) *See also* in this outline, IV. Domestic Violence – Criminal Proceedings, section F. Parental Discipline/Battery on a Child.

(6) Insufficient Evidence to Grant Injunction:

(a) Hursh v. Asner, 890 So.2d 494(Fla. 5th DCA 2004). No error in denying petition for domestic violence when Petitioner's ultimate burden of proof is not met.

(b) Mossbrooks v. Advincula, 748 So.2d 382 (Fla. 3d DCA 2000). The Third District reversed the entry of an injunction for protection against domestic violence because the evidence presented to the trial court of the alleged prior acts of violence was *insufficient as a matter of law.*

(c) Farrell v. Marquez, 747 So.2d 413 (Fla. 5th DCA 1999). The Fifth District held that it was error for the trial court to enter a permanent injunction for protection against domestic violence where *no evidence was presented that the former husband had physically harmed or threatened the former wife*, and the facts alleged and proved did not support the

conclusion that the former wife had reasonable cause to believe that she was in imminent danger of becoming a victim of domestic violence. The testimony revealed four encounters which did not involve any physical harm or threat of harm. During the first such encounter, the former wife discovered the former husband's parked car next to hers in the school parking lot; however, there was no evidence the former husband was present at the time. Second, the former wife saw the former husband three times at a school building where they both take classes. On one occasion he greeted her in passing. On another occasion, he offered her a birthday card, and she continued to exit the building. On the third occasion, following the conclusion of a lecture they had both attended, when she attempted to cut through the crowd to leave and the former husband did not move out of her way, she reacted by pushing him out of the way with her book bag. The testimony revealed, however, that it was impossible for him to move due to the fact that there were people on both sides of him.

(7) Aggravated Stalking:

(a) Continued Incidents Constitute Aggravated Stalking:
Jordan v. State, 802 So.2d 1180 (Fla. 3d DCA 2001). Defendant appealed convictions for aggravated stalking and trespass after violating a domestic violence injunction on the grounds that the evidence was not sufficient to sustain the charges. The court held that the defendant's conduct in visiting the victim's home after the issuance of the injunction and multiple phone calls from jail subsequent to his arrest constituted aggravated stalking under section 741.30, Florida Statutes.

(b) Single Incident Not Enough:
Stone v. State, 798 So.2d 861 (Fla. 4th DCA 2001). Defendant appealed a conviction for aggravated stalking after a no contest plea. The only evidence supporting the charge was the probable cause affidavit detailing the events of the night in question. The Fourth District held that there was not a sufficient factual basis for a nolo contenedre plea on a charge pursuant to section 784.048(3), Florida Statutes. The affidavit alleged a single incident on one occasion. There was no other evidence presented that the defendant had contact with the victim at any other juncture; therefore, a charge of aggravated stalking was inappropriate because there was only a single act.

(c) Disjointed and Discrete Incidents Not Enough:
Butler v. State, 715 So.2d 339 (Fla. 4th DCA 1998). Disjointed and discrete incidents, interspersed with one of more reconciliations between the defendant and the victim, who were in an "on and off" again marital relationship, are not instances of repeated harassing conduct constituting aggravated stalking.

F. EX-PARTE TEMPORARY INJUNCTIONS

(1) Required Forms/Information:
If the petition for injunction requests that the court address issues of temporary child custody or visitation of the parties minor child or children, the required allegations under section 61. 522 shall be incorporated into the petition for protection against domestic violence or a separate Uniform Child Custody Jurisdiction and Enforcement Act Affidavit Form (UCCJEA), which sets out the required information, shall accompany it. Section 741.30(3)(d), Florida Statutes.

(a) *See also* in this outline, sections II.D.(12),(13) for further explanation of the petition requirements and additional forms required for filing when petitioner requests temporary child or spousal support.

(2) Amended Petition:
The petitioner retains the right to promptly amend any petition, or otherwise be heard in person on any petition in accordance with Florida Rules of Civil Procedure. Section 741.30(5)(b), Florida Statutes. Once amended, the court must consider the amended petition as if it was originally filed. *Rule* 12.610(c)(1)(A), Florida Family Law Rules of Procedure.

(3) Making the Judicial Determination of Whether to Enter a Domestic Violence Injunction:
In actual practice, the court reviews the petition and pleadings ex-parte, the same day it is filed, to determine if an ex-parte temporary injunction should be issued. To accomplish this, a judge must be available in each circuit 24 hours a day, seven days a week, to hear petitions for injunctions for protection against domestic violence. Section 26.20, Florida Statutes.

See also supra section E. Substantive Requirements for Claims.

(4) Court Must Use Florida Supreme Court Approved Family Law Forms that are Applicable to Domestic Violence. Florida Family Law Rule of Proceedure 12.610(c)(2)(A).

(5) Period of Effectiveness:
An ex parte temporary injunction shall be effective for a fixed period not to exceed 15 days AND a full hearing on a permanent injunction shall be set for a date no later than the date the temporary injunction ceases to be effective. Section 741.30(5)(c), Florida Statutes, Fla. Fam. L. R. P. 12.610(c)(3)(A).

(6) Notice of Full Hearing:
Once a petition for an injunction is filed, a hearing on the petition must be held at the earliest possible time. Section 741.30(4), Florida Statutes. The respondent should receive notice of the hearing when the petition, temporary injunction or order denying the petition, and other pleadings are served. Section 741.30(7)(a), Fla. Fam.L.R.P. 12.610(c)(3)(A).

(7) The court can only consider the verified pleadings/affidavits in an ex-parte hearing, unless the respondent appears at the hearing or has received reasonable notice of the hearing. Section 741.30(5)(b). If the respondent appears at the temporary injunction hearing or has had reasonable notice of it, a full evidentiary hearing may be held. *Rule* 12.610(c)(1)(A), Florida Family Law Rules of Procedure.

(a) Court Can Not Consider Ex-Parte Motion unless it is Verified:
Vargas v. Vargas, 816 So.2d 238 (Fla. 2d DCA 2002). Azra Rheman Vargas appeals from a non-final order issued without notice that temporarily enjoined her and her husband, David Vargas, from removing their children from the jurisdiction of the circuit court and required her to relinquish the children's passports to her attorney or to her husband. The Second District reversed the decision from the trial court because the trial court failed to conform to the requirements of Florida Rule of Civil Procedure 1.610. The Second District said that *the party seeking a temporary injunction without notice must file a verified pleading or affidavit that alleges specific facts showing immediate and irreparable harm and must detail any efforts made to give notice and the reasons why notice should not be required. Fla. R. Civ. P. 1.610(a).* Appellant's motion was not verified because he did not file an affidavit, and he

did not detail any efforts made to give notice or state why notice should not be required. Note that this does not preclude a party from reapplying for injunctive relief in accordance with the requirements of rule 1.610.

(8) Denial of Petition for Temporary Injunction: Mandatory Requirements of Judiciary when Petition for Temporary Injunction is Denied.

(a) If the court finds no basis for the issuance of an injunction the petition may be denied without a return hearing. A denial shall be by written order noting the legal grounds for denial. Section 741.30(5)(b), Florida Statutes. *See also* Florida Supreme Court Family Law Form 12.980(b)(2).

(b) When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the petition for an ex parte temporary injunction may be denied but the court shall set a full hearing on the petition with notice at the earliest possible time. Section 741.30(5)(b), Florida Statutes, Florida Supreme Court Family Law Form 12.890(b)(1).

1. *See also* Cuiska v. Cuiska, 777 So.2d 419 (Fla. 1st DCA 2000), (trial court did not abuse its discretion in denying the entry of a temporary injunction for protection against domestic violence where the allegations in the petition did not demonstrate the existence of an "immediate and present danger of domestic violence" as required by section 741.30(5)(a), Florida Statutes.) Furthermore, although the appellate court, in Cuiska, did not rule on the issue of whether the trial court erroneously dismissed the petition without a hearing, due to the fact that such an order was not provided as part of the case on appeal, the opinion noted that in accordance with section 741.30(5)(b), Florida Statutes, a hearing on the allegations of the petition would clearly be required before the case could be dismissed.
2. Segui v. Nester, 745 So.2d 591 (Fla. 5th DCA 1999).

(c) Likewise, Florida Family Law Rule of Civil Procedure 12.610(b)(3) requires the denial of a petition to be by written order noting the legal grounds for denial and

when the only ground for denial is no appearance of immediate and present danger of domestic . . . violence . . . the court must set a full hearing on the petition, with notice, at the earliest possible time.

1. Mandatory requirements if petition is denied -
   a. order must be in writing and specify how the allegations were insufficient OR
   b. if the petition is dismissed because there is no appearance of an immediate and present danger of domestic violence, a full hearing must be scheduled at the earliest possible time.
2. Sanchez & Smith v. State, 785 So.2d 672 (Fla. 4th DCA 2001). The Fourth District held in these consolidated opinions that it was error for the trial court to summarily deny a facially sufficient petition for ex-parte injunction against domestic violence without a hearing and without explanation for the reason for summarily denying the petition. The trial court provided as its sole reason for denying the petition, only that petitioner "failed to allege facts sufficient to support the entry of an injunction against domestic violence or repeat violence," but did not specify how the allegations were insufficient. Additionally, the denial of petitioner's facially sufficient petition without a hearing was a departure from the essential requirements of the law. The Fourth DCA also held that it was error for the trial judge to summarily dismiss an ex parte injunction for protection against domestic violence issued by a duty judge the previous day and to cancel the hearing which had been set by the duty judge. Before the denial of a petition and prior to dismissal of an injunction, where the trial court's action is based on a finding of insufficient allegations, the trial court must have a specific basis for that finding.
3. *See also* Kniph v. Kniph, 777 So.2d 437 (Fla. 1st DCA 2001). Dismissal of a request for an injunction against domestic violence solely on the basis that there was a pending divorce action between the parties is contrary to section 741.30(1)(b), Florida Statutes (1999), and constitutes error.

(d) Continuance of the Hearing/ Extension of Temporary Injunction:

1. The court may grant a continuance of the hearing and an extension of the temporary injunction when "good cause" is shown by any party, or on the court's own motion for "good cause," including failure to obtain service of process. Fla. Fam. L. R. P. 12.610(4)(A), section 741.(5)(c), Florida Statutes. Therefore, the court can sua sponte extend a temporary injunction when it has "good cause" or when it finds it "necessary" due to the fact the hearing is being continued. There does not appear to be a time limit to an extension of a temporary injunction when it is made according to the above procedures. However, due process concerns would still apply. *See* Kopelovich v. Kopelovich, 793 So.2d 31 (Fla. 2d DCA 2001).
2. *See also* Miller v. Miller, 691 So.2d 528 (Fla. 4th DCA 1997). The court may not extend a temporary injunction without good cause.
3. Section 741.30(5)(c) states that a request for an extension of a hearing on a petition must be made before or during the hearing on the petition for injunction. When a hearing on a petition is continued, the court can extend the temporary injunction if necessary during any period of continuance. Section 741.30(5)(c), Florida Statutes.
4. Motions regarding the extension of a temporary injunction may be served by certified mail. *Rule* 12.610(c)(3)(A), Florida Family Law Rules of Procedure.

(9) Service of Temporary Injunction and Notice of Hearing on Permanent Injunction:

The respondent shall be personally served, by a law enforcement officer, with a copy of the petition, temporary injunction or order denying the petition, notice of hearing and the following additional forms, a financial affidavit and UCCJEA, if applicable; unless the respondent was present at the ex-parte hearing or had reasonable notice. Section 741.30(4), Florida Statutes, *Rule* 12.610(c)(3)(A), Florida Family Law Rules of Procedure. Service should be made as soon as possible and may be obtained any day of the week, at any time. Section 741.30(7)(a)1, Florida Statutes.

G. RELIEF GRANTED IN TEMPORARY DOMESTIC VIOLENCE INJUNCTIONS:

(1) Final Judgment of Ex Parte Temporary Injunction

(a) Section 741.30(5)(a), Florida Statutes, if the court determines that there is an immediate and present danger of domestic violence, the court may grant a temporary injunction ex parte, and may grant such relief as the court deems proper, including and injunction:

1. Restraining the respondent from committing any acts of domestic violence.
2. Awarding the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.
3. Granting the petitioner temporary custody of a minor child or children, on the same basis as provided in chapter 61.
4. Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies.
5. Restrain respondent from contact with petitioner or any member of petitioner's immediate family or household. Florida Supreme Court Approved Family Law Forms 12.980(d)(1) and (d)(2).
6. Exclude respondent from petitioner's place of employment or school. Florida Supreme Court Approved Family Law Forms 12.980(d)(1) and (d)(2).
7. Exclude respondent from places frequented regularly by petitioner and/or any named family or household member of petitioner. Florida Supreme Court Approved Family Law Forms 12.980(d)(1) and (d)(2).
8. Order respondent to surrender any firearms and ammunition in his/her possession to the specified sheriff's office pending further order of the court. Florida Supreme Court Approved Family Law Forms 12.980(d)(2).

(2) *See also infra* section II.J. Factors the Court must Consider when Entering an Injunction.

H. PERMANENT INJUNCTIONS:

(1) A "full evidentiary hearing" is required before a permanent injunction can be entered. *Rule* 12.610(c)(1)(B), Fla. Fam. L. R. P.

(a) Lewis v. Lewis, 689 So.2d 1271 (Fla. 1st DCA 1997). It was error to enter a permanent injunction and award the wife temporary custody of the children without providing an adequate hearing as required by the domestic violence statute and Family Law Rules of Procedure. The law requires custody to be addressed at the permanent injunction hearing on the same basis as provided in chapter 61. The domestic violence statute requires a full evidentiary hearing prior to issuing a permanent injunction. The trial court erred in not allowing any testimony from witnesses who were present or cross-examination of the parties. *See also* Miller v. Miller, 691 So.2d 528 (Fla. 4th DCA 1997).

(b) *See also supra* section E., Substantive Requirements for Claims.

(2) Court Must Ensure that the Parties Understand the Terms: The court must "ensure that the parties understand the terms of the injunction, the penalties for failure to comply, and that the parties cannot amend the injunction verbally, in writing, or by invitation to the residence. Section 741.2902(2)(b), Florida Statutes.

(3) Recording:
All proceedings shall be recorded which may be by electronic means as provided by the Rules of Judicial Administration. Section 741.30(6)(h), Florida Statutes.

(4) Grounds for Relief:
When it appears to the court that the petitioner is a victim of domestic violence or has reasonable cause to believe he or she will be come a victim, the court may grant such relief as the court deems proper. Section 741.30(6)(a), Florida Statutes. *See also* section II.J. Factors the Court must Consider when Entering an Injunction.

(5) It is error to grant relief not requested, unless it falls within the statutory language regarding domestic violence.

(a) Ryan v. Ryan, 784 So.2d 1215 (Fla. 2d DCA 2001).

(b) Don't give exclusive use of marital home if not requested. Montemarano v. Montemarano, 792 So.2d 573 (Fla. 4th DCA 2001).

(6) An injunction for protection against domestic violence should not be used as a substitute for an order regarding issues which should be addressed in dissolution of marriage or paternity proceeding.

See O'neill v. Stone, 721 So.2d 393 (Fla. 2d DCA 1998). "Although custody matters may be decided in domestic violence proceeding, better practice in such case would be for trial court to enter temporary order, such as order adopting general master's report, and direct parties to litigate their subsequent custody and visitation disputes in proper paternity proceeding where orders entered would remain in effect beyond temporary lifespan of most injunctions."

(7) The court must use the Florida Supreme Court Approved Family Law Forms that apply to domestic violence. Fla. Fam. L. R. P. 12.610(c)(2)(A).

(8) Period of Effectiveness:

(a) Section 741.30 has also been revised to provide that the terms of an injunction are to "remain in effect until modified or dissolved." *See* Section 741.30(6)(c), Florida Statutes.

(b) Florida Family Law Rule of Procedure 12.610(c)(4)(B) states that a permanent injunction must be issued for a fixed period or until further order of the court. *See also* Miguez v. Miguez, 824 So.2d 258 (Fla. 3rd DCA 2002).

(c) A final judgment of injunction for protection against domestic violence may be effective indefinitely, until modified or dissolve by the judge at either party's request, upon notice and hearing, or expire on a date certain at the judge's discretion. Florida Supreme Court Family Law Forms 12.980(e). The court has discretion to determine the length of time for which the injunction will remain in effect. *See* Amendments to the Florida Family Law Rules, no. 89,955 (Fla. 2/26/98). Therefore, the duration of the injunction is not subject to any time limits by statute. *Id.*; Patterson v. Simonik, 709 So.2d 189 (Fla. 3rd DCA 1998).

(d) *See also* Goodell v. Goodell, 421 So.2d. 736 (Fla. 4th DCA 1982). The appellate court affirmed the trial court's finding of contempt against the wife for violation of the injunction contained in the final judgment of dissolution of marriage against her claim that the injunction was void because it was perpetual. The court

held that the injunction was properly entered, valid and enforceable and not overbroad despite the absence of a time limit. The Fourth District held that an injunction can be entered as long as the court feels the protection is necessary or until a modification is needed.

(9) Judicial Error Entering and Vacating Permanent Injunction:

(a) Oravec v. Sharp, 743 So.2d 1174 (Fla. 1st DCA 1999). The First District held that the trial court erred in entering a permanent injunction for protection against domestic violence where the entry of the order was inconsistent with the judge's statement that he intended only to extend the temporary injunction for 90 days, and the court denied the respondent an opportunity to present evidence in opposition to the entry of the injunction.

(b) Lee v. Delia, 827 So.2d 386 (Fla. 2d DCA 2002). The trial court erred in denying the Respondent's post judgment motions to vacate the final injunction where a stipulation was entered into to enter the final injunction and the final injunction is inconsistent with the terms of the stipulation. The denial of the post judgment motion to vacate is reversed and the case remanded to the trial court to hold a hearing on the merits of the motion.

I. RELIEF GRANTED IN PERMANENT DOMESTIC VIOLENCE INJUNCTIONS:

(1) Final Judgment of Injunction for Protection Against Domestic Violence:

(a) Section 741.30(6)(a)1.-7., Florida Statutes, after notice and hearing, if the court determines that the petition is either a victim of domestic violence, as defined by section 741.28, Florida Statutes, or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, the court may grant such relief as the court deems proper, including an injunction:

1. Restraining the respondent from committing any acts of domestic violence against petitioner or any member of petitioner's family or household members.
2. Awarding the petitioner the temporary exclusive use and possession of the dwelling that the

parties share or excluding the respondent from the residence of the petitioner.

3. Granting the petitioner temporary custody of a minor child or children, on the same basis as provided in chapter 61.
4. Establishing temporary support for the petitioner (temporary alimony) and/or minor child or children (temporary child support), on the same basis as provided in chapter 61.
5. Ordering the respondent to participate in a treatment, intervention, or counseling services to be paid for by the respondent. *See infra,* Batterers' Intervention Programs.
6. Referring a petition to a certified domestic violence center.
7. Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies.
8. Restrain respondent from contact with petitioner or any member of petitioner's immediate family or household. Florida Supreme Court Approved Family Law Forms 12.980(d)(1) and (d)(2).
9. Order counseling for any minor children and order any other provisions relating to minor children. Florida Supreme Court Approved Family Law Form 12.980(e)(1).
10. Exclude respondent from petitioner's place of employment or school. Florida Supreme Court Family Law Forms 12.980(d)(1) and (2).
11. Exclude respondent from places frequented regularly by petitioner and/or any named family or household member of petitioner. Florida Supreme Court Family Law Forms 12.980(d)(1) and (d)(2).
12. Order respondent to surrender any firearms and ammunition in his/her possession to the specified sheriff's office pending further order of the court. Florida Supreme Court Family Law Forms 12.980(d)(2).
13. Order a substance abuse and/or mental health evaluation for the respondent and order the respondent to attend any treatment recommended by the evaluation(s). Section 741.30(6)(a)5., Florida Statutes.
14. Specify the type of contact/visitation the noncustodial parent may have with the minor

child(ren). Florida Supreme Court Approved Family Law Form 12.980(2)(1).

(b) *See also infra* section II.J., Factors the Court Must Consider When Entering an Injunction.

(c) Participation in a parenting class may be court ordered:
A parenting class can be required as a condition of a domestic violence injunction. Roman v. Lopez, 811 So.2d 840 (Fla. 3rd DCA 2002).

(d) Court must provide list of domestic violence centers, if applicable: If the court refers the petitioner to a certified domestic center, the court must provide the petitioner with a list of certified domestic violence centers in the circuit, which the petitioner may contact. Section 741.30(6)(a)6, Florida Statutes.

(e) Batterers' Intervention Programs: Under Certain Circumstances Respondents must be Court Ordered to Attend Batterers' Intervention Programs (BIPs), Section 741.30(6)(e), Florida Statutes:

1. The court MAY order the respondent to attend a batterers' intervention program as a condition of the injunction; however,
2. The court SHALL order the respondent to attend a batterers' intervention program if the any of the following circumstances exist:
    a. The court finds that the respondent willfully violated the ex parte injunction;
    b. The respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence;
    OR
    c. At any time in the past in this state or another state, an injunction has been entered against the respondent after a hearing with notice,
3. Exception: UNLESS the court makes written factual findings in its judgment or order which are based on substantial evidence, stating why batterers' intervention programs would be in appropriate, the court SHALL order the respondent to attend a BIP.

(f) Batterers' Intervention Programs must be certified under section 741.32, Florida Statutes and a list of BIPs must be Provided to the Respondent if Participation is Court Ordered: When the court orders the respondent to participate in a BIP, the court, or any entity designated by the court, must provide the respondent with a list of all certified BIPs, from which the respondent must choose a program in which to participate. Section 741.30(6)(a)5., Florida Statutes.

J. FACTORS THE COURT MUST CONSIDER WHEN ENTERING AN INJUNCTION:

(1) Custody:

(a) The court must consider the factors listed under section 61.13(3)(k) – (3)(l) when making a temporary determination in a domestic violence proceeding regarding parental responsibility and designating the primary residential parent.

(b) Custody Must be Properly Pled in Domestic Violence Petition:

1. Ryan v. Ryan, 784 So.2d 1215 (Fla. 2d DCA 2001).

   The Second District held that it was error for the trial court to grant an injunction for protection against domestic violence in favor of petitioner where the injunction also awarded temporary custody of the parties' minor children to former husband and denied former wife any contact with children for one year. Former wife's rights of due process were violated when her rights of custody and visitation were terminated based upon pleadings that did not request such relief and did not provide notice that the court could take such action. The former husband did not mark appropriate boxes on the face of the petition to indicate he was seeking temporary exclusive custody or to determine visitation rights, nor did the former husband in the narrative portion of the petition seek temporary exclusive custody of the children or exclusion of visitation by the former wife. Additionally, the husband did not file Uniform Child Custody Jurisdiction Act Affidavit

(UCCJA), despite petition form clearly stating UCCJA was required if petitioner was requesting the court to determine issues of temporary custody. Section 741.30(3)(d), Fla. Stat. Finally, the best interests of the children were not addressed at the hearing for the injunction.

2. Blackwood v. Anderson, 664 So.2d 37 (Fla. 5th DCA 1995). The petitioner filed for a domestic violence injunction against the respondent, but failed to appear at the final hearing. The court granted the respondent (the father) custody of the children and reset the case for final hearing. The order awarding custody to the father was quashed because the father did not properly plead for custody and the mother was not sufficiently notified of the custody issue. Note: See Judge Antoon's concurring opinion for an interesting discussion on jurisdiction and the frustration trial judges can experience in dealing with domestic violence injunction cases.

(2) Relocation of a Child:

(a) O'Neill v. Stone, 721 So.2d 393 (Fla. 2d DCA 1998). A relocation issue arose in the domestic violence proceeding involving unmarried parents, where no paternity or judgment had been obtained. The parties appeared before a general master, who issued a report recommending that custody, visitation and support be awarded as part of the domestic violence injunction. Prior to the trial court entering an order adopting the report, the petitioner left the state with the minor child of the parties, who were unmarried. At a hearing where the petitioner was present, the trial court granted a motion filed by the respondent to transfer custody to him and ordered law enforcement to pick up the minor child. The petitioner then filed a motion to set aside this order. The appellate court held that trial court abused its discretion by ordering the petitioner to return to Florida with the child, when it failed to conduct a full hearing and take testimony to consider the statutory factors regarding relocation. NOTE: The dicta in this opinion contains strong language to the effect that it is *contrary to the intent of the legislature for domestic*

violence injunction proceedings to be the primary forum for custody, visitation, and child support issues to be addressed.

(b) Young v. Young, 698 So.2d 314 (Fla. 3d DCA 1997). The restriction prohibiting either party from removing the children from the county without prior court order or written agreement of the parties is premature, where neither party sought to relocate and the court made no findings to support such a residential restriction.

(3) Court Must Consider the Existence of Any Domestic Violence (Child or Spouse Abuse) as Evidence of Detriment to the Child.

(a) Under Section 61.13(2)(b)2, Florida Statutes, due to the detriment of the child, the court may base an award of sole parental responsibility on evidence of child or spouse abuse.

See Ford v. Ford, 700 So.2d 191 (Fla. 4th DCA 1997).

The trial court abused its discretion in awarding custody to the husband where it made no determination regarding the credibility of either party, failed to apply section 61.13, Florida Statutes, and the final judgment was devoid of all but the most "minimal mention" of the husband's established pattern of domestic violence. The court noted that the record from the six day trial was replete with testimony regarding domestic violence, which was the "central focus" of the case. The final judgment stated, "The court has considered everything that each side has accused the other side of as well as all the good things that each side has presented about themselves". The appellate court found that failure to give the domestic violence evidence the proper consideration and weight mandated a reversal of the custody award to the father and restoration of custody to the mother. Note: The 1997 amendment to section 61.13(2)(b)(2), Florida Statutes, mandates the court's consideration of the existence of any child abuse or spousal abuse as evidence of detriment to the child.

(b) Felony Conviction of Domestic Violence is not an Absolute Bar to being a Primary Residential Parent.
A felony conviction of the third degree or higher involving domestic violence additionally creates a presumption of detriment to the child, which can be rebutted by the abuser to persuade the court that shared parental responsibility should be ordered. Section 61.13(2)(b)2, Florida Statutes.

1. *See* Doyle v. Owens, 881 So.2d 717 (Fla. 1st DCA 2004). Father failed to rebut the statutory presumption against unsupervised visitation.
2. Monacelli v. Gonzalez, 883 So.2d 361 (Fla. 4th DCA 2004).
   Although section 61.13, Florida Statutes, provides that a felony conviction is a rebuttable presumption of detriment to a child, the court held that the evidence supported the award of primary residential custody of four minor children to ex-husband; although there was a history of domestic violence towards ex-wife, emotional ties were significantly greater towards ex-husband, he had greater capacity and disposition to provide children with necessities, they would maintain a stable environment in the home of their paternal grandmother, the children preferred to be with their father, ex-wife suffered from bipolar disorder, and ex-wife refused to accept treatment or medication for her illness.

(c) Visitation between Inmate and Minor Child:
Singletary v. Bullard, 701 So.2d 590 (Fla. 5th DCA 1997).
The trial court exceeded its authority by entering a post-conviction order requiring the Department of Corrections to allow visitation between the inmate and minor child during the inmate's incarceration. The statutory provision permitting the trial court to grant permission for special visitation where visiting was restricted by court order did not apply in the case where the trial court was not eliminating the restriction it had earlier imposed.

(6) Visitation:

(a) Although shared parental responsibility is the statutory preference under section 61.13(2)(b) this determination can set up a dangerous situation for abuse victims and their children. Consequently, when making a visitation determination, the court must be cognizant of the situation and prevent giving the perpetrator access to the home for visitation with the children. *See* Burke v. Watterson, 713 So.2d 1094 (Fla. 1st DCA 1998), Fullerton v. Fullerton, 709 So.2d 162 (Fla. 5th DCA 1998); M. Sharon Maxwell and Karen Oehme, Referrals to Supervised Visitation Programs, A Manual for Florida's Judges (2004).

(b) *But see* Andrade v. Dantas, 776 So.2d 1080 (Fla. 3rd DCA 2000). The court erred in granting a temporary order denying the father the right to overnight visitation with his twenty-two month old child. There is nothing about overnight visitation which permits its treatment as an exception to the doctrine that both parents of children of any age must be treated equally. There is a lack of substantial competent evidence that would prevent more extensive visitation between the father and minor child. Thus, there is no basis to deny it.

(7) Support:

(a) Support should be paid by income deduction order and through the State Disbursement Unit or court depository in order to eliminate control issues and avoid further contact between the victim and the abuser.

(b) Payments for the victim's future medical expenses may be included in the support order. This requirement can remain effective subsequent to remarriage by the victim. *See* Garces v. Garces, 704 So.2d 1106 (Fla. 3d DCA 1998).

(8) Alimony:

(a) An individual who petitions for an injunction against domestic violence can request temporary support as a term of the injunction. Section 741.30(6)(a)4, Florida Statutes. The same standard for awarding alimony in a family law case under chapter 61 must be applied in determining whether to award temporary support in an injunction case. *Id.*

1. Under Chapter 61, section 61.071 permits the court to award a "reasonable sum" of alimony

when a temporary request for support is made. Section 61.08(2) sets forth the factors for the court to consider when making an alimony award in a dissolution proceeding. Both permanent and rehabilitative alimony can be awarded under section 61.08. Rehabilitative alimony, including bridge-the-gap alimony, is temporary in nature, and therefore could likely be awarded as a term of a domestic violence injunction.

a. Rehabilitative Alimony
Rehabilitative alimony requires the court to make specific findings including: whether the petitioner has a specific rehabilitation plan, the costs of rehabilitation, the stated purpose of the rehabilitation, and the duration of the award. Collinsworth v. Collinsworth, 624 So.2d 287 (Fla. 1st DCA1993). This type of support is awarded to enable a spouse to become self-supporting. Shea v. Shea, 572 So.2d 558 (Fla. 1st DCA 1991).

b. Bridge-the-gap Alimony
Whereas rehabilitative alimony is to help a spouse become self-supporting, bridge-the-gap alimony is to ease the transition from married to single life. *Murray v. Murray*, 374 So.2d 622 (Fla. 4th DCA 1979) (stating bridge-the-gap alimony may be appropriate for a period of six months to transition the wife from a high standard of living during the marriage to a modest standard of living); Shea at 559 (stating even though spouse is employed or employable, bridge-the-gap alimony can be ordered). Bridge-the-gap alimony is "to assist a spouse with any legitimate, identifiable, short-term need . . . when the other spouse has the ability to pay the award." Borchard v. Borchard, 730 So.2d 748 (Fla. 2d DCA 1999). Therefore, in injunction cases, bridge-the-gap alimony could be awarded to a petitioner to make the transition from married to single life.

(9) Marital Home and Marital Property:

(a) Damages to Marital Property:

When distributing marital assets, reimbursements should be figured in for damaged property, such as broken window, doors, furniture, etc. Section 741.31(6), Florida Statutes; *See also* Hill v. Hill, 415 So.2d 20 (Fla. 1982).

(b) Petitioner must request exclusive use and possession of home.

Montemarano v. Montemarano, 792 So.2d 573 (Fla. 4th DCA 2001). Without background, the court held that in domestic violence cases, where the petitioner did not seek exclusive use and possession of the marital home, it is an error to include in that order a requirement that the respondent vacate the premises. Due process requires that a party have proper notice of hearing, and the opportunity to be heard before such an order is entered requiring the party to vacate the marital home.

K. ADDITIONAL PROVISIONS WHICH MUST BE INCLUDED IN BOTH TEMPORARY AND PERMANENT INJUNCTIONS:

A temporary or permanent injunction should indicate on its face the following

(1) The injunction is valid and enforceable in all counties in Florida.

(2) Law enforcement officers may use their arrest powers pursuant to section 901.15(6), Florida Statutes, to enforce the terms of the injunction.

(3) The court had jurisdiction over the parties and matter.

(4) Reasonable notice and opportunity to be heard was given to respondent sufficient to protect that person's rights to due process.

(5) The date the respondent was served with the temporary or final order, if obtainable. Section 741.30(6)(d), Florida Statutes.

(6) Firearms Violation: It is a violation of Section 790.233, Florida Statutes, and a first degree misdemeanor for respondent to have in his or her care, custody, possession or control any firearm or ammunition. Section 741.30(6)(g), Florida Statutes.

(a) Florida's Firearm Prohibition:

1. Section 741.31(4)(b)(1), Florida Statutes, Possession of firearm or ammunition is prohibited when a person is subject to a permanent injunction against committing acts of domestic violence.

2. Therefore, according to section 741.31(4)(b)(1), Florida Statutes, possession of firearm or ammunition is prohibited when a person is subject to a permanent injunction against committing acts of domestic violence. It is a first degree misdemeanor to violate the firearms provision of an injunction and punishable as provided in section 775.083, Florida Statutes. However, this provision is consistent with federal law and therefore the active law enforcement exception applies in Florida and this provision does not apply to active law enforcement officers who possess firearms and ammunition for use in performance of their job, unless the law enforcement agency finds that possession of firearms should be denied. Section 741.31(b)2., Florida Statutes.
3. State's Evidence in Criminal Contempt Proceeding for Proof of Firearm violation must Rebut Reasonable Hypothesis of Innocence:
Fay v. State, 753 So.2d 682 (Fla. 4th DCA 2000). The Fourth District held that it was error for the trial court to deny a motion for judgment of acquittal where the defendant was charged with indirect criminal contempt for possession of a firearm in violation of an injunction for protection against domestic violence, and the evidence that defendant possessed a firearm prior to the issuance of the injunction, coupled with circumstantial evidence relating to current possession of the firearm, was insufficient to rebut a reasonable hypothesis of innocence.
4. FDLE form requiring gun purchasers to disclose prior conviction for domestic violence is unconstitutional.
    1. State v. Watso, 788 So.2d 1026 (Fla. 2d DCA 2001).
    2. Randall v. State, 805 So.2d 917 (Fla. 2d DCA 2001).

(b) Federal Firearm Prohibition:

1. 18 U.S.C. § 922(g)(8):
    a. Prohibits any person, under a permanent domestic violence injunction, from possessing a firearm.

b. Penalty: Up to ten years incarceration.

2. US v. Emerson, No 99-10331 (5th Cir. October 16, 2001). Statute is not unconstitutional on its face under Second Amendment.
3. 18 U.S.C. § 922(g)(9).
   a. Prohibits any person convicted of domestic violence from possessing a firearm.
   b. Penalty: up to ten years incarceration.

L. SERVICE OF PERMANENT INJUNCTIONS:
Proper Procedure to Effectuate Service is Set Out in Section 741.30(8)(a)(3); and Florida Family Law Rule of Procedure 12.610(c)(3)(B)(i).

(1) Obtaining Personal Service at the Hearing:
To effectuate service, a certified copy of the injunction must be provided to the parties at the full hearing. The party must acknowledge receipt of the injunction in writing on the original order. If the respondent will not acknowledge receipt, the clerk should make note on the original order that service was made. If the parties are present but they are not provided with copies at the hearing, the clerk will make service by certified mail. The clerk must certify in writing how service was made for the court file. Section 741.30(8)(a)(3); Fla. Fam. L. R. P. 12.610(c)(3)(B)(i).

(2) Service Subsequent to Hearing:
"Within 24 hours after the court issues, continues, modifies, or vacates an injunction for protection against domestic violence the clerk must forward a copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner for service. Section 741.30(8)(c)1, Florida Statutes, Fla. Fam. L. R. P. 12.610(c)(3)(B)(ii). However, section 741.30(8)(a)(3), Florida Statutes, allows for service to be effectuated by mail.

M. ADDITIONAL REMEDIES:

(1) Mutual Orders of Protection are Prohibited:
Florida Statutes, section 741.30(i), prohibits the court from issuing mutual orders of protection. Likewise, mutual restraining orders or similar restrictive provisions based on domestic violence should not be incorporated into orders which address issues under Chapter 61, Florida Statutes. Section 61.052(6), Florida Statutes. However, the court is not precluded from issuing separate injunctions for protection for

each party where each party has complied with the provisions of section 741.30, Florida Statutes.

(a) DeMaio v. Starr, 791 So.2d 1116 (Fla. 4th DCA 2000). Trial court erred in entering a mutual restraining order without proper pleading by petitioner or testimony, and over respondent's objection. *See also* Martin v. Hickey, 733 So.2d 600 (Fla. 3d DCA 1999), (Trial court erred in entering a domestic violence injunction on behalf of the appellee after the appellant had obtained an injunction against him, amounting in effect to mutual restraining orders, as the injunction was not independently supported by the pertinent evidentiary requirements of section 741.30(1)(i), Fla. Stat. (1997); Hixson v. Hixson, 698 So.2d 639 (Fla. 4th DCA 1997)).

(b) *But see* Brooks v. Barrett, 694 So.2d 38 (Fla. 1st DCA 1997). In a contempt proceeding, it was error to sua sponte amend a previously entered mutual injunction against domestic violence by either the husband or wife, on the ground that the mutual injunction was prohibited by statute, and to enter in its place an injunction against domestic violence as to the husband only, without notice or hearing. The court of appeal reversed the amended injunction against husband and remanded the cause for further proceedings to address the initial mutual injunction which, was prohibited by statute.

(2) Confidentiality of Information:

(a) Address Confidentiality can be Requested:

1. Petitioner can request that his or her address be kept confidential and omitted from the Petition for Protection Against Domestic Violence and other required forms by filing Form 12.980(i), Florida Supreme Court Family Law Forms. *Rule* 12.610(b)(4)(B), Florida Family Law Rules of Procedure; Section 741.30(6)(a)(7), Florida Statutes.
2. The ultimate determination of a need for address confidentiality must be made by the court as provided in Florida Rule of Judicial Administration 2.051. *Rule* 12.610(b)(4)(B).

(b) Address Confidentiality Program:
In accordance with 741.408, Florida Statutes, the Attorney General shall designate state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence to

assist persons applying to be program participants in the Address Confidentiality Program.

1. The addresses, corresponding telephone numbers, and social security numbers of program participants in the Address Confidentiality Program of Victims of Domestic Violence held by Office of the Attorney General are exempt from section 119.07(1), Florida Statutes. Section 741.465, Florida Statutes.
2. Legislative Intent and Program for Victims of Domestic Violence: Sections 741.401 – 741.409, Florida Statutes enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence.

(c) Practical note:
The confidentiality provisions of chapter 741 are not distinctly cross referenced to other statutes that cover related areas of a Unified Family Court. The clear intent and language used to create the confidentiality program indicates that information made confidential under its provisions must remain confidential regardless of the context in which the information is kept. If this was not true, then a respondent to a domestic violence injunction could simply initiate an additional court matter as a means to discover the whereabouts of the petitioner.

1. Likewise, any criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which reveals the identity of the victim of the crime of sexual battery as defined in chapter 794 is exempt from public record disclosure, Section 119.07(6)(f), Florida Statutes.

(d) Victim and Domestic Violence Center Information Exempt from Public Record: Information received by Department or Domestic Violence Center about clients and location of domestic violence centers and facilities is exempt from the public records provisions of section 119.07(1), and unable to be disclosed without the written consent of the client. Section 39.908, Florida Statutes.

N. SUBSEQUENT ACTIONS:

(1) Modification of Injunctions:

(a) Either party may file a motion to modify an injunction.

Sections 741.30(10), Florida Statutes; *Rule* 12.610(c)(6), Florida Family Law Rules of Procedure.

(b) Motion for Modifications Must be Filed and a Hearing Held with Opposing Party Properly Notified.

1. Mayotte v. Mayotte, 753 So.2d 609 (Fla. 5th DCA 2000).
   The Fifth District held that it was error for the trial court to modify a permanent injunction for protection against domestic violence without the filing of a motion for modification, without a hearing, and without notice to the opposing party.
2. *But see* Ribel v. Ribel, 766 So.2d 1185 (Fla. 4th DCA 2000). Extensions of temporary injunctions may be done ex-parte.

(c) Evidence of a change in circumstances since the time the injunction was entered must be provided.

Simonik v. Patterson, 752 So.2d 692 (Fla. 3d DCA 2000).

The Third District held that it was not error for the trial court, after conducting a hearing, to deny respondent's motion to modify an injunction for protection against repeat violence to allow him to possess firearms, in the absence of evidence that circumstances had changed since the injunction was entered.

(d) Service of an Order Modifying an Injunction:

1. *See supra* section D.(3)(b).
2. *See also Rule* 12.610(c)(3)(B)(i), Florida Family Law Rules of Procedure. Service of an order modifying an injunction must be made in the same manner as for an injunction.

(2) Extension of Permanent Injunctions:

(a) To extend an injunction no new violence is necessary but a continuing fear and that is reasonable based on the circumstances must exist.

1. Sheehan v. Sheehan, 853 So.2d 523 (Fla. 5th DCA 2003).
   Although section 741.30(6)(b), Florida Statutes, does not specifically require any allegation of a new act of violence, the moving party must prove to the trial court that a continuing fear exists and that such fear is reasonable based on the circumstances.

a. *See also* Giallanza v. Giallanza, 787 So.2d 162 (Fla. 2d DCA 2001). The trial court erred in extending the injunction against domestic violence against the respondent because the petitioner has not established sufficient facts. The statutory definition of domestic violence requires some showing of violence or a threat of violence. General harassment does not constitute domestic violence under the statute. Here, the petitioner never alleged any further actual violence or threats of violence, nor showed any fear of domestic violence. Rather, they reflect that she is upset by the respondent's dealings with their children and that she believes that he is using the children to harass her.

3. *See also infra* Spiegal v. Haas.

(b) Court may consider the circumstances leading to the imposition of the original injunction, as well as subsequent events.

1. Patterson v. Simonik, 709 So.2d 189 (Fla. 3d DCA 1998).
   In determining whether to extend a permanent injunction the court may consider the circumstances leading to the imposition of the original injunction, as well as subsequent events which may cause the petitioner to have continuing reasonable fear that violence is likely to reoccur in the future.
2. *See also* Spiegel v. Haas, 697 So.2d 222 (Fla. 3d DCA 1997).
   On a petition for an extension of an injunction, the trial court announced it felt constrained to grant the extension, based on the petitioner's continued professed fear of the respondent. The appellate court stated that although no specific allegations are required, the petitioner must show

that an actual incident of violence has occurred or that he/she has a reasonable basis to believe that an act of violence is likely to occur or reoccur in the future. The court rejected the respondent's claim that the court may only review the time period during which the injunction was in effect, and held that the court may consider all the circumstances, including the facts which led to the initial granting of the injunction, in determining whether continued fear is reasonable. The case was remanded to the trial court for a further hearing.

(c) Florida Statutes permits an extension hearing to be set ex-parte.
Ribel v. Ribel, 766 So.2d 1185 (Fla. 4th DCA 2000). The trial court did not err in extending the temporary injunction for two weeks and rescheduling the hearing by entering an order without a motion or notice of hearing, based solely on the ex parte communication of the wife's attorney with the judge's office. The Florida Statute permits an extension hearing to be set ex parte. The petitioner has not demonstrated how an order resetting the noticed hearing on a petition for temporary injunction for protection presents the possibility of any harm, let alone irreparable harm.

(d) Court's Discretion to Extend Permanent Injunction:
Miguez v. Miguez, 824 So.2d 258 (Fla. 3d DCA 2002). The appellate court affirmed the trial court's decision granting petitioner a second domestic violence injunction five days before the expiration of petitioner's one year previous injunction. The Third District held that the seven year duration of the second injunction was not defective and could only be challenged as an abuse of discretion. See Goodell v. Goodell, 421 So.2d. 736 (Fla. 4th DCA 1982). As there was no record of the proceeding to determine if there had been an abuse of discretion, the court affirmed the trial court's decision.

(3) Dissolving Injunctions:

(a) Either party may move to dissolve the injunction at any time. Section 741.30(6)(b), Florida Statutes, Florida Family Law Rule of Procedure 12.610(c)(6).

1. *See also* York v. McCarron, 842 So.2d 281(Fla. 1st DCA 2003). The First District reversed the trial court's decision denying appellant's motion to dissolve the permanent injunction against repeat violence as either party may motion at any time to modify or dissolve an injunction, as provided for in section 784.046(7)(c), Florida Statutes. The court held that the trial court erred in not allowing the presentation of evidence "regarding the initial procurement of the injunction at a hearing."
2. Madan v. Madan, 729 So.2d 416 (Fla. 3d DCA 1998).
   The Third District reversed the lower court's denial of the husband's motion to dissolve the permanent injunction, holding that a trial judge must allow a respondent to present evidence of false allegations by the petitioner at the initial injunction hearing. Pursuant to section 741.30(6)(b), Florida Statutes (now 741.30(6)(c)), either party may move *at any time* to dissolve an injunction. In this case, the appellate court interpreted this statute to permit what would appear to amount to a de novo rehearing *at any time*, to reopen the case with proof of falsehoods in the petitioner's "initial procurement of the injunction".

(b) Service of the motion to dissolve must be made on the other party to provide notice and an opportunity to be heard. Fla. Fam. L. R. P. 12.610(b)(2)(C).

Chanfrau v. Fernandez, 782 So.2d 521 (Fla. 2d DCA 2001). The Second District held that it was error to dismiss permanent injunction against domestic violence where there was no motion, notice or evidentiary hearing. "By dismissing the injunction without motion, notice, or evidentiary hearing, the court failed to accord appellant due process in this matter". Snyder v. Snyder, 685 So.2d 1320 (Fla. 2d DCA 1996).

(c) Court's Authority Subsequent to Dismissal: Incorrect to Order Compliance with Counseling Subsequent to

Dismissal of Petition or Domestic Violence Injunction. Tobkin v. State, 777 So.2d 1166 (Fla. 4th DCA 2001).

O. CROSSOVER CASES/RELATED CASES:

Note: The Family Court Efficiency Bill was passed by the Florida Legislature during the 2005 session and will become effective July 1, 2005, if signed by Governor Bush. The bill amends the following sections of chapter 39 and 741 that relate to domestic violence proceedings:

Amends 39.013: Chapter 39 orders pertaining to custody, visitation, etc. take precedence over similar orders in other civil cases. The amendment allows a court of competent jurisdiction in any other civil action to modify such an order if the dependency court has terminated jurisdiction.

Amends 39.0132: The amendment allows for final orders and evidence from a dependency case to be admissible in a subsequent civil case that deals with custody and visitation issues.

Amends 741.30: The amendment provides for the provisions of injunctions dealing with custody, visitation, and child support to remain in effect until the order expires or an order on those matters is entered in a subsequent civil case.

(1) An injunction should not be used as a substitute order for issues which should be addressed in dissolution of marriage or paternity proceedings.

See O'Neill v. Stone, 721 So.2d 393 (Fla. 2d DCA 1998).

"Although custody matters may be decided in a domestic violence proceeding, better practice in such case would be for trial court to enter temporary order, such as order adopting general master's report, and direct parties to litigate their subsequent custody and visitation disputes in proper paternity proceeding where orders entered would remain in effect beyond temporary lifespan of most injunctions."

(2) Types of Crossover Cases:

(a) Issues in Dissolution of Marriage/Domestic Violence Crossover Cases:

1. Domestic Violence Injunctions in Dissolution Cases:

   In a dissolution action under Chapter 61, injunctions for protection against domestic violence must be issued under section 741.30. An injunction under section 741.30 is the exclusive remedy at law for a domestic violence injunction.

   a. Shaw-Messed v. Messed, 755 So.2d 776 (Fla. 5th DCA 2000). The Fifth District held

that the trial court erred in not conducting an evidentiary hearing on the issuance of an injunction for protection against domestic violence filed by the wife against the husband, and in entering a mutual injunction in the dissolution action, under Chapter 61, without any testimony that the husband had committed any conduct deserving such action. In reversing the lower court's ruling and remanding the case for further action, the Fifth District clearly maintains that section 741.30, Florida Statutes, is the appropriate vehicle for a domestic violence injunction, as opposed to Chapter 61 proceedings.

b. Campbell v. Campbell, 584 So.2d 125 (Fla. 4th DCA 1991). Injunctions against domestic violence may not be issued as part of a final judgment of dissolution; they must be made in a separate order. Section 61.052(6), Florida Statutes

c. However, there does not appear to be any prohibition against issuing an injunction under Fla.R.C.P. 1.610 in a dissolution action if threatened behavior would not qualify for an injunction under section 741.30. Therefore, it would seem a "no contact" order could be issued in a dissolution action if it was not based on circumstances supporting an injunction against violence.

2. Domestic Violence and Dissolution Case with a Foreign Order in a Pending Action: Abuchaibe v. Abuchaibe, 751 So.2d 1257 (Fla. 3d DCA 2000). Husband could not be held in contempt of order awarding temporary child custody to wife where husband was precluded from removing his son from foreign country by foreign administrative and judicial orders until his custody claim filed there was resolved.

3. Trial Court must Make Findings Regarding DV or Child abuse in Dissolution Action when Ruling on the Issue of Primary Residential Custody: Collins v. Collins, 873 So.2d 1261 (Fla. 1st DCA 2004). In making a ruling on the issue of primary residential custody in the divorce action, the trial

court was required to make a finding regarding alleged domestic violence or child abuse by husband; evidence indicated that alleged domestic abuse appeared to be serious incident involving wife making distraught 911 call to local police, and appellate review could not be meaningfully conducted without trial court explicitly addressing allegation.

4. Ancillary Relief is Limited when Child Files DV Petition by and through her Mother:
Rinas v. Rinas, 847 So.2d 555 (Fla. 5th DCA 2003).The Fifth District found it improper for trial court to award custody, child support and alimony for petitioner's mother and sister in a domestic violence action where petitioner was a minor child filing by and through her mother as "next best friend". Mother was only a party to the case as representative of the child, and the statute did not authorize awards of custody, child support, or alimony in the absence of an action for dissolution of marriage. Consequently, the Fifth District held that the trial court did not have jurisdiction to award custody, child support and alimony absent dissolution of marriage proceeding as section 741.30, Florida Statutes (1997) does not authorize such awards.

5. Trial Court Can not Dismiss Domestic Violence Injunction in Dissolution where Parties did not Move to Vacate and were not Notified the Matter would be Considered:
Farr v. Farr, 840 So.2d 1166 (Fla. 2d DCA 2003). Trial court erred in dismissing an injunction against domestic violence in the final judgment dissolving the parties' marriage where the petitioner did not move to vacate the injunction and where the parties were not noticed that the matter would be considered, thus failing to provide due process on the issue. Additionally, the court struck the trial court's order setting a motion for a rehearing as the court had lost

jurisdiction on the matter when the wife filed an appeal.

6. Trial Court Can Dismiss Temporary Injunction at a Related Hearing but the Requirements of Due Process must be Observed:
White v. Cannon, 778 So.2d 467 (Fla. 3d DCA 2001). The trial court erred in dismissing a temporary injunction for protection against domestic violence at a hearing on husband's emergency motion for visitation by claiming that whether or not a restraining order should or should not be granted must be determined by the court in the parties' dissolution of marriage. The matter may be handled by one circuit judge, section 741.30, Florida Statutes, however the requirements of due process must be observed.

7. Pending Dissolution Action does not Prevent Court from Issuing Domestic Violence Injunction:
Kniph v. Kniph, 777 So.2d 437 (Fla. 1st DCA 2001). Dismissal of a request for an injunction against domestic violence solely on the basis that there was a pending divorce action between the parties is contrary to section 741.30(1)(b), Florida Statutes (1999), and constitutes error.

8. Judge Hearing Dissolution Erred in Requiring Husband to Pay Attorney's Fees in a Separately Filed DVI Case:
Belmont v. Belmont, 761 So.2d 406 (Fla. 2d DCA 2000). The Second District held that the trial court hearing the dissolution case erred in requiring the husband to pay attorney's fees incurred by the wife in a separately filed domestic violence injunction case. *See also* in this outline, section II.,P.(1), Attorney's Fees in Domestic Violence Proceedings.

9. Provisions in Chapter 61 Orders Trump Conflicting Temporary Provisions Set out in Chapter 741 DVI Orders:

Cleary v. Cleary, 711 So.2d 1302 (Fla. 2d DCA 1998). When parties are involved in both an injunction and a dissolution case, matters governed by chapter 61 are controlled by the judge hearing the dissolution case, without regard to whether the family court action was filed before or after the injunction case.

(b) Issues in Dependency/ Domestic Violence Crossover Cases:

1. Opinion from New York's Highest Court:

   A charge of child neglect may be made only where there is a link or causal connection between the mother's alleged actions or inactions and proven harm to the child. Nicholson v. Scoppetta, 3 N.Y3d 157, (N.Y. Oct 26, 2004). The Nicholson court specifically ruled that it violates the U.S. Constitution to remove children from battered mothers solely or primarily on the grounds that there is domestic violence in the home, to charge those battered mothers with child neglect, and to mark cases against them as "indicated" at the State Central Register of Child Abuse and Maltreatment.

2. Florida Case Law:

a. Sufficient Evidence to Adjudicate Child As Dependent:

i. D.R. v. Department of Children and Families, 898 So.2d 254 (Fla. 3d DCA 2005). The Third District Court of Appeal upheld the trial court's adjudication of the child as dependent as to the mother based on finding that domestic violence in the house adversely affected the child even though there was insufficient evidence to conclude the child witnessed the physical altercations between both parents.

ii. T.R. v. Dept. of Children and Families, 864 So.2d 1278 (Fla. 5th DCA 2004). The 5th DCA affirmed the trial court's ruling that evidence supported adjudication of father's two children as dependents based upon the children being aware of an act of domestic violence. The children had been aroused from sleep by the screams of their father and his girlfriend who was yelling for the father to keep the knife away from her and the baby.

iii. W.V. v. Department of Children and Families, 840 So.2d 430 (Fla. 5th DCA 2003). Competent substantial evidence supported conclusion that there was a pattern of domestic violence in presence of child, warranting finding of abuse.

iv. D.W.G. v. Department of Children and Families, 833 So.2d 238 (Fla. 4th DCA 2002). Dependency adjudication affirmed based on a holding that it is not necessary for a child to witness violence in order to be harmed by it as children may be affected and aware that the violence is occurring without actually having to see it occur. This rule of law is to be considered in determining whether visitation or custody is appropriate where domestic violence is committed against a parent.

v. Y.G. v. Department of Children and Families, 830 So.2d 212 (Fla. 5th DCA 2002). Dependency case in which the court affirmed the adjudication of dependency, but remanded for entry of written findings consistent with the trial court's oral announcement. The Fifth District provided specifically, "[t]he children's

health was in danger of being significantly impaired by the acts of domestic violence that took place in the children's presence and by the mother's refusal to end her troubled relationship with the paramour."

vi. D.D. v. Department of Children and Families, 773 So.2d 615 (Fla. 5th DCA 2000). Father (appellant) appealed trial court order finding his five-year-old child dependent. The court found that evidence that the child witnessed father's abuse of the mother, together with evidence indicating that parents will more likely than not resume their relationship in the future and resume the cycle of domestic violence in the presence of the child, established prospective neglect sufficient to support finding of dependency, even in absence of medical or other expert testimony. Pursuant to section 39.01(46), Florida Statutes, (now section 39.01(45)) defining neglect, the court can make a finding that the child is neglected and adjudicated a dependent when the state has presented sufficient evidence that the child is living in an environment which causes mental, physical, or emotional impairment. It continued by finding that it is not necessary for finding of dependency that the court make finding that there is no reasonable prospect that parents can improve their behavior. The court affirmed the decision.

3. Florida Case Law:

a. Insufficient Evidence to Adjudicate Child As Dependent:

i. B.C. v. Department of Children and Families, 846 So.2d 1273 (Fla. 4th DCA 2003). Dependency adjudicated based on domestic violence between

father and former wife and father's alleged substance abuse was not supported by competent substantial evidence. The two instances of domestic violence in the presence of the child more than a year and a half prior to the dependency petition were too remote in time to support dependency adjudication.

ii. J.B.P.F. v. Department of Children and Families, 837 So.2d 1108 (Fla. 4th DCA 2003). Error to adjudicate child dependent based on finding that she was at substantial risk of imminent abuse and neglect where that finding was base upon a single instance of abuse inflicted on a sibling, and evidence failed to establish a nexus between the abuse of the sibling and a risk of prospective abuse to the child.

iii. E.B. v. Department of Children and Families, 834 So.2d 415 (Fla. 2d DCA 2003). Evidence insufficient to support finding that child suffered from abuse as a result of domestic violence between mother and her boyfriend where there was no evidence that the child was present at the time of the act of domestic violence.

(3) Dismissal of Injunctions in Crossover Cases:

(a) Sumner v. Sumner, 862 So.2d 93 (Fla. 2d DCA 2003). Appellate Court decided, inter alia, that the trial court committed reversible error by entering an order dismissing the wife's petition for a permanent injunction for protection against domestic violence at the end of its hearing on the petition for dissolution of marriage. Due process required that a hearing for the issuance of the permanent injunction occur and that the court erred when it dismissed the petition based solely upon its

observations at the final hearing of the dissolution of marriage.

1. *See also* White v. Cannon, 778 So.2d 467 (Fla. 3d DCA 2001). Trial court erred in dismissing an injunction against domestic violence in the final judgment dissolving the parties' marriage where the Petitioner did not move to vacate the injunction and where the parties were not noticed that the matter would be considered, thus failing to provide due process on the issue.
2. Parties must have notice that dismissal will be considered. Farr v. Farr, 840 So.2d 1166 (Fla. 2d DCA 2003).

(b) Tobkin v. State, 777 So.2d 1160 (Fla. 4th DCA 2001). Petitioner's voluntary dismissal of an action for injunction for protection against domestic violence and an action for dissolution of marriage divested the trial judge of authority to continue with further proceedings on the wife's attorney's motion to withdraw, the husband's motion to disqualify the wife's counsel, and enforcement of the previously ordered requirement of counseling and attendance at the spouse batterers' program. No permanent injunction requiring counseling or attendance at the Glass House was ever entered. A voluntary dismissal does not divest the court of jurisdiction to conclude ancillary matters involved in the case such as outstanding and unresolved motions for attorney's fees and costs, and similar issues. The decision of the trial court is reversed.

P. ANCILLARY MATTERS:

(1) Attorney's Fees in Domestic Violence Proceedings:

(a) Neither Appellate Rule 9.400 nor Chapter 741 Provides Authority to Grant Attorney's Fees:

1. Lewis v. Lewis, 689 So.2d 1271 (Fla. 1st DCA 1997).

   Wife's request for appellate attorney's fees was denied. Neither the domestic violence statute nor Florida Rule of Appellate Procedure 9.400 provides authority for granting attorney's fees in domestic violence proceedings. Chapter 61.16(1), Florida Statutes, providing for attorney's fees for maintaining or defending proceedings under

chapter 61, does not apply to chapter 741 proceedings, as domestic violence proceedings are independent of dissolution of marriage proceedings. Note: The court stated, "We are not unaware that the public policy reasons for granting attorney's fees in a chapter 61 proceeding exist in a domestic violence proceeding. This is a matter, however, that should be dealt with by the Legislature rather than the courts."

2. *See also* Baumgartner v. Baumgartner II, 693 So.2d 84 (Fla. 2d DCA 1997). It was error to award attorney's fees in an action to obtain an injunction for protection against domestic violence pursuant to section 741.30, Florida Statutes. There is no statutory authority for an award of attorney's fees in a chapter 741 proceeding. The statute clearly contemplates a streamlined pro se proceeding.

3. *But see* Harrison v. Francisco, 884 So.2d 239 (Fla. 2d DCA 2004). Husband was entitled to a hearing on his motion for costs, after wife voluntarily dismissed her domestic violence injunction. "Although an award of costs 'is a matter largely left to the discretion of the trial court,' the holding in *Coastal Petroleum* requires 'the trial court, in an appropriate hearing, after argument and presentation of appropriate evidence by both sides to determine exactly which expenses would have been reasonably necessary for an actual trial.'" *Quoting*, Coastal Petroleum Co. v. Mobil Oil Corp., 583 So.2d 1022, 1025 (Fla. 1991).

(b) Attorney's Fees under Section 57.105, Florida Statutes Could not be Awarded in the absence of a Timely Motion for such fees in a Domestic Violence Case:

Cisneros v. Cisneros, 831 So.2d 257 (Fla. 3d DCA 2002). Regardless of the fact that respondent's injunction was reversed by the Third District on respondent's appeal, no attorney's fees could be awarded based on section 57.105, Florida Statutes (frivolous-bad faith lawsuit), for either the trial level or

the appellate level proceedings, in the absence of a timely motion for such fees.

(c) Compensatory and Punitive Damages:
A victim of domestic violence who has suffered repeated physical or psychological injuries over an extended period of time, as a result of continuing domestic violence, has a cause of action for compensatory and punitive damages against the perpetrator responsible for the violence. Section 768.35, Florida Statutes.

(2) Disqualification and Recusal of Judge:

(a) Tindle v. Tindle, 761 So.2d 424 (Fla. 5th DCA 2000). The Fifth District held that the trial court erred in not granting the husband's motion for recusal where the trial judge showed strong disapproval of calling the children as witnesses of domestic violence occurring in their presence for purposes of determining custody issues.

(b) Wehbe v. Uejbe, 744 So.2d 572 (Fla. 3d DCA 1999). Where appellant and appellee were half brothers who each filed for an injunction for protection against domestic violence against one another, the Third District held that the issue of whether the trial court should not have taken judicial notice of testimony presented in appellee's case without making such testimony a part of the record was not preserved for appellate review based on the fact that the issue was never raised as an objection before the trial court. There was also no abuse of discretion by the trial court in denying an oral motion for disqualification and request for new trial where it was *raised at the conclusion of the hearing*. The Third District noted that a motion for disqualification is not properly used to express disagreement with the trial court's rulings.

(c) Yates v. State, 704 So.2d 1159 (Fla. 5th DCA 1998), *concurring opinion*. Motion to disqualify judge based on judge's membership on domestic violence task force was legally insufficient.

Q. APPELLATE REVIEW:

(1) Appellate Record:

(a) Trial Court Must Make Findings for the Record Regarding Alleged Domestic Violence:

Collins v. Collins, 873 So.2d 1261 (Fla. 1st DCA 2004). In making a ruling on the issue of primary residential custody in divorce action, trial court was required to make a finding regarding alleged domestic violence or child abuse by husband; evidence indicated that alleged domestic abuse appeared to be serious incident involving wife making distraught 911 call to local police, and appellate review could not be meaningfully conducted without trial court explicitly addressing allegation.

(b) Issue Must be Raised by Objection for the Record:
Wehbe v. Uejbe, 744 So.2d 572 (Fla. 3d DCA 1999). Where appellant and appellee were half brothers who each filed for an injunction for protection against domestic violence against one another, the Third District held that the issue of whether the trial court should not have taken judicial notice of testimony presented in appellee's case without making such testimony a part of the record was not preserved for appellate review based on the fact that the issue was never raised as an objection before the trial court.

(2) Standard of Review:

S.E.R. v. J.R., 803 So.2d 861 (Fla. 4th DCA 2002). The petitioners requested review of the circuit court's order denying their motion to dismiss a domestic violence injunction. The petitioners based their motion on the grounds that there was a pending dependency action in Palm Beach, in which a custody award was granted that was contrary to the custody award given during the domestic violence injunction hearing. The Fourth District found that no certiorari review is necessary where a party has failed to show that a denial of a motion to dismiss a domestic violence injunction caused irreparable harm. The Fourth District found that petitioner's argument claiming that the Palm Beach award had precedence over the domestic award was not sufficient harm to mandate certiorari review. *(The test for irreparable harm is set forth in Bared & Co., Inc. v. McGuire, 670 So2d. 153. (Fla. 4th DCA 1996).)*

(3) Transcripts:

(a) Squires v. Darling, 834 So.2d 278 (Fla. 5th DCA 2002). Appellate court affirmed the entry of injunction as moving party failed to provide the court with a transcript of the proceedings and failed to provide the court a record of the proceedings pursuant to Florida Rule of Appellate Procedure 9.200(b)(4). Respondent's failure to provide either a transcript or record preserved the presumption of correctness attached to the final judgment. Applegate v. Barnett Bank of Tallahassee, 377 So.2d 1150 (Fla. 1979).

(b) Stevens v. Bryan, 805 So.2d 881 (Fla. 2d DCA 2001). Respondent appeals a repeat violence injunction, as next best friend of her son. Because no record or transcript was provided, the Second District cannot find error in the trial court's decision, as evidence had to be provided to the lower court for the injunction to be issued. The case was remanded only to correct scrivener's errors regarding the correct parties, and to remedy an error on the pre-printed form.

(c) Ricketts v. Ricketts, 790 So.2d 1265 (Fla. 5th DCA 2001).
No transcripts were made available to determine whether or not error was committed, therefore injunction preventing appellant from contacting ex-husband is affirmed.

(d) Lawrence v. Walker, 751 So.2d 68 (Fla. 4th DCA 1999). The Fourth District affirmed the trial court's issuance of an injunction for protection against domestic violence where the contentions raised by the appellant could not be evaluated due to the fact that no transcript was ever made of the hearing in which the evidence was presented. In a special concurrence, the court observed that an injunction action is a civil proceeding, and there is no requirement as yet that such proceedings be transcribed at public expense, making it necessary for the party to arrange in advance for reporting and transcription. It was noted that with so much litigation being conducted pro se, the parties should be alerted in the notice for final hearing on the injunction that if they want the hearing reported, it is up to them to create a record by arranging for the services of a court reporter to transcribe the proceedings.

(e) Pollock v. Couffer, 750 So.2d 659 (Fla. 5th DCA 1999).

The Fifth District affirmed the ruling of the trial court where the appellant/respondent contended that the evidence of record did not support the trial court's entry of a permanent injunction for protection against repeat violence, but failed to provide the appellate court with either a transcript of trial court proceedings or stipulated statement of facts. Accordingly, the appellate court was prevented from reviewing the validity of the claim and held that no error of law was apparent.

R. ENFORCEMENT:

(1) Enforcement of Injunctions in Florida:

(a) Florida Injunctions:

Injunctions for protection against domestic violence entered by the judiciary of Florida are valid and enforceable in all counties of the state. Section 741.315, Florida Statutes.

(b) Foreign Protection Orders:

Protection orders entered by state courts other than Florida, which are issued in accordance with the Violence Against Women Act (VAWA) are enforceable by Florida's local law enforcement authorities as if they were entered by the judiciary of Florida. Record and registration of the order in Florida is not a prerequisite for enforcement. However, entry of the initial foreign protection order must be legally valid – the issuing court must have had jurisdiction over the parties and subject matter and the respondent must have been provided reasonable notice and opportunity to be heard, as defined by the law of foreign court. 18 U.S.C. § 2265.

1. Violation of Foreign Protection Order is a First Degree Misdemeanor, Section 741.31(4), Florida Statutes.
2. Police Warantless Arrest Powers for Violations of Foreign Orders of Protection, Section 901.15(6), Florida Statutes.
3. Court of a Foreign State is defined in Section 741.315(1), Florida Statutes as follows -
    a. Court of competent jurisdiction of a state of the United States, other than Florida;
    b. The District of Columbia
    c. An Indian tribe; or
    d. A commonwealth, territory, or possession of the United States.
4. Residency and Registration of Foreign Protection Orders is Addressed in Section 741.315(3)(a), Florida Statutes:

a. Foreign protection orders need not be registered in the protected person's county of residence to be valid.
b. Venue is proper throughout the state.
c. Residence in Florida is not required for enforcement of an injunction for protection against domestic violence.

5. Registration of a Foreign Order:
   a. To register a foreign order the petitioner must present a certified copy to any sheriff in Florida and request that it be entered into the system.
   b. "The protected person must swear by affidavit, that to the best of the person's knowledge and belief, the attached certified copy of the foreign order . . . is currently in effect as written and has not been superseded by any other and that the respondent has been given a copy of it." Section 741.315(3)(a), Florida Statutes.
   c. "If not apparent from the face of the certified copy of the foreign order, the sheriff shall use best efforts to ascertain whether the order was served on the respondent" [and] "shall assign a case number and give the protected person a receipt showing registration of the foreign order in this state." Section 741.315(3)(b), Florida Statutes.
   d. FDLE "shall develop a special notation for foreign orders of protection." Section 741.315(3)(b), Florida Statutes.
   e. It is a first degree misdemeanor to intentionally provide police with a false or invalid foreign protection order, Section 741.315(5), Florida Statutes.

(2) Courts Power to Enforce through Civil or Criminal Contempt Proceeding:

(a) The court may enforce a violation of an injunction for protection against domestic violence through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation under section 741.31. Section 741.30(9)(a), Florida Statutes. The court may enforce the respondent's compliance with the injunction through any appropriate civil and criminal

remedies, including but not limited to, a monetary assessment or fine.

(b) Violations of provisions such as child support or visitation may be enforced through civil contempt sanctions, since the purpose of a civil contempt proceeding is to mandate compliance with the injunction, not to impose punishment. Section 741.30(9)(a), Florida Statutes.

(c) Legislative Intent:
According to section 741.2901(2), it is the intent of the legislature that domestic violence be treated as a crime; and for that reason, "criminal prosecution shall be the favored method of enforcing compliance with injunctions for protection against domestic violence." However, that provision does not preclude the court from using indirect contempt to enforce the order. But if the violation is punishable by criminal contempt and incarceration, the court must comply with the provisions of Florida Rule of Criminal Procedure 3.840. *See also* Lapushinsky v. Campbell, 738 So.2d 514 (Fla. 1st DCA 1999)

(3) Inherent Power of Contempt:
Legislature has no authority under doctrine of separation of powers to limit circuit court in exercise of its constitutionally inherent powers of contempt.

(a) Steiner v. Bentley, 679 So.2d 770 (Fla. 1996).
The statutory directive that domestic violence injunctions "shall" be enforced by civil contempt is directory rather than mandatory. The legislature cannot eliminate the court's inherent indirect criminal contempt power. The portion of the statute expressing legislative intent that indirect criminal contempt may not be used to enforce compliance with injunctions for protection against domestic violence is unconstitutional.

(b) Ramirez v. Bentley, 678 So.2d 335 (Fla. 1996).
The statutory directive that domestic violence injunctions "shall" be enforced by civil contempt is permissive rather than mandatory.

(c) *See also* Walker v. Bentley, 660 So.2d 313 (Fla. 2d DCA 1995). To the extent that statute would limit circuit court's jurisdiction to use of civil contempt to enforce compliance with domestic violence injunction, it is

unconstitutional as violative of the doctrine of separation of powers. The court's power to enforce an injunction through a civil contempt proceeding is discretionary rather than mandatory, and thus does not prohibit use of indirect criminal contempt by the circuit court.

(d) Lopez v. Bentley, 660 So.2d 1138 (Fla. 2d DCA 1995). Trial court has inherent power to enforce an injunction for protection against "domestic/repeat violence" through indirect criminal contempt proceedings.

(4) Contempt = Willful Violation of an Injunction for Protection Against Domestic Violence:

(a) It is a first degree misdemeanor to willfully violate an injunction for protection against domestic violence or a foreign protection order that is given full faith and credit pursuant to section 741.315, Florida Statutes. Violation of the injunctions above is punishable as provided in section 775.082 or section 775.083, Florida Statutes. Section 741.31(4)(a).

(b) The essential inquiry in a contempt proceeding is whether the defendant *intentionally* failed to comply with the subpoena or other court order.

1. Robinson v. State, 28 Fla. L. Weekly D841c (Fla. 1st DCA 2003). Error to deny motion for judgment of acquittal on charge of violation of domestic violence injunction where state failed to establish that defendant knew permanent injunction had been entered against him, either through proof that the defendant had been served with the injunction or proof that defendant had some other notice.
2. Hunter v. State, 855 So.2d 677 (Fla. 2d DCA 2003).
   Respondent was ordered to successfully complete a batterers' intervention program as part of an injunction. Respondent enrolled and attended eight classes before being terminated by the program for failure to pay the provider fee and provide proof of community service hours. Respondent was sentenced to ninety days in jail for indirect criminal contempt for violating the injunction. Respondent testified that because he was sentenced to prison on an unrelated offense,

he did not have any income and wanted to complete the community service but could not because of his asthma. Furthermore, the batterers' program issued a trespass warning against him because he had failed to pay the provider fees. The Second District held that the respondent demonstrated a willingness to attend the class but, because of his indigency and disability status, he could not. Furthermore, the State failed to prove an intentional violation of the injunction.

3. Villate v. State, 663 So.2d 672 (4th DCA 1995).
   a. Fear of retaliation is not a valid defense for failing to comply with a lawful order to appear at a court proceeding.
   b. "While we sympathize with Villate's plight, the courts simply cannot conduct orderly business where individual witnesses take it upon themselves to decide when, and if, they should respond to a court order."
4. Scimshaw v. State, 592 So.2d 753 (Fla. 3d DCA 1992). Where law enforcement officer reasonably believed that he had been excused from the subpoena by an assistant state attorney, there was no intent to disobey the order.
5. *See also* Gaspard v. State, 28 Fla. L. Weekly D888a (Fla. 1st DCA 2003). Trial court fundamentally erred in failing to instruct the jury that defendant's knowledge that the injunction is in effect at the time of alleged violation is an essential element of the offense of violation.

(c) Actions which Constitute a Willful Violation:

A person is guilty of a first degree misdemeanor who intentionally violates an injunction for protection against domestic violence by (Section 741.31(4)(a), Florida Statutes):

1. Refusing to vacate the dwelling that the parties share;
2. Going to, or being with 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
3. Committing an act of domestic violence against the petitioner:

4. Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
5. Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
6. Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
7. Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
8. Refusing to surrender firearms or ammunition if ordered to do so by the court.

(d) Respondent may be charged with burglary or trespass for entering the residential property in violation of an injunction:

1. State v. Surez-Mesa, 662 So.2d 735 (Fla. 2d DCA 1995), *review denied,* 669 So.2d 252 (Fla. 1996). Husband who shared a house with wife, but was restrained by an injunction from entering the property, was charged with burglary for entering the premises with the intent to commit a crime.
2. Jordan v. State, 802 So.2d 1180 (Fla. 3d DCA 2002).The domestic violence injunction had the effect of giving notice to defendant against entering the victim's property.

(e) Respondent's Defense to Willful Violation: Respondent was not Personally Served with Injunction.
Silas v. State**,** 6 Fla. L. Weekly Supp. 628 (Fla. 20th Cir. Ct. 1999). Respondent must be personally served with permanent injunction to be in violation. The Circuit Court, Appellate Division, of the Twentieth Judicial Circuit held that where the defendant was charged with violation of a permanent injunction for protection against domestic violence, he was entitled to a judgment of acquittal based on the fact that he was never personally served with the permanent injunction in accordance with Florida Family Law Rule of Procedure 12.610. Note: Under rule 12.610 both temporary and permanent injunctions must be personally served.

(f) Violation of Injunction by Indirect Contact Includes:

1. Leaving messages on an answering machine or speaking with a minor child of the intended victim. Nelson v. State, 5 FLW Supp. 48 (10th Jud. Cir. 10/31/97).
2. Mailing letters to victim; circuit court could revoke probation based upon defendant's indirect contact with victim through a third party, as order of probation mandated that defendant was to have no association in any way with victim. Arias v. State, 751 So.2d 184 (Fla. 3rd DCA 2000).
3. *But see* Even though defendant's actions did not involve direct or indirect contact with the victim, he still could be convicted of stalking. Seitz v. State, 29 FLW D210a (Fla. 3rd DCA 2004), (defendant disseminated pharmaceutical records of the victim to various persons in the county. The State alleged that this action served no legitimate purpose and that it caused the victim to suffer emotional distress.)

(5) Contempt Remedies

(a) Civil Contempt:

1. Civil contempt is a remedy of a court "to coerce obedience to its orders which direct a civil litigant to do or abstain from doing an act or acts . . . ." Dowis v. State, 578 So.2d 860,862 (Fla. 5th DCA 1991).
2. A civil contempt adjudication is intended to operate in prospective manner to coerce, rather than to punish.
   a. Shillitani v. U.S., 384 U.S. 364 (1966).
   b. Featherstone v. Montana, 684 So.2d 233 (Fla. 3d DCA 1996).
3. The preponderance of the evidence burden of proof applies to civil contempt proceedings. Kramer v. State, 800 So.2d 319, 320 (Fla. 2d DCA 2001).
4. A court order must be obeyed until vacated or reversed.
   a. Defendant cannot defend contempt by claiming order violated was wrong. McQueen v. State, 531 So.2d 1030 (Fla. 1st DCA 1988).
   b. *Also*: A defendant cannot complain, after revocation of probation, of the illegality of a sentence placing him on probation, because he accepted the benefits.

i. Clem v. State, 462 So.2d 1134, 1136 (Fla. 4th DCA 1984).
ii. Brown v. State, 659 So.2d 1260 (Fla. 4thDCA 1995).
iii. Bashlor v. State, 586 So.2d 488, 489 (Fla. 1st DCA 1991). "[S]entences imposed in violation of statutory requirements, which are to the benefit of the defendant and to which he agreed, may not be challenged after the defendant has accepted the benefits flowing from the plea, but has failed to carry out the condition imposed on him."

(b) Indirect Criminal Contempt: Florida Rule of Criminal Procedure 3.840:

1. Indirect criminal contempt concerns conduct that has occurred outside the presence of the judge. Gidden v. State, 613 So.2d 457 (Fla. 1993).
2. Indirect criminal contempt is a criminal matter with the object of punishment. Featherstone v. Montana, 684 So.2d 233 (Fla. 3d DCA 1996).
3. Rule of Criminal Procedure 3.840:
    a. The prosecutorial procedure for criminal contempt is governed by Florida's Rule of Criminal Procedure 3.840.
        i. Hagan v. State, 853 So.2d 595 (Fla. 5th DCA 2003). The Fifth District Court reversed the defendant's conviction for indirect criminal contempt for violating an injunction against repeat violence. The Court held, *inter alia*, that: (1) the affidavit of violation was insufficient as it was not based on personal knowledge (2) the trial court committed reversible error by not having the proceeding transcribed, preventing the appellate court from reviewing the defendant's additional due process claims. The District Court reversed without prejudice to new proceedings being initiated in conformity with Florida Rule of Criminal Procedure 3.840.
        ii. Lapushinsky v. Campbell, 738 So.2d 514 (Fla. 1st DCA 1999). The First

District granted a writ of *habeas corpus* where the trial judge hearing the petition for permanent injunction learned of a violation of the temporary injunction and, in addition to entering the permanent injunction, held the respondent in indirect criminal contempt and sentenced him to thirty days in the county jail. The First District held that the trial court failed to comply with the procedural safeguards set forth in Florida Rule of Criminal Procedure 3.840 when instituting the contempt action.

b. Indirect criminal contempt begins with the judge issuing an order to show cause. Tschapek v. State, 699 So.2d 851 (Fla. 4th DCA 1997).

c. Motion for order to show cause on which contempt order is based must be sworn or supported by affidavit.

i. Judkins v. Ross, 658 So.2d 658 (Fla. 1st DCA 1996).

ii. Lindman v. Ellis, 658 So.2d 632 (Fla. 2d DCA 1995).

iii. B.L.J. v. State, 678 So.2d 530 (Fla. 1st DCA 1996).

4. All the procedural aspects of the criminal justice process must be accorded a defendant in an indirect criminal contempt proceeding.

a. Appropriate charging document;

b. An answer;

d. An order of arrest;

e. The right to bail;

f. An arraignment;

g. A hearing;

h. Representation by counsel;

i. Process to compel the attendance of witnesses; and

j. Right to testify in his own defense.

i. Gidden v. State, 613 So.2d 457 (Fla. 1993).

ii. Tschapek v. State, 699 So.2d 851 (Fla. 4th DCA 1997).

iii. Pompey v. State, 685 So.2d 1007 (Fla. 4th DCA 1997).

5. State must Produce Non-Hearsay Testimony:

In order to justify a holding that defendant violated an injunction for protection, the State must produce non-hearsay testimony. Torres v. State, 29 FLW D233a (Fla. 2d DCA 2004).

6. Featherstone v. Montana, 684 So.2d 233 (Fla. 3d DCA 1996). The fact that the husband had previously been found in civil contempt and incarcerated for noncompliance with court orders does not bar indirect criminal contempt proceedings based on the same noncompliance.
7. Subject to Speedy Trial:
    a. Washington v. Burk, 704 So.2d 540 (Fla. 5th DCA 1997). Indirect criminal contempt is subject to the speedy trial rule, whether the proceeding is initiated by arrest or service of an order to show cause. Where the defendant had been arrested for violation of an injunction, the state filed a *nolle prosse* in county court after the defendant filed a motion for discharge, and the state subsequently filed a motion for an order to show cause in circuit court, the speedy trial period for the circuit court action commenced with the defendant's initial arrest rather than with service of the show cause order.
    b. *But see* Washington v. Burk, 713 So.2d 988 (Fla. 1998). Indirect criminal contempt initiated by court is not subject to the speedy trial rule.
8. Right to jury trial:
    a. A defendant charged with indirect criminal contempt for violation of injunction was not entitled to a jury trial; denial of jury trial merely limited the maximum term of jail to six months. Wells v. State, 654 So.2d 146 (Fla. 3d DCA 1995).
9. Standard to support conviction for criminal contempt is beyond a reasonable doubt:
    a. Tuner v. State, 283 (Fla. 2d DCA 1973).
    b. Lindman v. Ellis, 658 So.2d 632 (Fla. 2d DCA 1995).
    c. Tide v. State, Case No: 4D00-4041 (Fla. 4th DCA Oct. 3, 2001).
        i. In criminal contempt proceeding, the court must require proof of defendant's guilt beyond a reasonable

doubt before shifting the burden to defendant to go forward.

ii. "Thus, to prove indirect criminal contempt, 'there must be proof beyond a reasonable doubt that the individual intended to disobey the court.'"

d. Hoffman v. State, 842 So.2d 895 (Fla. 2d DCA 2003). The trial court erred in finding that the defendant had violated the 500 foot provision of the injunction as the state failed to prove the exact distance the defendant was from petitioner. The court held that the state's burden of proof in an indirect criminal contempt case is to prove every element beyond a reasonable doubt.

10. Notice of Prohibited Conduct Must Be Provided in an Injunction:

a. Hoffman v. State, 842 So.2d 895 (Fla. 2d DCA 2003). Defendant, a respondent in a civil case, was convicted of violation of the injunction for sending cards to the petitioner's residence and for allegedly violating the 500 foot provision of the injunction. The trial court erred in finding that the defendant had violated the injunction as the cards were addressed to other residents of the petitioner's household and as the injunction did not specifically prohibit this.

b. Zelman v. State, 666 So.2d 188 (Fla. 2d DCA 1995). The order holding the husband in indirect criminal contempt for violating a temporary restraining order against harassing the wife by failing to pay her health insurance premiums in a timely fashion was reversed. Neither the final judgment of dissolution nor the temporary restraining order adequately apprised the husband of conduct that was prohibited in regard to the timeliness of payments of the wife's health insurance premiums. The husband's payment of premiums after the due date had passed, but within the grace period, did not constitute indirect criminal contempt.

(c) Direct Criminal Contempt: Florida Rule of Criminal Procedure 3.830:

1. Criminal contempt proceedings are subject to Florida's Rules of Criminal Procedure 3.830 and 3.840 and to the "constitutional limitations applicable to criminal cases including due process requirement of a burden of proof 'beyond a reasonable doubt.'" Dowis v. State, 578 So.2d 860, 862 (Fla. 5th DCA 1991).
    a. Defendant must be allowed to show cause why he should not be found guilty.
        i. Rule 3.830.
        ii. Tchapek v. State, 699 So.2d 851 (Fla. 4th DCA 1997).
2. Direct criminal contempt occurs when the court sees or hears the conduct, which constitutes the contempt.
    a. Tchapek v. State, 699 So.2d 851 (Fla. 4th DCA 1997).
        i. Jackson v. State, 779 So.2d 379 (Fla. 2d DCA 2000). Defendant's "contemptuous behavior occurred in the presence of the trial court, frustrated an ongoing proceeding, and is apparent on the face of the record."
3. The burden of proof to support conviction for criminal contempt is beyond a reasonable doubt:
    a. Kramer v. State, 800 So.2d 319, 320 (Fla. 2d DCA 2001).
    b. Dowis v. State, 578 So.2d 860, 862 (Fla. 5th DCA 1991).
    c. Tuner v. State, 283 (Fla. 2d DCA 1973).
    b. Lindman v. Ellis, 658 So.2d 632 (Fla. 2d DCA 1995).
    e. Tide v. State, Case No: 4D00-4041 (Fla. 4th DCA Oct. 3, 2001).
        i. In criminal contempt proceeding, the court must require proof of defendant's guilt beyond a reasonable doubt before shifting the burden to defendant to go forward.
4. Purpose of criminal contempt is to punish.
    a. Tchapek v. State, 699 So.2d 851 (Fla. 4th DCA 1997).
        i. Kress v. State, 790 So.2d 1207 (Fla. 2d DCA 2001). Judge cannot hold a person in direct criminal contempt of

court for a profanity-laced tirade that takes place away from the courtroom and has nothing to do with the judge's official duties.

5. Failure to appear is direct contemptuous behavior.
Wood v. State, 600 So.2d 27, 29 (Fla. 4th DCA 1992).

(6) FDLE Statewide Verification System:

The Florida Department of Law Enforcement has established and maintains a Domestic, Dating, Sexual and Repeat Violence Injunction Statewide Verification System capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions issued by the courts throughout the state. Information regarding the respondent's name, race, sex and date of birth must be obtained by the sheriff's department and transmitted to the verification system by the sheriff's office within twenty four hours after the court issues, modifies, continues, or vacates an injunction. Section 741.30(7)(b)-(7)(c). Note: Mutual restraining orders, if granted as part of a chapter 61, dissolution of marriage action, are not included in this registry.

(7) Law Enforcement's Role in Domestic Violence Proceedings:

(a) Law enforcement officers must assist the victim of domestic violence to obtain medical attention and advise the victim that there is a domestic violence center from which the victim may receive services. Additionally, law enforcement must immediately notify the victim of his or her legal rights by providing the victim with the Legal Rights and Remedies Notice, which is developed by the department and shall include the statutory language in section 741.29(1)(a) and (b).

(b) Law enforcement officers are required to prepare reports of each act of alleged domestic violence and give the report to the officer's supervisor and file it with the law enforcement agency "in a manner that will permit data on domestic violence cases to be compiled." Section 741.29(2), Florida Statutes.

(c) The court may order a law enforcement officer "to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction." Section 741.30(8)(a)2, Florida Statutes.

(d) Law enforcement officers may arrest the alleged abuser regardless of the consent of the alleged victim. Section 741.29(3), Florida Statutes.

(e) Law enforcement officers may not be held liable in a civil action because of arrests, enforcement, or service of process under Chapter 741, Florida Statutes. Section 741.29(5), Florida Statutes.

(f) Law Enforcement Must have Defendant Sign Notice to Appear (NTA) for the Court to have Jurisdiction over the Defendent:

1. Mallard. State, 669 So.2d 797, 798 (Fla. 4th DCA 1997).
   Conviction reversed on jurisdictional grounds where the defendant was issued a NTA and was booked into the county jail. The court held that where a defendant is booked into jail, the defendant does not sign the NTA and the officer does not fill in the court information, the NTA was no longer a NTA, thus there was no charging document before the court. The court therefore lacked any jurisdiction over the defendant. Jurisdiction can never be waived; an information must be filed whenever someone is actually booked into jail. *See also* Byrd v. State, 6 Fla. L. Weekly Supp. 683 (15th Jud.Cir. 1999).
2. **However**, *see* Florida Rule of Criminal Procedure 3.170(a): "If the sworn complaint charges the commission of a misdemeanor, the defendant may plead guilty to the charges at first appearance . . . , and the judge may thereupon enter judgment and sentence without the necessity of any formal charges being filed."

(8) Procedures Subsequent to a Violation of the Injunction:

(a) Three Ways Enforcement of a Violation Can Be Initiated-

1. Victim may contact local law enforcement.

2. If the court has knowledge on its own that the petitioner, the petitioner's children, or another person is in immediate danger if the court fails to act before the decision of the state attorney to prosecute, the court may take one of two actions:
    a. Court may issue an order of appointment of the state attorney to file a motion for an order to show cause why the respondent should not be held in contempt, OR
    b. If the court does not issue an order of appointment of the state attorney, it shall immediately notify the state attorney that the court is proceeding to enforce the violation through criminal contempt. Section 741.31(3), Florida Statutes.
3. Victim may contact the clerk of the court's office and receive assistance from the clerk's office in filing an "affidavit in support of the violation." Sections 741.31(1), 741.30(2)(c) Florida Statutes.
    a. Once an Affidavit in Support of the Violation is Completed: The affidavit must be immediately forwarded to the state attorney's office, the designated judge, and, if the affidavit contains allegations that a crime has been committed, it shall be forwarded to the appropriate law enforcement agency to complete an investigation within 20 days and forward an investigative report to the state attorney.
    b. The state attorney must determine within 30 working days whether it will file criminal charges or prepare a motion for an order to show cause why the respondent should not be held in criminal contempt, or both, or file notice that the case is under investigation or still pending. Section 741.31(2), Florida Statutes.

(9) Obligations of the Attorney in Prosecuting Domestic Violence Cases:

1. Each state attorney shall develop special units or assign prosecutors, who are trained in domestic violence, to

specialize in the prosecution of domestic violence cases. Section 741.2901(1), Florida Statutes.

2. State attorneys are required to adopt a "pro-prosecution policy" for acts of domestic violence. The consent of the victim is not required to prosecute; the state attorney possesses prosecutorial discretion. Section 741.2901(2), Florida Statutes. A respondent can be prosecuted for specific acts such as assault, battery, or stalking which constituted violation of the injunction. *See* Surez-Mesa, , 662 So.2d 735 (Fla. 2d DCA 1995), Jordan, 802 So.2d 1180 (Fla. 3d DCA 2002).
3. *See also infra* section IV.G., Domestic Violence – Charging and Prosecuting.

(10) Preparation for First Appearance Subsequent to Arrest for Violation of an Injunction:

(a) If the respondent is arrested by law enforcement for violation of an injunction under chapter 741, Florida Statutes, law enforcement must hold the respondent in custody until first appearance when court will decide bail in accordance with chapter 903. Sections 741.30(9)(b), 741.2901(3), Florida Statutes.

1. *See* Simpson v. City of Miami, 700 So.2d 87 (Fla. 3d DCA 1997). Sovereign immunity did not bar wrongful death action against city arising from death of woman killed by violator of domestic violence injunction after he was released from police cruiser; if officer's action of securing violator in cruiser, after having responded to call about injunction violation, constituted "arrest" of violator, then statute left officer no discretion under sovereign immunity principles to release violator, but required him to take violator before judge.

(b) Prior to first appearance the State Attorney's Office shall perform a thorough background investigation on the respondent and present the information to the judge at first appearance, so he/she will have all pertinent information when determining bail. Section 741.2901(3), Florida Statutes.

(11) Damages, Costs, and Attorneys' Fees for Enforcement of Injunction:

(a) Economic Damages:

The court may award economic damages to any person who suffers an injury and/or loss due to a violation of

an injunction for protection against domestic violence. Section 741.31(6), Florida Statutes.

(b) Compensatory and Punitive Damages:
A victim of domestic violence who has suffered repeated physical or psychological injuries over an extended period of time as a result of continuing domestic violence has a cause of action for compensatory and punitive damages against the perpetrator responsible for the violence. Section 768.35, Florida Statutes.

(c) Attorneys' Fees: *See supra* section II.P.

III. EVIDENCE

A. PRIVILEGES APPLICABLE TO DOMESTIC VIOLENCE:

(1) Domestic Violence Advocate-Victim Privileges; Section 90.5036, Florida Statutes.

(a) Section 90.5036(d), Florida Statutes. A communication between a domestic violence advocate and a victim is "confidential" if it is related to the incident of domestic violence for which the victim is seeking assistance and if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the victim in the consultation, assessment, or interview.
2. Those persons to whom disclosure is reasonably necessary to accomplish the purpose for which the domestic violence advocate is consulted.

(b) Section 90.5036(d)(2), Florida Statutes. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing, a confidential communication made by the victim to a domestic violence advocate or any record made in the course of advising, counseling, or assisting the victim.

(2) Attorney-Client Privilege; Section 90.502, Florida Statutes.

Attorney-client privilege is relatively limited in scope, and thus does not require exclusion of evidence voluntarily submitted by an attorney in violation of that privilege. State v. Sandini, 395 So.2d 1178 (Fla. 4th DCA 1981).

(3) Spouse Privilege; Section 90.504, Florida Statues.

(a) No privilege "prevents the Government from enlisting one spouse to give information concerning the other or to aid in the other's apprehension. It is only the spouse's testimony in the courtroom that is prohibited" Trammel v. U.S., 445 U.S. 40 (1980); State v. Grady, 811 So.2d 829 (2d DCA 2002).

(b) Statements of spouse that would be privileged at trial can be used to establish cause to obtain a search warrant or to investigate a suspect based on those statements. State v. Grady, 811 So.2d 829 (2d DCA 2002).

(c) Husband-wife evidentiary privilege does *not* apply to criminal acts by one spouse on the other. Section 90.504, Florida Statutes.

1. A spouse has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, communications which were intended to be made in confidence between the spouses while they were husband and wife.
2. Section 90.504(3)(b), There is no privilege under this section in a criminal proceeding in which one spouse is charged with a crime committed at any time against the person or property of the other spouse or the person or property of a child of either.
3. Valentine v. State, 688 So.2d 313 (Fla. 1997).

B. ALLOCATION OF DECISION MAKING/FINDER OF FACT:

(1) **Question of Fact for the Trier:**

(a) Emotional Distress:

D.L.D., Jr. v. State, 815 So.2d 746 (Fla. 5th DCA 2002). The court looked to the 1st DCA in McMath v. Biernacki agreeing with that courts finding that in deciding whether an incident or series of incidents creates substantial emotional distress that distress should be judged on an objective, not subjective standard and even if a subjective standard is used, a person does not need to be reduced to "tears or hysteria in order to be considered substantially emotionally distressed."

(b) Stalking:

Biggs v. Elliot, 707 So.2d 1202 (Fla. 4th DCA 1998). The court's finding that whether following and repeatedly telephoning the victim fell within the statutory definition of stalking under the domestic violence statute so as to permit the issuance of an injunction was a question of fact for the trier of fact and was not clearly erroneous. The stalking statute was found not to be unconstitutionally vague or overbroad.

C. CONFIDENTIAL RECORDS:

(1) A petitioner's place of residence may be kept confidential for safety reasons, Section 741.30(6)(a)(7), Florida Statutes.

(2) Any criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which reveals the identity of the victim of the crime of sexual battery as defined in chapter 794 is exempt from public record disclosure, Section 119.07(6)(f), Florida Statutes.

(3) *See also* in this outline section II.,M.(2), Confidentiality of Information.

D. JUDICIAL NOTICE OF SERVICE:

(1) Improper for court to take judicial notice of an essential element that the state is required to prove.

(a) Cordova v. State, 675 So.2d 632 (Fla. 3d DCA 1996).

1. Notice of injunction is an essential element of charge of violating its provisions.
2. Return of service, while hearsay, was admissible in evidence under public records exception.
3. Trial court may not take judicial notice of fact that defendant was served with an injunction.
    a. Fact that the defendant was served is not generally known within territorial jurisdiction of the court.
    b. And it was not type of fact that was not subject to dispute because of being capable of accuracy could not be questioned.
4. However: Trial court may allow State to use "permissive inference" to establish that the defendant was served with an injunction.
    a. Permissive inference allows, but does not require, the trier of fact to infer elemental fact upon proof of a basic fact and places no burden on the defendant.
    b. Such inference passes the rational connection test, as fact of service more likely than not flowed from the return of service.

(b) Hernandez v. State, 713 So.2d 1120 (Fla. 3d DCA 1998). The District Court of Appeal held that defendant was entitled to judgment of acquittal on charge of violating a domestic violence injunction, as trial court could not properly take judicial notice of an essential element that state was required but failed to prove for conviction.

E. BATTERED SPOUSE SYNDROME (BSS) or (BWS):

(1) Admissible Against Batterers to Bolster Credibility of Victim:

(a) Commonwealth v. Goetzendanner, 42 Mass.App.Ct. 637, *cert. denied,* 425 Mass. 1105 (1997). "Where relevant, evidence of BSS may be admitted through a qualified expert to enlighten jurors about behavioral or emotional characteristics common to most victims of battering and to show that an individual or victim witness has exhibited similar characteristics."

(b) State v. Griffin, 564 N.W.2d 370 (Iowa 1997).

1. Iowa Supreme Court allowed the use of expert testimony on BWS with respect to the victim's recantation.
2. Expert did not offer opinion on the specific victim's credibility, but instead testified concerning the medical and psychological syndrome present in battered woman generally.

(c) People v. Morgan, 58 Cal.App.4th 1210 (Cal.Ct.App.1997). BWS is admissible to bolster the credibility of a victim who recants her story.

(d) Dillard v. California, NO. 99-56345 (9th Cir. 2001). No constitutional violation occurred in the admission of BWS evidence, and its admission did not "result in a decision that was contrary to, or involved an unreasonable application of clearly established federal law."

(e) Gonzalez-Valdes v. State, 834 So.2d 933 (Fla. 3d DCA 2003). Defendant was convicted in a jury trial in the Circuit Court, Miami-Dade County, of second-degree murder of her live-in boyfriend. Defendant appealed. On motion for rehearing, the District Court of Appeal held that the testimony of victim's ex-wife, that victim never abused her in 29 years of marriage, was relevant to battered woman's syndrome defense.

(2) BSS is Admissible as a Defense by Those Suffering from the Condition:

(a) State v. Hickson, 630 So.2d 172 (Fla. 1993).

(b) *But see* Trice v. State, 719 So.2d 17 (Fla. 2d DCA 1998). No error in prohibiting BSS relating to the victim where the expert could not testify that victim was suffering from such at the time of the homicide.

F. STATEMENTS BY WITNESSES: Florida Rule of Criminal Procedure 3.330(b)(1)(B).

(1) State must disclose prior statements of prosecution witness.

(a) Roman v. State, 528 So.2d 1169 (Fla. 1988). State's failure to disclose exculpatory statements made by witness who testified to the contrary at trial was reversible error.

(b) Holmes v. State, 642 So.2d 1387 (Fla. 2d DCA 1994).

(2) State must disclose defense witness statements. Sun v. State, 627 So.2d 1330 (Fla. 4th DCA 1993).

(3) The reference to "statements" is limited to written statements or contemporaneously oral statements.

Watson v. State, 561 So.2d 1159 (Fla. 1994). Expert's oral statement was not discoverable.

(4) State is not charged with knowledge of defendant's statement to State witness.

(a) Sinclair v. State, 657 So.2d 1138 (Fla. 1995). "We agree with the trial court that none of the rules of criminal procedure relating to discovery require the State to disclose information which is not within the State's actual or constructive possession."

(b) *Reversing by implication:*
McCray v. State, 640 So.2d 1215 (Fla. 5th DCA 1994). Held that the State was so charged with constructive knowledge of a defendant's statements to a State witness.

(5) Prosecutor's trial preparation notes, work product, not subject to disclosure:

Where the prosecutor's trial preparation notes did not reflect verbatim statements of any witness interviewed, had not been adopted or approved by the person to whom they were attributed, and the notes included interpretation of remarks made by witnesses, they were not subject to disclosure. Williamson v. State, 651 So.2d 84 (Fla. 1994).

(6) Child Witness Competent to Testify:

Kronjack v. State, 8 Fla. L. Weekly Supp. 283 (Fla. 10th Cir. Ct. 2001). The Tenth Judicial Circuit held that the trial court did not abuse its discretion in finding a child competent to testify in a domestic violence battery trial, where the trial judge found that seven-year-old child was in the correct grade for her age, making good progress in school, and understood the difference between what she observed and what someone else may have told her, in accordance with the standard set out in Kertell v. State, 649 So.2d 892 (Fla. 2d DCA 1995).

G. STATEMENTS BY VICTIMS

(1) Reluctant v. Recanting Victim:

(a) Fairness of Opposing Party and Counsel
A lawyer shall not:

1. Unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows or reasonable should know is relevant to a pending or a reasonably foreseeable

proceeding; nor counsel or assist another person to do any such act. Rule 4-3.4, Florida Rules of Professional Conduct.

(b) State v. Conley, 799 So.2d 400 (Fla. 4th DCA 2001). The state appealed an order dismissing a felony battery. An adversarial hearing occurred but the state had neglected to subpoena the witnesses to the events. The victim was present and claimed that she instigated the argument and the injuries she sustained were a result of her own actions, directly contradicting the eyewitness account. The victim claimed she never wanted charges brought against the defendant. The judge dismissed the charges despite the state's objection. In relying on both Florida Rule of Criminal Procedure 3.133(b), and on State v. Hollie, 736 So.2d 96 (Fla. 4th DCA 1999), the Fourth District held that because the hearing was an adversarial hearing, where the defendant never motioned the court for a dismissal, and because probable cause was clearly established, a dismissal was clearly in error. Judge Warner concurs in a separate opinion, finding that the lower court made an additional error in finding that consent to a battery is a defense. Consent is only a defense in cases of sexual battery, NOT domestic violence.

(2) Cross Examination of Victim; Fundamental Right

(a) Zuchel v. State, 824 So.2d 1044 (Fla. 4th DCA 2002). Defendant, charged with aggravated stalking and violation of the restraining order, filed a writ of prohibition after the trial court denied his motion for disqualification. The Fourth District granted defendant's request and remanded the case back to the trial court for assignment of a new judge. The appellate court held that the trial court's denial of the basic fundamental right of cross examination of the victim would give a "reasonably prudent person a well-founded fear of judicial bias." The Fourth District noted the fact that the state was allowed to use the victim's testimony in its opposition to the motion to reduce bond.

H. HEARSAY

(1) Definition: A statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Section 90.801(1)(c), Florida Statutes.

(2) Conviction May Stand Solely on Hearsay:

(a) "We decline to enunciate a blanket rule that no conviction can stand based solely on hearsay." Anderson v. State, 655 So.2d 1118 (Fla.1995).

(b) *But see* Colwell v. State, 838 So.2d 670 (Fla. 2d DCA 2003). (Improper to base revocation of probation on inadmissible hearsay). The Second District reversed trial court's revocation of defendant's probation for violation of probation for committing domestic battery. The court held that it was an error to base the revocation, in part, on inadmissible hearsay and other insufficient evidence. The only testimony offered at the revocation hearing was that of a deputy who testified that the victim told him that the defendant had grabbed her and she was afraid to go back to the house. Further, the deputy testified that the victim was hysterical and had a faint mark on her neck. This evidence was insufficient to find that defendant violated probation. Note: Trial court found that the victim's statement did not meet excited utterance exception as too much time passed between the time of the alleged incident and her statement to the deputy.

(3) When the declarant testifies during the hearing and is subject to cross-examination the confrontation clause is satisfied.

(a) U.S. v. Owens, 484 U.S. 554 (1988).

(b) U.S. v. Spotted War Bonnett, 993 F.2d 1471 (8th Cir.1991), *cert. denied,* 112 S.Ct. 1187 (1992).

(4) Satisfaction of the confrontation clause where the declarant does <u>not</u> testify. *See also infra* section I.

(a) If a hearsay statement is admissible under any of the hearsay exceptions included in the Evidence Code, with the exception of section 90.803(23) – hearsay exception; statement of child victim, no additional analysis is necessary and the admission of the statement will not infringe upon the defendant's confrontation rights.

1. Ehrhardt, *1 Fla. Prac., Evidence §* 802.2 (2004 ed.).
2. Where witness is unavailable to testify at subsequent hearing, prior testimony is admissible, despite confrontation clause, if opponent can show that testimony was given under circumstances that indicate its content is probably true. State v. Kleinfeld, 587 So.2d 592 (Fla. 4th DCA 1991).
    a. *But see* Mathieu v. State, 552 So.2d 1157 (Fla. 3d DCA 1989). Defendant's right to

confrontation was violated when there was testimony from which an inescapable inference was drawn that two eye-witnesses who did not testify had identified the defendant as the person who committed the robbery.

3. *See also* Crawford v. Washington, 124 S.Ct. 1354 (2004), which, regarding "testimonial" hearsay, overruled the Roberts decision, which held that reliability could be inferred if the hearsay statement falls within a firmly-rooted exception or if there are particular guarantees of trustworthiness. Ohio v. Roberts, 448 U.S. 56 (1980).
   a. Note: The Crawford opinion applies to "testimonial" hearsay and Roberts analysis applies to "non-testimonial." Further discussion of Crawford's impact on domestic violence proceedings, *see* Judge Amy Karen and Judge David M. Gersten's article, "Domestic Violence Hearsay Exceptions In the Wake of Crawford v. Washington."
   b. In Crawford the U.S. Supreme Court held that when hearsay statements of an unavailable witness are "testimonial" in nature, the 6th amendment requires that the accused be afforded a prior opportunity to cross-examine the witness. 124 S.Ct. 1354 (2004). However, the Supreme Court did not set out a definition of "testimonial." *Id.*

I. HEARSAY EXCEPTIONS: Section 90.803(2), Florida Statutes Availability of Declarant Immaterial:
The provision of section 90.802 (hearsay rule) to the contrary notwithstanding, the following are admissible as evidence, even though the declarant is unavailable as a witness:

(1) Spontaneous Statement – 90.803(1), Florida Statutes. A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.
   (a) The spontaneity of the statement negates the likelihood of conscious misrepresentation by the declarant and provides the necessary circumstantial guarantee of trustworthiness to justify the introduction of the evidence.

1. Ehrhardt, *1 Fla. Prac., Evidence §* 803.1 (2004 Ed.).
2. White v. Illinois, 502 U.S. 346 (1992).
3. Fratcher v. State, 621 So.2d 525 (Fla. 4th DCA 1993). Defendant's companions' statement to store manager should not have been admitted under spontaneous statement exception to hearsay rule.
4. McDonald v. State, 578 So.2d 371 (Fla. 1st DCA 1991), *review denied*, 587 So.2d 1328 (Fla. 1991). Victim's statement to friend *immediately* after sexual battery incident was admissible.

(b) Sunn v. Colonial Penn Ins. Co., 556 So.2d 1156 (Fla. 3d DCA 1990). Testimony inadmissible where record did not reflect that statements were spontaneous and made without engaging in reflective thought.

(c) Cadavid v. State, 416 So.2d 1156 (Fla. 3d DCA 1982). "There was no error in permitting the investigating police officer to testify as to victim's spontaneous statements at the time of the incident."
The spontaneity is lacking if more than a "slight lapse of time" has occurred between the event and the statement.

(d) State v. Jano, 524 So.2d 660 (Fla. 1988). Spontaneous statement by two-and-one-half year old to baby sitter that child's father had sexually molested her was no showing that statement was made contemporaneously with the alleged act by the father.

(e) Quiles v. State, 523 So.2d 1261 (Fla. 2d DCA 1988). Testimony by police officer concerning victim's version of aggravated assault, when the statement was made after the victim drove home and called the police, was not admissible.

(f) U.S. v. Cruz, 765 F.2d 1020 (11th Cir. 1985). Undercover agent's statement as to whom agent identified as source of cocaine was not admissible under present sense impression exception to hearsay rule.

(2) Excited Utterance – 90.803(2), Florida Statutes. A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(a) Excited utterance is an exception to the hearsay rule.

1. Viglione v. State, 28 FLW D 2867a (Fla. 5th DCA 2003). Victim of a kidnapping had called witnesses while the offense was taking place. These were considered excited utterances, and the people who were called were allowed to testify about the content of the conversations.

2. J.L.W. v. State, 642 So.2d 1198 (Fla. 2d DCA 1994); Williams v. State, 714 So.2d 462 (Fla. 3d DCA 1997).
3. Power v. State, 605 So.2d 856 (Fla. 1992), *cert. denied,* 507 U.S. 1037 (1993).
4. Stoll v. State, 762 So.2d 870 (Fla. 2000). The Supreme Court rejected the state's argument that statements of the victim to a witness were admissible under the excited utterance exception to the hearsay rule where the proper predicate was not established by the state and where such a finding was not made by the trial court. An alternative argument that the witness's testimony was admissible under the state-of-mind exception to the hearsay rule was rejected because the victim's state of mind was not found to be relevant to any issue in the case. The Supreme Court also held it was error to admit the victim's handwritten statement of a prior domestic violence case from the court record.

(b) Elements:
1. There must be an event startling enough to cause nervous excitement;
2. The statement must have been made before there was time to contrive or misrepresent; and

3. The statement must have been made while the person is under the stress of excitement cause by the event.
   a. State v. Jano, 524 So.2d 660 (Fla. 1988).
   b. Rogers v. State, 660 So.2d 237 (Fla. 1995).
   c. Henyard v. State, 689 So.2d 239 (Fla. 1997).

(c) Time:
1. State v. Jano, 524 So.2d 660 (Fla. 1988).
   a. "Some out-of-court statements may be admitted as excited utterances even though they were not made contemporaneously or immediately after the event."
   b. "The length of time between the event and the statement is pertinent in considering whether the statement may be admitted as an excited utterance."
   c. "It would be an exceptional case in which a statement made more than several hours

after the event could qualify as an excited utterance because it would be unlikely that the declarant would still be under the stress of excitement caused by the event."

2. The lapse of time between the startling event and the statement is relevant but not dispositive. Henyard v. State, 698 So.2d 239 (Fla. 1997). ". . . The immediacy of the statement is not a statutory requirement."
3. There is no bright-line rule of hours or minutes to determine whether the time interval between the event and the statement is long enough to permit reflective thought.
   a. Werley v. State, 814 So.2d 1159 (Fla. 1st DCA 2002).
   b. Rogers v. State, 660 So.2d 237, 240 (Fla. 1995). The fact that reflective thought may be possible does not automatically exclude a statement from being classified as an excited utterance. If the evidence establishes a lack of reflective thought, the predicate is satisfied.
4. "As long as the excited state of mind is present when the statement is made, the statement is admissible if it meets the other requirements of section 90.803(2)." *Ehrhardt, 1 Fla. Prac., Evidence §* 803.2 (2004 Ed.). Cited by:
   a. State v. Jano, *supra.*
   b. Edwards v. State, 763 So.2d 549 (Fla. 3d DCA 2000). No error in admission, as excited utterance, statement made by bystander at accident scene that she had been at party with defendant, that defendant was drunk, and that defendant had been told not to drive.

(d) Excited utterance does not violate the confrontation clause.
   1. J.L.W. v. State, 642 So.2d 1198 (Fla. 2d DCA 1994).
   2. White v. Illinois, 502 U.S. 346 (1992).
   3. Ohio v. Roberts, 448 U.S. 56 (1980).

(e) Availability of declarant of excited utterance is immaterial: Unavailability analysis is a necessary part of the Confrontation Clause inquiry only when the challenged out-of-court statements were made in the course of a prior judicial proceeding. Ohio v. Roberts, 448 U.S. 56 (1980).

(f) 911 Recordings:
   1. Generally, 911 tapes are admissible as excited utterance or spontaneous statement exceptions to the hearsay rule.
      a. State v. Frazier, 753 So.2d 644 (Fla. 5th DCA 2000).
      b. Werley v. State, 814 So.2d 1159 (Fla. 1st DCA 2002). The First District affirmed trial

court's conviction of aggravated battery with a deadly weapon and held that the trial court did not abuse its discretion in admitting 911 tapes regardless of the fact that the victim did not call the police until an hour after the alleged battery occurred as she was shaken and visibly frightened when the police arrived.

c. Coley v. State, 816 So.2d 817 (Fla. 2d DCA 2002)
Jamie Coley appealed from his judgment and sentence for aggravated battery, arguing that the trial court erred in failing to redact portions of a 911 tape admitted into evidence, which referred to a nonexistent restraining order. The state argued that even if the reference to the restraining order should have been redacted from the tape, its admission into evidence was harmless. The test for harmless error requires the state to prove that there is no reasonable possibility that the error complained of contributed to the verdict. State v. DiGuilio, 491 So.2d 1129, 1138 (Fla. 1986). Here the state did not meet its burden and as a result the court reversed and remanded the judgment.

d. Sliney v. State, 699 So.2d 662 (Fla. 1997). Prosecutor allowed to read transcript of 911 call to the jury.

e. Davis v. State, 698 So.2d 1182 (Fla. 1997).

f. Allison v. State, 661 So.2d 889 (Fla. 2d DCA 1995). 911 audio recording of victim's ten-year-old son's telephone call was admissible under excited utterance exception to hearsay rule. (*reversed on other grounds), affirmed by* Sliney, *supra.*

g. Ware v. State, 596 So.2d 1200 (Fla. 3d DCA 1992), *approved*, Davis v. State, 698 So.2d 1182 (Fla. 1997), *affirmed by* Sliney, *supra*.

h. *See also* Garcia v. State, 492 So.2d 360, 365 (Fla. 1986), *cert. denied,* 479 U.S. 1022 (1986), *approved,* Davis v. State, *supra.*

i. Quinn v. State, 692 So.2d 988 (Fla. 5th DCA 1997).

j. Evans v. State, 854 A.2d 1158 (Del.Supr. 2004); Williamson v. State, 707 A.2d 350

(Del.Supr. 1998) Defendant's argument that the statements could not be admitted as evidence identifying the defendant as the killer was rejected by the court.

2. However: The fact that a call is placed on a 911 line does not, standing alone, qualify it for admission, as a hearsay exception, under Section 90.803, Florida Statutes.
   a. Quinn v. State, *supra.* Tape of 911 call from anonymous caller was not admissible.
   b. Bemis v. Edwards, 45 F.3d 1369 (9th Cir. 1995). 911 call not admissible absent first hand knowledge of the events described under present sense impression or excited utterance exceptions.
   c. People v. Adkins, 628 N.Y.S. 2d 711 (N.Y. 2d Dept. 1995). Transcript of a 911 call was not admissible as present sense exception because caller was not an eyewitness. *Affirmed as modified by,* People v. Vasquez, 670 N.E. 2d. 1328 (N.Y. 1996).
   d. Franzen v. State, 746 So.2d 473 (Fla. 2d DCA 1998). The concurring opinion pointed out that 911 tapes do not come in under business records exception.

(g) Call to Third Party:
   1. Viglione v. State, 861 So.2d 511 (Fla. 5th DCA 2003).
      The Court, citing State v. Skolar, 692 So.2d 309 (Fla. 5th DCA 1997), recognized the rule that a victim's telephone "calls for help" to third parties made while the victim was being held against his will and threatened during a kidnapping incident are admissible under the same excited utterance or spontaneous statement exception to the hearsay rule that would permit the admission of a victim's 911 calls.
   2. J.L.W. v. State, *supra.* Officer's testimony that victim stated "the guys in the car pointed a gun at me" was admissible.
   3. Wilcox v. State, 770 So.2d 733 (Fla. 4th DCA 2000). Testimony that the victim yelled to her daughter to "call the police because Ernest picked up a knife[,]" was admissible as an excited utterance.

(h) Excited utterance on their own are sufficient to deny a Judgment of Acquittal (JOA) motion and send case to the jury.
   1. Williams v. State, 714 So.2d 462 (Fla. 3d DCA 1998).

a. Trial testimony which conflicts with excited utterance goes to the weight of the testimony; jury has the choice of which statement to believe.
b. These excited utterances were, on their own, sufficient to deny the defendant's motion's for JOA and to send the case to the jury.
c. Rivera v. State, 718 So.2d 856 (Fla. 4th DCA 1998).
d. Lopez v. State, 716 So.2d 301 (Fla. 3d DCA 1998).
e. Willis v. State, 727 So.2d 952 (Fla. 4th DCA 1998). Applies to violation of probation hearings.

2. *But see* R.T.L. v. State, 764 So.2d 871 (Fla. 4th DCA 2000). Error to deny JOA where only evidence of intent was prior inconsistent statement from victim.
    i. Note: This holding is no new revelation. The case law has always held that prior inconsistent statements can not be used as substantive evidence. However, an excited utterance *is not* a prior inconsistent statement; it is an exception to hearsay and can supply the basis for a conviction. Controlling precedent has held that exited utterances on their own are sufficient to deny JOA motion and send cases to the jury.

(i) Other Case Law Regarding Excited Utterance:
1. Garcia v. State, 492 So.2d 360 (Fla. 1986), *cert. denied*, 479 U.S. 1022 (1986). Statement made to police by wounded victim admissible because "her response was spontaneous, sprang from the stress, pain and excitement of the shootings and robberies, and was not the result of any premeditated design."
2. Power v. State, 605 So.2d 856 (Fla. 1992). Bystander's hearsay statement to officer, which described assailant, was admissible because bystander flagged down officer and appeared visibly shaken.
3. Henyard v. State, 689 So.2d 239 (Fla. 1997).
4. Rodriguez v. State, 696 So.2d 533 (Fla. 3d DCA 1997). The fact that the declarant also testifies does not affect the admissibility of the excited utterance. Evidence that victim identified defendant to an investigating officer, which was properly admitted as an excited utterance, was sufficient to support a conviction.
5. Willis v. State, 727 So.2d 952 (Fla. 4th DCA 1998). Although evidence was conflicting, trial court was in best position to weight the credibility of the witnesses.
6. Pope v. State, 679 So.2d 710, 713 (Fla. 1996). Being stabbed and beaten was a sufficiently startling event.
7. Pedro's v. State, 781 So.2d 470 (Fla. 3d DCA 2001). Statement made to police while victim was still bleeding and in a distressed state.

(j) Practical Points When Dealing with Excited Utterances:
1. Establish the victim's emotional condition and demeanor at the time of the statement.
2. Establish whether the statement was made pursuant to detailed questioning (reflective thought), the product of a general "what happened question" or was it spontaneous.

(3) Medical Statement – 90.803(4), Statements made for the purposes of medical diagnosis or treatment by a person seeking the diagnosis or treatment, or made by an individual who has knowledge of the facts and

is legally responsible for the person who is unable to communicate the facts, which statements describe medical history, past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar, as reasonably pertinent to diagnosis or treatment.

(a) White v. Illinois, 502 U.S. 346 (1992).

(b) State v. Ochoa, 576 So.2d 854 (Fla. 3d DCA 1991).

(c) Elements:

1. The statements were made for the purpose of diagnosis or treatment; and,
2. The individual making the statements knew the statements were being made for medical purposes.
   a. Lazarowicz v. State, 561 So.2d 392 (Fla. 3d DCA 1990).
   b. Reyes v. State, 580 So.2d 309 (Fla. 3d DCA 1991). Victim's statements to physician may be admitted "only, if, and to the extent that it was knowingly made for the purpose of and was pertinent to diagnosis or treatment." *See also* State v. Frazier, 753 So.2d 644 (Fla. 5th DCA 2000).

(d) Statements which are Not Necessary for Medical Diagnosis are Inadmissible:

1. Conley v. State, 620 So.2d 180 (Fla. 1993). In prosecution for armed burglary and sexual battery with a deadly weapon, doctor could testify that victim stated that she was orally, vaginally, and anally penetrated because it was reasonably pertinent to the diagnosis or treatment of the victim's wounds. However, the "assault at gunpoint" portion of the statement was inadmissible because it was not reasonably pertinent to medical diagnosis or treatment.
2. Begley v. State, 483 So.2d 70 (Fla. 4th DCA 1986). Statements about victim's medical state provided by sexual abuse counselor were unsupported by any showing purpose for medical diagnosis and therefore inadmissible hearsay.
3. Allison v. State, 661 So.2d 889 (Fla. 2d DCA 1995).
   a. Where the record does not show that the statement was elicited for the purpose of treatment as opposed to investigation, the statement is not within the medical diagnosis exception.
   b. Where four-year old witnessed her father kill her mother, the child's statement to a psychologist, who was treating her for PTS, describing the killing is not admissible under the medical diagnosis exception.
4. Randolph v. State, 624 So.2d 328 (Fla. 1st DCA 1993). In sexual battery prosecution, error to admit doctor's testimony concerning statements made by the victim which related the "details of the crime", particularly those relating to a shotgun because the statements were not "reasonably pertinent to medical diagnosis or treatment."
5. Bradley v. State, 546 So.2d 445 (Fla. 1st DCA 1989). Hearsay exception for statements made for purposes of medical diagnosis does not permit the admission of victim's statement to doctor that she was raped when she went to the doctor to determine if she was pregnant, not for treatment of injuries from the assault.

(e) Statement Regarding Circumstances which Caused Injury May be Admissible:

1. Pridgeon v. State, 809 So.2d 102 (Fla. 1st DCA 2002).

2. Allison v. State, 661 So.2d 889 (Fla. 2d DCA 1995). Statements describing the cause or inception of an illness are admissible, but statements of fault are not.
3. Brown v. State, 611 So.2d 540 (Fla. 3d DCA 1992). Testimony of doctor who conducted rape treatment examination that the victim stated that she was beaten with a show was admissible because the "information was pertinent to the treatment of her wounds."
4. State v. Ochoa, 576 So.2d 854 (Fla. 3d DCA 1991). Victim's statement to physician that "they had been touched in the genitalia by an adult male and had experienced some pain when that happened" was admissible.
5. *See also* Torres-Arboledo, 524 So.2d 403 (Fla. 1988), *cert. denied,* 488 U.S. 901 (1988).

(f) Statement Need Not be Made to Medical Doctor:
1. Begley v. State, *supra.*
2. Otis Elevator Co. v. Youngerman, 636 So.2d 166 (Fla. 4th DCA 1994). Plaintiff's statement to emergency room nurse that she fainted or passed out and fell was admissible under exception to hearsay for statements made for medical treatment or diagnosis.

(g) Identity of Perpetrator Not Pertinent to Diagnosis and therefore seldom Admissible:
The details of a violent crime may be reasonably pertinent to diagnosis or treatment, but the identity of the perpetrator would seldom, if ever, be admissible as not being pertinent to either diagnosis or treatment.
1. State v. Jones, 625 So.2d 821 (Fla. 1993). Statements made to child protection team doctor by victims of child sexual abuse identifying their abuser are not admissible.
2. Torres-Arboledo v. State, 524 So.2d 403 (Fla. 1988), *cert. denied,* 488 U.S. 901 (1988).
   a. In murder prosecution, statement to doctor that he was shot was admissible because it was reasonably pertinent to the diagnosis or treatment of his wounds.
   b. But the statement that black people had tried to steal his medallion was not admissible, because it was a statement of fact "not reasonably pertinent in the medical treatment."
3. State v. Frazier, 753 So.2d 644 (Fla. 5th DCA 2000). The Fifth District upheld the ruling of the trial court where the victim's statements to her treating physician identifying the defendant as her assailant were not given for purposes of medical diagnosis or treatment, and were therefore inadmissible and not excepted from the hearsay rule. The Fifth District held however those statements on the 911 tape identifying the defendant as her assailant may be admissible if the trial court determines on remand that the statements are hearsay, but qualify as excited utterances. The statements on the 911 tape may be excluded as hearsay if the trial court determines that the statements are *not* excited utterances or admissible on some other

grounds. The Fifth District also held that statements on the 911 tape were also not inadmissible as violative of the defendant's right to confrontation, as such hearsay evidence is firmly rooted in the common law and its reliability can be inferred.

4. Lages v. State, 640 So.2d 151 (Fla. 2d DCA 1994).
   a. Statements by a child abuse victim describing the cause of an injury are admissible if reasonably pertinent to the diagnosis.
   b. A description about how the victim was assaulted is admissible.
   c. Identity of the defendant by the doctor as related by the victim was error.

(4) <u>Former Testimony</u>- 90.803(22) – Former testimony given by the declarant which testimony was given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, or a person with similar interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination; provided, however, the court finds that the testimony is not inadmissible pursuant to section 90.402 or section 90.403, Florida Statute.

(a) <u>State v. Mosley</u>, 760 So.2d 1129 (Fla. 5th DCA 2000). Defendant's testimony in first trial was admissible on retrial under former testimony hearsay exception, where defendant was only surviving eyewitness of homicide, defendant voluntarily took the stand in his own defense at trial, and testimony would not be cumulative, would not mislead the jury, and would not confuse the issues.

(b) *But see* <u>Price v. City of Boynton Beach</u>, 847 So.2d 1051 (Fla. 4th DCA 2003). Psychiatrist's deposition testimony that defendant had made threats, talked about guns, and was a danger was not admissible in hearing on city's motion for temporary injunction for protection against defendant under former testimony exception to rule against admission of hearsay, where deposition was not taken in case, but in defendant's workers' compensation case involving different issues; rule required that the party against whom the testimony was offered had the opportunity and motive to cross-examine the witness in the prior proceeding.

(c) *See also* <u>Friedman v. Friedman</u>, 764 So.2d 754 (Fla. 2d DCA 2000).

1. Court held that the admissibility of a discovery deposition of a nonparty witness as substantive

evidence continues to be governed by rule 1.330(a)(3), Florida Rule of Civil Procedure.

2. "An attorney taking a discovery deposition does not approach the examination of a witness with the same motive as one taking a deposition for the same purpose of presenting testimony at trial."

(d) Former Testimony Statute, as Applied in Criminal Cases is Unconstitutional.

1. Abreu v. State, 804 So.2d 442 (Fla. 4th DCA 2001). "It is, therefore, clear that live testimony may not be constitutionally supplanted with former testimony in criminal cases absent a showing of unavailability."
2. In re: Amendments to the Florida Evidence Code, 782 So.2d 339 (Fla. 2000). The court specifically declined to adopt and approve an amendment made by the legislature, which would allow the admission of former testimony when the defendant is available as a witness.
3. Brown v. State, 721 So.2d 814 (Fla. 4th DCA 1998). Although the court did not address the former testimony statute, it held that it was error to admit the pretrial deposition of the victim as evidence in place of live testimony where the defendant was not personally present when the deposition was taken.

(5) Statement of Child Victim, 90.803(23)(a) – "Unless the method or circumstances under which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 11 or less describing any act of child abuse or neglect, any act of sexual abuse against the child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act . . . in the presence of, with, by, or on the declarant child, not otherwise admissible, is admissible into evidence in any civil or criminal proceeding if:" -

(a) The court conducts a separate hearing, outside of the jury, and determines that the circumstances of the statement provide adequate safeguards of reliability, *see* Section 90.803(22)(a)1, AND

(b) the child either testifies; OR is unavailable as a witness and other corroborative evidence regarding the abuse or offense exists.

1. For further discussion on the determination of "unavailability" see Section 90.803(22)(a)2b, Florida Statutes.
2. Baugh v. State, 862 So.2d 756 (Fla. 2nd DCA 2003), At trial, the child victim of a sexual battery recanted her out of court statement that had been admitted pursuant to Section 90.803(23). Other evidence was presented to support the claim that an offense took place. However, there was not eye witness or physical evidence. In this case, because there was some corroboration, the court held that the trial judge did not err in denying defendant's Motion for Acquittal. *Rev. granted,* 882 So.2d 384 (Fla. 2004).

(6) **Statements of family history and relationships are admissible as an exception to the hearsay rule**. Brown v. State, 473 So.2d 1260 (Fla. 1985). *See also* Cruz v. State, 557 So.2d 668 (Fla. 5th DCA 1990).

a. Providing the identity of the victim is a material element of the proof at trial.
b. The identity of the victim could not be established through "inadmissible hearsay".
c. Cruz does not identify what is inadmissible hearsay.

(7) **Statements Admissible as Substantive Evidence are Exceptions to Hearsay:**

(a) Exceptions to hearsay are substantive evidence.
J.L.W. v. State, 642 So.2d 1198 (Fla. 2d DCA 1994). Officer's testimony that victim stated "the guys in the car pointed a gun at me" was admissible as substantive evidence.

(b) Impeachment testimony cannot be used as substantive evidence.

1. Izquierdo v. State**,** 890 So.2d 1263 (Fla. 5th DCA 2005). Allowing deputy, on direct examination by prosecutor, to read specific question from the Domestic Violence Threat Level Assessment checklist and the victim's affirmative answers in order to impeach victim's testimony at hearing, was permissible to show victim's motivation to testify untruthfully about her husband's crime and was not an abuse of the court's discretion.
2. Jackson v. State, 498 So.2d 906, 909 (Fla. 1986).
3. Kingery v. State, 523 So.2d 1199, 1204 (Fla. 1st DCA 1988), *affirmed by:* State v. Smith, 573 So.2d 306 (Fla. 1990).
4. Santiago v. State, 652 So.2d 485 (Fla. 5th DCA 1995). Victim's recanted original statement could be used as impeachment but not as substantive evidence.
5. *But see* Dudley v. State, 545 So.2d 857 (Fla. 1989). Prior inconsistent statement was admissible in guilt phase only for purposes of impeachment and could not be used as substantive evidence. However, in penalty phase the prior inconsistent statement could be used as substantive evidence if

as long as it is relevant and the defendant has a chance to rebut it.

(c) In a criminal prosecution, a prior inconsistent statement standing alone is insufficient as a matter of law to prove guilt beyond a reasonable doubt.
1. State v. Green, 667 So.2d 756 (Fla. 1995). Criminal depositions pursuant to Florida's Rule of Criminal Procedure 3.220 are inadmissible as substantive evidence.
2. State v. Moore, 485 So.2d 1279 (Fla. 1986).
3. Joyce v. State, 664 So.2d 45 (Fla. 3d DCA 1995).

(d) HOWEVER: Prior inconsistent statement introduced pursuant to 90.801(2)(a) is admissible as substantive evidence.
1. Moore v. State, 452 So.2d 559 (Fla. 1984). Grand jury proceedings
2. State v. Green, 667 So.2d 756 (Fla. 1995). Depositions to perpetuate testimony taken pursuant to Florida Rule of Criminal Procedure 3.190(j) are admissible as substantive evidence.
3. Section 90.801(2), A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is: Inconsistent with the declarant's testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition. (Note: Depositions referred to are those taken pursuant to Rule 3.190(j). Green, *supra.*

(e) Discovery depositions may not be used as substantive evidence in a criminal trial.
1. State v. Green, 667 So.2d 756 (Fla. 1995).
2. State v. James, 402 So.2d 1169, 1171 (Fla. 1981).

J. NON-HEARSAY (Excluded from Definition of Hearsay)

A. Section 90.801(2), Florida Statutes – A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is:

(a) Inconsistent with the declarant's testimony and was given under oath subject to the penalty of perjury at trial, hearing or other proceeding or in a deposition;

(b) Consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication; OR

(c) One of identification of a person made after perceiving the person.

(1) Statements of Identification: Non-hearsay:

(a) Statements of identification made by a witness made after the witness has perceived the individual, which identify an individual before a trial, are excluded from the definition of hearsay.
1. Ehrhardt, *1 Fla. Prac., Evidence §* 801.9 (2004 ed.).
2. State v. Freber, 366 So.2d 426 (Fla. 1978).

a. "An identification made shortly after the crime is inherently more reliable than a later identification in court."
b. "The fact that the witness could identify the respondent when the incident was still fresh in her mind is of obvious probative value."

(b) Statements of identification May be Admissible as Substantive Evidence:
1. State v. Freber, 366 So.2d 426 (Fla. 1978). "Testimony of prior extrajudicial identification is admissible as substantive evidence of identity if identifying witness testifies to fact that prior identification was made."
2. *But see* Rockerman v. State, 773 So.2d 602 (Fla. 1st DCA 2000). Affirmative defense cannot rest on evidence of prior inconsistent identifying statement adduced for impeachment purposes only.

(c) Failure of the witness to repeat the identification in court does not affect the admissibility of evidence of the prior identification:
1. Brown v. State, 413 So.2d 414 (Fla. 5th DCA 1982). Evidence of prior identification admissible even though witness denied making the prior identification and testified at trial that defendant did not commit the crime.
2. A prior identification is also admissible as a prior inconsistent statement to impeach the victim's recantation of the identification at trial.
a. U.S. v. Jarrad, 754 F.2d 1451 (9th Cir. 1985), *cert. denied,* 474 U.S. 830 (1985). Where witness identified defendant in photo-spread after the crime was committed and at trial denied making the identification, an FBI agent could testify at trial that witness had made the pretrial identification.
b. Evans v. State, 366 So.2d 540 (Fla. 3d DCA 1979).

(d) Must be a statement of Identification to be Admissible: Robbery victim's description of suspect to police was not statement of identification, and thus police officer's testimony as to victim's description was not admissible under statute providing that statement of identification of person after perceiving him is non-hearsay when declarant testifies and is subject to cross examination. Puryear v. State, 810 So.2d 901 (Fla. 2002).

(e) Witness Must Testify for Identifying Statement to be Admissible:
Individual who made out-of-court identifying statement must testify during trial for statement to be admissible.
1. Valley v. State, 860 So.2d 464 (4th DCA 2003).
2. Hayes v. State, 581 So.2d 121 (Fla. 1991), *cert. denied,* 502 U.S. 972 (1991).
3. Hall v. State, 622 So.2d 1132 (Fla. 2d DCA 1993).
4. D'Agostino v. State, 582 So.2d 153 (Fla. 4th DCA 1991).
5. Postell v. State, 389 So.2d 851 (Fla. 3d DCA 1981), *review denied*, 411 So.2d 384 (Fla. 1981).
6. Graham v. State, 479 So.2d 824 (Fla. 2d DCA 1985).

(f) The statement of identification need not be made to a police officer; it may be made to a family member or other non-law enforcement person.

Henry v. State, 383 So.2d 320 (Fla. 5th DCA 1980). Testimony of father who was present when his daughter identified the victim at a chance encounter.

(2) Caller-ID Readout: Non-hearsay:

(a) Bowe v. State, 785 So.2d 531 (Fla. 4th DCA 2001).

1. "The caller ID display and the pager readouts are not statements generated by a person, so they are not hearsay within the meaning of subsection 90.801(1)(c)."
2. "Only statements made by persons fall within the definition of hearsay."

(b) *But see* Schmidt v. Hunter, 788 So.2d 322 (Fla. 2d DCA 2001), (Polygraph results incorrectly admitted.)

(3) Statements of Defendant: Non-hearsay:

(a) Police questioning of the defendant at a domestic violence crime scene does not normally require the reading of *Miranda* warnings in that the questioning does not involve custodial interrogations.

1. Morris v. State, 557 So.2d 27 (Fla. 1990). Miranda warnings are not required of defendant questioned in defendant's home.
2. Melero v. State, 306 So.2d 603 (Fla. 3d DCA 1975). Admission to killing wife to the police in response to what happened type question at the crime scene found not to violate *Miranda*.
3. US v. Axsom, No. 01-2848 (8th Cir. May 06, 2002). Where defendant was not "in custody" during an interview in his home, based on the presence of mitigating factors and absence of aggravating factors, *Miranda* warnings were not required, and granting of motion to suppress inculpated statements made by appellant is reversed.

(b) False statements of the defendant are admissible in State's case in chief as substantive evidence to prove guilt.

1. Simpson v. State, 562 So.2d 742 (Fla. 1st DCA 1990). Jury instruction as to this issue should not be given.
2. Brown v. State, 391 So.2d 729 (Fla. 3d DCA 1980). Used as both impeachment and substantive evidence to prove guilt.
3. Mackiewicz v. State, 114 So.2d 684 (Fla. 1959). False exculpatory statements admissible as consciousness of guilt evidence.

(4) Admissions: Non-hearsay:

Statements which are made against a party and are his own statements are admissions and therefore an exception to the prohibition against hearsay, section 90.802(18)(a), Florida Statutes.

(a) Ehrhardt, *1 Fla. Prac., Evidence §* 803.18(a), (2004 ed.).
The statement need not be against the interest of the party-opponent either at the time the statement was made or at the time it is offered.

(b) Husband-wife evidentiary privilege does *not* apply to criminal acts by one spouse on the other.

(c) Searcy v. Simmons, No. 00-3161 (10th Cir. August 19, 2002). A corrections department's Sexual Abuse Treatment Program (SATP) does not violate an inmate's Fifth Amendment right against self-incrimination, and the SATP's admission of responsibility requirement does not violate the right to free exercise of religion.

(5) Impeachment Testimony: Section 90.608(1), allows a party to impeach his own witness.

(a) Limitations:

1. Party (State) cannot call a witness solely to impeach. London v. State, 541 So.2d 119 (Fla. 4th DCA 1989).
2. Impeachment testimony cannot be used as substantive evidence.
3. State v. Smith, 573 So.2d 306 (Fla. 1990).

a. Jackson v. State, 498 So.2d 906, 909 (Fla. 1986).
b. Kingery v. State, 523 So.2d 1199, 1204 (Fla. 1st DCA 1988), *affirmed by:* State v. Smith, 573 So.2d 306 (Fla. 1990).
c. Santiago v. State, 652 So.2d 485 (Fla. 5th DCA 1995). Victim's recanted original statement could be used as impeachment but not as substantive evidence.
d. *But see:* Dudley v. State, 545 So.2d 857 (Fla. 1989). Prior inconsistent statement was admissible in guilt phase only for purposes of impeachment and could not be used as substantive evidence. However, in penalty phase the prior inconsistent statement could be used as substantive evidence if as long as it is relevant and the defendant has a chance to rebut it.

4. Joyce v. State, 664 So.2d 45 (Fla. 3d DCA 1995).

(b) The impeaching party must be prepared to prove up the disputed evidence prior to asking the question. This concept is based on the idea that for the party to ask the question in good faith he must be prepared to prove up the answer.

1. Marrero v. State, 478 So.2d 1155 (Fla. 3d DCA 1985).
1. Tobey v. State, 486 So.2d 54 (Fla. 2d DCA 1986), *review denied*, 494 So.2d 1153 (Fla. 1986).
2. *Criticized by:* Ehrhardt, *1 Fla. Prac., Evidence §* 608.4 (2004 Edition).
   a. "The logical result of the *Marrerro* decision is to limit any cross-examination regarding credibility to situations in which counsel has a witness-room full of witnesses prepared to give backup testimony."
   b. *See also* Greenfield v. State, 336 So.2d 1205 (Fla. 4th DCA 1976). Requiring counsel to demonstrate to the court by a "professional statement to the court" or through other evidence that counsel's belief is well-founded.

(c) There is no requirement that a prior inconsistent statement be reduced to writing in order to be used for impeachment.

1. Kimble v. State, 537 So.2d 1094 (Fla. 2d DCA 1989).
2. Williams v. State, 472 So.2d 1350 (Fla. 2d DCA 1985). "The prior inconsistent statement may be oral and unsworn and may be drawn out on cross-examination of the witness himself and, if on cross-examination the witness denies, or fails to remember making such a statement, the fact that the statement was made may be proven by another witness."

(d) Court did not error in granting State's motion in limine excluding evidence that defendant had filed two petitions for domestic violence injunctions against the victim after the criminal incident. Nelson v. State, 704 So.2d 752 (Fla. 5th DCA 1998).

(e) Simmons v. State, 790 So.2d 1177 (Fla. 3d DCA 2001). By testifying that he had never been violent with the victim or anyone else, defendant opened the door to admission of impeachment evidence that defendant had engaged in acts of domestic violence against another girlfriend.

(f) Butler v. State, 842 So. 817 (Fla. 2003). Defendant alleged, inter alia, that the trial court erred by allowing the state to elicit testimony regarding alleged prior acts of violence committed by defendant. The court held that the trial court did not err in allowing the cross examination of defense witnesses on other crimes evidence as "the evidence was admissible to explain and modify direct testimony, was relevant and probative, and its probative value was not outweighed by the prejudicial effect.

(g) Mills v. State, 816 So.2d 170 (Fla. 3d DCA 2002).

Respondent appealed from a judgment of conviction for aggravated battery. The Third District affirmed the lower court's decision concluding that the domestic violence permanent injunction and the arrest warrant issued, based upon alleged violations of the injunction, were admissible under section 90.402, Florida Statutes, and not Williams's rule of evidence. The court held that evidence of uncharged crimes, which are inseparable from the crime charged, is not Williams's rule of evidence and is admissible if it is a relevant and inseparable part of the act, which is in issue. "It is necessary to admit the evidence to adequately describe the deed." Coolen v. State, 696 So.2d 738, 742-43 (Fla. 1997), (quoting Griffin v. State, 639 So.2d 966, 968 (Fla. 1994)).

(h) Werley v. State, 814 So.2d 1159 (Fla. 1st DCA 2002). The First District affirmed trial court's conviction of aggravated battery with a deadly weapon and held evidence of prior convictions was admissible pursuant to section 90.806(1), Florida Statutes, for the purpose of impeaching statements (made by defendant) but offered by wife but through her testimony and the court found that the statement made by the wife was "exculpatory hearsay" offered for the truth of the matter.

(6) Statements from Radio dispatch: Non-hearsay:

a. Police may testify that they arrived on the scene because of a statement made to them. Harris v. State, 544 So.2d 322 (Fla. 4th DCA 1989)(en banc), *affirmed in:* Conley v. State, 620 So.2d 180 (Fla. 1993).

b. HOWEVER: The contents of the statement are inadmissible especially where they are accusatory.

1. The inherently prejudicial effect of admitting into evidence an out-of-court statement relating accusatory information only to establish the logical sequence of events outweighs the probative value of such evidence.

a. Conley v. State, 620 So.2d 180 (Fla. 1993). Police dispatch is hearsay.

b. Baird v. State, 572 So.2d 904 (Fla. 1990).

c. Harris v. State, *supra, expressly receding from:* Freemen v. State, 494 So.2d 270 (Fla. 4th DCA 1986).

K. EXCULPATORY EVIDENCE: (BRADY VIOLATION)

(1) State Cannot Suppress Material Evidence.

(a) Brady v. Maryland, 373 U.S. 83, 87 (1963). "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is *material* to either guilt or punishment . . . ." *See also* White v. State, 664 So.2d 242 (Fla. 1995).

(b) *Material* Evidence Means:

"The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been

different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome."

1. U.S. v. Bragley, 473 U.S. 667, 682 (1995).
2. White v. State, *supra.*
3. Kyles v. Whitley 514. U.S. 419 (1995).

(c) In order to establish a *Brady* violation, the defendant must prove that the State possessed evidence favorable to the defense, that the defendant did not have the evidence, nor could have obtained it through the exercise of reasonable diligence, that the State suppressed the evidence, and that a reasonable probability exists that had the evidence been disclosed, the outcome would have been different. Cherry v. State, 659 So.2d 1069 (Fla. 1995), Hegwood v. State, 575 So.2d 170,172 (Fla. 1991). *See also* Hildwin v. Dugger, 654 So.2d 107 (Fla. 1995), (Here, the defendant failed to establish such a violation where the State made its entire file available to the defense).

(d) TEST:

1. The test "is whether there is a reasonable probability that 'had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" Duest v. Dugger, 555 So.2d 849, 851 (Fla. 1990), *quoting,* U.S. v. Bagley, 473 U.S. 667, 682 (1985), Cherry v. State, 659 So.2d 1069 (Fla. 1995).

(2) Searches: Exigent Circumstances which Could Justify Entry of Home:

(a) People v. Greene, 289 Ill.3d 796, 682 N.E. 2d 354 (Ill. App.2d Dist. 1997). Officer's belief that a potential emergency was justified and their entry onto the defendant's porch was proper after 911 hang-up call.

(b) State v. Gilbert, 942 p.2d 660 (Kan. Ct.App. 1997). Where victim, who had visible signs of injury, answered the door upset and crying and told police that suspect was not there, police were justified in making a warrantless entry of home for the safety of the victim.

(c) US v. Holloway, No. 01-13607 (11th Cir. May 10, 2002). Law enforcement officials may conduct a limited, warrant less search of a private residence in response to an emergency situation reported by an anonymous 911 caller, where exigent circumstances (particularly danger to human life) demand an immediate response; any evidence in plain view is properly seized.

(d) *But see* Espiet v. State, 797 So.2d 598 (Fla. 5th DCA 2001). The courts generally agree that a law

enforcement officer may not make a warrantless entry into a person's home to arrest the person for a misdemeanor offense. The provisions of section 901.15(7), Florida Statutes, which allow a law enforcement officer to arrest a person for an act of domestic violence without a warrant, do not permit the forcible entry into the person's home to effectuate the arrest based on a misdemeanor offense. The decision of the trial court is reversed and remanded.

(3) Photographs:

(a) To be admissible photographs must be a fair and accurate depiction of that which it purports to be.

1. Pierce v. State, 718 So.2d 806 (Fla. 4th DCA 1997). Computer generated animation.
2. Paramore v. State, 229 So.2d 855 (Fla. 1969), *vacated as to sentence only,* 408 U.S. 935 (1972). Videotape admission.
3. Grant v. State, 171 So.2d 361 (Fla. 1965), *cert. denied,* 384 U.S. 1014 (1966). Motion picture.

(b) Two methods of authenticating photographic evidence: Dolan v. State, 743 So.2d 544 (Fla. 4th DCA 1999), (computer enhanced process.).

1. First, the "pictorial testimony" method requires the testimony of a witness to establish that, based upon personal knowledge; the photographs fairly and accurately reflect the event or scene.
2. Second, the "silent witness" method provides that the evidence may be admitted upon proof of the reliability of the process which produced the tape or photo.

(c) The trial court's admission of autopsy photographs was held to be in the sound discretion of the trial judge in all of the following cases:

1. Gudinas v. State, 693 So.2d 953 (Fla. 1997).
2. Olivera v. State, 719 So.2d 341 (Fla. 3d DCA 1998).
3. Maret v. State, 605 So.2d 949 (Fla. 3d DCA 1992). The fact that photographs were taken at medical examiners office rather than at the scene of the crime did not affect their admissibility.
4. Russell v. State, 454 So.2d 778 (Fla. 4th DCA 1984), photograph of post evisceration view of empty chest cavity.

5. Mordenti v. State, 630 So.2d 1080 (Fla. 1994). Morgue photographs admissible even though manner of death was not in dispute; however, repetitious photographs should be excluded.

(d) The following cases held that photographs which corroborated testimony were properly admitted.
   1. Jackson v. State, 545 So.2d 260 (Fla. 1989). Photographs of victim's charred remains.
   2. Russell v. State, *supra*.
   3. Brumbley v. State, 453 So.2d 381 (Fla. 1984). Color photographs of homicide victim's skeletal remains.
   4. Stratight v. State, 397 So.2d 903, 906 (Fla. 1984).
   5. Edwards v. State, 414 So.3d 1174 (Fla. 5th DCA 1982). Entry and exit gunshot wounds.
   6. Carvajal v. State, 470 So.2d 73 (Fla. 3d DCA 1985). Color photograph of deceased victim's fact in early state of decomposition.
   7. Zamora v. State, 361 So.2d 776 (Fla. 3d DCA 1978). Notwithstanding defendant's offer to stipulate to murder, position of body, etc., photographs were relevant in that they corroborated testimony of certain witnesses.

(e) Photographs which assisted the medical examiner in explaining wounds found on murder victim are admissible.
   a. King v. State, 623 So.2d 486 (Fla. 1993).
   b. Vargas v. State, 751 So.2d 665 (Fla. 3d DCA 2000). Almost any photograph of a homicide victim is gruesome but they are admissible if their probative value out weighs any prejudicial effect.

(f) Pressley v. State, 271 So.2d 522 (Fla. 3d DCA 1972). Held that the trial court did not err in admitting 12" x 15" black-and-white glossy photographs of murder victim lying dead on the floor of the murder scene, taken within one hour of the commission of the crime, though bloodstain appeared, where the photograph accurately portrayed the setting and served to illustrate or explain the testimony of the witnesses.

(g) The test for admissibility of photographs is relevancy rather than necessity. (The fact that other witnesses can or will testify to that which is depicted in the

various photographs does not make those photographs inadmissible.)

1. Pope v. State, 679 So.2d 710, 713 (Fla. 1996).
2. King v. State, 623 So.2d 486 (Fla. 1993).
3. Nixon v. State, 572 So.2d 1336 (Fla. 1990).
   a. Rejecting the defense's argument that since the cause and nature of death had been clearly established there was no circumstances which necessitated the introduction of the seven photographs of the victim's charred remains.
   b. *Affirmed* on this point in Jones v. State, 648 So.2d 669, 679 (Fla. 1994).
   c. Photographs, although "extremely gruesome", were not "so shocking in nature" as to outweigh their relevancy. Pope v. State, *Supra.*; Gudinas v. State, 693 So.2d 953, 963 (Fla. 1997). Six slides of victim's body in the alley, two slides which showed the stick protruding from the victim's vagina and several slides of the body in the morgue were relevant.
4. Gore v. State, 475 So.2d 1205, 1208 (Fla. 1985), *cert. denied,* 475 U.S. 1031 (1986).
5. Straight v. State, 397 So.2d 903, 906 (Fla. 1981).
6. Waggoner v. State, 800 So.2d 684 (Fla. 5th DCA 2001).
7. Brooks v. State, 461 So.2d 936, 941(Fla. 1984). Reaffirming its position that gruesome and inflammatory photographs are admissible if relevant to any issues required to be proven in a case, and relevancy is to be determine in the normal manner without regard to any special characterization of the proffered evidence.
8. State v. Wright, 265 So.2d 361, 362 (Fla. 1972).

(h) Admission of photographs appears to be reversible error only when the photographs have little or no relevance or the photographs are so shocking in nature as to outweigh their relevance.

1. Ruiz v. State, 743 So.2d 1 (Fla. 1999). Admission during penalty phase of murder trial of 2 x 3 foot blowup showing in detail the bloody and disfigured head and upper torso of the victim was reversible error.
2. Czuback v. State, 570 So.2d 925 (Fla. 1990). Photographs of victim's body, which had been

ravaged by dogs and was in a severely decomposed condition, should not have been admitted.

3. Rosa v. State, 412 So.2d 891 (Fla. 3d DCA 1982). Admission of photograph of the victim's blood-splattered body, which depicted the results of emergency procedures performed after the stabbing was error.
4. Polygraph exam results were incorrectly admitted at contempt hearing for violation of domestic violence injunction. Schmidt v. Hunter, 788 So.2d 322 (Fla. 2d DCA 2001).
   a. Evidence of respondent's character and previous criminal convictions was admitted:
   b. respondent's arrest for violating an earlier injunction not involving petitioner and
   c. a letter that respondent wrote to an old girlfriend apologizing for an incident that lead to charges being filed.

L. WILLIAMS RULE/SIMILAR FACT EVIDENCE:

(1) Prior bad acts, wrongs, or crimes committed by the accused are admissible into evidence if they are relevant to prove some material fact in issue.

(a) *See* Williams v. State, 110 So.2d 654 (Fla. 1959).

(b) Section 90.404(2), Florida Statutes.

(c) To Prove Lack of Consent:

Boroughs v. State, 684 So.2d 274 (Fla. 5th DCA 1996).

Testimony concerning the abusive nature of the defendant's relationship with the victim, including the defendant's prior "bad acts," was relevant to prove the sexual battery victim's lack of consent and to explain why the victim did not immediately contact the police.

(d) To Prove Premeditation/Motive:

1. Goldstein v. State , 447 So.2d 903 (Fla. 4th DCA 1984).
   a. Evidence was that defendant threatened ex-wife (victim) on a prior occasion.
   b. "[W]e hold that the prior act of aggressive conduct and the accompanying verbal statements were admissible because they were relevant to the issue of intent which is

an essential element of premeditated murder."

2. No error in admitting testimony of victim, defendant's wife, concerning three earlier separate incidents in which defendant struck victim without her consent. Merrell v. State, 4 FLW Supp. 686 (11th Jud.Cir. 4/11/97).
3. Hyer v. State, 462 So.2d 488 (Fla. 2d DCA 1984).
   a. "Defendant also argues that the trial court erred in allowing the admission of testimony establishing that defendant's wife prior to the shooting had obtained an order restraining defendant from bothering, threatening or harming her."
   b. "Before any testimony was given regarding the restraining order, the wife testified without objection concerning an occasion when her husband hit her."
   c. "The evidence was relevant to the issue of premeditation. One of defendant's defenses at trial was lack of premeditation.
   d. *See also*
      i. Sireci v. State, 399 So.2d 964 (Fla.1981). Evidence from which premeditation may be inferred includes previous difficulties between the parties.
      ii. King v. State, 436 So.2d 50 (Fla. 1983). Evidence that defendant severely beat victim twenty-three days before killing her was relevant to premeditation.
      iii. Wooten v. State, 398 So.2d 963 (Fla. 1st DCA 1981). Evidence that defendant previously beat or physically mistreated one-year-old murder victim or victim's two-year-old sister was properly admissible.
4. Burgal v. State, 740 So.2d 82 (Fla. 3d DCA 1999). Although no facts were given, the court held that evidence of prior incidents of domestic violence by defendant against victim were properly admitted to prove motive, intent and premeditation, in an attempted first degree murder/armed burglary trial.
5. *But see* Robertson v. State, 829 So.2d 901 (Fla. 2002). Landmark collateral crimes domestic

violence case; reversible error "as a matter of law" to allow as Williams rule evidence "a prior threat six years earlier against a different victim and involving a different weapon" to prove absence of mistake or accident. The Supreme Court noted it was "unable to find...any cases in Florida where a prior threat against a different victim was admitted under the Williams rule to prove the absence of mistake or accident of the present offense." The Court did cite with apparent approval cases allowing "prior crimes against the same victim as the charged offense."

(e) Prior Bad Acts Admitted Once Defense "Opened the Door":

Fiddemon v. State, 858 So.2d 1100 (Fla. 4th DCA 2003). The Fourth District Court reversed the trail court's judgment convicting the defendant of the second-degree murder of his girlfriend. Prior to the trial, the court granted the defendant's motion in limine to preclude evidence regarding defendant's prior assault on his girlfriend. At trial, the court allowed the state to introduce evidence of the assault on the theory that the defense had "opened the door" by presenting evidence of a 10 year-old domestic violence incident involving the girlfriend's former husband. The District Court reversed and held that in order for prior bad acts to be admitted under the "opening the door" argument, the defense must first present misleading testimony or a factual assertion which the state would have a right to correct. (Note: The Court did go on to discuss in a footnote that evidence of prior violence or assaults may be relevant to establish motive, intent.)

(f) Proper and Improper use of Prior Bad Acts in Trial for Resisting Arrest:

1. Burgos v. State, 865 So.2d 622 (Fla. 3rd DCA 2004). While responding to a domestic violence call, defendant struggled with the officers as they intended to arrest him. The domestic battery charge was not filed. During his trial for resisting arrest with violence, the officers testified in detail about the domestic violence offense. This was error, and defendant was entitled to a new trial.

2. Logan v. State, 705 So.2d 140 (Fla. 3d DCA 1998). Proper to enter injunction for protection against domestic violence into evidence on resisting with violence charge where defendant/respondent battered law enforcement officer when trying to serve injunction.

(2) Pre-requisites to Introduce Similar Fact Evidence:

(a) There must be sufficient similarity between the crime charged and the evidence introduced.

The evidence introduced must be relevant to a fact in issue; and the evidence must not be relevant solely to prove bad character.

Hodges v. State, 403 So.2d 1375 (Fla. 5th DCA 1981), *see also* Crowell v. State, 518 So.2d 535 (Fla. 5th DCA 1988).

(3) Evidence is Inadmissible if Solely Relevant to Prove Bad Character or Propensity to Commit the Crime.

(a) Peek v. State, 488 So.2d 52 (Fla. 1986).

(b) Coler v. State, 418 So.2d 238 (Fla. 1982).

(c) Florida v. State, 522 So.2d 1039 (Fla.4th DCA 1988).

(d) Paquette v. State, 528 So.2d 995 (Fla. 5th DCA 1988). Improper to admit prior bad act evidence where purpose is to show that because of propensities, defendant very likely did the acts for which he is charged.

(e) Jackson v. State, 522 So.2d 802 (Fla. 1988).

(f) LaMarr v. Lang, 796 So.2d 1208 (Fla. 5th DCA 2001). The Fifth District reversed a lower court's decision to enter a permanent injunction for repeat violence against the respondent on the grounds that the court erred in admitting certain evidence regarding the respondent's character and previous criminal convictions. At the original hearing, the court allowed the petitioner's attorney to "1) show that LaMarr had been arrested for violating an earlier injunction not involving Lang; 2) introduce a letter that LaMarr wrote to an old girlfriend apologizing for an incident that apparently lead to charges being filed against him; 3) question LaMarr regarding prior injunctions filed against him by other people." The Fifth District held that this was improper for the lower court to admit this evidence pursuant to the Williams Rule regarding collateral evidence. Relying on Pastor v. State, 792 So.2d 627 (Fla. 4th DCA 2001), the court comments that collateral crimes evidence is not admissible when its relevance goes only to prove a respondent's propensity.

(g) *See also* Rodriguez v. State, 842 So.2d 1053 (Fla. 3rd DCA 2003).
Trial court improperly permitted victim's testimony regarding a restraining order she obtained subsequent to an argument she and the defendant had which resulted in defendant's charge of aggravated assault with a deadly weapon against the victim. The Third District held that the testimony should not have been admitted as it bolstered the victim's credibility.

(4) Collateral Crime Evidence:
Evidence of a Collateral Crime May be Admitted to Establish the Context Out of Which the Criminal Conduct Arose:

(a) Jackson v. State, 522 So.2d 802 (Fla. 1988).
(b) Smith v. State, 365 So.2d 704 (Fla. 1978).
(c) The collateral offenses must not only be strikingly similar, but they must also share some unique characteristics or combination of characteristics which sets them apart from other offenses.
1. Heuring v. State, 513 So.2d 122 (Fla.1987).
2. Crowell v. State, *supra*.
(d) The evidence must be relevant to a material fact in issue.
1. Heuring v. State, 513 So.2d 122 (Fla.1987).
2. Crowell v. State, *supra*.
(e) Reverse *Williams* Rule:
When the State seeks to introduce *Williams* rule evidence, the defendant should have the same right to question the alleged collateral victim about the circumstances surrounding the collateral crime as he would have in questioning the alleged victim in a crime for which he stands accused. Gutierrez v. State, 705 So.2d 660 (Fla. 2d DCA 1998).

(5) Inseparable Crime Evidence:

(a) Inseparable crime evidence or inextricably intertwined evidence is admissible because it is relevant and necessary to adequately describe the events leading up to the crime and/or the entire context out of which the criminal conduct arose or occurred.
1. Smith v. State, 365 So.2d 704, 707 (Fla. 1978).
2. Hall v. State, 403 So.2d 1321 (Fla. 1981).
3. Osborne v. State, 743 So.2d 602 (Fla. 4th DCA 1999).
4. State v. Cohens, 701 So.2d 362, 364 (Fla. 2d DCA 1997).
5. Austin v. State, 500 So.2d 262 (Fla. 1st DCA 1986).

(b) Evidence of uncharged crimes which are inseparable from the crime charged, or evidence which is inextricably

intertwined with the crime charged, is admissible under 90.402, Florida Statutes, because "it is relevant and inseparable part of the act which is in issue."

1. Osborne v. State, 743 So.2d 602 (Fla. 4th DCA 1999).
2. Collen v. State, 696 So.2d 738 (Fla. 1997).
3. It is inseparable crime evidence that explains or throws light upon the crime being prosecuted.
    a. Tumulty v. State, 489 So.2d 150 (Fla. 4th DCA 1986).
        i. "Under this view, inseparable crime evidence is admissible under Section 90.402 because it is relevant rather than being admitted under 90.402(2)(a)."
        ii. *affirmed in:* Padilla v. State, 618 So.2d 165 (Fla. 1993).
4. There is no need to comply with the ten (10) day notice provision.

    Tumulty v. State, 489 So.2d 150 (Fla. 4th DCA 1986).

IV. DOMESTIC VIOLENCE - CRIMINAL PROCEEDINGS

A. BURGLARY:

(1) State v. Byars, 804 So.2d 336 (Fla. 4th DCA 2001). The defendant was charged with first degree murder and armed burglary of an occupied structure with assault and battery. The defendant had an injunction against him, preventing him from entering the structure where the victim was killed. The defendant successfully moved that the second count of armed burglary be dismissed based on Miller v. State, 733 So.2d 955 (Fla. 1998), in which the court held that a complete defense to burglary is established when the defendant can prove that the premises were open to the public. The *state challenged the dismissal because of the domestic violence injunction, which encompassed the victim's workplace*. The Fourth District ruled that the intent of Miller must be upheld because of the statutory wording of section 810.02(1), Florida Statutes. Because the defendant entered into a store which was open to the public, a charge of burglary cannot stand. The court suggested the legislature consider this issue at the next session.

(2) *But see* State v. Suarez-Mesa, 662 So.2d 735 (Fla. 2d DCA 1995). The husband, who had shared the house with his wife but was restrained by court order (an injunction) from entering the property, was subject to a burglary charge when he entered the premises with the intent to commit a crime.

B. JURY INSTRUCTIONS AND JURORS:

(1) Tindle v. State, 832 So.2d 966 (Fla. 5th DCA 2002). Reversible error for trial court to deny defendant's motion to dismiss the amended information, and fundamental error to instruct jury in a way permitting the jury to find that one alleged victim was threatened while the other had a well-founded fear that violence was imminent as the crime of aggravated assault requires that the victim must both have been threatened *and* have a well founded fear that the violence is imminent.

(2) Rodriguez v. State, 816 So.2d 805 (Fla. 3d DCA 2002). Appellant Carlos Rodriguez appealed his conviction by the circuit court for felony battery in a domestic violence case following a jury trial challenging that the trial court erred in denying his challenge for cause to a potential juror. It was found that during voir dire, the trial court did not allow defendant Rodriguez to strike a potential juror who had revealed that she had been exposed to domestic violence in her past. The Third District held that a juror is not impartial when one side must overcome a set opinion in order to prevail. If a prospective juror's statements raise reasonable doubts as

to that juror's ability to make an impartial verdict, the juror should be excused. Note that when it is not completely clear whether or not the juror should be dismissed, then those cases should be resolved in favor of excusing the juror rather than leaving a doubt as to his or her impartiality. This error made by the trial court was irreversible and as a result the conviction was reversed and remanded.

(3) Henry v. State, 756 So.2d 170 (Fla. 4th DCA 2000). The Fourth District held that where the defendant was convicted for violating an injunction for protection against domestic violence, a new trial was required based on the fact that the trial court erroneously failed to excuse a juror for cause. The juror, who in his capacity as a paramedic and firefighter regularly worked with the police department and had responded to a number of domestic violence cases, gave answers which demonstrated reasonable doubt as to his ability to lay aside a bias in favor of law enforcement.

C. WARRANTLESS ARREST POWERS:

(1) Arrest Powers under Section 901.15, Florida Statutes: A law enforcement officer may arrest a person without a warrant when:

(a) Section 901.15(6) -- There is probable cause to believe that the person has committed a criminal act according to . . . section 741.31 or section 784.047, which violates an injunction for protection entered pursuant to section 741.31 or section 784.047, or a foreign protection order accorded full faith and credit pursuant to section 741.315, over the objection of the petitioner, if necessary.

(b) Section 901.15(7) -- There is probable cause to believe that the person has committed an act of domestic violence as defined in section 741.28. The decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence on each other and to encourage training of law enforcement and prosecutors in this area.

(c) Section 901.15(8) – There is probable cause to believe that the person has committed child abuse, as defined in section 827.03. The decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. It is public policy of this state to protect abused children by strongly encouraging the arrest and prosecution of persons who commit child abuse. A law enforcement officer who acts in good faith

and exercises due care in making an arrest under this subsection is immune from civil liability that otherwise might result by reason of his or her action.

(d) Section 901.15(12), Florida Statutes, was created giving police warrantless arrest powers where there is probable cause to believe that a person has violated a condition of pretrial release when the original arrest was for an act of domestic violence.

(e) *But see* Espiet v. State, 797 So.2d 598 (Fla. 5th DCA 2001). The courts generally agree that a law enforcement officer may not make a warrantless entry into a person's home to arrest the person for a misdemeanor offense. The provisions of section 901.15(7), Florida Statutes, which allow a law enforcement officer to arrest a person for an act of domestic violence without a warrant, do not permit the forcible entry into the person's home to effectuate the arrest based on a misdemeanor offense. The decision of the trial court is reversed and remanded. *See also infra* section (3).

(2) Arrest Powers Under Section 741.29(3), Florida Statutes: Whenever a law enforcement officer determines upon probable cause that an act of domestic violence has been committed within the jurisdiction the officer may arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge shall not require consent of the victim or consideration of the relationship of the parties.

(3) Warrantless Misdemeanor Arrest in Private Residence:

(a) Invalid:

1. State v. Eastman, 553 So.2d 349 (Fla. 4th DCA 1989). Arrest held invalid where trooper chased defendant three miles with lights flashing and siren on, followed defendant into his home and arrested him for fleeing. Subsequent DUI arrest based upon facts obtained after entering home also invalid.
2. Drumm v. State, 530 So.2d 394 (Fla. 4th DCA 1988).
3. Welsh v. Wisconsin, 466 U.S.740 (1984).
4. Guerrie v. State, 691 So.2d 1132 (Fla. 4th DCA 1997). LEO may not enter a private residence to effect a warrantless misdemeanor arrest even when the crime was committed in the LEO's presence.

5. Espiet v. State, 797 So.2d 598 (Fla. 5th DCA 2001), *supra,*(Domestic violence)
6. M.J.R. v. State, 715 So.2d 1103 (Fla. 5th DCA 1998).
7. Conner v. State, 641 So.2d 143 (Fla. 4th DCA), rev. denied. 649 So.2d 234 (Fla. 1994).
8. Ortiz v. State, 600 So.2d 530 (Fla. 3d DCA 1992).
9. Johnson v. State, 395 So.2d 594 (Fla. 2d DCA 1981).

(b) Valid:

1. Gasset v. State, 490 So.2d 97 (Fla. 3d DCA), *rev. denied*, 500 So.2d 544 (Fla. 1986).
2. State v. Spoonamore, 39 Fla.Supp. 2d 63 (15th Jud.Cir. 1989), Warrantless DUI arrest in driveway valid as defendant did not have reasonable expectation of privacy in his open driveway.
3. State v. Battiese, 34 Fla.Supp. 2d 1 (4th Jud. Cir. 1989). Warrantless DUI arrest valid where the defendant voluntarily exited his home.

(4) Dual Arrest Policy – Section 741.29(4)(b), Florida Statutes, created a dual arrest policy for police – If a law enforcement officer has probable cause to believe that two or more persons have committed a misdemeanor or felony, or if two or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response with respect to a person who acts in a reasonable manner to protect or defend oneself or another family or household member from domestic violence.

D. IMMUNITY OF LAW ENFORCEMENT UNDER FLORIDA STATUTES:

(1) Section 901.15(7) – A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection, under section 741.31(4) or section 784.047, or pursuant to a foreign order of protection accorded full faith and credit pursuant to section 741.315, is immune from civil liability that otherwise might result by reason of his or her actions.

(2) Section 741.29(5) – No law enforcement officer shall be held liable, in any civil action, for an arrest based on probable cause, enforcement in good faith of a court order, or service of process in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

(3) Section 741.315(4)(f) – A law enforcement officer acting in good faith under this section and the officer's employing agency shall be immune from all liability, civil, or criminal, that might otherwise be incurred or imposed by reason of the officer's or agency's actions in carrying out the visions of this section.

(4) *But see* Estate of Robert Brown, 28 Fla. L. Weekly D765 (Fla. 1st DCA 2003). The court concluded that the sheriff had a special duty of care as it was reasonably foreseeable that individual, who was visiting defendant's wife at the time of the murder, would be in danger if the defendant was released from custody without sufficient warning.

E. VICTIM'S RIGHTS:

(1) Article I, Section 16(b), Florida Constitution.
"Victims of crime or their legal representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused."

(2) *See generally*, Section 960.001, Florida Statutes.

(3) Victim's right to be present in court during trial:

(a) Here, the trial court heard argument of counsel before deciding whether the sequestration rule would be applied to the victim's next of kin. Key to the decision was the fact that the witnessses' testimony had been memorialized in prior depositions. Under these circumstances, the trial court did not err in denying defense counsel's request to apply the rule of sequestration to the victim's next of kin. Beasley v. State, 774 So.2d 649 (Fla. 2000).

(b) Mother of child victim had a statutory and constitutional right to remain in the courtroom in the penalty phase of a capital murder prosecution in the absence of a showing of prejudice. Rose v. State, 787 So.2d 786 (Fla. 2001).

(c) Excluding a murder victim's great-niece from the courtroom during the defendant's case before she testified as a defense witness violated her constitutional right to be present as the next of kin of a homicide victim; since the constitutional right to be present did not conflict with the right to a fair trial, the constitutional right prevailed over the rule of sequestration in the penalty phase of a capital murder prosecution. Booker v. State, 773 So.2d 1079 (Fla. 2000).

(d) Where victim's right to be present at defendant's trial might conflict with defendant's right to received fair trial, doubts should be resolved in favor of defendant receiving a fair trial. Martinez v. State, 785 So.2d 1034 (Fla. 4th DCA 1995), Cain v. State, 758 So.2d 1257 (Fla. 4th DCA 2000).

(e) The victim is entitled to be present at all proceedings, including the trial, as long as it does not prejudice the defendant. Gore V. State, 500 So.2d 978 (Fla. 1992), section 616.1 (pg. 555) in Florida Evidence by Ehrhardt.

(4) Vitim's Right to be Properly Notified of Court Hearing Defendant's Pleas:
Ford v. State, et al, 27 FLW D1740 (Fla. 4th DCA 2002). Pleas quashed after constitutional rights of victim violated because victim received insufficient notice of hearing in which court accepted guilty pleas of defendants.

(5) Prosecutor Disciplinary Action for Violating Victim's Rights:

(a) In re: Disciplinary proceedings Against Lindberg, 494 N.W. 421 (Wis. 1993). Failure by prosecutor to contact victim in timely manner reference preliminary proceeding was grounds for disciplinary action.

(b) The Florida Bar v. Buckle, 771 So.2d 1131 (Fla. 2000). Lawyer misconduct: "An attorney was publicly reprimanded for sending a letter to the alleged victim of a battery that insinuated that the attorney would 'take her away from her job and her children and expose her to ridicule, contempt and hatred." The letter was sent after the attorney had spoken with the alleged victim by phone and told not to contact her. The Supreme Court of Florida found that the letter was a clear attempt to have the alleged victim drop the charges against the attorney's client and the contents of the letter violated Rule of Professional Conduct 4-4.4 and 4-8.4(d); . . .

(6) Withholding victim's address and current place of employment from defendant was within the trial court's discretion. Deluge v. State, 710 So.2d 83 (Fla. 5th DCA 1998).

(7) Court does not error by imposing sentence greater that that recommended by the victim. Pandolph v. State, 710 So.2d 577 (Fla. 4th DCA 1998).

(8) Yesnes v. State, 440 So.2d 628 (Fla. 1st DCA 1983) (concurring opinion) "We should be grateful that this great country of ours has perfected the greatest justice system known to mankind. We should continually strive to better it. But, while doing this, should we ignore the rights of the lawful, should we ignore the rights of victims, should we ignore the rights of taxpayers? No! Should we consider only the rights of criminals who have shown no respect for their victims, for the

law of the land, for the constitution of our country and state? No."

F. PARENTAL DISCIPLINE/BATTERY ON A CHILD

(1) ***In Loco Parentis***: Florida law recognizes a parent's right to discipline their child through non-consensual touching within acceptable limits and preempts the state from charging and prosecuting parents for battery.

(a) Over a century ago the Florida Supreme Court reaffirmed the right of a parent to moderately chastise or correct a child under their authority. Marshall v. Reams, 32 Fla. 499, 14 So. 95 (1893).

(b) A parent does not commit a crime (simple battery) by inflicting corporal punishment on a child subject to their authority, if the parent remains within the legal limits of the exercise of that authority.

1. Kama v. State, 507 So.2d 154 (Fla. 1st DCA 1987). There are not fixed parameters of reasonable discipline. However, the determination that a parent has overstepped the bounds of permissible conduct "presupposes that the punishment was motivated by malice; that is was inflicted upon frivolous pretenses; that it was excessive, cruel or merciless; or that it has resulted in 'great bodily harm, permanent disability, or permanent disfigurement.'" *Quoting* definition of aggravated child abuse under Section 827.03, Florida Statutes.
2. Jones v. State, 5 FLW Supp. (Fla. 15th Jud.Cir. 8/19/97).
    a. Reversing the simple battery conviction of a parent holding that the Florida legislature preempted a parent from being charged with battery under section 783.03, Florida Statutes.
    b. Under Florida law, when a parent strikes their child, it must rise to the level of child abuse to constitute a crime.
    c. **However,** in 1997, the Florida legislature amended Section 827.03(1), making "child abuse" a third degree felony. This statute defines "child abuse" as an intentional infliction of physical or mental injury upon a child.
3. Raford v. State, 792 So.2d 476 (Fla. 4th DCA 2001), *review granted.*

a. Person acting as parent cannot be convicted of simple battery, e.g., a typical spanking.
b. Person acting as a parent can however be convicted of third degree child abuse. *See also* Clines v. State, 765 So.2d 947 (Fla. 5th DCA 2000).
c. *Conflict certified:* Wilson v. State, 744 So.2d 1237 (Fla. 1st DCA 1999).
    i. Where undisputed facts demonstrate that a parent has employed corporal punishment to discipline his child, parent is exempt from prosecution under felony child abuse statute.
    ii. If the line between permissible and excessive punishment is crossed, the act is punishable as aggravated child abuse and the State has the responsibility to prove "malice" under aggravated child abuse statute.

4. Simple child abuse is not a non-existent crime under Wilson, but rather there is a parental privilege which may be asserted as an affirmative defense available to a parent faced with possible conviction for actions taken while disciplining a child.
    a. Brown v. State, 802 So.2d 434 (Fla. 4th DCA 2001). "Even if the evidence in the present case had established a 'typical spanking', the parental privilege to administer corporal punishment is an affirmative defense which is waived if not asserted."
    b. Nixon v. State, 773 So.2d 1213 (Fla. 1st DCA 2000).
5. *But see* State v. McDonald, 785 So.2d 640 (Fla. 2d DCA 2001).
    a. Disagreeing with Wilson, "Wilson does not accurately reflect the current state of the criminal child abuse statutes".
    b. "a father's 'privilege' to reasonably discipline a child does not bar prosecution for simple child abuse when the beating results in bruising severe enough to require the child's treatment at a hospital."
    c. Common law recognizes a parent's right to discipline a child, "in a reasonable manner", and prevents prosecution for simple battery;

however, no such privilege exists as to the separate statutory crime of child abuse."

d. "Our current child abuse statutes attempt to define the boundary between permissible parental discipline and prohibited child abuse."

(c) Thus, what we are left with when a parent strikes a child is either a felony or lawful conduct. Officers, who continue to arrest and charge parents with simple (domestic) battery, run the risk of a false arrest claim of action.

G. CHARGING AND PROSECUTING:

(1) Obligations of the Attorney:

1. Each state attorney shall develop special units or assign prosecutors, who are trained in domestic violence, to specialize in the prosecution of domestic violence cases. Section 741.2901(1), Florida Statutes.
2. State attorneys are required to adopt a "pro-prosecution policy" for acts of domestic violence. The consent of the victim is not required to prosecute; the state attorney possesses prosecutorial discretion. Section 741.2901(2), Florida Statutes. A respondent can be prosecuted for specific acts such as assault, battery, or stalking which constituted violation of the injunction. *See* Surez-Mesa, , 662 So.2d 735 (Fla. 2d DCA 1995), Jordan, 802 So.2d 1180 (Fla. 3d DCA 2002).
3. *See also supra* section II.R.(9), Obligations of the Attorney in Prosecuting Domestic Violence Cases.

(2) Discretionary Executive Function:

1. The state attorney has complete discretion in the decision whether to charge and prosecute.
   a. Valdes v. State, 728 So.2d 736 (Fla. 1999).
   b. Cleveland v. State, 417 So.2d 653, 654 (Fla. 1982).
2. The decision to prosecute does not lie with the victim of a crime.
   a. State v. Wheeler, 745 So.2d 1094 (Fla. 4th DCA 1999).
   b. McArthur v. State, 597 So.2d 406 (Fla. 1st DCA 1992). "The thrust of appellant's argument is that he should not have been charged in a domestic dispute where the victim advised the state attorney's office that she did not wish to

prosecute. Since the decision to charge was the prerogative of the prosecutor, the argument is unavailing.

c. State v. Brown, 416 So.2d 1258 (Fla. 4th DCA 1982).

3. The judiciary cannot interfere with this discretionary executive function.
   a. Valdes v. State, *supra.*
   b. State v. Bloom, 497 So.2d 2, 3 (Fla. 1986).
4. State, not trial court, makes decisions whether to prosecute.
   a. State v. Bryant, 549 So.2d 1155 (Fla. 3d DCA 1989).
   b. State v. Jogan, 388 So.2d 322 (Fla. 3d DCA 1980). State Attorney has sole discretion to either prosecute or nolle prosse a defendant.
   c. In the Interest of S.R.P., 397 So.2d 1052 (Fla. 4th DCA 1981). Decision to file nolle prosse vested solely in discretion of State.
   d. Cleveland v. State, 417 So.2d 653, 654 (Fla. 1982). "State attorney has complete discretion in making the decision to charge and prosecute."
   e. State v. Wheeler, 745 So.2d 1094 (Fla. 4th DCA 1999). "Notwithstanding the court's belief that the best interest of the public and the parties would be served by dismissal, it is the state attorney who 'who make the final determination as to whether prosecution will continue.'"
5. Court improperly dismissed information where State Attorney determined to prosecute.
   a. State v. Brown, 416 So.2d 1258 (Fla. 4th DCA 1982).
   b. State v. Rubel, 647 So.2d 995 (Fla. 2d DCA 1994). The state attorney shall make the final determination as to whether the prosecution shall continue.
   c. Section 948.08(5), Florida Statutes.
   d. State v. Chavieco, 8 Fla. L. Weekly Supp 283 (Fla. 11th Cir. Ct. 2001). The state appealed a sua sponte decision dismissing domestic violence charges, following the state's request for a second continuance due to an officer's unavailability. The state claimed it was an abuse of discretion for the judge to dismiss when other alternatives existed. The Appellate Division agreed, holding that criminal charges "should only be dismissed as a last resort when no viable alternatives exist"

(citing State v. Cohen, 662 So.2d 430 (Fla. 3d DCA 1995)). Here the court found that numerous alternatives existed, as speedy trial was not an issue, and therefore the dismissal was improper.

e. State v. Conley, 799 So.2d 400 (Fla. 4th DCA 2001).
The state appealed an order dismissing a felony battery. An adversarial hearing occurred but the state had neglected to subpoena the witnesses to the events. The victim was present and claimed that she instigated the argument and the injuries she sustained were a result of her own actions, directly contradicting the eyewitness account. The victim claimed she never wanted charges brought against the defendant. The judge dismissed the charges despite the state's objection. In relying on both Florida Rule of Criminal Procedure 3.133(b), and on State v. Hollie, 736 So.2d 96 (Fla. 4th DCA 1999), the Fourth District held that because the hearing was an adversarial hearing, where the defendant never motioned the court for a dismissal, and because probable cause was clearly established, a dismissal was clearly in error. Judge Warner concurs in a separate opinion, finding that the lower court made an additional error in finding that consent to a battery is a defense. Consent is only a defense in cases of sexual battery, NOT domestic violence. Judge Warner continues by noting that consent as a defense to domestic violence is in complete contravention to section 742.2901(2), Florida Statutes, in that the intent behind creating the statute is to make domestic violence a criminal act, as opposed to a "private matter."

6. Severance/Joiner of Offenses:
   a. Joiner of Offenses: Florida Rule of Criminal Procedure 3.150(a) --
   Two or more offenses that are triable in the same court may be charged in the same indictment or information in a separate count for each offense, when the offenses, whether felonies or misdemeanors, or both are based on the same act or transaction or on two or more connected acts or transactions.
   b. Trying defendant for both battery LEO and DUI together was not error when battery charge occurred while defendant was in-route to breathe

testing facility. Hamilton v. State, 458 So.2d 863 (Fla. 4th DCA 1984).

7. Prosecution and Conviction of Stalking:
   a. State v. Gagne, 680 So.2d 1041 (Fla. 4th DCA 1996). Double jeopardy does not bar a subsequent prosecution for aggravated stalking where the defendant had previously been convicted for violating an injunction based on the same conduct.
   b. State v. Johnson, 676 So.2d 408 (Fla. 1996). The defendant was properly convicted or aggravated stalking where he had previously been convicted of contempt for violating an injunction based on the same conduct. Each of the offenses contained an element not contained in the other offense.
   c. *See also infra* section H. Double Jeopardy.
8. *See also supra* section II.R.(8), Preparation for First Appearance Subsequent to Arrest for Violation of an Injunction.

H. DOUBLE JEOPARDY:

(1) Double Jeopardy Clause applies to all "crimes":

(a) Ex Parte Lange, 85 U.S. (18 Wall) 163, 21 L.Ed 872 (1873).

(b) Criminal contempt is a crime in every fundamental respect.

1. Codispoti v. Pennsylvania, 418 U.S. 506 (1974).
2. Attwood v. State, 687 So.2d 271 (Fla. 4th DCA 1997).
3. Civil and criminal sentences served distinct purposes, one coercive, the other punitive and deterrent; the fact that the same act may give rise to both of these distinct sanctions presents no double jeopardy problem. Yates v. U.S., 355 U.S. 66 (1957), Featherstone v. Montana, 684 So.2d 233 (Fla. 3d DCA 1996).

(c) It may be generally said that the Double Jeopardy Clause has no application in non-criminal cases.

1. An award of punitive damages in a civil lawsuit does not bar subsequent criminal prosecution for the offense. Smith v. Bagwell, 19 Fla. 117 (1882).
2. Helvering v. Mitchell, 303 U.S. 391 (1938). "[C]ongress may impose both a criminal and civil sanction in respect to the same act or omission; for the Double Jeopardy Clause prohibits merely

punishing twice, or attempting a second time to punish criminally, for the same offense."

3. Defendant may be convicted of indirect criminal contempt even though there has previously been a civil contempt adjudication based on the same noncompliance with court orders.
4. A prior arbitration reward under a collective bargaining agreement where a postal employee was suspended for thirty (30) days did not bar a subsequent prosecution for misappropriating postal funds involving the same conduct. U.S. v. Reed, 937 F.2d 575 (11th Cir. 1991).

(2) The guarantee against double jeopardy consists of three protections:
Lippman v. State, 633 So.2d 1061 (Fla. 1994).
   (a) against a second prosecution for the same offense after acquittal,
   (b) against a second prosecution for same offense after conviction, and
   (c) against multiple punishments for the same offense.

(3) Defendant may properly be convicted of aggravated stalking where he had previously been convicted of contempt for violating an injunction based on the same conduct:
   (a) State v. Johnson, 676 So.2d 408 (Fla. 1996). The defendant was properly convicted of aggravated stalking where he had previously been convicted of contempt for violating an injunction based on the same conduct. Each of the offenses contained an element not contained in the other. *See also* Williams v. State, 673 So.2d 486 (Fla. 1996).
   (b) State v. Gagne, 680 So.2d 1041 (Fla. 4th DCA 1996). Double jeopardy does not bar a subsequent prosecution for aggravated stalking where the defendant had previously been convicted for violating an injunction based on the same conduct. *See also* State v. Miranda, 644 So.2d 342 (Fla. 2d DCA 1994). *Approved*, State v. Johnson, 676 So.2d 408 (Fla. 1996). Holding that the rule against double jeopardy did not bar a prosecution for aggravated stalking even though defendant had previously been convicted of criminal contempt for violating an injunction based on the same conduct because each offense contained at least one element that the other did not.
   (c) Richardson v. Lewis, 639 So.2d 1098 (Fla. 2d DCA 1994). Defendant may properly be charged with indirect

criminal contempt for violating an injunction prohibiting defendant from committing battery on or entering residence of his former girl friend although he had previously been convicted of armed trespass aggravated battery arising out of the same incident.

(4) Where defendant pointed a gun at the victim and stabbed the victim after the gun had been taken away, both acts occurring in uninterrupted sequence are properly viewed as being but a single act; thus attempted second degree murder by the gun and aggravated battery by the knife are barred by double jeopardy. Gresham v. State, 725 So.2d 419 (Fla. 4th DCA 1999).

(5) Sentencing of defendant on both battery and violation of domestic violence injunction counts violated double jeopardy clause. Doty v. State, 884 So.2d 547 (4th DCA 2004).
   (a) *See also* Young v. State, 827 So.2d 1075 (Fla. 5th DCA 2002). Double Jeopardy bars conviction for both battery AND violation of injunction (here, for repeat violence) where the violation consists of the battery itself: "Young was convicted of violating the injunction by committing a battery. Because of the crime of battery did not contain any elements distinct from the elements of a violation of section 784.047 [prohibiting willfully violating an injunction for protection against repeat violence], the crimes are not separate under the *Blockburger* test."

(6) Multiple Charging:
   (a) Double jeopardy prohibits multiple homicide *convictions* for a single death. Barnes v. State, 528 So.2d 69 (Fla. 4th DCA 1988).
   (b) HOWEVER: Although a defendant cannot be convicted of multiple homicide offenses based on a single death, he can be *charged* with multiple crimes.
      1. State v. Lewek, 656 So.2d 268 (Fla. 4th DCA 1995).
      2. *See also* State v. Moreno, 3 FLW Supp. 393 (20th Jud.Cir. 9/15/95).
         a. Filing separate counts charging defendant with DUI Property Damage and DUI Personal Injury did not constitute double jeopardy violation, notwithstanding fact that incident from which accident arose involved same victim.
         b. However, State may seek to enforce only one conviction sentence.

3. THUS: State can *charge* defendant with domestic battery and violation of injunction in the same information regardless of double jeopardy considerations, although double jeopardy bars conviction for both.

I. PREPARATION FOR FIRST APPEARANCE SUBSEQUENT TO ARREST FOR VIOLATION OF AN INJUNCTION:

(1) If the respondent is arrested by law enforcement for violation of an injunction under chapter 741, Florida Statutes, law enforcement must hold the respondent in custody until first appearance when court will decide bail in accordance with chapter 903. Sections 741.30(9)(b), 741.2901(3), Florida Statutes.

(a) Murder was committed by a person who was the subject of a domestic violence injunction, who was placed in a police cruiser by a law enforcement officer dispatched to the victim's home after the victim called the police department, and who was subsequently released after he promised the officer he would leave the victim alone. It was error to dismiss the complaint with prejudice. On remand, the plaintiff was given leave to amend her complaint to allege an arrest since the officer had no discretion under sovereign immunity principles to release a violator who had been arrested. Simpson v. City of Miami, 700 So.2d 87 (Fla. 3d DCA 1997).

(2) Prior to first appearance the State Attorney's Office shall perform a thorough background investigation on the respondent and present the information to the judge at first appearance, so he/she will have all pertinent information when determining bail. Section 741.2901(3), Florida Statutes.

(3) ***See also* II. Domestic Violence – Civil Proceedings, section R.(6) and (7), for information about Indirect and Direct Criminal Contempt.**

J. DOMESTIC VIOLENCE PRETRIAL RELEASE/DETENTION:

(1) Pretrial release:

(a) No bond until First Appearance, Section 741.2901(3), Florida Statutes.

(b) Section 741.29(6), Florida Statutes, A person who willfully violates a condition of pretrial release when the original arrest was for an act of domestic violence

commits a first degree misdemeanor and shall be held in custody until his or her first appearance.

(c) Judicial Obligation: The court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released, and exercise caution in releasing defendants. Section 741.2902(1) Florida Statutes.

(d) There is probable cause to believe that the person has committed an act that violates a condition of pretrial release provided in Section 903.047 when the original arrest was for an act of domestic violence as defined in Section 741.28. Section 901.15(14), Florida Statues.

(e) State Attorney Offices should have victim advocate contact the victim before the first appearance hearing.
   1. Counties should have the availability for victims to obtain an injunction for protection at the first appearance hearing.
   2. Section 741.30(6)(a)(5), authorizes courts issuing an injunction to order the respondent to participate in treatment, intervention, or counseling services.

(f) Judicial Discretion Regarding Arrest Warrant Issued by Another Judge: First appearance judge has the authority *and* duty to consider the appropriate conditions of release for a defendant arrested on a warrant issued by another judge. State v. Norris, 768 So.2d 1070 (Fla. 2000).

(2) Pretrial detention.

(a) Section 907.041(4)(a)(18), classifies domestic violence as a "dangerous crime".

(b) Section 907.041(4)(b) "No person charged with a dangerous crime shall be granted monetary pretrial release at a first appearance hearing; however the court shall retain the discretion to release an accused on electronic monitoring or on recognizance bond if the findings on the record and circumstances warrant such release.

(c) Section 907.041(3)(a), Florida Statutes. It is the intent of the legislature to create a presumption in favor of release on non-monetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime as defined in subsection (4).

(d) Section 907.041(4)(c), authorizes a court to order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of

behavior, the criteria in section 903.046, and any other relevant facts, that any of the following circumstances exist:

1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure his appearance at subsequent proceedings;
2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, . . . or has attempted or conspired to do so, and that no further conditions of release are reasonably likely to assure his appearance at subsequent proceedings;
3. The defendant is on probation, parole, or other release pending completion of sentence or on pretrial release for a *dangerous crime* at the time of the current arrest.

(e) Where defendant is held without bond on an offense which is not designated a "dangerous crime" the State must prove that there are no reasonable conditions of release that would secure the defendant's appearance at trial.

1. Martinez v. State, 715 So.2d 1024 (Fla. 4th DCA 1998).
2. Dupree v. Cochran, 698 So.2d 945 (Fla. 4th DCA 1997)

(f) Arguments for Detention or High Bond -

1. Prior criminal record;
   a. NCIC/FCIC
   b. Local records check
   c. Input from victim or police.
2. Flight risk;
   a. Failure To Appear (FTA)– Defendant's driver record and NCIC. Generally, if there is a willful FTA after reasonable notice, a court may commit a defendant to custody without determining whether conditions of release are appropriate.
      i. Wilson v. State, 669 So.2d 312 (Fla. 5th DCA 1996).
      ii. Florida Rule of Criminal Procedure 3.131(g)
3. Ties to the jurisdiction;
   a. Family
   b. Property
   c. Employment

d. Passport
e. Pilot license

4. Victim safety.
   a. Statements by the defendant, reference future harm to the victim or witnesses.
   b. Seriousness of the instant offense.
   c. Prior violence offenses or harm to the victim.

(g) Recommended conditions for pretrial release -

1. No contact (or violent contact) with the victim;
   a. Consider having victim obtain caller ID and call block.
   b. Have the victim consider changing the phone number to unlisted and change the locks on the house.
   c. Issue and explain safety plan to the victim.
   d. Consider initiating a program to issue a 911 cellular phone to the victim.
   Example Program Overview:
   A cooperative venture between local criminal justice agencies and the local cellular telephones may be available at no cost to victims. Specified victims are provided cellular telephones which have been pre-programmed for 911 access only, which victims can have with them at all times, but especially when they are most vulnerable. The cellular telephone provides a tool for security in that 911 assistance is just a phone call away.
2. No possession of dangerous weapons;
3. No possession or consumption of alcohol;
4. Random alcohol/drug testing;
5. Geographical restrictions;
6. Counseling – violence and/or substance abuse;
7. Electronic monitoring.
   a. Home detention (house arrest)
   b. Receiver alarm at victim's house
      i. When perpetrator is close, the victim's receiver emits an alarm.
      ii. Victim's receiver automatically calls monitoring center.
      iii. Police are notified immediately.
      iv. Communicator inside receiver turns on.

v. Monitoring center begins to record audio.
vi. Electronic record demonstrates violation of court order.

8. NOTE: These same pretrial conditions would be valid special conditions of probation.

K. BAIL:

(1) Purpose of Bail:

(a) Ensure that appearance of the criminal defendant at subsequent proceedings; and,

(b) To protect the community against unreasonable danger from the criminal defendant.

(c) Assure the integrity of the judicial process.

1. Nicholas v. Cochran, 673 So.2d 882 (Fla. 4th DCA 1996).
2. Section 903.046(1), Florida Statutes.
   a. Section 903.047(1), Florida Statutes.
   b. Florida Rule of Criminal Procedure 3.131(b)(3).
   c. Florida Constitution Article I, section 14.
3. Generally limited to securing the defendant's presence in court.
   a. Stack v. Boyle, 342 U.S. 1 (1951).
      i. "Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."
      ii. "The right to release before trial is conditioned upon the accused's giving adequate assurances that he will stand trial and submit to sentence if found guilty."
   b. Harp v. State, 410 So.2d 619 (Fla. 4th DCA 1982). Bail may not be used for purpose of preventative detention before trial.

(2) Initial Determination and Bail Modification:

(a) The court shall consider the following when determining bail -

1. The safety of the victim,
2. The victim's children, and
3. Any other person who may be in danger if the defendant is released.

(b) Once bail is set, the State may move to modify it "by showing good cause," with notice to the defendant.

1. Florida Rule of Criminal Procedure 3.131(d)(2).
2. Keane v. Cochran, 614 So.2d 1186 (Fla. 4th DCA 1993).
3. HOWEVER: In contrast there is no requirement of showing good cause when a defendant moves to reduce bond.
    a. Florida Rule of Criminal Procedure 3.131(d)(2).
    b. Kean v. Cockran, 614 So.2d 1186 (Fla. 4th DCA 1993). "This suggests that the state has a greater burden to carry to increase a bond than a defendant had to reduce it."
    c. Defendant has the burden of proof when seeking a bail reduction to adduce evidence sufficient to overcome the presumption of correctness of the trail court's order. Mesidor v. Neumann, 721 So.2d 810 (Fla. 4th DCA 1999).

(c) In order to have good cause to modify a bond, the State must present evidence of a change in circumstances or information not make known to the first appearance judge.

1. Keane v. Cochran, 614 So.2d 1186 (Fla. 4th DCA 1993).
2. Kelsey v. McMillan, 560 So.2d 1343 (Fla. 1st DCA 1990).
3. Sikes v. McMillan, 564 So.2d 1206 (Fla. 1st DCA 1990). Where there was conflicting evidence as to whether the first appearance judge had the same information as the trial judge who increased a bond, and the conflict was not resolved, the State failed to carry its burden of demonstrating adequate grounds to increase bail.

(d) Bond can be denied or revoked to assure the integrity of the judicial process.

1. Section 903.047(1), Florida Statutes.
2. Ex Parte McDaniel, 86 Fla. 145, 97 So. 317, 318 (1923).
3. Witness tampering would violate the conditions of pretrial release and disrupt the integrity of the

court. Arcia v. Manning, 680 So.2d 1146 (Fla. 3d DCA 1996).

4. Section 903.0471 Violations of conditions of pretrial release.
   a. Notwithstanding section 907.041, a court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release. Parker v. State, 780 So.2d 210 (Fla. 4th DCA 2001).
      i. Statute is constitutional. State v. Paul, 783 So.2d 1042 (Fla. 2001).
      ii. Trail court properly revoked pretrial release and placed defendant in pretrial detention upon finding probable cause that defendant committed new crime while on pretrial release.
   b. Williams v. Spears, 814 So.2d 1167 (Fla. 3d DCA 2002).
      i. Statute authorizing courts to revoke pretrial release where there is probable cause to believe a defendant has committed a new crime while free on bail is constitutional.
      ii. "The reason for revoking the defendant's pretrial release in this case – and refusing to further release – is because the defendant committed a new crime while on pretrial release. No showing that the defendant poses a risk of physical harm is required."
      iii. "The integrity of the judicial process is undercut if the courts do not have effective tools to use where a defendant free on bail commits a further crime."

(e) Trial court may not increase bond on its own motion.

1. Flemming v. Cochran, 694 So.2d 131 (Fla. 4th DCA 1997).
2. Bowers v. State, 710 So.2d 681 (Fla. 4th DCA 1998).
3. Cousino v. Jenne, 717 So.2d 599 (Fla. 4th DCA 1998).

4. Mongomery v. State, 744 So.2d 1148 (Fla. 4th DCA 1999).
5. Welch v. Jenne, 770 So.2d 731 (Fla. 4th DCA 2000).

(3) Denial of Bail:

(a) To deny an accused the right to bail in a capital case under our constitution, the State must present proof that guilt is evident or the presumption of guilt is great.

a. Van Eeghen v. Williams, 87 So.2d 45 (Fla. 1956). Specifically, the court held that the state is actually held to an even greater degree of proof than that required to establish guilt beyond a reasonable doubt.
b. State v. Williams, 87 So.2d 45 (Fla. 1956).
c. Russell v. State, 71 Fla. 236, 71 So. 27 (1916).
d. State v. Arthur, 390 So.2d 717 (Fla. 1980).
e. Mininni v. Gillum, 477 So.2d 1013 (Fla. 2d DCA 1985).

(b) Proof Required:

1. The State must rely on something more than the Indictment and the probable cause affidavit to have bailed denied.
   a. State v. Arthur, 390 So.2d 717 (Fla. 1980).
   b. Young v. Neuman, 770 So.2d 205 (Fla. 4th DCA 2000).
2. Admissible Hearsay:
   a. State v. Arthur, 390 So.2d 717 (Fla. 1980).
      i. "The state can probably carry this burden by presenting the evidence relied upon by the grant jury or the state attorney in charging the crime."
      ii. "This evidence may be presented in the form of transcripts or affidavits."
         i.i. Mininni v. Gillum, 477 So.2d 1013 (Fla. 2d DCA 1985).
         i.ii. Kinson v. Carson, 409 So.2d 1212 (Fla. 1st DCA 1982).
3. Proof Beyond a Reasonable Doubt:
   a. Metzger v. Cochran, 694 So.2d 842 (Fla. 4th DCA 1997). *Superseded by Statute as Stated in* Barns v. State, 768 So.2d 529 (Fla. 4th DCA 2000).

b. Merdian v. Cochran, 654 So.2d 573, 576 (Fla. 4th DCA 1996). *Superseded by Statute as Stated in* Barns v. State, 768 So.2d 529 (Fla. 4th DCA 2000), *Distinguished by* Houser v. Manning, 719 So.2d 307 (Fla. 3d DCA 1998), rehearing denied (Nov 04, 1998).

c. Burden of proof on State even when defense moves for bail. Gomez v. McCampbell, 701 So.2d 412 (Fla. 4th DCA 1997).

(c) Circumstances valid for denial of bail:

1. Martin v. State, 700 So.2d 809 (Fla. 4th DCA 1997).
   a. Lack of ties to the community;
   b. Lack of regard for the orders of the courts;
   c. expressed intent of leaving jurisdiction.
2. Failure to appear:
   a. Bradshaw v. Jenne, 754 So.2d 109 (Fla. 4th DCA 2000). A defendant who "willfully" violates a condition of bail by failing to appear may be subject to revocation of bail and commitment to custody.

(d) Appellate remedy:

1. Through writ of mandamus.
   a. Martin v. Circuit Court of the Fifteenth Judicial Circuit, 690 So.2d 674 (Fla. 4th DCA 1997). Mandamus will lie to compel the timely performance of a purely ministerial duty, such as entering a ruling on a bond motion.
   b. Kramp v. Fagan, 568 So.2d 479 (Fla. 1st DCA 1990).
   c. Florida Rule of Appellate Procedure 9.140(h)(4).
2. Writ of Hebeas Corpus.
   a. Metzger v. State, *supra.*
   b. Flemming v. State, 694 So.2d 131 (Fla. 4th DCA 1997).

L. PRETRIAL INTERVENTION:

(1) Batters Intervention Programs:

(a) Section 741.281, Florida Statutes – "If a person is found guilty of, has had adjudication withheld on, or has pled nolo contendere to a crime of domestic violence, as defined in section 741.28, the COURT MUST ORDER -

1. a minimum term of 1 year's probation, and

2. attendance at a batterers' intervention program as a condition of probation; UNLESS the court determines not to impose attendance and states on the record why a batterers' intervention program might be inappropriate. Section 741.32, Florida Statutes.

(2) Plea and Pass Diversion Program:

(a) The following are guidelines for a State Attorney "plea & pass" program:

1. "Plea & pass" is a form of diversion to be utilized for cases where the State is unable to proceed with the prosecution. (Alternatively, in cases where there is a cooperating victim or the case is otherwise provable, probation with counseling or incarceration will be the standard disposition.)
2. "Plea & pass" should be considered in the following type cases:
   a. Where the victim will not cooperate and the case cannot otherwise be proven. (Proceed with caution.)
   b. For first offenders, where victim agrees and is concerned with the effect of a criminal record on the family.
   c. For mutual combatants where the primary aggressor cannot be determined.
3. The victim *must* be in agreement with a "plea & pass" disposition.
4. A standardized Office "Plea & Pass" form may be utilized.
5. All defendants will be required to participate in and complete a Batters' Intervention Program (BIP) as a standard condition; otherwise, there will be a written explanation by the court.
6. An administrative Order should set out program specifics. For example, when a status check should be scheduled (45 days after the plea and 90 days after the plea).

(3) Error to dismiss case after defendant successfully completed pretrial intervention (PTI) program where State objected to the original placement of the defendant in PTI.

State v. Turner, 636 So.2d 815 (Fla. 3d DCA 1994). Section 948.08(5), Florida Statutes, specifically requires consent of State to placement in PTI program.

(4) PTI diversion decision of state attorney is prosecutorial in nature and thus not subject to judicial review.

(a) Cleveland v. State, 417 So.2d 653 (Fla. 1982).

(b) State v. Turner, 636 So.2d 815 (Fla. 3d DCA 1994), *supra.*

(c) Virgo v. State, 675 So.2d 994 (Fla. 3d DCA 1996).

(d) State v. Winton, 522 So.2d 463 (Fla. 3d DCA 1988). Trial court cannot second-guess State's decision to withhold consent to defendant's entry into PTI program.

(5) State, not trial court, makes decision whether to prosecute.

(a) State v. Bryant, 549 So.2d 1155 (Fla. 3d DCA 1989).

(b) State v. Jogan, 388 So.2d 322 (Fla. 3d DCA 1980). State attorney has sole discretion to either prosecute or nolle prosse a defendant.

(c) In the interest of S.R.P., 397 So.2d 1052 (Fla. 4th DCA 1981). Decision to file nolle prosse vested solely in discretion of state.

(d) Court improperly dismissed information where State attorney determined to prosecute.

1. State v. Brown, 416 So.2d 1258 (Fla. 4th DCA 1982).
2. State v. Rubel, 647 So.2d 995 (Fla. 2d DCA 1994). The state attorney shall make the final determination as to whether the prosecution shall continue.
3. Section 948.08(5), Florida Statutes.

(e) However: Trial court has discretion to dismiss charges against substance abuse-impaired offender, over objection by the State, where the offender has successfully completed a court referred drug treatment program.

1. State v. Dugan, 685 So.2d 1210 (Fla. 1996).
   a. Pursuant to Section 397.12, Florida Statutes (1993), a trial court is empowered "to dismiss the charges against a substance-abuse impaired offender who successfully completes a drug treatment program when the offender is referred to the program by the court." The statutory language referred to in this case is now located in section 397.705(1), Florida Statutes.
   b. This statute "clearly authorizes a trial court to close the case by dismissing the charges against the offender once the offender

successfully completes the drug treatment program."

c. *See also* State v. Upshaw, 648 So.2d 851 (Fla. 3d DCA 1995). Court properly dismissed case over State's objection where defendant successfully completed PTI type program offered with the consent of the State under the theory of specific performance of a settlement agreement.

2. *See also supra* section IV.G. Charging and Prosecuting.

M. PROBATION:

(1) Batterers' Intervention Shall be Ordered in Conjunction with Probation:

"If a person is found guilty of, has had adjudication withheld on, or has pled nolo contendere to a crime of domestic violence, as defined in section 741.28, that person shall be ordered by the court to a minimum term of 1 year's probation and the court shall order that the defendant attend a batterers' intervention program as a condition of probation. The could must impost the condition of the batterers' intervention program for a defendant under this section, but the court, in its discretion, may determine not to impose the condition if it states on the record why a batterers' intervention program might be inappropriate. The court must impose the condition of the batterers' intervention program for a defendant placed on probation unless the court determines that the person doest not qualify for the batterers' intervention program pursuant to section 741.32." Section 741.281, Florida Statutes.

(2) Jurisdiction to Revoke Probation:

(a) Young v. State, 739 So.2d 1179 (Fla. 4th DCA 1999). The Fourth District held that the trial court was without jurisdiction to revoke probation where the warrant charging the defendant with probation violation was delivered to the sheriff's office after expiration of the probationary period. It was error to find that the defendant had absconded from supervision by failing to file monthly reports with her probation officer where the defendant was not hiding, nor had departed the jurisdiction of the state, and that the probationary period was thereby tolled.

(a) Paulk v. State, 733 So.2d 1096 (Fla. 3d DCA 1999). The Third District held that in order to invoke jurisdiction of the court, not only must a timely affidavit of violation of probation be filed (within the period of probation), but the judge must sign and issue an arrest warrant and that warrant must be delivered to the proper officer for execution within that same time period. The Third District rejected the trial court's conclusion that a probationer absconds by failing to sign-up for intake, and by the fact that the defendant failed to appear at a duly noticed hearing.
[Note: *See also* Tatum v. State, 736 So.2d 1214 (Fla. 1st DCA 1999), where it was determined that the probation revocation process was not timely commenced when the arrest warrant was not delivered to the sheriff until the probationary term had expired.]

(c) McGraw v. State, 700 So.2d 183 (Fla. 4th DCA 1997). The trial court lacked jurisdiction to entertain an application for revocation of probation based on a violation which occurred during the probationary period, where the affidavit of violation and arrest warrant were not filed with the clerk until six days after the term of probation had expired. For the trial court to have jurisdiction, the affidavit of violation had to be filed with the clerk or the trial court had to issue the arrest warrant before the probationary period expired.

(3) General Conditions of Probation:

(a) General Conditions are Contained within the Statutes and may be Imposed in Written Order with out Oral Pronouncement:

1. Hart v. State, 668 So.2d 589 (Fla. 1996).
2. Fernandez v. State, 677 So.2d 332 (Fla. 4th DCA 1996),

(b) A condition of probation which is statutorily authorized or mandated may be imposed and included in a written order of probation even if not orally pronounced at sentencing.

1. Hart v. State, *supra.*
2. Nank v. State, 646 So.2d 762, 763 (Fla. 2d DCA 1994), *cited by*, Hart v. State, *supra.*
"'The legal underpinning of this rational is that the statute provides 'constructive notice of the condition which together with the opportunity to be heard and raise any objections at a sentencing hearing satisfies the requirements of procedural

due process.'" *Quoting*, Tillman v. State, 592 So.2d 767 (Fla. 2d DCA 1992). General conditions set forth in statute need not be orally pronounced.

(c) "All persons are presumed to know the contents of criminal statutes and the penalties provided within them." State v. Ginn, 660 So.2d 1118 (Fla. 4th DCA 1995), *review denied*, 669 So.2d 251 (Fla. 1996).

(d) Defendant's have notice of all probation conditions contained in the statues.
1. Hart v. State, 651 So.2d 112 (Fla. 2d DCA 1995), *affirmed*, Hart v. State, 668 So.2d 589 (Fla. 1996).
2. Tillman v. State, *supra*.
3. State v. Green, 667 So.2d 959 (Fla. 2d DCA 1996). All persons have constructive notice of Florida's criminal statutes.
4. State v. Beasley, 580 So.2d 139 (Fla. 1991).

(e) Random testing is a General Condition of Probation:
1. Urinalysis, breathalyzer and blood testing are statutorily authorized as "random testing". Fernandez v. State, 677 So.2d 332 (Fla. 4th DCA 1996).
2. Section 948.03(1)(j), authorizes the imposition of this condition.
3. However: A condition that probationer pay for the testing is a special condition which must be orally announced. *See also infra* section (b)2.d.

(f) Conditions contained in the approved Probation Order under Rule of Criminal Procedure 3.986 are general conditions, which do not require oral pronouncement.
1. Hart v. State, *supra.*
2. State v. Hall, 668 So.2d 600 (Fla. 4th DCA 1996).

(g) A Defendant may object to imposition of statutory conditions on ground of relevancy.
Fernandez v. State, 677 So.2d 332 (Fla. 4th DCA 1996).

(4) Special Conditions of Probation:

(a) Special Conditions must be related to the offense or rehabilitation of the defendant.
1. Brewer v. State, 531 So.2d 393 (Fla. 2d DCA 1988).
2. Grubbs v. State, 373 So.2d 905 (Fla. 1979).

3. Hussey v. State, 504 So.2d 796 (Fla. 2d DCA 1987), *review denied*, 518 So.2d 1275 (Fla. 1987).
4. Goldschmitt v. State, 490 So.2d 123 (Fla. 2d DCA 1986). DUI bumper sticker valid special condition.
5. Pratt v. State, 516 So.2d 328 (Fla. 2d DCA 1987).
6. A court may impose a condition of probation that is reasonably related to the offense or future criminality.
    a. Biller v. State, 618 So.2d 734 (Fla. 1993).
        i. Condition of probation in CCF that defendant not use alcohol was improper as there was nothing connecting any use of alcohol with the offense and nothing in the record to suggest that the defendant had a propensity toward alcohol abuse.
        ii. Condition of probation is invalid if it:
            i.i. has no relationship to the crime of which the offender was convicted,
            i.ii. relates to conduct which is not itself criminal; and
            i.iii. requires or forbids conduct which is not reasonably related to future criminality.
        iii. *See also* Rogriquez v. State, 378 So.2d 7 (Fla. 2d DCA 1979), Grate v. State, 623 So.2d 591 (Fla. 5th DCA 1993).

(b) Special Condition of Probation Must be Ordered by the Court and Orally Pronounced:

1. Carson v. State, 531 So.2d 1069 (Fla. 4th DCA 1988).
2. Requirement that defendant pay for urinalysis, breathalyzer or blood test, a condition not mentioned at sentencing, to be deleted.
    a. Catholic v. State, 632 So.2d 272 (Fla. 4th DCA 1994).
    b. Cumbie v. State, 597 So.2d 946 (Fla. 4th DCA 1992).
    c. Nank v. State, 646 So.2d 762 (Fla. 2d DCA 1994).
    d. Luby v. State, 648 So.2d 308 (Fla. 2d DCA 1995).
    However:

i. Requirement to submit to random testing is not a special condition.
ii. Section 948.03(1)(j), authorizes the imposition of this condition, thus it need not be orally announced.
iii. Condition that probationer pay for this testing is a special condition which must be orally announced.
iv. *See also* Malone, 652 So.2d 902 (Fla. 2d DCA 1995).

e. Williams v. State, 653 So.2d 407 (Fla. 2d DCA 1995).
f. Bartley v. State, 675 So.2d 246 (Fla. 4th DCA 1996).

3. Special condition must be orally pronounced at sentencing before it can be included in the written probation order.
   a. State v. Williams, 712 So.2d 762 (Fla. 1998),
      The requirement that the defendant pay for drug testing is a special condition of probation which the trial court must pronounce orally at sentencing.
   b. Nank v. State, *supra.*
   c. Cumbie v. State, 597 So.2d 946 (Fla. 1st DCA 1992).
   d. Shacraha v. State, 635 So.2d 1051 (Fla. 4th DCA 1994).
4. Because a defendant must make a contemporaneous objection to the probation conditions at the time of sentencing, the defendant must be informed of the conditions being imposed.
   a. Hart v. State, 668 So.2d 589 (Fla. 1996).
   b. Olvey v. State, 609 So.2d 640 (Fla. 2d DCA 1992), *(en banc).*
5. Special condition of probation prohibiting use of intoxicants stricken because it was not orally pronounced.
   a. Washington v. State, 658 So.2d 538 (Fla. 4th DCA 1995). Possession, carrying or ownership of a weapon without consent of probation officer also stricken as a special condition not orally pronounced.
   b. Hann v. State, 653 So.2d 404 (Fla. 2d DCA 1995). Random alcohol testing is special

condition which should have been orally pronounced.

c. Nank v. State, 646 So.2d 762 (Fla. 2d DCA1994).
d. Stark v. State, 650 So.2d 697 (Fla. 2d DCA 1995).
e. Williams v. State, 653 So.2d 407 (Fla. 2d DCA 1995).
f. Friend v. State, 666 So.2d 599 (Fla. 4th DCA 1995).
g. Fitts v. State, 649 So.2d 300 (Fla. 2d DCA 1995).

6. Where sentence is reversed because trial court failed to orally pronounce special conditions of probation which later appeared in the written sentence, trial court may not reimpose the conditions at re-sentencing.
   a. Justice v. State, 674 So.2d 123 (Fla. 1996).
   b. Burdo v. State, 682 So.2d 557 (Fla. 1996).
   c. Young v. State, 699 So.2d 624 (Fla. 1997).

(5) Probation order must specify the period within which the probationer must complete special conditions.

(a) Salzano v. State, 644 So.2d 23 (Fla. 2d DCA 1995).
(b) Young v. State, 566 So.2d 69 (Fla. 2d DCA 1990).

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(6) Illegal Conditions of Probation: **Condition which are too vague to advise the probationer of the limits of his restrictions and could be easily violated unintentionally, are illegal.**

(a) Hughes v. State, 667 So.2d 910 (Fla. 4th DCA 1996). Condition prohibiting probationer from coming within 250 miles of the victim was too vague and thus illegal.
(b) Huff v. State, 554 So.2d 616 (Fla. 2d DCA 1989). Condition prohibiting probationer from being within three blocks of a high drug area was stricken as being illegal.
(c) Almond v. State, 350 So.2d 810 (Fla. 4th DCA 1997). Condition that probationer reside elsewhere other than Central Florida was illegal.
(d) However: Condition prohibiting probationer from traveling to Tallahassee, Florida was not illegal. Larson v. State, 572 So.2d 1368 (Fla. 1991).

(**7) No contemporaneous objection required to contest an *illegal* condition of probation:**

(a) Hughes v. State, *supra.*

(b) Larson v. State, *supra.*

(8) Problems with Representation: Uncounseled Plea and Inadequate Waiver of Right to Counsel:

(a) Tur v. State, 797 So.2d 4 (Fla. 3d DCA 2001). The defendant in this case was sentenced to a term of probation after an uncounseled plea pursuant to Florida Rule of Criminal Procedure 3.111(b)(1). Defendant later violated his probation for driving under the influence of alcohol. The Third District looked at whether or not a defendant, sentenced to a term of probation pursuant to Florida Rules of Criminal Procedure, may be sentenced to incarceration after violating that probation. The Third District held that as the trial court could not impose a jail sentence on this defendant for his uncounseled plea to the charges, it cannot later impose a jail term for a violation of the terms of probation. The case was reversed and remanded for resentencing without incarceration.

(b) Harris v. State, 773 So.2d 627 (Fla. 4th DCA 2000). The defendant was charged with a crime allowing imprisonment for up to one year. The state represented that they would not seek jail time. Knowing this, the defendant was tried without a jury and without counsel, but never formally waived those rights on the record. The defendant subsequently violated the probation and was sentenced to 60 days in jail. The defendant appealed, alleging that there was a denial of his right to a jury trial and appointed counsel at the original sentencing. In its appellate capacity, the circuit court found that because jail time was a possibility at sentencing, jail time for a violation was permissible. On appeal, the Fourth District found that the defendant was entitled to a jury trial, as well as counsel. The court also held that the trial court could not impose jail time for either the original charge or the probation violation. Reversed and remanded with instructions that the defendant is to be resentenced without any jail time.

N. JAIL:

(1) Consecutive Sentences – (Stacking multiple misdemeanors):

(a) Valid for misdemeanors.

1. Armstrong v. State, 656 So.2d 455 (Fla. 1995).
2. State v. Troutman, 685 So.2d 1290 (Fla. 1996). Consecutive county jail sentences exceeding one year for defendant convicted of two or more

misdemeanors are valid, *unless* defendant is also convicted of a felony along with the misdemeanors.

(b) Thus: domestic battery + stalking + trespass after warning + violation of injunction = four (4) years county jail.

(c) Section 741.281 – "The imposition of probation under this section shall not preclude the court from imposing any sentence of imprisonment authorized by s. 775.082." (775.082 – Penalties; applicable of sentencing structures; mandatory minimum sentences for certain reoffenders previously from prison.)

(d) Jail credit: Court cannot give jail credit for house arrest.

1. McCarthy v. State, 689 So.2d 1095 (Fla. 5th DCA 1997). "There is simply no statutory authority for 'crediting' such time."
2. State v. Goodman, 7 FLW Supp. 97 (15th Jud.Cir. 11/22/99), *cert. denied*, Case No: 00-0258 (Fla. 4th DCA 3/14/00). In house arrest does not count as jail, thus sentence of in house arrest for convicted DUI offender was illegal where statute mandated minimum jail sentence.
3. State v. Foster, 7 FLW Supp. 252 (15th Jud.Cir. 01/19/2000).

O. SENTENCING:

(1) Minimum Term of Imprisonment for Domestic Violence:

If a person is adjudicated guilty of a crime of domestic violence and the person has intentionally caused bodily harm to another person, the court SHALL order the person to service a minimum of 5 days in the county jail as part of the sentence imposed, unless the court sentences the person to serve a nonsuspended period of time in a state correctional facility. The court may also sentence the person to probation, community control, or additional period of incarceration. Section 741.283, Florida Statutes.

(2) Upon revocation of probation, the court shall adjudicate the probationer.

(a) Section 948.06(2)(b), Florida Statutes.
"If probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed

before placing the probationer on probation or the offender into community control."

(b) State v. Gloster, 703 So.2d 1174 (Fla. 1st DCA 1998).

1. A judge may withhold adjudication of guilt only if the defendant is placed on probation.
   a. Florida Rule of Criminal Procedure, 3.670.
   b. Section 948.06(1), Florida Statues.
   c. State v. Gloster, 703 So.2d 1174 (Fla. 1st DCA 1998).
2. Amendment to Fla.R.Crim.P 3.704(d)(23), 763 So.2d 997 (Fla. 1999). Sentencing guideline scoresheet (Rule 3.704(d)(24)) amended to reflect that use of sentencing multiplier for crime involving domestic violence in the presence of a child is no longer in the trial court's discretion.

(3) Lawful Suspended Sentences:

(a) Ex parte Williams, 26 Fla. 310, 8 So. 425 (1890). "That sentence may be suspended on conviction of an offender, because of mitigating circumstances, or the pendency of another indictment, or other sufficient cause, is not denied, and in practice is frequently done in this state, and in other states is held to be permissible."

(b) Statutory Authority:

1. Sections 948.01(3) and (4), Florida Statutes.
2. McGuirk v. State, 382 So.2d 1235 (Fla. 2d DCA 1980). Court may suspend some or a defendant's entire sentence in order to place him on probation.
3. Section 958.06, Florida Statutes. The court upon motion of the defendant, or upon its own motion, may within 60 days after imposition of sentence suspend the further execution of the sentence and place the defendant on probation in a community control program upon such terms as the court may require.

(c) Split Sentences:

1. A trial court may impose a true split sentence in which the period of community control and probation is shorter than the *suspended* portion of incarceration.
2. Suspending sentence and placing defendant on probation constitutes a split sentence. Lawton v. State, 711 So.2d 142 (Fla. 2d DCA 1998).

(d) Hearings on Revocation of Suspension of Sentences are Informal:

1. Hearings on the question of revocation of suspension of sentence for violating the conditions of suspension are informal and do not take the course of a regular trial.
   a. Brill v. State, 159 Fla. 682, 32 So.2d 607 (1947).
      i. evidence adduced at such hearings does not have the same objective as that taken at a criminal trial;
      ii. that its first purpose is to satisfy the conscience of the court as to whether the conditions of suspension have been violated;
      iii. second purpose is to give the accused an opportunity to explain away the accusation as to violation of the conditions of suspension.
   b. State v. Shelby, 97 So.2d 631 (Fla. 1st DCA 1957). The latitude of inquiry is such that even though evidence upon which the revocation is based would be inadmissible upon trial of the accused for a crime, it is competent for the trial court to consider it on the issue of compliance with the conditions under which suspension of the sentence was granted.
   c. Caston v. State, 58 So.2d 694 (Fla. 1952).

(4) Unlawful Suspended Sentences:

(a) Order *suspending* sentence from day to day and term to term, is illegal.

1. Coleman v. State, 205 So.2d 5 (Fla. 3d DCA 1967).
2. State v. Bateh, 110 So.2d 7 (Fla. 1959).
3. Drayton v. State, 177 So.2d 250 (Fla. 3d DCA 1965).
4. Hunter v. State, 200 So.2d 577 (Fla. 3d DCA 1967).
5. Helton v. State, 106 So.2d 79 (Fla. 1958).
6. *But see* Miller v. Aderhold, 288 U.S. 206 (1933). "Such an order is a mere nullity without force or effect, as though no order at all had been made; and the case necessarily remains pending until lawfully disposed of by sentence."

(b) Mandatory Sentencing Statutes:

1. Court cannot withhold adjudication or *suspend* sentence in use of a firearm conviction.
2. Section 775.087(2), Florida Statutes.
3. State v. Gibson, 353 So.2d 670 (Fla. 2d DCA 1978).

P. VIOLATION OF PROBATION OR INJUNCTION

(1) Gaspard v. State, 845 So.2d 986 (Fla. 1st DCA 2003). When a conviction for aggravated stalking has been reversed, any sentence imposed after revocation of probation based solely on the conviction must also be vacated. This, however, does not preclude the state from seeking revocation of probation on other grounds.

(2) Hoffman v. State, 842 So.2d 895 (Fla. 2d DCA 2003). Defendant, a respondent in a civil case was convicted of violation of the injunction for sending cards to the petitioner's residence and for allegedly violating the 500 foot provision of the injunction. The trial court erred in finding that the defendant had violated the injunction as the cards were addressed to other residents of the petitioner's household and as the injunction did not specifically prohibit this. Additionally, the trial court erred in finding that the defendant had violated the 500 foot provision of the injunction as the state failed to prove the exact distance the defendant was from petitioner. The court held that the state's burden of proof in an indirect criminal contempt case is to prove every element beyond a reasonable doubt.

(3) Robinson v. State, 840 So.2d 1138 (Fla. 1st DCA 2003). The court reversed the trial court's conviction for violation of a domestic violence injunction for failing to grant appellate's motion for judgment of acquittal. The court held that the state failed to establish that the appellant knew the permanent injunction had been entered against him. Appellant's conviction for aggravated battery was upheld, however.

(4) Colwell v. State, 838 So.2d 670 (Fla. 2d DCA 2003). The Second District reversed trial court's revocation of defendant's probation for violation of probation for committing domestic battery. The court held that it was an error to base the revocation, in part, on inadmissible hearsay and other insufficient evidence. The only testimony offered at the revocation hearing was that of a deputy who testified that the victim told him that the defendant had grabbed her and she was afraid to go back to the house. Further, the deputy testified that the victim was hysterical and had a faint mark on her neck. This evidence was insufficient to find that

defendant violated probation. Note: Trial court found that the victim's statement did not meet excited utterance exception as too much time passed between the time of the alleged incident and her statement to the deputy.

(5) Dunkin v. State, 780 So.2d 223 (Fla. 2d DCA 2001). Defendant was placed on probation for a period of three years, and ordered to complete an outpatient sex offenders' treatment program until he was officially discharged by the program administrator. Probation officer violated the defendant, finding that he was absent from the sex offenders program without permission by missing three separate meetings without notification to the therapist as to why he missed the sessions. The defendant contended that the missed appointments were due to illness. The terms of his probation did not specify that the defendant successfully complete the program on the first try, just that the program be completed within the three years of probation. The circuit court revoked the defendant's probation, but the Second District reversed and remanded on the grounds that the defendant's termination from the sex offenders program was insufficient to establish a "willful and substantial" violation of probation, and did not therefore warrant a revocation.

(6) Murtha v. State, 777 So.2d 1067 (Fla. 3d DCA 2001). The court held that the trial court abused its discretion when it found that the defendant had violated the terms of and revoked probation for failing to pay restitution and perform community service hours. The court reversed the probation revocation on the grounds that the original order never specified a schedule for this sentence to be completed by, and there was still sufficient time in the probationary period for the terms to be completed. The court also held that a violation can't be deemed willful where a defendant, as this one, was incarcerated on unrelated charges for the first three months of the probationary period.

(7) Suggs v. State, 795 So.2d 1028 (Fla. 2d DCA 2001). Defendant appeals a denial of her motion to dismiss an aggravated stalking charge. The court reversed, and remanded on the grounds that a defendant cannot be charged with a violation of a permanent injunction unless the defendant was served with the injunction. In this case, there was no service on the defendant; therefore the court found that she cannot be charged with a violation.

(8) Brown v. State, 776 So.2d 329 (Fla. 5th DCA 2001). The defendant failed to complete an intake interview with the probation officer, as court ordered, and was asked to call back and provide the information requested by the officer. The defendant failed to do so, and the court held that the

defendant's failure to complete intake procedure was a substantial enough violation to justify the revocation of the probation.

(9) Meadows v. State, 747 So.2d 1043 (Fla. 4th DCA 2000). Where the state agreed at the beginning of a probation violation hearing not to proceed on a count alleging aggravated battery and domestic violence, but did proceed on a second count alleging accessing 911 for a non-emergency purpose, the case was reversed and remanded by the Fourth District. Because the revocation of probation was based upon two violations, it was not apparent whether the trial court would have revoked the defendant's probation based upon the remaining violation.

(10) Young v. State, 739 So.2d 1179 (Fla. 4th DCA 1999). The Fourth District held that the trial court was without jurisdiction to revoke probation where the warrant charging the defendant with probation violation was delivered to the sheriff's office after expiration of the probationary period. It was error to find that the defendant had absconded from supervision by failing to file monthly reports with her probation officer where the defendant was not hiding, nor had departed the jurisdiction of the state, and that the probationary period was thereby tolled.

(11) Mitchell v. State, 717 So.2d 609 (Fla. 4th DCA 1998). The claim that the trial court erred in finding the defendant in violation of probation because the order of probation did not specify the time frame for completion of a domestic batterers' intervention program was not preserved for appellate review. The appellate court found that there was no merit to the claim due to the fact that the time period for completion of the program was implicit in other dictates imposed by the court order and supported the trial court's revocation of probation.

(12) Rawlins v. State, 711 So.2d 137 (Fla. 5th DCA 1998). Two unexcused absences from a substance abuse treatment program amounts to a material probation violation. The probation officer lacked the authority to substitute a program different from that ordered by the court.

(13) Appearance via satellite at probation revocation hearing of otherwise unavailable victim is not a denial of the Sixth Amendment's Confrontation Clause.

   a. Lima v. State, 732 So.2d 1173 (Fla. 3d DCA 1999). The Third District held that in a probation revocation hearing for the commission of a domestic violence-related battery, it is not a denial of the Sixth Amendment's Confrontation Clause to present the victim's testimony via satellite transmission, so long as there is a showing that the victim "was unable to

attend." This holding will also apply to the trial itself, as opposed to a probation violation hearing.

Q. EXPUNCTION OF CRIMINAL HISTORY IN DOMESTIC VIOLENCE CASES:

(1) Domestic violence cases are statutorily ineligible for expunction under section 943.0585(2), Florida Statutes. Williams v. State, 879 So.2d 77 (Fla. 3d DCA 2004). Defendant, who was convicted of battery and false imprisonment with charging instrument stamped "domestic violence," was not eligible for expunction of criminal history records; expunction statute did not permit the expunction of criminal offenses involving domestic violence.

R. PROSECUTOR'S RESPONSIBILITY DEALING WITH A THREAT OF PERJURY OR CONTEMPT:

(1) Prosecutor must be cautious when attempting to get reluctant witnesses to testify (e.g., by threatening perjury of false affidavit).

(a) Lee v. State, 324 So.2d 694 (Fla. 1st DCA 1976). *See also* Davis v. State, 334 So.2d 823 (Fla. 1st DCA 1976).

(b) Merely advising witness of what consequences would be if she failed to testify or if she failed to tell the truth is appropriate.

1. Coleman v. State, 491 So.2d 1206 (Fla. 1st DCA 1986).
2. Edmund v. State, 399 So.2d 1362 (Fla. 1981).

(c) Prosecution correctly informed victim that if she attempted to change testimony or affidavit statements in order to achieve her desire to have the battery charges against her husband dropped she would be held in contempt for perjury. Coleman v. State, 491 So.2d 1206 (Fla. 1st DCA 1986).

1. An admonition to a witness to "tell the truth," if such admonition does not suggest to the witness exactly what testimony to give, is appropriate, and will not be cause for discipline.
2. The Coleman Court upheld this action distinguishing both: Lee and Davis *supra*.
3. U.S. v. True, 179 F.3d 1987 (8th Cir. 1999).

(d) Prosecutor may be disciplined by the Bar for telling a witness not to speak with defense counsel at all unless the prosecutor was present.

(e) Appellate Review Due to Prosecutorial Error: "Prosecution error alone does not warrant automatic reversal of conviction unless the errors involved are so basic to a fair trial that they can never be treated as harmless."

1. Gilbert v. State, *supra.*

2. State v. Murray, 433 So.2d 955, 956 (Fla. 1984). "The correct standard of appellate review is whether the error committed was so prejudicial as to vitiate the entire trial."

(f) Conclusive Summary:
   1. Prosecutor suggesting which version of testimony = misconduct, and
   2. Misconduct = discipline action
      However, misconduct is not equal to per se reversal.

S

SUMMARY OF 2005 LEGISLATIVE SESSION

TOPIC	SECTION AFFECTED & DESCRIPTION OF CHANGE
Victim's Right to Speedy Trial (HB 285)	The bill instructs the trial court to schedule a calendar call within 5 days when a demand for a speedy trial has been filed and that state has met its obligations under rules of discovery, regardless if the charge is a felony or misdemeanor. The bill ensures the trial shall be scheduled no sooner than 5 days and no later than 45 days following the date of the calendar call. Postponements of the trial dates will not exceed 70 days.
Relating to Temporary Cash Assistance (SB 408)	This bill is aimed at assisting victims of domestic violence by providing said victims exemption from work requirements when receiving temporary cash assistance.
Relating to Protection of Persons/ Use of Force (SB 436)	This bill authorizes a person to use force, including deadly force, against an intruder or attacker in a dwelling, residence, or vehicle under specified circumstances. It provides that a person is justified in using deadly force under certain circumstances, including cases where there is a protective injunction for domestic violence, and provides immunity from criminal prosecution or civil action in using deadly force.
Relating to Public Records Exemption (HB 1699/SB 726)	This bill ensures that 'interference of custody' does not apply to a spouse who is the victim of domestic violence or who has reasonable cause to believe he or she is about to become a victim of domestic violence, or believes that his or her action was necessary to preserve the child or the person from danger to his or her welfare. This bill further protects anyone who seeks shelter from the act and takes with them any child 17 years of age or younger. The bill requires that a report must be made to the Sheriff's or State Attorney's office.
Family Court Efficiency Bill (HB 145/SB 348)	Clearly delineates the precedence of custody orders between dependency and other custody cases. Provides a mechanism to modify previous custody rulings from a dependency case in other family cases. Permits evidence and judgments from a dependency case to be admissible in evidence in subsequent civil proceedings. Deletes unconstitutional language regarding grandparent visitation. Permits the creation of a unique identifier to better track and coordinate cases. This bill specifies that in the event the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make arrangements for visitation that will protect the child or the abused spouse from further harm. The bill clarifies that if there is a conviction of any offense of domestic violence, child abuse or existence of injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.
Interstate Compact for Juveniles (SB 274/HB 577)	Substantial rewording of the interstate compact found in 985.502, Florida Statutes. Creates a State Council for Interstate Juvenile Offender Supervision. Provides for repeal of sections 985.502 & 985.5025, Florida Statutes, two years from effective date unless saved through reenactment. Repeals sections 985.503, 985.504, 985.505, 985.506, and 985.507, Florida Statutes.
Immigrant Children/Residency Status (SB 498/HB 809)	Creates new section 39.5075, Florida Statutes, and sets forth steps to be taken regarding citizenship or residency status of for immigrant children who are dependent. Provides for filing of petition for special immigrant juvenile status to appropriate federal authorities on the child's behalf. Permits retention of jurisdiction and further review hearings after child turns 18 for sole purpose of determining status of petition and application. Provides rulemaking authority for Department of Children and Families to administer act.

SUMMARY OF 2005 LEGISLATIVE SESSION CONTINUED

TOPIC	SECTION AFFECTED & DESCRIPTION OF CHANGE
Psychotropic Medication (HB 883/SB 1090)	Substantially amends section 39.407, Florida Statutes and sets forth comprehensive procedures to be taken in administration of psychotropic medication to children. Provides for notice to parents and requires hearings. Makes provision for obtaining a second medical opinion. Prohibits public schools from denying students access to programs or services because the parent of the student has refused to place the student on psychotropic medication. Permits sharing of school-based observations of a student's academic, functional, and behavioral performance with the student's parent and offer program options based on observations. Prohibits school personnel from attempting to compel actions by parents or requiring that a student take medication.
Domestic Violence Fatality Review (SB 974/HB 1921)	Provides for confidentiality of information obtained by domestic violence fatality review team. Makes child and victim identification information confidential and exempt from Chapter 119.
Child Abuse Cases/Guardian ad Litem (SB 1098/HB 1929)	Amends 39.202 to provide an exception to confidentiality of records to permit access by an executive director or designee of a children's advocacy center established under section 39.3035, Florida Statutes. Provides for confidentiality of child information held by a Guardian ad Litem. Provides for confidentiality of certain personal information of a Guardian ad Litem.
Independent Living (SB 1314/HB 1319)	Permits retention of jurisdiction by court over child for up to one year after child reaches 18 for purposes of determining whether support and services were provided to the formerly dependent child. Requires that child be given notice of right to request continuation of jurisdiction for one year. Requires child to be encouraged to attend all judicial reviews occurring after turning 17 years of age. Creates new subsection 409.1451(9), Florida Statutes regarding medical assistance for young adults formerly in foster care. Requires the Independent Living Services Advisory Council to conduct a study to determine the most effective way to address health insurance needs of certain young adults. Appropriates $1.1 million to Department of Children and Families to implement act. Provides rulemaking authority for Department of Children and Families to administer act.
State Judicial System (HB 1935/SB 2542)	This is the Article V glitch bill.

COMPARISON OF INJUNCTIONS UNDER CHAPTER 39 AND CHAPTER 741

APPENDIX D

CHAPTER 39	CHAPTER 741
Purpose is to protect and promote the best interests of the child.	Purpose is to protect adults, but children may be included in terms of injunction.
DCF often files the motion, but law enforcement, state attorney, the court itself, or a responsible adult may file for the injunction on behalf of the child.	Victim is the petitioner and must file petition with the court.
Offender may at any time offer evidence of "changed circumstances" in order to modify the injunction. Best interest of the child is still the court's benchmark.	Either party may move to modify or dissolve the injunction at any time. Risk to children is not a factor.
May order treatment for offender. May <u>also</u> order offender to pay for medical, psychiatric, or psychological treatment of the child or other family members.	May order treatment for respondent only, such as: BIP, substance abuse, mental health, etc.
Supervised visitation may be ordered with access to DCF visitation centers and supervision.	Supervised visitation may be ordered but will depend upon the availability of local programs.
Law enforcement has a duty and responsibility to enforce, however, arrest authority is unclear.	Law enforcement to enforce the injunction with specific directions as to arrest authority.
Violation is a first degree misdemeanor.	Violation may be handled as civil or criminal contempt, or as a first degree misdemeanor.
Injunction ends at disposition.	Injunction ends on a specific date or upon further order of the court.

Chapter 39 Injunctions

Chapter 39, Florida Statutes, provides a method for obtaining an injunction to protect a child from abuse. The limitation of this type of injunction is that it first requires that a shelter petition or dependency petition be filed, or that the child has been taken into the custody of the State. While this will limit the applicability of the injunction in many situations, there are still some situations where a victim of domestic violence may be able to use this injunction to her benefit and the benefit of her family.

The Statute:

39.504 Injunction pending disposition of petition; penalty.--

(1)(a) When a petition for shelter placement or a petition for dependency has been filed or when a child has been taken into custody and reasonable cause, as defined in paragraph (b), exists, the court, upon the request of the department, a law enforcement officer, the state attorney, or other responsible person, or upon its own motion, shall have the authority to issue an injunction to prevent any act of child abuse or any unlawful sexual offense involving a child.

(b) Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or an unlawful sexual offense involving a child or if there is a reasonable likelihood of such abuse or offense occurring based upon a recent overt act or failure to act.

(2) Notice shall be provided to the parties as set forth in the Florida Rules of Juvenile Procedure, unless the child is reported to be in imminent danger, in which case the court may issue an injunction immediately. A judge may issue an emergency injunction pursuant to this section without notice at times when the court is closed for the transaction of judicial business. When such an immediate injunction is issued, the court shall hold a hearing on the next day of judicial business either to dissolve the injunction or to continue or modify it in accordance with the other provisions of this section.

(3)(a) In every instance in which an injunction is issued under this section, the purpose of the injunction shall be primarily to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration. The effective period of the injunction shall be determined by the court, except that the injunction will expire at the time of the disposition of the petition for shelter placement or dependency.

(b) The injunction shall apply to the alleged or actual offender in a case of child abuse or an unlawful sexual offense involving a child. The conditions of the injunction shall be determined by the court, which conditions may include ordering the alleged or actual offender to:

1. Refrain from further abuse or unlawful sexual activity involving a child.

2. Participate in a specialized treatment program.

3. Limit contact or communication with the child victim, other children in the home, or any other child.

4. Refrain from contacting the child at home, school, work, or wherever the child may be found.

5. Have limited or supervised visitation with the child.

6. Pay temporary support for the child or other family members; the costs of medical, psychiatric, and psychological treatment for the child victim incurred as a result of the offenses; and similar costs for other family members.

7. Vacate the home in which the child resides.

(c) At any time prior to the disposition of the petition, the alleged or actual offender may offer the court evidence of changed circumstances as a ground to dissolve or modify the injunction.

(4) A copy of any injunction issued pursuant to this section shall be delivered to the protected party, or a parent or caregiver or individual acting in the place of a parent who is not the respondent, and to any law enforcement agency having jurisdiction to enforce such injunction. Upon delivery of the injunction to the appropriate law enforcement agency, the agency shall have the duty and responsibility to enforce the injunction.

(5) Any person who fails to comply with an injunction issued pursuant to this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

MOTION FOR INJUNCTION
(Rule 8.962)

1. .....(Name and address) ..... requests this Court, pursuant to section 39.504, Florida Statutes, to issue, until .....the cause is disposed/ ....., an injunction requiring .....(name and address of person against whom injunction is requested) ..... to do the following:

..... Refrain from further abuse or unlawful sexual activity with .....(name(s) of child(ren)) .....

..... Obtain counseling as arranged by the Department of Children and Family Services or as specified below.

..... Have no contact with .....(child(ren)'s name(s)) ..... except .....(list acceptable contact provisions) .....

..... Pay $ ..... support for the child(ren) and/or family.

..... Vacate the home in which .....(child(ren)'s name(s)) ..... reside(s) and not return until further order of the court.

..... OTHER CONDITIONS: .....

2. Reasonable cause for the issuance of an injunction exists based on the following: .....

3. .....(Name and address of person against whom injunction is requested) ..... was noticed of the hearing on this motion on .....(date) .....

..... This injunction is being issued without notice because .....(child(ren)' s name(s)) ..... is/are in imminent danger, in that .....

4. .....(Name and address of person against whom injunction is requested) ..... can be identified by the following:

Race: ..... Gender: Male ..... Female ..... Date of Birth: .....

Height: ..... Weight: ..... Eye Color: ..... Hair Color: .....

Distinguishing marks and/or scars .....

Vehicle(make/model/year): ..... Color: .....

Tag Number: .....

_____

.....Moving Party .....

_____

..... (attorney's name) .....

.....(address and phone number) .....

.....(Florida Bar number) .....

INJUNCTION
(Rule 8.963)

THIS CAUSE came before this court on .....(date)....., pursuant to section 39.504, Florida Statutes. Present before the court were .....(name(s)) .....; and the court having heard testimony and argument and being otherwise fully advised in the premises finds:

1. That this court has jurisdiction to issue an injunction in this cause.

2. .....(Name and address of person(s) against whom injunction is requested) ..... was noticed of the hearing on this motion on .....date .....

..... This injunction is being issued without notice because .....(child(ren)' s name(s)) ..... is/are in imminent danger, in that .....

3. Reasonable cause for the issuance of an injunction exists based on the following: .....

4. .....(Name and address of person against whom injunction is requested) ..... can be identified by the following:

Race: ..... Gender: Male ..... Female ..... Date of Birth: .....

Height: ..... Weight: ..... Eye Color: ..... Hair Color: .....

Distinguishing marks and/or scars: .....

Vehicle(make/mode/year): ..... Color: .....

Tag Number: .....

THEREFORE, based upon the foregoing findings, it is hereby ORDERED AND ADJUDGED that:

1. Until .....disposition of this cause/ .....(date) ...../further order of this court ....., ...(name and address of person against whom injunction is requested) ..... shall:

..... Refrain from further abuse or unlawful sexual activity with ..... (name(s) of the child(ren)) .....

..... Obtain counseling as arranged by the Department of Children and Family Services or as follows: .....
..... Have no contact with .....(child(ren)'s name(s)) ..... except .....(list acceptable contact provisions) .....

..... Pay $ ..... support for the child(ren) and/or family.

..... Vacate the home in which .....(child(ren)'s name(s)) ..... reside(s) and not return until further order of the court.

..... OTHER CONDITIONS: .....

2. This court retains jurisdiction over this cause to enter any further orders that may be deemed necessary for the best interest and welfare of the minor child(ren).

3. All prior orders not inconsistent with the present Order shall remain in full force and effect.

DONE AND ORDERED on .....(date) ......

_____
Circuit Judge

Copies furnished to:

COMMENT: If injunction is issued ex parte, include the following:

NOTICE OF HEARING

The Juvenile Court hereby gives notice of hearing in the above styled cause on .....(date) ..... at ... a.m./ p.m., before .....(judge) ....., at ..... (location) ..... or as soon thereafter as counsel can be heard.

In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Office of the Court Administrator no later than 7 days before the proceeding at .....(telephone number) ......

PLEASE BE GOVERNED ACCORDINGLY.

RELATED UNIFIED FAMILY COURT PUBLICATIONS

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Office of Court Improvement
500 South Duval Street, Tallahassee, FL 32399
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DOMESTIC VIOLENCE

* Proposal for Post-Filing Domestic Violence Injunction Case Management and Case Manager Training (2004)
* Domestic Violence Court Action Plan (2004)
* Domestic Violence Checklist (2004)
* Domestic Violence Court Assessment: Final Report (2003)

* Domestic Violence Court Assessment: Executive Summary (2003)

CHILD SUPPORT
* Court Child Support Process Improvement Project (2002)

DELINQUENCY
* Florida's Juvenile Delinquency Court Assessment: Final Report (2003)
* Florida's Juvenile Delinquency Court Assessment: Executive Summary (2003)
* Juvenile Delinquency Brochure: A Family Guide to Juvenile Court

DEPENDENCY
* Chapter 39, Florida Statutes, and Excerpts from the Florida Rules of Juvenile Procedure (2004)
* Dependency Benchbook (2003)

DRUG COURT
* Report on Florida's Drug Courts (2004)

UNIFIED FAMILY COURT
* The OCI Files – A Quarterly Newsletter of the Office of Court Improvement
* Florida's Family Court Tool Kit: Volume II (2004)
* Florida's Family Court Tool Kit: Volume I (2003)
* Supreme Court Opinion Summary on Unified Family Court
* What, Where, Why and How: Unified Family Courts in Florida
* Unified Family Court Brochure
* Supreme Court Opinions on Unified Family Court

Florida's Four Orders of Protection Against Violence: Distinguishing the Difference

by Judge Amy Karan and Lauren Lazarus

As of July 1, 2003, Florida law provides for four distinct types of orders of protection against violence, also commonly known, locally and nationally, as *restraining orders*, and in Florida, legally called *injunctions.* These orders protect a person from domestic, repeat, dating, and sexual violence. This article surveys the differences between these four types of injunctive relief, and serves as a guide for practitioners to navigate their way through the four distinct causes of action. It is intended to be a primer on the law in this area rather than an in depth analysis.

All four types of injunctions are civil proceedings, and the Florida Family Law Rules of Procedure and the Florida Rules of Evidence apply.[1] The Florida Supreme Court has promulgated forms, some of which are mandatory. In order to ensure statewide uniformity and recognition by law

When determining which cause of action is appropriate the practitioner must first consider standing to file which is based solely upon the relationship between the parties.

enforcement, all courts are required to use the Supreme Court's temporary injunction and final judgment of injunction forms.[2] The forms, including petitions, various motions and orders are available online for viewing, printing, and/or downloading at www.flcourts.org.

When filing a case, it is advisable to use the Florida Family Law Rules version of the petition, track the statutory language, or contact your clerk's office to obtain a copy of the version in use in your county. All filing and service fees have been eliminated as of July 1, 2003.[3]

Once a petition has been filed, it is presented to a judge to consider whether an ex parte temporary injunction, valid for up to 15 days, should be granted.[4] Florida law only requires the court to review the four corners of the petition to determine whether there appears to be "an immediate and present danger of violence," the standard for issuance of temporary injunctions.[5] No police reports, photographs of injuries, or other supporting evidence need be presented.

If a temporary injunction is issued, a full evidentiary hearing must be scheduled within the 15-day period. The court may grant a continuance of the hearing for an additional 15 days, for good cause shown by either party, which includes an extension to obtain service of process.[6]

If the ex parte temporary injunction is denied because the court finds no appearance of an immediate and present danger, a final hearing must be granted. If the temporary injunction is denied because the petition is filed under the incorrect statute, a motion to amend to the correct statute should be filed. At the final hearing, the petitioner must prove the case by a preponderance of the evidence. As with the temporary injunction, no supporting documentation is required by law, although all admissible evidence should be presented.

"Final judgments" for protection against violence, commonly known as "permanent injunctions," remain in effect until modified or dissolved by the court. Therefore, at the court's discretion, the injunction may be indefinite or expire on a date certain. Petitioners should request the duration of the injunction they are seeking at the time of final hearing.

Injunctions may be extended beyond their expiration date, provided the request to extend is filed prior to actual expiration. In determining whether the injunction should be extended, the occurrence of new violence is not required. The court may consider the circumstances leading to the imposition of the original injunction, as well as subsequent events that may cause the petitioner to have continuing reasonable fear that violence is likely to recur in the future.[7]

When determining which cause of action is appropriate, the practitioner must first consider standing to file which is based solely upon the relationship between the parties. The four types of injunctions, the required standing, the elements of each cause of action, and the available relief will be discussed separately.

DOMESTIC VIOLENCE

F.S. §741.28 through 741.31 define domestic violence, create a cause of action for an injunction for protection against domestic violence, outline the relief available and set forth the violations that constitute crimes. Ch. 741 is the exclusive civil method to obtain protection against domestic violence.[8]

"Domestic violence" is defined by §741.28 as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family household member by another.

Standing to file is conferred upon family or household members, which are defined as: spouses; former spouses; persons related by blood or marriage (including minors);[9] any person who is or was residing within a single dwelling with petitioner as if a family;[10] or a person with whom the petitioner has a child in common (regardless of marriage or cohabitation).

The petition may be filed in the circuit where the petitioner is currently or temporarily residing, where the respondent resides, or where the domestic violence occurred.[11] This allows a victim of violence, who has fled their home county, to obtain protection in their county of temporary residence without having to return to the site of the potential danger.

The court may issue an ex parte temporary injunction if the required relationship exists and the court finds that there is an immediate and present danger of domestic violence. The petitioner must plead and prove he or she has been a victim of domestic violence or that there is reasonable cause to believe he or she is in imminent danger of becoming a victim. Note that the statute is phrased in the disjunctive and only one of the two criteria need be satisfied: petitioner *has been* a victim, or has *reasonable fear* of imminent violence.[12]

When determining whether an immediate and present danger exists, the court considers the totality of the circumstances. In 2002, the legislature detailed 10 specific factors for the court to take into account. These are indicators of elevated danger and include acts or threats of violence; attempts to harm petitioner, family members or close associates; restraining petitioner from leaving the home or contacting police; prior orders of protection; injuring or killing a family pet; threats to use a gun or knife; previous criminal history; threats to kidnap or harm petitioner's children; and destruction of personal property.[13]

If the court enters an ex parte temporary injunction, the court may award the following requested relief in addition to the standard injunctions against acts of violence and "the no contact within 500 feet" provisions: exclusive use of a shared dwelling (regardless of title); exclusion of the respondent from petitioner's residence, place of employment, school, or other designated places frequented by petitioner, family, or household members; temporary custody of minor children; and temporary surrender of firearms and ammunition.[14]

If the court awards exclusive use of a shared home, provisions will be made for the respondent to retrieve items of personal health and hygiene, tools of the trade, along with other property that the parties may agree on. The respondent will be allowed to return to the premises to retrieve these items at a designated time, in the presence of law enforcement, who will normally stand by for a short period of time (usually 30

minutes or less). In a Ch. 741 proceeding, the court has no authority to make any equitable distribution of property. All disputed matters regarding the division or distribution of property must be brought before the court in a Ch. 61 or other appropriate proceeding.

The domestic violence injunction statute specifically prohibits the entry of any form of "mutual" injunctions. Separate injunctions may be issued under individual and distinct case numbers, in circumstances where each party files for an order of protection, and pleads and proves sufficient facts to warrant the entry of an order.[15]

Violations of the injunction by the respondent, such as refusing to vacate a shared dwelling; returning to the shared dwelling; coming within 500 feet of petitioner's home, place of employment, or other designated place; telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly; committing any act of domestic violence against the petitioner; and/or having any firearms in respondent's possession are first degree criminal misdemeanors.[16] Other violations, such as failure to pay ordered support; failing to attend the court ordered counseling; or violation of visitation orders may result in contempt of court charges. Certain violations of the injunction, such as intentionally crossing a state line to violate an injunction; causing an intimate partner to cross state lines by force or fraud and causing bodily injury to that person in violation of an injunction; and interstate stalking are also crimes under the Federal Violence Against Women Act (VAWA).[17] Even if the petitioner, or a third party, invites the respondent to come to the residence, or otherwise into contact with the petitioner, it is a violation of the injunction. However, petitioners who initiate contact with the respondent cannot be charged with violating the injunction. If petitioner makes contact, the respondent should file a motion to dissolve the injunction or dismiss the case, although it is not always grounds for dismissal.

As of July 1, 2003, final hearings for injunctions against domestic violence must be recorded at the court's expense. This eliminates the necessity for bringing a court reporter to the final hearing. The notice of hearing will set forth what type of recording the court provides.[18]

The injunctive relief which may be awarded in the permanent injunction against domestic violence include the same provisions for protection against violence and include injunctions against contact and acts of violence, award of temporary visitation;[19] child support;[20] and spousal support; ordering the respondent to attend a certified batterers' intervention program,[21] parenting classes, substance abuse or other counseling; and a mandatory prohibition against possession of firearms and ammunition. Both federal and Florida law make it a crime for a respondent to possess any firearms or ammunition while subject to a qualifying order of protection against domestic violence.[22] Surrender of all personal firearms is mandatory, although law enforcement officers, as defined by F.S. §943.10(14) may keep their service weapons while on official duty unless otherwise prohibited by the employing law enforcement agency.[23]

There is no statutory authority for an award of attorneys' fees in a Ch. 741 injunction proceeding. Neither trial nor appellate fees may be awarded under any theory, including F.S. §57.105.[24]

While orders entered in a Ch. 61 proceeding take priority over those entered in an injunction action,[25] the circuits have varying procedures regarding where the

injunction case is handled when there is a concurrent domestic relations case. Each circuit should have an administrative order on the issue, or it should be explained in the circuit's unified family court plan. The entry of a final judgment of dissolution of marriage does not automatically result in the dismissal of an injunction.[26] Similarly, if there is a pending temporary injunction against domestic violence, it is error for the court to dismiss the action simply because there is a pending dissolution of marriage action.[27]

Florida injunctions are enforceable in all counties of the state as well as nationwide. Similarly, a qualifying final order of protection against domestic violence issued by a court of a foreign state, must be accorded full faith and credit by the courts of Florida and enforced by law enforcement as if they were Florida court orders.[28]

REPEAT VIOLENCE

A petitioner who does not have a "domestic relationship" as defined in Ch. 741 may be eligible to obtain an injunction for protection under the repeat violence statute.[29] Since the enactment of laws providing for protection against dating and sexual violence, repeat violence cases have become mostly love triangle cases (new girlfriend vs. old girlfriend, former husband vs. new husband, etc.), employer-employee and co-worker relationships, schoolmates, neighborhood disputes, and roommates who do not have a dating or intimate relationship.

Any person who is the victim of repeat violence, or the parent or legal guardian of a minor child living at home who is the victim of repeat violence, has standing to file for an injunction against repeat violence.[30]

In repeat violence cases, the petitioner must plead and prove he or she has been the victim of two incidents of violence, or stalking. Violence is defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment or any criminal offense resulting in physical injury or death. One of the incidents of violence or stalking must have occurred within six months of the filing of the petition and be directed against the petitioner or petitioner's immediate family member.[31]

The standard for relief here is much different than that in domestic violence cases. In domestic violence cases, no acts of violence need have occurred prior to the filing if petitioner has a reasonable fear that domestic violence is imminent. In repeat violence cases, not only must the violence have already occurred, there must be two acts of violence or a stalking in order for relief to be warranted. No matter how egregious the violence may be, if it is simply one act the petition will fail.[32]

The following circumstances were found insufficient for issuance of repeat violence injunctions: telephone threats alone;[33] receiving unwanted letters and flowers;[34] nonthreatening e-mails, phone messages, chance encounters at restaurants, and leaving notes, cards, and a rose on petitioner's doorstep, even after petitioner had clearly indicated she wanted no further contact. [35]

On the other hand, repeated videotaping of a neighbor constituted stalking for purposes of the issuance of a repeat violence injunction,[36] and barking dogs coupled with threats were found sufficient where the petitioner was substantially and unreasonably disturbed.[37]

The court may award the following relief in a repeat violence injunction: injunctions from committing acts of violence ordering the respondent to appropriate counseling, and such other relief necessary for the protection of the petitioner.[38]

There is no requirement that the court record the final hearing in any of the Ch. 784 injunction proceedings (repeat, dating or sexual violence), so counsel should bring a court reporter if a transcript is desired.

The firearms prohibitions do not apply in repeat violence injunctions. However, the respondent may be required to surrender firearms if the court finds it necessary to protect the petitioner.[39]

In domestic violence cases, no acts of violence need have occurred prior to the filing if petitioner has a reasonable fear that domestic violence is imminent.

DATING VIOLENCE

The legislature created a cause of action for protection against dating violence in 2002. Any person who is the victim of dating violence, or the parent or legal guardian of a minor child living at home who is the victim of dating violence, has standing to file for an injunction under this section.[40]

"Dating violence" means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.[41] Despite the fact that the cause of action for an injunction against dating violence is contained in Ch. 784, the law provides that persons in dating relationships must meet the same statutory criteria as is required for issuance of an injunction against domestic violence. That is, the petitioner is a victim of dating violence or has a reasonable belief that violence is imminent. No acts of violence need have occurred prior to filing.[42] Because the dynamics of a dating relationship are the same as those in traditional Ch. 741 "domestic" relationships, the standard for protection is the same.

There are three factors for the court to consider in determining whether a "dating relationship" exists: the relationship existed within the past six months; the relationship was characterized by the expectation of affection or sexual involvement between the parties; and the frequency and type of interaction was that the persons were involved over time and on a continuous basis during the course of the relationship.[43] A dating relationship does not exist in circumstances where contact between the parties has been that of a casual acquaintance or ordinary fraternization in a business or social context.[44]

While the standard for issuance of the injunction is the same as the domestic violence statute, the available injunctive relief mirrors that in repeat violence cases. The court may award injunctions against acts of violence, referrals to appropriate counseling, and such other orders necessary to protect the petitioner.

As of the date of this writing, there are no reported cases construing the dating violence statute.

SEXUAL VIOLENCE

Effective July 1, 2003, "The Victim's Freedom Act" became law, and created a cause of action under Ch. 784 for an injunction against sexual violence. [45]

"Sexual violence" is defined as one incident of sexual battery; a lewd or lascivious act committed upon, or in the presence of, a person younger than 16; luring or enticing a child's sexual performance; or any other forcible felony where a sexual act is committed or attempted. [46]

A person who is the victim of an act of sexual violence, or the parent or legal guardian of a minor child living at home who is the victim of an act of sexual violence, has standing to file. The petitioner must have reported the incident to law enforcement and be cooperating in any criminal proceeding against the respondent; or, if the respondent was sentenced to a term of imprisonment for the act of sexual violence, the sentence must have expired, or be due to expire within 90 days.[47]

If the respondent is incarcerated, the temporary injunction is effective for 15 days following release from incarceration rather than 15 days from the date of issuance as with the other protective injunctions. The final hearing must be set prior to expiration of the temporary injunction.[48]

Authority to serve an injunction for protection against sexual violence upon an incarcerated respondent is shifted from a law enforcement officer to a state prison correctional officer. If the respondent is not served before release, the copies will be forwarded to the sheriff of the county where the offender was released.[49]

This category of protection order was created to provide protection for persons, including minors, who are victims of one act of sexual violence but have no domestic or dating relationship with the perpetrator. Previously, the only remedy available was the repeat violence statute, where two acts are required. This new enactment closes a gap in protection for sex crime victims. The relief available is the same as in repeat violence cases. This law is too new for any case law analysis.

CONCLUSION

The authors hope this article has distinguished the differences between Florida's four orders of protection against violence. The practitioner will best serve the client by becoming familiar with the four types of injunctions and the nuances of standing and proof necessary to warrant relief in each cause of action. The practitioner can then appropriately apply for, defend against, and have a reasonable expectation of prevailing in these important and often dangerous matters.

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[1] Fla. Fam. L. R. P. 12.010; Fla. Stat. §90.103.
[2] Fla. Fam. L. R. P. 12.610 (C)(2)(A); Florida Family Law Forms 12.980(d)(1), 12.980(e)(1), 12.980(e)(2), 12.980 (l), 12.980(m), 12.980(p) and 12.980(q).
[3] Fla. Stat. §§741.30(2)(a); §784.046(3).
[4] Fla. Stat. §§741.30(5)(b), 784.046(6)(c).
[5] Fla. Stat. §§741.30(5)(b), 784.046(6)(b).
[6] Fla. Stat. §§741.30(5)(c), 784.046 (6)(c).
[7] *Spiegel v. Haas*, 697 So. 2d 222 (Fla. 3d D.C.A. 1997); *Patterson v. Simonek*, 709 So. 2d 189 (Fla.3d D.C.A. 1998).
[8] *Orth v. Orndorff,* 835 So. 2d 1283 (Fla. 2d D.C.A. 2003); *Campbell v. Campbell*, 584 So. 2d 125 (Fla. 4th D.C.A. 1991).

[9] Children may file against their parents, however no custody, visitation, or support issues may be addressed. *Rinas v. Rinas* , 847 So. 2d 555 (Fla. 5th D.C.A. 2003); *Rosenthal v. Roth*, 816 So. 2d 667 (Fla. 3d D.C.A. 2002) (brother and sister who had not lived together for over 40 years qualified under the plain meaning of this section).
[10] *Slovenski v. Wright*, 849 So. 2d 349 (Fla. 2d D.C.A. 2003) (overnight visits are insufficient to establish "residing within a single dwelling").
[11] Fla. Stat. §741.30(1)(j) (notwithstanding any provision of Fla. Stat. ch. 47).
[12] Fla. Stat. §741.30(5)(a).
[13] Fla. Stat. §741.30(6)(b).
[14] Fla. Stat. §741.30 (5)(a). At this juncture, the surrender of firearms is discretionary with the court; however, surrender of firearms pending final hearing is usually ordered to ensure safety.
[15] Fla. Stat. §741.30(i); *Martin v. Hickey*, 733 So. 2d 600 (Fla. 3d D.C.A. 1999); *Hixson v. Hixson*, 698 So. 2d 639 (Fla. 4th D.C.A. 1997); *Brooks v. Barrett*, 694 So. 2d 38 (Fla. 1st D.C.A. 1997).
[16] Fla. Stat. §741.31(4).
[17] 18 U.S.C. §2261-2262.
[18] Fla. Stat. §741.30(6)(h). In most courts only audiotape recordings are made by the court. If parties desire transcripts, they must arrange for the transcription of the audiotape at their own expense.
[19] Fla. Stat. §741.30(6)(a)(3). Awards of temporary custody and temporary visitation rights are made on the same basis as provided in Fla. Stat. ch. 61. Pursuant to Fla. Stat. §61.13(2)(b)2, evidence that a parent has been convicted of a felony of the third degree or higher involving domestic violence as defined in §741.28 and ch. 775, creates a rebuttable presumption of detriment to the child.
[20] Fla. Stat. §741.30(6)(a)(4). Temporary child support is to be awarded on the same basis as provided in Fla. Stat. ch. 61.
[21] Fla. Stat. §741.30(6)(e). The court must order the respondent to attend a certified batterer's intervention program in three instances: (1) the respondent has willfully violated the temporary injunction; (2) the respondent has been convicted of, had adjudication withheld, or plead no contest to a crime involving violence or a threat of violence; (3) the respondent has had at any time a prior injunction for protection entered after a hearing with notice; all other referrals are at the court's discretion.
[22] The Gun Control Act, 18 U.S.C. §922(g)(8); Fla. Stat. §741.30(6)(g).
[23] Fla. Stat. §741.31(4)(b)(2). It is the intent of the legislature that the disabilities regarding possession of firearms and ammunition are consistent with federal law. 18 U.S.C. §925 provides for the "official use" exemption for law enforcement officers and military personnel.
[24] *Cisneros v. Cisneros*, 831 So. 2d (Fla. 3d D.C.A. 2002); *Lewis v. Lewis*, 689 So. 2d (Fla. 1st D.C.A. 1997); *Baumgartner v. Baumgartner*, 693 So. 2d 84 (Fla. 2d D.C.A. 1997); *Belmont v. Belmont*, 761 So. 2d 406 (Fla. 2d D.C.A. 2000).
[25] Fla. Stat. §741.30(1)(c).
[26] *Farr v. Farr*, 840 So. 2d 1166 (Fla. 2d D.C.A. 2003).
[27] *Kniph v. Kniph*, 777 So. 2d 437 (Fla. 1st D.C.A. 2001); *White v. Cannon*, 778 So. 2d 467 (Fla. 3d D.C.A. 2001).
[28] Fla. Stat. §741.30(6)(d)(1); 18 U.S.C. §2265.
[29] Fla. Stat. §784.046.
[30] Fla. Stat. §784.046 (2)(a).
[31] Fla. Stat. §784.046(1)(b).
[32] *Buerster v. Fermin,* 844 So. 2d 804 (Fla. 4th D.C.A. 2003) (although respondent threatened, yelled, and screamed at the petitioner for two years, petitioner's testimony established only one act of violence); *Long v. Edmundson*, 827 So. 2d 365 (Fla. 2d D.C.A. 2002) (only qualifying incident was one in which respondent waved a gun and pushed petitioner; threat on petitioner's answering machine did not qualify as second incident); *Darrow v. Moschella,* 805 So.2d 1068 (Fla. 4th D.C.A. 2002) (several physical altercations on same day with brief pause in between found insufficient).
[33] *Gianni v. Kerrigan*, 836 So. 2d 1106 (Fla. 2d D.C.A. 2003); *Johnson v. Brooks,* 567 So. 2d 34 (Fla. 1st D.C.A. 1990).
[34] *McMath v. Biernacki,* 776 So. 2d 1039 (Fla. 1st D.C.A. 2001).
[35] *Ravitch v. Whelan,* 28 Fla. L. Weekly D1818a (Fla. 1st D.C.A. August 1, 2003).
[36] *Goosen v. Walker*, 714 So. 2d 1149 (Fla. 4th D.C.A. 1998).
[37] *Rae v. Flynn,* 690 So. 2d 1341(Fla. 3d D.C.A. 1997).
[38] Fla. Stat. §784.046(7). Note that all referrals to counseling under ch. 784 are discretionary.
[39] *Langner v. Cox*, 826 So. 2d 475(Fla. 1st D.C.A. 2002).
[40] Fla. Stat. §784.046(2)(b).
[41] Fla. Stat. §784.046(1)(d).
[42] Fla. Stat. §784.046(2)(b).
[43] Fla. Stat. §784.046(1)(d)(1)-(3).
[44] Fla. Stat. §784.046(1)(d)(3).
[45] House Bill 561, Fla. 2003.
[46] Fla. Stat. §784.046(1)(c).
[47] Fla. Stat. §784.046(2)(c).
[48] Fla. Stat. §784.046(6)(c).
[49] Fla. Stat. §784.046(8)(a)2.

Judge Amy Karan *is the administrative judge of Miami-Dade County's Dedicated Domestic Violence Court. She serves as faculty for the National Judicial College, Florida's College of Advanced Judicial Studies, and the National Council of Juvenile and Family Court Judges. Judge Karan is chair of The Florida Bar Family Law Section domestic violence subcommittee, the 11th Judicial Circuit's standing committee on domestic violence, and the advisory panel for Miami-Dade County's Domestic Violence Fatality Review Team.*
Lauren Lazarus *serves as director of the domestic violence court in the 11th Judicial Circuit of Florida. In May 1998 she founded Miami-Dade County's Domestic Violence Fatality Review Team, which develops intervention and prevention strategies to reduce domestic violence-related deaths.*
This column is submitted on behalf of the Family Law Section, Richard D. West, chair, and Michele K. Cummings and Jeffrey Weissman, editors.

DOMESTIC VIOLENCE
RESOURCE PHONE NUMBERS

Florida Domestic Violence Hotline	800/500.1119
National Domestic Violence Hotline	800/799.SAFE(7233)
Florida Coalition Against Domestic Violence	850/425.2749

Domestic Violence Program Office	850/921.2168
Coalition of BIPs of Florida	561/688.9113
Department of Corrections,	
Office of Certification and Monitoring	850/487.2165
Elder and Child Abuse Hotline	800/96.ABUSE(22873)

STATEWIDE DOMESTIC VIOLENCE REFERRAL GUIDE

Information verified from Florida Coalition Against Domestic Violence (FCADV) Website

FIRST JUDICIAL CIRCUIT – ESCAMBIA COUNTY

DOMESTIC VIOLENCE SHELTERS

FavorHouse of N.W. Florida
2001 W. Blount Street
Pensacola, FL 32501
HOTLINE: 850/994-3560
PHONE: 850/434-1177

BATTERER'S INTERVENTION PROGRAMS

Cordova Counseling
4400 Bayou Blvd., Suite 8D
Pensacola, FL 32503
PHONE: 850/474-9882

Favorhouse of N.W. Florida
2001 W. Blount Street
Pensacola, FL 32501
PHONE: 850/434-1177

Mental Health Associates
14 West Jordan Street
Pensacola, FL 32501
PHONE: 850/469-0128

POLICE DEPARTMENT

John W. Mathis, Chief of Police
Pensacola Police Department

711 North Hayne Street
Pensacola, FL 32501
PHONE: 850/435-1900

SHERIFF'S OFFICE

H.R. "Ron" McNesby, Sheriff
Escambia County Sheriff's Office
1700 West Leonard Street
Pensacola, FL 32501
PHONE: 850/436-9630

FIRST JUDICIAL CIRCUIT – SANTA ROSA COUNTY

DOMESTIC VIOLENCE SHELTERS

FavorHouse of N.W. Florida
2001 W. Blount Street
Pensacola, FL 32501
HOTLINE: 850/994-3560
PHONE: 850/434-1177

BATTERER'S INTERVENTION PROGRAMS

None in county

POLICE DEPARTMENT

Gregory Brand, Chief of Police
Milton Police Department
5451 Alabama Street
Milton, FL 32501
PHONE: 850/983-5420

Peter Paulding, Chief of Police
Gulf Breeze Police Department
311 Fairpoint Drive
Gulf Breeze, FL 32561
PHONE: 850/934-5121

SHERIFF'S OFFICE

O. Wendell Hall, Sheriff
Santa Rosa County Sheriff's Office
5755 East Milton Road
Milton, FL 32583
PHONE: 850/983-1100

FIRST JUDICIAL CIRCUIT – OKALOOSA COUNTY

DOMESTIC VIOLENCE SHELTERS

Shelter House, Inc.
P.O. Box 220
Fort Walton Beach, FL 32549
HOTLINE: 1-800/442-2873
HOTLINE: 850/863-4777
PHONE: 850/243-1201

BATTERER'S INTERVENTION PROGRAMS

Bridgeway Center, Inc.
137 Hospital Drive
Fort Walton Beach, FL 32548
PHONE: 850/833-7400

US Air Force Family Advocacy
113 Lielmanis Avenue
Hurlburt Field, FL 32544
PHONE: 850/884-5061

Patterson Professional Counseling Center
7 Vine Avenue
Fort Walton Beach, FL 32548
PHONE: (850) 863-2873

POLICE DEPARTMENT

Travis Gillihan, Chief of Police
Crestview Police Department
321 W. Woodruff Avenue
Crestview, FL 32536
PHONE: 850/682-3603

Ron Bishop, Chief of Police
Fort Walton Beach Police Department
7 Hollywood Blvd. NE
Fort Walton Beach, FL 32548
PHONE: 850/833-9543

Brian Cruttenden, Chief of Police
Niceville Police Department
212 N. Partin Drive
Niceville, FL 32578
PHONE: 850/729-4030

Joseph Hart, Chief of Police
Valparaiso Police Department
465 Valparaiso Parkway
Valparaiso, FL 32580
PHONE: 850/729-5400

Charles Self, Chief of Police
Shalimar Police Department
2 Cherokee Road
Shalimar, FL 32579
PHONE: 850/651-5723

SHERIFF'S OFFICE

Charles W. "Charlie" Morris, Sheriff
Okaloosa County Sheriff's Office
1250 Eglin Parkway
Shalimar, FL 32579
PHONE: 850/651-7400

FIRST JUDICIAL CIRCUIT – WALTON COUNTY

DOMESTIC VIOLENCE SHELTERS

Shelter House, Inc.
P.O. Box 220
Fort Walton Beach, FL 32549
HOTLINE: 1-800/442-2873
HOTLINE: 850/863-4777
PHONE: 850/243-1201

BATTERER'S INTERVENTION PROGRAMS

C.O.P.E. Center
3686 US Highway 331 South
Defuniak Springs, FL 32433
PHONE: 850/892-8045

POLICE DEPARTMENT

Ray Burgess, Chief of Police
Defuniak Springs Police Department

355 US Hwy 90 E.
Defuniak Springs, FL 32433
PHONE: 850/892-8511

SHERIFF'S OFFICE

Ralph L. Johnson, Sheriff
Walton County Sheriff's Office
72 North 6th Street
Defuniak Springs, FL 32433
PHONE: 850/892-8111

SECOND JUDICIAL CIRCUIT – FRANKLIN COUNTY

DOMESTIC VIOLENCE SHELTERS

Refuge House
P.O. Box 20910
Tallahassee, FL 32316
HOTLINE: 850/681-2111
PHONE: 850/922-6062
* Shelters in Leon and Gadsden Counties

BATTERER'S INTERVENTION PROGRAMS

New Hope
1589-A Metropolitan Blvd.
Tallahassee, FL 32309
PHONE: 850/847-1700
* Men – classes only available in Leon, Gadsden, and Wakulla Counties
* Women – classes only available in Leon County

Creative Counseling
1106 Thomasville Road, Suite K
Tallahassee, FL 32303
PHONE: 850/668-2572
* Men only – classes only available in Leon County

SHERIFF'S OFFICE

H. Michael "Mike" Mock, Sheriff
Franklin County Sheriff's Office
270 Highway 65
East Point, FL 32328
PHONE: 850/670-8519
Clarice Gross, Victim's Advocate 850/670-8500

SECOND JUDICIAL CIRCUIT – GADSDEN COUNTY

DOMESTIC VIOLENCE SHELTERS

Refuge House
P.O. Box 20910

Tallahassee, FL 32316
HOTLINE: 850/681-2111
PHONE: 850/922-6062

BATTERER'S INTERVENTION PROGRAMS

New Hope
1589-A Metropolitan Blvd.
Tallahassee, FL 32309
PHONE: 850/847-1700
* Men – classes only available in Leon, Gadsden, and Wakulla Counties
* Women – classes only available in Leon County

Creative Counseling
1106 Thomasville Road, Suite K
Tallahassee, FL 32303
PHONE: 850/668-2572
* Men only – classes only available in Leon County

SHERIFF'S OFFICE

Morris A. Young, Sheriff
Gadsden County Sheriff's Office
P.O. Box 1709
Quincy, FL 32353-1709
PHONE: 850/627-9233
Whitney Simpson, Victims Advocate 850/875-8838

SECOND JUDICIAL CIRCUIT – JEFFERSON COUNTY

DOMESTIC VIOLENCE SHELTERS

Refuge House
P.O. Box 20910
Tallahassee, FL 32316
HOTLINE: 850/681-2111
PHONE: 850/922-6062
* Shelters in Leon and Gadsden Counties

BATTERER'S INTERVENTION PROGRAMS

New Hope
1589-A Metropolitan Blvd.
Tallahassee, FL 32309
PHONE: 850/847-1700
* Men – classes only available in Leon, Gadsden, and Wakulla Counties
* Women – classes only available in Leon County

Creative Counseling
1106 Thomasville Road, Suite K
Tallahassee, FL 32303
PHONE: 850/668-2572
* Men only – classes only available in Leon County

SHERIFF'S OFFICE

David C. Hobbs, Sheriff
Jefferson County Sheriff's Office
171 Industrial Park
Monticello, FL 32344
PHONE: 850/997-2523
Sally Cole, Victims Advocate 850/997-4369

SECOND JUDICIAL CIRCUIT – LEON COUNTY

DOMESTIC VIOLENCE SHELTERS

Refuge House
P.O. Box 20910
Tallahassee, FL 32316
HOTLINE: 850/681-2111
PHONE: 850/922-6062

BATTERER'S INTERVENTION PROGRAMS

New Hope
1589-A Metropolitan Blvd.
Tallahassee, FL 32309
PHONE: 850/847-1700

Creative Counseling
1106 Thomasville Road, Suite K
Tallahassee, FL 32303
PHONE: 850/668-2572

POLICE DEPARTMENT

Walter McNeil, Chief of Police
Tallahassee Police Department
234 East Seventh Avenue
Tallahassee, FL 32302
PHONE: 850/891-4200
Jill McArthur, Victims Advocate 850/891-4246

SHERIFF'S OFFICE

Laurence O. "Larry" Campbell, Sheriff
Leon County Sheriff's Office
P.O. Box 727
Tallahassee, FL 32302
PHONE: 850/922-3300
Emily Schwerin, Victims Advocate 850/922-3424
Qwen Williams, Victims Advocate 850/414-9826
Kathy Connelly, Victims Advocate 850/922-3498

SECOND JUDICIAL CIRCUIT – LIBERTY COUNTY

DOMESTIC VIOLENCE SHELTERS

Refuge House
P.O. Box 20910
Tallahassee, FL 32316
HOTLINE: 850/681-2111
PHONE: 850/922-6062
* Shelters in Leon and Gadsden Counties

BATTERER'S INTERVENTION PROGRAMS

New Hope
1589-A Metropolitan Blvd.
Tallahassee, FL 32309

Creative Counseling
1106 Thomasville Road, Suite K
Tallahassee, FL 32303

PHONE: 850/847-1700
* Men – classes only available in Leon, Gadsden, and Wakulla Counties
* Women – classes only available in Leon County

PHONE: 850/668-2572
* Men only – classes only available in Leon County

SHERIFF'S OFFICE

Harrell W. Revell, Sheriff
Liberty County Sheriff's Office
P.O. Box 67
Bristol, FL 32321
PHONE: 850/643-2235
Charles Morris, Victims Advocate 850/643-2235

SECOND JUDICIAL CIRCUIT – WAKULLA COUNTY

DOMESTIC VIOLENCE SHELTERS

Refuge House
P.O. Box 20910
Tallahassee, FL 32316
HOTLINE: 850/681-2111
PHONE: 850/922-6062
* Shelters in Leon and Gadsden Counties

BATTERER'S INTERVENTION PROGRAMS

New Hope
1589-A Metropolitan Blvd.
Tallahassee, FL 32309
PHONE: 850/847-1700
* Men – classes only available in Leon, Gadsden, and Wakulla Counties
* Women – classes only available in Leon County

Creative Counseling
1106 Thomasville Road, Suite K
Tallahassee, FL 32303
PHONE: 850/668-2572
* Men only – classes only available in Leon County

SHERIFF'S OFFICE

David F. Harvey, Sheriff
Wakulla County Sheriff's Office
15 Oak Street
Crawfordville, FL 32327
PHONE: 850/926-0800
Sarrah Ward, Victims Advocate 850/926-0812

THIRD JUDICIAL CIRCUIT – COLUMBIA COUNTY

DOMESTIC VIOLENCE SHELTERS

Another Way, Inc.

P.O. Box 1028
Lake City, FL 32056-1028
HOTLINE: 352/493-6743
PHONE: 386/719-2757
Mendy Warner, DV Clerk 386/758-2174

BATTERER'S INTERVENTION PROGRAMS

Praxis-Jon Huenink
260 S. Marion Avenue, Suite 125
Lake City, FL 32055
PHONE: 386/752-9937

POLICE DEPARTMENT

David Albritton, Chief of Police
Columbia County Police Department
225 NW Main Boulevard
Lake City, FL 32055
PHONE: 386/752-4344

SHERIFF'S OFFICE

William M. "Bill" Gootee, Sheriff
Columbia County Sheriff's Office
P.O. Box 650
Lake City, FL 32056
PHONE: 386/719-7516
Sandy Seig, Victims Advocate 386/719-2002

THIRD JUDICIAL CIRCUIT – DIXIE COUNTY

DOMESTIC VIOLENCE SHELTERS

Another Way, Inc.
P.O. Box 1028
Lake City, FL 32056-1028
HOTLINE: 352/493-6743
PHONE: 386/719-2757
Clissy Cobb, DV Clerk 386/498-1200

BATTERER'S INTERVENTION PROGRAMS

Praxis-Jon Huenink
260 S. Marion Avenue, Suite 125
Lake City, FL 32055
PHONE: 386/752-9937

POLICE DEPARTMENT

Dixie County Police Department
P.O. Box 470
Cross City, FL 32628
PHONE: 352/498-1222

SHERIFF'S OFFICE

Dewey H. Hatcher, Sr., Sheriff
Dixie County Sheriff's Office
P.O. Box 470
Cross City, FL 32628
PHONE: 352/498-1462

THIRD JUDICIAL CIRCUIT – HAMILTON COUNTY

DOMESTIC VIOLENCE SHELTERS

Another Way, Inc.
P.O. Box 1028
Lake City, FL 32056-1028
HOTLINE: 352/493-6743
PHONE: 386/719-2757
TiDhaine Jenkins, DV Clerk 386/792-1288

BATTERER'S INTERVENTION PROGRAMS

Praxis-Jon Huenink
260 S. Marion Avenue, Suite 125
Lake City, FL 32055
PHONE: 386/752-9937

POLICE DEPARTMENT

Frank Osborn, Chief of Police
Jasper Police Department
208 W. Hatley Street
Jasper, FL 32052
PHONE: 386/792-1130

SHERIFF'S OFFICE

J. Harrell Reid, Sheriff
Hamilton County Sheriff's Office
P.O. Drawer A
Jasper, FL 32052
PHONE: 386/792-1001

THIRD JUDICIAL CIRCUIT – LAFAYETTE COUNTY

DOMESTIC VIOLENCE SHELTERS

Another Way, Inc.
P.O. Box 1028
Lake City, FL 32056-1028
HOTLINE: 352/493-6743
PHONE: 386/719-2757
Misty Shows, DV Clerk 386/244-1600

BATTERER'S INTERVENTION PROGRAMS

Praxis-Jon Huenink
260 S. Marion Avenue, Suite 125
Lake City, FL 32055

PHONE: 386/752-9937

SHERIFF'S OFFICE

O. Carson McCall, Jr., Sheriff
Lafayette County Sheriff's Office
P.O. Box 227
Mayo, FL 32066
PHONE: 386/294-1222

THIRD JUDICIAL CIRCUIT – MADISON COUNTY

DOMESTIC VIOLENCE SHELTERS

Refuge House
P.O. Box 20910
Tallahassee, FL 32316
HOTLINE: 850/681-2111
PHONE: 850/922-6062
Ramona Dickenson, DV Clerk 850/973-1500

BATTERER'S INTERVENTION PROGRAMS

Praxis-Jon Huenink
260 S. Marion Avenue, Suite 125
Lake City, FL 32055
PHONE: 386/752-9937

POLICE DEPARTMENT

Rick Davis, Chief of Police
180 West Ruthledge Street
Madison, FL 32340
PHONE: 850/973-5077

SHERIFF'S OFFICE

Peter C. "Pete" Bucher, Sheriff
Madison County Sheriff's Office
101 S. Range Street
Madison, FL 32340
PHONE: 850/973-4151

THIRD JUDICIAL CIRCUIT – SUWANNEE COUNTY

DOMESTIC VIOLENCE SHELTERS

Vivid Visions
P.O. Box 882
Live Oak, FL 32064
HOTLINE: 386/364-2100
PHONE: 386/364-5957
Dorothy Daniels, DV Clerk 386/362-0500

Another Way, Inc.
P.O. Box 1028
Lake City, FL 32056-1028
HOTLINE: 352/493-6743
PHONE: 386/719-2757

BATTERER'S INTERVENTION PROGRAMS

Praxis-Jon Huenink
260 S. Marion Avenue, Suite 125
Lake City, FL 32055
PHONE: 386/752-9937

POLICE DEPARTMENT

Nolan McLeod, Chief of Police
Live Oak Police Department
833 Pinewood Way
Live Oak, FL 32064
PHONE: 386/362-7463
Stephanie Laidig, Victims Advocate

SHERIFF'S OFFICE

Tony C. Cameron, Sheriff
Suwannee County Sheriff's Office
200 S. Ohio, Suite 105
Live Oak, FL 32064
PHONE: 386/362-2222
Tracy Brantley, Victims Advocate 386/364-3789

THIRD JUDICIAL CIRCUIT – TAYLOR COUNTY

DOMESTIC VIOLENCE SHELTERS

Refuge House
P.O. Box 20910
Tallahassee, FL 32316
HOTLINE: 850/681-2111
PHONE: 850/922-6062
Salina Ford, DV Clerk 850/838-3506 ext. 43

BATTERER'S INTERVENTION PROGRAMS

Praxis-Jon Huenink
260 S. Marion Avenue, Suite 125
Lake City, FL 32055
PHONE: 386/752-9937

POLICE DEPARTMENT

Wayne Puttnam, Chief of Police
Perry Police Department
P.O. Drawer 1907
Perry, FL 32348
PHONE: 850/584-5121

SHERIFF'S OFFICE

Lawrence E. "Bummy" Williams, Sheriff
Taylor County Sheriff's Office
108 N. Jefferson Street
Perry, FL 32347
PHONE: 850/584-4225

FOURTH JUDICIAL CIRCUIT – CLAY COUNTY

DOMESTIC VIOLENCE SHELTERS

Quigley House, Inc.
P. O. Box 142
Orange Park, FL 32067-0142
HOTLINE: 904/284-0061
PHONE: 904/284-0340

BATTERER'S INTERVENTION PROGRAMS

Alternatives for Males
Wings for Women
* Information on location provided by Q H
Upon enrollment or Courts
PHONE: 904/284-0340

POLICE DEPARTMENT

James H. Boivin, Chief of Police
Orange Park Police Department
2025 Smith Street
Orange Park, FL 32073
PHONE: 904/264-5555

Gail Russell, Chief of Police
Green Cove Springs Police Department
205 Spring Street
Green Cove Springs, FL 32043
PHONE: 904/529-2220

SHERIFF'S OFFICE

P. Richard "Rick" Beseler, Jr., Sheriff
Clay County Sheriff's Office
901 North Orange Avenue
Green Cove Springs, Florida 32043
PHONE: 904/284-7575 or 904/264-6512

FOURTH JUDICIAL CIRCUIT – DUVAL COUNTY

DOMESTIC VIOLENCE SHELTERS

Hubbard House
P.O. Box 4909
Jacksonville, FL 32201
HOTLINE: 904/354-3114
PHONE: 904/354-0076 ext. 300
CONTACT: JoAnn Cetnar

BATTERER'S INTERVENTION PROGRAMS

First Step Hubbard House
P.O. Box 4909
Jacksonville, FL 32201
HOTLINE: 904/354-3114
PHONE: 904/354-0076, ext 283
CONTACT: Anna Mignot

Salvation Army
328 North Ocean Street
Jacksonville, FL 32202
PHONE: 904/301-4834
CONTACT: Loretta Bribeza

Alternative to Violence
Family Fleet & Support Center
P.O. Box 136
Jacksonville, FL 32212
PHONE: 904/542-2766 ext. 116
CONTACT: Carol Miller

Women's Intervention Program
PHONE: 904/354-0076, ext 283
CONTACT: Vanessa Francis

SHERIFF'S OFFICE

John Rutherford, Sheriff
Jacksonville Sheriff's Office
501 East Bay Street
Jacksonville, Florida 32202
Civil Processing Unit
PHONE: 904/630-2141

FOURTH JUDICIAL CIRCUIT – NASSAU COUNTY

DOMESTIC VIOLENCE SHELTERS

Micah's Place
P.O. Box 477
Yulee, FL 32041
HOTLINE: 877/228-7388
PHONE: 904/225-3110

Hubbard House
P.O. Box 4909
Jacksonville, FL 32201
HOTLINE: 904/354-3114
PHONE: 904/354-0076 ext. 300

BATTERER'S INTERVENTION PROGRAMS

Salvation Army
76347 Veteran's Way
Yulee, FL 32097
PHONE: 904/548-4904
CONTACT: Beth Strickland

POLICE DEPARTMENT

"Chip" Robert Hammond, Chief of Police
Fernandina Beach Police Department
1524 Lime Street
Fernandina Beach, FL 32034
PHONE: 904/277-7342

SHERIFF'S OFFICE

T.L. "Tommy" Seagraves, Jr., Sheriff

Nassau County Sheriff's Department
50 Bobby Moore Circle
Yulee, FL 32097-5400
PHONE: 904/548-4099
CONTACT: Karen Card

FIFTH JUDICIAL CIRCUIT – CITRUS COUNTY

DOMESTIC VIOLENCE SHELTERS

Citrus County Abuse Shelter Association
P.O. Box 205
Inverness, FL 34451
PHONE: 352/344-8111

BATTERER'S INTERVENTION PROGRAMS

Baycare Inverness
103 W. Dampier Street
Inverness, FL 34450
PHONE: 352/341-4545

POLICE DEPARTMENT

Steven Burch, Chief of Police
Crystal River Police Department
123 NW Highway 19
Crystal River, FL 34428
PHONE: 352/795-4241

SHERIFF'S OFFICE

Jeffery J. "Jeff" Dawsy, Sheriff
Citrus County Sheriff Office
1 Dr. Martin Luther King, Jr. Avenue
Inverness, FL 34450-4994
PHONE: 352/726-4488

FIFTH JUDICIAL CIRCUIT – HERNANDO COUNTY

DOMESTIC VIOLENCE SHELTERS

Dawn Center of Hernando County
P.O. Box 6179
Spring Hill, FL 34611
HOTLINE: 352/799-0657
PHONE: 352/592-1288

BATTERER'S INTERVENTION PROGRAMS

Growing Center Counseling
275 W. Jefferson Street
Brooksville, FL 34601
PHONE: 352/544-5833

Dr. Benjamin Keyes, Ph.D
947 Candlelight Blvd.
Brooksville, FL 34601
PHONE: 352/797-5559

POLICE DEPARTMENT

Ed Tincher, Chief of Police
City of Brooksville Police Department
85 Veterans Avenue

Brooksville, FL 34601
PHONE: 352/754-6800

SHERIFF'S OFFICE

Richard B. "Rich" Nugent, Sheriff
Hernando County Sheriff's Office
18900 Cortez Blvd.
Brooksville, FL 34601
PHONE: 352/754-6830

FIFTH JUDICIAL CIRCUIT – LAKE COUNTY

DOMESTIC VIOLENCE SHELTERS

Haven of Lake & Sumter Counties
P.O. Box 492335
Leesburg, FL 34749-2335
HOTLINE: 352/753-5800
PHONE: 352/787-5889

BATTERER'S INTERVENTION PROGRAMS

Court Education
220 East Main Street
Tavares, FL 32778
PHONE: 352/343-9399

Groveland Family Counseling
627 South Main Street
Groveland, FL 34736
PHONE: 352/429-5600

Life Streams (TASC)
404 Wobster Street
Leesburg, FL 34748
PHONE: 352/360-6680

Families Against Abuse
314 E. Commercial Street
Sanford, FL 32771
PHONE: 407/260-6343

Western Judicial Services
1113 Lake Harris Drive
Tavares, FL 32778
PHONE: 352/742-9317

Life Streams (TASC)
115 Citrus Avenue
Eustis, FL 32726
PHONE: 352/357-1550

Families Against Abuse
282 Short Avenue, Suite #106
Longwood, FL 32750
PHONE: 407/260-6343

POLICE DEPARTMENT

Fred A.M. Cobb, Chief of Police
Eustis Police Department
Department
51 East Norton Avenue
Eustis, FL 32726
PHONE: 352/483-5400

Stoney Lubins, Chief of Police
Tavares Police Department
201 E. Main Street
Tavares, FL 32778
PHONE: 352/742-6433

J.M. Isom, Sr., Chief of Police
Fruitland Park Police

506 West Berckman Street
Fruitland Park, FL 34731
PHONE: 352/360-6655

H.C. Idell, Jr., Chief of Police
Leesburg Police Department
115 E. Magnolia Street
Leesburg, FL 34748
PHONE: 352/728-9859

T. Randall Scoggins, Chief of Police
Mount Dora Police Department
1300 N. Donnelly Street
Mt. Dora, FL 32757
PHONE: 352/735-7131

SHERIFF'S OFFICE

Chris Daniels, Sheriff
Lake County Sheriff's Office
360 West Ruby Street
Tavares, FL 32778
PHONE: 352/343-9500

FIFTH JUDICIAL CIRCUIT – MARION COUNTY

DOMESTIC VIOLENCE SHELTERS

Ocala Rape Crisis Domestic Violence Center (Creative Services, Inc,)
P.O. Box 2193
Ocala, FL 34478
PHONE: 352/622-5919

BATTERER'S INTERVENTION PROGRAMS

Choices
108 North Magnolia Avenue, Suite 219
Ocala, FL 34475
PHONE: 352/622-0062

The Centers
5664 SW 60 Avenue, Building #2
Ocala, FL 34474
PHONE: 352/291-5440

Mid-Florida Counseling
401 NW Third Avenue
Ocala, FL 34475
PHONE: 352/620-0900

Western Judicial Services, Inc.
603 SW 10th Street
Ocala, FL 34474
PHONE: 352/622-9006

POLICE DEPARTMENT

Samuel Williams, Chief of Police
Ocala Police Department
402 S. Pine Avenue
Ocala, FL 34475
PHONE: 352/369-7000

Lee Strickland, Chief of Police
Belleview Police Department
5350 SE 110th Street
Belleview, FL 34420
PHONE: 352/245-7044

Ed Nathanson, Chief of Police
Lady Lake Police Department
423 Fennell Blvd.
Lady Lake, FL 32159
PHONE: 352/751-1570

Robert Jackson, Chief of Police
Dunnellon Police Department
12014 S. Williams Street
Dunnellon, FL 34432
PHONE: 352/465-8510

SHERIFF'S OFFICE

H. Edward "Ed" Dean, Jr., Sheriff
Marion County Sheriff's Office
692 NW 30th Avenue
Ocala, FL 34475
PHONE: 352/732-9111

FIFTH JUDICIAL CIRCUIT – SUMTER COUNTY

DOMESTIC VIOLENCE SHELTERS

Haven of Lake & Sumter Counties
P.O. Box 492335
Leesburg, FL 34749-2335
HOTLINE: 352/753-5800
PHONE: 352/787-5889

BATTERER'S INTERVENTION PROGRAMS

Life Stream Behavioral
515 W. Main Street
Leesburg, FL 34748
PHONE: 352/315-7500

Life Stream Behavioral
4416 S. US Highway 301
Bushnell, FL 33513
PHONE: 352/793-4126

POLICE DEPARTMENT

Joyce T. Wells, Chief of Police
Bushnell Police Department
501 N. Market Street
Bushnell, FL 33513
PHONE: 352/793-6810

SHERIFF'S OFFICE

William O. "Bill" Farmer, Jr., Sheriff
Sumter County Sheriff's Office
P.O. Box 188
Bushnell, FL 33513
PHONE: 352/793-0222

SIXTH JUDICIAL CIRCUIT – PASCO COUNTY

DOMESTIC VIOLENCE SHELTERS

Sunrise of Pasco County, Inc.
P.O. Box 928
Dade City, FL 33526
HOTLINE: 352/521-3120
PHONE: 352/521-3358

BATTERER'S INTERVENTION PROGRAMS

Alpha Counseling Services
10730 US Hwy 19 N., Suite 4
New Port Richey, FL 34668
PHONE: 727/862-0111

Mac Associates
1501 Alt. 19 South, Suite A
Tarpons Springs, FL 34689
PHONE: 727/937-7900

Western Judicial Services
6420 Ridge Road
New Port Richey, FL 34654
PHONE: 800/430-0503

Psychological Management Group
7621 Little Road, Suite 100
New Port Richey, FL
PHONE: 727/996-0646

A First Step/Stepping Stones to Independence

Lifesource Couseling, Inc.

5313 Shaw Street
104
New Port Richey, FL 34652
34652
PHONE: 727/849-3476

5006 Trouble Creek Rd., St.
New Port Richey, FL
PHONE: 727/845-3355

POLICE DEPARTMENT

Martin "Mo" Rickus, Chief of Police
New Port Richey Police Department
6739 Adams Street
New Port Richey, FL 34652
PHONE: 727/841-4550

SHERIFF'S OFFICE

Robert L. "Bob" White, Sheriff
Pasco County Sheriff's Office
8700 Citizen Drive
New Port Richey, FL 34654
PHONE: 727/847-5878

SIXTH JUDICIAL CIRCUIT – PINELLAS COUNTY

DOMESTIC VIOLENCE SHELTERS

C.A.S.A.
P.O. Box 414
St. Petersburg, FL 33731
HOTLINE: 727/895-4912 ext. 1
PHONE: 727/895-4912 ext. 111

The Haven of R.C.S.
P.O. 10594
Clearwater, FL 33757
HOTLINE: 727/442-4128
PHONE: 727/442-2719

BATTERER'S INTERVENTION PROGRAMS

Wellness Center
8800 49th Street North
Pinellas Park, FL 33782
PHONE: 727/544-3352

Glover & Associates
7017 Central Avenue
St. Petersburg, FL 33710
PHONE: 727/343-5158

A Better Solution
5347 Park Street
St. Petersburg, FL 33709
PHONE: 727/458-7775

Department of Veterans Affairs
P.O. Box 5005
Bay Pines, FL 33744
PHONE: 727/398-6661, ext.
5750

ADR Adult Services
3350 Ulmerton Road, Suite 24
Clearwater, FL 33762
PHONE: 727/573-1844

Salvation Army
300 North Ft. Harrison Avenue
Clearwater, FL 33755
PHONE: 727/442-8150

Salvation Army
4950 34th Street North
St. Petersburg, FL 33714
PHONE: 727/520-1206

David Swindall, LMFT
5580 Park Blvd., Suite 6
Pinellas Park, FL 33781
PHONE: 727/544-9305

Men's Work
7901 4th Street N., Suite 3232
St. Petersburg, FL 33702
PHONE: 727/515-8482

Department of VA Medical Center
Veterans' DVIP-SATP 116A2
P.O. Box 5005
Bay Pines, FL 33744
PHONE: 727/398-6661, ext. 5750

Clinicians Group, P.A.
d/b/a Batterers' Intervention Project
1661 East Bay Drive
Largo, FL 33771
PHONE: 727/582-8000

Nautilus Counseling Center
1950 First Avenue N., Suite 217
St. Petersburg, FL 33713-8998
PHONE: 727/488-6366

Prevention Projects, Inc.
13743 US 98 Bypass
Dade City, FL33525
PHONE: 352/523-0024

Benjamin Keyes, Ph.D.
New Port Square
4625 E. Bay Drive, Ste. 301
Clearwater, FL 33764
PHONE: 727/572-0059

Barbara Chism, LMHC
8383 Seminole Blvd., Suite B
Seminole, FL 33772
PHONE: 727/393-8702

Integrity Counseling and Coaching
1501 S. Belcher Road, Suite B-4
Largo, FL 33771
PHONE: 727/531-7988

POLICE DEPARTMENT

Charles "Chuck" Harmon, Chief of Police
St. Petersburg Police Department
1300 1st Avenue North
St. Petersburg, FL 33705
PHONE: 727/893-7780

SHERIFF'S OFFICE

James F. "Jim" Coats, Sheriff
Pinellas County Sheriff's Office
10750 Ulmerton Road
Largo, FL 33778
PHONE: 727/582-6200

SEVENTH JUDICIAL CIRCUIT – FLAGLER COUNTY

DOMESTIC VIOLENCE SHELTERS

Family Life Center
P.O. Box 2058
Bunnell, FL 32110
HOTLINE: 386/437-3505
PHONE: 386/437-7610

POLICE DEPARTMENT

John Michael Plummer, Chief of Police
Flagler Beach Police Department
204 S. Flagler Ave.
Flagler Beach, FL 32136
PHONE: 386/517-2020

William Davis, Chief of Police
Bunnell Police Department
Old Highway 11
Bunnell, FL 32110
PHONE: 386/437-7508

SHERIFF'S OFFICE

Donald W. Fleming, Sheriff
Flagler County Sheriff's Office
1001 Justice Lane
Bunnell, FL 32110
PHONE: 386/437-5453

SEVENTH JUDICIAL CIRCUIT – PUTNAM COUNTY

DOMESTIC VIOLENCE SHELTERS

Lee Conlee House
P.O. Box 2558
Palatka, FL 32177
HOTLINE: 386/325-3141
PHONE: 386/325-4447

BATTERER'S INTERVENTION PROGRAMS

Responsible Choices
P.O. Box 10482
Daytona Beach, FL 32120
PHONE: 888/250-2400

POLICE DEPARTMENT

Gary Getchell, Chief of Police
Palatka Police Department
110 N. 11th Street
Palatka, FL 32177
PHONE: 386/329-0115

SHERIFF'S OFFICE

Dean Kelly, Sheriff
Putnam County Sheriff's Office
130 Orie Griffin Blvd.
Palatka, FL 32177
PHONE: 386/329-0800

SEVENTH JUDICIAL CIRCUIT – ST. JOHNS COUNTY

DOMESTIC VIOLENCE SHELTERS

Safety Shelter of St. Johns County (Betty Griffin House)
P.O. Box 3319
St. Augustine, FL 32085
HOTLINE: 904/824-1555
PHONE: 904/808-8544

BATTERER'S INTERVENTION PROGRAMS

Change
1375 Arapano
St. Augustine, FL 32085
PHONE: 904/808-8544

First Step
P.O. Box 4909

Responsible Choices
P.O. Box 10482
Daytona Beach, FL 32120
PHONE: 1-888/520-2400

Jacksonville, FL 32201
PHONE: 904/354-0076

POLICE DEPARTMENT

Loran Lueders, Chief of Police
St. Augustine Police Department
P.O. Box 1950
St. Augustine, FL 32085
PHONE: 904/825-1074

SHERIFF'S OFFICE

David B. Shoar, Sheriff
St. John's County Sheriff's Office
4015 Lewis Speedway
St. Augustine, FL 32084
PHONE: 904/824-8304

SEVENTH JUDICIAL CIRCUIT – VOLUSIA COUNTY

DOMESTIC VIOLENCE SHELTERS

Domestic Abuse Council, Inc.
P.O. Box 142
Daytona Beach, FL 32115
HOTLINE: 386/255-2102 (Daytona)
HOTLINE: 386/738-4080 (Deland)
PHONE: 386/257-2297

BATTERER'S INTERVENTION PROGRAMS

Domestic Abuse Council, Inc.
Family Intervention Program
P.O. Box 142
Daytona Beach, FL 32115
PHONE: 386/257-2297

New Horizons Domestic Violence Program
4550 S. Clyde Morris Blvd., Suite C
Port Orange, FL 32119
PHONE: 386/766-1501

Newman Counseling Alternatives, P.A.
1240 Mason Avenue
Daytona Beach, FL 32117
PHONE: 386/253-4559

Deltona Counseling Associates
766-B Deltona Blvd.
Deltona, FL 32725
PHONE: 386/574-5148

Responsible Choices
P.O. Box 10482
Daytona Beach, FL 32120
PHONE: 386/248-2272

Positive Changes
2001 S. Ridgewood Avenue
South Daytona, FL 32118
PHONE: 386/767-0523

Preventive Abuse Counseling
P.O. Box 3034
Deland, FL 32721-3034
PHONE: 386/738-7594

POLICE DEPARTMENT

Dennis Jones, Chief of Police
Daytona Beach Police Department
990 Orange Ave.
Daytona Beach, FL 32114
PHONE: 386/671-5100

Ronald Pagano, Chief of Police
New Smyrna Beach Police Department
1400 North Dixie Freeway
New Smyrna Beach, FL 32168
PHONE: 386/424-2000

Edward Overman, Chief of Police
Deland Police Department
120 S. Florida Ave.
Deland, FL 32720
PHONE: 386/734-1711

Larry Mathieson, Chief of Police
Ormond Beach Police Department
P.O. Box 277
Ormond Beach, FL 32175
PHONE: 386/677-0731

Mike Ignasiak, Chief of Police
Edgewater Police Department
155 E. Park Ave
Edgewater, FL 32132
PHONE: 386/424-2425

Gerald Monahan, Chief of Police
Port Orange Police Department
1395 Dulawton Ave.
Port Orange, FL 32129
PHONE: 386/322-3002

Donald Shinnamon, Chief of Police
Holly Hill Police Department
1065 Ridgewood Ave.
Holly Hill, FL 32117
PHONE: 386/248-9494

SHERIFF'S OFFICE

Ben F. Johnson, Sheriff
Volusia County Sheriff's Office
P.O. Box 569
Deland, FL 32721
PHONE: 386/736-5961

EIGHTH JUDICIAL CIRCUIT – ALACHUA COUNTY

DOMESTIC VIOLENCE SHELTERS

Peaceful Paths
P.O. Box 5099
Gainesville FL 32627-5099
HOTLINE: (352)377-8255 or 1-800-393-SAFE
PHONE: 352/377-5690

BATTERER'S INTERVENTION PROGRAMS

Diversified Human Services, Inc.
1904 NW 12th Terrace
Gainesville, FL 32609

Creative Counseling
4001 Newberry Rd., D-4
Gainesville, FL 32607

PHONE: 352/335-1880 PHONE: 352/373-1218

Peaceful Paths
P.O. Box 5099
Gainesville, FL 32627-5099
PHONE: 352/377-5690

POLICE DEPARTMENT

Norman Botsford, Chief of Police
Gainesville Police Department
721 NW 6th Street
Gainesville, FL
PHONE: 352/334-2400

SHERIFF'S OFFICE

Stephen Oelrich, Sheriff
Alachua County Sheriff's Office
2621 SE Hawthorne Rd.
Gainesville, FL 32641
PHONE: 352/367-4000

EIGHTH JUDICIAL CIRCUIT – BAKER COUNTY

DOMESTIC VIOLENCE SHELTERS

Hubbard House
P.O. Box 4909
Jacksonville, FL 32201
HOTLINE: 904/354-3114
PHONE: 904/354-0076 ext. 300

BATTERER'S INTERVENTION PROGRAMS

First Step/Hubbard House, Inc.
The Family Service Center
418 8th Street South
Macclenny, FL 32063
PHONE: 904/354-0076

SHERIFF'S OFFICE

Joey Dobson, Sheriff
Baker County Sheriff's Office
56 N. 2nd Street
Macclenny, FL 32063
PHONE: 904/259-2231

EIGHTH JUDICIAL CIRCUIT – BRADFORD COUNTY

DOMESTIC VIOLENCE SHELTERS

Peaceful Paths
P.O. Box 5099
Gainesville FL 32627-5099
HOTLINE: (352)377-8255 or 1-800-393-SAFE
PHONE: 352/377-5690

BATTERER'S INTERVENTION PROGRAMS

Diversified Human Services, Inc.
1904 NW 12th Terrace
Gainesville, FL 32609
PHONE: 352/335-1880

Creative Counseling
4001 Newberry Rd., D-4
Gainesville, FL 32607
PHONE: 352/373-1218

Peaceful Paths
P.O. Box 5099
Gainesville, FL 32627-5099
PHONE: 352/377-5690

POLICE DEPARTMENT

Gordon Smith, Assistant Chief of Police
Starke Police Department
830 Edwards Rd.
Starke, FL 32091
PHONE: 904/964-5400

SHERIFF'S OFFICE

Bob Milner, Sheriff
Bradford County Sheriff's Department
945 N Temple Avenue
Starke, FL 32091
PHONE: 904/966-2276

EIGHTH JUDICIAL CIRCUIT – GILCREST COUNTY

DOMESTIC VIOLENCE SHELTERS

Peaceful Paths
P.O. Box 5099
Gainesville, FL 32627-5099
PHONE: 352/377-5690

SHERIFF'S OFFICE

David P. Turner, Sheriff
Gilchrist County Sheriff's Office
9239 South US 129
Trenton, FL 32693
PHONE: 352/463-3410

EIGHTH JUDICIAL CIRCUIT – LEVY COUNTY

DOMESTIC VIOLENCE SHELTERS

Peaceful Paths
P.O. Box 5099
Gainesville, FL 32627-5099
PHONE: 352/377-5690

SHERIFF'S OFFICE

Johnny Smith, Sheriff
Levy County Sheriff's Office

9150 NE 80th Avenue
Bronson, FL 32621
PHONE: 352/486-5111

EIGHTH JUDICIAL CIRCUIT – UNION COUNTY

DOMESTIC VIOLENCE SHELTERS

Peaceful Paths
P.O. Box 5099
Gainesville, FL 32627-5099
PHONE: 352/377-5690

BATTERER'S INTERVENTION PROGRAMS

Diversified Human Services, Inc.
1904 NW 12th Terrace
Gainesville, FL 32609
PHONE: 352/335-1880

Creative Counseling
4001 Newberry Rd., D-4
Gainesville, FL 32607
PHONE: 352/373-1218

Peaceful Paths
P.O. Box 5099
Gainesville, FL 32627-5099
PHONE: 352/377-5690

SHERIFF'S OFFICE

Jerry Whitehead, Sheriff
Union County Sheriff's Office
Union County Courthouse, Room 102
Lake Butler, FL 32054
PHONE: 386/496-2501

NINTH JUDICIAL CIRCUIT – ORANGE COUNTY

DOMESTIC VIOLENCE SHELTERS

Harbor House
P.O. Box 680748
Orlando, FL 32868
HOTLINE: 407/886-2856
PHONE: 407/886-2244

BATTERER'S INTERVENTION PROGRAMS

No Abuse Inc.
1612 E. Colonial Drive, Suite B
Orlando, FL 32803
PHONE: 407/228-9503

POLICE DEPARTMENT

Michael J. McCoy, Chief of Police
Orlando Police Department
P.O. Box 913
100 S. Hughey Avenue

Orlando, FL 32802-0913
PHONE: 407/246-2470

SHERIFF'S OFFICE

Kevin E. Beary, Sheriff
Orange County Sheriff's Office
2500 W. Colonial Drive
Orlando, FL 32804
PHONE: 407/737-2400

NINTH JUDICIAL CIRCUIT – OSCEOLA COUNTY

DOMESTIC VIOLENCE SHELTERS

Help Now of Osceola County
P.O. Box 420370
Kissimmee, FL 34742
HOTLINE: 407/847-8562
PHONE: 407/847-3260

BATTERER'S INTERVENTION PROGRAMS

Beltran Behavioral Health
201 Ruby Avenue
Kissimmee, FL 32741
PHONE: 407/518-9161

All Dimensions
600 N. Thacker Avenue
Kissimmee, FL 34741
PHONE: 407/944-1155

Family Court Education & Mediation Services
3 S. John Young Parkway
Kissimmee, FL 34741
PHONE: 407/931-1778

POLICE DEPARTMENT

Mark Weimer, Chief of Police
Kissimmee Police Department
8 N. Stewart Avenue
Kissimmee, FL 34741
PHONE: 407/847-0176

Patrick M. Kelly, Chief of Police
St. Cloud Police Department
4700 Neptune Road
St. Cloud, FL 34769
PHONE: 407/957-7361

SHERIFF'S OFFICE

Robert E. "Bob" Hansell, Sheriff
Osceola County Sheriff's Office
2601 E. Irlo Bronson Memorial Hwy.
Kissimmee, FL 34744-4912
PHONE: 407/348-1100

TENTH JUDICIAL CIRCUIT – HARDEE COUNTY

DOMESTIC VIOLENCE SHELTERS

Peace Rive Center – Domestic Violence Shelter
P.O. Box 1559
Bartow, FL 33831-1559
HOTLINE: 863/413-2700

PHONE: 863/413-2708

BATTERER'S INTERVENTION PROGRAMS

*** There are no certified batterer's intervention programs in Hardee County.**

BayCare Health Management
305 E. Peachtree Street
Lakeland, FL 33801
PHONE: 863/688-6262

Social Solutions, Inc.
1570 Lakeview Drive, Suite 110
Sebring, FL 33870
PHONE: 863/402-1088

Adjustment & Awareness Counseling
Services, Inc.
245 3rd Street SW
Winter Haven, FL 33880
PHONE: 863/291-3155

POLICE DEPARTMENT

John Scheel, Chief of Police
Bowling Green Police Department
104 E. Main Street
Bowling Green, FL 33834
PHONE: 863/375-2255

William Beattie, Chief of Police
Wauchula Police Department
303 W. Main Street
Wauchula, FL 33873
PHONE: 863/773-3265

SHERIFF'S OFFICE

J. Loran Cogburn, Sheriff
Hardee County Sheriff's Office
900 E. Summit Street
Wauchula, FL 33873-9606
PHONE: 863/773-0304

TENTH JUDICIAL CIRCUIT – HIGHLANDS COUNTY

DOMESTIC VIOLENCE SHELTERS

Peace Rive Center – Domestic Violence Shelter
P.O. Box 1559
Bartow, FL 33831-1559
HOTLINE: 863/413-2700
PHONE: 863/413-2708

BATTERER'S INTERVENTION PROGRAMS

Social Solutions
1570 Lakeview Drive, #110
Sebring, FL 33870
PHONE: 863/402-1088

POLICE DEPARTMENT

Thomas Dettman, Chief of Police
Sebring Police Department
307 North Ridgewood Drive
Sebring, FL 33870
PHONE: 863/453-6622

Phil Williams, Chief of Police
Lake Placid Police Department
8 North Oak Street
Lake Placid, FL 33852
PHONE: 863/669-3759

Frank S. Mercurio, Chief of Police
Avon Park Police Department
304 West Pleasant

Avon Park, FL 33825
PHONE: 863/453-6622

SHERIFF'S OFFICE

Susan Benton, Sheriff
Highlands County Sheriff's Office
434 Fernleaf Drive
Sebring, FL 33870
PHONE: 863/402-7210

TENTH JUDICIAL CIRCUIT – POLK COUNTY

DOMESTIC VIOLENCE SHELTERS

Peace River Center – Domestic Violence Shelter
P.O. Box 1559
Bartow, FL 33831-1559
HOTLINE: 863/413-2700
PHONE: 863/413-2708

Women's Care Center
495 N. Hendry Avenue
Bartow, FL 33830
PHONE: 863/534-3844

BATTERER'S INTERVENTION PROGRAMS

BayCare Health Management
305 E. Peachtree Street
Lakeland, FL 33801
PHONE: 863/688-6262

Adjustment & Awareness Counseling Services, Inc.
245 3rd Street S.W.
Winter Haven, FL 33880
PHONE: 863/291-3155

POLICE DEPARTMENT

Dean Longo, Chief of Police
Auburndale Police Department
2 Bobby Green Plaza
Auburndale, FL 33823
PHONE: 863/965-5555

Morris West, Chief of Police
Haines City Police Department
35400 US Highway 27
Haines City, FL 33844
PHONE: 863/421-3636

Erik Sanduik, Chief of Police
Bartow Police Department
450 N. Broadway Ave.
Bartow, FL 33830
PHONE: 863-534-5034

Art Bodenheimer, Chief of Police
Lake Alfred Police Department
190 N. Seminole Avenue
Lake Alfred, FL 33850
PHONE: 863/291-5200

Charles Clements, Chief of Police
Davenport Police Department
17 W. Market Street
Davenport, FL 33837
PHONE: 863/419-3306

Edward Freeman, Chief of Police
Lake Hamilton Police Department
100 Smith Avenue
Lake Hamilton, FL 33851
PHONE: 863/439-4711

Bill Guess, Chief of Police
Dundee Police Department
106 Center Street
Dundee, FL 33838
PHONE: 863/419-3110

Mark LeVine, Chief of Police
Lake Wales Police Department
133 E. Tillman Avenue
Lake Wales, FL. 33853
PHONE: 863/678-4223

J.R. Sullivan, Chief of Police
Eagle Lake Police Department

Roger Boatner, Chief of Police
Lakeland Police Department

75 N. 7th Street
Eagle Lake, FL 33839
PHONE: 863/293-5677

219 Massachusetts Avenue
Lakeland, FL 33801
PHONE: 863/499-6966

I.W. "Midge" Heathcote, Chief of Police
Fort Meade Police Department
15 N.W. First Street
Fort Meade, FL 33841
PHONE: 863/285-1100

Alan Graham, Chief of Police
Mulberry Police Department
401 Church Avenue
Mulberry, FL 33860
PHONE: 863/425-1125

Deanna R. Higgins, Chief of Police
Frostproof Police Department
2 N. Lake Reedy Blvd.
Frostproof, FL 33843
PHONE: 863/635-7849

Paul Goward, Chief of Police
Winter Haven Police Department
125 N. Lake Silver Drive
Winter Haven, FL 33881
PHONE: 863/291-5858

SHERIFF'S OFFICE

Grady C. Judd, Jr., Sheriff
Polk County Sheriff's Office
455 N. Broadway Avenue
Bartow, FL 33830
PHONE: 863/534-0444

ELEVENTH JUDICIAL CIRCUIT – MIAMI-DADE COUNTY

DOMESTIC VIOLENCE SHELTERS

The Lodge
P.O. Box 470728
Miami, FL 33147
PHONE: 305/693-1170
HOTLINE: 305/693-0232

Miami-Dade Advocates for Victims
7831 NE Miami Court
HOTLINE: 305/758-2546
PHONE: 305/758-2804 ext. 224

BATTERER'S INTERVENTION PROGRAMS

Family & Victim Services
2125 Biscayne Blvd., Suite 400
Miami, FL 33137
PHONE: 305/571-7750

The Advocate Program
5040 N.W. 7th Ave.
Miami, FL 33126
PHONE: 305/704-0147
Dana Corman, DV Department Director

POLICE DEPARTMENT

Miami-Dade Police Department
7875 N.W. 12th Street
Miami, FL 33125
PHONE: 305/418-7206

SHERIFF'S OFFICE

Robert Parker, Director
Miami-Dade County Sheriff's Office
9105 N.W. 25th Street
Miami, FL 33172-1500

PHONE: 305/471-2100

TWELFTH JUDICIAL CIRCUIT – DeSOTO COUNTY

DOMESTIC VIOLENCE SHELTERS

SPARCC
2139 Main Street
Sarasota, FL 34234
HOTLINE: 941/365-1976
PHONE: 941/365-0208

POLICE DEPARTMENT

Charles J. Lee, Chief of Police
Arcadia Police Department
17 N. Polk Avenue
Arcadia, FL 34266
PHONE: 863/494-2222

SHERIFF'S OFFICE

Vernon L. Keen, Sheriff
DeSoto County Sheriff's Office
208 E. Cypress Street
Arcadia, FL 34266
PHONE: 863/993-4700

TWELFTH JUDICIAL CIRCUIT – MANATEE COUNTY

DOMESTIC VIOLENCE SHELTERS

HOPE Family Services, Inc.
P.O. Box 1624
Bradenton, FL 34206
HOTLINE: 941/755-6805
PHONE: 941/747-8499

POLICE DEPARTMENT

Michael Radzilowski, Chief of Police
Bradenton Police Department
100 10th Street W.
Bradenton, FL 34205
PHONE: 941/708-6273

SHERIFF'S OFFICE

Charles B. "Charlie" Wells , Sheriff
Manatee County Sheriff's Office
515 11th Street West
Bradenton, FL 34205
PHONE: 941/747-3011

TWELFTH JUDICIAL CIRCUIT – SARASOTA COUNTY

DOMESTIC VIOLENCE SHELTERS

Safe Place and Rape Crisis Center (SPARCC)
2139 Main Street
Sarasota, FL 34237
HOTLINE: 941/365-1976
PHONE: 941/365-0208

POLICE DEPARTMENT

Peter J. Abbott, Chief of Police
Sarasota Police Department
2050 Ringling Blvd.
Sarasota, FL 34237
PHONE: 941/366-8000

SHERIFF'S OFFICE

William F. "Bill" Balkwill, Sheriff
Sarasota County Sheriff's Office
2071 Ringling Blvd.
Sarasota, FL 34237
PHONE: 941/861-5800

THIRTEENTH JUDICIAL CIRCUIT – HILLSBOROUGH COUNTY

DOMESTIC VIOLENCE SHELTERS

Spring of Tampa Bay
P.O. Box 4772
Tampa, FL 33677
HOTLINE: 813/247-7233
PHONE: 813/247-5433

BATTERER'S INTERVENTION PROGRAMS

Brandon Psychiatric Association
407N. Parsons Ave Suite 102-B
Brandon, FL 33510
PHONE: 813/684-7627

Intervention Enterprise, Inc.
Group
1420 W. Busch Blvd.
218
Tampa, FL 33612
PHONE: 813/933-8865

Intervention Enterprise, Inc.
South Tampa Classes
501 S. Dale Mabry, Room #5
Tampa, FL 33612
PHONE: 813/933-8865

Joni Stewart L.C. S.W.
7412 B. Commerce Street
Riverview, FL 33569
PHONE: 813/277-0080

Psychological Management

8900 N. Armenia Avenue, Suite

Tampa, FL 33604
PHONE: 813/963-1016

Western Judicial Services
8001 N. Dale Mabry, Suite 801 C
Tampa, FL 33614
PHONE: 813/930-9595
**Dade City and Port Richey class*

locations available

Joni Stewart L.C. S.W.
310 E. Oak Avenue
Hospital
Tampa, FL 33602
PHONE: 813/277-0080

James A. Haley Veteran's

11707 Club Drive
Tampa, FL 33612
PHONE: 813/631-7126

Joni Stewart L.C. S.W.
104 W. Reynolds, Suite 8
Plant City, FL 33566
PHONE: 813-/277-0080

MacDill Air Force Base
SGOHF – Family Advocacy
8415 Bayshore Blvd.
MacDill AFB, FL 33612-1607
PHONE: 813/827-9172 or 827-9173

POLICE DEPARTMENT

Stephen Hogue, Chief of Police
Tampa Police Department
One Police Center
411 N. Franklin Street
Tampa, Florida 33602
PHONE: 813/276-3200

SHERIFF'S OFFICE

David Gee, Sheriff
Hillsborough County Sheriffs Office
Sheriff's Operations Center
2008 E. 8th Ave.
Tampa, FL 33605
PHONE: 813/247-8200

FOURTEENTH JUDICIAL CIRCUIT – BAY COUNTY

DOMESTIC VIOLENCE SHELTERS

Salvation Army Domestic Violence & Rape Crisis Center
651 W. 14th Street, Unit C
Panama City, FL 32401
HOTLINE: 1-800/252-2597
PHONE: 850/769-7989
Lisbeth Berry, Victims Advocate: 850/769-7989

BATTERER'S INTERVENTION PROGRAMS

The Unlimited Path
1159 Jenks Avenue
Panama City, FL 32401
PHONE: 850/872-0222

All-N-One Therapy, Inc.
949 Jenks Avenue
Panama City, FL 32401
PHONE: 850/784-7888

Panhandle BIP
P.O. Box 15148
Panama City, FL 32408
PHONE: 850/872-2120

POLICE DEPARTMENT

John Van Etten, Chief of Police
Panama City Police Department

1209 E. 15th Street
Panama City, FL 32301
PHONE: 850/873-3100

SHERIFF'S OFFICE

W. Frank McKeithen, Sheriff
Bay County Sheriff's Office
3421 N. Highway 77
Panama City, FL 32405
PHONE: 850/747-4700

FOURTEENTH JUDICIAL CIRCUIT – JACKSON COUNTY

DOMESTIC VIOLENCE SHELTERS

Salvation Army Domestic Violence & Rape Crisis Center
651 W. 14th Street, Unit C
Panama City, FL 32401
HOTLINE: 1-800/252-2597
PHONE: 850/769-7989

BATTERER'S INTERVENTION PROGRAMS

*** There are no programs in Jackson County.**

POLICE DEPARTMENT

Lou Roberts, Chief of Police
Marianna Police Department
P.O. Box 936
Marianna, FL 32447
PHONE: 850/526-3125

SHERIFF'S OFFICE

John P. McDaniel, Sheriff
Jackson County Sheriff's Office
P.O. Box 919
Marianna, FL 32447
PHONE: 850/482-9624
Mellie McDaniel, Victims Advocate

FOURTEENTH JUDICIAL CIRCUIT – HOLMES COUNTY

DOMESTIC VIOLENCE SHELTERS

Salvation Army Domestic Violence & Rape Crisis Center
651 W. 14th Street, Unit C
Panama City, FL 32401
HOTLINE: 1-800/252-2597
PHONE: 850/769-7989

BATTERER'S INTERVENTION PROGRAMS

***There are no programs in Holmes County**

POLICE DEPARTMENT

Ronnie Bennett, Chief of Police
Bonifay Police Department
809 S. Waukesha Street
Bonifay, FL 32425
PHONE: 850/547-3661

SHERIFF'S OFFICE

Coy Dennis Lee, Sheriff
Holmes County Sheriff's Office
211 N. Oklahoma Street
Bonifay, FL 32425
PHONE: 850/547-3687

FOURTEENTH JUDICIAL CIRCUIT – WASHINGTON COUNTY

DOMESTIC VIOLENCE SHELTERS

Salvation Army Domestic Violence & Rape Crisis Center
651 W. 14th Street, Unit C
Panama City, FL 32401
HOTLINE: 1-800/252-2597
PHONE: 850/769-7989

BATTERER'S INTERVENTION PROGRAMS

*There are no programs in Washington County.

POLICE DEPARTMENT

Kevin Crews, Chief of Police
Chipley Police Department
P.O. Box 1007
Chipley, FL 32428
PHONE: 850/638-6310

SHERIFF'S OFFICE

Robert C. "Buddy" Haddock, Sheriff
Washington County Sheriff's Office
1293 Jackson Avenue, Building 400
Chipley, FL 32428
PHONE: 850/638-6111

FOURTEENTH JUDICIAL CIRCUIT – CALHOUN COUNTY

DOMESTIC VIOLENCE SHELTERS

Salvation Army Domestic Violence & Rape Crisis Center
651 W. 14th Street, Unit C
Panama City, FL 32401
HOTLINE: 1-800/252-2597
PHONE: 850/769-7989

BATTERER'S INTERVENTION PROGRAMS

All-N-One Therapy, Inc.
17773 N. Pear Street
Blountstown, FL 32424
PHONE: 850/784-7888

POLICE DEPARTMENT

Glen Kimbrel, Chief of Police
Blountstown Police Department
20580 Central Avenue West
Blountstown, FL 32424
PHONE: 850/674-5987

SHERIFF'S OFFICE

David L. Tatum, Sheriff
Calhoun County Sheriff's Office
20776 Central Avenue East, Suite 2
Blountstown, FL 32724
PHONE: 850/674-5049

FOURTEENTH JUDICIAL CIRCUIT – GULF COUNTY

DOMESTIC VIOLENCE SHELTERS

Salvation Army Domestic Violence & Rape Crisis Center
651 W. 14th Street, Unit C
Panama City, FL 32401
HOTLINE: 1-800/252-2597
PHONE: 850/769-7989

BATTERER'S INTERVENTION PROGRAMS

All-N-One Therapy, Inc.
120 Library Drive
Port St. Joe, FL 32456
PHONE: 850/784-7888

POLICE DEPARTMENT

James Hersey, Chief of Police
Port St. Joe Police Department
410 Williams Avenue
Port St. Joe, FL 32456
PHONE: 850/229-8265

SHERIFF'S OFFICE

Dalton L. Upchurch, Sheriff
Gulf County Sheriff's Office
P.O. Box 970
Port St. Joe, FL 32456
PHONE: 850/227-1115

FIFTEENTH JUDICIAL CIRCUIT – PALM BEACH COUNTY

DOMESTIC VIOLENCE SHELTERS

Aid to Victims of Domestic Abuse, Inc.
(AVDA)
102 P.O. Box 667
Delray Beach, FL 33447
HOTLINE: 561/265-2900 or 800/355-8547
PHONE: 561/265-3797

YWCA Harmony House
2200 N. Florida Mango Road, St.
West Palm Beach, FL 33409
HOTLINE: 561/640-9844
HOTLINE: 1-800/973-9922
PHONE: 561/640-0050

BATTERER'S INTERVENTION PROGRAMS

D.A.R.T.
185 East Indiantown Road, Suite 108
Jupiter, FL 33477
PHONE: 561/743-2797

Alternative/Relapse Treatment Services
3405 Forest Hill Blvd.
West Palm Beach, FL 33406
PHONE: 561/434-4410
561/451-4037

FA/CTS
3175 S. Congress Avenue, Suite 106
Lake Worth, FL 33461
PHONE: 561/968-2370

Let's Grow Together
33 SE 1st Avenue
Delray Beach, FL 33444
PHONE: 561/279-2080

Abusive Partners of Palm Beach County
399 Camino Gardens Blvd., Suite 307
Boca Raton, FL 33433
PHONE: 561/750-9710

New Options of Royal Palm Beach
1402 Royal Palm Beach Blvd. #400B
Royal Palm Beach, FL 33411
PHONE: 561/792-9242

Parent-Child Center, Inc.
4802 East Avenue
West Palm Beach, FL 33407
PHONE: 561/844-3531 ext. 68

Atlantic Coast Counseling
4047 Okeechobee Blvd., #225
West Palm Beach, FL 33409
PHONE: 561/242-9287

Family Health Counseling Center, Inc.
2677 Forest Hill Blvd., Suite 102
West Palm Beach, FL 33406
PHONE: 561/433-0123

Counseling Services of Lake Worth, Inc.
416 N. Dixie Hwy.
Lake Worth, FL 33460
PHONE: 561/447-9121

Florida Family Care
350 Camino Gardens Blvd., Suite 301
Boca Raton, FL 33432
PHONE: 561/447-9121

POLICE DEPARTMENT

Robert Mangold, Chief of Police
Atlantis Police Department
260 Orange Tree Drive
Atlantis, FL 33462
PHONE: 561/965-1700

Gregory Smith, Chief of Police
Greenacres Police Department
2995 Jog Road
Greenacres, FL 33467
PHONE: 561/642-2153

Michael Miller, Chief of Police

Anthony M. Cervasio, Chief of Police

Belle Glade Police Department
Department 40 W. Canal St. S.
Belle Glade, FL 33430
PHONE: 561/996-7251

Andrew J. Scott, III, Chief of Police

Boca Raton Police Department
100 NW 2nd Ave.
Boca Raton, FL 33432
PHONE: 561/338-1230

Marshall B. Gage, Chief of Police

Boynton Beach Police Department
100 E. Boynton Beach Blvd.
Boynton Beach, FL 33435
PHONE: 561/375-6160

J.L. Schroeder, Chief of Police

Delray Beach Police Department
300 West Atlantic Ave.
Delray Beach, FL 33444
PHONE: 561/274-1467

Rafael Duran, Jr., Chief of Police
Pahokee Police Department
P.O. Box 206
Pahokee, FL 33476
PHONE: 561/924-5651

Douglas Reese, Chief of Police
Lake Park Police Department
700 6th Street
Lake Park, FL 33403
PHONE: 561/881-3326

Rick Lincoln, Chief of Police
Lantana Police Department
500 Greynolds Circle
Lantana, FL 33462
PHONE: 561/540-5700

Rodney P. Thomas, Chief of Police
Mangonia Police Department
1775 East Tiffany Drive
Mangonia Park, FL 33407
PHONE: 561/848-2513

Edward G. Hillery, Jr., Chief of Police
Ocean Ridge Police Department

Highland Beach Police
3612 South Ocean Blvd.
Highland Beach, FL 33487
PHONE: 561/278-4548

H.C. “Skip” Clark, II, Chief of

Juno Beach Police Department
340 Ocean Drive
Juno Beach, FL 33458
PHONE: 561/626-1717

Richard J. Westgate, Chief of

Jupiter Police Department
210 Military Trail
Jupiter, FL 33469
PHONE: 561/746-4545

Joseph A. Benevento, Chief of

Jupiter Inlet Colony Police Dept.
#1 Colony Road
Jupiter, FL 33469
PHONE: 561/746-3787

Wes Smith, Chief of Police
Lake Clarke Shores Police Dept.
1701 Barbados Road
Lake Clarke Shores, FL 33406
PHONE: 561/964-1515

William E. Smith, Chief of Police
Lake Worth Police Department
120 North G Street
Lake Worth, FL 33460
PHONE: 561/586-1680

Clay Walker, Chief of Police
Manalapan Police Department
600 South Ocean Blvd.
Lantana, FL 33462
PHONE: 561/585-4090

Jimmy Knight, Chief of Police
North Palm Beach Police Department
501 US Hwy 1
North Palm Beach, FL 33408
PHONE: 561/882-1142

Roger Wille, Chief of Police
Palm Beach Shores Police Dept.

6450 North Ocean Blvd
Ocean Ridge, FL 33435
PHONE: 561/732-8331

247 Edwards Lane
Palm Beach Shores, FL 33404
PHONE: 561/-844-3456

Michael S. Reiter, Chief of Police
Palm Beach Police Department
345 South County Road
Palm Beach, FL 33480
PHONE: 561/838-5480

Stephen J. Stepp, Chief of Police
Palm Beach Gardens Police Dept.
247 Edwards Lane
Palm Beach Gardens, FL 33404
PHONE: 561/844-3460

Jay C. Pickens, Chief of Police
Palm Springs Police Department
400 Davis Road
Palm Springs, FL 33461
PHONE: 561/968-8243

Clarence D. Williams, Chief of Police
Riviera Beach Police Department
600 W Blue Heron Blvd.
Riviera Beach, FL 33404
PHONE: 561/845-4166

Ed Stepnowski, Chief of Police
Royal Palm Beach Police Department
11498 Okeechobee Blvd.
Royal Palm Beach, FL 33411
PHONE: 561/790-5180

Roger M. Crane, Chief of Police
South Palm Beach Police Dept.
3577 South Ocean Blvd.
South Palm Beach, FL 33480
PHONE: 561/586-2122

Stephen J. Allison, Chief of Police
Tequesta Police Department
357 Tequesta Drive
Tequesta, FL 33469
PHONE: 561/575-6218

Delsa R. Bush, Chief of Police
West Palm Beach Police Department
600 Banyan Blvd.
West Palm Beach, FL 33401
PHONE: 561/355-7184

SHERIFF'S OFFICE

Ric L. Bradshaw, Sheriff
Palm Beach County Sheriff's Office
3228 Gun Club Road
West Palm Beach, FL 33406
PHONE: 561/688-3977
Sgt. Scott Shoemaker 561/688-4162
Lt. Douglas Reece 561/688-3971

SIXTEENTH JUDICIAL CIRCUIT – MONROE COUNTY

DOMESTIC VIOLENCE SHELTERS

Domestic Abuse Shelter
P.O. Box 2696
Marathon Shores, FL 33052
HOTLINE: 305/451-5666
HOTLINE: 305/872-9411
PHONE: 305/743-5452

BATTERER'S INTERVENTION PROGRAMS

Domestic Safety Program

P.O. Box 522472
Marathon Shores, FL 33052
PHONE: 305/743-9588

POLICE DEPARTMENT

Thomas Fortune, Chief of Police
Key West Police Department
P.O. Box 1409
Key West, FL 33041
PHONE: 305/809-1111

SHERIFF'S OFFICE

Richard D. "Rick" Roth, Sheriff
Monroe County Sheriff's Office
5525 College Road
Key West, FL 33040
PHONE: 305/292-7000

DOMESTIC VIOLENCE SHELTERS

Women in Distress of Broward County
P.O. Box 676
Fort Lauderdale, FL 33302
PHONE: 954/760-9800
HOTLINE: 954/761-1133

BATTERER'S INTERVENTION PROGRAMS

Family Service Agency
3347 North University Drive
Davie, FL 33024
PHONE: 954/587-7880

Family Therapy Center
9950 Stirling Road, #108
Pembroke Pines, FL 33024
PHONE: 954/436-1222

Fifth Street Counseling
130 East McNab
Pompano, FL
PHONE: 954/797-5222

Professional Counseling & Consulting Group
1326 SE 3rd Avenue
Fort Lauderdale, FL 33301
PHONE: 954/761-9333

Professional Counseling & Consulting Group
2632 W. Hollywood Blvd, #304
Hollywood, FL 33020
PHONE: 954/761-9333

Family Service Agency
1500 University Drive, #233
Coral Springs, FL 33074
PHONE: 954/755-4700

Fifth Street Counseling
4121 NW 5th Street, #206
Plantation, FL 33317
PHONE: 954/797-5222

The Glass House
5255 NW 33rd Avenue
Fort Lauderdale, FL 33309
PHONE: 954/938-0055

Lifeline of Miami
6500 Griffin Road, #104
Davie, FL 33314
PHONE: 954/791-5484

Lifeline of Miami
2640 Hollywood Blvd., #200
Hollywood, FL 33020
PHONE: 954/791-5484

Samaritan Counseling Center
1417 SE 4th Street
Fort Lauderdale, FL 33301
PHONE: 954/463-2273

Women in Distress
1153 S. Andrews Avenue
Fort Lauderdale, FL 33316
PHONE: 954/760-9800

POLICE DEPARTMENT

George Raggio, Jr., Chief of Police
Coconut Creek Police Department
4800 WE Copans Road
Coconut Creek, FL 33063
PHONE: 954/973-6700

Roy Arigo, Chief of Police
Coral Springs Police Department
2801 Coral Springs Drive
Coral Springs, FL 33065
PHONE: 954/346-1200

John A. George, Chief of Police
Davie Police Department
1230 Nob Hill Road
Davie, FL 33324
PHONE: 954/693-8200

Bruce G. Roberts, Chief of Police
Fort Lauderdale Police Department
1300 W Broward Blvd.
Fort Lauderdale, FL 33312
PHONE: 954/828-5700

Thomas Magill, Chief of Police
Hallandale Police Department
400 S. Federal Highway
Hallandale, FL 33009
PHONE: 954/457-1400

Jim Scarberry, Chief of Police
Hollywood Police Department
3250 Hollywood Blvd.
Hollywood, FL 33021
PHONE: 954/967-4357

Kenneth Pachnek, Chief of Police
Lauderhill Police Department
5899 West Oakland Park Blvd.
Lauderhill, FL 33313
PHONE: 954/497-4700

Ross Licata, Chief of Police
Lighthouse Point Police Department
3760 NE 22 Avenue
Lighthouse Point, FL 33064
PHONE: 954/942-8080

Jerry A. Blough, Chief of Police
Margate Police Department
5790 Margate Blvd.
Margate, FL 33063
PHONE: 954/972-7111

Melvin Standley, Chief of Police
Miramar Police Department
8915 Miramar Parkway
Miramar, FL 33025
PHONE: 954/602-4000

Dan Giustino, Chief of Police
Pembroke Pines Police Department
9500 Pines Blvd.
Pembroke Pines, FL 33024
PHONE: 954/431-2200

Larry Massey, Jr., Chief of Police
Plantation Police Department
451 NW 70 Terrace
Plantation, FL 33311
PHONE: 954/797-2100

David Boyett, Chief of Police
Sunrise Police Department
10440 W. Oakland Park Blvd.
Sunrise, FL 33351
PHONE: 954/746-3600

Rick Wierzbicki, Chief of Police
Wilton Manors Police Department
524 NW 21 Court
Wilton Manors, FL 33305
PHONE: 954/390-2150

SHERIFF'S OFFICE

Kenneth C. "Ken" Jenne II, Sheriff
Broward County Sheriff's Office
Administrative Offices
Public Safety Building
2601 W. Broward Blvd.
Fort Lauderdale, FL 33312
PHONE: 954/831-8900
24 HOUR NON-EMERGENCY: 954/765-4321

EIGHTEENTH JUDICIAL CIRCUIT – BREVARD COUNTY

DOMESTIC VIOLENCE SHELTERS

Salvation Army Brevard County Domestic Violence Program
P.O. Box 1540
Cocoa, FL 32923
HOTLINE: 321/631-2764
PHONE: 321/631-2766

Serene Harbor, Inc.
P.O. Box 100039
Palm Bay, FL 32910
HOTLINE: 321/726-8282
PHONE: 321/953-5389

POLICE DEPARTMENT

James E. Scragg, Chief of Police
Cocoa Beach Police Department
20 South Orlando Avenue
Cocoa Beach, FL 32931
PHONE: 321/868-3251

Phillip A. Ludos, Chief of Police
Cocoa Police Department
1226 West King Street
Cocoa, FL 32922
PHONE: 321/639-7620

Tony M. Morris, Chief of Police
Indialantic Police Department
220 Fifth Avenue
Indialantic, FL 32903
PHONE: 321/723-7788

Robert Sullivan, Chief of Police
Indian Harbour Beach Police Department
40 Cheyenne Court
Indian Harbour, FL 32937
PHONE: 321/773-3030

David Syrkus, Chief of Police
Melbourne Beach Police Department
507 Ocean Avenue
Melbourne Beach, FL 32951
PHONE: 321/723-4343

Donald L. Carey, Chief of Police
Melbourne Police Department
701 Babcock Street
Melbourne, FL 32901
PHONE: 321/259-1211

Jack King, Chief of Police
Melbourne Village Police Department
535 Hammock Road
Melbourne Village, FL 32904
PHONE: 321/725-7224

William "Bill" Berger, Chief of Police
Palm Bay Police Department
130 Malabar Road SE
Palm Bay, FL 32905
PHONE: 321/952-3459

John C. Shockey, Chief of Police

Lionel Cote, Chief of Police

Rockledge Police Department
P.O. Box 488
Rockledge, FL 32955
PHONE: 321/690-3988

Satellite Beach Police Department
510 Cinnamon Drive
Satellite Beach, FL 32937
PHONE: 321/773-4400

Anthony "Tony" Bollinger, Chief of Police
Titusville Police Department
1100 John Glen Blvd.
Titusville, FL 32780
PHONE: 321/264-7800

Brian K. Lock, Chief of Police
West Melbourne Police Department
2290 Minton Road West
Melbourne, FL 32904
PHONE: 321/723-9673

SHERIFF'S OFFICE

J.R. "Jack" Parker, Sheriff
Brevard County Sheriff's Office
700 S. Park Avenue
Titusville, FL 32780
PHONE: 321/264-5100

EIGHTEENTH JUDICIAL CIRCUIT – SEMINOLE COUNTY

DOMESTIC VIOLENCE SHELTERS

Safe House of Seminole
P.O. Box 2921
Sanford, FL 32772
HOTLINE: 407/330-3933
PHONE: 407/302-5220

BATTERER'S INTERVENTION PROGRAMS

Seminole County State Attorney's Office
101 Bush Boulevard
Sanford, FL 32773
PHONE: 407/665-6000

POLICE DEPARTMENT

Brian F. Tooley, Chief of Police
Sanford Police Department
815 South French Avenue
Sanford, FL 32772
PHONE: 407/323-3030

SHERIFF'S OFFICE

Donald F. "Don" Eslinger, Sheriff
Seminole County Sheriff's Office
100 Bush Boulevard
Sanford, FL 32773
PHONE: 407/665-6650

NINETEENTH JUDICIAL CIRCUIT – INDIAN RIVER COUNTY

DOMESTIC VIOLENCE SHELTERS

SafeSpace Domestic Violence Services, Inc.
P.O. Box 4075

Ft. Pierce, FL 34948
HOTLINE: 772/569-7233
PHONE: 772/223-2399

BATTERER'S INTERVENTION PROGRAMS

Stop Battering Now
Mental Health Association of
Indian River County
777 37th Street, Suite 104
Vero Beach, FL 32960
PHONE: 772/569-9788

Breakthrough Recovery Services
1623 US Highway 1, Suite 12-A1
Sebastian, FL 32958
PHONE: 772/581-0610

POLICE DEPARTMENTS

James Gabbard, Chief of Police
Vero Beach Police Department
1055 20th Street
Vero Beach, FL 32960
PHONE: 772/879-4600

Orchid Island Police Department
7406 U.S. Highway 1
Vero Beach, FL 32967

James Davis, Chief of Police
Sebastian Police Department
1201 Main Street
Sebastian, FL 32958
PHONE: 772/589-5233

Larry Tippins, Chief of Police
Fellsmere Police Department
21 S. Cypress Street
Fellsmere, FL 32948
PHONE: 772/571-1360

SHERIFF'S OFFICE

Roy H. Raymond, Sheriff
Indian River County Sheriff's Office
4055 41st Avenue
Vero Beach, FL 32960
PHONE: 772/569-6700

NINETEENTH JUDICIAL CIRCUIT – MARTIN COUNTY

DOMESTIC VIOLENCE SHELTERS

Safespace
P.O. Box 4075
Ft. Pierce, FL 34948
HOTLINE: 772/288-7023
PHONE: 772/223-2399

BATTERER'S INTERVENTION PROGRAMS

Alcohol and Drug Abuse Program
218 Southeast Osceola Street
Stuart, FL 34994
PHONE: 772/286-8933

Kathairein Center for Human
Development, Inc.
950 Southeast Central Parkway
Stuart, FL 32958
PHONE: 772/581-0610

D.A.R.T.
1320 Southeast Federal Highway
Stuart, FL 34994
PHONE: 772/220-8781

POLICE DEPARTMENTS

Edward M. Morley, Chief of Police
Stuart Police Department
830 Martin Luther King, Jr. Blvd.
Stuart, FL 32994
PHONE: 772/287-1122

Larry E. McCarty, Chief of Police
Sewall's Point Police Department
1 S. Sewall's Point Road
Stuart, FL 34996
PHONE: 772/781-3378

SHERIFF'S OFFICE

Robert L. "Bob" Crowder, Sheriff
Martin County Sheriff's Office
800 SE Monterey Road
Stuart, FL 32994
PHONE: 772/220-7000

NINETEENTH JUDICIAL CIRCUIT – ST. LUCIE COUNTY

DOMESTIC VIOLENCE SHELTERS

Safespace
P.O. Box 4075
Ft. Pierce, FL 34948
HOTLINE: 772/464-4555
PHONE: 772/223-2399

BATTERER'S INTERVENTION PROGRAMS

Stop Battering Now
Mental Health Association of
Indian River County
Miracle Prayer Temple Church
3215 Avenue Q
Ft. Pierce, FL 34950
PHONE: 772/467-2672

Breakthrough Recovery Services, Inc.
2142 North US Highway 1
North Bridge Plaza
Ft. Pierce, FL 34950
PHONE: 772/489-0005

Recovery Associates, Inc.
8241 South US Highway 1
Port St. Lucie, FL 34952
PHONE: 772/878-9368

Kathairien Center for Human Development, Inc.
601 Southeast Port St. Lucie Blvd.
Port St. Lucie, FL 34984
PHONE: 888/331-0744

POLICE DEPARTMENTS

Eugene G. Savage, Chief of Police
Ft. Pierce Police Department
920 S. US Highway 1
Ft. Pierce, FL 34950
PHONE: 772/461-3820

John Skinner, Chief of Police
Port St. Lucie Police Department
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
PHONE: 772/871-5000

SHERIFF'S OFFICE

Ken J. Mascara, Sheriff
St. Lucie County Sheriff's Office
4700 W. Midway Road

Ft. Pierce, FL 34981
PHONE: 772/462-7300

NINETEENTH JUDICIAL CIRCUIT – OKEECHOBEE COUNTY

DOMESTIC VIOLENCE SHELTERS

Martha's House
P.O. Box 727
Okeechobee, FL 34973
OFFICE: 863/763-2893
SHELTER: 863/763-0202

BATTERER'S INTERVENTION PROGRAMS

Breakthrough Recovery Services
202 Northwest 5th Avenue
Okeechobee, FL 34972
PHONE: 863/467-2300

Alpha Alternatives to Violence
103 Northwest 5th Street
Okeechobee, FL 34972
PHONE: 863/763-9800

POLICE DEPARTMENTS

Denny Davis, Chief of Police
Okeechobee Police Department
55 SE 3rd Avenue
Okeechobee, FL 34974
PHONE: 863/763-5521

SHERIFF'S OFFICE

Paul C. May, Sheriff
Okeechobee County Sheriff's Office
504 NW 4th Street
Okeechobee, FL 34973
PHONE: 863/763-3117

TWENTIETH JUDICIAL CIRCUIT – GLADES COUNTY

DOMESTIC VIOLENCE SHELTERS

Abuse Counseling & Treatment, Inc.
P.O. Box 60401
Ft. Myers, FL 33906
HOTLINE: 239/939-3112
PHONE: 239/939-2553

BATTERER'S INTERVENTION PROGRAMS

Step of Faith Counseling Services, Inc.
223 East Oak Street, Suite 2
Arcadia, FL 34266
PHONE: 863/990-3259

SHERIFF'S OFFICE

Stuart K. Whiddon, Jr., Sheriff
Glades County Sheriff's Office
P.O. Box 39
Moore Haven, FL 33471-0039
PHONE: 863/946-0100

TWENTIETH JUDICIAL CIRCUIT – CHARLOTTE COUNTY

DOMESTIC VIOLENCE SHELTERS

C.A.R.E. of Charlotte County, Inc.
P.O. Box 510234
Punta Gorda, FL 33951-0234
HOTLINE: 941/627-6000
PHONE: 941/639-5499

BATTERER'S INTERVENTION PROGRAMS

Alcoholism Treatment Services
Aztec Realty Plaza, Suite 5A
4456 Tamiami Trail
Charlotte Harbor, FL 33980
PHONE: 239/235-4550

The Halcyon Group
17506 Brighton Avenue, Suite C
Port Charlotte, FL 33950
PHONE: 239/235-4414

POLICE DEPARTMENT

Charles Rinehart, Chief of Police
Punta Gorda Police Department
1410 S. Tamiami Trail
Punta Gorda, FL 33950
PHONE: 941/639-4111

SHERIFF'S OFFICE

John G. Davenport, Sheriff
Charlotte County Sheriff's Office
7474 Utilities Road
Punta Gorda, FL 33982
PHONE: 941/639-2101

TWENTIETH JUDICIAL CIRCUIT – COLLIER COUNTY

DOMESTIC VIOLENCE SHELTERS

Shelter for Abused Women & Children
P.O. Box 10102
Naples, FL 34101
HOTLINE: 239/775-1101
PHONE: 239/775-3862

BATTERER'S INTERVENTION PROGRAMS

S.A.F.E.
The David Lawrence Center
2806 S. Horseshoe Drive
Naples, FL 34104
PHONE: 239/643-6101

Atwell Center
5647 Naples Blvd.
Naples, FL 34109
PHONE: 239/514-4550

Collier County Counseling/Peach Program
3375 Tamiami Trail East
Naples, FL 34112
PHONE: 239/417-0181

POLICE DEPARTMENT

Steven L. Moore, Chief of Police

Roger Reinke, Chief of Police

Naples Police Department
355 Riverside Circle
Naples, FL 34102
PHONE: 239/213-4844

Marco Island Police Department
1280 San Marco Road
Marco Island, FL 34145
PHONE: 239/394-6956

SHERIFF'S OFFICE

Don Hunter, Sheriff
Collier County Sheriff's Office
3301 Tamiami Trail East, Building J
Naples, FL 34112
PHONE: 239/774-434

TWENTIETH JUDICIAL CIRCUIT – HENDRY COUNTY

DOMESTIC VIOLENCE SHELTERS

Abuse Counseling & Treatment, Inc.
P.O. Box 60401
Ft. Myers, FL 33906
HOTLINE: 239/939-3112
PHONE: 239/939-2553

BATTERER'S INTERVENTION PROGRAMS

Step of Faith Counseling Services, Inc.
223 East Oak Street, Suite 2
Arcadia, FL 34266
PHONE: 863/990-3259

SHERIFF'S OFFICE

Ronald E. "Ronnie" Lee, Sr., Sheriff
Hendry County Sheriff's Office
101 South Bridge Street
LaBelle, FL 33935
PHONE: 863/674-4060

TWENTIETH JUDICIAL CIRCUIT – LEE COUNTY

DOMESTIC VIOLENCE SHELTERS

Abuse Counseling & Treatment, Inc.
P.O. Box 60401
Ft. Myers, FL 33906
HOTLINE: 239/939-3112
PHONE: 239/939-2553

BATTERER'S INTERVENTION PROGRAMS

AIM
3615 Central Avenue, Suite 1
Ft. Myers, FL 33901
PHONE: 239/939-2553

BAN
P.O. Box 60401
Ft. Myers, FL 33906
PHONE: 239/939-2553

Lee County Counseling
9371 Cypress Lake Drive, Suite 17
Ft. Myers, FL 33919
PHONE: 239-437-0009

POLICE DEPARTMENT

Hilton C. Daniels, Chief of Police
Fort Myers Police Department
2210 Peck Street
Ft. Myers, FL 33901
PHONE: 239/334-4155

Michael L. Hammerschmidt,
Chief of Police
Coral Gables Police Department
815 Nicholas Parkway
Cape Coral, FL 33915
PHONE: 239/574-0676

Bill Tomlinson, Chief of Police
Sanibel Police Department
800 Dunlop Road
Ft. Myers, FL 33957
PHONE: 239/472-3111

SHERIFF'S OFFICE

Michael J. "Mike" Scott, Sheriff
Lee County Sheriff's Office
14750 Six Mile Cypress Parkway
Ft. Myers, FL 33912
PHONE: 239-477-1000

DOMESTIC VIOLENCE COORDINATORS

1st CIRCUIT

Janet Gilbert
Family Court Manager
190 Governmental Center
Pensacola, FL 32502
PHONE: 850/595-0379
E-MAIL:
Janet_gilbert@co.escambia.fl.us

Linda Reaves (Escambia)
190 Governmental Center
Pensacola, FL 32501
PHONE: 850/595-4492
E-MAIL:
linda_Reaves@co.escambia.fl.us

Fern Pearson
Santa Rosa County Courthouse
6865 S.W. Carolina Street
Milton, FL 32570
PHONE: 850/981-5586
E-MAIL:
pearsonf@flcjn.net

2nd CIRCUIT

Kim Stephens
Leon County Courthouse
301 S. Monroe St., Room 313
Tallahassee, FL 32301
PHONE: 850/577-4423
E-MAIL:
StephensK@mail.co.leon.fl.us

Laura Gilley
Leon County Courthouse
301 S. Monroe St., Room
Tallahassee, FL 32301
PHONE: 850/413-7222
E-MAIL:
gilleyL@mail.co.leon.fl.us

3rd CIRCUIT

Natalie Land
P.O. Box 1569
Lake City, FL 32056
PHONE: 386/754-7020
E-MAIL:
land.natalie@jud3.flcourts.org

Nancy Holliday-Fields
(Lake City-Columbia)
P.O. Box 1569
Lake City, FL 32056
PHONE: 386/719-2021
E-MAIL:
fields.nancy@jud3.flcourts.org

4th CIRCUIT

Mia Heiney
Family Court Manager
Duval County Courthouse
330 East Bay Street, Room 413
Jacksonville, FL 32202
PHONE: 904/630-7682
E-MAIL:
mheiney@coj.net

Agnese Capps
Center for Prevention of Domestic Violence
City Hall Annex, 7th Floor
220 E. Bay St.
Jacksonville, FL 32202
PHONE: 904/630-7089
E-MAIL:
acapps@coj.net

5th CIRCUIT

Susan Berg
Family Court Manager
888 Duncan Dr.
P.O. Box 7800
Tavares, FL 32778
PHONE: 352/343-2509
OR 352/253-0900 ext. 107
E-MAIL:
sberg@lakecountyclerk.org

Alida Langley
Citrus County Courthouse
110 N. Apopka Avenue
Inverness, FL 34450
PHONE: 352/341-6720
E-MAIL:
avlangley@clerk.citrus.fu.us

6th CIRCUIT

Errica Mack (St. Petersburg)
501 1st Avenue North, Room 725
St. Petersburg, FL 33701
PHONE: 727/582-7567
E-MAIL:
emack@jud6.org

Joanna Staffeld (Clearwater)
Family Court Manager
315 Court Street, Room 401
Clearwater, FL 33756
PHONE: 727/464-4317
E-MAIL:
jstaffel@jud6.org

Lillian Simon (Pasco County)
Court Operations Manager
W. Pasco Judicial Center
7530 Little Road, Room 219
New Port Richey, FL 34654
E-MAIL:
lsimon@jud6.org

Debra Leiman (UFC)
Criminal Justice Center
14250 49th St. North
Clearwater, FL 33762
PHONE: 727/453-7168
E-MAIL:
dleiman@jud6.org

7th CIRCUIT

Marie Joy (Daytona Beach – Volusia)
Volusia County Courthouse Annex
125 E. Orange Avenue, Suite 201
Daytona Beach, FL 32114
PHONE: 386/248-8182
E-MAIL:
mjoy@circuit7.org

8th CIRCUIT

Arlene Huszar
201 E. University Avenue, Room 400
Gainesville FL 32601
PHONE: 352/374-3689
E-MAIL:
ach@circuit8.org

9th CIRCUIT

Molly Oksner
Ninth Judicial Circuit
Senior Deputy Court Administrator
Family Court Intake
425 North Orange Avenue, Suite 510
Orlando, FL 32801
PHONE: 407/836-6047
E-MAIL:
ctfcmo1@ocnjcc.org

Carmen Torres
Deputy Court Administrator
Osceola County Courthouse
2 Courthouse Square, Suite 6300
Kissimmee, FL 34741
PHONE: 407/343-2412
E-MAIL:
ctadct1@ocnjcc.org

10th CIRCUIT

Linda Clinton (Bartow-Polk)
P.O. Box 9000, J142
Bartow, FL 33831-9000
PHONE: 863/534-4167
E-MAIL:
lclinton@jud10.flcourts.org

Cherie Simmers (Bartow-Polk)
P.O. Box 9000, J153
Bartow, FL 33831-9000
PHONE: 863/534-4173
E-MAIL:
ccsimmers@jud10.flcourts.org

11th CIRCUIT

Lauren Lazarus
Lawson E. Thomas Courthouse Center
175 NW 1st Avenue, 15th Floor
Miami, FL 33128
PHONE: 305/349-5555
E-MAIL:
llazarus@jud11.flcourts.org

12th CIRCUIT

Alana Monge
Twelfth Judicial Circuit
Family Court Manager
1115 Manatee Ave., West
Bradenton, FL 32405
PHONE: 941/742-5958
E-MAIL:
amonge@scgov.net

Pam McLeod (Sarasota)
Criminal Justice Center
2071 Ringling Boulevard
Sarasota, FL 34237
PHONE: 941/861-4819
E-MAIL:
pmcleod@scgov.net

Arlean Adekoya (Manatee County)
P.O. Box 1000
Bradenton, FL 34205
PHONE: 941/748-4501 ext. 4514
E-MAIL:
arlean.adekoya@co.manatee.fl.us

Kathy Rusch (DeSoto County)
115 E. Oak Street, Suite 201
Arcadia, FL 34265
PHONE: 863/993-4639
E-MAIL:
krusch@scgov.net

13th CIRCUIT

Lynn Meehan (Tampa-Hillsborough)
800 E. Twiggs Street, Suite 208
Tampa,FL 33602
PHONE: 813/272-7006
E-MAIL:
meehanlf@fljud13.org

14th CIRCUIT

Syntha Alvarez (Bay)
P.O. Box 1089
Panama City, FL 32402
PHONE: 850/747-5623
E-MAIL:
alvarezs@jud14.flcourts.org

Cary Godwin
PO Box 826
Marianna, FL 32447
PHONE: 850/718-0480
E-MAIL:
godwinc@jud14.flcourts.org

15th CIRCUIT

Nicole Saunders (West Palm Beach)
205 N. Dixie Highway
West Palm Beach, FL 33401
PHONE: 561/355-1764
E-MAIL:
nsaunder@co.palm-beach.fl.us

16th Circuit

Elizabeth Logan
(Marathon and Upper Keys)
130 Porto Salvo
Islamorada, FL 33036
PHONE: 305/853-7344
E-MAIL:
logane@keysso.net

17th CIRCUIT

Lynn Allen
Broward County Courthouse
Room 270
201 S.E. 6th St.
Ft. Lauderdale, FL 33301
PHONE: 954/831-7756
E-MAIL:
lallen@17th.flcourts.org

18th CIRCUIT

Susan Phillips (Brevard)
Moore Justice Center
2825 Judge Fran Jamieson Way
Viera, FL 32940
PHONE: 321/633-2171
E-MAIL:
susan.phillips@flcourts18.org

Kristine Black
Moore Justice Center
2825 Judge Fran Jamieson Way
Viera, FL 32940
PHONE: 321/637-5305
E-MAIL:
Kristine.black@flcourts18.org

19th CIRCUIT

Laurie Ehler
Family Court Manager
218 S. Second Street
Fort Pierce, FL 34950
PHONE: 772/462-1889
E-MAIL:
EhlerL@stlucieco.gov

Gretchen Divincenzo (St. Lucie)
St. Lucie County Courthouse
229 Courthouse Addition
218 S. 2nd Street
Ft. Pierce, FL 34950
PHONE: 772/462-1415
E-MAIL:
divincen@stlucieco.gov

Allison Duffy (Martin County)
Martin County Courthouse
100 E. Ocean Blvd.
Stuart, FL 34994
PHONE: 772/223-4831
E-MAIL:
DuffyA@stlucieco.gov

Cathy Sellers (Indian River County)
2000 16th Ave.
Vero Beach, FL 32960
PHONE: 772/770-5232
E-MAIL:
sellersc@stlucieco.gov

20th CIRCUIT

Nancy Aloia (Ft. Myers-Lee)
Lee County Justice Center
Domestic Violence Division
1700 Monroe Street
Ft. Myers, FL 33919
PHONE: 239/335-2884
239/477-2050 (direct line)
E-MAIL:
naloia@ca.cjis20.org

THE DOMESTIC VIOLENCE INJUNCTION CASE PROCESS AND THE ISSUES ASSOCIATED WITH EACH STAGE

(Note: Stages refer to court process; issues are those of petitioner/victim)

STAGE 1: **PETITION FILED FOR PROTECTION FROM DOMESTIC VIOLENCE**

ISSUES:

- Access to court/courthouse
- Employment, children, transportation, office hours
- Completion of forms – usually pro se
  - * Lengthy, confusing forms
  - * Language/literacy
  - * Denial/minimization of abuse as survival strategy
  - * Emotional upset/agitation

STAGE 2: **COURT ISSUES EX PARTE ORDER GRANTING OR DENYING TEMPORARY INJUNCTION; RETURN HEARING SET**

ISSUES:

- Increased danger
- If temporary injunction issued (or if judge wants more info), respondent is served with injunction and notice of hearing – often, a very angry reaction
- Most dangerous time for petitioners/victims – separating or attempting to separate from partner
- Especially dangerous if court has scheduled a hearing without issuing a temporary injunction

STAGE 3: **COURT HOLDS RETURN HEARING TO DETERMINE WHETHER FINAL INJUNCTION WILL BE GRANTED**

ISSUES:

- Access to court/courthouse
- Employment, children, transportation
- Safety
- Threats, violence to coerce petitioner to drop case
- Courthouse/courtroom safety issues
- Respondent's access to children through shared custody, unsupervised visitation
- Firearms issues
- Family support
- Custody and visitation provisions
- Child support/alimony
- Spousal Support
- Counseling, other services for victim and children (not part of injunction order)

STAGE 4: **ENFORCEMENT OF COMPLIANCE WITH TERMS OF INJUNCTION ORDER**

ISSUES:

- Safety
- No contact
- No violence
- Firearms surrender
- Treatment/family support
- BIP/other treatment for respondent
- Custody and visitation provisions
- Child support/alimony
- Fear – who's responsible for tracking and enforcing compliance? (Often, it turns out to be the petitioner)