EFFECTS OF COVID-19 CRISIS ON DOMESTIC VIOLENCE SURVIVORS’ ACCESS TO LEGAL SERVICES
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The ABA Commission Domestic & Sexual Violence hosts several listserves for legal practitioners who work with survivors, and participates in multiple public policy and technical assistance peer groups and discussions on a regular basis. Below is a brief summary of what we have learned from victims’ attorneys across the country during the ongoing COVID-19 health crisis.

Disrupted access to vital court, legal, and law enforcement protections:
This crisis is creating additional stress on already fragile parenting arrangements with abusive partners, leaving children unprotected and putting survivors at risk.

- Many courts are still hearing emergency protection orders, but custody hearings, motions to modify and enforcement actions are being cancelled and postponed as “non-emergency” matters, despite the fact that virus-related concerns are urgent and consequential, and require judicial review.

- Even in cases where courts are accepting petitions, we are hearing of jurisdictions that continue to prohibit e-filing for orders of protection, or to restrict access to off-hours filing centers for DV matters, due to technical administrative requirements.

- Supervised visitation centers are closing, and as daycares, schools, and other public areas are restricted, survivors and children have no safe public place for visitation exchanges with their abusers.

- As law enforcement is relaxed in some areas to avoid contact for non-violent misdemeanors, custody orders are not being enforced. When an abusive parent already has the kids and won’t return them, in the absence of law enforcement and courts, there is literally nothing a victim parent can do. Further, in some jurisdictions, restraining order violations are generally considered non-violent offenses, meaning that orders of protection themselves could go unenforced, setting a terrible precedent for abusers and victims alike.

- Alternatively, when a victim parent needs to cancel visitation to avoid COVID-19 exposure (because the abusive parent won’t take precautions, or because the kids were scheduled to get on a plane or a bus for school break with the abusive parent, or because the parent or child is under quarantine)—there is no mechanism available for modification, so the victim parent must choose between the health and safety of their children, and contempt of a court order. There has been reporting that some courts do not seem to be looking fondly upon COVID-related defenses for ‘bad acts’.

- Finally, we are hearing from lawyers in California that they are being forced to withdraw from cases that are affected by ‘shelter-in-place’ orders—either because the lawyer is in an area subject to one, or the client or the OP is—but not the court, so the case is set for hearing even though not all parties can attend.
Policy Solutions:

Of course, implementing solutions is made much more challenging because this is all happening in state courts, which operate independently (in some states county by county), so there’s no single authority to govern the policies and procedures of all courts in a prompt and efficient way. In order to maintain survivors’ access to vital legal protections, we recommend:

- Increasing funding and relaxing restrictions on VAWA STOP grants for courts to issue protective orders and address child custody remotely, for civil attorneys to represent survivors in these matters, and for law enforcement to continue to prioritize enforcement of these orders;

- Congress should declare that COVID-19, social distancing, and shelter-in-place orders are all matters of legitimate public concern of which courts should take judicial notice when issuing decisions;

- Congress should urge state supreme courts and district chiefs to order:
  - Courts to remain open for COVID-related custody/parenting time hearings with video conference or phone options, in addition to protection order hearings;
  - Statutes of limitation, protection order expiration dates, and all existing filing and hearing deadlines should be tolled for 60-90 days;

- Local law enforcement must continue to respond to protection order, custody, and visitation order violations, even if they are non-violent;

- ‘Shelter-in-place’ orders should have an exception for travel to hearings, and continuances should be routinely granted whenever social distancing or shelter-in-place practices limit full participation in a scheduled hearing.

- Court administrators must be open to relaxing traditional requirements (e.g. requiring a raised seal for notarized petitions, rather than allowing for attestation on the record; requiring violence to have occurred it the last 48 hours to access emergency filing protocols) in this time of universally restricted access and mobility.

- Safe, routinely monitored municipal or other public spaces should be designated as temporary visitation exchange areas, and widely publicized—especially for cases where supervised visitation has been court-ordered. We are hearing of supervised visits being cancelled (because the supervisor is not available, or because the center is closed) and the abusive parent insisting on visits anyway, without any oversight and at risk to the victim-parent as well as the children.