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 discussion groups for legal practitioners who work with survivors, and participates in multiple public policy and technical assistance peer group 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. 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.

- 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.

  - Across the country, “non-violent” offenders and misdemeanants are being released or diverted from jails and prisons as a matter of public health policy; however, in many jurisdictions, there is no plan in place to notify victims of their abuser’s release, and no opportunity for connection to services to assist with safety planning or relocation.

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• Alternatively, when a victim parent needs to cancel visitation to avoid COVID-19 exposure (because the abusive parent is not taking 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’.

  o We have also heard reports of courts ordering an indefinite change of primary residential custody on the motion of the abusive parent in cases where the victim parent works in a profession deemed ‘essential’.

• Finally, we are hearing from lawyers across the country that shifting to technology for continued access to courts and legal services is not as simple as it may seem:

  o Telephone calls are a viable option for some legal functions, but, especially when credibility is at issue, the ability for all parties to see the faces of witnesses is critical;

  o Alternatively, it is nearly impossible to sequester witnesses from others’ testimony in a remote hearing;

  o Not all lawyers and courts have access to video conferencing platforms, and even when they do, affordable access often does not include the level of encryption security necessary to preserve confidentiality and privilege;

  o Clients who are poor, unhoused, or fleeing abuse may not even have access to a smart phone, let alone reliable wifi or capacity for private video chats;

  o In rural and frontier areas, internet service can be spotty at best;

  o Courts are struggling with balancing open access laws against the need for privacy and safety in domestic violence and sexual assault cases; one jurisdiction reported that all hearings were being live-streamed on YouTube in order to meet open-access obligations. When anyone, anywhere in the world could easily view the details of the testimony in real time, survivors are deterred from proceeding with trial.
**Policy Solutions:**

Of course, state courts operate independently (in some states, county by county), so there is 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 and other grants for courts to issue protective orders and address child custody remotely, for civil attorneys to represent survivors in these matters, for law enforcement to continue to prioritize enforcement of these orders, and for access to technology that includes appropriate encryption and other privacy safeguards;

- 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 in the last 48 hours to access emergency filing protocols) in this time of universally restricted access and mobility;

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

- State supreme courts and/or district chiefs should 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 past the lifting of any shelter-in-place orders;
  - Continuances to be routinely granted whenever social distancing or shelter-in-place practices (including access to technology) limit full participation in a scheduled hearing;
  - Victim safety to take precedence over open access requirements for public hearings;

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

- Safe, routinely monitored municipal or other public spaces should be designated as temporary visitation exchange areas, and widely publicized—especially for cases where supervised exchange has been court-ordered;

- Courts, jails, and prisons must coordinate and communicate with prosecutors and community victim service providers to ensure that victims are given timely notice and opportunity to safety plan prior to the COVID-related release of their abuser.

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