

THE IMPACT OF COVID-19 ON DOMESTIC VIOLENCE HEARINGS IN WASHINGTON, D.C.: WEIGHING THE PROS AND CONS OF VIRTUAL HEARINGS FOR DOMESTIC VIOLENCE SURVIVORS

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I. Introduction: Rising Rates of Domestic Violence During the COVID-19 Pandemic

The home, while a sanctuary and safe place for many people, can be the most dangerous place for a woman.¹ In the United States, one in three women have experienced domestic violence.² In Washington, D.C., one in four women are victims of domestic violence.³ When lockdowns and stay-at-home orders were imposed due to the outbreak of the COVID-19 pandemic in 2020, rates of domestic violence incidents skyrocketed, increasing by 8.1% nationwide.⁴ Women of color, who already experience the highest rates of intimate partner violence (IPV) in the US,⁵ have been subject to even more frequent and severe abuse during the pandemic.⁶

There are two main factors that could explain the recent surge in intimate partner violence.⁷ First, the added stresses caused by the pandemic—from higher rates of male unemployment, more responsibilities in the form of childcare and homeschooling, and the increased consumption of alcohol and other substance—may all contribute to an abuser being more likely to lash out at their partner.⁸ Second, stay-at-home orders left women trapped in their homes, isolating them from the people and organizations in the outside world who could recognize signs of abuse and help them.⁹ Rates of domestic violence have not just increased in the US, but also around the world.¹⁰ As Jacky Mulveen, the head of the Women’s Empowerment and Recovery Educators in

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¹ See Tanya Selvaratnam, *Where Can Domestic Violence Victims Turn During COVID-19?*, N.Y. TIMES (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/opinion/covid-domestic-violence.html>.

² *Statistics*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE (NCADV), <https://ncadv.org/STATISTICS>.

³ *Domestic Violence Facts*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE (NCADV), https://dccadv.org/wp-content/uploads/2018/09/DCCADV_DomesticViolenceFacts_Sheet.pdf.

⁴ Alex R. Piquero et al., *Domestic Violence During COVID-19*, COUNCIL ON CRIM. JUST. (CCJ) (Feb. 2021), <https://build.neoninspire.com/counciloncj/wp-content/uploads/sites/96/2021/07/Domestic-Violence-During-COVID-19-February-2021.pdf>.

⁵ *Domestic Violence in Communities of Color*, THE WOMEN OF COLOR NETWORK, INC., <https://wocninc.org/wp-content/uploads/2018/11/DVFAQ-1.pdf>.

⁶ See Jeffrey Kluger, *Domestic Violence is a Pandemic Within the COVID-19 Pandemic*, TIME (Feb. 3, 2021), <https://time.com/5928539/domestic-violence-covid-19/>.

⁷ See Piquero et al., *supra* note 4; *What is Intimate Violence?*, WESLEYAN UNIV., <https://www.wesleyan.edu/shape/support-healing/interpersonal.html> (defining intimate partner violence as: “a pattern of threatened or actual violence used to gain power and control over a partner/member of an intimate relationship.”).

⁸ *Id.*

⁹ *Id.*; Megan L. Evans et al., *A Pandemic Within a Pandemic – Intimate Partner Violence During Covid-19*, 383 NEW ENG. J. MED. 2302-04 (2020).

¹⁰ Amanda Taub, *A New Covid-19 Crisis: Domestic Abuse Rises Worldwide*, N.Y. TIMES (Apr. 6, 2020), <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>.

Birmingham, England stated, “COVID doesn’t make an abuser, but COVID exacerbates it. It gives them more tools, more chances to control you.”¹¹

Like the rest of the country, the nation’s capital experienced a surge in domestic violence cases during the pandemic.¹² D.C. Survivors and Advocates for Empowerment (SAFE), a crisis intervention hotline for domestic violence survivors, saw an influx of twice as many calls as usual during the first two weeks of the pandemic.¹³ During the height of the pandemic, police were told not to make arrests for any crimes other than felonies.¹⁴ This meant that during quarantine, not only was there nowhere for a survivor to go to flee the abuse, but there were also no solutions available that would remove the abuser from the house to stop the abuse.¹⁵ Some abusers have also used fears about the COVID-19 pandemic to torment their partners.¹⁶ For example, one domestic violence hotline had a woman call them to report that her husband forced her to wash her hands until they were raw.¹⁷ Another caller feared that she would be exposed and vulnerable to the virus because her abuser was trying to kick her out of the house.¹⁸

Many women who experience IPV are economically dependent on their abusers.¹⁹ When women are “financially entangled” with their abusive partner, they may be less likely to end the relationship because they do not have another source of income or financial support.²⁰ Women of color, immigrant women, and women without a college degree have become even more financially reliant on their abusers because these groups of women have experienced higher rates of job loss and unemployment during the COVID-19 pandemic.²¹ For women who were fortunate enough to keep their jobs, their homes became their office spaces when countless industries transitioned to virtual and remote work.²² Both women who lost their jobs and those who were able to work from home became increasingly exposed to domestic abuse because they were confined to the houses they shared with their abusers.²³

II. Virtual Hearings: How the Pandemic Has Changed the Way the Domestic Violence Division Conducts Trials

¹¹ Kluger, *supra* note 6.

¹² Taub, *supra* note 10.

¹³ *AG Racine Shares Resources to Help Domestic Violence Survivors During COVID-19*, OFF. OF THE ATT’Y GEN. FOR D.C., <https://oag.dc.gov/release/ag-racine-shares-resources-help-domestic-violence>.

¹⁴ Clare E. B. Cannon et al., *COVID-10, Intimate Partner Violence, and Communication Ecologies*, 65 *Am. Behav. Scientist* 992, 995 (2021).

¹⁵ *See id.*

¹⁶ Selvaratnam, *supra* note 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See* Evans, *supra* note 9.

²⁰ *See id.*

²¹ *Id.*

²² Parker et al., *How the Coronavirus Outbreak Has – and Hasn’t – Changed the Way Americans Work*, PEW RSCH. CTR. (Dec. 9, 2020), <https://www.pewresearch.org/social-trends/2020/12/09/how-the-coronavirus-outbreak-has-and-hasnt-changed-the-way-americans-work/>.

²³ *See* Claire Meyer, *Domestic Abuse Reports Fueled by More Remote Workers*, SOC’Y FOR HUM. RES. MGMT. (May 28, 2020), <https://www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/domestic-abuse-rises-fueled-by-more-remote-workers.aspx>.

Survivors of domestic violence can file for a civil protection order (CPO) against their abuser with the Domestic Violence Division Court in their area. A civil protection order is a judge-decided court order in which an abuser can be required to follow certain requirements, including not contacting and staying away from the person filing for the CPO.²⁴ In Washington, D.C., a CPO can be in effect for up to two years.²⁵ Prior to the pandemic, a survivor could come to the courthouse and file in person.²⁶ However, due to COVID-19, judges also started working remotely, presiding over virtual courtrooms for domestic violence cases.²⁷ After the court and its proceedings became virtual, survivors could now file a CPO online while at home.²⁸ After filing for a CPO, if the survivor wants a Temporary Protection Order (TPO) as well, which lasts for two weeks, the survivor could have a hearing that same day.²⁹ If successful, a survivor receives a TPO and a court date usually two weeks later for a CPO hearing.³⁰ These TPO and CPO hearings became virtual hearings after March 2020. Virtual hearings took place over the phone or through video conferencing software like WebEx, Skype, or Zoom.³¹

Virtual court hearings have impacted domestic violence survivors both positively and negatively. The benefits of having a virtual trial include the following: (i) the ability to participate in the trial without being in the same “physical space” as their abuser and (ii) the convenience of logging into a hearing from wherever you are and not having to take time off from work or pay for childcare.³² The positive takeaways of virtual court for domestic violence survivors can be summarized as “emotional distance” and “physical convenience.”³³ However, there are also downsides to domestic violence trials going remote. These include: (i) the lack of access to a stable internet connection or a quiet space to conduct their trial which is a reality for many domestic violence survivors and (ii) the issue that abusers could (unknowingly to the judge and attorneys) conduct their trials in the same room as the survivors causing them to feel unsafe and intimidated.³⁴ It is unclear whether virtual hearings for domestic violence cases will remain in place even after the COVID-19 pandemic is over, but many are advocating for the remote court

²⁴ *Get a Protection Order*, D.C. CTS., <https://www.dccourts.gov/services/domestic-violence-matters/get-a-protection-order>.

²⁵ *Id.*

²⁶ See Ashley Carter & Richard Kelley, *Remote Court Procedures Can Help Domestic Abuse Victims*, LAW360 (Oct. 18, 2020), <https://www.law360.com/articles/1315788/remote-court-procedures-can-help-domestic-abuse-victims>.

²⁷ See *Frequently Asked Questions Involving Courts and COVID-19 (FAQ)*, NAT’L NETWORK TO END DOMESTIC VIOLENCE (Jul. 13, 2021), <https://www.womenslaw.org/laws/preparing-court-yourself/frequently-asked-questions-involving-courts-and-covid-19/virtual>.

²⁸ *Id.*

²⁹ SAFE Inc., *A SAFE Client’s Guide to Civil Protection Orders in D.C.*, Survivors & Advocs. for Empowerment (SAFE) (<https://safety.gwu.edu/sites/g/files/zaxdzs2386/f/downloads/DC%20GuideForCPO.pdf>).

³⁰ *See Id.*

³¹ Carter and Kelley, *supra* note 26.

³² *See id.*

³³ Lee Price, *Why Are Judges Forcing Survivors of Domestic Violence Back Into Court While Delta Spreads?*, SLATE (Aug. 31, 2021), <https://slate.com/news-and-politics/2021/08/zoom-court-domestic-violence-covid-delta.html>.

³⁴ Alicia L. Bannon & Douglas Keith, *Remote Court: Principles for Virtual Proceedings During the COVID-19 Pandemic and Beyond*, 115 NW. L. REV. 1875, 1890 (2021); Shelley Flannery, *Virtual Court Hearings Make Testifying Safer*, DOMESTICSHELTERS.ORG (May 5, 2021), <https://www.domesticshelters.org/articles/legal/virtual-court-hearings-make-testifying-safer>.

system to become the new normal.³⁵ The ideal solution would be to give survivors the option to decide whether they would feel more comfortable attending trial in-person or virtually.

a. Why Hearings at Home Could Benefit Domestic Violence Survivors

i. Emotional (and Possibly Physical) Distance from an Abuser

Being in a courtroom can be a traumatic and stressful experience, particularly for domestic violence petitioners.³⁶ It can be demoralizing, retraumatizing, and revictimizing for survivors of IPV. A major concern for a domestic violence survivor is the safety of themselves and their children when they are in a courtroom face to face with their abuser.³⁷ The physical safety of a domestic violence survivor and her family is most at risk after they end their relationship with the abuser.³⁸ Beyond physical danger, survivors put themselves in emotional danger when they attend court opposite their abuser, who can subject them to harassment, insults, and gaslighting tactics.³⁹ Virtual hearings take many of these fears and stresses away. While a survivor may still have to look at her abuser (if the hearing occurs via video conference), they will not physically have to be in the same room as their abuser. This can make a survivor feel physically and emotionally more secure.⁴⁰

A domestic violence survivor who is unsure about going forward with trial may feel more willing and comfortable to participate in a virtual rather than an in-person hearing because they do not have to face their abuser physically in a courtroom.⁴¹ Another positive is that virtual hearings can be conducted almost anywhere, without the abuser knowing where the survivor's whereabouts. When a traditional trial takes place in person, an abuser knows where their victim will be and for how long.⁴² Some vengeful abusers may try to slash a survivor's tires or run them off the road ahead of trial to delay or sabotage the hearing, putting survivors in even more danger.⁴³ Virtual hearings can make domestic violence survivors feel safer, not only from COVID-19, but from their abusers and the trauma associated with facing them in a courtroom.⁴⁴

ii. Physical Convenience of a Virtual Trial

³⁵ See Price, *supra* note 33.

³⁶ See Carter & Kelly, *supra* note 26. <https://www.law360.com/articles/1315788/remote-court-procedures-can-help-domestic-abuse-victims>; see also *Supporting Domestic Violence Survivors' Safety During the Court Process*, CTR. FOR CT. INNOVATION, https://www.courtinnovation.org/sites/default/files/media/document/2021/CCI_FactSheet_DV_Support_Checklist_03232021.pdf.

³⁷ See *Supporting Domestic Violence Survivors' Safety During the Court Process*, *supra* note 37.

³⁸ See Flannery, *supra* note 34.

³⁹ Price, *supra* note 33.

⁴⁰ See Carter & Kelly, *supra* note 27.

⁴¹ Flannery, *supra* note 34.

⁴² *Id.*

⁴³ See *id.*

⁴⁴ See Price, *supra* note 33.

Virtual hearings can be time-saving, cost effective, and convenient for many survivors of IPV. It may be difficult and costly for survivors to take time off from work or to hire childcare to attend their trials in-person.⁴⁵ Even finding transportation to and from the court room or payment for parking outside the courthouse can be added stressors for domestic violence survivors.⁴⁶ Additionally, survivors can have visible and painful injuries that limit their mobility and ability to travel to the courthouse.⁴⁷ With virtual hearings, a survivor can conduct the trial from home, possibly no longer having to miss work (if their job is virtual) or pay for a babysitter. Some judges even allow litigants to call in to the hearings by phone, so a survivor-litigant could conduct their trial from their car or another semi-private location.⁴⁸

Before the pandemic, domestic violence survivors would wait for hours in the courthouse for their case to be called.⁴⁹ Through the virtual system, a survivor can file their petition online, wait for an hour wherever they feel comfortable, and then appear before a judge, all before the end of the day.⁵⁰ An hour or two after the judge's decision, provided that the survivor-litigant is successful, they will receive their CPO or TPO via email.⁵¹ The Domestic Violence Division's move to virtual hearings has made the often painstaking and time-consuming process of filing a petition for a protection order much more streamlined and efficient.

b. Why Virtual Hearings Could Harm Domestic Violence Survivors

i. Lack of Access to Internet Connection

Survivors of IPV who do not have access to a stable internet connection, or to an internet connection at all, cannot take advantage of the benefits of virtual hearings.⁵² In this way, the virtual court system is even more inaccessible and unequal than the traditional in-person process. While internet and broadband services are widespread across the United States, not every community has the same access to these technologies.⁵³ 25% of American adults who have a household income of less than \$30,000 report that they do not own a smartphone, an important device for a virtual hearing because many judges require that litigants appear by video.⁵⁴ In Washington, D.C., about 25% of households do not have access to broadband internet service and separately, another 17% of people do not have access to a computer.⁵⁵ The pandemic caused

⁴⁵ See Carter and Kelley, *supra* note 26.

⁴⁶ Flannery, *supra* note 34.

⁴⁷ See Carter & Kelly, *supra* note 26.

⁴⁸ See *id.*

⁴⁹ Bannon & Keith, *supra* note 34 at 1887-88.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 1889.

⁵³ *Id.*

⁵⁴ Emily A. Vogels, *Digital Divide Persists Even as Americans with Lower Incomes Make Gains in Tech Adoption*, PEW RSCH. CTR. (Jun. 22, 2021), <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>.

⁵⁵ Andi Wenck, *Digital Divide Leaves DC Residents at Distinct Disadvantage*, WUSA9 (Sept. 19, 2019), <https://www.wusa9.com/article/news/local/dc/digital-divide-leaves-dc-residents-at-distinct-disadvantage/65-d51ba861-74b7-469f-b3ca-ea893b0ee4f1>.

public libraries to close for a period of time, further limiting certain communities' access to a computer and reliable internet.⁵⁶

A survivor without a cell phone or a computer is at a disadvantage when preparing for and participating in their trial. If the survivor then has to borrow a friend or family member's computer or cell phone, there are a number of possible obstacles. First, a survivor-litigant may want to keep their hearing and the fact that they are filing for a protection order private.⁵⁷ They also might want to conduct the trial from their own home, in their own space, and not have to have others nearby during an intimate and traumatic hearing.⁵⁸ While virtual hearings may be more convenient and secure for many survivors, for those without access to internet, virtual hearings could pose a huge barrier.

ii. Opportunities for Intimidation and Scare Tactics by the Abuser

Another negative impact of at-home trials is that they allow abusers to exert control over survivors by conducting the trials in the same room, without the judge and attorneys knowing. In February 2021, during a criminal hearing conducted on Zoom in Michigan, the assistant to the prosecuting attorney interjected to bring something to the attention of the judge.⁵⁹ She said, "your honor... I have reason to believe that the defendant is in the same apartment as the complaining witness right now, and I am extremely scared for her safety."⁶⁰ The defendant and complaining witness in this case had been dating at the time that he reportedly assaulted her.⁶¹ The police then arrived at the address from where the witness was calling and confirmed that the defendant was conducting the virtual trial from the same house as her.⁶²

For advocates, this situation in Michigan served as a reminder of the intimidation that domestic violence survivors are subjected to, even during a virtual hearing.⁶³ Some have suggested that in order to prevent abusers from attending virtual hearings in the same location as survivors, advocates should conduct the trial by the survivor's side to provide support and protection.⁶⁴ However, because of COVID-19 related concerns, some advocates may not feel comfortable conducting a trial at their client's home or in an office. Survivors may share these same concerns. Just because a trial is virtual does not mean that an abuser will stop trying to exert control and power over their victims.⁶⁵ In fact, in-person trials may provide more protection in the form of

⁵⁶ Bannon & Keith, *supra* note 34 at 1889-90.

⁵⁷ See Mark Lee, *COVID-19 and the Courtroom: Domestic Violence Survivors Adapt to Virtual Hearings*, WTLC (Feb. 23), <https://wtlc.org/covid-19-and-the-courtroom-domestic-violence-survivors-adapt-to-virtual-hearings/>.

⁵⁸ *Id.*

⁵⁹ Dan Cherry, *Michigan Zoom Hearing Adjourned when Attorney Spots Alleged Assaulter, Victim in Same Home*, USA TODAY (Mar. 10, 2021), [//www.usatoday.com/story/news/nation/2021/03/10/michigan-zoom-court-hearing-adjourned-defendant-victim-same-home/6936887002/](https://www.usatoday.com/story/news/nation/2021/03/10/michigan-zoom-court-hearing-adjourned-defendant-victim-same-home/6936887002/).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Hannah Knowles, *A Zoom Hearing for her Domestic Violence Case Went Viral. Now People are Blaming Her, She Says*, WASH. POST (Mar. 12, 2021), <https://www.washingtonpost.com/dc-md-va/2021/03/12/mary-lindsey-coby-harris-zoom-hearing/>.

⁶⁴ *Id.*

⁶⁵ Flannery, *supra* note 34.

court officers and security guards that are not available to survivors when they conduct their hearings at home.

III. The Future of Virtual Hearings After the Pandemic is Over

Many believe that the positives of virtual hearings, specifically for domestic violence survivors, outweigh the negatives and advocate for virtual hearings to remain in place even after the pandemic is over.⁶⁶ These advocates of this new “digital reality” born out of “chaotic necessity” believe that virtual hearings shield survivors from the traumatic experience of in-person trials.⁶⁷ New York has already stated that they are going to keep the virtual hearing process for domestic violence survivors in place permanently and Oregon has adopted these virtual proceedings as “standard practice.”⁶⁸ Even if jurisdictions decide not to offer virtual court hearings for domestic violence cases, survivors can always request to appear by telephone if they would feel safer doing so.⁶⁹ The pandemic has forced the country and the world into a new normal as schools, offices, and courtrooms shut down. But this new normal brought with it some potential positive advancements. If the courts can address the downsides of virtual hearings—like allowing those without access to internet or the required remote technology to conduct their virtual hearings in-person if they decide, and providing those who share their homes with their abuser with protection when they are doing their trial from home—then virtual hearings should remain in place for domestic violence survivors even after the pandemic is over. Ideally, going forward, survivors should be given the option to decide whether they want to attend their trials virtually or in-person.

⁶⁶ See Price, *supra* note 33.

⁶⁷ See *id.*

⁶⁸ *Id.*

⁶⁹ Flannery, *supra* note 34.