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# Victim Defendants and COVID-19

Presented by

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NATIONAL CLEARINGHOUSE FOR  
THE DEFENSE OF BATTERED WOMEN  
Working for justice for victims of battering charged with crimes

## ABOUT THE NATIONAL CLEARINGHOUSE

The National Clearinghouse for the Defense of Battered Women (NCDBW) is a resource and advocacy center for victims of battering charged with crimes related to their experiences of battering.

Founded in 1987, the National Clearinghouse works to increase justice for – and prevent further victimization of – arrested, convicted, and/or incarcerated battered victims throughout the United States.

## ABOUT THE PRESENTER

**Cindene Pezzell** is the Legal Coordinator at the National Clearinghouse for the Defense of Battered Women (NCDBW), a legal resource and advocacy center for victims of battering charged with crimes. She coordinates the Legal Team at NCDBW, provides direct technical assistance to defense teams, and researches and develops legal materials. Cindene is an experienced trainer who develops and conducts programs around the country on topics related to advocating for and defending charged and incarcerated victims of battering, and expert testimony on behalf of victims of battering. Prior to joining NCDBW, Cindene worked at the Defender Association of Philadelphia, representing indigent people charged with crimes. During her final year as a public defender, Cindene practiced exclusively in family court, providing criminal defense to people accused of crimes involving the violation of a civil protection order.

## DURING THIS WEBINAR, WE WILL

- Identify increased risks to victim defendants as a result of COVID-19
- Identify strategies – and potential barriers – for getting victim defendants released from jails & prisons
- Discuss ways to meet the needs of victim defendants who are not incarcerated
- Share resources for advocates and attorneys who are working with victim defendants during the pandemic
- To the extent possible, hear from participants about their experiences working with victim defendants



# **COVID-19: INCREASED RISK TO VICTIM DEFENDANTS**



## CONTEXTUALIZING TODAY'S CONVERSATION

- The health risks are everywhere, but they are particularly detrimental for communities of color, Native communities, and poor people
- This crisis has highlighted many structural inequities, including over-representation of people of color in the criminal legal system
- While people are in the same storm, everyone is not in the same boat

# INCREASED HEALTH RISKS TO VICTIM DEFENDANTS

- The health risks are particularly detrimental for people who
  - Are prevented from distancing
  - Do not have autonomy over their own actions/inactions
  - Have health-based risk factors
  - Are prevented from accessing risk-reducing necessities (PPE, testing, medical care, etc.)

# INCREASED LEGAL RISKS TO VICTIM DEFENDANTS

- Increased motivation to plead guilty to get out of jail
- Delayed opportunities for release/relief (woman in New York died before she could get DVSJA relief)
- Lengthier pre-trial state control (on bail, electronic monitoring, house arrest, etc.)
- Lengthier parole/probation
- Inability to comply with bail/probation/parole conditions in a timely fashion
- Decreased ability to pay fines and costs
- Decreased or eliminated access to attorneys (in person and on phone)



# COVID-19: ANOTHER WEAPON IN THE BATTERER'S TOOLBOX

■ Many organizations have developed resources about ways that COVID-19 increases the ability of abusive partners to exert control over victims, including the Battered Women's Justice Project (BWJP) and the National Domestic Violence Hotline:

□ <https://www.bwjp.org/news/coercive-control-covid-19.html>

□ <https://www.thehotline.org/>

# INCREASED RISKS FOR VICTIM DEFENDANTS BY ABUSIVE PARTNERS

- More opportunities for batterer sabotage of case (far out court dates, extended probation and parole because services are shut down, etc.)
- “Locked down” with abusive partner not just because of pandemic, but because of state control – additional potential consequences for leaving
- Remote court hearings may allow additional interference by abusive partner

## INCREASED RISKS FOR INCARCERATED VICTIM DEFENDANTS BY ABUSIVE PARTNERS

- Batterer may exert coercion and control by:
  - Giving partner false info about health/kids' health (lie about test results, death, etc.)
  - Feeding partner alarmist info about the outside world (convincing her that living with him is the only option/safe option, lying about shelters and services being closed, etc.)
  - Coercing access to money, property, etc.
  - Denying visits with children



## INCREASED RISKS

What else are you seeing  
in your state/your community?



# **SEEKING RELEASE AND SAFETY FOR VICTIM DEFENDANTS**



# GETTING PEOPLE OUT

- “Mass” release agreements
- Lawsuits
- Mass habeas corpus petitions
- Individual bail reduction hearings/EM
- Bail funds
- Detainer lifts
- Compassionate release
- No incarceration for technical violations
- Clemency (commutation, pardon)
- Parole/early parole
- Furlough
- Prompt/speedy trial motions
- Expanded use of alternative disposition
- Early termination of probation/parole
- On time termination – no delay just because courts closed

## WHAT WE'VE HEARD FROM THE FIELD

- Even some “mass” releases have involved close scrutiny of individual defendants’ circumstances
- Release efforts for pre-trial defendants have been more successful than for defendants serving sentences, even those who are technically eligible for parole

## WHAT WE'VE HEARD FROM THE FIELD

- Who “deserves” to be released?
  - Many anti-DV programs are struggling with calls to “release them all”
  - Concerns about safety of DV and SA victims if the person who harmed them is released; want to focus on “non-violent offenders”
  - Concerns about lack of victim notification
  - Many victim defendants serving time for a “crime of violence”



## POTENTIAL ARGUMENTS TO INCLUDE WHEN SEEKING RELEASE

- Increased risk of complex trauma for those already living with trauma/PTSD (Coronavirus causes PTSD)
- Dramatically decreased access to services for incarcerated victims during pandemic (counseling, support groups, etc.)
- Low risk of recidivism for victims who have been in for a long time

## ARGUMENTS, CONT'D

- Victimization increases incidences of many “high risk” conditions including
  - Diabetes
  - Hypertension
  - Respiratory conditions, particularly for victims who have experienced strangulation
- Many victims who are serving sentences in prison are over 50
- For pre-trial defendants, self-defense arguments may be effective

## BUT ALSO CONSIDER

- “Safety” arguments may backfire if defendant will be residing with batterer
- May need to reconsider legal strategy (revealing self-defense strategy at bail hearing, turning over expert reports and other discovery early, etc.)
- “Standard” release terms may need modification

# ANTICIPATING BARRIERS TO RELIEF FOR VICTIM-DEFENDANTS


- “Violent crime” prohibitions on release efforts
- “Well then she’s probably safer in jail/prison”
- Backlash for appearance of seeking “special treatment”

# BAIL FUNDS


- Because of COVID-19, as well as bail reform efforts, there are more bail funds than ever before
- Do you know if there are bail funds in your community? Are you connected with them? Check with public defender offices, legal aid offices, and national organizations such as
  - <https://bailproject.org/>
  - <https://bailbondsnetwork.com/bail-bonds-funds.html>
  - <https://www.communityjusticeexchange.org/nbfn-directory>

## SEEKING RELEASE AND SAFETY

What else are you hearing about  
in your state/your community?



**ASSISTING VICTIM DEFENDANTS  
WHO ARE NOT INCARCERATED:  
COVID-SPECIFIC  
ADVOCACY STRATEGIES**



# ASSISTING VICTIM DEFENDANTS WHO ARE NOT INCARCERATED

- Provide services for victims who are reentering, on bail, etc., if that isn't already happening
- Explicit messaging – if program/shelter is operating, say so in informational materials (and in the jails and prisons)
  - Be particularly explicit about reentry services
- Counter false messaging (from batterer, others) that could be detrimental to the victim defendant (shelters are closed, courts are closed, the hospital isn't taking anyone besides COVID patients, etc.)
- Help victim defendants comply with release conditions if possible



## ADVOCACY STRATEGIES, CONT'D

- In some communities, COVID-19 has resulted in increased surveillance by police. Everyone needs to know their rights in the event of a police interaction
  - Making statements to police
  - Planning for bail, children, work, etc. should arrest (or re-arrest) occur
- Help facilitate private communication with defense attorney

## ADVOCACY STRATEGIES, CONT'D

- Help defendants navigate their cases in light of the ways that COVID has changed how courts proceed – and do so from a defense-based perspective
- Safety plan with defendants who are having remote court hearings, prep sessions with attorney, etc.
- As always, avoid discussing the facts of the defendant's case, particularly when confidentiality is not guaranteed (Zoom, etc.)

# ADVOCACY FOR NON-INCARCERATED DEFENDANTS

What else are you doing  
in your state/your community?



**SOME ADDITIONAL RESOURCES  
FOR ADVOCATES AND ATTORNEYS  
WHO SERVE VICTIM DEFENDANTS**



## ADDITIONAL RESOURCES (NOT VICTIM- DEFENDANT SPECIFIC)

**National Task Force FAST FACTS: Survivors of Domestic and Sexual Violence are at Heightened Risk Now, and Will Remain So Long After the Current Crisis** - A short paper that gives a snapshot through statistics in certain jurisdictions about what is going on with demands of DV survivors and reported responses. Outlines some helpful information about how the pandemic impacts survivors and gives abusive partners increased tools to control.

<http://www.4vawa.org/ntf-action-alerts-and-news/2020/4/16/survivors-of-domestic-and-sexual-violence-are-at-heightened-risk-now-and-will-remain-so-long-after-the-current-crisis>

## ADDITIONAL RESOURCES, CONT'D

**Tahirih Justice Center A GUIDE Adapting Trauma-Informed Lawyering Best Practices During the COVID-19 Pandemic** – This unique guide offers helpful strategies and tips for adapting trauma-informed practicing/meeting/interviewing with clients over virtual platforms. Reviews best practices for in-person meetings and how to adapt that to a virtual platform.

[https://www.tahirih.org/wp-content/uploads/2020/03/Pro-Bono-Guidance-COVID-19\\_V3.pdf](https://www.tahirih.org/wp-content/uploads/2020/03/Pro-Bono-Guidance-COVID-19_V3.pdf)

## ADDITIONAL RESOURCES, CONT'D

### **National Network to End Domestic Violence**

Frequently updated compilation of national, state, and local resources, as well as COVID-19 specific guides developed by NNEDV.

[https://nnedv.org/latest\\_update/resources-response-coronavirus-covid-19/](https://nnedv.org/latest_update/resources-response-coronavirus-covid-19/)

## ADDITIONAL RESOURCES, CONT'D

### ■ **American Bar Association**

Includes resources and summaries of what we have learned from victims' attorneys across the country during the ongoing COVID-19 health crisis.

[https://www.americanbar.org/groups/domestic\\_violence/Initiatives/covid-19/](https://www.americanbar.org/groups/domestic_violence/Initiatives/covid-19/)

### ■ **National Resource Center on Domestic Violence**

Comprehensive guide: national and international resources about domestic violence and COVID-19.

<https://vawnet.org/news/preventing-managing-spread-covid-19-within-domestic-violence-programs>



## ADDITIONAL RESOURCES, CONT'D

### **National Association of Public Defenders –**

Webpage contains numerous links to resources, including sample pleadings, relevant to people doing defense work.

<https://www.publicdefenders.us/covid>

### **National Legal Aid and Defender Association –**

Webpage contains links to a wide variety of resources for defense attorneys and civil attorneys.

<http://www.nlada.org/COVID-19>



## RESOURCES

Other resources you think  
are particularly helpful?

## QUESTIONS?

### **National Clearinghouse for the Defense of Battered Women**

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