



VAWA and the Courts

Promoting Effective Court Responses to Violence Against Women



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LESSONS LEARNED FROM THE PANDEMIC: UNDERSTANDING AND ENHANCING LITIGANTS' EXPERIENCES IN DOMESTIC VIOLENCE CASES

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EXECUTIVE SUMMARY

Over the past two years, courts around the country have struggled to address the seismic impact of the pandemic on court functioning and access to justice. While challenging in the extreme, many courts discovered that the disruption of established patterns inspired creative problem-solving and innovations that improved court experiences for litigants in certain cases. Rather than returning to pre-pandemic “business as usual” practices, courts are seeking to understand which strategies should be continued due to their effectiveness in ensuring due process while improving safety and access to justice for litigants.

With support from the Office on Violence Against Women, NCSC planned two critical conversations to explore and examine state court practices developed during the pandemic specifically to address domestic violence (DV) cases. Chief Justice Susan Christensen of Iowa and Director Michelle Long of the Tennessee Administrative Office of the Courts presided over these events. Invited participants included a diverse group of judges, court administrators, STOP Points of Contact, and national technical assistance providers (see Appendix A: Critical Conversation Participants, pp. 18 – 19).

The first conversation identified barriers to procedural justice (pp. 6 – 9). These included technology barriers or limited technology infrastructure, limited language access (especially those of lesser diffusion), poor litigant experience related to a disconnect between the information needed to understand court processes and the information made available, lack of community resources that can help meet litigant needs beyond what courts can provide alone, court procedure/policy that is very complex for many self-represented litigants to understand, and limited court staff support due to workforce shortages and lack of training or funding.

Through interactive large and small group discussions, participants identified solutions to improve procedural justice and user experience:

- Court Self-Assessment – soliciting feedback from stakeholders representing a diverse array of views and groups within the community and conducting mock walk-throughs (p. 11)

Goals of this Conversation:

- *Identify strategies that courts used to understand litigants’ experience, especially obstacles to meaningful access and procedural justice in DV cases.*
- *Identify the lessons learned during the pandemic about barriers to achieving procedural justice and how to address them.*
- *Identify strategies that proved successful in improving access for litigants facing obstacles (e.g., language, disabilities, technology).*
- *Identify existing technical assistance resources and unfulfilled needs.*

- Technology & Virtual Court Processes – providing access in public places (e.g., library or supermarket) and ensuring technology is user-friendly and accessible with a mobile device (p. 12)
- Court Processes – enhancing triage prior to hearings to ensure litigants are connected to appropriate court processes and improving efforts to inform litigants of these pathways (p. 13)
- Language Access – providing information in plain language as well as ensuring information, forms, and e-filing/portal systems are available in non-English languages (p. 14)
- Coordinated Community Response – identifying methods of court support for non-legal pathways to safety, involving survivor voices in planning phases through surveys and focus groups, and enhancing community engagement efforts (e.g., providing educational sessions on court processes and attending community events) (p. 15)
- Court Culture – adopting a code of ethics for court staff emphasizing customer service and providing court staff with mandatory DV training so they are better prepared to understand and handle the unique dynamics in these cases (p. 16)

Participants identified a variety of technical assistance needs (p. 17) courts would experience when implementing these solutions, such as how to establish/improve:

- Strategic planning/change management efforts, including developing goals, measuring progress, and incorporating diverse perspectives (anti-oppression, equity, inclusion);
- Plain language materials;
- Court staff training, including DV dynamics, handling protection order violations, self-care/vicarious trauma, as well as working with and communicating to underserved communities; and
- Effective community engagement, language access practices, etc.

Based on the discussion's great focus on expanding access through portals or e-filing, NCSC planned a second conversation for July 17. Allowing parties to file for a protection order from a safe location other than the courthouse can enhance victim safety and alleviate the tangential barriers to in-person filing (e.g., arranging childcare, missing work, and reduced confidentiality as community members may see the victim go to the courthouse). Many courts have looked to the examples of Indiana, Arizona, North Carolina, and Kansas to provide remote filing or portal solutions.

A companion report will be developed to capture the information gathered from the second conversation. The hope is that these combined reports will provide guidance to courts across the country that are seeking to leverage greater access and technological solutions developed during the pandemic to support DV case processing.

PROCEDURAL JUSTICE AND THE LITIGANT EXPERIENCE IN DV CASES: ARE WE MEASURING UP?

Research on procedural justice theory demonstrates that one's perception of fairness is strongly impacted by the quality of the experience and not only the end result. Features of procedural justice include:

1. **Voice** – the perception that litigants have an opportunity to be heard, to tell their side.
2. **Respect** – the perception that the judge and all court actors treat litigants with dignity.
3. **Neutrality** – the perception that decisions are made reasonably and without bias.
4. **Understanding** – litigants comprehend the language used and how decisions are made.
5. **Helpfulness** – the perception that court actors are interested in your personal situation to the extent that the law allows.

Research also indicates litigants who feel the court experience was procedurally fair are more likely to comply with court orders. In DV cases, this impacts the safety and peace of victims and their children. Therefore, it's crucial to understand DV litigants' perceptions concerning their experiences navigating new court procedures introduced during the pandemic.

Examples of jurisdictions solicit litigant feedback are provided below (see Appendix B for more information, pp. 20 - 22).

Below are some examples of jurisdictions soliciting litigant feedback. More information on each strategy may be found in Appendix B (pp. 20 - 22).

**Community
Listening
Sessions**

Oregon

Almost the entire bench in Multnomah County participated in community listening sessions to solicit general feedback on the courts. Sessions were held in neutral spaces that were convenient for the public to access (a community college, local high school). Findings from these sessions resulted in some significant legislative changes.

**'Secret
Shopper'
Walk-
Through**

Iowa

Program staff and partners developed an assessment tool to study physical and language accessibility barriers in the civil protection order process, particularly from a self-represented litigant perspective. Staff were sent to unfamiliar court houses to walk through the process and see how easy it was to navigate the buildings/processes, work with court staff, etc. The exercise produced numerous ideas for improving procedures and forms.

**Customer
Satisfaction
Surveys**

Delaware

Courts adopted an online satisfaction survey to solicit feedback from users on their hearings. Data gathered for the past 2.5 years show that litigants seem to like the virtual format and find it convenient and safe.

CHALLENGES RELATED TO PROCEDURAL JUSTICE:



Technology Barriers

- The reality of the digital divide between well-resourced and low-resourced courts makes it difficult for many courts to adapt technological innovations that require additional funding (e.g., bandwidth/Wi-Fi irregularities, lack of kiosks/computers in courthouses).
- SRLs had access problems (e.g., some SRLs do not have email or smart tech, encountered difficulty setting up accounts, or lack skills needed to easily navigate software used for court portals/Zoom).

Limited Language Access

- Already existing language accessibility problems transferred to virtual hearings:
 - Lack of American Sign Language (ASL) and limited English proficiency (LEP);
 - Lack of interpreters trained in DV dynamics to ensure appropriate interpretation;
 - Interpreters were uncomfortable or had difficulties with with virtual hearings so fewer were available;
 - In small cultural communities, litigants may know interpreter; and
 - Use of one interpreter for both parties.
- Lack of information and instructions in plain language.
- Lack of translation of written orders, information, and instructions.



Poor Litigant Experience

- Users see the justice system as a whole, whereas system players see themselves as siloed and do not necessarily think of themselves as one entity.
 - Experiences in criminal system colored litigants' views of the civil legal system.
 - Poor communication amongst system stakeholders resulted in SRLs getting incorrect information; this led to dissatisfaction and distrust with the system.
- There is a disconnect between the information the litigant needs to understand court processes and the information made available.
 - Litigants feel that judges have eyes on them rather than understanding judges are going through necessary court proceedings.
 - Victims often lacked a clear understanding of privacy and confidentiality rights, especially in remote hearings.
 - Litigants are confused by court processes that vary within a jurisdiction.
 - The nature of the courts' adversarial system and the need for court neutrality can be confusing/discouraging to litigants.
- Having to conform one's voice to required legal forms and formal procedures left some litigants feeling that they couldn't get their story across.
- Members of the disability community had been asking for some of these accommodations for years without a response and now feel some resentment that changes only occurred due to the pandemic. Further, remote procedures may be more helpful for physically disabled litigants, but less so for litigants with psychological disabilities. Going forward, options must be available to litigants.

Lack of Community Resources

- A lack of volunteers during the pandemic decreased services in general (e.g., culturally-specific service providers, victim advocacy, etc.)
- A lack of transportation in rural communities makes it difficult to access the courts and other needed services.
- Law enforcement officers were unable to serve CPOs due to staffing issues.
- Litigants found it difficult to understand how to navigate/access courts and services beyond the walls of the court.

Complex Court Procedure/Policy

- Some quick procedural or policy changes were not communicated well to all system actors, especially if there was not a strong coordinated community response (CCR) in place before the pandemic, resulting in even more confusion for outsiders.
- Rushed dockets and inconsistent practices among courts in the same jurisdiction creates confusion and frustration for litigants.
- Safety considerations should be established for remote hearings in DV cases as well as those related to being in-person in a courthouse if security measures aren't taken or the physical layout precludes separating parties.
- The crisis diverted attention from procedural justice efforts that had been ongoing.

Limited Court Staff Support

- Staff shortages/burnout hit courts too, further limiting the time staff were able to be spend on each case and affecting their response to litigants. Some staff are better suited to handle these cases; maybe courts should be more intentional about choosing staff for these roles.
 - Some staff lack patience and understanding of the additional stresses of children/elder care that prevent litigants from participation in court processes; they can be too quick to think litigants were not serious.
 - Vicarious trauma among court staff due to the pandemic and other life stressors (e.g., experiencing DV themselves) impacted their interaction with people in crisis.
- Lack of staff training on:
 - DV dynamics
 - People-centered practice
 - De-escalation of users in crisis
 - Handling complex cases
 - Cultural responsiveness to crisis
 - Customer service
 - Legal information vs legal advice

POTENTIAL SOLUTIONS

Solutions discussed in the following pages can be summarized in the following chart:



CONDUCT A COURT SELF-ASSESSMENT:

Courts would benefit from more research to identify and understand the local litigant populations to better understand their needs.

Court Self-Assessments serve as a model for such research. These should include:



Key to these assessments is the Court's understanding and willingness to receive criticism.

For authentic community feedback and relationship building, Courts have to be willing to acknowledge that there are areas for improvement.

Examples:

- UNC Chapel Hill conducted a study on court experiences with remote hearings. Differently resourced counties were included, so findings should be useful and provide some evidenced-based data to the field.
- MN Courts' engagement with Native communities.



* Courts must be sensitive about where community meetings are convened. Spaces may have negative historical context for some communities (e.g., some churches may not be friendly spaces for members of the LGBTQIA+ community).

IMPROVE TECHNOLOGY & VIRTUAL COURT PROCESSES:

Virtual processes for remote CPO applications and certain types of DV hearings work well if due process protections and safety considerations are addressed. Courts should be encouraged to overcome challenges and continue to implement these strategies, rather than abandon virtual procedures as danger from the pandemic subsides.

Specifically, Courts should consider technology and processes that allow for remote filing for civil protection orders, remote hearings, etc. Such technology should be/include:



Examples/Resources:

- NM portal uses AI avatars to instruct litigants in their native language.
- AZ tech project requires the court to assign CPOs to enforcement agencies. Arizona produced a how-to guide: <https://nationalcenterforstatecourts.app.box.com/s/qys863xlio0cz5maerarpm786yzy2zcp>
- NCJFCJ toolkit on remote hearings: www.ncjfcj.org/the-court-toolkit-a-focus-on-cases-involving-abuse/



* Ensuring availability in legal aid offices, libraries, or other community centers can work well, especially if there are staff on hand or available remotely to guide litigants through the process and respond to technical problems.

STREAMLINE COURT PROCESSES

Litigants on each side of the aisle are often confused by court processes, including dealing with facilitation specifically on custody cases. With the advent of some of the most innovative alterations to court processes in recent memory, Courts are encouraged to review what worked well during the pandemic and what to discontinue.

Some considerations when reviewing court processes could include:

Enhance coordination and communication among courts

Assign judges to DV cases who have a passion and deeper understanding/knowledge of DV

Improve Triage Prior to Hearings*

Identify protocols and tools for hybrid/remote evidentiary hearings to help avoid technical difficulties

Establish staff or volunteers to serve as a court guide for litigants to guide them through the entire process

Improve efforts to inform litigants about privacy/confidentiality rights



* Examples of improvements to triage processes include:

- Fast track referral/early intervention services for children who may have been impacted by/exposed to violence.
- Ask litigants what accommodations are needed for them to fully participate before anyone engages with the courts.

ENHANCE LANGUAGE ACCESS

A key factor for any court process, virtual or in-person, must include considerations for ensuring language access.



* Example:

- NM courts use technology to aid with language access.

SUPPORT THE LOCAL COORDINATED COMMUNITY RESPONSE

The challenges to service provision presented by the pandemic highlighted the need to strengthen relationships beyond traditional justice system stakeholders (e.g., hairstylists, schools, medical professionals, et.c.).

Some considerations for courts to establish/strengthen community relationships include:

Consider ways that courts can support non-legal pathways to safety*

Communicate how Courts are responding when asking about needed changes

Include survivor voices in planning conversations about potential changes

Institute or maintain ongoing links to culturally-specific communities and advocacy programs

Identify methods to strengthen meaningful communication and engagement with the community in court processes

Examples:

- The Legal Aid Foundation of Los Angeles (LAFLA) developed a court “hoteling” concept to host court sessions in community convening places to bridge the accessibility gap. This could be replicated in other community areas, such as grocery stores.

* Examples of innovative ways courts can support non-legal pathways to safety include:

- Supporting Advocates meeting people where they are to facilitate filing
- Foster community-based navigator programs to leverage the people in their neighborhood



IMPROVE COURT CULTURE

The pandemic placed added strain on an already overwhelmed system. To recruit and retain a qualified workforce, courts must consider ways of improving court culture.

Implement more creative strategies for recruitment and retention of diverse staff, with a focus on staff well-being

Provide mandatory DV training for everyone in system (trauma-centered approach with lens of racial equity) to foster a greater understanding and acceptance of how trauma impacts all survivors

Adopt a code of ethics for all court personnel so that customer service and racial equity are explicit values for the whole system



Examples:

- DE Courts has developed resources and programs to support staff well-being.

TECHNICAL ASSISTANCE NEEDS

In order to support courts implementing these solutions, technical assistance providers can consider providing the following services:



* Training for judges, court staff, and community stakeholders should include DV dynamics, handling protection order violations, self-care/vicarious trauma, working with and communicating to underserved communities, etc.

+ Strategic Planning and Change Management efforts should include guidance on developing goals, measuring progress, incorporating diverse perspectives (anti-oppression, equity, inclusion).

APPENDIX A: CRITICAL CONVERSATION PARTICIPANTS

Name	State	Organization/Agency
Alicia K Davis		National Center for State Courts
Amie Lewis	DC	The Pew Charitable Trusts
Amy Hernandez	UT	Utah Courts
Ava Carcirieri	DE	Delaware Family Court
Barbara Holmes		National Center for State Courts
Cannon Han	CA	Asian Pacific Institute on Gender-Based Violence
Danielle Pugh	NY	Center for Court Innovation
Darren Mitchell	MD	Consultant, National Center for State Courts
Denise Gamache		Consultant/Reporter, National Center for State Courts
Erica Davis	DE	Family Court State of Delaware
Felix Bajandas		National Center for State Courts
Heather Dorsey	IL	Administrative Office of the Illinois Courts
Hengel Reina	FL	Administrative Office of the Courts
Jacque Ring		National Center for State Courts
Jannet Okazaki		National Center for State Courts
Jannette Brickman	FL	Vera Institute of Justice
Jennifer Arsenian	NV	National Council for Juvenile and Family Court Judges
Jose Juan Lara Jr	TX	Esperanza United
Julie Aldrich	DC	U.S. Department of Justice, Office on Violence Against Women
Kathryn Genthon		National Center for State Courts
Katie Fabbri	MA	Executive Office of the Trial Court

National Center for State Courts

Name	State	Organization/Agency
Kay Radwanski	AZ	Administrative Office of the Courts
Laura Jones	WA	Administrative Office of the Courts
Maureen Sheeran	NV	Consultant, National Center for State Courts
Melia Garza	MN	Minnesota Judicial Branch
Melissa Arvin	IN	Administrative Office of the Courts
Michelle Long	TN	Administrative Office of the Courts
Michelle White	VA	State Justice Institute
Miguel Trujillo		National Center for State Courts
Neal Japport	OR	Multnomah County Circuit Court
Nicole Ticknor	IL	17th Judicial Circuit Court- DV Coordinated Court
Nida Abbasi	IL	Center for Court Innovation
Rachel Abrego		National Center for State Courts
Sarah Henry	VA	Battered Women's Justice Project
Sarah Hoskinson	KS	Kansas Judicial Branch
Sarah Song	IL	Access to Justice Division of the Administrative Office of Illinois Courts
Sarah Vandenberg Van Zee		National Center for State Courts
Stephanie Satkowiak	NC	North Carolina Administrative Office of the Courts
Stephine Bowman	NV	National Council for Juvenile and Family Court Judges
Chief Justice Susan Christensen	IA	Administrative Office of the Courts
Judge Wendy Million	AZ	Administrative Office of the Courts

APPENDIX B: REAL LIFE EXAMPLES

During this session, participants shared some examples of improved court responses in response to challenges presented by the pandemic:

Outreach to the Deaf Community

Judge Wendy Million described outreach effort in Tucson, AZ. After gathering data on their DV cases, they realized they saw a few deaf offenders, but no deaf victims were accessing their court (though there is a large educational institution for the Deaf in town). Following a study on the barriers that keep deaf victims from engaging, they realized they needed a comprehensive response and met with Deaf social service organizations, victim services, services for offenders, court staff, and others to identify the barriers to court access. These groups were charged to develop a coordinated plan but quickly came to realize that these groups were not accustomed to working together and some bridge-building would have to be undertaken first.



A series of trainings was held, with Deaf culture experts training judges and court staff and DV service providers; DV experts also provided training for Deaf organizations and ASL interpreters. Receiving feedback on police interactions, outreach to the Deaf community also included “coffee with cops/courts” sessions in accessible community locations where deaf citizens were invited to discuss their interactions with police officers or court personnel and suggest improvements. Internal Affairs officers also attended because they were concerned about law enforcement interactions with the Deaf community. To ensure interpreters are available and paid by the court, treatment programs can now schedule interpreters through the court. A policy was also instituted to provide, whenever possible, interpreters for each party.

Eliciting Victim Feedback



Nikki Ticknor, Rockford, IL, discussed how their court elicited information from DV victims to identify barriers and improve case processing. Several committees meet regularly to address these issues. A committee on victim safety and security is composed of representatives from a mix of agencies and survivors that discuss both courthouse and virtual safety issues and identify gaps. A DV survivor-led VOICES Committee is consulted on policy or practices changes and solicited for ideas when grant opportunities arise. Monthly meetings are also held with local DV advocates to provide updates on court processes, elicit information on their recent court experiences, and problem solve together (e.g., the group helped the court to work out procedures for advocates in virtual hearings). They feel that it is important to have an advocate physically in the court room as well as appearing virtually so that the modality of how people appear is matched.

They have also worked through policies to allow victims to observe court safely, especially for sexual assault cases, and now have procedures for the court to let them into the “virtual gallery” in a way that protects their safety.

The court has produced several videos and guides to prepare litigants for virtual hearings. Document submission was a problem, and the courts worked with DV advocates to prepare them to assist victims, including developing a written guide. Judges also had to be trained to use docucams and other tools. Even now, in some situations, the online solutions don’t work well, and the judge must convert to an in-person hearing.

Nikki noted that the culture of Zoom court is different from in-person hearings – there are effects on judicial fatigue and staff burnout as well as additional technical preparation required of litigants. Being better prepared for this difference eased frustrations and helped everyone adjust better to new policies. In Illinois, virtual proceedings are here to stay, likely in hybrid proceedings that handle matters remotely when feasible, paired with in-court sessions as needed.

The goal is to ensure an equally satisfying experience for all concerned in both types of proceedings.

Customer Service Improvements

Neal Jappert, Multnomah County, OR, described their legal resource center (created in a new courthouse in January 2020) to improve access for SRLs in particular. Lots of work was devoted to improving the CPO process. During the pandemic when staff were not physically available, a video kiosk remotely connected litigants to staff who explained procedures and forms. The center has improved customer service by providing a first stop for all litigants that directs them to the appropriate court divisions and explains related procedures and required forms. Recently, the legal center made a good connection to the Somali community, resulting in more Somali women using the center.

An Access to Justice Group of the local bar meets quarterly to share information among all partners to improve court processes.

A position was added to address customer service issues, particularly to support staff in coping with regular users with unique needs due to mental health and other factors. Additional training has been provided to help staff manage with these issues and avoid the overuse of security officers in these situations.

Hybrid CPO Process

Ava Carcirieri described major changes that were made to the CPO process in Delaware. Pre-pandemic, all litigants had to show up in court, wait to meet with a mediator, and if no resolution, had to go to trial that same day. No one was happy with the process. In the new system, called a virtual case review, the two parties each meet with the mediator in separate break out rooms. The mediator does shuttle mediation to reach consent if both parties are present, or identifies default cases or cases in which the matter needs to be rescheduled for service. If a trial is needed, it usually proceeds in-person at the courthouse, though a few virtual trials have been conducted successfully with tech-savvy attorneys. There are still issues with electronic evidence submission, but it is likely the court will continue this hybrid strategy for CPO cases. one significant benefit of more purposeful scheduling is that parties are not waiting in court all day. For litigants who are uncomfortable appearing remotely from their homes, the court has partnered with advocacy centers and libraries to set up Zoom rooms, using COVID emergency funds to pay for them.



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