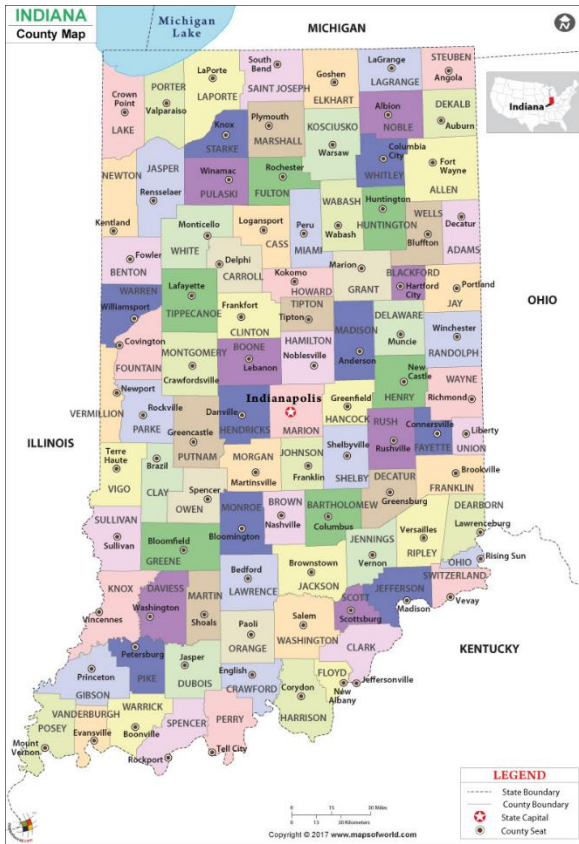




Using Your Powers for Good

ICADV's Satellite Attorney Program-2021



A Little About US

Psychology Today Find a Therapist Get Help Magazine Today

Find a Therapist (City or Zip)

DOMESTIC VIOLENCE

Why the Increase in Domestic Violence During COVID-19?

Maclen Stanley JD, Ed.M.
Making Sense of Chaos

COVID-19 has triggered common factors associated with domestic violence.

Posted May 09, 2020

The Economist Daily Chart

Domestic violence has increased during coronavirus lockdowns

In American cities, reports rose after lockdowns while other crimes fell

The data for context

United States reported a 20% increase in domestic violence cases in April 2020, a 10% increase in May 2020, and a 15% increase in June 2020.

Domestic violence cases in the US, 2019-2020

Domestic violence cases in the US, 2019-2020

NEWS

World

Coronavirus: Domestic violence 'increases globally during lockdown'

The UK has described the worldwide increase in domestic abuse as a "shadow pandemic" alongside Covid-19. It's thought cases have increased by 20% during the lockdown, as many people are trapped at home with their abuser.

The BBC's Gender and Identity Correspondent, Angela Martin, has been tracking but four women in four countries have come up with lockdown to help vulnerable women in their communities.

Reporter: Angela Martin, video journalist: Olivia Le Pogrevel, BBC America

12 Jun 2020

Stories to keep you connected and informed.

IndyStar.

[News] North Sports Things To Do Opinion Nation / World Obituaries E-Edition

PUBLIC SAFETY

'Scared to leave, scared to stay': Domestic violence worsens amid stay-at-home orders

Ryan Martin Indianapolis Star

Published 6:00 a.m. ET Apr. 9, 2020 | Updated 12:08 p.m. ET Apr. 9, 2020



The New York Times

THE INTERPRETER

A New Covid-19 Crisis: Domestic Abuse Rises Worldwide

Movement restrictions aimed to stop the spread of the coronavirus may be making violence in homes more frequent, more severe and more dangerous.

Satellite Attorney Project: Nutshell

- **Started January 1, 2016; funding renewed -2022**
- **SAP has served just over 980 survivors and their children.**
- **60+ attorneys available, depending on their schedules.**
- **80+ ICADV programs as referrals**
- **DV Provider>ICADV Legal Counsel>Attorney**
- **Contract, training & match required**
- **\$75.00 per hour plus travel/expenses**
- **Pro bono if less than half your hourly.**

Goals

- **Learn about the intersections of IPV and Indiana/ federal law.**
- **Help YOU be a better legal advocate for all survivors**
- **Understanding you clients is an ethical issue.**
- **Learn about “trauma informed lawyering”**





**CAN YOU PUT IT
IN THE CHAT?**

Trauma Informed Legal Practice

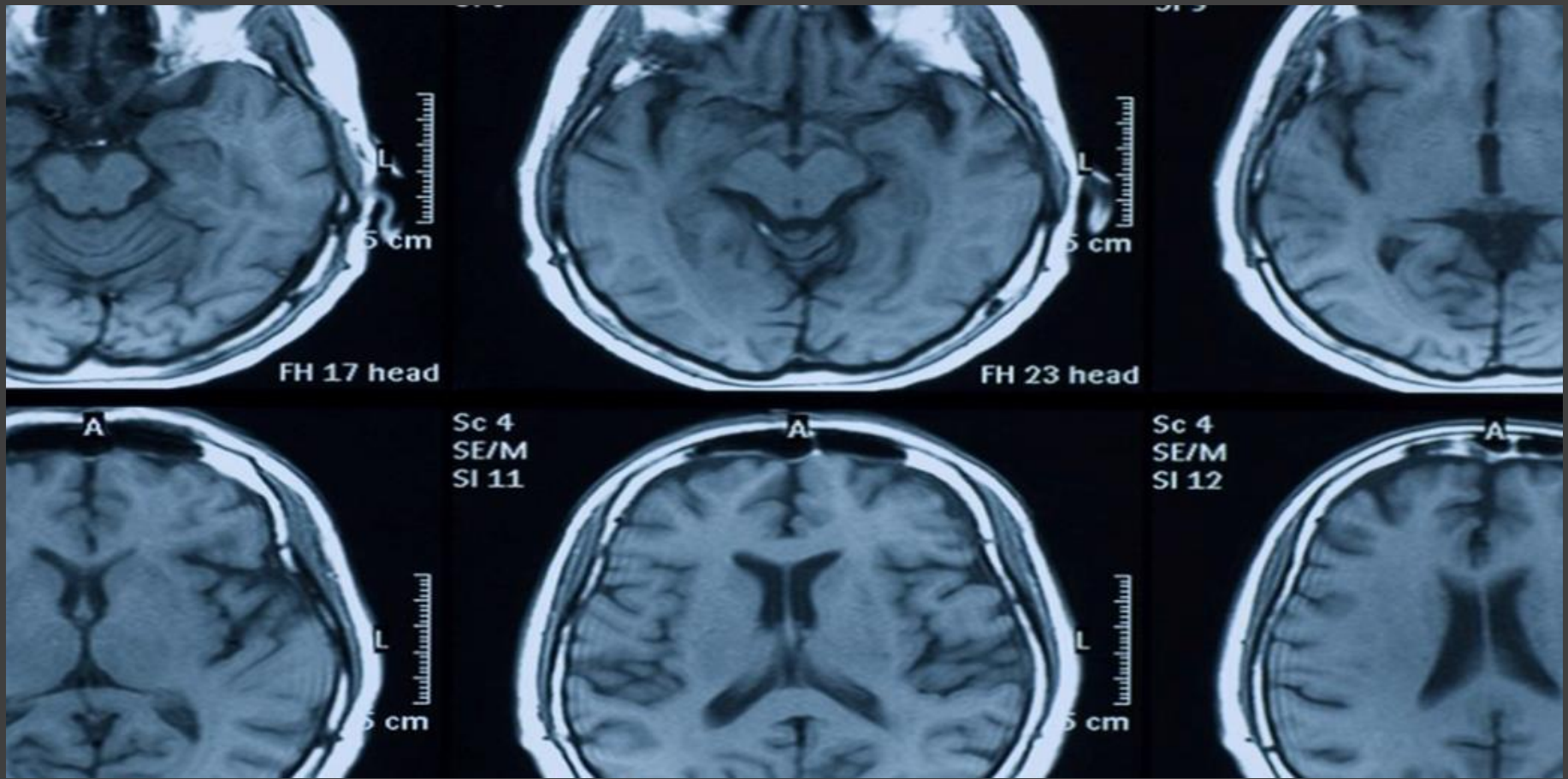
- When the practitioner puts the realities of the clients' trauma experiences at the forefront in engaging with clients and adjusts the practice approach informed by the client's trauma experience.

THE PEDAGOGY OF TRAUMA-INFORMED LAWYERING

SARAH KATZ & DEEYA HALDAR*

“Trauma-informed practice” is an increasingly prevalent approach in the delivery of therapeutic services, social and human services, and now legal practice. Put simply, the hallmarks of trauma-informed practice are when the practitioner puts the realities of the client’s trauma experiences at the forefront in engaging with the client, and adjusts the practice approach informed by the individual client’s trauma experience. Trauma-informed practice also encompasses the practitioner employing modes of self-care to counterbalance the effect the client’s trauma experience may have on the practitioner.

This article posits that teaching trauma-informed practice in law school clinics furthers the goals of clinical teaching, and is a critical aspect of preparing law students for legal careers. Trauma-informed practice is relevant to many legal practice areas. Clients frequently seek legal assistance at a time when they are highly vulnerable and emotional. As clinical professors who each supervise a family law clinic, we of course teach our students how to connect with their clients, while drawing the appropriate boundaries of the attorney-client relationship. Equally challenging and important is helping our students cultivate insight into identifying and addressing trauma and its effects. Many of our clinics’ clients are survivors of intimate partner



<https://youtu.be/Xtknqy3MnTM>

- The vast majority of domestic-violence victims who show signs of traumatic brain injury never receive a formal diagnosis.
- Temet / Getty

What we want

- **Evidence**
- **Consistent Stories**
- **Strong Witnesses**
- **Vulnerability**
- **“Sobriety”**
- **Emotional stability**
- **Coping Skills**
- **Credibility**

What we get

- **Story changes**
- **Self medicating**
- **Unexplainable anger, rage, emotion**
- **Inability to focus**
- **Catatonic like state; staring**
- **Unexplainable mood changes**
- **Fear of losing the control over them**
- **Self doubt, self blame**

THIS



~~“What is
wrong with
you?”~~

“What
happened to
you?”

Trauma Informed Legal Practice

- **Identifying Trauma**
- **Adjusting the Attny-Client Relationship**
- **Adapting Litigation Strategy**
- **Preventing Vicarious Trauma**



- **Indiana Rules of Court**
- **Rules of Professional Conduct**

- **Rule 1.1. Competence**
- A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.



- **Indiana Rules of Court**
- **Rules of Professional Conduct**

- **Rule 1.3. Diligence**
- A lawyer shall act with reasonable diligence and promptness in representing a client.



- **Rule 1.14**
- **Diminished Capacity**

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, **maintain a normal client-lawyer relationship with the client.**

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

(d) This Rule is not violated if the lawyer acts in good faith to comply with the Rule.



What You Need to Know

DV101

Domestic Violence Defined

- **The misuse of power in a relationship in order to coerce, control, intimidate or dominate another person.**
- **It can be understood as a pattern of behaviors used to control or exert power over another person in the context of an intimate relationship, regardless of the length or depth of the relationship.**

- Physical violence
- Economic control and coercion
- Threats
- Intimidation
- Isolation of the victim
- Emotional abuse

- Sexual assault or abuse
- Threats against children to coerce the parent
- Damaging or destroying property
- Killing or abusing pets

Why is DV still relevant if the relationship is ending/over?

- Because abuse does not end with separation.
- Because children's continued exposure to unhealthy relationships reinforces that behavior.
- Because the abuse not only continues through litigation but it often gets worse.
- Because the abuse can be the litigation itself.

Domestic Violence & Parenting

- Children from violent homes are **1500X** more likely to grow up to be either abusers or victims of intimate partner violence
- **We teach our children how to treat the people we love.**

Protection Orders in Indiana

IC 34-26-5

IC 34-26-5: Indiana Civil Protection Order Act

- Its all about Family/Partner Violence/Sexual Assault & Harrassment
- Structured after the Model Code of Family Violence
- Economic Relief is a Critical Component

Legislative Intent

§ 34-26-5-1. Construction

This chapter shall be construed to promote the:

(1) protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; and

(2) protection and safety of all victims of harassment in a fair, prompt, and effective manner; and

(3) prevention of future domestic violence and family violence and harassment

A Judicial Mandate 34-26-5- 9(f)

Upon a showing of domestic or family violence by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence

Why obtaining a PO matters

- **Economic Justice**
- **Indiana AG' s Address Confidentiality Program**
- **Driver' s License exception to above**
- **Tenancy relief for victims of DV (32-31-9)**
 - **Work**
 - **Housing**
 - **Resources**
- **Employment Protections: 2015 (22-5-7-2)**
- **Pet Protections/Phone Bill bifurcation**

The Petitioner: Who is Getting the Order

- **1. A person who is or has been a victim of “domestic or family violence”.**
- **2. A person who is or has been a victim of “sexual assault”.**
- **3. A person who is or has been a victim of “stalking”.**
- **4. 2019: Victim of “harassment”**

**Definition:
IC 34-6-2-
34.5
Domestic or
Family
Violence**

- **Attempting to cause, threatening to cause, or causing physical harm to another family or household member.**
- **Placing a family or household member in fear of physical harm.**
- **Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress**
- **Beating, torturing or killing a vertebrate animal with the intent to terrorize, threaten, harass, intimidate.**

NEW
Definition: IC
34-6-2-51.5
Harassment:
2019

"Harassment"

means conduct directed toward a victim that includes, but is not limited to, repeated or continuing *impermissible contact*:

- (1) that would cause a reasonable person to suffer emotional distress; and**
- (2) that actually causes the victim to suffer emotional distress.**

NEW
Definition: IC
35-45-10-3
Impermissible
Contact

(1) Following or pursuing the victim.

(2) Communicating with the victim in person, in writing, by telephone, by telegraph, or through electronic means.

(3) Posting on social media, if the post:

(A) is directed to the victim; or

(B) refers to the victim, directly or indirectly.

Harassment by Telegraph



Harassment POs-SideBar

Burden the same: Preponderance

NO Ex Parte Orders.

Court MUST set it for hearing w/in 30 days

Harassment PO may be granted after hearing whether or not the Respondent appears.

Relief may include allowing the parties to occupy the same location if legitimate or necessary.

Indiana Code 34-26-5

Cost

Jurisdictional Requirements

- Personal (who)
- Subject Matter (issue)

Length of Protection Order

Mandatory Forms

No Fees to Register Foreign POs

BIP Option for violations

How it Works

First Step: Filing for PO

- **The County Clerk's Responsibility**
- **NOT Unauthorized Practice of Law**

Efiling now ONLINE

- <https://www.in.gov/judiciary/tutorials/efile-po-efsp/#/>

Forms on the Internet

- <https://www.in.gov/judiciary/iocs/2645.htm>

Ex Parte Order Procedure

Relief Available: Ex Parte Order

Separation: the right to be left alone

**Removal and exclusion of respondent
from residence and/or assistance in
removing necessary personal affects.**

Including Pets (2017)/Cell Phone

Possession of automobile

Regardless of the ownership

There **MUST** be a hearing **within 30 days** when:

The Ex Parte Order issues an eviction



The Ex Parte Order rules on an immediate possession/use issue:

A residence they both share	A car or other motor vehicle	Other necessary personal items	REGARDLESS OF OWNERSHIP OF THESE ITEMS	(IC 34-26-5-9) •NEW in 2017: <u>pet protections and possession</u>
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Relief Available: Post Hearing PO

All relief under Ex Parte Order

Parenting time including denial of parenting time by Respondent

Economic Justice/relief

- child support/maintenance
- expenses resulting from abuse
 - medical, shelter, counseling, damages
- ATTORNEY FEES of Petitioner

FIREARMS

What Relief is Missing From This List?

Custody

Although the proposed statute contained language allowing a judge to make a custody decision as part of a PO case, the legislature removed that language.

Indiana PO Law and Firearms:

“A finding that domestic/family violence has occurred sufficient to justify the issuance of a PO means that Respondent represents a credible threat to the safety of Petitioner/member of Petitioner's household. Upon a showing of domestic/family violence by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence/threat of violence. The relief may include an order directing Respondent to surrender to a law enforcement officer/agency all firearms, ammunition, and deadly weapons in the control, ownership, or possession of Respondent/another person on behalf of Respondent for the duration of PO unless another date is ordered by the court.” (emphasis added)

**Federal Gun
Laws
stronger-not
discretionary
18 USC 922**

✓ **18 USC 922(g)(8), 924(a)(2)**

- ✓ **Notice and Opportunity to be Heard**
- ✓ **Intimate Partners**
- ✓ **Indicates finding of “credible threat”.**

When a Protective Order is Violated

Civil remedy available:

- **Civil Contempt**

Criminal remedy available:

- **Invasion of Privacy**

Civil vs. Criminal Enforcement of Protection Orders

<u>Civil Contempt</u>	<u>Criminal IOP</u>
Burden of proof is lower: Clear and convincing	Burden of proof is higher: Beyond a reasonable doubt
Victim/Petitioner is in charge	Prosecutor is in charge
A viable alternative to more punitive measures	Punitive in nature; brought by State
Demands accountability, compliance hearings	Repeat offenders face greater offenses

Touching on Other Issues

PO's do NOT
circumvent valid PT
orders.

Date and time of
abuse not by itself
determinative

Invitation is no
defense to a
violation....BUT

Cannot violate your
own PO

Mutual Protection
Orders are Illegal

POs have Full Faith
and Credit; Facial
Validity

Dismissal must be in
writing or on record

Both parties' legal
obligation to disclose
other actions

Pending criminal cases
and divorce cases and
their effect on the
Order for Protection

DCS CAN file on behalf
of a child instead of
telling the victim to go
and file.

Domestic Violence in Family Law Cases

Why It Matters



- **MANDATORY CUSTODY CONSIDERATIONS**

- IC 31-17-2-8 Custody order

- The court *shall* determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court *shall* consider all relevant factors, including the following:

-
- **(6) The mental and physical health of all individuals involved.**
- **(7) Evidence of a pattern of domestic or family violence by either parent.**

DV and Parenting Time in Indiana

- The Scope of Indiana's Parenting Time Guidelines:
 1. Generally. These Guidelines are applicable to all child custody situations, including paternity cases and cases involving joint legal custody where one person has primary physical custody. *However, they are not applicable to situations involving family violence, substance abuse, risk of flight with a child, or any other circumstances the court reasonably believes endanger the child's physical health or safety, or significantly impair the child's emotional development.*

DV and Parenting Time in Indiana

- **IC 31-17-2-8.3**
- **Conviction of DV crime with a child present creates a presumption of supervised parenting time in DR and paternity cases.**

IC 31-17-2-8.3

Supervised parenting time; conviction of crime involving domestic or family violence; batterer's intervention program

Sec. 8.3. (a) This section applies if a court finds that a noncustodial parent has been convicted of a crime involving domestic or family violence *that was witnessed or heard by the noncustodial parent's child*.

(b) There is created a rebuttable presumption that the court shall order that the noncustodial parent's parenting time with the child must be supervised:

- (1) for at least one (1) year and not more than two (2) years immediately following the crime involving domestic or family violence; or
 - (2) until the child becomes emancipated;
- whichever occurs first.

(c) As a condition of granting the noncustodial parent unsupervised parenting time, the court may require the noncustodial parent to complete a batterer's intervention program certified by the Indiana Coalition Against Domestic Violence.

Mediating Domestic Violence Cases

In the year 2000, the American Bar Association made the following resolution:

RESOLVED, That the American Bar Association recommends that court-mandated mediation include an opt-out prerogative in any action in which one party has perpetrated domestic violence upon the other party.

Considerations:

Mandatory mediation can be ineffective in the context of domestic violence because it assumes that parties are equally able to negotiate.

In fact, survivors often agree to the terms of mediation out of fear or coercion, and mediators often fail to recognize the tactics abusers use to exert control over their victims during the mediation process.

Indiana: Mediation in DV Cases

Protective Orders: IC 34-26-5-15

Sec. 15. A court **may not**:
 (1) order parties into mediation; or
 (2) refer parties to mediation;
for resolution of the issues in a petition for an order for protection regarding family or domestic violence.

ADR RULE 2. MEDIATION

- 2.7A(6) advise a party who self-identifies or who the mediator identifies as a victim after screening for domestic or family violence, also known as intimate partner violence or abuse, or coercive control (hereinafter, “domestic violence”) that the party will only be required to be present at mediation sessions in accordance with Rule 2.7(B)(1) below.

ADR RULE 2. MEDIATION

- 2.7B(1). A party who self-identifies or who the mediator identifies as a victim after screening for domestic violence shall be permitted to have a support person present at all mediation sessions. The mediator may terminate the mediation at any time when a participant becomes disruptive to the mediation process.

ADR RULE 2. MEDIATION

2.7B(5). The mediator may meet jointly or separately with the parties and may express an evaluation of the case to one or more of the parties or their representatives. The mediator shall advise the parties that the mediator's evaluation is not legal advice.



Housing Issues for Survivors

State & Federal Law

The Federal Violence Against Women's Act

Domestic Violence and Housing

VAWA covers people who are subject to:

- **Domestic violence:** Any felony or misdemeanor crimes of violence committed by a current or former spouse, intimate partner, person with whom the victim shares a child, person who is or has cohabitated with the victim
- **Dating violence:** Violence committed by a person who is/was in a social relationship of intimate nature with victim as determined by considering three factors.
- **Sexual assault:** Any nonconsensual sexual act prohibited by law
- **Stalking:** Any conduct directed toward a specific person that would cause a reasonable person to fear for safety or suffer substantial distress

Admissions

- PHAs, landlords and owners may not deny an applicant housing **on the basis or as a direct result of** an applicant having been a survivor of domestic violence, dating violence, sexual assault, or stalking.
- Adverse factors resulting from the abuse (e.g. poor credit history or criminal history)

Evictions

- **PHAs, landlords and owners may not evict a tenant on the basis or as a direct result of their status as a survivor.**
- Crimes against a survivor directly relating to the abuse are not grounds for evicting the survivor or terminating their rental subsidy.
- An incident of actual or threatened abuse does not constitute a “serious or repeated lease violation” or “good cause” for evicting the survivor or terminating their rental subsidy.

Few Things:

- Lease Bifurcation:
 - Landlord can bifurcate a lease to evict an abuser while allowing survivor to stay.
 - Applies only to tenants-not residents.
- Emergency Transfers:
 - Must be granted (12-2016)
 - Proving Abuse-
 - Self certification
 - Court docs
 - Forms
 - HUD must provide VAWA rights to all.

Domestic Violence and Private Housing

Indiana Law: IC 32-31-9

Lease Protections for DV Victims

- IC 32-31-9
 - A person who has a civil PO or criminal NCO
 - Landlord may not terminate a lease, refuse to renew a lease, refuse to enter a lease, or retaliate against a tenant solely because the tenant is victim of DV.

Lock Changes for Survivors

- If the abuser lives at the same premises as protected person, the landlord **SHALL** change the locks no later than 24 hours from written notice and give key to new locks to protected person.
- If the perpetrator who is restrained is NOT a tenant of the same dwelling unit, the landlord **SHALL change the lock** upon written request of the tenant no later than 48 hours after giving them a copy of the court order

Lock Changes for Survivors

- IF the landlord fails to timely change the locks, **the tenant** may change the locks without landlord's permission and landlord **shall** reimburse the tenant for actual expenses incurred. Tenant needs to give a key of new lock to landlord.
- Unless the court order allows the abuser to return to the dwelling to retrieve his/her possession, **the landlord may not** by any act provide access to the dwelling unit.

Lock Changes for Survivors

- The landlord is immune from civil liability for excluding abuser from dwelling or loss of use or damage to personal property while the property is present in the dwelling.
- The abuser remains liable for rent and damages as provided in the lease.

Lease Termination for Survivors

- Tenant may terminate lease with 30 days written notice to landlord. Must include
 - copy of PO/NCO
 - copy of a safety plan from an accredited DV agency that recommends relocation
- Lists what expenses they are liable for in terminating lease. Tenant is entitled to have deposit returned.



Finally!





We'd love to have
you join us as a
contract
attorney

You changed my life. You reminded me that I mattered. You reminded me that the abuse I was taking wasn't normal and that I did not have to accept it. You gave me my worth back. Your job is so much more important than you might even realize. You changed me deep within. You found the me I had lost. I know your jobs are difficult and that it must be hard to go to work everyday dealing with all of these negative situations many of us have found ourselves in, and the roller coaster of emotions that go with that, but please know it matters so much. It means so much to me. Thank you from the bottom of my heart!



Questions?

ICADV's Satellite Attorney Program-2021