

# COVID-19's COMPLICATIONS FOR FAMILY LAW COUNSEL: DOMESTIC VIOLENCE AND THREATS TO THE WELL-BEING OF CHILDREN:

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## INTRODUCTION

Virtually every family law practitioner is forced to address issues of domestic violence or potential for injury to children when representing clients in divorce and child custody matters. The COVID-19 epidemic has created new problems for couples or families who have traditionally lived-in situations in which stress has either been minimal or controlled by the goodwill and interests of the individuals involved. It has also aggravated situations faced by domestic units that have existed despite ongoing difficulties, often at risk of personal anxiety suffered by spouses or partners or members of the family unit.

A recent study reported in the Journal of the American Medical Association included the following summary of the researchers' conclusions:

Findings in this survey study that included 1441 respondents from during the COVID-19 pandemic and 5065 respondents from before the pandemic, depression symptom prevalence was more than 3-fold higher during the COVID-19 pandemic than before. Lower income, having less than \$5000 in savings, and having exposure to more stressors were associated with greater risk of depression symptoms during COVID-19.<sup>1</sup>

The upshot of stress attributable to the pandemic has likely been increased depression that will be manifested in increased domestic violence.<sup>2</sup> The JAMA article concludes:

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Catherine K. Ettman, et al., "*Prevalence of Depression Symptoms in US Adults Before and During the COVID-19 Pandemic*," ORIGINAL RESEARCH/PUBLIC HEALTH, J. AM. MED. ASSOC. (Sept. 2, 2020) <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2770146/> (accessed Oct. 4, 2020). The author, Ms Ettman worked on this project while funded by grant No. T32 AG 23482-15 from the National Institutes of Health.

<sup>2</sup> Behavior constituting "domestic violence" are included in the definition of "domestic abuse" in the Arkansas Family Code:

These findings suggest that prevalence of depression symptoms in the US was more than 3-fold higher during COVID-19 compared with before the COVID-19 pandemic. Individuals with lower social resources, lower economic resources, and greater exposure to stressors (e.g., job loss) reported a greater burden of depression symptoms. Post-COVID-19 plans should account for the probable increase in mental illness to come, particularly among at-risk populations.<sup>3</sup>

## I. IMPLICATIONS FOR THE FAMILY LAWYER’S CLIENTS AND PRACTICE

There are at least three factors attributable to the COVID-19 or necessary responses to the virus that compound problems for clients of family law practitioners. First, the virus itself threatens the physical and psychological well-being of virtually every person simply because the continuum of its effects are so dramatic for the individual and those living in proximity to an exposed or sick person, the range of impact running from asymptomatic illness to fatal infection. The threat of contracting the illness is itself, a major determinant in individual response in

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(4) “Domestic abuse” means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

(B) Any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state;

(5) “Family or household members” means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, in-laws, any children residing in the household, persons who presently or in the past have resided or cohabited together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together

ARK. CODE ANN. §§ 9-15-103(4) and (5) (2020). The definition of “family or household members” in subsection (5) explains the limitation as to who may suffer “domestic abuse” under the statute. This limitation may prove particularly significant in specific contexts. For instance, Arkansas recognizes the justification for use of deadly force not only for defense of the person, but also provides:

(a) A person is justified in using deadly physical force upon another person if the person reasonably believes that the other person is:

....

(3) Imminently endangering the person’s life or imminently about to victimize the person as described in § 9-15-103 from the continuation of a pattern of domestic abuse.

ARK. CODE ANN. § 5-2-607 (2020).

<sup>3</sup> See Ettman, *supra* note 1.

addressing other threatening situations. For instance, the threat of contracting the illness may have a significant impact on the decision to seek treatment for unrelated medical problems, which may include medical treatment necessitated by acts of domestic violence:

For many women, even the fear of contracting the coronavirus is stopping them from seeking out medical care after experiencing physical abuse.

“I spoke to a female caller in California that is self-quarantining for protection from COVID-19 due to having asthma,” an advocate at the National Domestic Violence Hotline wrote in the organization’s log book. “Her partner strangled her tonight. While talking to her, it sounded like she has some really serious injuries. She is scared to go to the ER due to fear around catching COVID-19.”<sup>4</sup>

Second, the range of response to exposure to the virus requiring, if not demanding, social distancing, quarantine, or isolation during treatment, is likely to have significant impact on the ongoing relationships for couples or members of family units. And third, the potential financial danger inflicted or threatened by the economic consequences of the response to the virus’s very serious contagious nature, whether through the loss of business revenue or employment, jeopardizes many couples and families. The American Psychological Association reports that increased levels of stress are being experienced more by parents with children than adults without children.<sup>5</sup> The APA survey finds:

The average reported stress level over the past month related to the coronavirus pandemic for parents of children under 18 is 6.7, compared with 5.5 for adults without children, with nearly half of parents (46%) saying their stress level is high (between 8 and 10 on a 10-point scale where 1 means “little or no stress” and 10 means “a great deal of stress”), compared with 28% of adults without children who say the same.

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<sup>4</sup> Rachel Bucchino, *Domestic violence cases surge amid stay-at-home orders*, THE HILL (Apr. 13, 2020) <https://thehill.com/homenews/news/492506-domestic-violence-cases-surge-amid-stay-at-home-orders> (last accessed Jun. 2, 2020).

<sup>5</sup> AMERICAN PSYCHOLOGICAL ASSOCIATION, *Stress in the Time of COVID-19* (May, 2020), <https://www.apa.org/news/press/releases/stress/2020/report> (last accessed May 30, 2020) (“Parents report stressors related to education, basic needs, access to health care services and missing out on major milestones.”).

For family law attorneys, the overall situation that has developed with respect to the spread of the virus has likely been compounded by circumstances that impact the ability of counsel to perform the necessary duties for effective representation. The closing of law offices, or restriction of access to law offices for clients or prospective clients, frustrates the ability of many family lawyers to respond to the need for representation or advice by those individuals who might have the same representation needs, such as the filing of a petition for a no-fault divorce without custody issues, or those whose situations within the relationship with a spouse or domestic partner or their families have been complicated or aggravated by circumstances attributable to the epidemic.

Moreover, even when counsel may be available, whether with restricted personal access or through other means of communication such as telephone, email, or online conferencing, court closures and limitations on the availability of court clerical personnel have likely slowed, if not foreclosed, access to family courts that are necessary for counsel representing clients in disputes not easily resolved by negotiation. Additionally, the economic burdens created or enhanced by the circumstances surrounding the corona-virus epidemic not only a source of a legitimate concern for clients needing assistance, but also for counsel faced with a loss of income while overhead for maintaining an office and practice remains fixed.

## II. DOMESTIC VIOLENCE: UNFORESEEN CONSEQUENCES FOR CLIENTS

Just as COVID-19 threatens virtually every individual, except possibly those who have suffered from infection and survived and may have developed immunity as a result, the measures taken to control its spread have proved particularly difficult for poorer individuals and families to address. The ordered or recommended isolation of individuals within their homes or family homes has certainly changed the circumstances of life and not always positively.

While recurring advertising and public service messages have stressed the opportunity for couples and families, particularly, to experience more time in close proximity, the change in physical circumstances of daily living has not necessarily proven to benefit those watching those advertisements and public service messages on television. This is likely particularly true for economically disadvantaged individuals and families. And, for many, the change in financial resources has undoubtedly proved devastating.

### III. DANGERS TO FAMILIES POSED BY COVID-19

The result of the dramatic change in daily lifestyle experienced by those who have been sheltering in their homes or quarantined has not necessarily offered positive experiences for those individuals or family members accustomed to a routine that offered a different reality. Not only is forced closeness likely to interfere with daily habits, such as going to work or school, but it may result in aggravation of underlying tensions between people experiencing the abrupt change in physical proximity occasioned by official announcements of public policy by state and federal officials in which closure of businesses and forced restriction on public activities have been ordered as immediate steps to contain the epidemic. A researcher and consultant in public health specializing in issues of domestic violence, Andrew Campbell observes:

With shelter in-place measures and widespread organizational closures related to COVID-19 likely to continue for an extended period of time, stress and associated risk factors for family violence such as unemployment, reduced income, limited resources, and limited social support are likely to be further compounded.

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An increasing risk of domestic violence-related homicide is also a growing concern – reports continue to surface around the globe of intimate partner homicides with ties to stress or other factors related to the COVID-19 pandemic. Reports of increasing gun and ammunition sales in the U.S. during the crisis are particularly concerning given the clear link between firearm access and fatal domestic violence incidents.<sup>6</sup>

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<sup>6</sup> Andrew M. Campbell, *An increasing risk of family violence during the COVID-19 pandemic: Strengthening community collaborations to save lives*, FORENSIC SCIENCE INTERNATIONAL: REPORTS (April 12, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7152912/> (last accessed May 31, 2020).

## A. Increasing Domestic Violence Directed at Spouses and Partners

A likely upswing in incidents of domestic violence has been both predicted<sup>7</sup> and demonstrated by rising reports of abuse of spouses, partners and children.<sup>8</sup> This would suggest that client demand for orders of protection<sup>9</sup> will rise as a result of sheltering-in related to domestic abuse. However, two factors may compromise the use of protective orders: first, lack of access to counsel or courts due to closures or time limitations to opening either;<sup>10</sup> or, second,

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<sup>7</sup> David Montieth, *Calls To Arkansas's Child Abuse Hotline Expected To Rise*, UA LITTLE ROCK PUBLIC RADIO (April 17, 2020), <https://www.ualrpublicradio.org/post/calls-arkansas-child-abuse-hotline-expected-rise> (last accessed May 30, 2020).

<sup>8</sup> See generally, Julie Bosman, *Domestic Violence Calls Mount as Restrictions Linger: 'No One Can Leave'* N.Y. TIMES (May 15, 2020) <https://www.nytimes.com/2020/05/15/us/domestic-violence-coronavirus.html> (last accessed May 30, 2020) (“The coronavirus has created new tensions. Staying at home has worsened abusive situations. Shelters worry about the spread of the virus.”). The Times reported:

Americans have been cooped up at home for months to slow the spread of the coronavirus, many of them living in small spaces, reeling from sudden job losses and financial worries. Children are home from school in every state in the country.

That confinement has led to another spiraling crisis: Doctors and advocates for victims are seeing signs of an increase in violence at home. They are hearing accounts of people lashing out, particularly at women and children.

“No one can leave,” Kim Foxx, the chief prosecutor in Chicago, said in an interview. “You’re literally mandating that people who probably should not be together in the same space stay.”

The problems have only deepened since stay-at-home orders were first imposed.

<sup>9</sup> Orders of Protection issued by Arkansas courts are designed to prevent continuing domestic abuse are authorized by statute. ARK. CODE ANN. §§ 9-1-201, *et seq.* (2020), Section 203 sets out that pleading requirements and provides a copy of the approved form for use by petitioners seeking relief. The Arkansas Judiciary website includes specific information regarding the process for obtaining an order. “How to Get an Order of Protection,” <https://www.arcourts.gov/administration/domestic-violence/how-to-get-an-order-of-protection> (last accessed May 30, 2020).

<sup>10</sup> In July, reports already showed increasing need for hearings for family law matters because courts were being closed or operated at limited capacity. See, e.g., Viktoria Capek, *Pulaski county courts re-open to the public after closing down from the coronavirus pandemic*, KATV (July 6, 2020) <https://katv.com/news/local/family-court-cases-skyrocket-under-coronavirus-conditions> (accessed Oct. 8, 2020):

The Pulaski County Courthouse resumed operations Monday. During the district's court closure, requests for consultation in family court cases rose.

Nationwide, there have been more than 10,000 requests for family litigation hearings since March. These cases include disagreements involving divorce, child custody and making child support payments.

fear on the part of abuse victims that sheltering requirements may subject them to additional abuse.<sup>11</sup> Moreover, even if orders of protection are issued, the problem posed by limited housing situations and the demands imposed by public policies dictating sheltering in for those individuals whose work is not deemed essential may result in lack of alternatives to prevent contact among parties in disputes involving threatened domestic violence.

Apart from problems in the enforcement of protection orders in less-stressful times—the order of protection cannot ultimately prevent a deliberate act of violence, including one precipitated by increased hostility due to the fact that the prospective victim has actually taken the step of seeking judicial intervention—the value of the protection order may be compromised by the fact that respondents and petitioners may simply be returned to living in close quarters. The enforced closeness may not only aggravate prior hostility between spouses or partners, but the circumstances of increased closeness may contribute to the increasing danger of violence.<sup>12</sup> These circumstances may be so obvious as the result in income available to support the relationship or family; loss of self-esteem for males in the relationship attributable to loss of

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<sup>11</sup> See Bosman, *supra* note 8:

[M]any other callers to the hotline in Chicago, which takes calls from across Illinois, have been from victims who are waiting out the coronavirus stay-at-home orders, reasoning that leaving at this time is riskier than ever. Callers have asked for help on how to keep their partners calm, how to secretly save money, how to develop code words with children that will tell them they need to call 911.

Some victims of violence are anticipating that stay-at-home orders will be lifted before long and are making plans for when that day will come.

<sup>12</sup> Melissa Godin, *As Cities Around the World Go on Lockdown, Victims of Domestic Violence Look for a Way Out*, TIME (Mar. 18, 2020) <https://time.com/5803887/coronavirus-domestic-violence-victims/> (last accessed Jun. 2, 2020). Godin reports:

“My husband won’t let me leave the house,” a victim of domestic violence, tells a representative for the National Domestic Violence Hotline over the phone. “He’s had flu-like symptoms and blames keeping me here on not wanting to infect others or bringing something like COVID-19 home. But I feel like it’s just an attempt to isolate me.”

Her abuser has threatened to throw her out onto the street if she starts coughing. She fears that if she leaves the house, her husband will lock her out.

employment, as evidenced by the incomparable upswing in unemployment compensation applications; loss of income even when employment is not terminated. Men reportedly commit a significantly higher number of incidents of domestic violence than women. The Centers for Disease Control and Prevention reports:

About 1 in 4 women and nearly 1 in 10 men have experienced contact sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime and reported some form of IPV-related impact. Over 43 million women and 38 million men experienced psychological aggression by an intimate partner in their lifetime.<sup>13</sup>

Less obvious complications may arise when the primary income-earner not only suffers a loss of that income, but when the loss or reduction in employment hours compounds the problem of closeness. Extra leisure time may not be productive for individuals for whom employment is the primary source of daily effort, as well as status and self-esteem. In short, the formerly full-time employed income-earner who may have looked forward to personal freedom in retirement may simply fail to develop activities that may be pursued with the extra free time occasioned as public activities, including visiting restaurants and bars, or social activities relating to fraternal orders or other groups have been limited—dramatically and abruptly by social distancing requirements. Similarly, the loss of activity options within the home may contribute to increased anxiety or depression, such as the absence of current sports events from live television, or the lack of other avocations or hobbies, including group social activities.

Arguably, one of the most threatening effects of COVID-19 and the sheltering-in orders imposed by many jurisdictions and recommended by epidemiologists for couples and families is increased intoxication by individuals abusing alcohol or demonstrating abuser tendencies. The situation involving increased use of alcohol may be complicated by several factors:

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CENTERS FOR DISEASE CONTROL, *Preventing Intimate Partner Violence* (Feb. 26, 2019) <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html> (last accessed May 31, 2020).

First, the closing of restaurants and bars by official orders designed to stop or slow the spread of the virus changes the choices available to individuals for whom social drinking in restaurants or bars is a routine event in interaction with others, further isolating these individuals while sheltering in place in compliance with executive orders. This means that increased stress due to the virus will likely be aggravated by the increased confinement in the household and the curtailment of a social experience that may be an important outlet for interpersonal interaction.

Second, those individuals who do routinely consume alcohol in establishment settings but are confined to the residence may continue to drink, but without the legal restraints that limit consumption, such as DUI/DWI laws that are designed to limit the operation of an automobile while intoxicated, or public intoxication ordinances. While increased public safety may be an unintended consequence of sheltering-in-place orders, the other consequence may be increased intoxication within what ends up being a more stressful home environment for those individuals or families whose social interactions outside the family relations are severely restricted.

Third, social drinking in establishments that serve alcohol is typically far more costly than purchasing larger quantities of alcohol to be consumed in the home. There is no legal limitation on intoxication, or degree of intoxication because use of alcohol in one's own home is not regulated by law. Nor is there any requirement that alcohol not be served after 2 a.m.

The combined effect of these factors may well be an increase in domestic violence within family relationships, as researcher Andrew Campbell suggests:

With bars and restaurants being limited to take-out service only in many communities, family violence perpetrators who abuse alcohol may be even more likely to do so *in the home*, likely increasing risk for the entire household.<sup>14</sup>

Increasing domestic violence within the sheltered-in-home population ultimately increases pressure on the legal system and family law practitioners to provide relief through ordinarily

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<sup>14</sup> See Campbell, *supra* note 6.

available legal remedies to protect individuals within the home and family unit from acts of physical violence.

B. Increased threats to the safety of children

As in virtually all other circumstances that undermine the stability of the family unit to provide for the physical and emotional security of children within the home, coronavirus includes threats previously not known in their substance or severity. The social distancing requirement designed to control the spread of the virus has a particularly profound impact on children as a result of the premature ending of the school year. The continuation of an educational effort to complete the 2020 spring term has shifted largely to parents and online instruction, but necessarily altered the socialization experience of children. As a consequence, children have been deprived of discrete aspects of the school experience typically experienced by those children who have been attending school, as opposed to being home-schooled. For the latter, the changes imposed by social distancing may be less dramatic. But poorer families may not afford parents the option of choosing home schooling because of the necessity for parents to work outside the home to obtain necessary financial support for the family.

Violence directed at children and other members of the household constitutes “domestic abuse” under Sections 9-15-103 (4) and (5) of the Family Code,<sup>15</sup> warranting intervention in the courts to protect children from abuse occurring within the home.<sup>16</sup> Evidence of abuse of a child is a key factor in determining issues of temporary child custody and visitation under the applicable Arkansas statute, for instance:

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<sup>15</sup> ARK CODE ANN. § 9-15-103(4) (2017) defines “domestic abuse” as “Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members. . . .” “Children” are expressly included within the definition of domestic abuse under subsection (5).

<sup>16</sup> ARK. CODE ANN. § 5-26-302(2)(D) (2015) specifically defines those who are included in the statutory provisions criminalizing domestic assault to include “Child, including any minor residing in the household.”

(a) In addition to other factors that a circuit court shall consider in a proceeding in which the temporary custody of a child or temporary visitation by a parent is at issue and in which the court has made a finding of domestic or family violence, the court shall consider:

(1) As primary the safety and well-being of the child and of the parent who is the plaintiff of domestic or family violence; and

(2) The defendant's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person.<sup>17</sup>

Moreover, injuries suffered by a child may result in a criminal prosecution for assault<sup>18</sup> or endangering the welfare of a minor,<sup>19</sup> with the range of criminal liability including homicide charges,<sup>20</sup> if death results to the child. To the extent that domestic violence increases as a result of stress attributable to COVID-19 consequences, like sheltering-in-place, loss of employment or financial exigencies, the prospect that criminal prosecutions may be pursued due to injuries to children that also implicate involvement of the family lawyer in domestic relations issues is not unlikely.<sup>21</sup>

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<sup>17</sup> ARK. CODE ANN. § 9-15-215 (2001).

<sup>18</sup> The Arkansas Criminal Code includes specific provisions relating to assaults committed as matters of domestic and family relations: §§ 5-26-303—305, defining Domestic Battering offenses, first through third degree based on the degree of injury sustained by victims and intent of perpetrators, including felony punishments for aggravated offenses. Sections 5-26-306—308 define offenses of Aggravated Assault on a Family or Household Member with punishments ranging from Class D felonies to Class B misdemeanors based on degree of injury or intent of the perpetrator.

<sup>19</sup> ARK. CODE ANN. §§ 5-27-205—207, defining endangerment as first, second- and third-degree offenses based upon the degree of injury or degree of criminal intent of the perpetrator.

<sup>20</sup> ARK. CODE ANN. § 5-10-101(9)(A) (2019) (capital murder for knowingly causing death of victim 13 years old or younger under circumstances manifesting extreme indifference to value of human life) carrying punishment of death or life imprisonment without parole unless committed by perpetrator under the age of 18 years at the time of the offense; § 5-10-102(a)(3) (murder in the first degree for knowingly causing death of a person 14 years of age or younger), a Class Y felony carrying punishment range of 10-40 years or life imprisonment.

<sup>21</sup> See Campbell, *supra* note 6, observing:

Given current school and library closures and shelter in-place mandates, children are likely to be spending significantly more time than usual in the home. Domestic violence abusers may often target children or pets in the home as a means of furthering control over the household. Researchers estimate children residing in a home where domestic violence occurs are at as much as 60 times the risk of child abuse or neglect compared to the general U.S. child population [5].

Even abuse attributable to increased intoxication contributing to domestic abuse directed at a parent in the presence of children may require the court to intervene to protect the child or children from exposure to this violence or excessive intoxication by a parent. Increasing evidence of parental intoxication typically compromises the performance of the parenting function and may lead to the termination of parental rights.<sup>22</sup> Family lawyers or child welfare advocates may confront issues relating to increased intoxication that might be resolved once the spread of COVID-19 is contained, suggesting temporary solutions may be fashioned to prevent long-term disruption of an existing and relatively successful family or household relationship suffering an unusual change in intra-family relations due to the overwhelming impact of COVID-19 and sheltering-in-place stressors.

C. Exposure of children to COVID-19

One potential source of danger to children that may present specific problems for family law practitioners in representing their divorced clients having primary responsibilities for custody of children lies in the threat to exposure of COVID-19. This would prove far less complicated in family relationships in which both the parent having primary custody and the parent having visitation rights were both diligent in complying with directives designed to

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Additionally, when domestic violence abusers also harm animals in the home, it is often an indicator of increased risk for both human and animal members of the household. Nearly 80 % of victims residing in a home where domestic violence and pet abuse co-occur report daily fear they will be killed by the perpetrator.

<sup>22</sup> See, e.g., *Mitchell v. Arkansas Department of Human Services*, 2013 Ark. App. 715, at 3, 430 S.W.3d 851, 853. The court described the circumstances ultimately supporting termination of parental rights:

The police were dispatched to the appellants' residence, and the police found Amanda to be intoxicated with multiple bruises, swelling, and abrasions on her face and neck. Amanda registered .19 on a breathalyzer test, and she indicated that John had caused her injuries the night before when they were drinking whiskey. Amanda said that John had whipped her with a dog leash and locked her in the dog pen in their living room, which occurred in the presence of their daughter. Amanda's daughter had to let Amanda out of the cage. John had left home with the boys before the police arrived that morning.

prevent or reduce exposure. Parents, grandparents, and other family members who are careful in respecting the need for wearing masks and maintaining social distancing are critical in reducing exposure of children to the virus, of course. For others, however, negligence or hostility toward the restrictions imposed by public officials to limit exposure or rejection of the science supporting existence of the pandemic as a hoax is far more dangerous in threatening infection of others, including children.

The problem that counsel may be forced to address would involve an attempt by a parent to protect the child from exposure or infection by withholding court-ordered visitation. This could also happen when the parent having visitation rights refuses to return the child following regular visitation out of concern that the child's home environment is unsafe due to failures to comply with restrictions on exposure. Because the pandemic involves an emergency, custody and visitation orders issued before recognition of this situation nationally or locally will almost certainly not include provisions for similar emergency-type contingencies.<sup>23</sup>

Of course, ideally, a client claiming a threat to a child while outside the home, or one claiming that the primary home itself presents a threat of infection, would notify counsel immediately to have the emergency addressed by the court. But, the pandemic has slowed or restricted the availability of the court's often requiring a delay in scheduling that arguably compromises the need for emergency action. What is not clear is, of course, how the courts will eventually address the implications of the pandemic's highly contagious characteristic for the protection of children within their jurisdiction. The best interest of the child, in such situations,

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<sup>23</sup> The statute authorizing the circuit court to determine and award custody and visitation for parents upon divorce does not specifically address the type of situation affecting the child's best interests posed by COVID-19. *See* ARK. CODE ANN. § 9-13-101. Instead, the court's authority is prescribed generally, as follows:

(a)(1)(A)(i) In an action for divorce, the award of custody of a child of the marriage shall be made without regard to the sex of a parent but solely in accordance with the welfare and best interest of the child.

might warrant a change of a custody determination and order,<sup>24</sup> but parents are not authorized to alter custody or visitation through unitary action, or “self-help.”

Courts in some jurisdictions have attempted to preempt unilateral action by parents to address concerns about coronavirus protection by withholding physical custody or visitation rights.<sup>25</sup> The California Supreme Court issued the following directive:

The California and local “stay at home” COVID-19 orders may affect your custody and visitation orders... Generally, child custody and visitation (parenting time) orders must be followed. However, during this public health crisis, parents may find it difficult to follow the current orders. Also, parents may not be able to get new court orders right away because courts in some counties are closed or offer limited services.<sup>26</sup>

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<sup>24</sup> In *Leonard v. Stidham*, 59 Ark. App. 5, 6, 952 S.W.2d 189, 189 (1997), for instance, the court of appeals explained the general rule: “Modification of visitation rights is not permitted unless there is a sufficient change in circumstances pertinent to visitation.” Whether the existence of the pandemic would constitute a change sufficient to warrant alteration of the visitation order has yet to be addressed by the Arkansas courts. Modification of visitation rights originally ordered cannot be utilized to effectively change custody. *Kennedy v. Kennedy*, 19 Ark. App. 1, 3, 715 S.W.2d 460, 461 (1996). The court held:

[A] change of custody cannot be ordered unless there had first been established a material change in the circumstances which affects the child's best interest or a showing of facts affecting that best interest which were not presented to or known by the court at the time the custodial custody order was entered. *Watts v. Watts*, 17 Ark.App. 253, 707 S.W.2d 777 (1986); *Greening v. Newman*, 6 Ark.App. 261, 640 S.W.2d 463 (1982); *Harris v. Tarvin*, 246 Ark. 690, 439 S.W.2d 653 (1969).

Finding that the order changing father’s visitation rights essentially changed custody, the Court of Appeals reversed the order changing visitation. 19 Ark. App. at 4, 715 S.W.2d at 462.

<sup>25</sup> See, e.g., Scott Broden, *All parents must adhere to custodial conditions while schools are out, court order says*, MURFREESBORO DAILY NEWS JOURNAL, (Mar. 27, 2020) <https://www.dnj.com/story/news/2020/03/27/court-orders-parents-follow-custody-conditions-while-schools-closed/29273350>. The article reports:

Custodial conditions remain in place even though children are out of school through April 24 to limit the spread of COVID-19, a order from the 16th Judicial District states.

"Parenting time/physical custody shall not be affected by the school's closure that arises from an epidemic or pandemic, including but not limited to, what is commonly referred to as COVID-19," states the order signed by 16th Judicial District judges who preside over civil court cases.

<sup>26</sup> *Emergency Court Actions and COVID-19 (Coronavirus)*, <https://www.courts.ca.gov/43589.htm> (accessed Oct. 13, 2020). The California Supreme Court issued a series of recommendations for those most likely affected by the pandemic, including the following:

If this is your situation, you and the other parent can:

1. Learn about the “stay-at-home” orders to understand how they affect your family.

Similarly, the Texas Supreme Court addressed problems of visitation rights that might be affected by school closures ordered in response to the pandemic in March 2020. The court responded to action taken by the Texas governor:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This order is issued pursuant to Section 22.0035(b) of the Texas Government Code.
2. This order applies to and clarifies possession schedules in Suits Affecting the Parent–Child Relationship. For purposes of determining a person’s right to possession of and access to a child under a court-ordered possession schedule, the original published school schedule shall control in all instances. Possession and access shall not be affected by the school’s closure that arises from an epidemic or pandemic, including what is commonly referred to as the COVID19 pandemic.
3. Nothing herein prevents parties from altering a possession schedule by agreement if allowed by their court order(s), or courts from modifying their orders.<sup>27</sup>

The problem for parents confronting the prospect of increasing infection of children due to the re-opening of schools lies, at least in part, in the fact that parents having custodial or visitation rights are not able to control their children’s exposure to others outside the home who may have been exposed or suffer from coronavirus.

The parent may not only have concern for the child who returns to school or who has been required to return to school in terms of the potential illness that may be suffered by the

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2. Work together to make a temporary, written agreement to change the court order during the “stay-at-home” period, if needed.
  3. Learn what other legal options you may have if you can’t come to an agreement.

Learn how “stay-at-home” orders may affect your family.  
California’s Governor issued “stay-at-home” orders in March 2020, to protect the public health of Californians and reduce the spread of the COVID-19 virus. The orders are not intended to stop parents from leaving their homes with the child or stop them from following the court order for parenting time. In fact, many “stay-at-home” orders allow people to leave home to provide care for children, elderly parents, or friends who need help. Also, some counties have specifically defined “essential travel” to include travel for custody arrangements and following court orders.

<sup>27</sup> In the Supreme Court of Texas, *SECOND EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER*, Misc. Docket Order 20-9043 (Mar. 17, 2020).

child, but also the increased likelihood of exposure to others within the home, including the parents, siblings, grandparents, or other people who may share the residence. The logical response might be to refuse to permit the child to return to school, a position many parents have opted to take.

The issue of school attendance could prove less problematic for family law counsel because parents may be afforded the option of educating their children virtually. But, if parents sharing custody or visitation rights disagree on whether children subject to court orders with respect to returning to school or opting for virtual schooling, the disagreement could readily lead to conflict requiring intervention by counsel and family law courts.

Similarly, visitation or shared custody itself could lead to disagreements between parents sharing custody if one parent is less rigorous in terms of enforcing social distancing policies, or otherwise is simply less compliant. The threat is that while the child is in a home while on a regular basis, or while visiting with the parent having primary custody, the child may be exposed to the coronavirus and in the process threaten others in the home when returning from visitation.

In this situation, either parent having custody or visitation rights could logically be extremely concerned over the need to prevent the spread of the disease through contact with an unprotected child. This is particularly true, of course, if there are other family members living in the home who may be compromised by pre-existing conditions that render them more susceptible to infection and serious complications, even though the child may never be infected or prove asymptomatic. In this circumstance, it is not unlikely that some parents might deliberately interfere with custody or visitation orders as a preventive measure designed to protect others, including children subject to those orders, from infection.<sup>28</sup> However, under

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<sup>28</sup> See, e.g., Robert Salonga, *Coronavirus: Navigating ‘uncharted territory’ of child-custody disputes fueled by virus fears*, SAN JOSE MERCURY NEWS (June 20, 2020),

Arkansas law, any person may be charged with interference with visitation with a child for preventing visitation “from any person entitled by a court degree or other to the right of visitation with the minor.”<sup>29</sup>

The interference with child visitation statute, however, includes an affirmative defense in Section 5-26-501(c)(1):

(1) A person or lawful guardian committed the act to protect the child from imminent physical harm, provided that the defendant's belief that physical harm was imminent is reasonable and the defendant's conduct in withholding visitation rights was a reasonable response to the harm believed to be imminent. . .<sup>30</sup>

The affirmative defense illustrates the General Assembly’s concern that a parent acting in response to a credible threat of imminent harm would afford the parent a legal excuse from the violation subject to the defendant’s proof of their excuse by a preponderance of the evidence if subjected to trial. The existence of the affirmative defense suggests the recognition that in an emergency situation, unilateral action to protect the child might be excused, but the pandemic presents an unanticipated problem, the reasonableness of withholding visitation to prevent the

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<https://www.mercurynews.com/2020/06/18/coronavirus-navigating-uncharted-territory-of-child-custody-disputes-fueled-by-virus-fears/> (accessed Oct. 8, 2020):

As Bay Area counties have gradually reopened their economies amid the novel coronavirus pandemic, residents have had to navigate a maze of exemptions and allowable activities that can vary from city to city.

But courts, authorities and attorneys are reminding people that one area where the rules never wavered is how child-custody agreements must be honored in the age of the COVID-19.

Since the pandemic began, some parents have refused to allow their children to visit their former partners, citing the danger of contracting the new coronavirus, according to anecdotal accounts from those stakeholders.

<sup>29</sup> ARK. CRIM. CODE §§ 5-26-501(a)(1) (2020) (child custody interference). The punishment for violation of the statute is only a Class C, fine only, misdemeanor for a first offense unless the child is removed from the state of Arkansas, which event the offense is designated a Class B felony.

<sup>30</sup> ARK. CRIM. CODE §§ 5-26-501(c)(1) (2020).

spread of the coronavirus to family members or others living in the child's home who may well be far more susceptible to the effects of infection.

Without express reservation of rights to interfere with or restrict visitation in the event of emergency medical situations like the pandemic, a parent's unilateral action in denying visitation or interfering with custody or visitation rights will subject the parent acting unilaterally to the possibility of contempt.<sup>31</sup> It might also provide a basis for modification of an existing custody order depending upon the family court's view of the proffered reason for unilateral action.<sup>32</sup>

#### D. Threatened loss of habitation

The combined community effects of loss of business activity attributed to social distancing requirements resulting in loss of employment for many poor and working-class families and the resulting loss of already strained financial resources may threaten housing of individuals and families. Rising unemployment due to the combination of loss of business activity and social distancing considerations has been evident and devastating for both the community generally and individuals who have lost jobs or suffered a total or partial loss of earnings in this relatively short period of epidemic thus far. The re-employment of many who formerly held jobs will likely take significant time.

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<sup>31</sup> For a comprehensive view of Arkansas law relating to visitation rights and change of custody, *see* Harral v. McGaha, 2013 Ark. App. 320, 427 S.W.3d 769. There, the court generally explained:

A circuit court has continuing jurisdiction over visitation and may modify or vacate a visitation order when it becomes aware of a change in circumstances or facts not known to it when the initial order was entered. *Baber v. Baber*, 2011 Ark. 40, 378 S.W.3d 699. Although visitation is always modifiable—to promote stability and continuity for the children and to discourage repetitive litigation—courts impose a more rigid standard for modification than for initial determinations. *Id.* So a party seeking a change in visitation has the burden to demonstrate a material change in circumstances that warrants a change. *Id.* The primary consideration regarding visitation is, however, the best interest of the child.

<sup>32</sup>

*See Id.*

Because so many poor and working-class families in non-rural communities rent their homes, the advent of COVID-19 and projected loss of employment suggested that there would be a considerable threat to housing stability due to the epidemic.<sup>33</sup> The eventual problems for tenants were predicted in an article published by the Arkansas Non-Profit News Network:

With unemployment in Arkansas skyrocketing in the wake of the COVID-19 pandemic and renters facing threats of losing their homes, advocates for tenants have pushed for a temporary moratorium on evictions, a measure implemented in some form in 42 other states. At least 100 civil eviction complaints have been filed for nonpayment of rent in the state in the month of April, according to an analysis by an expert in housing law, a figure that represents a significant undercount in the total number of eviction actions because of limitations in tracking.

Governor Hutchinson has said that there is no need for state action, and expressed confidence that landlords would work with tenants facing financial difficulty due to the pandemic. “I expect landlords to work in a humanitarian fashion,” he said in a press conference on April 29. “We know that they need to be patient.” He said that he was “relying upon the trust relationship” between renters and landlords.<sup>34</sup>

Because Arkansas law is unfriendly to tenants,<sup>35</sup> being the only state that has no legislatively or judicially recognized body of tenants rights,<sup>36</sup> the threat of loss of employment or income poses

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<sup>33</sup> David Ramsey, *Arkansas renters face eviction threats during pandemic*, ARKANSAS NON-PROFIT NEWS NETWORK (May 12, 2020), <https://arktimes.com/news/2020/05/12/arkansas-renters-face-eviction-threats-during-pandemic> (last accessed May 31, 2020).

<sup>34</sup> *Id.*

<sup>35</sup> For instance, Arkansas law provides for criminal prosecution for a tenant’s failure to pay rent and refusal to vacate premises on notice. ARK. CODE ANN. § 18-16-101 (2020).

<sup>36</sup> Amy Pritchard, Lynn Foster and Jimmy Gazaway, *The Public Health Connection to the Implied Warranty of Habitability and HB1400*, ARKANSAS LAWYER (Summer 2019), [https://issuu.com/arkansas\\_bar\\_association/docs/lawyer\\_summer\\_019issuu/26](https://issuu.com/arkansas_bar_association/docs/lawyer_summer_019issuu/26) (last accessed May 31, 2020). The reform proposed by authors is likely to be filed again in the Arkansas General Assembly for consideration during its 2021 session.

Daily Record Staff, *Amid COVI-19, Arkansas tenant-landlord la expected to get new look in 2021 legislative session*, Daily Record, at 11 (Sept. 14-20, 2020).

particularly serious problems for families faced with the threat of eviction and without other housing options.

The threat of forced evictions has been mitigated, perhaps to a significant extent by President Trump's order extending the existing moratorium on evictions through December 31, 2020.<sup>37</sup> The extension applied to continue the moratorium originally issued on March 17, 2020, for a 120-day protection from eviction, issued by the Center for Disease Control at the President's direction, that had expired in July.<sup>38</sup>

The loss of housing also poses problems for domestic relations and family law counsel unable to reach their clients when necessary for communication with respect to status of pending

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<sup>37</sup> See, Ron Lieber, *The New Eviction Moratorium: What You Need to Know*, N.Y. TIMES (Sept. 2, 2020, updated Sept. 16, 2020), <https://www.nytimes.com/2020/09/02/your-money/eviction-moratorium-COVID.html> (accessed Oct. 2020). The Times article provides an outline for renters to claim eligibility for relief provided by the extended moratorium, explaining the requirements for readers:

You must meet a five-pronged test.

- You need to have used your “best efforts” to obtain any and all forms of government rental assistance.
- You can't “expect” to earn more than \$99,000 in 2020, or \$198,000 if you're married and filing a joint tax return. If you don't qualify that way, you could still be eligible if you did not need to report any income at all to the federal government in 2019 or if you received a stimulus check this year.
- You must be experiencing a “substantial” loss of household income, a layoff or “extraordinary” out-of-pocket medical expenses (which the order defines as any unreimbursed expense likely to exceed 7.5 percent of your adjusted gross income this year).
- You have to be making your best efforts to make “timely” partial payments that are as close to the full amount due as “circumstances may permit,” taking into account other nondiscretionary expenses.
- Eviction would “likely” lead to either homelessness or your having to move to a place that was more expensive or where you could get sick from being close to others.

<sup>38</sup> Daily Record Staff, *Arkansas housing, real estate advocates sort out details of Trump administration's surprise eviction ban*, Daily Record, at 9 (Sept. 14-20, 2020). The article quotes the President:

“The intent of this order is to use federal authority to prevent evictions that could exacerbate the spread of COVID-19. It is essential during the pandemic that Americans have an effective place to quarantine, isolate, and social distance, and evicting people from residences undermines that objective.”

*Id.* Tenants are required to submit the declaration referenced in the Times article to landlords “regarding their inability to make payments despite good faith efforts.” *Id.*, see Lieber, *supra* note 37.

actions. It may also result in adverse action by the State or divorced parents threatened with legal efforts to change living arrangements governed by joint custody of a child or children under court orders because of the instability of living conditions if the family unit is no longer able to afford decent housing. The lack of legal defenses, even in light of the dramatic change of circumstances suffered by families due to COVID-19, will frustrate even the best efforts of counsel representing the newly homeless and financially compromised clients.

E. Loss of child support and resources to pay court-ordered support

Even when there is no obvious failure on the part of either the custodial parent or the non-custodial parent to provide care consistent with guidelines designed to protect the child from infection, or when there is no threatened disruption of the homes by loss of housing through eviction or just loss of rental resources, many custodial relationships will likely be disturbed by the loss of income necessary for compliance with support obligations.<sup>39</sup> Because the effects of business closings or limitations on operations have had a dramatic impact on the employment of individuals who owe child support obligations to provide for the care of their dependent children, the impact of COVID-19 is likely to compromise resources available for support of those children.<sup>40</sup> Many parents having support obligations have lost employment or suffered reduced earnings even when not losing their jobs.<sup>41</sup>

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Arkansas child support obligations are imposed by family courts pursuant to the structure set out by the state supreme court. Arkansas Supreme Court Administrative Order No. 10. *See In re Implementation of the Revised Administrative Order No. 10* (Apr. 2, 2020) <https://opinions.arcourts.gov/ark/supremecourt/en/item/468402/index.do> (accessed Nov. 2, 2020).

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For information relating to the child support obligation for Arkansas parents, *see generally*, ARKANSAS OFFICE FOR CHILD SUPPORT ENFORCEMENT, *A Handbook for Noncustodial Parents*, <https://www.dfa.arkansas.gov/images/uploads/childSupportOffice/ncpHandbook.pdf>, (accessed Nov. 6, 2020); *see also* ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION, *Child Support*, <https://www.dfa.arkansas.gov/child-support> (accessed Nov. 6, 2020) (explaining, for instance, enforcement of child support obligations with respect to the Federal Stimulus Payment).

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For those parents having child support obligations pursuant to orders entered by family courts, the limitation on earnings attributable to COVID-19 directly, resulting from infection or exposure to the virus preventing further work, will prove disastrous in some cases, maybe more. For parents who support their children through child support imposed by court order, the loss of the payor's earnings will also prove critical in many instances. Thus, the economic consequences of infection, exposure, or loss of income or earning potential resulting from COVID-19's impact on business extends to custodial and non-custodial parents, with the ultimate result being a loss of support for their dependent children.

Enforcement of child support orders in custody cases remains a central point of importance for Arkansas, both in terms of policy and practical considerations. The stability of families is critical to the social and economic health of the state, requiring that parents providing primary support for minor children have the ability to maximize resources designed to underwrite the costs inherent in raising children. While the loss of employment or reduction in earnings suffered by the noncustodial parent may unfairly compromise the parent's ability to pay child support in the amount ordered by the family court, relief or reduction in the amount of support requires action by the court, rather than by unilateral decision not to pay.<sup>42</sup> The

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<sup>42</sup> See ARK. CODE ANN. § 9-14-107 (2020). Change in payor income warranting modification. The statute addresses loss of income for the payor and provides for instance:

(a)(1) A change in gross income of the payor in an amount equal to or more than twenty percent (20%) or more than one hundred dollars (\$100) per month shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the family support chart after appropriate deductions.

See e.g., *Roland v. Roland*, 43 Ark. App. 60, 64, 859 S.W.2d 654, 656 (1993) (reversing chancellor's refusal to reduce amount of child support where evidence showed that payor had suffered loss of at least ten percent of earnings). *Roland* shows that the General Assembly has increased the amount of loss necessary to trigger reduction based on "material change of circumstances."

obligation to pay court-ordered child support is not subject to reduction except through the family law court. The *Handbook for Noncustodial Parents* explains:

What happens if my income changes?

If your income changes significantly (for example, job loss or reduction in hours), contact your local child support office to ask about a review and adjustment. You may be eligible for a reduction in your child support. It will take a new court order to change the existing one. You are responsible to pay your court ordered amount of child support until a new court order is established.<sup>43</sup>

Moreover, there is a range of options for enforcement of payment of child support obligations. Failure to pay may be addressed by citation for contempt for non-compliance with the child support order;<sup>44</sup> cumulation of amounts of failed payment obligations may result in a reduction of the arrearage to judgment for collection;<sup>45</sup> chronic failure to pay child support may warrant termination of parental rights;<sup>46</sup> and willful non-payment may subject the defaulting parent to prosecution for criminal non-support.<sup>47</sup>

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<sup>43</sup> *Handbook*, *supra* note 40.

<sup>44</sup> *E.g.* Cherry v. Cherry, 2020 Ark. App. 294, at \*15, 603 S.W.3d 585, 597: (“Disobedience of any valid judgment, order, or decree of a court having jurisdiction to enter it may constitute contempt, and punishment for such contempt is an inherent power of the court.”).

<sup>45</sup> *E.g.*, Stehl v. Zimmerebner, 2016 Ark. 290, at \*6, 497 S.W.3d 188, 192, where the court explained that a court can adopt an alternative approach to ordering contempt to afford the judgment debtor an option to “avoid punishment for contempt of court.”

<sup>46</sup> For example, if the natural parent opposes adoption or refuses to give consent to adoption otherwise required under ARK. CODE ANN. § 9–9–206(a)(2) (Supp.2005), section 9-9-207(a)(2) provides:

(a) Consent to adoption is not required of:

(2) a parent of a child in the custody of another, if the parent for a period of at least one (1) year has failed significantly without justifiable cause (i) to communicate with the child or (ii) to provide for the care and support of the child as required by law or judicial decree[.]

Powell v. Lane, 375 Ark. 178, 191, 289 S.W.3d 440, 448 (2008).

<sup>47</sup> ARK. CODE ANN. § 5-26-401(a)(1) defines the offense of Nonsupport:

(a) A person commits the offense of nonsupport if he or she fails to provide support to the person’s:

(1) Spouse who is physically or mentally infirm or financially dependent;

The parent failing to pay child support based on fiscal circumstances resulting in an inability to pay may plead inability to comply with the ordered obligation,<sup>48</sup> and this will likely characterize failures in light of the economic consequences of the pandemic. For family lawyers, the difficulty posed by the pandemic may be that clients will suffer from loss of support attributable to the termination of employment or business opportunities or loss or reduction in income for payors, but that the circumstances will require access to the family courts for hearings to consider whether failure to pay child support will constitute contempt or be excused because of economic circumstances beyond the control of many noncustodial parents ordered to provide support.

#### CONCLUSIONS

The COVID-19 epidemic that has altered—perhaps permanently—the course of American life has immediate and long-term implications for lawyers representing clients in

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(2) Legitimate child who is less than eighteen (18) years of age;

(3) Illegitimate child who is less than eighteen (18) years of age and whose parentage has been determined in a previous judicial proceeding; or

(4) Dependent child who is physically or mentally infirm.

The statute includes punishment ranging from a Class A misdemeanor to a Class B felony depending upon the total arrearage of unpaid support in subsections (b)(1)(A)(B) and (C). The statute also provides for an affirmative defense based upon the accused's inability to pay. § 5-26-401(g).

See, e.g., *Nelke v. State*, 19 Ark. App. 292, 295, 720 S.W.2d 719, 720-211 (1986) (summarizing father's failure to pay court ordered child support in any significant amount and apparent unwillingness to obtain employment in upholding conviction for misdemeanor nonsupport).

*See Stehl, supra* note 45:

[I]n a contempt proceeding, where the object is to coerce the payment of money, the lack of ability to pay is a complete defense against enforcing payment from the defendant by imprisonment. *Griffith v. Griffith*, 225 Ark. 487, 283 S.W.2d 340 (1955). As we have recognized, the practice of imprisoning people for debts was abolished long ago by the Debtor's Act of 1869. This fundamental concept is embodied in our constitution, which provides that "[n]o person shall be imprisoned for debt in any civil action, or mense or final process, unless in cases of fraud." Ark. Const. art. 2, § 16

family law matters. The implications addressed in this article are perhaps most obvious for the community generally, but for family law attorneys there is an additional layer of consequences that may well jeopardize the viability of domestic relations and family law practice for many solo practitioners and small family-law oriented firms. The immediate threats to the family lawyers' clients are direct and at this point in time, not controlled by governments advised by public health and medical professionals. The economic implications not only threaten those clients, however, also threaten the livelihoods of lawyers who have made deliberate decisions to focus their practice interests on family law practice.

The loss of income attributable to the social distancing policies that have required significant closure of important sectors of the business communities, particularly eating and entertainment venues, as well as non-essential retail businesses, limits those affected by the economic impact of COVID-19 of ability to divert immediately necessary resources from food and housing to payment of counsel for representation. For lawyers practicing family law unable to sustain business viability as a consequence, the necessary option may be to change the focus of practice to minimize family law cases. Others may simply leave this area of practice altogether because the likelihood of maintaining or rebuilding a family law practice may convince them that family law practice will likely not offer viability in the near future such that counsel may not be able to wait out the immediate circumstances of the coronavirus experience.

This worst case scenario, which may be faced by domestic relations and family law practitioners, would likely have an immediate consequence for legal services lawyers and those counsels who undertake family law representation on a pro bono or low bono basis. The consequence will likely be rising demand for representation from prospective clients who simply cannot afford to retain private counsel. Moreover, the pressure created by compromised

economic circumstances would increase significantly because of the number of potential clients who have lost their ability to even pay very reasonable fees required for representation by attorneys willing to reduce their rates to address this challenged client base, will be dramatically increased with the rising unemployment rate.

COVID-19 and the threatened re-emergence of the disease<sup>49</sup> pose grave consequences for couples and families who have been forced to address problems within those relationships before

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<sup>49</sup> See e.g., Lisa Lockerd Maragakis, M.D., M.P.H., *First and Second Waves of Coronavirus*, JOHNS HOPKINS MEDICINE (Updated Aug. 16, 2020), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-coronaviruses> (accessed Oct. 22, 2020). Dr. Maragakis explained in looking to the situation involving the pandemic in fall, 2020:

An increase in COVID-19 cases in the fall could be troublesome, because seasonal flu is likely to be accelerating at the same time. If the coronavirus surges in the fall and the flu season is bad, the combination could put hospitals and patients at risk. In the U.S. during the 2019–2020 flu season, the Centers for Disease Control and Prevention reported 39 million cases and 24,000 deaths.

Another concern is that since the COVID-19 pandemic began, far fewer children have been getting their regular vaccinations. An outbreak of pertussis (whooping cough), measles, flu or other preventable disease in children could also complicate the picture, making it harder for doctors and hospitals to care for all patients.

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Doctors, clinics and hospitals recognize the chance that COVID-19 cases could start increasing in the fall. They are working with manufacturers to stock up on equipment, and they are continuing their policies for protecting patients and staff members.

See also, Joel Achenbach and Rachel Weiner, *Experts project autumn surge in coronavirus cases, with a peak after Election Day*, WASHINGTON POST (Sept. 5, 2020) (Sept. 5, 2020) [https://www.washingtonpost.com/health/coronavirus-fall-projections-second-wave/2020/09/04/6edb3392-ed61-11ea-99a1-1343d03bc29\\_story.html](https://www.washingtonpost.com/health/coronavirus-fall-projections-second-wave/2020/09/04/6edb3392-ed61-11ea-99a1-1343d03bc29_story.html) (accessed Oct. 23, 2020):

Infectious-disease experts are warning of a potential cold-weather surge of coronavirus cases — a long-feared “second wave” of infections and deaths, possibly at a catastrophic scale. It could begin well before Election Day, Nov. 3, although researchers assume the crest would come weeks later, closer to when fall gives way to winter.

An autumn surge in covid-19, the disease caused by the novel coronavirus, would not be an October surprise: It has been hypothesized since early in the pandemic because of the patterns of other respiratory viruses.

the events of spring, 2020—consequences aggravated by the economic threats related to efforts to control its spread--its impact has dramatically increased the pressures faced by couples and families who formerly had the financial resources to address problems they commonly experienced no longer have those resources to meet their current circumstances. This poses serious problems for the legal system designed to provide protection for couples and families. And it threatens to significantly alter practice for domestic relations and family law counsel.