



**Defending Liberty
Pursuing Justice**

Section of Individual Rights and Responsibilities • Commission on Domestic Violence • Criminal Justice Section

In collaboration with

The National LGBT Bar Association



An Affiliate of the American Bar Association



What Rights Do I Have As An LGBT Victim of Domestic Violence?

How do I know if I am in an abusive relationship?

If you believe you might be in an abusive relationship, here are some questions to ask yourself:¹

When you are with your partner, do you sometimes feel as if:

- You are not safe?
- You have to watch what you do and say?
- Things are either really great, or there are problems—but things are never just okay?

Has your partner ever:

- Told you where to go or what not to say?
- Told you what to wear?
- Told you how you could spend money?
- Gotten in the way of you receiving medical care?
- Told you not to hang out with certain people?

Has your partner ever:

- Threatened you physically?
- Pushed, hit, or held you down?
- Threatened to “out” you to anyone?
- Threatened to report you to an authority, such as immigration?
- Refused to have safer sex or forced you to have sex against your will?

If you answer yes to some or all of these questions, you may be experiencing domestic violence. You are not alone and help is available.

¹ These questions have been developed by the National Coalition of Anti-Violence Programs (<http://www.ncavp.org/issues/DomesticViolence.aspx>).

How is domestic violence in Lesbian, Gay, Bisexual, or Transgender (LGBT) relationships different from domestic violence in heterosexual relationships?

Between one-third to one-fourth of lesbian, gay, bisexual, and transgender (LGBT) people in relationships experience domestic violence — the same as women in heterosexual relationships.

Although the abuse is often similar in LGBT and heterosexual relationships, perpetrators of domestic violence in LGBT relationships may also use society's bias against their partner's sexual orientation or gender identity to abuse and isolate their partner. These tactics may include:²

- Threatening to “out” or outing the partner's sexual orientation and/or gender identity to their family, employer, or community;
- Threatening to tell or telling others the partner's HIV/AIDS status;
- Reinforcing fears that no one will help because she or he is lesbian, gay, bisexual, and/or transgender; or
- Telling the partner that abusive behavior is a normal part of lesbian, gay, bisexual, and/or transgender relationships.

For other examples of abuse in LGBT relationships, see the LGBT Power and Control Wheel developed by the New York Gay and Lesbian Anti-Violence Project at www.ncavp.org, and click on “Issues.”

What legal options do I have if I am afraid of my partner?

As an LGBT person who may be a victim of domestic violence, *you have legal rights*, regardless of whether you are married and/or in a recognized domestic partnership with your partner. Access to legal assistance will depend on the laws in your state.

A person can request protection from an abuser under both civil and criminal law. In almost all states, an

LGBT victim can request a Civil Protection Order, an order available to victims of domestic violence that requires your partner to stay away from you. In most states, victims of stalking, repeated violence, or harassment can request a protection order which prevents the person from harming or contacting them.

What is a Civil Protection Order?

A Civil Protection Order is a civil court order, requested by a victim (Petitioner) and signed by a judge. A Civil Protection Order can, for example:

- Order the abuser to stop threatening, abusing or harassing you;
- Order the abuser to stay a certain distance from you (also known as a “stay-away order”);
- Order the abuser not to come to your home (sometimes even if you share the home);
- Order the abuser to stop contacting you;
- Say who your children will live with temporarily and whether the abuser can visit them; or
- In some states, order the abuser to get treatment or counseling (often a condition of child visitation).

A victim does not have to press criminal charges against a partner in order to get a Civil Protection Order. The choice to get the police and criminal justice system involved is completely separate from filing a Civil Protection Order.

A Civil Protection Order goes by different names in different states. It is also referred to as a protection order, a protective order, a restraining order, a protection from abuse order, a domestic protection order, or a no contact order, among others.

Do I qualify for a Civil Protection Order as an LGBT victim of domestic violence?

A survivor in an LGBT relationship can qualify for a Civil Protection Order in almost every state. Civil Protection Orders can only be filed between people with specific types of relationships, as defined by state statutes. Most state statutes include individuals

in romantic or dating relationships while others limit the relationships to categories such as “spouses,” “family members,” or “roommates.”

It is important to know your state’s laws so that you can know whether you qualify for a Civil Protection Order. For information about whether people in same-sex relationships or who are transgender³ can qualify for Civil Protection Orders in your state, see a summary of state statutes prepared by the ABA Commission on Domestic Violence at www.abanet.org/domviol.

What are my options if I live in a state where I do not qualify for a Civil Protection Order?

There are options for LGBT victims who are denied or prevented from obtaining Civil Protection Orders. Each state has its own individual laws which allow victims of violence or harassment not considered to be “domestic violence” to get protection. These options might also be useful in situations where survivors do not want to be “out” about the nature of their relationship to their abuser.

In most states, victims of stalking can file protection orders against their stalker. In many states, a victim of repeated violence or harassment can request a protection order against the person who has assaulted or harassed them.

These protection orders, in most states, can order the Respondent to not harm or contact the Petitioner. However in most states a person cannot request other relief such as custody. Like in a Civil Protection Order, these orders are civil in nature, and do not require that criminal charges be filed.

For a summary of state laws on orders of protection for sexual assault survivors, as well as other options available to LGBT victims of domestic violence who are denied civil orders of protection, please visit www.abanet.org/domviol or www.ncavp.org.

3 Whether a transgender person can get a Civil Protection Order under a state’s definition of relationship may depend on whether that person identifies or is legally categorized as the same sex as their partner. For example, a transgender woman who is legally female should have the same rights as a non-transgender woman to file against her abusive male partner.

How can I get a Civil Protection Order?

The process for requesting a domestic violence Civil Protection Order and other protection orders are the same in most states. First, go to the state courthouse (municipal, superior, or district court) in the district where you live. There, you will fill out a request (Petition) where you explain in writing why you want the order and describe recent incidences of abuse. The more details you can provide the better. Once you fill out the Petition and submit it to the Clerk of the Court, you will be given a court date to appear before a judge, who will decide whether or not to grant the Petition.

In many states, when you file for a Civil Protection Order you may be awarded a Temporary (or Emergency) Order. In states where they do not automatically grant a Temporary Protection Order, you can request it in your Petition. A judge will decide on the spot whether to grant the Temporary Protection Order. If the Temporary Protection Order is granted, the abuser (usually called the Respondent in court documents) must be notified. The Order will begin once the Respondent is notified. The Temporary Order will last until your court date, when a judge will decide whether to grant you a permanent order, extend the temporary order, or terminate the order.

In many states, the police will deliver the temporary order, your Petition for Civil Protection, and a notice about the court date to the Respondent. In other states or if the police are unable to serve the Respondent, you may be responsible for finding a third party to serve the notice.

The time between when you file your Petition and the court date varies from state to state. In general, courts try to schedule the hearings as quickly as possible; typically, not more than a month away.

At your court date, if both you and the Respondent are present, you will be given a chance to present to a judge why you believe that a protection order is necessary to protect you. You should be prepared to provide evidence such as other witnesses, photographs, voicemails, or emails. The Respondent, if

she or he decides to participate, will be given the opportunity present evidence as to why the order should not be granted. The judge will make a decision and either grant a Civil Protection Order or deny the order and terminate the Temporary Protection Order.

A protection order lasts different amounts of times in different states. In some states, they last for only six months. In others, they can last up to two years, or even permanently. You will need to go back to court to extend a protection order once it expires.

An abuser who violates either a temporary or long-term Civil Protection Order may be subject to civil or criminal contempt charges. If you have an order that an abuser violates, you can call the police to report the violation. The government may then decide to prosecute the abuser for violating the order. In some states, you can also file a motion for criminal or civil contempt yourself.

What further legal protections are available to me if my abuser is charged with a crime related to the abuse?

When an abuser is charged with a violence-related crime, the victim can get access to special criminal orders of protection. In most states, when a person is charged with committing such crimes as harassment, battery, or assault, the court has the right to place a no-contact (or restraining) order against the person. Under a no-contact order, the defendant cannot contact the victim or come near the victim. If the defendant does contact the victim, the defendant will be breaking the law and could face criminal penalties.

What if I am afraid to get help because I believe that I will be harassed by the police for being LGBT?

Some victims may be hesitant to call the police or seek other assistance because they are afraid that they or their partner will be mistreated because of their sexual orientation and/or gender identity.

Legally, neither the courts nor the police can discriminate against victims and abusers because of their sexual orientation and/or gender identity.

Many states are working to improve their interactions with LGBT people. Numerous states now provide training to their police officers regarding same-sex domestic violence.⁴ Some jurisdictions have begun to adopt policies that allow them to better serve the LGBT community. Some examples of policies are those requiring police to treat same-sex instances of domestic violence the same as heterosexual instances,⁵ creating a gay and lesbian unit of the police,⁶ and attempting to forge a workplace where LGBT police officers do not feel that they have to hide their sexual orientation.⁷

Even with increasing efforts to eradicate homophobia and transphobia in police and court systems, many LGBT survivors still reasonably fear mistreatment by police and court systems. If you want to get help and do not want to contact the police or courts first, contact your local anti-violence program. These are groups that work specifically with LGBT survivors of domestic violence, sexual violence, and hate violence, and who can help you navigate the legal system.

To find your local program, contact the National Coalition of Anti-Violence Programs at www.ncavp.org or at the 24-hour hotline: 212-714-1141.

Will my abuser automatically be charged with a crime if I call the police?

If you call the police, your partner will not automatically be charged with a crime, even if she or he is arrested. The state prosecutor's office, with the assistance of the police, decides whether to file criminal charges against an abuser. A victim does not decide whether a criminal case is brought against an abuser once the police are involved.

4 83% of police departments report providing training on issues around same-sex domestic violence. Amnesty International, Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay and Transgender People in the U.S.

5 For example, both Arlington, VA and New York City recently enacted such a policy.

6 Washington, D.C. has created such a unit.

7 Philadelphia, PA has made such an effort to become more LGBT friendly.

Once a criminal investigation is underway, a victim does not have the ability to ‘drop’ criminal charges against their abuser. A victim is a witness in the case, and not a party to it. While a victim’s cooperation is very helpful in prosecuting a criminal case, it is not always necessary. Victims who do not want charges to be brought can talk with the police or prosecutor, but this does not assure the case will be ‘dropped’ and may not excuse the victim from having to testify for the government in the case. Even if the victim does not testify, an abuser can be prosecuted based on other evidence, such as the police report.

Where can I find more information about my rights as an LGBT victim of domestic violence?

Remember that only a legal professional who is knowledgeable in this area of law can advise you on the availability of rights and protections. For information on attorneys in your area, contact your state or local bar association. For a list of domestic violence coalitions, go to **www.nnedv.org/resources/coalitions**.

To locate help in your area, call the National Domestic Violence Hotline at **1-800-799-7223 (SAFE)** or **1-800-787-3224 (TTY)**. The hotline is available 24/7 and is free of charge.

For help that is targeted to LGBT victims of violence, call the National Coalition of Anti-Violence Programs at **212-714-1141** for 24 hour assistance or visit **www.ncavp.org**.



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