

Civil Legal Remedies for Domestic Violence in the Lesbian, Gay, Bisexual, and Transgender Communities¹

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Domestic violence in the lesbian, gay, bisexual, and transgender (LGBT)² communities is an often ignored, sometimes confused, and rarely discussed problem. For the LGBT communities fighting for equality and the legitimization of their relationships, it can be difficult to admit that battering occurs. Many traditional models for addressing domestic violence assume intimate partners are heterosexual and omit reference to LGBT victims or craft solutions that fail to account for the impact of sexual orientation or gender identity. Some advocates and organizations may not know how to even begin to talk about the issue because of a lack of familiarity with the language or culture of the LGBT communities. Civil legal practitioners may want to help with the issue, but find that few, if any, civil legal remedies exist for LGBT clients.

This article will explore the issue of intimate partner violence in the LGBT communities and the civil legal remedies that address this violence. The lesbian, gay, bisexual, and transgender communities are not interchangeable. For practitioners new to the issues of the LGBT communities, some of the language used to describe LGBT people and their partners or their identities can be confusing. Gender identity is often confused with sexual orientation. Sexual orientation is commonly defined as our preference for sexual partners — either same or opposite-sex partners. Lesbians generally identify themselves as women who partner with other women. Gay men generally identify themselves as men who partner with other men. Bisexual people often identify themselves as people who partner with same and opposite-sex partners. Gender identity, on the other hand, is commonly defined as a sense of ourselves as masculine, feminine or at some other point along that spectrum. Transgender people may define

¹ This article was originally published in a longer form in "Domestic Violence in the Lesbian, Gay, Bisexual and Transgender Communities," *Lawyer's Manual on Domestic Violence Representing the Victim*, Supreme Court of the State of New York Appellate Division, First Department, Goodman & Leiboldt (Eds.), 5th Ed. (2006).

² Lesbian, gay, bisexual, and transgender (also referred to as "trans") communities can also be referred to as the "queer" community and include people who identify as queer, questioning, two-spirited, gender variant, genderqueer, bigendered, intergender, intersex, same gender loving, and/or by any other terms that indicate self-definition of gender identity and/or sexual orientation. For an excellent description of all of these terms, see Eli Green and Eric Peterson, "LGBTTSQI Terminology & Definitions," <http://www.trans-academics.org/lgbttsqiterminology.pdf> (last visited August 29, 2008).

themselves as male or female or in a differently defined gender (or lack of gender). While some trans people do identify as “queer” (either because they are involved in same-sex relationships or because their sexual orientation is not “straight”), others define their sexual orientation as straight or heterosexual.

Defining LGBT Domestic and Intimate Partner Violence

Domestic, or intimate partner, violence occurs within the lesbian, gay and bisexual communities with the same statistical frequency as in the heterosexual community.³ Although few studies have been done, preliminary data suggests that domestic violence may occur at a higher rate in transgender relationships.⁴

As in the heterosexual communities, domestic violence in the LGBT communities is generally defined as a pattern of behavior where one partner coerces, dominates, or isolates the other partner. It is the exertion of any form of power that is used to maintain control in a relationship.⁵ The violence can be physical, emotional, psychological or economic. Same-sex batterers use forms of abuse similar to those of heterosexual batterers.

However, some forms of battering are unique to the LGBT communities. Batterers have an additional weapon in the threat of “outing” their partner’s sexual orientation or gender identity to family, friends, employers, landlords or other community members.⁶ Same-sex survivors of domestic violence faced with custody battles may worry that their sexual orientation will negatively impact their case and decide to stay with an abuser rather than risk losing custody or visitation rights. Batterers who abuse their transgender partners often tell their partners that no one will understand or love them because of their gender identity or transition process, or they may threaten to evict their transgender partner, leaving the survivor homeless and facing dangers in the streets, the homeless shelters and the job market. Survivors may face further isolation because

³ Diane Dolan-Soto & Sara Kaplan, *New York Lesbian, Gay, Transgender and Bisexual Domestic Violence Report, 2003-2004: A Report of the New York City Gay and Lesbian Anti-Violence Project*, <http://www.avp.org/publications/reports/2005nycdvrpt.pdf> (last visited August 29, 2008).

⁴ See, e.g., Arlene Istar Lev and S. Sundance Lev “Sexual Assault in the Transgender Community,” http://my.execpc.com/~dmmunson/Nov99_7.htm (last visited August 29, 2008). This may be due to societal transphobic responses to transgender people. See also <http://www.survivorproject.org/survivor.html> (last visited August 29, 2008).

⁵ New York City Anti-Violence Project, *Domestic Violence: Working with Lesbian, Gay, Bisexual, Transgender and Questioning People*, training materials used with permission. Materials on file with the author.

⁶ As further explained by the New York City Gay and Lesbian Anti-Violence Project, “LGTB abusers have some additional tools at their disposal; heterosexism, homophobia, transphobia and biphobia. Heterosexism refers to the presumption that heterosexual relationships are the ‘right,’ only or preferred form of relationship. Homo/trans/bi-phobias refer to fear, ignorance and hatred of LGTB persons. Heterosexism, as well as the other phobias, can be exhibited or used by people of any sexual orientation or gender identity. LGTB abusers use these biases and stigmas to convince their victims that no one else will care about them, and that if victims seek assistance from others, they may be at risk for bias or even abuse, unfortunately not an unfounded concern. LGTB abusers may also use these biases within relationships to control their victims’ forms of self-expression or social contact with others.” Dolan-Soto & Kaplan, *supra* note 3.

they are reluctant to access services that are not perceived as LGBT-friendly. For some LGBT survivors, their batterer may be the first person to accept their sexual orientation or gender identity and batterers may use this knowledge to keep a survivor isolated.

It can be difficult for a LGBT survivor to access services. Models based on heterosexual relationships can be alienating and seemingly irrelevant to same sex survivors. Survivors who must out themselves to service providers may be afraid that they will be treated disrespectfully or be denied services. LGBT survivors may not have the energy to educate advocates unfamiliar with LGBT communities about their experiences and cultural norms. LGBT survivors also may understand the restricted access they have to civil legal remedies and may not seek services because it is unclear that the law will afford protection.

Some of these barriers can be easily overcome by services providers. It is important for practitioners to become and remain educated about social and legal issues specific to the LGBT communities.⁷ As discussed below, it is important to avoid assumptions. It is also important for practitioners to challenge their own service provision models and to make sure these models are LGBT inclusive. Practitioners should consider displaying literature that advertises LGBT-specific services, support groups and legal service providers in a waiting room or office. Most importantly, practitioners should form meaningful collaborations with service providers who have worked with LGBT intimate partner violence. LGBT domestic violence is as much an anti-violence issue as it is an LGBT issue.

Interviewing LGBT Clients

To plan for safety and find legal remedies and strategies with clients, practitioners need complete histories of the relationship with the abuser and the violence. As with all clients, it is important to obtain this information in a neutral, respectful manner. When meeting with all clients, it is important to avoid assumptions and to allow clients to describe and define their own identity and the identity and gender of the batterer, and to name the violence in their own language. Nonetheless, lawyers and advocates inevitably will find themselves in situations where they are still unsure of how clients identify their sexual orientation, their gender identity or that of their partner. In those cases, it is best to ask clients what language they would use to describe themselves, their partner or their situation.⁸ As when working with all clients experiencing violence, practitioners can best create a common understanding by using the language clients use to describe themselves or the events that have happened to them.⁹

⁷ For more information on LGBT domestic violence and referrals throughout the country, see www.ncavp.org and the resource list at the end of this article.

⁸ This might be uncomfortable for practitioners unfamiliar with the language or culture of the LGBT communities. However, practitioners can best help clients when they strive to understand the cultural norms and community mores of clients whose experiences are different from their own.

⁹ See Dorchen A. Leidholdt, *Interviewing Battered Women*, in *Lawyer's Manual on Domestic Violence: Representing the Victim*, Supreme Court of the State of New York Appellate Division, First Department, Goodman & Leidholdt (Eds.), 5th Ed. (2006).

While most practitioners work diligently to create an atmosphere of tolerance and respect, there are times when inaccurate assumptions may arise. For example, advocates working within the anti-violence communities often assume (not without reason) that most victims are women and most perpetrators are men. However, referring to an abuser as “he” or “your boyfriend” or “husband” is likely to cause a lesbian client to wonder how safe she is in “coming out” about her sexual orientation and the gender of her abuser. There are many ways to welcome clients who identify as LGBT. Consider the following suggestions for law offices and lawyers:

- Use gender-neutral terms until the client identifies the abuser’s gender (e.g., “So what is your partner’s name?” instead of “What is his name?”).
- Ask respectfully how they identify and what pronouns they prefer. Questions about a transgender client’s sexual organs, sexual-reassignment surgery status (many transgender people never have sexual reassignment surgery), hormone status or any other clearly private matter as a way to establish a client’s identity are inappropriate in all circumstances. As in any other situation, these questions are intrusive and embarrassing. If a definition of the transition process is necessary for a legal theory or remedy, practitioners should explain to the client why they are asking an admittedly personal and invasive question.
- Create intake forms that are neutral in tone. For example, instead of “Gender: F or M,” use “Gender: _____,” which allows transgender clients to self-identify. Also consider using language like “partner” instead of “boyfriend” or “husband” on written materials.
- Instead of using the phrase “battered women” — which may alienate battered gay men and transmen — use gender-neutral language like “victim” or “survivor.”
- Consider making all office bathrooms gender neutral. Transgender clients face pervasive and often violent discrimination in attempting to go about the everyday business of their lives. Transgender clients are often harassed for using bathrooms appropriate to their gender identity and gender neutral bathrooms can alleviate unnecessary strain and anxiety for clients.

Once practitioners have a basic understanding of clients’ gender identity or sexual orientation and that of their abusers, it is important to continue to guard against assumptions. As in all interviews, practitioners should ask detailed questions that allow clients to explain their story; this is particularly true with LGBT survivors who may not have the same cultural assumptions or life experiences as the practitioner. Practitioners should also expect that they will make mistakes while learning to work with LGBT-specific intimate partner violence issues; however, it is generally enough to acknowledge the error, correct it and move on. This will not only demonstrate respect

for the client, but it will also avoid placing the burden of educating practitioners about LGBT issues on a survivor who is in the midst of a personal and traumatic time.

Identifying the Victim or the Abuser

Assumptions are easy to make but can have devastating effects. Assuming that the more “butch” or masculine-acting (or identifying) partner in a lesbian relationship is an abuser, or assuming that the more effeminate-acting (or identifying) partner in a gay male relationship is the victim, creates not only a barrier to talking with clients, but also a potential erroneous analysis of who is the victim and who is the perpetrator in the relationship. The process of identifying perpetrators in a same-sex relationship can be fraught with difficulty, but it is a critically important process to assuring a victim’s safety and preventing a batterer from entering a support system meant for victims.¹⁰

Instead of relying on gender stereotypes practitioners must look to factors that indicate typical behaviors of an abuser or a victim. For example, victims are more likely to blame themselves, to minimize violent attacks, to excuse the behavior of their abuser, or to hesitate to take action against the abuser. Abusers are more likely to blame the victim, to use aggressive and hostile language in describing incidents, and they may exhibit a sense of entitlement in punishing their partner.¹¹ Careful consideration of the totality of the circumstances made after investigation into the issues is the best way to determine who the victim is and who the abuser is.

Legal Remedies for Same-Sex and Trans Survivors of Domestic Violence

There are many remedies, traditional and non-traditional, available to LGBT survivors of domestic and intimate partner violence. These include: orders of protection, custody and visitation orders, support (both child and possibly spousal), housing, public assistance, and some tort and other contract-based remedies. These remedies are largely determined by state law, so practitioners should research issues specific to their state, including jurisdictional issues such as whether the state recognizes all, some or no LGBT relationships, what types of protection the state gives same-sex parents, and what types of protection the state gives same-sex partners dissolving their relationship. For state-specific protective order remedies, see the ABA website.

¹⁰ This appears to be a common tactic of batterers in same-sex relationships, according to the New York City Anti-Violence Project. Often, batterers request services pretending to be the victim, both to prevent the victim from accessing services and to keep track of the victim’s options in reaching out for assistance. There is no way to figure out which partner is statistically more likely to be the batterer based on gender in same-sex relationships. Therefore, practitioners must be vigilant in both welcoming LGBT clients but also be more deliberate in engaging in a victim/aggressor analysis of the relationship.

¹¹ None of these factors is determinative, of course. It should be mentioned that many clients who are victims are also seeking “justice” or want their abuser “to pay.” This is a typical and normal reaction and may not indicate that the client is an abuser. However, these factors, viewed through the totality of the circumstances, including any past accusations of abuse against the client, can be helpful in determining who is the aggressor. For more information about this topic, contact the New York City Anti-Violence Project [<http://www.avp.org>].

Because in most states LGBT survivors do not have access to the same legal remedies that married survivors of violence have, such as equitable distribution of property or spousal support, more creative avenues should be sought. Consider the remedies available in a civil order of protection, if that order is available to LGBT survivors in your state. Can the order include support? Can the court distribute property where the ownership is uncontested? Also consider using Crime Victims Board compensation for injuries or damaged property. Finally, tort and contract law can help compensate survivors for their injuries or negotiate the agreements and/or ownership issues between the couple.

Conclusion

As LGBT communities and allies struggle to obtain legal recognition and protections for themselves, their partners, and their children, these communities are also confronting intimate partner violence. Anti-violence service providers must be aware of, and educated about, issues specific to the LGBT communities, and they must be willing to work in coalition with LGBT organizations to address LGBT intimate partner violence.

Resources:

Here is a list of several organizations which may help you to provide legal and social services for your client. There are many state and local organizations devoted to advancing the rights and protections of the LGBTQ community. The organizations listed below can help you to build a relationship with your community's domestic violence service providers.

The National Coalition of Anti-Violence Projects [<http://www.ncavp.org>]

NCAVP is a coalition of programs that document and advocate for victims of anti-LGBT and anti-HIV/AIDS violence/harassment, domestic violence, sexual assault, police misconduct and other forms of victimization. The NCAVP website provides contact information for over 30 local chapter member organizations.

The National Center for Lesbian Rights [<http://www.nclrights.org>]

The NCLR is a national legal resource organization dedicated to the advancement of LGBTQ rights. In addition to providing specialized knowledge of LGBT legal issues, the NCLR provides technical assistance for attorneys who wish to serve the LGBT community.

The National Lesbian and Gay Law Association [<http://www.nlqla.org>]

The National Lesbian and Gay Law Association (NLGLA) is an association of lawyers, judges and other legal professionals, law students, activists, and affiliated lesbian, gay, bisexual, transgender legal organizations. NLGLA promotes justice in and through the legal profession for the LGBT community in all its diversity.

The National Gay and Lesbian Task Force [<http://www.thetaskforce.org>]

The National Gay and Lesbian Task Force Action Fund, founded in 1974 as the National Gay and Lesbian Task Force, Inc., works to build the grassroots political power of the LGBT community to win complete equality. The Task Force website offers a map charting LGBT domestic violence protections state by state.

The American Bar Association [<http://www.abanet.org/domviol/>]

The ABA's Commission on Domestic Violence provides information and support for lawyers including those representing LGBT clients. The ABA website offers a particularly useful chart detailing Civil Orders of Protection State by State.