



LGBTQ Issues in DV and SA

David Ward
Legal Voice
October 7, 2016



Session Overview

- Myths and realities about LGBTQ people and relationships
- Distinct tactics abusers in LGBTQ relationships can use
- Barriers and discrimination LGBTQ survivors face in accessing services, protection, and courts
- Scenarios



LGBTQ People

- Broad and diverse community
- Difference between sexual orientation and gender identity
- History of discrimination
- Myths and stereotypes about LGBTQ people and their relationships



Basic Terminology

- Lesbian, Gay, and Bisexual
- Transgender
- Queer



How often does domestic violence occur in LGBTQ relationships?

- Occurs in 25-33% of LGBTQ relationships, according to study by National Coalition of Anti-Violence Programs
- Rate of occurrence is similar to that of non-LGBTQ relationships



Sexual Violence Against LGBTQ People

- Nearly one in ten LGBTQ survivors of intimate partner violence have been sexually assaulted by partners
- About half of transgender people and bisexual women will experience sexual violence at some point in their lifetime

Human Rights Campaign, Sexual Assault and the LGBTQ Community,
<http://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>

Similarities in patterns of abuse in LGBTQ and non-LGBTQ relationships

- In both, abusers establish power and control over time
- Abusers use many different tactics – some of which are illegal, most of which are not
- Abusers rely on systems of oppression and social inequalities to maintain their control over their partners



Abusers in LGBTQ relationships can use other many distinct tactics

- Threat of outing
- Isolation
- Using vulnerabilities
- Using survivor's internalized oppression and fear of discrimination
- Using myths and stereotypes
- Using children

DV Tactics (cont'd)

- Using small communities
- Using survivor's HIV status
- Threatening to have immigrant survivor deported
- Particular issues for transgender survivors

Threat of Outing

- LGBTQ people who are closeted are very vulnerable to abuse
 - Risk of losing friends/family
 - May be alienated from cultural, ethnic, religious, familial community, institutions
- Threat of “outing” an LGBTQ person is a powerful tool of control



Isolation

- LGBTQ survivors may be uniquely isolated due to rejection (or fear of rejection) from family and friends
- Abusers can isolate survivor by claiming family, friends, and systems are homophobic/transphobic
- Abusers can isolate survivors by saying no one will believe them because they are LGBTQ

Using Vulnerabilities

- Abusers can use their own history of abuse, bullying, or discrimination as an LGBTQ person to obligate or coerce partners into staying, caring for them, and/or prioritizing abuser's needs
- Results in survivors being exploited and undermines attempts to negotiate boundaries or prioritize self



Using Survivor's Internalized Oppression and Fear of Discrimination

- A survivor's internalized homophobia/transphobia can lead to self-blame for abuse
- Abusers can exploit survivors fear of discrimination in accessing services and protection
- Reluctance to disclose DV for fear of making LGBTQ people “look bad”



Using Myths and Stereotypes

- Myth of mutual abuse
- Myth that women can't batter or commit sexual violence, men can't be victims
- Stereotypes/myths about LGBTQ people and relationships

Using Children

- Threatening to take children away is a very powerful control tactic
- Particular vulnerability for non-biological parents in LGBTQ relationships, especially if they do not have a legally established parent-child relationship



Using Small Communities

- Often a smaller number of LGBTQ friendly social gathering spaces, neighborhoods, faith communities, social groups, businesses, bars and nightclubs
- Closeness of relationships and community spaces makes it easier to gain information about someone and use that info to increase a pattern of coercive power and control



Using Survivor's HIV Status

- Threatening to reveal survivor's HIV status
- Using HIV status to justify abuse
- Survivor's dependence on abuser for health insurance or care



Threatening Immigrant Survivors with Deportation

- Used by abusers in both LGBTQ and non-LGBTQ relationships against immigrant survivors
- LGBTQ immigrant survivors are particularly vulnerable to threats of being deported to a country that lacks protections for LGBTQ people



Particular Concerns for Transgender Survivors

- Interfering with transition-related care
- Dependence on abuser due to discrimination against transgender people
- Exploiting fears of transgender survivors in accessing services, law enforcement, courts

DV/SA Laws and LGBTQ People





Equal Treatment of LGBTQ Survivors is the Law

- Our DV laws don't distinguish between different-sex or same-sex relationships.
- Our SA laws apply equally regardless of the gender of survivors and perpetrators
- Federal VAWA prohibits discrimination against LGBTQ survivors
- Legally, the same protections apply to LGBTQ survivors



Legal Equality Does Not Mean Lived Equality

- Many LGBTQ survivors experience discrimination and stereotyping when seeking help from service providers, law enforcement, and courts
- Some examples...

Myth of Mutual Abuse

- LGBTQ individual are 10 times more likely to face dual arrest when law enforcement perceive same gender couples in responding to DV

Department of Justice, “Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases: Final Report (2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/218355.pdf>



Mistreatment of Transgender Survivors

- Misgendering survivors and refusing to use correct name
- Outing survivors
- Asking invasive and irrelevant questions
- Refusal to house survivors in facilities consistent with their gender identity
- Physical and sexual assault in shelters and jails and by law enforcement

Mistreatment of LGB Survivors

- Forcing survivors to out themselves in filing police reports or in court
- Reliance on gender stereotypes (e.g., perceiving a more “masculine” partner as abuser)
- Disrespectful language and treatment
- Treating a biological parent as having superior rights than a non-biological parent



The Challenge of Navigating Protection Orders

Often not clear which protection order an LGBTQ survivor should seek:

- Domestic Violence Protection Order?
- Sexual Assault Protection Order?
- Anti-Harassment Protection Order?
- Stalking Protection Order?
- Other?



Domestic Violence Protection Order (DVPO)

Definition of DV:

- (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;
- (b) Sexual assault of one family or household member by another; or
- (c) Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member

RCW 26.50.010(1)



Definition of “Family or Household Member”

Definition includes (but not limited to):

- Current and former spouses and domestic partners
- Adults who are presently residing together or who have resided together in the past
- Dating relationships between persons 16 or older

RCW 26.50.010(2)



“Dating Relationship”

Defined as a “social relationship of a romantic nature.” Factors that a court may consider include:

- (a) Length of time the relationship has existed
- (b) Nature of the relationship
- (c) Frequency of interaction between the parties

RCW 26.50.010(3)



Sexual Assault Protection Order (SAPO)

Remedy if the petitioner is a survivor of nonconsensual sexual contact by the respondent and would not qualify for a DVPO (e.g., if the parties are not “family or household members”)



Anti-Harassment Protection Orders

Remedy if the petitioner is a survivor of unlawful harassment and would not qualify for a DVPO, SAPO, or DV no-contact order



Stalking Protection Orders

Remedy if the petitioner is a survivor of “stalking conduct” and would not qualify for a DVPO (e.g., stalking is not committed by “family or household member”)

Hypothetical #1

- Carol and Diane have been in a relationship 5 years and married 3 years ago. They have a child together and Diane was the birth mother. Diane is physically abusive to Carol, which Carol has never reported to anyone.
- One night, Diane hits Carol, and Carol pushes Diane hard to get away. Diane calls the police, who arrest Carol. Diane is now seeking a DV Protection Order against Carol.
 - Why would the police arrest Carol rather than Diana?
 - What should Carol do next and what barriers might she face as an LGBTQ person?

Hypothetical #2

- Allan and Bob meet online. They “hook up” several times and have consensual sex. When Bob stops responding to Allan’s requests to get together, Allan starts sending Bob text messages threatening to out him to his parents and to post intimate photos of Bob online.
- What can Bob do to protect himself? What barriers may he encounter?

Hypothetical #3

Francie is a transgender woman who has dated Greg, a cisgender man, for several months. They have been sexually intimate, but Francie has told Greg she won't engage in anal sex. One night, while the couple is being sexually intimate in other ways, Greg forces anal sex on Francie. She tells Greg repeatedly to stop, but does not physically resist.

- What steps can Francie take to protect herself and hold Greg accountable? What barriers may she encounter as a trans woman?



Questions?

David Ward

Legal Voice

dward@legalvoice.org

(206) 682-9552, ext. 112