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LGBT Legal Issues & Intimate Partner Violence

LGBT – lesbian, gay, bisexual, or transgender – individuals who are victims of intimate partner violence face many of the same challenges as other marginalized communities, and these are coupled with legal difficulties directly related to their sexual orientation, gender expression, and gender identity. LGBT victims may face overt or subtle discrimination at the hands of law enforcement, courts, attorneys, or domestic violence or other service providers as they reach out for supportive services or legal assistance.

In addition to discrimination and lack of understanding, many LGBT victims of intimate partner violence are challenged by the ambiguity of state and federal law and case law around the legal status of their relationships. This ever-changing area of law is complex and can be hard to navigate for victims, attorneys, and service providers, but understanding its nuances is key to ensuring an LGBT victim is offered all legal options available to them while seeking help and attempting to access safety.

See page 3 for Q&A on LGBT Legal Issues & Intimate Partner Violence.

Did you know...

In 2008, there were 3283 claims identified as domestic violence and 2054 claims identified as sexual assault filed with the NYS Crime Victims Board (CVB). In response, CVB paid $2,128,007 to victims of domestic violence and $982,832 to victims of sexual assault.

From the Executive Director

We are pleased to present the Summer 2009 issue of the OPDV Bulletin, which includes useful information such as a Q&A about LGBT legal issues with Amy Schwartz of the Empire Justice Center, and an article on Parental Alienation Syndrome by Joan Meier of George Washington University Law School.

Media reports continue to cover a perceived increase in domestic violence — and certain jurisdictions have certainly experienced a rise in incidents and/or severity of incidents in the past year. OPDV has just released our first annual Domestic Violence Dashboard with data from 2007. This will begin to establish some baseline data on domestic violence prevalence; we plan to publish the Dashboard annually so that we can more accurately track trends in domestic violence prevalence and response statewide over time.

Plans are moving forward to “Shine the Light on Domestic Violence” by turning New York State purple this October in recognition of Domestic Violence Awareness Month. This effort was launched last October with several buildings and structures in the State illuminated in purple, as well as organizations posting web banners and other awareness activities. OPDV looks forward to increasing state-wide participation in this unique public awareness opportunity in 2009 and we invite you to join us. To find out how your community can participate, e-mail us at opdvpublicinfo@opdv.state.ny.us. Let’s raise domestic violence awareness, educating all New Yorkers and reaching even more victims in need.

Amy Barasch
Executive Director
A mother who raises the issue of domestic violence or child sexual abuse during child custody litigation may find herself accused of parental alienation syndrome or parental alienation. These accusations often lead family courts to focus on the mother’s motives and unwillingness to co-parent, discount what she says about abuse, and, all too often, order the children into custody or unsupervised visitation with their abusive father.

Parental Alienation Syndrome (PAS)

“PAS” was defined by psychiatrist Richard Gardner as a mental health disorder in which mothers use child (primarily sexual) abuse allegations to punish their ex-husbands and win custody for themselves. He theorized that these mothers brainwash their children into believing that their father had abused them and enlist them in a “campaign of denigration” against the father, in which the children contribute their own fabricated stories. Gardner’s proposed remedy was extreme—denying all mother-child contact and “de-programming” the child to change their belief that they had been abused.

Gardner had no objective data to support his theory and extensive empirical research directly contradicts it. Studies show that child sexual abuse claims are actually made in a very small percentage of custody cases, and only 12% or fewer are intentionally false. Even researchers who see alienation as a real problem concur that there is no scientific basis for describing it as a mental health syndrome in the child.

But because family courts place such a priority on fostering children’s relationships with their noncustodial parents, alienation claims have more power than they deserve in defeating claims of abuse. To counter that trend, the National Council of Juvenile and Family Court Judges has warned that:

[i]the discredited “diagnosis” of “PAS” (or allegation of “parental alienation”), quite apart from its scientific invalidity, inappropriately asks the court to assume that the children’s behaviors and attitudes toward the parent who claims to be “alienated” have no grounding in reality. It also diverts attention away from the behaviors of the abusive parent, who may have directly influenced the children’s responses by acting in violent, disrespectful, intimidating, humiliating and/or discrediting ways toward the children themselves, or the children’s other parent.

Parental Alienation (PA)
The discrediting of PAS has not ended allegations of alienation in custody litigation. While but children in divorcing families are sometimes estranged from one parent, there is no evidence that parental poisoning of the child’s mind— as opposed to the disfavored parent’s own conduct—causes this estrangement. Even Janet Johnston, a leading proponent of PA, found that, despite alienating behaviors by almost all the divorcing parents she studied, only 6% of the children were “extremely rejecting” and only 20% were “consistently negative” toward the other parent. And many of those had specific reasons for their hostility, including abuse or neglect.

It may be no coincidence that, along with courts’ increased focus on alienation, joint custody is regularly awarded despite a history of abuse, primary caregivers alleging abuse often lose custody, and a growing number have been judicially cut off from virtually all contact with their children. One study found that abusive fathers received more visitation than non-abusers. In response to these trends, the NYS legislature adopted Chapter 538 of the Laws of 2008, which amends §240 of the Domestic Relations Law, requiring courts to consider abuse allegations and to not punish parents who bring such allegations in good faith.

Q: What are some of the unique legal challenges facing LGBT victims of intimate partner violence?

A: Because of evolving or unequal state and federal law, and negative or unsettled case law relating to family formation and relationship recognition, some legal remedies available to heterosexual victims may be difficult to access for LGBT people. Examples include:

- Non-citizen LGBT victims in valid same-sex marriages with their abusers may be unable to access immigration status protections afforded by the federal Violence Against Women Act, such as battered spouse waiver or self petition, because federal law does not recognize same-sex marriages.
- A lesbian with a valid same-sex civil union from Vermont may be unable to get that union dissolved in New York, because civil unions are not recognized as a marriage under present case law.
- A transgender female may be improperly denied access to domestic violence shelter because of the program’s unwillingness to support her gender identity and expression.

Q: What are the legal remedies that might be affected by the type of relationship an LGBT victim has with their partner?

A: As of July 2008, many LGBT victims can now access civil and criminal remedies (such as family court orders of protection and mandatory arrest protections) not previously available because of a change in how NYS law defines “family or household member.” Because of this change, it is anticipated that more LGBT families will have access to Integrated Domestic Violence Courts and other specialized domestic violence courts. Additionally, there are existing domestic violence laws that provide assistance to a broad spectrum of victims, such as residential and nonresidential domestic violence services, address confidentiality, name changes, absentee voting, housing, employment, insurance, and welfare benefits protections. However, some legal remedies based on marriage or family formation are complicated or impossible where there is a question if the relationship will be legally recognized. These include:

- divorce or dissolution;
- economic issues, such as equitable distribution or spousal support; and
- custody, visitation, and child support for the non-biological parent when parties have not completed a second parent or joint adoption of children.

Q: What are some of the unique legal challenges facing LGBT victims of intimate partner violence?

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Legislative Update

Governor Paterson signed into law three bills that would provide greater protections for victims of domestic violence:

Chapter 80 establishes victims of domestic violence as a protected class in the employment provisions of the NYS human rights law. The new law prevents an employer from firing or refusing to hire an individual based on their status as a victim of domestic violence and prevents discrimination in compensation or in the terms, conditions or privileges of employment. Effective 7/7/09.

Chapter 72 requires, at the beginning of any divorce proceeding, automatic orders to be issued to prevent both parties from incurring unreasonable debts, dissipating assets (including personal property, real estate, retirement funds, etc.), or removing a party or the children from health or life insurance policies. Effective 9/1/09.

Chapter 83 extends protections for individuals seeking a name change. The NYS Civil Rights Law allowed a judge to seal court documents and other records associated with a name change, and to waive the requirement that the change be published in a local paper, if the court found that disclosing this information would jeopardize the safety of the person requesting the change. The new law requires the judge to order the sealing and safeguarding of all information from the time the case is opened, rather than waiting until a final decision is reached. Effective 7/7/09.

Please visit the OPDV website periodically for any additional legislative updates.

Media Project

During the 2008-2009 academic year, a team of students from NYU Robert F. Wagner Graduate School of Public Service chose to work with OPDV on a project focusing on media coverage of domestic violence in New York State. The project, based on a study done in Rhode Island, included a content analysis of print media, an examination of other national media projects, interviews with editors, reporters, and domestic violence programs, and recommendations on how OPDV might help to improve media coverage of domestic violence in New York State.

The team recently presented its findings and recommendations to OPDV staff. Recommendations ranged from training police, frequent sources for the media, to developing a tool kit for media professionals. OPDV is currently reviewing the findings and recommendations and is determining next steps. We look forward to building on the work done by the team and to providing support to media and the domestic violence community in this area. Check our website for updates on this project.

OPDV thanks the team (Emily Barnes, Aminata Diop, Sarah Felsenthal, Surovi Mukerjee, Laura Prussin, and Instructor Sara Grant), NYU Wagner School of Public Service, and the editors, reporters, and domestic violence programs who agreed to be interviewed as part of this project.


Recently, OPDV issued an annual report, highlighting steps the State took to address domestic violence in 2008, including information on training, legislation, policies, programs, and public education. The report, which also highlights plans for 2009, was developed by OPDV, but includes information about many different agencies’ work to address domestic violence, such as NYS Crime Victims Board, NYS Office for Children and Family Services, and NYS Division of Probation and Correctional Alternatives. The intention is to release a report of this nature annually. To access this report, visit: opdv.state.ny.us/statistics/reports/dvannual08/contents.html

Released with the annual report was the Domestic Violence Dashboard, a comprehensive compilation of domestic violence-related data from multiple agencies and systems. The Dashboard includes one year’s worth of data, including criminal justice, social services, and medical information. The goal is to release an annual Dashboard, building on this document. Data elements will be added over time to allow for examination of trends. To access the Dashboard, visit: opdv.state.ny.us/statistics/nydata/index.html