

APPENDIX D

Domestic Violence in Lesbian, Gay, Bisexual, Transgender, and Queer Relationships

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I. Introduction

Most experts agree that domestic violence in lesbian, gay, bisexual, transgender, and queer (LGBTQ) relationships occurs with the same frequency and severity as in heterosexual relationships. However, domestic violence in the LGBTQ community contains unique factors and characteristics that often relate to the anti-LGBTQ bias within society.

A. Recent Recognition

The federal Violence Against Women Act (VAWA) did not specifically recognize LGBTQ domestic violence survivors prior to the 2013 reauthorization. The 2013 reauthorization, however, added new provisions applicable to LGBTQ domestic violence survivors. Under the reauthorization of VAWA, the definition of domestic violence is amended to explicitly include “intimate partners” as well as spouses. In addition, it adds civil rights provisions that prohibit discrimination based on a person’s sexual orientation or gender identity.¹

B. Treatment of LGBTQ Survivors Under Washington Domestic Violence Laws

Washington’s domestic violence laws do not distinguish between heterosexual and LGBTQ relationships. The laws provide equal protection to domestic violence survivors who are in LGBTQ relationships.

For example, under [RCW 26.50.010\(2\)](#), the definition of “family or household member” for the purposes of domestic violence laws includes (but is not limited to):

- Current and former spouses and domestic partners,
- Adults who are presently residing together or who have resided together in the past,
- Persons sixteen years old or older with whom a person sixteen years old or older has or has had a dating relationship.

¹ Title IV, Sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355

C. LGBTQ Families²

- Approximately 37% of LGBTQ-identified adults have or have had a child at some time in their lives.
- Nearly 17% of same-sex couples are raising children.
- An estimated 125,000 same-sex couples are raising approximately 220,000 children.
- Of the same-sex couples under age 50 raising children, approximately 48% are female couples.

II. Terminology³

- **Bisexual:** A term identifying a person who is attracted to members of either sex emotionally, physically, spiritually, and/or sexually.
- **Gay:** A term commonly identifying a man who is predominantly or exclusively attracted to men emotionally, physically, spiritually, and/or sexually. Also sometimes used as a blanket term (“the gay community”) including both men and women.
- **Gender Identity:** The gender with which a person identifies (i.e. whether one perceives oneself to be male, female, or describes oneself in other ways).
- **Heterosexism:** A cultural assumption based on the idea that everyone is heterosexual and that it is the correct sexual orientation.
- **Heterosexual:** A person who is predominantly or exclusively attracted to different-sex individuals emotionally, physically, spiritually, and/or sexually.
- **Homophobia:** The fear of same-sex relationships as well as of those who identify as gay, lesbian, bisexual, or transgender.
- **Homosexual:** A person who is predominantly or exclusively attracted to individuals of the same sex emotionally, physically, spiritually, and/or sexually. The term is generally disfavored in the LGBTQ community.

² Gary J. Gates, “LGBT Parenting in the United States,” The Williams Institute, February 2013, available at: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>

³ The Center, Trans Basics: Glossary of Terms, <http://www.gaycenter.org/gip/transbasics/glossary>; Web MD, <http://www.webmd.com/sex-relationships/guide/sexual-orientation>; The Williams Institute, http://www.courts.ca.gov/documents/lgbtq_final_12-4.pdf. The Northwest Network, <http://www.nwnetwork.org>.

- **Lesbian:** A woman who is predominately or exclusively attracted to women emotionally, physically, spiritually and/or sexually.
- **Queer:** An inclusive term that refers collectively to LGBT individuals and others who may not identify with any of these categories but identify as queer. Although embraced by some members of the LGBTQ community, others may still consider the term to be a pejorative.
- **Sexual Orientation:** A person’s emotional, romantic, and/or sexual attraction to individuals of a particular gender.
- **Trans or Transgender:** An umbrella term for people whose gender identity, expression, or behavior differs from the sex they were assigned at birth. The term may include but is not limited to: transsexuals, cross-dressers, male to female (MTF), female to male (FTM), and gender nonconforming people.
- **Transphobia:** The fear, hatred or dislike of, or discrimination towards a person because that person is transgender.

III. Statistics

In 2012, Gallup conducted the first-of-its-kind study about LGBTQ populations across the United States. Interviewers posed the following question: “Do you, personally, identify as lesbian, gay, bisexual, or transgender?” giving participants the opportunity to self-identify. The study recognizes that it is difficult to gather accurate and complete data on this population because “these concepts involve complex social and cultural patterns.” Nevertheless, the results dispel the previously held stereotype that this population is concentrated in only certain states. The survey reveals that 3.4% of those surveyed self-identified as LGBTQ, from 1.7% in North Dakota to 5.1% in Hawaii. The District of Columbia reported 10% of its population self-reporting as LGBTQ. In Washington State, 4.0% of those surveyed self-identified as LGBTQ.

Gallup also reported on racial groups identifying as members of this community with the following estimates: 4.6% of African-Americans, 4.0% of Hispanics, 4.3% of Asian-Americans, and 3.2% of white Americans identify as LGBTQ.

Finally, Gallup introduced age as a factor and survey results indicated estimates that adults aged 18 to 29 are more than three times as likely to identify as LGBTQ than older Americans—6.4% of adults ages 18 to 29 identify as LGBT while only 1.9% of seniors aged 65 and older identify as LGBTQ.

A. Domestic Violence in the LGBT Community compared to Heterosexual Community⁴

Male Survivors:

Bisexual Men in the United States

- 26.0% have reported experiencing rape, physical violence, and/or stalking by an intimate partner.
- 27.0% have been a victim of physical violence by an intimate partner.
- 53% have reported experiencing psychological aggression in the context of an intimate relationship.

Heterosexual Men in the United States

- 29.0% have reported experiencing rape, physical violence, and /or stalking by an intimate partner.
- 26.3% have been a victim of physical violence by an intimate partner.
- 49% have reported experiencing psychological aggression in the context of an intimate relationship at some point.

Gay Men in the United States:

- 24.0% have been a victim of physical violence by an intimate partner.
- 60% have reported experiencing psychological aggression in the context of an intimate relationship.

Female Survivors:

Bisexual Women in the United States:

- 22% have been raped by an intimate partner.
- 40% have reported experiencing sexual violence other than rape by an intimate partner.
- 55.1% (over half of bisexual women) have been a victim of physical violence by an intimate partner.

⁴ National Intimate Partner & Sexual Violence Survey, 2010) Findings on Victimization by Sexual Orientation, (January 2013) http://www.cdc.gov/violenceprevention/pdf/nisvs_sofindings.pdf.

- 76.2% have experienced psychological aggression by an intimate partner.

Heterosexual Women in the United States:

- 9.1% have been raped by an intimate partner.
- 15% have reported experiencing sexual violence other than rape by an intimate partner.
- 29.8% (more than one-quarter) have been a victim of physical violence by an intimate partner.
- 47.5% have experienced psychological aggression by an intimate partner.

Lesbian Women in the United States:

- 36.3% (more than one third of lesbian women) have been a victim of physical violence by an intimate partner.
- 63.0% have experienced psychological aggression by an intimate partner.

IV. Similarities and Differences between Domestic Violence in LGBTQ Relationships and Heterosexual Relationships

There are many similarities between domestic violence in LGBTQ relationships and in heterosexual relationships. In both types of relationships, the abuser's primary goal is to achieve power and control over the survivor.

However, it is important to recognize that there are unique issues that may be present in cases involving LGBTQ relationships. Abusers in LGBTQ relationships have different tools available to achieve power and control, and survivors face different realities when seeking help.

A. Domestic Violence Occurs in LGBTQ Relationships at Comparable Rates as in Heterosexual Relationships

Studies have indicated that 25 to 33% of people in same-sex relationships have reported experiencing domestic violence. This is comparable to the percentage of women in heterosexual relationships who report experiencing domestic violence.⁵ The prevalence, dynamics, severity, and effects of domestic violence are similar in both LGBTQ and heterosexual relationships.

⁵ Center for American Progress, Domestic Violence in the LGBT Community: A Fact Sheet (available at <http://www.americanprogress.org/issues/lgbt/news/2011/06/14/9850/domestic-violence-in-the-lgbt-community/>).

B. LGBTQ Couples Are No More Likely To Engage in “Mutual Abuse” Than Heterosexual Couples

There is no evidence that LGBTQ relationships have higher levels of “mutual abuse” than heterosexual relationships. However, it is sometimes incorrectly presumed that abuse in same-sex relationships must be mutual, based on stereotypes that “women can’t batter” or “men can’t become victims.”

While an abuser in an LGBTQ relationship may attempt to portray domestic violence as “mutual,” (especially if the survivor attempts to defend against it), the person who is the abuser is the person who exerts a pattern of power and control over his or her partner.

When it appears that both partners have used violence, it is important to assess who is further isolated and controlled by the behavior of the other partner.

C. Domestic Violence in LGBTQ Relationships and Heterosexual Relationships Share Many Common Characteristics

In LGBTQ relationships, the patterns of abuse often mirror those commonly found in heterosexual relationships. See Chapter II, including physical abuse: sexual abuse, stalking, emotional abuse, using coercion and threats, using children, economic abuse, isolation, minimizing, denying, and blaming others for abusive behaviors.

D. Special Issues in LGBTQ Domestic Violence

While there are many similarities between domestic violence in LGBTQ relationships and heterosexual relationships, there are also distinct issues that may arise in LGBTQ relationships. Some unique issues that may be present in LGBTQ relationships include:

1. Threatening to “out” a survivor to family members, friends, and co-workers⁶

The threat of “outing” is an effective tool to control and coerce a survivor who is “closeted” about his or her sexual orientation or gender identity. Even if a survivor is “out” to some people, he or she may not be at work or may not have disclosed his or her sexual orientation or gender identity to

⁶ For various reasons, many LGBTQ people have not shared their sexual orientation or gender identity with everyone in their life. This is often due to fear of violence, being ostracized from friends and family, or experiencing negative consequences at work. Someone is “outed” when another person reveals his or her sexual orientation or gender identity without permission.

family members or friends. The consequences of being outed can lead to further isolation of a survivor.⁷

The fear of outing may also make LGBTQ survivors less likely to report abuse to legal authorities. Survivors may fear that reporting abuse will require them to reveal their sexual orientation publicly.

2. Forcing a survivor to engage in sexual acts to prove the survivor is a “true” LGBTQ person

An abusive partner may coerce a partner to perform sexual acts by complaining that the survivor is not “really” gay if he or she refuses to perform the acts. Transgender survivors may face similar coercion to have sex to prove their gender identity (e.g., “if you want to be a real woman, you have to have sex like this.”)⁸

People in the LGBTQ community have long been exposed to messages that their sexual relationships are wrong. Exposure to these messages may make LGBTQ survivors more hesitant to disclose sexual abuse.

3. Threatening to end a survivor’s relationship with his or her children due to sexual orientation, gender identity, or non-biological relationship to the children

Many LGBTQ couples are raising children together. LGBTQ couples may have children together through assisted reproduction, surrogacy, or adoption. LGBTQ couples may also raise children together who were born while one partner was in a prior relationship. The threat to end a survivor’s relationship with a child is a powerful tool that can be used to control the survivor.

- a. If a same-sex couple has children together, the abuser may threaten to separate the survivor from the couple’s children. For example, if a survivor is not a biological parent, the abuser may claim the survivor has no legal rights to the child.⁹

⁷ Connie Burk, *Think, Re-Think: Woman-To-Woman Domestic Violence*, WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE NEWSLETTER, May 1999. (available at <http://nwnetwork.org/wp-content/uploads/2011/11/Think-Re-think-Woman-to-Woman-DV.pdf>).

⁸ The Network, *La Red: Partner abuse happens to trans folks too!* (available at <http://tnlr.org/wp-content/uploads/2011/04/trans-partner-abuse-handout.pdf>).

⁹ *Think, Re-Think*, *Supra* note 3 at 2

- b. **NOTE:** Washington law provides that if a same-sex couple has a child while they are married or in a registered domestic partnership, both spouses/partners are legally presumed to be the child’s parents. [RCW 26.26.116\(1\)](#).

There is also a presumption under Washington law that a person is a legal parent if the person lived in the same household for the first two years of the child’s life and the person openly held out the child as his or her own. [RCW 26.26.116\(2\)](#).

In addition, Washington law also provides that if a same-sex couple raises a child together, the non-biological parent may establish a legal relationship by being adjudicated as the child’s “de facto” parent. A de facto parent stands in legal parity with a child’s natural or adoptive parent. In re Parentage of L.B., 155 Wn.2d 679 (2005).

- c. If a same-sex couple has children together and both are the children’s legal parents, the non-biological parent has the same legal rights as a parent as the biological parent. In such cases, a parent should not be awarded more residential time or be given sole decision-making based on the fact that the parent is biologically related to the child.
- d. Some LGBTQ individuals have children from prior heterosexual relationships. In those cases, an abusive partner may threaten to “out” a survivor to the child’s other biological parent. Washington law prohibits a parent’s sexual orientation or gender identity from being considered in custody decisions. However, the history of discrimination against LGBTQ people may create fear that they will not be treated fairly in court.

4. Depicting sexual violence as consensual

People in both same-sex and different-sex relationships may engage in consensual “role playing” or sexual practices that involve intense and sometimes painful physical sensation. Many couples who participate in this type of activity have well-developed rules for keeping this experience safe through mutually agreed-upon boundaries and the use of “safe” words.

However, stereotypes may create a misperception that these practices are more common in LGBTQ sexual relationships. An abuser may recognize that these stereotypes exist and attempt to depict sexual abuse as

consensual. But if a partner violates the mutually agreed-upon boundaries, it is sexual abuse.¹⁰

5. Particular concerns for transgender survivors

Transgender people are uniquely vulnerable to a number of forms of abuse in relationships, including:

- a. Hiding or destroying hormones. Manipulating a transgender survivor's ability to take hormones can have devastating effects both physically and emotionally. Missing just a few pills can have an effect on someone's physical appearance.
- b. An abusive partner may demean or coerce a transgender survivor by calling his or her body parts by the wrong names or threatening to share nude photos of the survivor either post- or pre-transition.
- c. A transgender survivor's partner may try to control how the survivor dresses and acts, or refuse to use the name or pronouns that conform with the survivor's gender identity.
- d. Abusers may demean transgender survivors by saying things like "even with that wig on, you still look like a man" or "you are never going to find someone else who will date someone like you."

6. Telling survivor "All LGBTQ relationships are like this"

If the abuser has been "out" for longer than the survivor, the abuser may try to act as the authority on how same-sex relationships should "look." For example, the abuser may tell a survivor that all LGBTQ relationships are abusive or that "men can't abuse men" or "women can't abuse women."

7. Exploiting survivor's fears of discrimination

An abuser may exploit a survivor's fears of discrimination by telling the survivor that the police, judges, or CPS will not believe him or her because they are biased against LGBTQ people.

8. Accusing survivor of mutual abuse or being the abuser

¹⁰ See also The Northwest Network, *S/M is not abuse – Abuse is not S/M* (available at <http://nwnetwork.org/resources/info-and-articles/>).

An abusive partner may claim the survivor was the abuser, particularly if the survivor appears to be bigger, stronger, or more masculine.

9. Using survivor’s HIV status to coerce or threaten the survivor¹¹

An abuser may use a survivor’s HIV status in many ways to threaten, control, or demean the survivor, including:

- a. Threatening to reveal the survivor’s HIV status to family, friends, and/or employers.
- b. Blaming the survivor for having HIV, using the survivor’s HIV status to justify abuse, and/or telling partner he or she is “dirty.”
- c. Accusing the survivor of being an unfit parent because of HIV status or making the survivor feel guilty for the HIV status of children.

If the survivor becomes less able to care for himself or herself due to HIV or AIDS, the survivor becomes more dependent on the abuser. This can make it extremely challenging to leave the relationship.

10. Alienating and isolating the survivor from family and friends by claiming they are homophobic or transphobic

If a survivor does not feel comfortable contacting friends or family because the survivor believes they disapprove of his or her sexual orientation or gender identity, it will be harder to leave an abusive partner. The abusive partner may isolate the survivor by claiming that friends and family are homophobic/transphobic or judgmental. This may make the survivor hesitant to contact family and friends or to maintain those relationships.¹²

11. Using abuser’s vulnerabilities as an LGBTQ person to manipulate and coerce the survivor.

An abuser may use his or her own history of abuse, bullying, or discrimination experienced as a result of being LGBTQ as a means to manipulate the survivor. For example, an abuser may minimize or excuse abusive behavior as a response to the trauma of having been abused, bullied, or discriminated against as an LGBTQ person.

¹¹ Office for the Prevention of Domestic Violence, New York State, *What do Professionals Need to Know? Domestic Violence and HIV/AIDS* (available at <http://opdv.ny.gov/professionals/health/hiv aids.html>).

¹² *Think, Re-Think*, *Supra* note 3, at 2.

12. Threatening to have an immigrant survivor deported

The threat of deportation may be used in both heterosexual and LGBTQ relationships to control an undocumented survivor. However, the threat of deportation is particularly terrifying to an LGBTQ survivor if the survivor's home country does not have adequate protections for LGBTQ people.

13. Barriers for gay/bisexual men and transgender people in accessing many domestic violence shelters

Domestic violence programs may not accept male-identified survivors in communal shelters, and trans survivors may also be turned away due to transphobia or misgendering by shelter staff. With such barriers to services, it is less likely that someone will seek the resources provided by domestic violence agencies. This may result in the survivor returning to the abuser due to a lack of safe spaces.

14. Ability of abusers to access “safe” spaces such as shelters, hospital rooms, bathrooms, or LGBTQ community spaces.

- a. Because domestic violence is often characterized as men abusing women, service providers can miss the signs of domestic violence in LGBTQ relationships. Survivors have told stories of being asked questions by hospital staff about domestic violence while the abuser sits in the room, based on the assumption that the person is a sibling or friend.
- b. The LGBTQ community within the area may be small and insular, making it less likely that an abused partner will be able to completely avoid the abuser. Even in large cities, there are relatively few LGBTQ community spaces. In smaller communities, there may be only one or none.
- c. Because it may be difficult for a survivor to avoid contact with the abuser in a small and insular LGBTQ community, advocates in the LGBTQ community may focus on safety planning that has harm reduction as its goal, rather than asking the survivor to completely avoid the abuser at all costs.

15. Exploiting the survivor’s desire to present LGBTQ relationships in a positive light

Abusers may coerce survivors not to reveal abuse because they claim it will present LGBTQ people in a negative light. For example, the abuser may tell the survivor that revealing the abuse to police, courts, or others would reinforce stereotypes that LGBTQ relationships are “abnormal.”

Survivors may fear that disclosing abuse would harm broader efforts to advance LGBTQ equality. They may also fear that it will cause them to lose support from friends who want to maintain the myth that there are no problems in LGBTQ relationships.

V. Addressing LGBTQ Domestic Violence Issues in the Courtroom: Creating a Knowledgeable and Compassionate Courtroom

LGBTQ survivors of domestic violence are often reluctant to seek relief in court because of fears that they will not be believed, that they will not be treated respectfully, or that they will be forced to reveal their sexual orientation or gender identity publicly. It is important for judicial officers and staff to recognize and address these concerns appropriately.

A. Challenges LGBTQ Domestic Violence Survivors Face in Court

LGBTQ survivors face unique barriers in presenting their cases for many of the reasons discussed earlier. For example:

- The survivor may have been arrested based on stereotypes that abuse in LGBTQ relationships is mutual, or that the bigger, stronger, or more “masculine” partner is the abuser.
- LGBTQ survivors may be less likely to report the abuse to the police or medical providers due to a fear of mistreatment or “outing.”
- Survivors may be reluctant to disclose in their petitions or in open court that they are LGBTQ.
- Survivors may fear that the judicial officers or staff will be hostile or will make fun of them.

Courts can address these barriers by recognizing the distinct issues that may be presented in cases involving LGBTQ survivors.

B. Creating a Bias-Free Courtroom

Washington’s Code of Judicial Conduct prohibits expressions of bias. Beyond this fundamental requirement, there are many other steps that judges can take to ensure that LGBTQ litigants are treated respectfully and appropriately.

1. Washington’s Code of Judicial Conduct Requires a Bias-Free Courtroom

Washington State Code of Judicial Conduct Rule 2.3 provides:

RULE 2.3 Bias, Prejudice, and Harassment

- (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
- (C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, against parties, witnesses, lawyers, or others.
- (D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making reference to factors that are relevant to an issue in a proceeding.

“Harassment” is defined in the comment to Rule 2.3 as:

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, **sexual orientation**, marital status, socioeconomic status, or political affiliation.

2. Judges Should Refrain From Extrajudicial Activities That Could Appear to Express Bias or Prejudice

Comment (2) to Washington State Code of Judicial Conduct Rule 3.1 provides:

Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a

reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, **sexual orientation**, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination.

3. Practical Steps

Judges and court personnel can take many steps to ensure respectful and appropriate treatment of LGBTQ domestic violence in their courtrooms. These include:

- Do not force a survivor to “out” himself or herself in the process of the case.
- Do not make a big deal about the case involving an LGBTQ relationship.
- Do not assume that LGBTQ domestic violence is “mutual combat” based on stereotypes about LGBTQ relationships.
- If the couple has children, do not treat the biological parent as having superior rights to the other parent.
- Use the same terms to describe the relationship that the survivor uses (e.g., spouse or partner). Do not refer to the couple’s relationship as “friends” or “roommates” unless the survivor chooses to characterize the relationship that way.
- For transgender survivors, use the pronouns that conform to the survivor’s gender identity. If it is unclear which pronouns the survivor prefers to use, it is acceptable to ask.
- Update court forms to ensure that they are not worded in a way that excludes LGBTQ relationships.
- Do not tolerate derogatory remarks about a party’s sexual orientation or gender identity by staff, court personnel, or witnesses.
- Train all court personnel on barriers that LGBTQ people face in accessing the courts.