Chapter 9: Intimate Partner Violence

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(Excerpt)

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Introduction

Intimate partner violence is a social and public health epidemic that affects people of all classes, races, abilities, sexual orientations, religions, and gender identities. What little research that exists shows that transgender people are unsurprisingly not immune from the epidemic. Transgender clients presenting with family law issues may be survivors or they may be perpetrators of intimate partner violence. Few family law attorneys are prepared to ensure that clients who have faced intimate partner violence are appropriately represented and receive essential services to aid them in negotiating the biased judicial and non-judicial systems (including, for example, a shelter mediation program) they may encounter.

9.1 Intimate Partner Violence and Transgender Clients

9.1.1 Intimate Partner Violence Basics

For the purposes of this chapter, intimate partner violence is defined as a recurring and chronic pattern of behaviors where one person (the abuser) tries to control the thoughts, beliefs, and/or actions of her/his married or unmarried partner, someone s/he is dating, or someone with whom s/he had or has an intimate relationship (the survivor).[1] It is important for an attorney to focus on the pattern of behavior, rather than an isolated incident. While intimate partner violence or abuse can include physical assault, it is not limited to physical abuse. Abuse may be physical, emotional, sexual, economic, or related to a person's culture or identity. These are not discrete categories and instances of abuse may be in overlapping categories. Below are some examples of abusive behavior:

- emotional abuse: verbal abuse, lying, undermining self-esteem, humiliation, monitoring whereabouts, threats, and/or intimidation;
- physical abuse: pushing, hitting, punching, choking, withholding medications or hormones, sleep deprivation;
- sexual abuse: rape, coercing sex and/or sex with others, exposure to HIV or sexually transmitted infections;
- economic abuse: controlling money and resources, forcing to live above means, stealing, identity theft;
- cultural/identity abuse: threat of outing partner's sexual orientation, gender identity, sexual history or interests, HIV status, or any other personal information such as a partner's former name; using a partner's race, class, age, immigration status, religion, size, physical ability, language, and/or ethnicity against them.[2]

9.1.2 Intimate Partner Violence Involving a Transgender Spouse or Partner

9.1.2.1 Incidence of Abuse

There is a still small but growing body of research to assess the prevalence of intimate partner violence within transgender communities and to explore the experiences of transgender survivors. In *Injustice at Every Turn,* A Report of the National Transgender Discrimination Survey, the study of more than 6,000 transgender respondents revealed that:

> Nineteen percent (19%) of respondents have experienced domestic violence at the hands of a family member because of their transgender identity or gender non-conformity. American Indian (45%), Asian (36%), Black (35%) and Latino/a (35%) respondents reported higher rates of domestic violence than the full sample, as well as undocumented non-citizens (39%), those earning under $10,000 annually (38%), those without a high school diploma (39%), the unemployed (30%), respondents who have lost jobs due to bias (35%) and those who worked in the underground economy (42%). MTF respondents endured family violence more often (22%) than FTM respondents (15%), while gender non-conforming respondents were victimized more often (21%) than their transgender peers (19%).[3]

In a report by The National Coalition of Anti-Violence Projects (NCAVP), research found that 50% of transgender and intersex respondents had been raped or physically assaulted by a romantic partner.[4] A study conducted by the Massachusetts Department of Public Health based on data collected in 2009 reported that 34.6% of transgender respondents had been threatened with physical violence by an intimate partner.[5]

While there has been some research on transgender survivors of intimate partner violence, there has been very little research on who perpetrates intimate partner violence. While many transgender individuals have experienced and will experience intimate partner violence, some transgender individuals are also abusers.

9.1.2.2 Tactics of Abuse and Hurdles to Assistance

Family law attorneys working with transgender individuals may well encounter clients and/or opposing parties who are survivors of intimate partner violence. Not all survivors present the same and many may not identify the abuse, victimization, or assault that they have experienced to be intimate partner violence. This occurs for a range of reasons: social and cultural images can distort people's understanding of intimate partner violence by narrowing the field of who can have such experiences to women in heterosexual relationships; internalized homophobia, biphobia, and/or transphobia can lead survivors to believe they deserve abuse; some survivors are too traumatized to talk about or acknowledge the abuse; and others may be too afraid of their abuser to speak out or take action, or they may have been threatened by their abuser about speaking to anyone. Transgender survivors may fear being "outed" (having their transgender identity disclosed against their will) to their family, friends, employers, or neighbors. For transgender survivors who work or have worked in illegal trades, such as sex work, their partners' knowledge of such work gives their partners an even greater amount of power over the survivor. Survivors who have engaged in sex work may be concerned about seeking police and

court assistance for the abuse committed against them. This may be based on their own history with or legitimate concerns about interacting with law enforcement.

Given how small many transgender communities are, some survivors may be concerned about being identified as an intimate partner violence survivor. Furthermore, one partner identifying as a survivor and labeling her/his partner as an abuser within a small community may significantly affect the dynamic of the community. The survivor may have no interest in affecting that dynamic or fear s/he will lose her/his place within that community. For some transgender individuals, that community may be all the social support they have. Historically, LGBTQ communities have not always been fully supportive of intimate partner violence survivors and have not always been focused on holding abusers accountable for their actions. Given the political, social, and cultural battles over extending marriage equality and civil unions to same-sex couples, some in LGBTQ communities are considerably invested in promoting same-sex and LGBTQ relationships strictly as healthy relationships. This can add pressure to transgender survivors to stay silent about the abuse so as not to reflect negatively on the community.

Many transgender survivors are wary about interacting with the police and court system due to experienced or perceived concerns about harassment, discrimination, and bias. Police often respond inappropriately to calls involving physical assaults between intimate partners, particularly where one of the partners is transgender. If one of the parties is identifiably transgender, presents as masculine, is perceived to have been born male, or is physically larger than the other party, s/he may be more likely to be blamed for the incident or less likely to receive protection or be believed because of police bias or discrimination.[6] In some cases, the abuser will specifically disclose that her/his partner is transgender to law enforcement to leverage institutional bias. If the relationship presents to responding officers as a same-sex relationship, then police may respond by arresting both parties or neither party—believing that "boys will be boys," that it is not that serious if it is "between girls," that the fight is "fair," or that there could not be a survivor and an abuser where it is between two men or two women.[7] For these reasons, if an attorney is working with a person who has been arrested for intimate partner violence or against whom a protective order has been brought, it is important to understand that that person may not always be the abuser in the relationship and may in fact be the survivor.

An additional concern when working with transgender survivors is the possibility of mutual restraining orders. Mutual restraining orders, issued by a court for and against both parties, are mostly an inappropriate response to both parties seeking an order of protection. Referring back to the definition of intimate partner violence, one of the partners (the abuser) is using abusive tactics to obtain power and control over their partner (the survivor). Thus, only one of the parties is deserving of the restraining order. Mutual restraining orders and mutual arrests send a message that both parties are survivors and that both parties are abusers—a misleading message when only one partner holds power and control over the other. Mutual restraining orders empower the abuser while leaving the survivor feeling that the courts and law enforcement will not protect her/him.

Abusers prey on survivors, often using their fears—fear of disclosure of transgender identity or previous gender, police, violence, etc.—to keep survivors silent and under their control. A transgender person's fear that s/he might be treated in a way that is discriminatory or biased by the court system in an intimate partner violence-related or family court case is a fear that may be especially strong and is well-founded. Abusers may attempt to take advantage of such fear of, or actual, institutional bias against transgender individuals.

In addition to institutional bias from the police and court system, the broader community of intimate partner violence organizations and service providers have often either largely ignored the issue of intimate partner violence in transgender communities or replicated the kind of discrimination and prejudice transgender people experience in other areas of their lives. Some intimate partner violence programs see intimate partner violence exclusively through a lens in which men are abusers and women are survivors. As a result of this myopic view, survivors seeking services who present as, identify as, or were born male often are excluded from receiving intimate partner violence services, especially from shelter-providing organizations which may only provide housing to women and, then only to non-transgender women, and who may not serve transgender men or may insist that transgender men use their female name to access services.

Some tactics of abuse are more likely to be used against transgender survivors. In addition to institutional bias and capitalizing on the fears of survivors as discussed above, an abuser may engage in other forms of abuse that specifically target a transgender partner's gender identity, including: forcing her/him to dress consistent with her/his previous gender (including destroying or withholding access to her/his gender specific clothing or accessories), interfering with her/his gender transition (such as forcing her/him to stop taking hormones), withholding medications such as hormones or post-surgery drugs, refusing to use her/his post-transition name or pronoun (particularly in public), obstructing her/his access to transgender support groups and/or medical services related to gender transition, outing her/him as transgender, ridiculing her/his body, or challenging the authenticity of her/his gender identity.

Identity theft and other forms of economic abuse are other powerful tools in an abuser's arsenal. While electronic identity theft is increasing with the expansion of the Internet and wireless communications, old-fashioned impersonation in person and over the phone to make unauthorized financial transactions using the victim's stolen identity is easier when the identity thief presents as the same gender as the identity theft victim. A transgender survivor may be more vulnerable to this type of identity theft either because her/his partner is the same gender or because s/he has chosen a gender-neutral name that makes it easier for the identity thief to impersonate her/him. In addition, given the fact that many transgender individuals have difficulty finding stable, well-paying employment, an abuser can force her/his partner to become economically dependent on her/him as a way to exact control. For example, an abuser may run up charges on the survivor's debit/credit card(s) or empty out the survivor's bank accounts. For an additional list of abusive tactics used against and by transgender individuals, as well as the impact of transphobia on access to services, see the *Transgender Domestic Violence and Sexual Assault Resource Sheet* included in the resource list in Appendix 9A.

Unfortunately, as will be discussed below, while there may be protection under the law, not all transgender survivors will be able to benefit from that protection in court where bias and discrimination against transgender people are too often still the norm.

9.1.2.3 When the Abuser is Transgender

While much of this chapter is focused on working with a transgender survivor of intimate partner violence, it is important to acknowledge that transgender individuals can also be abusers. Transgender individuals who abuse their transgender or non-transgender partners may use some of the same abusive tactics mentioned above. They may also attempt to coerce their partner to

stay in the relationship or not report the abuse because they, as a transgender person, would face institutional bias and/or violence in the courts and justice system.

Sometimes attorneys may feel a tension between zealously representing their client's interests and not using an opposing party's identity against her/him. An attorney may achieve the client's goals without taking advantage of institutional biases against transgender, bisexual, and gay and lesbian people. Family law representation involving intimate partner violence should focus on behavior, not the parties' sexual or gender identities. When representing a transgender abuser, it is important to recommend that s/he seek assistance to stop such behavior.

9.1.3 Difference between BDSM and Abuse

As stated earlier, intimate partner violence is a recurring and chronic pattern of behaviors where one person tries to control the thoughts, beliefs, and/or actions of her/his partner, someone s/he is dating or someone with whom s/he has or had an intimate relationship. BDSM stands for bondage and discipline, dominance and submission, and sadomasochism. BDSM is the generally accepted umbrella term for a broad group of consensual behaviors that includes the giving and receiving of intense erotic sensation.[8] The behaviors used in BDSM are consensual, negotiated, and involve the communication of limits and the use of a safe word that can stop all action at any time.[9]

Because BDSM is a consensual dynamic, it is not abuse. Power is negotiated between "players"—who may or may not be partners/spouses outside the BDSM context—for the purpose of a "scene" only, and do not correlate to the players' relationships outside the BDSM context. In contrast, abuse is nonconsensual force, power over another, and/or actions that are meant to limit the survivor's choices and resources.

However, abusive behavior can manifest itself within negotiated interactions. For example, if one player's use of a safe word is ignored, that may indicate abusive behavior. Additionally, it is common for abusers to claim that abuse was really negotiated BDSM behavior. This is particularly true for transgender individuals whose sexuality is often eroticized. When analyzing an allegation of abusive behavior within a BDSM context, it is important to focus on the context, intent, and effect of the behavior, and not to rely on cultural stereotypes.

9.2 Impact of Intimate Partner Violence on Family Law

9.2.1 Impact of Intimate Partner Violence on Family Law Representation Generally

A client's experience as a survivor of intimate partner violence might dramatically affect an attorney's representation in family law matters. This section addresses the intersection of intimate partner violence and family law representation as it relates to custody determinations, divorce and relationship dissolution, and estate planning.

Determining whether a client is a survivor of intimate partner violence can be accomplished through adept client interviewing and case records searches. As discussed in Section 9.1.2.2, it is possible that a client will be reluctant to discuss abuse. S/he may not feel comfortable offering up sensitive information and may not think it is relevant to her/his case. It is also very likely that a client will not have reported the abuse to the police or sought some form of a civil protective order. When an attorney meets with a client, s/he can ask the client questions

about her/his relationship's dynamics, specifically touching on issues of physical, sexual, economic, and emotional abuse. For additional information about how to screen for intimate partner violence, see the ABA's screening tool.[10]

9.2.2 Custody Remedies for Survivors

As described in Chapter 6, transgender clients may face barriers in securing custody of and visitation with their children in family dissolution cases. Transgender clients who are also survivors of intimate partner violence, though, may have some important legal protections in custody/visitation disputes that should not be overlooked.

Custody determinations are generally based on a best interests of the child(ren) standard. According to the American Bar Association's Commission on Domestic Violence, forty-two states and the District of Columbia explicitly take intimate partner violence into consideration in doing an assessment of the child's best interests.[11] Three states (West Virginia, South Dakota, Oklahoma) do not include it, and another five (Washington, Texas, Maryland, Louisiana, Arizona) do not explicitly consider it as a factor, but have some form of recognition that intimate partner violence between parents affects the emotional and physical health of the children and may consider the abuse in determining custody.[12] Intimate partner violence against a parent, particularly when witnessed by the child, can sometimes be strong evidence against the abusive parent getting full physical and legal custody. Sometimes, particularly in cases where intimate partner violence has been witnessed by the children or has involved them, abusers will be granted no physical custody and limited or supervised visitation. In fact, almost half of the states and the District of Columbia have some form of rebuttable presumption against custody for abusive parents or against joint custody when intimate partner violence has occurred.[13]

Clients who are survivors of intimate partner violence, depending on the specific jurisdiction's evidence requirements, may introduce evidence of past intimate partner violence perpetrated by the abuser against them or against the children involved in a custody case. Past civil protective orders, criminal cases, or other court documents may substantiate the client's claim. A client may also be called to testify about intimate partner violence and its impact on her/his capacity to share custodial rights (specifically around legal decision making and visitation) or on the mental and physical health and safety of the children. An expert witness may also be called to testify about the impact of intimate partner violence on children, including those who did not directly witness the abuse.

In establishing a visitation arrangement for a transgender client who is a survivor, it is important to consider the safety of the visitation arrangement as well as how appropriate and comfortable it is for a transgender parent. For example, spaces such as supervised visitation centers or police stations—which are often used for visitation in cases involving child abuse or intimate partner violence—are safe for many survivors, but might not be staffed by individuals who are respectful of transgender parents. Conversely, transgender community spaces or a known third party might be respectful of transgender parents, but not necessarily safe for survivors of intimate partner violence.

An attorney should also take abusive dynamics into consideration during custody and visitation negotiations. Some survivors will not feel comfortable or be able to fully assert their preferred options if forced to negotiate in the same room as their abuser. Some jurisdictions allow for an exception to mediation or negotiation if there is a history of intimate partner violence or if the mediators otherwise determine that mediation would not be productive or

reliable as a result of relationship dynamics. Shuttle negotiation or some other process that does not require direct communication between a survivor and abuser is an option in some jurisdictions. In other jurisdictions, the only option may be to fully litigate the case before a judge or to conduct negotiations solely between attorneys (if both parties are represented).

9.2.3 Divorce and Relationship Dissolution for Survivors

Transgender individuals who are divorcing or legally separating from their spouse face legal hurdles (see Chapter 5) that may be exacerbated for individuals who are also survivors of intimate partner violence. A few of the areas where intimate partner violence intersects with divorce or dissolution are the mediation process, asset and debt distribution, alimony, and fault versus no-fault divorce assessment.

As noted in Section 9.2.2, mediation may not be safe for survivors of intimate partner violence. Abusive partners may use tactics of abuse to coerce a survivor into an agreement in mediation that is not in the survivor's best interest or that the survivor would not consent to if not in the same room with the abuser. Being unable to mediate or consent to a divorce, separation, or dissolution agreement may result in the case going to trial.

Asset and debt distribution may be impacted by intimate partner violence particularly where the abusive relationship included economic abuse. For example, a former partner may have withheld money, controlled household expenditures, forced a former partner not to work or contributed to her/him being fired from jobs, kept property titled in the abuser's name only, or worked to ruin the survivor's credit. This situation could be exacerbated for transgender persons who work in the majority of jurisdictions that have no express employment discrimination protections for transgender people. In equitable distribution states where courts consider factors in determining distribution of debt and/or property, a survivor's attorney could discuss the relevance of intimate partner violence and economic abuse to the reason for the relationship's termination or the cause for indebtedness. Similarly, an attorney may be able to provide evidence and arguments related to intimate partner violence or economic abuse to argue for alimony for a client in states that consider similar factors to determine alimony.[14]

While all states now have some no-fault grounds for proceeding with divorce, the majority still retain some combined form of fault/no-fault grounds. In many of the states that retain fault-based grounds for divorce, most include some form of physical or emotional cruelty as one of the grounds. Intimate partner violence, be it physical or emotional, can often count for this ground and should be considered in the assessment of whether the client should proceed under a fault or no-fault theory. A finding of fault in a divorce may impact distribution of marital assets as well as custody determinations.

9.2.4 Estate Planning

While intimate partner violence may be more apparent when a relationship is dissolving or during a custody dispute, estate planning attorneys should also be aware of and screen for intimate partner violence and other abusive dynamics when working with a couple who is engaged in estate planning. Attorneys may need to refer each spouse to a separate attorney and possibly provide the client with resources for intimate partner violence services when there are indicators of the presence of abuse. See Chapter 10 for guidance about transgender clients and estate planning.

9.3 Specific Intimate Partner Violence-Related Legal Remedies

9.3.1 Protective Orders

One of the main legal remedies that a survivor of intimate partner violence may access is a civil protective order.[15] These orders, which are governed by the states' intimate partner violence statutes, typically provide broad discretion to a judge to direct the behavior of the abuser (respondent), which includes orders that the respondent must stop harassing, threatening, and abusing the survivor (petitioner). Additionally, these orders can require that the abuser have no contact with the survivor at her/his home, school, and/or workplace; that s/he stay a specific distance away from the survivor; move out of the home; obey temporary child custody orders; pay financial obligations, including child and spousal support; and other orders as deemed appropriate. A violation of a protective order usually carries a criminal penalty and the existence of a protective order can increase the likelihood that law enforcement will intervene if called to the location of a future incident. While the grounds to qualify for a protective order vary from state to state, in most jurisdictions, there must be threats of or actual physical or sexual violence or seriously harassing behavior.

9.3.1.1 Availability for Transgender Survivors

While the majority of states have gender-neutral intimate partner violence protective orders, some states explicitly exclude same-sex couples,[16] which could affect a transgender survivor's eligibility depending upon how the state regards an individual's legal sex (see Chapter 2) and whether the relationship is considered a same-sex or different-sex relationship (see Chapter 3).[17] Currently, the two states that explicitly exclude survivors in same-sex relationships from accessing intimate partner violence protective orders are South Carolina and Montana,[18] although if a couple shares a child in common in Montana, a survivor may still be eligible.[19]

Another challenge is that different states have different requirements for what types of relationships qualify in order for someone to be eligible for a protective order. Some states require that the parties live together or be related by blood or have children in common, others require that they only be in a dating relationship, some allow for victims of stalking and sexual assault to obtain protective orders against people to whom they are not related, and still others may only require that the petitioner be a roommate of the abuser.

Where an individual is not eligible for an intimate partner violence protective order, s/he may be eligible for a different order, including a civil harassment order, where available.

9.3.1.2 Challenges for Transgender Survivors

Although the majority of states either explicitly or through gender neutral language allow LGBTQ individuals to seek protective orders, it remains to be seen whether this remedy, that has historically been framed in a heterosexual context, can adequately protect the interests of transgender survivors who may be facing threats of abuse that are unique to this population. One of the more prevalent threats used by an abusive partner is to threaten to publicly disclose a person's gender identity. The threat of public disclosure can also be used in the context of a person's sexual orientation. While this threat can have real repercussions, it is uncertain whether

threats of public disclosure qualify as abuse for purposes of obtaining a protective order under state statutes.[20] Attorneys are advised to closely review the specific statutory language that describes the type of harm that must be demonstrated to qualify for a protective order. Even if a threat of public disclosure is probably not sufficient to qualify as an offense legally worthy of a protective order, it is possible that such a threat in conjunction with other threats or actions could constitute a crime such as stalking or harassment.

The case of *Richardson v. Easterling* is one to which parallels may be drawn.[21] In this case, a gay male petitioner sought a protective order on the grounds that his same-sex abuser had threatened to contact the police and falsely accuse him of knowingly spreading communicable diseases; had contacted the District of Columbia's Board of Medicine, multiple colleagues, and his secretary, and divulged his sexual orientation, information about his sex life, and falsely accused him of knowingly spreading communicable diseases; and had forged and attempted to pass a check on a closed financial account in his name, resulting in a criminal investigation by Maryland authorities. [22]

The petitioner received a temporary protective order which included a provision prohibiting the respondent from contacting the petitioner's colleagues.[23] The respondent challenged the protective order, arguing that petitioner was HIV positive and that nothing petitioner alleged fell under the acts covered by the particular statute.[24] The trial court agreed with the respondent stating that "neither abuse nor violence has been alleged."[25] The matter was appealed and reversed on the grounds that the allegations could have constituted stalking, emotional violence, or intentional infliction of emotional distress, but noting that had the respondent only defamed him, there would have been no criminal conduct to invoke the act.[26] This case is instructive because even at the appellate level the court was resistant to protect the petitioner from statements that could be seen as defamatory, i.e., the threats to disclose his HIV status and sexuality, because they were not seen as crimes committed by the respondent against the petitioner's person.

Another challenge for transgender survivors is that there may be little to no evidence of the abuse. Given the historically difficult relationship between transgender individuals and law enforcement, many members of the transgender community are reluctant to involve law enforcement or other service providers. This fear is regularly reinforced by abusers who proclaim that their transgender partner will not be believed, will be arrested, or will experience violence by the very institutions that are meant to help. As a result, there are often no police reports, and where there are reports, they may have been misclassified as another crime or contain narratives that place blame on the survivor. Transgender individuals may also be reluctant to access medical care given past experiences of discrimination, disrespect, or mistreatment by health care providers. The absence of medical documentation may make it hard to prove the abuse. Where these documents do not exist, an attorney should be ready to argue about the barriers to accessing these traditional services and explain the absence of medical documentation.

Because proof beyond testimony is often unavailable, the credibility of each party is a pivotal issue in most protective order hearings. Attorneys working with transgender clients may have to overcome biased or discriminatory misinformation offered to the court by opposing parties. Attorneys may want to consider bringing in expert witnesses to overcome some of these barriers.

The following is a list of some things for attorneys to keep in mind when assisting a transgender client who is a survivor of intimate partner violence:

- A protective order is not always the best solution, and in fact, in certain circumstances could increase the dangerousness of the situation. (See Section 9.4.1 Safety Planning discussion below).
- Attorneys working with survivors of intimate partner violence are urged to be sensitive and work towards empowering the survivor, by first listening to her/his story, informing the survivor of her/his various options, asking what s/he wants, and then respecting that decision. People who have been abused have had the power to make their own decisions taken away from them; regaining that power is an important step in healing.
- Survivors frequently struggle with the shame, hurt, and fear that come with being a survivor of intimate partner violence. These feelings may be compounded for a transgender survivor because s/he has to "come out" to a legal system that in many ways negates or disrespects both her/his relationship and her/his identity. When representing transgender survivors, an attorney should make sure that the survivor's post-transition name, pronoun, and gender are used where legally possible. An attorney should be vigilant when a judge, clerk, bailiff, or opposing counsel uses, for instance, male pronouns when referring to the abuser, when the abuser is actually a transgender woman, or uses female pronouns when referring to the survivor, when the survivor is actually a transgender man. If the wrong pronoun or name is being used to identify a client, the attorney should politely inform the speaker of the correct pronoun or name. To provide effective representation, an attorney should be comfortable using the client's pronoun and name and be consistent in references to the client. There is more guidance about providing culturally competent representation in Chapter 1.
- An attorney should be prepared for the possibility that the legal system will trivialize a transgender client's case. Judges and/or court personnel may encourage the attorney to settle the matter or they may be less willing to grant the protective order or more likely to grant mutual protective orders, which is an inappropriate option that often leaves a survivor in a more dangerous situation and more vulnerable to arrest. It also reaffirms the survivor's experience that the abuser will not be held accountable for her/his actions. An attorney representing a transgender client should research and prepare arguments in advance to counter these barriers.
- An attorney should also ensure that a client's preferred name and pronoun are included in the court record and paperwork in a way that matches the client's desires while recognizing the legal requirements of the record and other legal documents. For example, it may be difficult to have a protective order enforced unless the petitioner's name matches the petitioner's legal and identification documents (e.g. license, passport, lease). If a client wishes for her/his post-transition name to be used in the hearing and in the documents and her/his post-transition name is different from her/his legal name, her/his attorney should consider adding both names to the protective order (e.g. Petitioner AB a.k.a. Petitioner DC versus Respondent) and stating the client's post-transition name on the record.
- Communicating respectfully to a survivor client that s/he is not alone and that intimate partner violence exists in all forms of relationships helps reassure a client that s/he is not to blame and that the attorney is supportive of her/his gender identity.

9.3.2 Criminal Advocacy

Family law attorneys may be called upon to provide advocacy for clients in the criminal justice system. As discussed above, there can be significant barriers for transgender individuals in accessing law enforcement. Family law attorneys may need to advocate or petition that a police report be taken or amended. Often, police reports involving transgender victims of crime misstate the victim's name, gender, and relationship to the other party. An attorney may also need to advocate that a protective order that has been violated be enforced. Where possible, it is helpful for attorneys working in these systems to build relationships with local prosecutors and police departments, particularly ones with liaisons to the LGBTQ community.

A family law attorney may also need to address a transgender client's legitimate fear of interacting at all with the criminal justice system, including filing a police report, seeking a protective order, or participating as a witness in a criminal matter. Abusers typically threaten a transgender survivor that if s/he accesses these systems and protections, s/he will be arrested and incarcerated. For many transgender people, the fear of being incarcerated in a sex-segregated facility is extreme and justified. Therefore, an attorney should counsel transgender clients about the reality of interacting with the system (e.g. you will not be locked up solely for filing a protective order, but you may be locked up if the police are called to the scene of an intimate partner violence incident and even wrongly determine that you have committed a crime against your partner). Also, attorneys should counsel a client who is working with a prosecutor that the prosecutor is not her/his attorney and that the prosecutor can use admissions to crimes against her/him.

9.3.3 Immigration Remedies for Survivors of Intimate Partner Violence

Immigration status may be used as a tool by an abuser to try and maintain power and control, and many survivors are unaware that there are specific domestic violence remedies that can be used by immigrant survivors.[27] As discussed in Chapter 3, a transgender client may or may not be eligible for family-based immigration remedies, such as marriage-based petitions or fiancé/ée visas. However, the transgender client, if s/he is a survivor of intimate partner violence, may have access to additional, and very significant, immigration remedies.

Two immigration remedies that are available to some survivors of intimate partner violence are a Violence Against Women Act (VAWA) Self-Petition and a Battered Spouse Waiver. An individual who is or was previously legally married to a citizen or a lawful permanent resident and who survived abuse may be eligible to apply without her/his spouse for lawful permanent residence pursuant to VAWA.[28] To apply for lawful permanent residence without a spouse/abuser a client would file a VAWA Self-Petition. This option is available for survivors while they are married and for up to two years after they divorce. Generally, an individual is eligible to file as a VAWA Self-Petitioner if 1) s/he entered into a good faith marriage to a United States Citizen or Lawful Permanent Resident, 2) s/he experienced battering or extreme mental cruelty (a pattern of abusive power and control) during said marriage, and 3) s/he is a person of "good moral character."[29] An individual may be eligible for this form of relief irrespective of how s/he entered the United States.

A Battered Spouse Waiver is another immigration remedy that is available to an individual with Conditional Lawful Permanent Residence (as evidenced by a two-year green card) who is or was previously legally married to a United States Citizen and who survived

abuse.[30] A Battered Spouse Waiver allows a noncitizen to remove the conditions on her/his green card without the joint participation of her/his United States Citizen Spouse.

Both VAWA Self-Petitions and Battered Spouse Waivers are only available to individuals who are legally married according to the federal government, so a transgender client's eligibility depends upon whether or not the federal government considers her/him to be legally married to a different-sex spouse. See Chapter 3 for guidance about assessing whether a transgender client's marriage is likely to be considered a valid marriage between different-sex individuals. Note, it is not clear yet what the February 2011 Department of Justice announcement about its decision not to defend the federal Defense of Marriage Act will have on family-based immigration remedies for individuals legally married to a same-sex spouse.

Marriage-based immigration remedies, including the ones described above, may not be an option for transgender individuals who are deemed to be in a "same-sex" relationship because the federal government does not recognize marriages between persons of the same sex pursuant to DOMA. However, the "U Visa" protects individuals regardless of their sexual orientation or gender identity who are victims of certain crimes, including intimate partner violence and sexual assault.[31] To be eligible, the crime must have occurred in the United States and the victim must have suffered substantial emotional or physical harm and be willing and able to cooperate with the government's prosecution of the crime. The U Visa is dependent on the victim's status as a crime victim, and does not depend upon the existence of a recognized marriage or on the immigration status of the abuser. A client may be eligible for a U Visa even if the client entered the country without documentation or if the client has some criminal activity on her/his record. Transgender clients who have survived abuse and who work with the police, prosecutors, or other governmental agencies by filing police reports, participating in hearings as witnesses, etc., may be eligible. As discussed earlier in this chapter, transgender people may have reasonable fears about reaching out to and working with the police or other parts of the justice system. An attorney may be in a good position to help make connections between a client and these systems to ensure that the client interacts with people who will not discriminate against her/him because s/he is transgender. Since evidence of abuse is required to obtain a U Visa, it is important for an attorney to encourage a transgender client to document the abuse and keep records wherever possible. U Visas provide noncitizens with lawful residency and a work permit for four years and the ability to petition for permanent residency after three years.[32]

Transgender survivors of intimate partner violence may also be eligible for asylum status if they are unable to return to their home country out of fear of persecution because of their membership in a particular social class (potentially including survivors of extreme intimate partner or sexual violence, people who are gay, lesbian, bisexual and/or transgender, or people with HIV/AIDS) or their race, religion, nationality or political opinion.[33] Asylum applications must be filed within one year of entry into the United States (with some exceptions). Asylees are granted lawful residency and a work permit and are eligible to petition for lawful permanent residence (a green card) after one year.

9.4 Safety Planning and Other Issues

9.4.1 Safety Planning

One of the most important aspects of successfully providing legal services for a transgender survivor of intimate partner violence is to adequately ensure that her/his safety

remains a priority throughout the legal process. Attorneys who have not had training on safety planning and the unique safety dynamics for transgender clients should consider contacting or being trained by a service provider with such expertise. There is a list of experienced providers in Section 9.4.2. Appendix 9A includes a resource list that includes a safety planning worksheet.

9.4.2 Screening Questions

If an attorney reaches out to local intimate partner violence agencies as potential resources, s/he should consider asking the following screening questions to evaluate whether the service is appropriate for transgender survivors:

- Does your agency have experience working with transgender survivors, and if not, does your agency partner with any local organization with experience working with transgender survivors?
- What services is a transgender client eligible for?
- What are the shelter's policies in regard to sex-segregated services and housing transgender clients?
- Will your program staff be respectful of my transgender client's gender identity?
- Does your organization have a nondiscrimination policy in place? Is gender identity or expression included as a protected category? Is the nondiscrimination policy provided to residents or other program participants? Is it posted in a visible place? How is it enforced?

9.4.3 Sex-Segregated Services/Facilities and Intimate Partner Violence

The reality is that too often transgender survivors are unable to access traditional intimate partner violence resources because such services, particularly housing, are sex-segregated and often have access policies based on biology, physiology, or birth sex, rather than gender identity. Even where a sex-segregated facility, such as a shelter, will allow a transgender individual admittance based on her/his gender identity, it is very possible that the other clients and staff may create a hostile environment.[34]

If taking refuge at a shelter is not an option for a client for any reason, one alternative is accessing Victims of Crime Compensation.[35] This money can be used to cover the cost of a hotel or the cost of relocating and can also help pay for medical bills and counseling. To have access to these funds an individual is typically required to cooperate with law enforcement.

9.4.4 Resources for Abusers

While there are few resources for transgender survivors, there are even fewer resources for transgender abusers. The best option for an attorney working with a transgender abuser is to call the resources for survivors and ask whether they have referrals for abusers. If an attorney knows that s/he is working with an abuser, the attorney should not refer her/him to survivor-focused resources. Resources for transgender abusers may also be available through the local court offender services agency. An attorney working with a transgender abuser can contact the court agency to determine whether they would be safe and competent to work with transgender participants.

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[1] The term "intimate partner violence" is used in this chapter to denote the most common type of relationship in which abusive behaviors may occur and the most common type of relationship in a family law context. Other terms such as "domestic violence," "domestic abuse," "battering," etc. may sometimes be used interchangeably to communicate the same type of behaviors. Abusive behaviors in relationships between children and their parents, siblings, roommates, individuals who have never been involved in an intimate relationship together, or caregiver and patient may not be remedied, however, in a family law context, depending on the particular state's law (although criminal sanctions may be available).

[2] *What is Partner Abuse?*, THE NETWORK, http://www.tnlr.org/about-partner-abuse/what-is-partner-abuse/ (last visited Sept. 14, 2011).

[3] JAIME M. GRANT ET AL., NAT'L CTR. FOR TRANSGENDER EQUAL. & NAT'L GAY & LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 100 (2011), *available at* http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

[4] Diana Courvant & Loree Cook-Daniels, *Trans and Intersex Survivors of Domestic Violence: Defining Terms, Barriers, and Responsibilities*, *in* 1998 NAT'L COAL. AGAINST DOMESTIC VIOLENCE CONFERENCE HANDBOOK, *available at* http://www.survivorproject.org/defbarresp.html.

[5] MASS. DEP'T OF PUB. HEALTH, THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) PERSONS IN MASSACHUSETTS 11 (2009), http://www.mass.gov/eohhs/docs/dph/commissioner/lgbt-health-report.pdf.

[6] "When police do attempt to identify the abuser in an LGBT domestic violence situation, reports to [Amnesty International] suggest that transgender and gender variant survivors, immigrant survivors, survivors of color, the person perceived to be of lower socioeconomic status or the biggest and youngest person are reportedly often assumed to be the abusers and arrested." AMNESTY INTERNATIONAL, STONEWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S. 129 (2005), *available at* http://www.amnesty.org/en/library/info/AMR51/122/2005.

[7] *See* Sommi v. Ayer, 744 N.E.2d 679 (Mass. App. Ct. 2001); Press Release, Gay & Lesbian Advocates & Defenders, Appeals Court Decides Cases of Domestic Violence Involving Gay Men (Mar. 28, 2001), http://www.glad.org/current/pr-detail/appeals-court-decides-cases-of-domestic-violence-involving-gay-men/.

[8] *Is It S/M or Abuse?*, THE NETWORK, http://www.tnlr.org/about-partner-abuse/sm-v-abuse/ (last visited, Sept. 14, 2011).

[9] *Id.*

[10] ABA Commission on Domestic Violence, *Tool for Attorneys to Screen for Domestic Violence*, *in* LESBIAN, GAY, BISEXUAL, AND TRANSGENDER DOMESTIC VIOLENCE TOOLKIT FOR ATTORNEYS (2005), http://www.americanbar.org/content/dam/aba/migrated/domviol/screeningtoolcdv.authcheckdam.pdf.

[11] *See* ABA COMMISSION ON DOMESTIC VIOLENCE, CHILD CUSTODY AND DOMESTIC VIOLENCE BY STATE (2008), http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/Custody.authcheckdam.pdf. This statutory summary chart details the child custody and domestic violence statutes in the fifty states.

[12] *See id.*

[13] *See id.*

[14] There's a good deal of variation in the factors that can be considered for alimony/support. In states with fault divorce, marital fault can usually be considered and intimate partner violence would likely be relevant to that analysis. *See Family Law in the 50 States: Chart 1: Alimony/Spousal Support Factors*, 44 FAM. L.Q. 510 (2011), *available at* http://www.americanbar.org/content/dam/aba/publishing/family_law_quarterly/vol44/4404_win11_chart1alimony.pdf.

[15] Civil protective order is a broad term which varies depending on the jurisdiction. Other names may include an order of protection or a domestic violence restraining order.

[16] *See* ABA COMMISSION ON DOMESTIC VIOLENCE, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS BY STATE (2009), http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/dv_cpo_chart.authcheckdam.pdf. This statutory summary chart details the domestic violence civil protection order statutes in the fifty states.

[17] *See id.*

[18] *Id.*

[19] MONT. CODE ANN. § 45-5-206(2)(b).

[20] Shannon Little, *Challenging Changing Legal Definitions of Family in Same-Sex Domestic Violence*, 19 Hastings Women's L.J. 259, 269 (2008).

[21] Richardson v. Easterling, 878 A.2d 1212 (D.C. 2005).

[22] *Id.* at 1214.

[23] *Id.*

[24] *Id.* at 1214–15.

[25] *Id.* at 1216.

[26] *Id.* at 1217–18. The D.C. protective order statute requires "an act punishable as a criminal offense committed by an offender upon a person," which was the reasoning for the criminal analysis. *See id.* at 1216.

[27] In general, a non-citizen client who has a prior deportation order, any criminal history, or has left and reentered the country should exercise particular caution before applying for any immigration remedies and is well-advised to consult with an immigration attorney before doing so.

[28] Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in scattered section of 8, 18, 28, 42 U.S.C.).

[29] *See* 8 U.S.C. § 1154.

[30] *See* 8 U.S.C. § 1186a.

[31] *See* 8 U.S.C. § 1101(a)(15)(U). *See generally* Greta D. Stoltz, *The U Visa: Another Remedy for Battered Immigrant Women*, 7 SCHOLAR 127 (2004).

[32] *See* 8 U.S.C. §§ 1184(p), 1255(m).

[33] *See* Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000).

[34] *See* LISA MOTTET & JOHN M. OHLE, NAT'L COAL. FOR THE HOMELESS & NAT'L GAY & LESBIAN TASK FORCE POL'Y INST., TRANSITIONING OUR SHELTERS: A GUIDE TO MAKING HOMELESS SHELTERS SAFE FOR TRANSGENDER PEOPLE (2003), *available at*

http://www.thetaskforce.org/downloads/reports/reports/TransitioningOurShelters.pdf. While this guide focuses on homeless shelters, many of the issues, challenges, and policies are also applicable to intimate partner violence shelters.

[35] 42 U.S.C. § 10602. *See* NAT'L ASSOC'N OF CRIME VICTIM COMP. BDS., http://www.nacvcb.org/ (last visited Sept. 15, 2011).