



WORKING WITH SURVIVORS OF INTIMATE PARTNER VIOLENCE

Poverty Law, Spring 2024 - Prof. Brianna Boone

DEFINITIONS AND LANGUAGE CHOICE

Domestic Violence v. Intimate Partner Violence

- Domestic violence or domestic abuse is still more common in statutes, courtrooms, and other legal settings
- Intimate partner violence is now more commonly used in the policy and advocacy world
- Why intimate partner violence?
 - Acknowledges that abuse can exist in any personal, intimate relationship, regardless of sexual orientation, marital status, or gender

Gender-Based Violence

- Another term that is sometimes used; more often by internationally focused advocacy groups
 - Refers to any type of violence directed at an individual based on their gender
 - Rooted in gender inequality, the abuse of power, and harmful norms
 - Intimate partner violence is a type of gender-based violence
 - Women-identifying individuals disproportionately experience IPV
 - IPV rooted in and exacerbated by patriarchal gender roles
 - BUT – IPV occurs in non-heteronormative relationships
 - Men can be victims, women can be perpetrators; and gender-non-conforming individuals can be victims and perpetrators
 - Gender-based violence can be an exclusionary term, but it is good to remember that IPV is historically and continues to be rooted in the patriarchy

What Is Intimate Partner Violence?

- Refers to a cycle of violence demonstrated through control and abuse that exists in a personal and intimate relationship
- Power and Control Wheel
 - Gendered tool, but concepts are helpful
 - IPV is not just physical and sexual violence.
 - Also includes:
 - Threats of violence; sexual coercion; financial control; social isolation; belittling and name calling; gaslighting; reproductive control; controlling access to healthcare; threats against self; threats against children; violence against pets
 - Happens on a continuum and cyclically

POVERTY AND INTIMATE PARTNER VIOLENCE

- While survivors of IPV come from all socioeconomic backgrounds, survivors living in poverty are more likely to experience and stay in relationships involving IPV
- Why?
 - Many reasons survivors do not leave abusive relationships:
 - Kids in common – need financial and day-to-day help raising kids
 - Housing – cannot afford on own
 - Income - need a dual income to get by
 - No social net – no friends/family to help if leave the relationship
 - Love
 - Fear of increased violence or lethality towards self
 - Fear of involving the police, CPS, immigration
 - Many/most of these reasons are exacerbated by conditions of poverty

CIVIL REMEDIES FOR SURVIVORS

Order for Protection (OFP)

- Domestic Abuse Act, Minn. Stat. 518B.01
- What is an OFP?
 - Civil order in which the Court may:
 - Restrain an abusing party from committing acts of domestic abuse
 - Exclude the abusing party from the victim's home and a reasonable area surrounding the home
 - Exclude the abusing party from victim's place of employment
 - Prohibit abusing party from contacting victim in any way
 - Award temporary custody or establish temporary parenting time with regard to shared minor children
 - Establish temporary child and/or spousal support
 - Order the abuser to participate in counseling
 - Other: award temporary use/possession of property; direct the care of a pet

Order for Protection (OFP)

- Requirements for an OFP
 - Domestic abuse
 - Physical harm, bodily injury, assault
 - Infliction of fear of imminent physical harm, bodily injury, assault
 - Terroristic threats; criminal sexual conduct; sexual extortion; interference with emergency call (uses criminal code definitions)
 - Committed against a family or household member by a family or household member
 - Spouses and former spouses
 - Parents and children
 - Persons related by blood
 - Persons presently residing together or who have resided together in the past
 - Persons who have or are having a child in common
 - Persons involved in a significant romantic or sexual relationship

Order for Protection (OFP)

- Length of OFP
 - Up to two years (usually 1 or 2 years)
 - OFP can be extended if the abuser has violated the order; victim still reasonably in fear of harm; or abuser has been incarcerated and about to be released
 - OFP can be extended to 50 years if abuser has violated OFP two or more times or victim has had two or more OFPs in effect against same abuser

Order for Protection (OFP)

- Ex Parte OFP: Court can grant OFP ex parte if there is an immediate and present danger of domestic abuse
- Court cannot order all relief ex parte – most notably custody, parenting time, child support
 - Court must hold a hearing if victim requests this type of relief
- Abuser/respondent can always request a hearing to dispute the basis for the OFP
- Abuser can request parenting time be awarded during OFP hearing, even if victim does not request custody or parenting time determination as part of OFP, and even if abuser did not have court-answered parenting time prior to OFP
 - *Beardsley v. Garcia*, 731 N.W.2d 843 (Minn. App. 2007): Victim request OFP (no custody/PT); abuser requested hearing; abuser did not contest basis for OFP but requested PT with children; court ordered one year OFP and granted abuser supervised parenting time

Harassment Restraining Order (HRO)

- Minn. Stat. 609.748
- What is an HRO?
 - Civil order in which the Court may:
 - Order respondent to cease or avoid harassment of another person
 - Order respondent to have no contact with petitioner
- Requirements:
 - Harassment
 - Single incident of physical or asexual assault;
 - Nonconsensual dissemination of private sexual images (revenge porn);
 - Repeated incidents of intrusive or unwanted acts, words, gestures that have or are intended to have substantial adverse effect on the safety, security, or privacy of another, regardless of relationship between the parties

Harassment Restraining Order (HRO)

- Length of HRO
 - Up to two years
 - Can order HRO up to 50 years If petitioner has had two or more previous restraining orders in effect against the same respondent or the respondent has violated a prior or existing restraining order on two or more occasions
 - No extension option – but can request new HRO
- Temporary restraining order (ex parte) can be issued if immediate and present danger of harassment alleged
- Respondent can ask for a hearing to dispute basis of HRO

OFP v. HRO

- OFP is a strong remedy for victims, but also has its downsides
 - (1) Does not cover all situations where a victim is in need of protection - stalking , sexual assault/violence not in “significant” relationship
 - (2) Can open the door to abuser requesting custody or parenting time they would not have otherwise asked for
- HRO is a good option for situations that don't fit into domestic abuse, or if a victim wants to prevent abuser from being able to request parenting time through OFP process. The biggest downside is that the type of relief that can be granted is much more limited – stop harassing.

Victim Remedies in Criminal Cases

- Domestic Abuse No Contact Order (DANCO)
- Crime Victim Reparations, Minn. Stat. 611A.52, 611A.53
 - Reimbursement for economic losses due to injury or death incurred by victims of violent crimes and their families
 - Must report crime within 30 days and cooperate with investigation and prosecution

Family Law

- Custody presumptions: Rebuttable presumption that joint legal/physical custody is not in the best interests of the child if domestic abuse has occurred between the parties, Minn. Stat. 518.17
- Mediation requirement: Not required to participate in mediation for custody/parenting time issues if there is probable cause that one of the parties has been physically or sexually abused by the other party, Minn. Stat. 518.619

Government Benefits

- Good cause exemption:
 - Caregivers who receives cash/medical/childcare benefits for a child must help county pursue child support from the absent parent (federal requirement)
 - Intimate partner violence victims can request an exemption – “good cause”
 - Must show that cooperation will cause physical or emotional harm to the child or the caregiver
 - Proof required: Medical records; Sworn statement from someone other than person claiming good cause
 - Presumed if caregiver is in the Safe at Home program
- MFIP extension: Can get cash assistance beyond 60 months if a victim of family violence
 - Must provide proof: police/court records; third party statements

Housing

- Right to break lease, Minn. Stat. 504B.206
 - Tenant may terminate a lease without penalty or liability if they fear imminent violence after being subjected to domestic abuse, sexual abuse, or harassment
 - Tenant must provide advance written notice
- VAWA transfer
 - Tenants in “covered properties” who are victims of IPV may request an emergency transfer
 - Public housing ,Section 8, project-based housing, other HUD-funded or federally subsidized
- Subsidized housing waiting list preferences
 - Some providers will provide victims of IPV a preference on waiting list so they can get into housing sooner

Immigration

- VAWA Self-Petition
 - U.S. Citizens and LPRs can petition for spouses, children, or parents to obtain immigration status in the US
 - VAWA self-petition allows abused spouses, children, and parents of U.S. citizens or LPRs to apply for immigration status separate from the abusive family member
 - Pros: much quicker process than other forms of immigration relief, fast track to LPR status
- U-Visa
 - Immigration status available to people who are survivors of certain crimes that happened in the US
 - Domestic violence and sexual assault are qualifying crimes
 - Can include family members on U visa application
 - Cons: requires law enforcement cooperation; very slow process (about 10 years), once granted have to wait 3 years to apply for green card; Pros: often the only form of immigration relief available for undocumented IPV victims

Coerced Debt Protection

- Minn. Stat. 332.72 – 332.74
- New law, passed in 2023 session
- Makes it illegal to force a survivor of domestic violence to take out debt they did not voluntarily ask for
- If survivor has this kind of debt they can ask a court to wipe out the debt
 - Must notify creditor in writing first
 - Must provide evidence of coercion

Privacy Protections

- Safe at Home address confidentiality program
 - Allows anyone who fears for their safety to use a confidential mailing address
 - P.O. Box >> SAH program then forwards mail to the physical address
- Medical / Health
 - HIPAA – request for confidential communications with provider and insurer
 - Issue when victim is on abuser's insurance policy
 - Special enrollment period for MNsure if victim of domestic violence
 - Allows victim to get off abuser's policy and onto their own

Employment Protections

- Quitting job due to domestic abuse is eligible category for UI, Minn. Stat. 268.095, subd.1(9)
- Right to time off to obtain restraining order
 - Minn. Stat. 518B.01, subd. 23 (OFP)
 - Minn. Stat. 609.746, subd. 10 (HRO)
- FMLA – victims of abuse may take time off due to physical or mental health problems associated with abuse

How IPV Impacts Cases that Do Not Involve an IPV Legal Issue

- Ability to safely and effectively communicate with client
- Ability to safely and effectively meet with client
- Client's ability to focus on their legal case
- IPV impact on client's actions that led to legal issue
 - Extremely common in welfare fraud cases; comes up often in criminal records cases
 - Really important to build trust with client in these situations so that you get the whole story from the client. You likely will not get it all in the first few conversations. Hidden IPV issues will usually reveal themselves over a few conversations.

IPV Issue Spotting

- Tamara has come to you for advice about government benefits eligibility.
- Tamara is undocumented and in a romantic relationship with John, a US Citizen. They have two minor children who are US citizens.
- Tamara and John live in an apartment. They are both on the lease.
- John is physically abusive towards Tamara. Last week she called the police and John was arrested. He was in jail for a few days but was released. He is staying at his brother's house now.
- She wants to leave John but is not sure how she could get an apartment without John. She cannot afford the rent at the current apartment on her own. John does not give her money for food.
- She is thinking about applying for MFIP cash assistance for her children but is not sure she is eligible. She is also worried John will find out and get mad.

TRAUMA-INFORMED LAWYERING

Trauma-Informed Lawyering

- Very important if going to do any type of poverty law work, not just areas where you will obviously be working with IPV victims
- Why?
 - Will improve attorney-client relationship
 - Will help you win cases
 - Most importantly: will help keep your client (and their children) safe

Trauma-Informed Lawyering

- 1) Identify that IPV is an issue or may be/have been an issue for your client
 - Can come up at any point in the relationship
 - Most agencies screen for IPV during intake
 - Good idea to ask about it during initial client interview
 - If client does not disclose IPV at beginning, don't just forget that IPV may be an issue, it may take a while for the client to disclose

- 2) Once IPV issue identified, adjust the attorney-client relationship
 - Acknowledge – “I am sorry you have experienced/are experiencing this” “It is not your fault”
 - Risk Assessment and Safety Plan (more on this later)
 - Collaborate and give the client choice in next steps, trust their decision, and empower them to act on their decision
 - Make referrals as needed
 - Check in again (and again)

Trauma-Informed Lawyering

3) Adapt your litigation strategy, if needed

- Gather more information about IPV as related to case
- Is the IPV relevant to the legal issue in the case?
- Does the client want to raise IPV as part of their case? Are they willing to testify about IPV? Do they want to tell their story, or just move on?
- Advise client on how bringing IPV into case could help or hurt their case, and let the client decide on the strategy with full knowledge
- Consider options to minimize re-traumatization >> affidavit, third party witness, police records, stipulation

4) Be aware of and prevent vicarious trauma

- Diversify case load so not only working on high trauma cases
- Get support when working on high-trauma cases – co-counsel; debrief with supervisor
- Be prepared to lose
- Set boundaries – you are a lawyer, not a DV advocate or social worker or therapist. Connect you client with other experts as needed, make warm referrals when you can.

Risk Assessment

- What is a risk assessment?
 - Obtain information from IPV victim which provides context about the recency and severity of abuse so you understand the risk of imminent physical abuse and can respond accordingly
 - Assess for lethality risk
 - Lethality is much more likely:
 - When victim is trying to leave
 - When victim is pregnant
 - When there are guns in the home
 - When the abuser has made threats to kills
 - When the abuser has used a weapon against the victim
 - When the abuser has previous choked/strangled the victim
 - When the abuser has threatened or attempted suicide
 - **When the victim believes the abuser is capable of killing them**

Risk Assessment

If you determine there is a high risk that a client or their children are at imminent risk of harm, focus on getting the client immediate help (if they want it).

If working in legal aid, consult with colleagues more familiar with IPV (family law attorneys, social workers) and make sure they know that you have determined high risk is present. They will understand and make it a priority.

If you know you will be working with IPV victims a lot, it is also a good idea to take the time to get to know your local DV advocates and shelters so you can make warm referrals for high risk clients when needed.

Make sure you know who these people are, so you know who to go to when this happens!

Safety Planning

- What is safety planning?
 - A safety plan is a personalized, practical plan to improve an IPV victim's safety while experiencing abuse, preparing to leave an abusive situation, or after they leave
 - Where can you go when you feel unsafe? Where can you go in case of emergency? What items will you take with you if you need to leave your home quickly?
- Who does safety planning with IPV victims?
 - There are [online tools](#) for IPV victims to do on own
 - Domestic violence advocates are trained in how to safety plan with a client, they are experts!
 - Lawyers usually not equipped to do a full safety plan with a client, but it is smart (and ethical) to at least do some safety planning with a client who discloses IPV
- How do I safety plan with a client?
 - Have a checklist you can use when needed – don't wing it

CREATE A SAFETY PLANNING CHECKLIST
