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LGBTQ Domestic Violence
Legal Toolkit for Advocates

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biphobia
public defender
ex parte
plea bargain
trans
queer

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LGBTQ Domestic Violence Legal Toolkit for Advocates

This Toolkit is a guide for community based advocates who support the self-determination and safety of Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) survivors of intimate partner violence who are involved with the legal system. LGBTQ people experience intimate partner violence at similar rates as in heterosexual relationships¹, but only some LGBTQ survivors end up interacting with the legal system. This Toolkit highlights the obstacles survivors face in the criminal and civil legal systems and provides tools for you, the advocate, to support survivors in their journey.

Why do only a few LGBTQ survivors turn to the legal system?

Both historically and currently, legal system responses in the United States have been a site of discrimination, mistreatment and violence for LGBTQ individuals and communities. For generations, LGBTQ people's lives were explicitly criminalized by "sodomy" and "crimes against nature" laws prohibiting lesbian, gay and bisexual sexual expression and gender transgression. Based on these experiences, many LGBTQ survivors of violence experience apprehension, mistrust or even fear of interacting with law enforcement or the court system. Some may fear that police will treat them badly or arrest them simply for being LGBTQ. They may be ready to leave an abusive relationship and want help, but not want their abusive partner to be arrested or incarcerated and mistreated based on their sexual orientation or gender expression. Other LGBTQ survivors may not know that they can obtain civil legal remedies without involving the police, and those who do know may not trust the civil court judges to treat them well, offer them protection, or appropriately recognize their relationship.



Look for questions highlighted in PURPLE throughout this toolkit to consider how the cultural context and lived experiences of LGBTQ survivors intersects with the legal system.

¹ Walters, M.L., Chen J., & Breiding, M.J. (2013). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

Given the history of discrimination and mistreatment of LGBTQ individuals, why do some LGBTQ survivors seek help from the criminal and civil legal systems?

Some LGBTQ survivors choose to get help from the legal system for a number of reasons, often because they need resources for safety and/or security that are only available through interacting with the police or courts. These resources might include custody or child support determinations, orders of protection, divorce, or access to immigration resources that may allow them to work and stay in the United States. Other survivors are forced to interact with the legal system because they have been arrested or because their partner has filed for a protection order against them.

Some LGBTQ people feel strongly that they should be able to access law enforcement and legal remedies without bias, and insist on utilizing these institutions despite barriers and limitations. Alternatively, some LGBTQ survivors live in communities where access to LGBTQ friendly legal resources and responses are available, and may have information about community members having positive experiences within these systems.

People who are perceived by police to be in relationships with someone of the same gender are ten to thirty times more likely than people in different-gender relationships to be arrested along with their abuser.

According to the Department of Justice, "26.1% of the female same sex cases and 27.3% of the male same sex cases resulted in the arrest of both of the involved parties compared to 0.8% of the cases with male offenders and female victims and 3.0% of the cases with female offenders and male victims."²

Laws exist, nearly everywhere to offer some form of protection to survivors of intimate partner violence, dating violence and sexual assault,³ but they vary greatly between jurisdictions. This toolkit is not specific to your state's particular laws or practices. Please review the suggested resources in this packet and consult with a legal service provider in your area to get a better understanding of the laws and practices in your area.

² See Department of Justice, "Explaining the Prevalence, Context, and Consequences of Dual Arrest in Intimate Partner Cases: Final Report." (2007) available at <https://www.ncjrs.gov/pdffiles1/nij/grants/218355.pdf>

³ LGBTQ survivors should be able to obtain protection orders in civil court in most states. Almost all laws providing for civil orders of protection are neutral to gender. In FL, CA, WA, NJ, OH, PA and DC, orders are explicitly available to people in relationship with someone of the same gender or to people who are in a partnership with a partner who has been abusive. In NC, VA, and LA it is possible that people in a relationship with someone of the same gender may not be able to get a civil order of protection and in MT and SC they definitely cannot.

What is the difference between the anti-violence advocate's use of the word "survivor" and the legal system's use of the term "victim"? Why does this distinction matter?

| Anti-violence advocacy model | Legal system model |
|---|---|
| Survivor: Person who experiences a pattern of power and control by another. | Victim: Person against whom a crime has been committed. |
| Abuser/Batterer: Person who establishes a pattern of power and control over another. | Perpetrator: Person who has committed a qualifying crime against a person. |
| The advocacy model understands that people who abuse their partners may: <ul style="list-style-type: none"> • Establish a pattern of control that occurs 24-7. • Control/exploit their partner over time • Use a number of tactics — some of which are illegal, most of which are legal • Rely on systems of oppression and social inequalities to maintain their control over their partner | Meanwhile, the legal system: <ul style="list-style-type: none"> • Is designed to address specific incidents and determine if they are legal or illegal, • Usually evaluates "moments in time," not patterns of abusive behavior, • Generally ignores bias and posits everyone as agents under the law — regardless of institutional inequalities. |

© Connie Burk for the Northwest Network of Bisexual, Trans, Lesbian and Gay Survivors of Abuse

The above diagram highlights the distinction between the anti-violence movement's advocacy model definition of the experience of surviving domestic violence and the legal system model definition of crimes related to domestic violence. All too often, we collapse or interchange the terms "survivor" and "victim"; "abuser" and "perpetrator." This diagram does not address the broader conversation regarding the connotation of these terms (i.e., conversations that center on whether the terms are empowering or disempowering), but rather the frank distinction between what each system actually means when they define domestic violence. **The legal system is looking at a moment in time when a particular crime in a particular type of relationship occurs.**

The legal system does not focus on what the anti-violence movement understands as the core of intimate partner violence — an on-going pattern of coercive control established over time by one partner, using tactics (both legal and illegal) ranging from physical abuse and rape to coercion, isolation, minimizing behavior, and financial exploitation. In many cases, people who are experiencing a pattern of coercive control in their intimate relationships (survivors) experience the crime of domestic violence or assault and are identified as a victim by the legal system, and their abusive partners are arrested and identified as a perpetrator, but there are dangers to collapsing these two paradigms.

Survivors may be arrested for alleged domestic violence crimes and labeled a “perpetrator” while their abusers are identified as a “victim” by the criminal legal system.

Often, the survivor has not committed a crime and is wrongly arrested. Such mistaken arrests occur more often to LGBTQ survivors than heterosexual survivors. One reason for this is that law enforcement may use the same indicators typically coded to gender differences in heterosexual relationships (relative size and weight, tone of voice, etc) to make determinations regarding the ‘primary aggressor’ in same-sex relationships. More overt homophobic and other bias plays a big role as well—when the survivor is larger, less visibly injured, more masculine, a person of color, or in some other way triggering to the biases of an officer or judge, they may be misidentified as a perpetrator.

At other times, a survivor may have used physical force in the course of surviving an abusive relationship. A survivor’s use of self-defense, for example, may be recognized as permissible behavior or may be misinterpreted as illegal violence. A survivor may also have gone beyond self-defense and used illegal violence in the course of surviving abuse. Any use of violence could make a survivor vulnerable to arrest.

Whether an arrest is mistaken or warranted, the resulting consequences of an arrest and prosecution to survivors can be devastating on their ability to stay safe and make their own decisions. At the same time, an abuser’s control can be greatly expanded by access to resources designated for “victims” of domestic violence and by exploiting the on-going consequences of a survivor’s arrest.

Heterosexual survivors identified by the criminal legal system as “perpetrators” may still be visible as people in need of survivor advocacy to domestic violence advocates. LGBTQ male and female survivors who are labeled “perpetrators”, in contrast, are less likely to be noticed by and receive help from anti-violence advocates.

Misidentification of survivors and abusers is also a challenge present in the civil system. Many abusive partners understand the bias inherent in our legal system and use that bias against their partner by filing for civil orders of protection to further endanger their partner or limit their access to friends and community. Similarly to criminal court professionals, civil court professionals often hold biases toward the LGBTQ community. Other court professionals are not attuned to the vulnerability of LGBTQ survivors in this system, and respond in ways that decrease a survivor’s access to safety, for example routinely granting mutual protection orders or dismissing both parties’ orders because they are too messy to handle.

Throughout this toolkit, the term “survivor” is used to refer to a person who has experienced an on-going pattern of coercive control in an intimate relationship. **Except where noted, assume that “survivors” described in this toolkit have also been identified as a victim in the criminal system, and as the petitioner in the civil system.**



Look for questions highlighted in **ORANGE** throughout this toolkit to imagine the consequences for a survivor’s safety & self-determination if they are arrested or misidentified by law enforcement or courts.

Criminal vs. Civil Legal Systems

A guide for advocates

This Guide is a supplement to the “Criminal vs. Civil Infographic” included in the Toolkit. The Criminal and Civil systems are complex and can be confusing to understand and navigate. This guide may be helpful to use when working with survivors to understand the legal processes they may be interested or involved with. The infographic and this Guide explain what often happens in these different systems.

A few notes about the guide

- Legal system processes change from state-to-state or courthouse-to-courthouse. Check with local advocates to make sure you know your area’s specific procedure.
- The information in the Guide and Infographic are based on the system’s response when someone who is surviving a pattern of coercive control has been identified as a victim who then becomes the complaining witness in a criminal case or the petitioner in a civil case. We know LGBTQ survivors are at a higher risk of being identified as perpetrators (whether due to bias or lack of cultural competence from law enforcement or legal system actors, or their use of illegal violence) and therefore can be defendants in criminal cases or respondents in civil cases. **To think through the realities of survivors who have been arrested or otherwise labeled as “perpetrators” of violence, see the ORANGE question boxes throughout the Guide.**
- All terms that are bolded & underlined below are explained in the “Terminology” section.

Infographic explained

Interaction with the legal system often occurs when a survivor (orange figure) contacts the police (top track) or goes to civil court to file for an order of protection (middle track). Contact with the legal system generally comes after a partner (green figure) does something abusive or violent. A survivor can be engaged in the legal system in many different ways, including:

- Being a witness in a criminal case brought by the government against the person who was abusive towards them.
- Becoming involved in the criminal or civil systems without intending to when, for example, a neighbor calls the police and a criminal case is started.
- Filing for a civil protection order against the person who was abusive towards them.
- Engaging in both criminal and civil court processes at the same time.
- Being labeled a “perpetrator” and being arrested, having a criminal case filed against them, or having a partner file a civil order against them

Remember, many survivors never end up involved with either system.

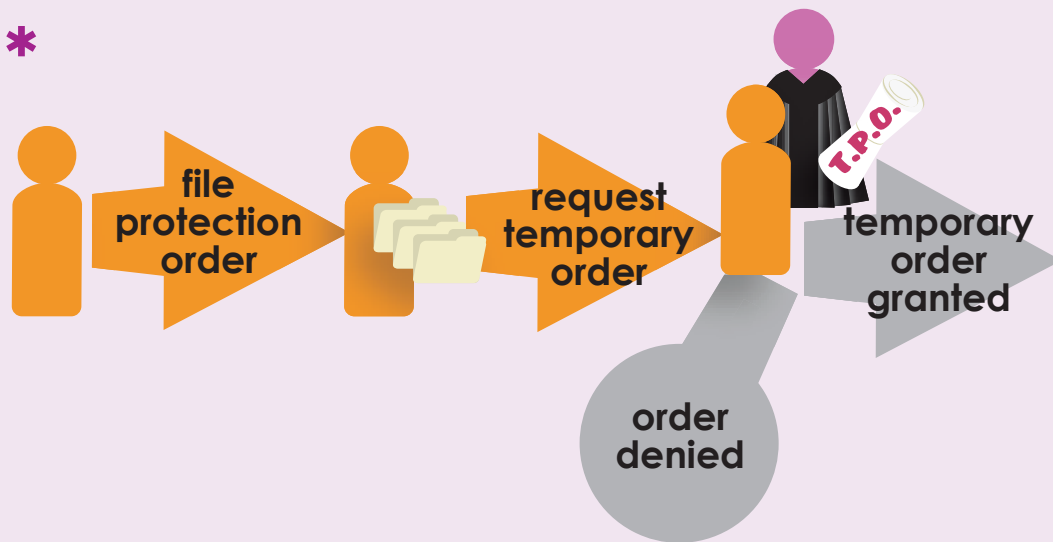
The criminal vs. civil infographic appears on pages 6–7.

Mapping Domestic Criminal*



Civil*

This infographic is a tool for you to use with survivors who are involved in or considering accessing the legal system. It offers a snapshot of common pathways in both the criminal and civil legal systems, and information about where and how survivors have access to making decisions or determining if or how a process moves forward. Survivors can also access community based resources (bottom track) that are available regardless of whether they access the legal system.



Community*

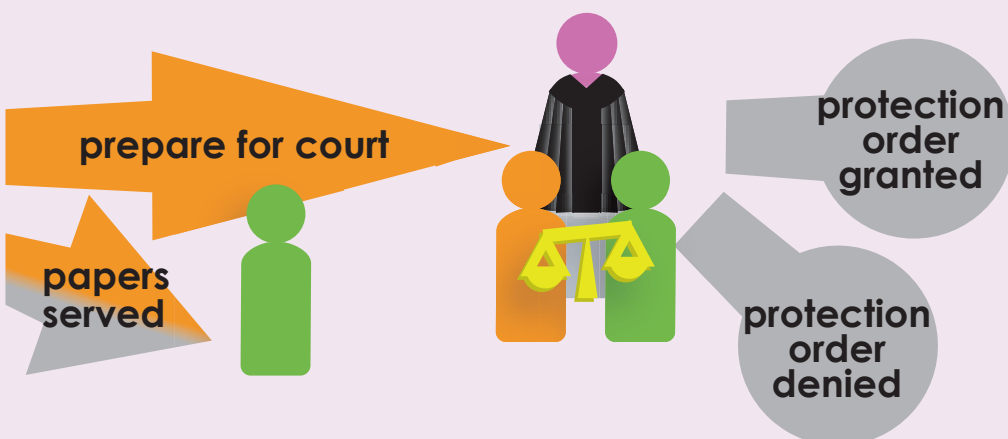
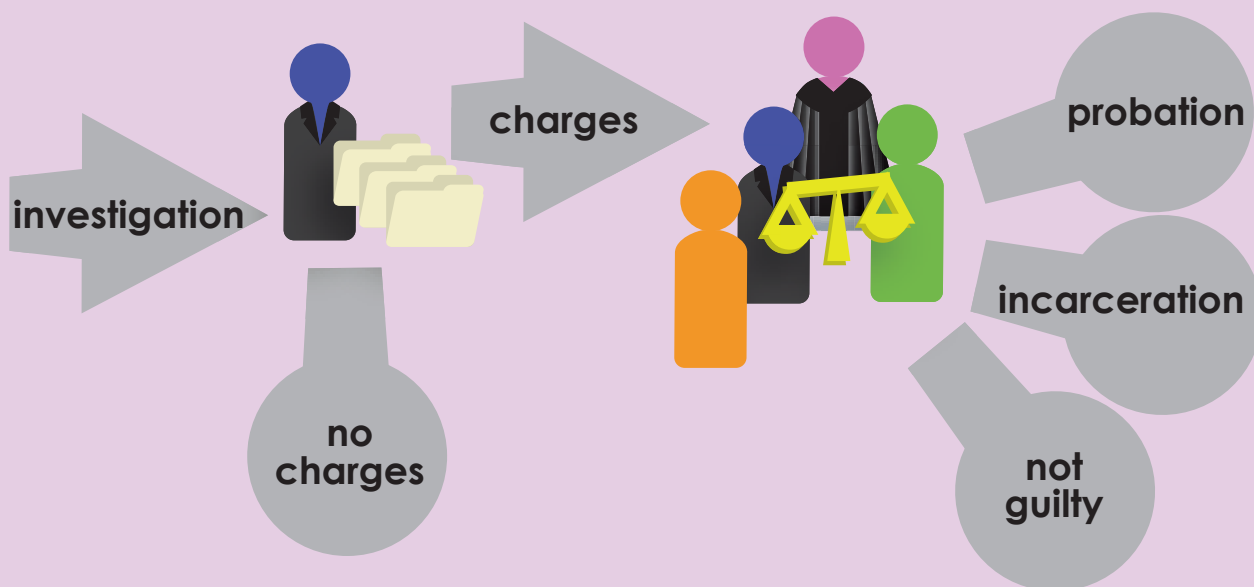


**Process & terminology may be different in your area*

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Violence Responses

Created by Morgan Lynn for the Northwest Network; Design by Charlie Shealy



Criminal Court

Government vs. Defendant

How does it begin?

Involvement with the Criminal System often begins with someone contacting the police and completing a police report. Responses from law enforcement to individual situations can vary widely, and may include the following:

- police arrive at the scene of an incident and take the report there
- the person who has been abusive is arrested
- only the survivor is arrested
- both parties are arrested (**remember, dual arrest occurs in over a quarter of cases when the parties are perceived by police to be in a same sex relationship**)
- no one is arrested

In other cases, survivors might go to the police *after* an incident to file a report. In some jurisdictions, individuals can file a statement with a commissioner or other official who then can issue an arrest warrant and schedule a hearing.

What are people called?

If a person is arrested for committing a crime and has a case brought against them, that person is called the "defendant." The person against whom they committed the crime is called the "complaining witness" or "complainant." Ideally, the abusive partner is the defendant and the survivor is the complaining witness, but this is not the case when the survivor is arrested.

Who decides if it moves forward?

Most often the police decide whether to investigate following a report and whether to arrest someone based on their investigation. This may all be done on

the scene or over a period of time. The police provide their evidence to the prosecutor who will decide whether to formally press charges against someone and take the case to trial. The complaining witness's cooperation is important along the way, but at times police or prosecutors will move forward or decide to drop the case even if it is against the survivor's wishes. Complaining witnesses are sometimes involved in providing information to the prosecutor before trial and in discussions about what sentence may be appropriate for a plea bargain.

What is the hearing/trial like?

There are often multiple hearings before the actual trial occurs. There will likely be a hearing to formally list the charges and assign a defense attorney to the defendant. There may also be pre-trial hearings about evidence. Cases regularly do not go to trial because the defendant agrees to a plea bargain or because the prosecution decides to drop the charges because of a lack of or problem with the evidence. If the case goes to trial, this is what will likely happen:

- First the prosecutor and then the defense attorney will present their evidence to the judge or jury. The prosecutor will have to prove their case that the defendant committed the crime beyond a reasonable doubt. Evidence may include testimony from witnesses, documents, text messages, phone call recordings, or other records.
- The complaining witness will likely be called by the prosecutor to be a witness and testify to prove the prosecutor's case. The prosecutor will generally ask the complaining witness questions to

How might you advocate with a survivor who has been arrested during pre-trial hearings?

facilitate a story about how the abuse happened and what impact it had on the complaining witness's life. Note, a complaining witness may not want to testify, but may be subpoenaed to testify and, in some jurisdictions, a bench warrant could be issued if the complaining witness does not show up for the hearing or refuses to testify.

- After the complaining witness testifies, the defense attorney may cross-examine them to attempt to make the judge or jury doubt their story.
- Other witnesses who may be called to testify include people who observed the crime or spoke with the complaining witness immediately after it, police who were called after the incident, or medical providers who interacted with the complaining witness. Complaining witnesses may be asked to sit outside the courtroom during the other witness' testimony.
- Defendants are not required to testify and usually do not. If they do, their defense attorney will call them and have them tell their story. The prosecutor can then cross-examine them.
- After the prosecutor and defense attorney present their case, the judge or jury will decide whether the defendant is guilty and what the sentence will be. Sometimes the sentence is decided in a separate hearing. The complaining witness will sometimes be asked by the judge or jury to submit a victim impact statement in writing or orally at the hearing to help determine sentencing of the defendant.

How might you advocate for a survivor who has been arrested in the sentencing process? What would the impacts of these sentencing possibilities be on their safety & self-determination?

Complaining witnesses may bring friends or advocates to the hearing for emotional support. Often, complaining witnesses will be asked to submit a victim impact statement in writing or orally at the hearing.

What are the possible legal outcomes for the defendant?

The defendant will have a chance to hire or be provided a free attorney (often a public defender). If the defendant is found guilty or agrees to a plea bargain, they can be sentenced to some form of punishment including: probation (drug testing, anger management classes, criminal stay away order), restitution (payment of money to the complaining witness), jail time (with a sentence of a day to multiple years, depending on the court, judge, and crime), or a combination.

What are the possible legal outcomes for the complaining witness?

The judge may order that the defendant stays away from and does not contact the complaining witness for the period of probation. In many states, a "guilty" verdict in a case related to domestic violence may affect a related family law cases (being used as a consideration for custody or allocation of property) or immigration remedies (making the complaining witness eligible for certain types of visas). There are other resources available to complaining witnesses who participate in the criminal legal system, such as access to crime victim's compensation money to pay for relocation, therapy, or medical costs and some housing or other resources.

What might the impact on a survivor's safety & self-determination be if they are ordered to stay away from their abusive partner? If their abusive partner uses the case as evidence in a custody case against them?

Civil Court

Petitioner vs. Respondent

How does it begin?

Interaction with the civil legal system often begins with the survivor filing a petition for a domestic violence civil order of protection. In the Petition, the survivor will explain the specific offenses that the partner who has been abusive has committed and will list out their requests for the order (for example, having their partner stay away from and not contact them, being granted access to a shared home, obtaining temporary custody of shared children, etc.). The survivor will also often have to list the type of relationship they have with the abuser (e.g., dating relationship, child in common, roommate) and may have to prove this relationship in court to be eligible for protection. In many states, survivors will have a chance to meet with a judge the day they file for a protection order to ask for a temporary order to protect them until the hearing/trial happens. Temporary order hearings often occur ex parte, where only one party, the survivor, is present. Abusive partners sometimes attempt to manipulate or further harm their partner by petitioning for an order of protection against the survivor. **Since the court system is often unprepared to appropriately respond to domestic violence in LGBTQ communities, many abusive partners are successful in this.** The consequences of having a protection order filed against a survivor can include further isolation from friends and community, inability to access their residence, loss of custody rights for children, or difficulty with employment.

What are your organization's practices when you are working with a survivor who has a PO filed against them?

What are people called?

A person who files for protection is called the Petitioner and the person against whom the petition is filed is called the Respondent. Sometimes, both parties file for protection orders, and these are called cross-petition cases.

Who decides if it moves forward?

The Petitioner asks for the civil case to begin and also has the power to withdraw the petition and end the process anytime before the court date. The Petitioner is responsible for making the case move forward. A judge will make the final decision on the case. The Petitioner can also petition for the order to be removed, changed, or extended after it has been entered.

What is the hearing/trial day like?

On the day that the permanent hearing is scheduled, there are many reasons that it may not actually happen, including:

- If the Petitioner has not been able to properly deliver the paperwork to the respondent and give them formal notice of the case (this is called service) or if either party has asked for more time to find an attorney or gather additional evidence. The judge may issue a continuance to a later date for these reasons.
- If the Petitioner does not attend the hearing, the case will usually be dropped and may be dropped "with prejudice" meaning that they cannot return later and bring a case based on the same incidents of abuse alleged in the original petition.

- If the Respondent was served but is not present, judges will often ask the Petitioner to present some evidence and then enter a **default order** that grants the Petitioner's requests. Respondents can appeal default orders if they have valid reasons for missing court, like being hospitalized or incarcerated.
- If the parties are both present and are in a jurisdiction where they are asked to work through a negotiation process, they may come to an agreed **consent order** that offers remedies to the survivor without a trial and without a finding of guilt.

If both parties are present and do not consent to an order, a trial will happen. The likely order of events at a civil protection order trial is:

- The Petitioner goes first, presenting evidence including their testimony, other witnesses, and any physical documentation of the abuse (like phone records, text messages, photographs of injuries, emails or letters, etc.) that prove the case by a **preponderance of the evidence**. The Petitioner will prove both that the abuse occurred and that the remedies requested are appropriate.
- The Respondent can cross-examine the Petitioner (or the Petitioner's witnesses) to attempt to discredit the Petitioner's story. In some jurisdictions, Respondents without attorneys must cross-examine by asking questions to the judge who then asks the questions to witnesses, but this is not always the case.
- Next, the Respondent can present evidence including witnesses and physical documentation to counter the survivor's evidence. Respondents do not have to testify and often do not. If they do, the Petitioner can cross-examine them too.
- The judge will usually make a decision that day and, if finding for the Petitioner, will enter the protection order for the requested remedies.

How might you support a survivor who has a protection order filed against them to not be further isolated?

What are the possible legal outcomes for the Respondent?

If a judge issues a protection order against the Respondent, they will then have to comply with the order or face possible civil or criminal contempt charges (which could lead to fines or jail time). Compliance with the order might include staying away from the Petitioner or others, not contacting the Petitioner or others, completing domestic violence related classes, providing financial support to the Petitioner, complying with temporary custody orders related to children in common, paying child support, being removed from shared housing, returning property to the Petitioner, or paying for damaged property. Respondents are also usually forced to turn in any firearms.

What would the impact of having a protection order entered against a survivor have on that survivor's safety and self-determination?

What are the possible legal outcomes for the Petitioner?

If a Petitioner is granted a protection order, the Petitioner then can benefit from the remedies granted in the order. A Petitioner might be able to use a granted civil protection order in family law or immigration cases to show a history of abuse.

Systems Advocacy Tips

For community advocates working with LGBTQ survivors & the legal system

Check out these quick tips and get ready to advocate for LGBTQ survivors of abuse.

Be aware of additional hurdles LGBTQ survivors might face when accessing the legal system

- Challenges arising from institutional bias against LGBTQ people (homophobia, biphobia & transphobia) in the legal system including like the criminal and civil courts, jails and prisons, and the police.
- **Increased risk of dual arrest or being arrested instead of the partner who has been abusive.**
- Fears around losing children, being deported, or having to disclose sexual orientation or gender identity.
- Concerns about “sending” partner to jail where they may be harassed, abused, or otherwise treated poorly based on their sexual orientation, gender identity, or gender expression.
- Worries that mainstream remedies available for survivors of domestic violence will not be accessible or available to LGBTQ survivors. For example, most emergency confidential housing for DV survivors is designated for “women only,” and programs are often not able to offer shelter to men or transgender people. Survivors who are eligible for shelter may have concerns encountering homophobic or transphobic attitudes from staff or residents.

Be aware of your organization's practices around serving survivors who have been arrested. Ensure access to services!

Increase your knowledge of the legal system in your area and provide systems advocacy, information & resources to LGBTQ survivors

- Observe court hearings and talk to other advocates and survivors about their experiences.
- Figure out what documents and court processes become public so you can inform survivors and help them plan to protect their privacy.
- Use resources in this toolkit to research your area's laws and practices (particularly around rights to children, relationship recognition, legal name and gender change, and anti-discrimination protections).
- Find attorneys in your area that may be useful resources for survivors. Find out if there are LGBTQ-friendly attorneys at local domestic violence & sexual assault agencies, crime victim centers or defender clinics. If there are none, help to build relationships between LGBTQ advocates and these agencies to build the service system's capacity to meaningfully support LGBTQ survivors. Similarly, look for attorneys who work explicitly on LGBTQ legal issues, like family and immigration law, and build relationships between them and domestic violence and sexual assault attorneys. Create referral networks you can trust and use them.

Advocacy Homework: What are the laws regarding LGBTQ people's rights to children, relationship recognition, legal name and gender change, and anti-discrimination protections in your county and state?

Connect with LGBTQ-friendly police, prosecutors, victim witness advocates, defense lawyers, attorneys or other people who are players in the legal system

- Determine whether there are special LGBTQ-specific liaison units in the police or prosecutors offices. If there are none, ask around to see if others know about LGBTQ-friendly police officers, detectives, prosecutors, or advocates within these offices.
- Sometimes, it is possible for advocates to accompany survivors to meetings with the police or prosecutors. Offer to attend these meetings with the survivor. This may be particularly important if you have not found an LGBTQ-supportive liaison or worry that the officer or prosecutor assigned to the case is not supportive of the survivor.
- Reach out to local public defense programs. Research LGBTQ-friendly defense attorneys in your community.

Make sure to document LGBTQ-friendly resources and share with other organizations & advocates

Understand the framework of confidentiality and ‘advocate privilege’ in your state or jurisdiction

- Do not disclose or share any information about a LGBTQ survivor you are working with to police, prosecutors, victim advocates, public defenders, defense attorneys, LGBTQ community agency, or any other organization, person or entity outside of your organization without the express, written permission of that survivor unless compelled to by law.
- Set the boundary early and often with colleagues in the criminal and civil legal system that you will not breach confidentiality, or even confirm or deny that you are providing an individual support without their permission. Be compassionate and kind responding to urgent requests for information, but be firm that you cannot circumvent or flex on your commitment to confidentiality. Practice saying “no.”
- Know how your organization responds to requests or subpoenas for documents, service records or other information by prosecutors, defense attorneys, family law attorneys or judges and support organizational policies that limit disclosures as much as possible.

- Understand the limits of ‘advocate privilege’ in your state and for your particular role. Learn, for example, if you are in a state where only private conversations between a survivor and an advocate are privileged while conversations held with a third party may be subject to disclosure and discovery.
- Explain your confidentiality policies and the scope of your privilege to all participants.

Help survivors navigate court processes

- Go the courthouse to help the survivor file papers, like petitions for civil orders for protection.
- Brainstorm with survivors about what supporting documentation might be helpful for their petition or the hearing and assist them in obtaining and organizing this information. Supporting documentation might include recorded voicemails, text messages, phone records, photographs of injuries, emails, letters, torn clothing, medical records, or any other physical evidence of the abuse.
- Help the survivor turn evidence in to police or prosecutors in preparation for a criminal trial.
- Talk with survivors about what the hearing might be like and offer to attend one with the survivor before the survivor’s court date. Discuss potential outcomes and what additional resources exist for the survivor if the survivor does not get the response they want.
- Accompany survivors to court and be a supportive presence for the survivor before, during, and after the hearing.
- Remember not to give legal advice or act as an attorney unless you are an attorney or law student who is specifically licensed to practice in the jurisdiction where the survivor’s case is being heard. One guideline to follow is that giving information about the courts and the laws is OK, but applying your understanding of the law or process to a survivor’s specific facts may not be.

In the civil system, court accompaniment can be particularly important for survivors who’s partner may have filed a PO against them, or if they are filing their own petition in response.

Suggestions for Working with LGBTQ Survivors

Educate yourself and make alliances

- Find out about the barriers LGBTQ survivors might face in accessing your services and other services in your area. Work collaboratively with community partners to decrease barriers and increase the accessibility of your organization and the broader response to LGBTQ survivors in your region.
- Learn about the laws in your city and state as they impact LGBTQ survivors.
- Be aware of LGBTQ supportive counseling, medical, and legal resources in your area. If you are struggling to find resources in your area, explore referrals to LGBTQ competent services who may be able to work with people remotely in your area.
- Make alliances with LGBTQ-friendly people in the police department, court system, and other service agencies.
- Find ways to collaborate with LGBTQ community organizations, such as LGBTQ specific mental health services, clubs, HIV/AIDS programs, medical clinics, or recovery groups.
- Attend trainings on LGBTQ issues; offer LGBTQ organizations information, resources and training on domestic and sexual violence.

Make sure this information is documented and updated regularly, as laws and organizations may change. Do an in-service with your direct service staff to share this information!

Remove your “straight glasses”

- Don’t make assumptions about the gender of person’s abusive partner. Don’t assume that a man seeking help has been abusive to his partner.
- Practice using terms like “lover,” “partner” or “significant other” instead of “boyfriend” or “husband” when referring to someone’s partner.
- Be aware of your own use of pronouns or gendered language in your advocacy or organization’s forms and resources.

Think about risks LGBTQ survivors might face when seeking support

- Think about privacy and outing. Be aware that LGBTQ survivors might be out in some parts of their lives, but not others. They might be out to you, but not to family; out to their case manager, but not to police. Share information about where their relationship status may be disclosed and work to support their preferences being respected.
- Recognize that it may be a risky choice for an LGBTQ survivor to access the legal system, particularly if the survivor is not out or if the survivor risks being arrested, deported, or losing their children.
- Get a feel for the strengths and challenges of the survivor’s community, which may be small and closely knit.

If we know LGBTQ survivors are at a higher risk of being arrested when calling police, how are we incorporating this information into our advocacy work?

Be thoughtful about language

- Ask survivors about the terms they prefer you to use to describe their sexuality, gender identity and relationship.
- Ask survivors for their preferred pronouns and use them.
- Be thoughtful about what information regarding someone's relationship or sexuality is relevant and necessary to your work. Be willing to ask questions and don't assume you know the answers (especially if you are LGBTQ yourself). On the other hand, don't ask unnecessary questions specific to someone's LGBTQ identity simply because you are curious.
- Your **intent, respect, and openness** when using words to describe LGBTQ people are connected to how LGBTQ folks will experience your use of the words. Remember, almost every word that can be used to describe LGBTQ people positively has also been used against LGBTQ people hatefully. This is not unique to the LGBTQ community.

lesbian bisexual
transgender
queer

Terminology

LGBTQ identities and the legal system

Here is some helpful vocabulary that may be useful in your work with LGBTQ Survivors who engage the legal system.

LGBTQ Identities and Experiences

These definitions are based on how many people define and describe their identities and experiences. Some people may identify using terms or definitions that are different from this list. Language and meanings change over time and vary based on geography, age, and communities. Almost all language can be used either respectfully or disrespectfully — **we encourage listening to people and how they talk about their experiences and responding respectfully.**

Lesbian: A person who identifies as a woman or girl whose primary sexual and romantic feelings are for other women or girls.

Gay: A person who identifies as a man or boy whose primary sexual and romantic feelings are for other men or boys. While many people use this term only to refer to gay men, others use it as a general term to include both men and women, for example, “the gay community”

Bisexual: A person whose sexual and romantic feelings may be for people of any sex or gender.

Transgender or “Trans”: An umbrella term that refers to people who in some way transgress socially acceptable ways of expressing gender. A trans person may not experience their gender identity as matching with the sex they were assigned at birth. The term is often used to refer to transsexual people (who may wish to physically change their bodies to affirm their gender identity); female-to-male (FTM) individuals, male-to-

female (MTF) people, gender-queer folks, masculine-presenting women, feminine-presenting men, and other gender variant folks, including people who experience their gender as fluid or falling somewhere between or outside of our binary gender system.

Queer: A term that can function as both an umbrella term referring collectively to bisexual people, lesbians, gay men, and transgender people, or to an individual’s sexuality or sexual orientation. Queer is sometimes used by individuals who do not identify as LGBT but do identify as something other than heterosexual or gender normative. While “queer” has historically been used as a hurtful term, many individuals and communities have reclaimed it as expression of power and pride. Not everyone in the LGBT community identifies with this term and some continue to experience it as hurtful or divisive

Homosexual: A term historically used to refer to a person who identifies as a man or boy and is primarily attracted to men or boys (or a person who identifies as a woman or girl and is primarily attracted to women or girls.) This term has fallen out of favor in the broader LGBTQ community, as it has deep ties to historical mistreatment of LGBTQ people in the mental health system.

Heterosexual/Straight: A person who identifies as a man or boy whose primary sexual and romantic feelings are for women or girls or a person who identifies as a woman or girl whose primary sexual and romantic feelings are for men or boys.

Homophobia: the systematic oppression of gay men, lesbians, bisexual and queer people because of their sexuality.

Transphobia: the systematic oppression of transgender people because they defy society’s expectations of what it means to be a man and what it means to be a woman in a gender binary culture.

Biphobia: the systematic oppression of bisexual people specifically because they are neither gay nor straight.

Heterosexism: the belief that heterosexual (straight) relationships and people are the ideal and that they are better or more normal than LGBTQ relationships and people. Heterosexism also sometimes includes the denial that LGBTQ people even exist, and the assumption that everyone is straight unless they tell you otherwise.

Coming Out/Being Outed: the process of disclosing one's LGBTQ identity or having someone else make that identity public. "Coming out" is a process for many people that happens multiple times in multiple areas across their lifetime.

The Legal System

Below is a list of terms used throughout this guide to explain processes survivors may experience if they engage with the legal system. The definitions are general and may not cover differences in language and meaning in different states or courtrooms.

Bench Warrant: A warrant issued by a judge to command someone to come to court after that person failed to comply with a court order, including a subpoena. If a bench warrant is issued against someone, that person can be brought by law enforcement to court to address the warrant.

Burden of Proof: Requirement that a party bringing a suit (plaintiff in civil cases) or seeking criminal conviction (prosecutor in criminal cases) has to meet to win the case. In civil cases, the burden is generally the "preponderance of the evidence" which means that there is more evidence than not – 50.01%. In criminal cases, the burden is generally "beyond all reasonable doubt," a much higher standard.

Continuance: The postponement of a court date to a later date granted by a judge.

Evidence: Testimony, objects, documents, anything else used at trial to prove a case.

Ex Parte: Done with only one side of a case, without notice to the other side (for example: having a hearing with only one party and the judge). Ex parte hearings are an exception to the rule that both parties must be present for a judge to rule on an issue and are usually only available for temporary orders (protection orders, custody orders, etc.).

Petition: Written request to a court to begin a civil proceeding. The person who initiates the case is called a Petitioner and the person who they file against is called the Respondent. It is possible that the Respondent can file a case against the Petitioner – this is called a Cross-Petition.

Plea Bargain: In a criminal case, an agreement made between the defendant and the prosecutor for the defendant to plead guilty or "no contest" to a charge in exchange for a lighter sentence, dropped charges, specific terms of release, etc.

Pressing Charges: A term often wrongly used to describe the process of a victim telling the police or prosecutor about a crime that occurred. Only prosecutors can formally press charges. A crime victim simply reporting a crime does not always mean that charges will be brought. In some states, crime victims can file paperwork with a commissioner to have a case initiated, but the prosecutor is still the person who formally brings charges against a defendant.

Pro Bono: Legal services provided for free.

Pro Se/Pro Per: A person who represents him/herself without an attorney

Probation: Sentence given to a defendant to avoid (or lessen) jail times that can include terms such as staying away from the victim, completing classes, complying with drug testing, etc.

Prosecutor: Attorney who represents the government's interest in a criminal case by providing evidence to a judge or jury to prove that a defendant is guilty of a crime. May also be called Attorney Generals, District Attorneys, Solicitor Generals, States Attorneys, or U.S. Attorneys.

Public Defender: Attorney who represents a defendant's interest in a criminal case by disproving the prosecutor's case; assigned by the court to a defendant who cannot afford a private attorney.

Restraining/Stay-Away Order: A court order demanding that one person stay a specific distance from another person or place or engage in or refrain from certain behaviors. **These orders come in three main forms and vary state-to-state:**

Criminal Stay Away Orders: Orders issued as part of a criminal case, usually when the defendant has committed a crime against the complaining witness, to require that defendant not contact or come near the witness.

Domestic Violence Civil Protection Orders: Orders issued by a civil court, usually in a Domestic Violence or Family unit, based on abuse done by someone against a family member, dating partner, or person with another type of intimate relationship. Some courts offer these orders to survivors of sexual violence or stalking. They can be called civil orders of protection, civil protection orders, or family abuse protection orders. If the Petitioner and Respondent agree to terms of an order without going to trial, this is called a consent order. If the Respondent does not show up for the trial, the judge can order a default order against the Respondent ex parte (without the Respondent present).

Other Civil Restraining Orders: Orders issued by a civil court in cases between parties that are not related enough to qualify for a domestic violence order (e.g. neighbors, coworkers). They can be called anti-harassment orders, civil stay aways, or restraining orders.

Sentence: The punishment given to someone found guilty of a crime. Can include jail time, fines, **restitution** (payment to a victim for damaged property), or other probation terms. Sometimes defendants agree to a **deferred sentence agreement (DSA)** where their guilty plea is held for a period of time during which the defendant must comply with certain terms. If the period of time passes and the defendant has complied, the court will withdraw its charges. If the defendant violates the terms, the guilty plea is automatically entered.

Service (“Being Served”): Delivery of legal documents to someone, necessary for formally initiating a case. When “**personal service**” is required, the papers must be delivered to either the recipient directly or to someone over the age of 18 who lives in the recipient’s home. Personal service also requires that the delivery be done in person by someone who is not part of the case (as one of the parties or as a witness) and who is over 18. Other types of service include certified mail or publication in a newspaper.

Subpoena: Court order directing a person to appear at court or to testify for a deposition. Because subpoenas are orders of the court, people who do not comply with them can be punished by being fined or incarcerated. (See **bench warrant**)

Victim Impact Statement: Written or oral statement made by victim of crime given during sentencing.

Witness: A person who testifies during a court hearing, trial, or deposition (also a person who observes an event occurring). Often, the victim in a criminal case is called a **complaining witness**.

Witness Advocates: Non-attorney staff in some prosecutors’ offices who work with victims of crime in preparing for, participating in, and responding to the prosecution of the crimes they have experienced.

Resources

Where can I find additional resources or information about the legal system or LGBTQ communities in my area?

LGBTQ Intimate Partner Violence, Sexual Assault, and Dating Violence Resources

Northwest Network of Bisexual, Trans, Lesbian & Gay Survivors of Abuse **www.nwnetwork.org**

The Northwest Network provides national training and technical assistance to organizations working to increase services and accessibility for LGBTQ survivors. Other services include support for LGBTQ survivors of domestic violence and sexual assault, youth services, and community engagement and education.

National Coalition of Anti-Violence Programs **www.ncavp.org**

Coalition of LGBTQ-specific anti-violence programs around the US and Canada, contact information for coalition members, annual reports on LGBTQ intimate partner violence and hate crimes.

Legal Resources for Survivors of Domestic and Sexual Violence

American Bar Association Commission on Domestic and Sexual Violence **www.americanbar.org/cdsv**

Updated protection order laws by state, Toolkit for Attorneys working with LGBT survivors, domestic violence screening tools.

Legal Momentum Immigrant Women's Project **iwp.legalmomentum.org/immigration**

Guides on immigration remedies for survivors (VAWA, Battered Spouse Waivers, U-Visas, and Asylum) and listing of local organizations working with immigrant survivors.

National Clearinghouse for the Defense of Battered Women **www.ncdbw.org/about.htm**

Resource center for survivors charged with crimes related to the abuse they have experienced.

Legal Resources on LGBTQ Rights & Protections

National Center for Lesbian Rights **www.nclrights.org**

Extensive resource for LGBTQ rights issues including family law, relationship recognition, anti-discrimination, including some state-by-state break downs.

National Gay and Lesbian Taskforce **www.nglft.org**

Issue maps and fact sheets covering state-by-state availability of anti-discrimination protections and relationship recognition.

Lambda Legal **www.lambdalegal.org**

Legal resources and advice for people who have experienced discrimination related to sexual orientation, gender identity and expression, and HIV status.

Immigration Equality **www.immigrationequality.org**

Information on how U.S. immigration law affects LGBTQ individuals and families, network of attorneys working on LGBTQ immigration cases.

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About The Northwest Network

The Northwest Network of Bisexual, Trans, Lesbian and Gay Survivors of Abuse works to end violence and abuse by building loving and equitable relationships in our community and across the country.

Proceed!

LGBTQ Domestic Violence Legal Toolkit for Advocates

By Morgan Lynn, Esq, Kristin Tucker & Connie Burk
for the Northwest Network of Bisexual,
Trans, Lesbian and Gay Survivors of Abuse

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Our Story

Founded in 1987 by lesbian survivors of battering, the Northwest Network works to end abuse in our diverse lesbian, gay, bisexual and trans communities. As an organization founded by and for LGBT survivors, we're deeply committed to fostering the empowerment of all survivors of abuse.

Our Mission

The Northwest Network increases our communities' ability to support the self-determination and safety of bisexual, transgendered, lesbian and gay survivors of abuse through education, organizing and advocacy. We work within a broad liberation movement dedicated to social and economic justice, equality and respect for all people and the creation of loving, inclusive and accountable communities.



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straight coming out sentence probation homosexual witnesses advocates pressing charges pro se pro per biphobia public defender queer victim impact statement plea bargain

The
Northwest
Network

WEB: nwnetwork.org
EMAIL: info@nwnetwork.org
PHONE: 206-568-7777
PO Box 18436
Seattle WA 98118-0436



**National LGBT Training &
Technical Assistance Initiative**
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**The
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www.nwnetwork.org