

NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE

OPDV Bulletin/Fall 2013

IN THIS ISSUE

From the Executive Director	Cover
The Intersection of Gang Culture and Domestic Violence	Cover
Did You Know.....	Cover
Protecting Indian Women with VAWA 2013	Page 2
Q&A About the Intersection of Gang Culture and Domestic Violence	Page 3
Legislative Update	Page 4
Rome Police Department's Home Visiting Program	Page 4
Domestic Violence Training for Child Protective Services Workers.....	Page 4



October is Domestic Violence Awareness Month! What are you planning to turn purple this year? Check out our Toolkit for ideas: http://www.opdv.ny.gov/public_awareness/campaigns/shinethelight/ During DVAM, send or tweet us photos and we'll post them on Facebook and Flickr. Shine the Light!

The Intersection of Gang Culture and Domestic Violence

Human trafficking and prostitution are among the most highly prevalent, most profitable crimes within today's gang culture. Yet due to the widespread, complex structure of gang networks, identifying and preventing gang-related crimes – including crimes committed against intimate partners of gang members – remains an ongoing challenge. As gangs develop more sophisticated ways of grooming, abusing, and exploiting women and children for financial gain, law enforcement works to understand and respond to the many forms of violence perpetrated against individuals who are trafficked and prostituted. At the same time, domestic violence service providers are finding that victims of domestic violence whose abusive partners are gang members often present a unique set of safety concerns that require specialized advocacy and safety planning.

To learn more about domestic violence within the gang culture, see the Q&A on page 3.

Did you know...

In 2012, firearms were used in 23 of the 74 intimate partner homicides (31%) compared to 2011, in which firearms were used in 22% (20 of 89) of intimate partner homicides.

This statistic is taken from the 2012 New York State Domestic Violence Dashboard, available at the end of July at: <http://www.opdv.ny.gov/statistics/nydata/2012/index.html>

From the Executive Director



It is my pleasure to bring you this issue as the newly appointed Executive Director of OPDV. I have served as Acting Executive Director for the past year, and I am proud of the work we have accomplished during this time of transition. I would also like to announce that Johanna Sullivan, our General Counsel since 2007, has accepted the position as Director of the Office of Public Safety at the NYS Division of Criminal Justice Services. We thank Johanna for her many years of dedicated work. I'm also pleased to welcome our new General Counsel, Ellen Schell. Ellen most recently served as Counsel at The Legal Project and we are fortunate to have her experience and knowledge of domestic violence, sexual assault, and military issues.

This Bulletin's article, "Protecting Indian Women with VAWA 2013," by Carrie E. Garrow, discusses the Violence Against Women Reauthorization Act of 2013 and how it relates to Indian women. Our Q&A, co-authored by Paul Annetts and Debra Darby, examines the intersection of gang culture and intimate partner violence.

Finally, I invite you to join our October "Shine the Light on Domestic Violence" campaign in recognition of Domestic Violence Awareness Month. If you would like ideas and guidance, please visit our website for a [tool kit](#) and other resources. Let's build on the success of last year's campaign and turn even more of the state purple in 2013!

All of us at OPDV wish you the very best for the upcoming holiday season.

Gwen Wright

Gwen Wright
Executive Director

Protecting Indian Women with VAWA 2013

Carrie E. Garrow is an adjunct professor and Executive Director of the Center for Indigenous Law, Governance & Citizenship at Syracuse University College of Law, President of the Board of the Directors for the Haudenosaunee Coalition for Women's Empowerment, and Chief Appellate Judge for the St. Regis Mohawk Tribal Court.

What is VAWA 2013?

The [Violence Against Women Reauthorization Act of 2013 \(VAWA 2013\)](#) amended the [Indian Civil Rights Act](#)¹ to give Indian Nations the ability to exercise special domestic violence criminal jurisdiction over non-Indians. In 1978, the United States Supreme Court refused to recognize the criminal jurisdiction of Indian Nations over non-Indians. The Court's refusal, in addition to many other jurisdictional problems and lack of resources, resulted in high crime rates on many Indian reservations, since non-Indian offenders could not be held accountable for any crimes they committed on tribal lands. The 2007 Amnesty International [Maze of Injustice](#) report raised the lack of response to sexual assault of Native women as an international human rights issue. The federal government's response to address these problems was the passage of the [Tribal Law and Order Act](#) (TLOA) in 2010 and VAWA 2013.

What is included in VAWA 2013?

One of VAWA 2013's many important provisions is the recognition of Indian Nations' special domestic violence criminal jurisdiction², which includes domestic violence, dating violence and violations of protection orders. (Special criminal jurisdiction only covers sexual assault within these contexts.) VAWA 2013 contains several due process requirements Indian Nations must meet to exercise special criminal jurisdiction:

- Nations must protect the rights of criminal defendants under the Indian Civil Rights Act of 1968.³
- The protections for criminal defendants contained in the Tribal Law and Order Act, which enhanced the sentencing authority of tribal courts, must be provided. This includes: effective assistance of counsel for defendants at least equal to that guaranteed by the U.S. Constitution; free, appointed, licensed attorneys⁴ for indigent defendants; law trained tribal judges licensed⁵ to practice law; publicly available tribal criminal laws and rules of evidence and procedure; and the trial must be recorded.⁶
- Tribal courts' jury pools must be drawn from sources that reflect a fair cross section of the community and do not systematically include any distinctive group, including non-Indians.
- Upon an order of detention, the Tribal Court must provide timely notice of the right to file a federal habeas corpus petition.

Special criminal jurisdiction does not apply if both the victim and defendant are non-Indian, if the non-Indian defendant lacks sufficient ties to the Tribe, if the crime does not take place in the Tribe's Indian country, and if the Tribe chooses not to exercise special criminal jurisdiction.

Sufficient ties to the Tribe exist if the defendant resides in or is employed within the Tribe's Indian country, or is a spouse, intimate partner or dating partner of a tribal member or an Indian who resides in the Tribe's Indian country.

Criminal Violations of Protection Orders

Criminal violations of protection orders only occur if the following circumstances are present.

- *The act occurred in the Tribe's Indian country;*
- *The conduct or act violated the portion of the protection order that "prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person."*
- *The order was issued against the defendant;*
- *The order is enforceable by the participating Tribe; and*
- *The order is consistent with section 2265(b) of title 18, of the United States Code.*

When does VAWA 2013 take effect?

The special criminal jurisdiction provisions of VAWA are effective on March 7, 2015. However, Tribes may request to participate in a pilot project. The Department of Justice is currently in the process of developing rules to establish the pilot program. It has issued [proposed procedures](#) for Tribes to request a designation as a participating Tribe. Also included in VAWA 2013 is recognition of Indian Nations' civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce orders through civil contempt proceedings, exclusion of violators from tribal lands and other appropriate enforcement mechanisms.⁷

Conclusion

The restoration of the recognition of Indian Nations' criminal jurisdiction over non-Indians for domestic violence and dating violence is an important step in reducing the high rates of violence against women. With this special criminal jurisdiction, Nations can resume holding offenders accountable and protecting Indian women and their families.

1 25 U.S.C. § 1301 et. seq.

2 The tribal special criminal jurisdiction is concurrent to any currently existing federal and/or state concurrent criminal jurisdiction. Thus, New York State still has concurrent criminal jurisdiction pursuant to 25 U.S.C. § 232.

3 25 U.S.C. 1301 et. seq.

4 Defense attorneys may be licensed in any jurisdiction that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys and this can include tribal bar associations.

5 Similar to defense attorneys, judges may be licensed by a tribal bar association.

6 Tribal Law and Order Act, Public Law 111-211.

7 § 905

Q&A: The Intersection of Gang Culture and Domestic Violence



This Q&A was conducted with Debra Darby, Victim Resource Coordinator, NYS Office for the Prevention of Domestic Violence, and Paul Annetts, Correctional Facility Specialist II, NYS Commission of Correction

Q: Why does the prevalence of gangs and gang violence seem to have increased recently?

A: While the presence and prevalence of gang violence hasn't necessarily increased, enhanced criminal justice efforts have made the issue more visible. The National Gang Intelligence Center (NGIC) attributes much of this increased visibility to law enforcement's swift, consistent response to narcotic and gun-related crimes, both of which are common within and among gangs.

Q: What are "gang crimes" and how are they different from other crimes?

A: According to the 2011 National Gang Threat Assessment (NGTA), "gang members are responsible for an average of 48% of violent crime in most jurisdictions and much higher in others."¹ While gang members commit the same kinds of crimes as non-gang members, such as assault, drug trafficking, extortion, firearms offenses, home invasion robberies, homicide, intimidation, shootings, and weapons trafficking, gangs are composed of such a complex, far-reaching network, that their criminal activity is often challenging, if not impossible, to identify and prevent. Additionally, due to the group nature of gangs, many members with knowledge of illegal activity are afraid to report out of fear of retaliation.

The NGIC reports that, "[gang] control over drug distribution and disputes over drug territory has increased ... [while] conflict between gangs, gang migration into

rival gang territory, and the release of incarcerated gang members back into the community has also resulted in an increase in gang-related crime and violence in many jurisdictions."² And while crimes like human trafficking and prostitution are always dangerous and complex, the 2011 NGTA indicates that gangs have started to engage in these criminal activities, and that prostitution is the second most profitable gang activity after drug sales.

Q: How does gang activity impact victims of domestic violence whose abusive partners are gang members?

A: These victims are particularly vulnerable, not only to the abuser, but to the entire gang network. Since the power and control at the root of all domestic violence is intensified by the gang culture, gang members who abuse their intimate partners often utilize specific tactics to groom and entrap their victims. These abusers not only promise to provide victims with basic living necessities such as shelter, food, clothing, and safety, they also manipulate and coerce victims to prostitute themselves with promises of drugs and alcohol, and they recruit other members to do the same.

It is also important to note the high correlation between domestic violence within gangs and human trafficking. Human trafficking can occur anywhere, even in the victim's own home. Threats and coercion alone are enough to restrain a victim of human trafficking. And since these victims are at the mercy of multiple abusers who threaten to report them for their own illegal activities, they rarely report their victimization, and

they often deny that they are being abused when asked.

Q: What should advocates know?

A: When working with victims of domestic violence whose abusive partners are gang members, advocates should be aware that gang involvement further complicates the already difficult challenge of advocating for and assisting these individuals. Due to the power of the gang network and the group structure of the gang mentality, advocates must first understand that the victim likely has multiple perpetrators within the gang, all of whom see the victim as communal property and "gang territory."



Often, gang members even brand and tattoo their victims as a way of declaring ownership. Therefore, while the risks associated with safety and support are always a concern when assisting any victim of domestic violence, they are multiplied for victims whose abusers are gang members.

When safety planning with victims, advocates should always be aware of some important considerations:

- Abusers who are gang members often recruit fellow members to further threaten, intimidate, and harm their victims.
- Teenage victims are particularly vulnerable to gang grooming, and advocates should recognize the need for age-appropriate services for this population.
- Victims of gang members can't always safely relocate, due to the expansive gang network.
- Local gang intelligence officers at state and local police departments are essential partners in assisting these victims.

1 FBI. 2011 *National Gang Threat Assessment – Emerging Trends*

2 FBI. 2011 *National Gang Threat Assessment – Emerging Trends*

Legislative Update

In addition to several domestic violence-related laws signed earlier, the Governor recently signed two new bills into law.

A new law will increase accountability of offenders by allowing local and state corrections officers, and parole officers, to access the statewide order of protection registry. Accessing the registry will allow officers to determine if an inmate or parolee is subject to an order and what conditions must

be followed, such as no contact with a victim. http://www.assembly.state.ny.us/leg/?default_fld=&bn=S04248&term=&Summary=Y&Text=Y

Another law will restrict the parental rights of individuals convicted of certain sexual offenses: rape first/second degree, course of sexual conduct against a child first degree, predatory sexual assault and predatory sexual assault against a child. When a child is conceived as a result of these offenses, the law will now presume that granting custody

to, or visitation with, the offender is not in the best interest of the child. The law also prohibits notifying the offender of certain proceedings involving the child, such as foster care or adoption. http://www.assembly.state.ny.us/leg/?default_fld=%0D%0A&bn=S5069&term=&Summary=Y&Text=Y

For information about other domestic violence-related laws, see <http://www.opdv.ny.gov/law/index.html>

Rome Police Department's Domestic Violence Home Visiting Program

After the NYS Division of Criminal Justice Services awarded [American Recovery and Reinvestment Act \(ARRA\)](#) funds to eleven jurisdictions across New York State in 2011, OPDV was able to provide additional ARRA money to the Rome Police Department, the Oneida County Probation Department, and the YWCA of the Mohawk Valley to develop a more intensive, more formalized program that could be used as a best practices guide for jurisdictions across the state.

The general premise of a home visiting program requires that police make follow-up contact with the victims of domestic incidents.

Depending on departmental policy and program criteria, this follow-up could occur the day after the incident, or several days later, and may involve a single home visit or a series of contacts. While police see this as an opportunity to connect victims with local domestic violence service providers, this is also an opportunity to collect additional evidence, interview more witnesses, and work closely with the probation officers of offenders currently under supervision. Police may also file new charges if the offender has committed new crimes since the initial incident.

As part of their process, the Rome partnership developed several materials, including a policy and protocol document, all of which can be shared with and replicated

by other jurisdictions. OPDV is prepared to provide training and technical assistance in the design and implementation of a home visiting program as one more resource that a community may utilize to enhance investigation and evidence collection and to support victim safety and offender accountability.



Domestic Violence Training for Child Protective Services Workers

In 2012-2013, The Office Children and Family Services (OCFS) and OPDV, in consultation with a nationally recognized expert in child welfare and domestic violence, revised the Domestic Violence/Child Protective Services (DV/CPS) training curriculum. Revisions were made to teach CPS caseworkers to use Family Engagement by safely engaging in and effectively intervening with each member of the family affected by domestic violence, including the DV offenders. When family members are engaged, they are likelier to be able to make changes needed to keep their children safe and support their permanency and well-being. The revised training teaches CPS staff how to engage the non-offending

parent to support and sustain her efforts to protect herself and her children, and to meet their needs.

The course also teaches CPS workers how to engage parents who abuse their intimate partner to assume responsibility for the impact of their abusive behavior on their children and explore the potential for behavioral change. Finally, the revised course teaches CPS caseworkers to use critical thinking skills and solution-focused practice strategies to identify domestic violence, to assess safety, to develop safety plans with the family, if needed, and to identify appropriate services for the family. The training is mandatory for all CPS workers.

The course is co-trained by OPDV and trainers from OCFS's Center for the Development

of Human Services. For more information regarding Family Engagement please visit http://ocfs.ny.gov/main/cfsr/family_engagement.shtm

A variety of training methods are used throughout the two day training program, including brief lectures, large group discussions and individual and small group learning activities. All training methods are designed to help participants integrate best domestic violence practice strategies within their day-to-day work, use self-reflection and build their ability to apply critical thinking skills to interviews, assessments and decision making.

For more information: <http://opdv.ny.gov/professionals/cps/cpstraining.html>

NYS Office for the Prevention of Domestic Violence www.opdv.ny.gov

Please send any comments or content ideas to: opdvbulletin@opdv.ny.gov

If you would like to subscribe to the OPDV Bulletin, visit www.opdv.ny.gov/public_awareness/bulletins/subscribe.html

Articles by outside authors are invited, but publication does not indicate endorsement of the opinions contained therein.

Permission to copy, use, and distribute content from The OPDV Bulletin is granted for personal, private, and educational purposes, except that reproducing materials for profit or any commercial use is strictly forbidden without specific permission from OPDV. Any reproduction or distribution of this material must expressly credit OPDV in a prominent manner, such as, "From the NYS Office for the Prevention of Domestic Violence, OPDV Bulletin, Fall 2013". This statement does not pertain to material from other sources.