

NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE

OPDV Bulletin/Spring 2010

IN THIS ISSUE

From the Executive Director	Cover
Intimate Partner Violence & Sexual Assault	Cover
Did You Know.....	Cover
Domestic Violence and Substance Abuse	Page 2
Q&A About Intimate Partner Violence & Sexual Assault	Page 3
Legislative/Legal Update.....	Page 4
New Expanded Access Webpage	Page 4
Newly Revamped Rape Kit and Award-Winning Training Video	Page 4

April is Sexual Assault
Awareness Month

See the OPDV website
for information on
[Intimate Partner Sexual
Abuse](#)

Intimate Partner Violence & Sexual Assault

Contrary to what many people believe, sexual assault is most often committed by someone the victim knows, not by a stranger in a dark alley. In fact, women are at the greatest risk of both sexual and physical assault by their intimate partners (boyfriends or husbands). In many cases, sexual assault is one of many tactics used by an abuser to control and demean the victim. Intimate partner violence of all kinds is under-reported, and sexual abuse in particular is hard for victims to discuss with advocates or law enforcement. Even so, it is common that someone who has been abused by their intimate partner has also been sexually assaulted by them.

In recognition of the overlap between intimate partner violence and sexual assault, the Governor's Program Bill (signed into law in September 2009) designated four low-level sexual assault crimes as family offenses. This change allows victims of these crimes to now petition for orders of protection in Family Court; any orders issued would be added to the state wide order of protection registry. In addition, by including these crimes as family offenses, mandatory arrest now applies should the police become involved.

See page 3 for Questions and Answers on intimate partner violence and sexual assault.

Did you know...

In 2008, the number of applicants for public assistance who indicated danger due to domestic violence was 17,863 in New York State, a 20% increase from 2007. (OTDA)

For more information and data from systems like the courts, law enforcement, domestic violence services, and health care, see the *2008 NYS Domestic Violence Dashboard*, published by OPDV in December of 2009: www.opdv.state.ny.us/statistics/nydata/2008/nys2008data.html

From the Executive Director



Greetings all. April is Sexual Assault Awareness Month. The Q&A in this issue of the OPDV Bulletin addresses the role sexual abuse plays in domestic violence generally. With a new law that permits certain sexual assaults to be alleged in Family Court, it is particularly important that all players in the domestic violence system understand this issue. April also brings with it National Crime Victims' Rights Week, which is April 18-24, 2010. To see some events happening around the state, as well as to register events you are hosting, visit: www.cvb.state.ny.us/NCVRW.aspx

Since the last issue of the OPDV Bulletin, Governor Paterson for the first time declared the entire month of February to be Teen Dating Violence Prevention and Awareness Month. We held a press conference in Washington County to recognize the successful teen program in the Whitehall Junior and Senior High School. In a time of serious budget challenges, it is a pleasure to be able to bring well-deserved attention to successful and progressive programs. We also took the opportunity to launch the [OPDV page on Facebook](#) at the press conference. Please take the time to visit our page and become a fan.

We know that many of you are struggling to keep your programs going, and we appreciate the work that you continue to do in these difficult times. We offer our support and thanks, and invite you to reach out to us for any assistance you think we can give you.

Amy Barasch
Executive Director

Domestic Violence and Substance Abuse

Sue Parry, Ph.D., NYS Office for the Prevention of Domestic Violence

The relationships between domestic violence and substance abuse are complex; neither problem is simply a result of the other. Because substance abuse, by either a woman or her partner, increases her risk of domestic violence victimization, a large proportion of women receiving services for one of these problems is also experiencing the other. Both services have an opportunity to help women affected by both problems. (Although being abused also puts men at risk of substance abuse, most victims of domestic violence are women, and this article focuses on female victims.)

Domestic violence can contribute to a woman becoming substance-dependent.¹ She may begin using to numb her physical pain, stress, and fear. This may help keep her from interacting with her partner in ways that he typically responds to with violence, but it may also make it possible for her to tolerate his abuse and stay with him longer than she otherwise might.

Substance use can also make it harder for a victim to deal with domestic violence.

- It can impair her judgment and motor coordination, making it harder to recognize and escape danger, and use safety plans.²
- It can make it hard to hold down a job, robbing her of the financial means to leave her partner.
- It can damage her credibility in court, and cost her custody of her children.
- It can make it hard to access domestic violence services. Many programs will not admit women who are currently using, referring them instead to substance abuse programs.³

Addressing Both Issues

It is possible to address both substance abuse and domestic violence, but it is important that the disciplines work together to create safety in order to make this happen. Substance abuse and domestic violence programs need to work together to:

- Learn each others' language and ways of conceptualizing problems and the process of change.
- Develop MOUs that facilitate referrals and make it easier for women to use both services at the same time.
- Make use of each other's expertise for staff training and client education.

FOR MORE INFORMATION

Bland, P.J., Substance Abuse: Building a Bridge to Safety for Battered Women. Washington State Coalition Against Domestic Violence, Rev. 2008. <http://www.wscadv.org/resourcesPublications.cfm?ald=088B66B2-C298-58F6-09AC8E27A4300617>

Bland, P.J. & Edmund, D. (2008). Getting safe and sober: Real tools you can use. 2nd Edition. Juneau, AK: Alaska Network on Domestic Violence and Sexual Assault. www.andvsa.org/pubs/RealToolsEntireDoc.pdf

Patterson, Lupita. Model Protocol for Working with Battered Women Impacted by Substance Abuse. Washington State Coalition Against Domestic Violence, 2003. <http://www.wscadv.org/resourcesPublications.cfm?ald=E3F85CA9-C298-58F6-0B12861F3BAF89DC>

Sharps, P., Campbell, J.C., Campbell, D., Gary, F. & Webster, D. Risky Mix: Drinking, Drug Use, and Homicide, NIJ Journal, Issue # 250, National Institute of Justice, 2003. <http://www.ncjrs.gov/pdffiles1/jr000250d.pdf>

¹ National Institute on Drug Abuse, Stress and Substance Abuse: A Special Report. <http://www.drugabuse.gov/stressanddrugabuse.html>

² Bennett, L. & Bland, P., Substance Abuse and Intimate Partner Violence, 2008. <http://new.vawnet.org/category/Documents.php?docid=1324>

³ Martin S.L., et al. Substance Abuse Issues Among Women in Domestic Violence Programs: Findings From North Carolina, Violence Against Women 2008 14: 985-997.

WHAT CAN PROVIDERS DO?

Substance abuse treatment providers can:

- Screen for domestic violence during psychosocial assessments
- Refer known victims to [domestic violence programs](#). In inpatient programs, make it possible for victims to meet with advocates while they are in residence.
- Integrate safety planning into treatment, discharge, and relapse prevention planning.
- Provide domestic violence education to all female clients.
- Offer women-only treatment groups, to provide social support and safe spaces for disclosure.
- Recognize other-focused behaviors (such as attending only to one's partner's needs) as safety strategies, and address safety issues involved in beginning to act differently.
- Refrain from involving abusers in their partner's treatment, even if they seem to be supportive of it.
- Help abused women deal with their partner's attempts to sabotage their treatment. Batterers may see their partners' increased independence and access to support as threats to their control, and therefore may stop them from attending meetings, cancel their appointments, interrupt their counseling sessions with repeated phone calls or text message, and encourage them to relapse by giving them "gifts" of drugs or keeping alcohol in the house.

Domestic violence programs can:

- Screen for substance abuse at intake. A simple instrument is the **CAGE**¹:
 - C** – Have you ever thought you should **CUT DOWN** on your drinking or drug use?
 - A** – Have you ever felt **ANNOYED** by others' criticism of your drinking or drug use?
 - G** – Have you ever felt **GUILTY** about your drinking or drug use?
 - E** – Do you ever have a morning drink as an **EYE OPENER** or use other drugs to get the day started?
- Help victims access [substance abuse treatment](#).
- Provide substance abuse education to women in shelter.
- Seek ways to accommodate women who are actively using.
- Ask about the abuser's substance use. The risk of a woman being killed significantly increases if he abuses drugs or alcohol, especially if he is intoxicated when he assaults her².
- Ask whether the abuser uses "I was drunk" as an excuse for his violence. If so, help the victim look at how her partner treats her when he's not drunk. Batterers who use substances commit much of their physical violence and almost all of their other controlling behaviors when they are not intoxicated. Help her be clear that substance abuse treatment alone is unlikely to stop his abusive behavior.

¹ Ewing, J.A., (1984). Detecting alcoholism: The CAGE questionnaire. JAMA 252, 905-907.

² Campbell, J.C., et al. "Assessing Risk Factors for Intimate Partner Homicide." NIJ Journal 250 (November 2003): 14-19, NCJ 196547

Q&A About Intimate Partner Violence and Sexual Assault



This Q&A was conducted with Ellen C. Schell, Legal Director at the Legal Project in Albany, NY

Q: Can you discuss the overlap between intimate partner violence and sexual assault?

A: Coercive control, the crux of domestic violence, is exercised in many different ways. Sexual coercion is a common method of control we don't always hear about, either because it is too difficult for victims to discuss, or, sometimes, because it is just a "part of the scenery" – so "normal" that victims don't really think to mention it. When we specifically ask about it, though, we hear from our clients that controlling whether, when, where, and how sexual contact will occur is a common tactic used by abusers.

For more information, see *Marital Rape: New Research and Directions*: http://new.vawnet.org/Assoc_Files_VAWnet/AR_MaritalRapeRevised.pdf

Q: Are there unique challenges for practitioners in dealing with intimate partner sexual assault cases?

A: Victims are often placed in the difficult situation of feeling that they must "consent" to, or go along with, sexual contact in order to "keep the peace" or to prevent something worse from happening. Coerced "consent" is not actual consent, but victims may feel guilty or complicit about it, making the waters very muddy when it comes to seeing this as part of the pattern of coercive control.

Sexual assault cases are notoriously hard to prove in court – the "she says, he says" situations.

With the dynamic of coercive control discussed above, the victim may not be entirely clear about whether she consented, making it difficult to convince a court. This can be dealt with by making sure the court understands the context in which the victim's "consent" was given -- why it was really not consent at all. Giving the judge a clear picture of the context of the victim's life can help explain what might otherwise seem difficult to understand.

Victims may be embarrassed or reluctant to talk, or testify, about sexual incidents. You can assist them with this by being comfortable talking about these things yourself, and making the conversations as matter of fact as possible so they feel they will not be telling you something that will shock or embarrass you.

For more information, see *Prosecuting Intimate Partner Sexual Assault*: http://www.ndaa.org/publications/newsletters/the_voice_vol_2_no_2_08.pdf

Q: Can you explain the recent change in the law regarding intimate partner sexual assault and family offenses?

A: In New York, only certain statutorily-enumerated offenses are family offenses. Family offenses are those that may be brought into Family Court to seek an Order of Protection, and for which mandatory arrest provisions apply. Up until December 15, 2009, no sex offenses were included in this list. On that date, however, four misdemeanor-level sex offenses were added. They are:

- *Sexual Misconduct* (PL § 130.20) (A misdemeanor)
- *Forcible Touching* (PL § 130.52) (A misdemeanor)
- *Sexual Abuse 3rd* (PL § 130.55) (B misdemeanor)
- *Sexual Abuse 2nd* (PL § 130.60 (1 only)) (A misdemeanor)

Sexual misconduct is sexual intercourse or oral or anal sexual intercourse without the victim's consent, while the other crimes relate to sexual contact, or touching of the sexual or other intimate parts without consent. The definitions of these crimes are very complicated, and the entire statute, including definitions of all terms, must be read carefully.

Q: Why might a victim wish to pursue intimate partner sexual assault in Family Court?

A: The most common reason victims choose to go to Family Court is that they simply want the abuse to stop – they are not looking to have the abusers jailed. In Family Court, they can get Orders of Protection without all of the criminal proceedings, and without running the risk of being perceived as having "put him in jail." The second reason Family Court may be a good option, particularly for sexual offenses, is that the standard of proof required in Family Court is lower than in criminal court, making it legally somewhat easier to prove the case. It can also be important for a Family Court judge, who may be making a custody determination in addition to deciding a family offense petition, to have information about the abuser's willingness to use sex as a means of control. Judges are required to consider a finding of a family offense having been committed by one parent against the other in determining custody of children, although the law provides no guidance as to what weight the judge must give such a finding.

There are many questions to be answered about how this will all play out, but it is a change that may be useful to some victims and may provide the courts with a clearer picture of the dynamics of coercive control within some families.

Legislative/Legal Update

The New York Prosecutors Training Institute (NYPTI) publishes a quarterly magazine, "Empire State Prosecutor", which features articles of interest for New York State's prosecutors. The Winter 2010 edition carried an article on the enforcement of violations of orders of protection written by OPDV Counsel Johanna Sullivan and Saratoga County District Attorney Jim Murphy.

The article discusses the unique challenges inherent in domestic violence cases and the dynamics that make enforcing orders of

protection so vital. It offers ways that consistent enforcement of orders of protection can be achieved, discussing practices which, if implemented at every stage of the prosecution, can better law enforcement's response. For example, it is crucial that during the initial stages of every investigation, the existence of an order of protection is established. In addition, consistent enforcement of mandatory arrest laws, where appropriate, can encourage victim reporting and holding abusers accountable. Finally, aggressive charging of misdemeanor and felony contempt charges and pursuit of

evidence-based prosecutions can be an effective tool for prosecutors and police. Collaborative enforcement efforts by police and prosecutors, along with advocates, can enhance victim safety, reduce recidivism, and strengthen law enforcement's ability to combat this crime.

The [article](#) is available on the OPDV website.

New Expanded Access Webpage

In July 2008, New York State expanded access to Family Courts to people who are in or have been in an intimate relationship. This legislation has increased the number of family offense petitions that are being filed in Family Court, as well as increasing demand on police officers who are called on to respond to a greater number of domestic incidents. In order to monitor the effects, the New York State Office for the Prevention of Domestic Violence (OPDV) and the Division of Criminal Justice Services (DCJS) are required to submit a report to the NYS Legislature detailing the effects on police practice. The report is due in 2011.

The report will be developed in

multiple steps. First, OPDV will work with the Office of Court Administration (OCA) and DCJS to collect data on court filings and police responses throughout New York State. Second, statewide webinars, including one on April 28, will take place involving domestic violence advocates, civil legal services attorneys, and other interested parties, to discuss the effects being felt in local communities. OPDV will also follow court decisions involving the new legislation to see how the term "intimate relationship" is being defined.

OPDV has created a page on our website to post information gathered throughout this process. Quarterly updates on the data collected from OCA, summaries of case decisions, and other relevant



information will be posted regularly. Check the website frequently for updates and please email us any information related to your experience with the Expanded Access legislation.

Newly Revamped Rape Kit and Award-Winning Training Video



For the first time in nearly 20 years, the NYS Division of Criminal Justice Services (DCJS) completely revamped the New York State Sexual Offense Evidence Collection Kit, known as the "rape kit", to reflect advances in DNA technology and to streamline an inevitably difficult physical exam. The kit allows for a standardized evidence collection process in all sexual assault cases.

In addition to the new kit, DCJS

also created a training video, *A Body of Evidence: Using the NYS Sexual Offense Evidence Collection Kit*, that features an introduction by actress and advocate Mariska Hargitay who plays Det. Olivia Benson on *Law and Order: SVU*. The video, which has been endorsed by the New York Academy of Medicine and certified for continuing education credits for doctors, provides a step-by-step demonstration of the proper collection of evidence. The Association of Marketing and Communication Professionals (AMCP) selected the video for a 2009 Ava Award, an international honor recognizing "excellence in terms of quality, creativity and resourcefulness." The video was produced and edited by New York Network (NYN), a service of the State

University of New York.

The Violence Against Women Unit at DCJS worked with individuals from every discipline – medical, legal, scientific, and social work – to update the kit to better serve victims and provide a better tool for medical practitioners who are collecting evidence. The new kit and video provide detailed directions that allow any medical practitioner – not just specially trained examiners – to do the collection properly.

DCJS provides kits and the training video to hospitals across the state free of charge. For more information, and to view a portion of the training video: www.criminaljustice.state.ny.us/ofpa/evidencekit.htm

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

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