

# NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE

OPDV Bulletin/Summer 2013

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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/](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!

OPDV is on Facebook, Twitter and Flickr. Like us and follow us!



Our Dating Abuse sites for young people:



## Working with Deaf Survivors of Domestic and Sexual Violence

While limited research exists regarding the prevalence of domestic and sexual violence within the Deaf community, agencies that provide Deaf services report that Deaf individuals experience domestic and sexual violence at significantly greater rates than hearing individuals. Ongoing training and education about Deaf culture and communication can build trust with the Deaf community. Additionally, collaboration between law enforcement and victim service providers is essential in developing appropriate policies and procedures to consistently provide Deaf survivors with the support and resources they need.

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

## Did you know...

In 2012, there was a 14% increase in felony-level strangulation offenses charged at arrests and arraignments in New York State, from 2,021 in 2011 to 2,310 in 2012.

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



We hope everyone is enjoying the summer months. We are pleased to announce the completion of two annual OPDV projects: the [NYS Domestic Violence Dashboard](#) and the [OPDV Annual Report](#). The Dashboard represents information collected from a range of systems and paints a picture of both the prevalence of domestic violence, and the strength of New York State's response. The Annual Report, a product of the NYS DV Advisory Council, addresses policies and protocols that impact those affected by domestic violence who come into contact with state and local systems. Both initiatives are possible because of the work you do, and we are pleased to share the results of your efforts.

In this issue's article, "Domestic Violence: Child Abduction or a Flight to Safety?", Merle H. Weiner from the University of Oregon School of Law examines the Hague Convention on the Civil Aspects of International Child Abduction. Weiner points out how domestic violence perpetrators may use the Hague Convention to abuse the other parent by taking their children out of the US, often exposing them to physical and psychological harm. In our Q&A, Jennifer Shaw and Lindsay Ryan Anthony discuss Vera House's Project EMERGE, a collaboration in Syracuse, NY that provides accessible, trauma-informed services to Deaf survivors of domestic and sexual violence. Shaw and Anthony provide information and concrete steps to developing appropriate supports and resources for working with the Deaf community.

We hope you enjoy this issue of the OPDV Bulletin.

*Gwen Wright*

Gwen Wright  
Acting Executive Director

## Child Abduction: Domestic Violence or a Flight to Safety?

**Merle H. Weiner, Philip H. Knight Professor of Law, University of Oregon School of Law**

“International child abduction” conjures up the image of a stranger sneaking a child into a foreign land. In reality, parents – not strangers – are involved in most international child abductions, and domestic violence is often integral to these stories. In some cases, the abductor may be a domestic violence perpetrator who takes the child to exert power and control over the victim. Other times, the “abductor” may be the domestic violence victim fleeing to safety with the child. Although both scenarios are factually different, the law sometimes treats them similarly, further harming victims and their children who flee for safety.

### The Hague Convention

The Hague Convention on the Civil Aspects of International Child Abduction (“the Hague Convention”) is an international treaty that governs the resolution of these cases. This treaty and the federal legislation that implements it (called the International Child Abduction Remedies Act) apply regardless of whether the child is taken by the domestic violence perpetrator or victim. It applies whenever the child is taken to (or from) one of the approximately seventy countries that have a treaty relationship with the United States. The child’s and parents’ nationality are irrelevant in a Hague Convention proceeding.

In these cases, the left-behind parent often uses the Hague Convention to seek return of the child. The remedy requires that a “wrongful removal or retention” occurred, meaning that the left-behind parent had “rights of custody” that were “actually exercised” (or would have been exercised but for the abduction) and the child was taken from, or retained outside of, his or her “habitual residence.” Each of these terms has its own legal definition and lawyers are essential in these cases.

### The Hague as a Tactic of Domestic Violence

Courts adjudicating Hague disputes too often conclude that evidence of domestic violence does not support the fleeing parent’s case. They often say that violence perpetrated against the fleeing parent does not create a risk of harm to the child, ignoring thirty years of evidence about the risks domestic violence poses to children. Courts may minimize the violence without determining whether the “minimal” violence is part of a larger pattern of coercive power and control. Courts sometimes return the child to the other country’s foster care system, believing the foreign court will sort it out even though this solution is “intolerable” from the child’s perspective. Sometimes courts naively trust the other nation to protect the victim, looking only at its law on the books and not the law as it’s applied. Most concerning is that no court has yet found that returning a child to a place where the mother’s life is endangered violates the mother’s fundamental human rights.

To make matters worse, the domestic violence victim that loses an abduction case is potentially subject to an order requiring the victim to pay the abuser’s attorney’s fees, even if the victim fled in good faith and can demonstrate abuse by a preponderance of evidence. Sometimes these fees are more than half a million dollars! Yet if the domestic violence victim prevails on a defense (and this is far more likely if the child has been physically abused), the abuser does not have to pay for the victim’s defense! In this way, abusers turn the Hague Abduction Convention into a powerful tool to use against their victims.

### Custody Decisions and the Hague in the US

In the US, Hague cases can be heard in either state or federal court. The court cannot decide custody until the Hague Convention proceeding is finished. If the child is returned, the court will probably never adjudicate custody; too often, the child is returned. A study by Jeff Edleson and Taryn Lindhorst found that courts returned children in 70% of the cases in which the mother alleged that she was physically abused, but did not allege that the child was physically harmed (and often the child was returned to the alleged abuser). Too often, abusers are able to use the Hague Convention, and [U.S. implementing law](#), in a way that harms children.

### Conclusion

While there are some challenges the Hague can impose on victims, there can also be some benefits when the batterer flees with the child. A Hague Convention case is heard in the country to which the child has been taken. If a domestic violence victim’s child is wrongfully taken or retained abroad, the Hague Convention is an important and beneficial remedy. The Office of Children’s Issues in the State Department will help initiate the proceeding by contacting the appropriate authority in the other country. Most nations will provide a left-behind parent with free legal counsel.

### Defenses to the Remedy of Return

*The Hague Convention contains only the following five defenses to the remedy of return:*

- 1. one year has passed since the abduction and filing of the action, and the child is now settled in his or her new environment (sometimes courts will not start counting time until the child’s location is known to the left-behind parent);*
- 2. the child does not want to return (and is old and mature enough to decide);*
- 3. the left-behind parent consented or acquiesced in removal;*
- 4. return would cause a grave risk of physical or psychological harm to the child or otherwise place the child in an intolerable situation; and*
- 5. return would violate fundamental principles of human rights.*

*The last two defenses are uniquely suited to domestic violence victims who flee for safety, but they must be proven by “clear and convincing evidence,” a much higher standard than the “preponderance of the evidence” standards otherwise required.*



This Q&A was conducted with Jennifer Shaw (left), Project EMERGE Director, Vera House and Lindsay Ryan Anthony (right), ASADV Empowerment/Project EMERGE Advocate

**Q: How did you start working with the Deaf community?**

**A:** Upon receiving a 2006 OVW Education and Technical Assistance Grant to End Violence Against Women with Disabilities, project staff conducted a needs and assets assessment with disability service providers and survivors in our community, including individuals from the Deaf community. Through that process, we learned that the Deaf community identifies as a cultural and linguistic group, not a group of people with disabilities. Our Project wanted to honor and respect that identity. The goal of Project EMERGE is to improve services for survivors with disabilities and Deaf survivors. Carving out objectives specific to the Deaf community allowed us to build relationships and trust with this population.

**Q: What is the prevalence of domestic and sexual violence for Deaf individuals?**

**A:** There is little research regarding the prevalence of domestic and sexual violence within the Deaf community. Agencies that provide Deaf survivors services, like Advocacy Services for Abused Deaf Victims in Rochester, NY, report that Deaf individuals experience domestic and sexual violence at significantly greater rates than hearing individuals.

**Q: Since domestic and sexual violence affect everyone, why don't service providers serve many, if any, Deaf survivors?**

**A:** The Deaf community is often small and closely connected; most people are at least familiar with one another. This creates fear of

gossip and a loss of confidentiality, which can be a major barrier to seeking help. Additionally, the Deaf community sees itself as isolated from hearing service providers and are unaware of the services available when they experience domestic/sexual violence. A long history of struggling to obtain services has led Deaf individuals to mistrust unfamiliar service providers, believing that providers lack knowledge about Deaf culture and the importance of American Sign Language (ASL) interpreters. If a Deaf individual does go to a domestic violence shelter, it is unlikely they will stay longer than a few days. The Deaf survivor is usually isolated from building relationships with other residents. As staff struggle with communication, chances are the Deaf individual is already planning to return to their partner. Additionally, Deaf survivors face challenges finding qualified ASL Interpreters, especially during crisis.

**Q: What has law enforcement's role been with Deaf victims?**

**A:** Across the US, Deaf individuals have experienced inadequate responses from law enforcement, which creates a legacy of mistrust. ASL interpreters are not always readily accessible, compelling officers to rely on children, other family members, neighbors, or even abusers to act as interpreters. Communication can be misinterpreted, purposefully or accidentally, leading to the potential for further harm of the survivor.

**Q: What would you recommend for agencies wanting to better serve Deaf survivors?**

**A:** It is crucial to fully engage and collaborate with leaders in the Deaf community. They are key to providing the most effective services for

**Building Trust with the Deaf Community**

*We remain in constant communication and collaboration with the Deaf Community to ensure that we create services, policies, trainings, etc. grounded in an understanding of Deaf culture.*

*We have developed trust with the Deaf community by:*

- *Exposing victim service providers to Basic ASL and Deaf Culture.*
- *Holding an open house during Deaf Awareness Week, and facilitated a Deaf Dialogue Series to educate leaders in the Deaf community about domestic/sexual violence.*
- *Creating a policy and procedure for obtaining and using ASL Interpreters.*
- *Creating a series of captioned, voiced ASL Videos using Deaf actors to convey information about domestic/sexual violence, healthy relationships, and safety planning.*
- *Recruiting and training a pool of Trauma Informed Qualified Interpreters (TIQIs) who provide effective communication for Deaf survivors and can be utilized by various community partners.*
- *Recruiting and training volunteer Deaf/Signing Advocates who provide culturally sensitive support, safety planning, and advocacy.*
- *Training police on Deaf Culture/Communication and responding to Deaf survivors.*

Deaf individuals. Spend time defining concepts and terms that are commonly used in dealing with domestic and sexual violence and participate in cross-trainings. Create policies and protocols that address providing accommodations and ensure that you can and will provide ASL interpreters for direct services, events, meetings, support groups, etc. Provide ASL classes to your staff or provide access so they can attend classes. Ask Deaf individuals who their preferred interpreters are, which acknowledges a desire to provide the most effective communication, ultimately building trust.

For additional information:

- [www.verahouse.org](http://www.verahouse.org)
- <http://asadv.org>
- [www.accessingsafety.org](http://www.accessingsafety.org)
- <http://www.adwas.org/>

## Legislative Update

Bills which addressed firearms (the SAFE Act) and extended domestic violence mandatory arrest provisions for another two years (until September, 2015) were signed into law earlier in the legislative session. The Governor has now signed two additional domestic violence-related bills into law:

- The current requirement for phone companies to provide unlisted

phone numbers/alternative listings for domestic violence victims with orders of protection is extended to now require a phone company to provide a new phone number, if requested, within 15 days and at no charge to the victim. (Chapter 202)

- The Office of Victim Services will now be able to include expenses of other household members, and not just the victim's expenses, when making an award

for relocation expenses. (Chapter 261)

Additional domestic violence bills have not yet been sent from the Legislature to the Governor for signature. The OPDV fall bulletin will summarize these pending bills.

For information about laws from previous years, please visit <http://www.opdv.ny.gov/law/index.html>

## Screening for Human Trafficking in Health Care Settings



Victims of human trafficking can present health problems which manifest physically and/or emotionally. Health care workers in the U.S. often remain unaware of

their immigrant patients' experiences of extreme violence, and patients with past or current histories of trafficking and forced labor are likely also going undetected. Increasing awareness of human trafficking among health care personnel remains an important goal for OPDV, because, often, trafficking survivors visit a variety of medical settings, including small, private doctors' offices where they pay cash for services.

In recognition of the essential role that health care professionals can play in providing outreach and victim services as well as treatment of physical and/or emotional issues, OPDV incorporates human

trafficking education and awareness into agency policy and training. Most recently, OPDV has developed a series of trainings about human trafficking laws and their intersections with domestic violence, and plans to develop additional trafficking-related trainings for health care practitioners related to screening.

These trainings are intended to increase awareness of human trafficking among professionals, including health care workers, who may unknowingly interact with trafficking victims in their daily work. With increased education and awareness on the issue and dynamics of human trafficking, health care professionals will be better able to assist trafficking victims with appropriate treatment and referrals.

## OCFS Addresses Child Trafficking/Commercial Sexual Exploitation

Human trafficking is a modern-day form of slavery whose victims are U.S. and foreign born children, teenagers, men and women. Since human trafficking is a serious crime punishable by both New York State and federal Law, it is important to know what resources exist.

Historically, human trafficking victims have often been arrested for criminal offenses associated with trafficking. The Safe Harbour Act was passed into law so that child victims of human trafficking or commercial sexual exploitation would not be treated as criminals. [The New York State Office of Children and Family Services](#) (OCFS) is launching a pilot program involving Erie, Monroe, Onondaga and Westchester counties

and the five boroughs of New York City. The project will include extensive training for the identification of child victims of trafficking and sexual exploitation and service plans for victim assistance. [The local districts within each county have submitted Safe Harbour plans](#), and lessons learned from the project will be the blueprint for statewide implementation.

If you suspect that someone has been trafficked or sexually exploited, you can contact local law enforcement. If the trafficker is a parent/caretaker, you must call the [New York State Central Register of Child Abuse and Maltreatment \(SCR\)](#) (1-800-342-3720). If you're uncertain if someone is a trafficking victim, or if you have questions, call the [National Human Trafficking Resource](#)

[Center \(NHTRC\)](#) (1-888-373-7888) or text INFO or HELP to 233733 ("BeFree"), for free, confidential assistance.

In an effort to address all facets of this serious issue, OCFS is participating in several other human trafficking initiatives and information will be posted on our [new human trafficking webpage](#) as it becomes available.



**NYS Office for the Prevention of Domestic Violence** [www.opdv.ny.gov](http://www.opdv.ny.gov)

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