

Is the Domestic Violence Abuser a Gang Member?

Considerations for the Bench

By Judge Videtta A. Brown¹

Domestic violence cases are some of the most difficult cases presented before the bench, especially when the victim is a teenager. Teenage women are becoming victims of domestic violence at an alarming rate.² Like adult victims, teenage victims experience the same acts of abuse described in the power and control model.³ Also, like adult perpetrators, teenage abusers use intimidation, frightening gestures, and destruction of property to maintain power and control over their teenage victim.⁴ However, there are notable differences between teen and adult victims: teens are less mature, have fewer coping skills and fewer resources, and are afforded less legal protection than adult victims.

More recently a new victim has emerged in the teenage group: the teenage victim who is the girlfriend of a gang member.⁵ These teenage victims, like adult victims, often suffer serious violence during the relationship, after reporting the violence, and when attempting to leave the relationship.⁶ Like their adult counterparts, these teenage victims may also recant previous statements or be reluctant to testify⁷ because they not only fear retaliation from the abuser,⁸ but also from members of the abuser's gang family.⁹ This new class of victim is becoming more visible to courts, prosecutors, and advocates, as are the limits on addressing these victims' needs.

To address the needs of teenage domestic violence victims whose abusers are gang members, it is important to understand the gang culture and its relation to domestic violence. Gangs are notoriously violent and use fear and intimidation to gain power and control on the streets. While not all gang members are abusive to their intimate partners, two theories posit that a direct correlation exists between gang membership and domestic violence: (1) female victimization as part of female gang initiations and (2) gang and family influences on the development of gender ideologies.¹⁰ Physical and sexual violence are used to initiate teen girls into auxiliary gangs, co-ed gangs, and girl gangs.¹¹ Akin to the generational violence theory,¹² gang members learn abusive behavior as a product of their "family" membership.¹³ If the gang supports and promotes abusive behavior against females, its individual members are more likely to do the same.¹⁴

Gang members have an array of power and control tactics at their disposal. They use intimidation and brutal violence when the girlfriend leaves the relationship and turns toward the legal system for safety and assistance.¹⁵ Gang members are intimidation experts and their methods are broad. Gang members often attend hearings to intimidate the victim. Technology is often used as an intimidation tool because it is untraceable and difficult to prove.¹⁶ Graffiti and regular mail are used to send messages of future violence to either the victim or her family members. Gang members have the capability to exact brutal violence on a victim who decides to testify and/or leave the relationship. The acts of violence can include branding, gruesome murders, and sexual assaults.¹⁷

Teenage victims that have been or continue to be abused by their gang member boyfriend are particularly vulnerable. They cannot relocate; they cannot get a protection order in many states; mandatory arrests policies do not apply to their abuser if he is a teen; and there is no shelter to which they can escape.¹⁸ Once these victims have taken the chance on the criminal justice system, it can be detrimental if judges do not address appropriately their concerns for safety and their abusers' behaviors. To aptly address this dynamic, judges should be more informed by exploring training opportunities relating to gangs, gang intimidation, domestic violence, and the use of technology in intimidation and stalking. When presented with and addressing the domestic violence-gang dynamic in a case, the following information may be valuable:

Postponements: The time between trial dates is very dangerous for a victim. Intimidation by the defendant or members of the abuser's gang

family should factor into the decision to grant or deny a postponement.

Courtroom Atmosphere: To protect the integrity of the trial and the victim, close the hearing to reduce gang influence.

Stay away orders: Swift responses to all violations of protection/peace/restraining/stay away orders are imperative when the defendant is a gang member. In some jurisdictions, third party contact can be a violation.¹⁹

Status hearings: This is an effective tool and lets the gang member know that the court is purposely paying attention and monitoring the defendant.

Lethality/risk assessments: Being a gang member is not an articulated factor but the court could consider gang membership to determine dangerousness and risk of future violence to the victim at bail review, postponement requests, and sentencing.

Sentencing: One size does not fit all. Is batterer intervention appropriate for this abuser? Consider whether he is violent with only the victim, women in general, and/or the general public.

The above is not an exhaustive list of when violence and gang intimidation can be considered in a domestic violence case. The court can consider this information during forfeiture by wrongdoing²⁰ and 404B motions. The court's action or inaction could reduce or increase a victim's current vulnerability to the gang member and the gang. If judges do not consider the gang member's dangerousness at every stage of the case, the abuser and the gang can continue their control over the victim.

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² The National Center for Victims of Crime, Teen Dating Violence Fact Sheet, available at http://www.ncvc.org/ncvc/main.aspx?dbID=DB_DVRCFactSheets207.

³ DOMESTIC ABUSE INTERVENTION PROJECT, POWER AND CONTROL WHEEL (1984), available at <http://www.duluth-model.org/documents/PhyVio.pdf> [hereinafter Power and Control Wheel].

⁴ Roger Levesque, *Dating Violence, Adolescents, and the Law*, 4 VA. J. SOC. POL'Y & L. 339, 345 (1997); Power and Control Wheel, *id.*

⁵ Original Document, *supra* note 1.

⁶ Original Document, *supra* note 1.

⁷ A victim's reluctance to testify may be based on a number of reasons, including love, children, financial dependence, lack of trust of the judicial system, and fear of retribution and retaliation. See Sarah Buel, *Family Violence, Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, COLO. LAW. 19, 290, 24-25 (1999).

⁸ Such retribution or retaliation might include intimidation, subsequent physical or sexual violence, or threats of violence. See Thomas Kirsch, *Problems in Domestic Violence: Should Victims Be Forced to Participate in the Prosecution of Their Abusers*, 7 WM. & MARY J. WOMEN & L. 383, 394 (2001).

⁹ Original Document, *supra* note 1.

¹⁰ *Id.*

¹¹ See generally, Cheryl Hanna, *Gangbanging Up On Girls: Young Women and Their Emerging Violence*, 41 ARIZ. L. REV. 93 (1999).

¹² Original Document, *supra* note 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Catherine Klein & Leslie Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 928-929 (1993); see also, Jeanne Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 48 (2006) (acknowledging that many criminal protection orders include no contact by third party).

²⁰ *Giles v. California*, 128 S. Ct. 2678 (2008) (stating that "[a]cts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions...rendering her statements admissible under the forfeiture statute").