



NEW YORK
CITY BAR

COMMITTEE ON DOMESTIC VIOLENCE

SANDRA S. PARK

CHAIR

125 BROAD STREET

18TH FLOOR

NEW YORK, NY 10004

Phone: (212) 519-7871

Fax: (212) 549-2580

sandrapark@post.harvard.edu

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The Honorable Andrew M. Cuomo

State Capitol

Executive Chamber

Albany, New York 12224

TERRY D. LAWSON

SECRETARY

579 COURTLANDT AVENUE

BRONX, NY 10451

Phone: (718) 928-2896

Fax: (718) 928-2897

tlawson@lsnybronx.org

Dear Governor Cuomo:

As you begin your tenure as the Governor of New York State, the Domestic Violence Committee of the New York City Bar Association offers our congratulations on your election and inauguration. We would also like to take this opportunity to offer legislative recommendations regarding issues related to domestic violence and to introduce you to the work of our committee. We offer these suggestions with the hope that you and your staff will call upon our expertise as you consider legislation that can improve the safety of New York's hundreds of thousands of victims of domestic violence who are attempting to build safer futures for themselves and their children.

The New York City Bar Association is an organization of over 23,000 members dedicated to improving the administration of justice and increasing fairness and efficacy in the justice system. Our committee members are employed in a variety of arenas, including legal and social service agencies, district attorneys' offices, law firms, policy positions and academia. We share a joint goal of advocating for improvements in the justice system, in terms of fairness and safety, for domestic violence survivors working to repair lives torn apart from abuse.

Domestic violence continues to be a longstanding national and New York state problem and the number one cause of injury to women in the United States. Yet the consequences of domestic violence reverberate far beyond the individual victim to the survivor's children, who are repeatedly traumatized by the violence in their homes, and to society at large, which shoulders the cost of medical bills, lost days of works and social services. For these reasons, we believe it is important that your new administration tackles issues related to domestic violence as promptly as possible.

Although we are in the midst of preparing our legislative goals for the upcoming year, we have several from previous sessions that were left undone. If enacted, these proposed legislative changes would improve the lives of victims of domestic violence and make it easier for them to successfully leave abusive relationships. The Committee therefore supports legislation that would: 1) prohibit discrimination against domestic violence victims in housing, with the definition of “victim of domestic violence” being consistent with the definitions currently used throughout New York State law; 2) require employers to provide victims of domestic violence with reasonable accommodation to attend to legal matters or other needs associated with the domestic violence;¹ and 3) allow victims of domestic violence who are currently serving time in prison as a direct result of the abuse they have suffered to be eligible for merit time. We also recommend that the New York State Office for the Prevention of Domestic Violence (OPDV) consider issuing recommendations to improve coordination surrounding the delivery of orders of protection. Finally, the Committee believes that the most effective way to stem the scourge of domestic and dating violence is to counter it before it occurs through prevention and education programs aimed at children and young people.

In particular, the Committee supports:

1. Amending the State’s Human Rights Law to prohibit housing discrimination against actual or perceived victims of domestic violence (see A.9020-A/S.5999-A {2009/10 Session})

Domestic violence victims are often faced with a stark choice: remain in an abusive relationship in order to have a place to live or risk homelessness. While homelessness can result from a number of factors, a December 2005 study found that half of the 24 cities surveyed in 2005 by the U.S. Conference of Mayors identified domestic violence as a “primary cause” of homelessness.² Victims of domestic violence, sexual assault, and stalking often face discrimination based on their actual or perceived status as victims of such violence. Landlords may fear that the victim’s presence will attract further violence by the abuser and harm to third parties, such as other tenants. And a 1999 study indicated that 67% of domestic violence service providers identified housing discrimination as a barrier to battered women seeking alternative housing.³

Currently only New York City and Westchester County provide victims of domestic violence with protection against discrimination in housing, leaving victims throughout the rest of New York State without necessary protection. Although the federal Violence against Women Act (VAWA) protects victims of domestic violence, stalking and dating violence from discrimination in access to federal public and Section 8 housing,⁴ it does not address

¹ We are joined by the City Bar’s Civil Rights Committee in supporting legislation that would protect victims of domestic violence in housing and in the workplace.

² United States Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America’s Cities, A 24-City Survey*, at 64 (Dec. 2005).

³ Correia, A., *Housing and Battered Women: A Case Study of Domestic Violence Programs in Iowa*, at 7 (Harrisburg, PA: National Resource Center on Domestic Violence (Mar. 1999).

⁴ See 42 U.S.C. §§ 1437d(c)(3), 1437d(l)(5) & (6) (2006); 42 U.S.C. §§ 1437f(c)(9)(A); 1437f(c)(9)(B) & (C) (2006).

discrimination in private housing or other federally-subsidized housing. It is time for New York to enact legislation ensuring that *all* victims of domestic violence are protected from housing discrimination regardless of where in New York they live, and whether they are residents of public or private housing. Moreover, an anti-discrimination bill of this nature will not impose an undue burden on landlords. Like other anti-discrimination laws, the bill prohibits adverse actions against tenants only when those actions are based on impermissible, discriminatory reasons.

Last session, A.9020-A/S.5999-A⁵, a bill meant to prohibit housing discrimination against victims of domestic violence, passed the Senate and Assembly. However, the bill was vetoed by Governor Paterson due to concerns that the definition of “victim of domestic violence” was overly broad. The Committee has reviewed the veto memo and agrees that the definition is unnecessarily broad, as it would encompass all penal law offenses committed among family members including for example, a sibling who embezzled money or an ex-spouse who forged a signature. We agree with Governor Paterson's recommendation to revise A.9020-A/S.5999-A to define victims of domestic violence to include individuals who would otherwise be eligible for an order of protection from Family Court because they have suffered a recognized family offense (including assault, stalking, harassment, menacing and numerous sexual offenses). This revision would make the legislation consistent with definitions of domestic violence victim currently used throughout New York State law.

2. Accommodation in Employment (*see* A.9018-A/S.6000-A {2009/10 Session})

As the economic security provided by a job is critical to allowing a victim of violence (and her children) to leave a dangerous situation in a safe manner, the Committee applauded the passage of legislation in 2009 to prohibit discrimination against victims of domestic violence in the employment context (A.755-A/S.958-B). However, the Committee believed that the legislation would have been stronger if it had included a “reasonable accommodation” provision. Victims of domestic violence should not be penalized or lose their jobs because they need a reasonable amount of time away from work in order to obtain medical or psychological care or to attend court hearings or other legal proceedings related to the domestic violence. However, with the understanding that employers must continue to operate and conduct business, the Committee understood that any “reasonable accommodation” provision would not require employers to provide an accommodation that resulted in an undue hardship.

In 2010, the Legislature passed A.9018-A/S.6000-A⁶, which amended the Human Rights Law to require employers, absent undue hardship, to provide a reasonable accommodation to victims of domestic violence. Although the bill passed both houses, it was vetoed by Governor Paterson for the same reason as the aforementioned housing discrimination bill, *i.e.*, the definition of “victim of domestic violence” was overly broad. As with the housing discrimination bill, the Committee supports revising the definition of “victim of domestic violence” so that it conforms to current New York law. We are most hopeful that the definitional language can be agreed upon by the Assembly, Senate and Governor so that victims of domestic

⁵ A.9020-A has been reintroduced in the 2011 session as A.3448.

⁶ A.9018-A has been reintroduced in the 2011 session as A.2348.

violence can receive the protections they need in the crucial contexts of employment and housing.

3. Merit time for certain incarcerated victims of domestic violence (*see* A.4516-D/S.3438-B {2009/10 Session})

The Committee supports legislation which would amend New York's correction law to allow certain incarcerated survivors of family or household violence to apply for merit time. Specifically, the legislation would require proof that the incarcerated individual was subjected to substantial physical, sexual or psychological abuse, that the abuse was inflicted by a member of the individual's same family or household, and that the abuse was a substantial factor in causing the individual to commit the crime to be eligible to earn merit time.

Merit time allows the State Department of Correctional Services (DOCS) to grant early release to incarcerated individuals who demonstrate good behavior and complete certain activities, including obtaining a GED or completing a vocational or drug treatment program. However under current law, people convicted of violent offenses, including survivors of domestic violence, are not eligible for merit time. This is despite the fact that this population frequently has low rates of recidivism and no history of violence other than the offense for which they are currently in prison, which was presumably the main reason for excluding those convicted of violent crimes from eligibility when merit time was first enacted.

The Committee is acutely aware of how abusers use fear and control to manipulate the actions of their victim. While many incarcerated survivors have committed criminal activity as a result of their abuser's coercion, others have convictions stemming from acts against their abuser that were taken in a direct effort to protect themselves from further violence.

Although domestic violence always levies great costs on children and society, the consequences are especially severe when victims of domestic violence are incarcerated due to actions taken as a direct result of the violence they have experienced. Healing the scars of domestic violence and affirming the relationships between parents and children is particularly difficult when the survivor and her children are separated by prison walls. New York taxpayers do not fare much better as a result of the incarceration, as they are often left to pay for both the care of children left behind and the hefty cost of incarceration.

This legislation in no way diminishes the seriousness of violent crime and includes many safeguards to prevent the early release of truly violent individuals. Applicants must prove through corroborative materials that abuse by a member of his/her family or household was a substantial factor in causing the commission of the crime. Applicants must also meet the eligibility requirements of maintaining good behavior and participating in specified programs as required for all other eligible inmates. Furthermore, the decision of whether to grant early release is made on a case by case basis at the discretion of the DOCS Commissioner, the Commissioner's designee or the parole board.

In these difficult financial times, allowing victims of domestic violence, under certain circumstances, to obtain an earlier release from incarceration would save the state much needed

dollars, while also promoting fairness in the New York's justice system. The Committee therefore urges its prompt passage and enactment.

4. Revised procedures for delivering orders of protection

When police officers arrest perpetrators of domestic violence, criminal court judges often issue orders of protection to the complaining witness. These orders typically direct the defendant to stay away from the victim, refrain from communicating with him or her, and forbid the defendant from making threats. These orders of protection are powerful law enforcement tools that often have the ability to stop further violence before it escalates.

Orders of protection however, have little value when victims are unaware of their existence. Yet victims frequently do not attend the court proceedings where judges issue, modify or renew the orders, and may therefore may be left unaware of the order or its terms. Although the current law requires court clerks to provide victims with copies of orders of protection, it does not provide a procedure to do so and each county in New York City has crafted a different mechanism for distribution, with varying degrees of success. Additionally, in the critical period after arraignment where victims are in a heightened period of danger, computer entry delays can make it difficult for police officer to track down the order.

The Committee believes that victims should be provided with timely and easily accessible information on how to access orders of protection through precincts and the courts. We also believe that existing technology should be coordinated to ensure access to orders of protection. Although the Committee is not offering a specific legislative proposal at this time, we would appreciate the opportunity to work with your office as well as the New York State Office for the Prevention of Domestic Violence to discuss statewide implications of these problems and to determine whether it would be helpful to amend the Penal Law to more specifically detail responsibilities in distributing criminal orders of protection and the mechanisms under which this should be done.

5. Teen dating violence education and school safety policies

The Committee strongly supports legislation to: 1) mandate education on the dangers of teen dating violence to the broadest number of New York students, and 2) institute school safety policies to help ensure the safety of targets of dating violence. According to the Department of Justice, girls ages sixteen to twenty-four are more vulnerable to intimate partner violence than any other age group – at a rate almost triple the national average. Here in New York, between one in three and one in five young people will experience abuse within a dating relationship. From the tragic death of Yeardley Love at the University of Virginia to the senseless killings of three young New York residents, Danielle DiMedici, Jessica Tush, and Kari Ann Gorman, teenage relationship abuse can quickly turn fatal. In hopes of putting an end to this type of violence, currently twenty states have enacted laws to institute educational policies and initiatives to combat teen dating violence with fourteen other states with pending legislation. As a public servant with a long history of supporting educational initiatives, we hope you will prioritize implementing educational programming that will teach young people how to strive for

and create healthy relationships free of violence. We believe it is the best tool to stop domestic violence and dating abuse.

In New York, the last legislative session saw four different legislative proposals aimed at creating a state wide educational policy to expand teen dating violence education to all New York schools. Unfortunately, none of these bills ultimately passed, although we expect that this session will see legislation reintroduced. We urge your office to support proposed legislation with the following provisions, to be overseen in collaboration with the Department of Education and the New York State Office for the Prevention of Domestic Violence:

- i. Mandate that each school district incorporate education on building healthy relationships and respect for all people into the annual curriculum framework for kindergarten through sixth grade.
- ii. Mandate that each school district incorporate dating violence education into the annual curriculum framework for students in grades seven through twelve.
- iii. Mandate teen dating violence training for all administrators, teachers, nurses, counselors, school safety officers, and health staff at each school.
- iv. Provide opportunities for parent trainings on the signs and ways to prevent teen dating violence.
- v. Mandate the creation of a model school policy on dating violence by the Office for the Prevention of Domestic Violence to assist school districts in creating school dating violence policies for dating violence reporting and response including, how to protect individual targets of abuse and harassment, how to enforce civil and criminal orders of protection, how to protect against violations of orders of protection, and how to give notice to students of available resources and remedies. The policy should, subject to appropriate procedures to safeguard the accused student's due process rights under the law, also include a provision authorizing a student or administrator to request the perpetrator of the violence be transferred to another school.

Currently, countless schools throughout the state are providing educational opportunities for students about the dangers of teen dating violence by collaborating with non-profit organizations and integrating training into health and other similar classes. Preventative education has been empirically shown to be effective at reducing incidents of violence. In one study, teaching young people about healthy relationships and ways to avoid physical dating was shown to reduce physical and sexual dating violence by up to 60%.⁷ A state-wide bill with the aforementioned provisions would support ongoing and expanded efforts to end teen dating violence, by standardizing training, helping schools build safety policies to insure that violence does not interfere with learning, and providing resources for school districts to pass on to their

⁷ Foshee, V.A., et. al. (1998). An Evaluation of Safe Dates, an Adolescent Dating Violence Prevention Program. *American Journal of Public Health*. (88)1.

students. Each year, teen dating violence creates negative consequences that go far beyond the individuals in the relationship – it exacts a societal cost through the increased truancy, alcohol and drug use, and mental and physical health problems experienced by victims of intimate partner abuse. Preventative education will help alleviate these costs by helping young people to seek healthy relationships and escape abusive partners. Moreover, this preventative education can be integrated into preexisting training and educational opportunities such as the Safe Schools Against Violence in Education (SAVE) trainings and health curricula. Education costs can be further limited through the support of non-profit domestic violence organizations and the use of in-school trainers, selected from the staff and administration of each individual school or, where appropriate, school district.

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In conclusion, the Committee supports passage of legislation to protect victims of domestic violence from discrimination in housing, provide reasonable accommodation for victims in places of employment and offer opportunities for early release through merit time for individuals incarcerated for actions directly relating to their abusive experiences. We also urge a continuing discussion regarding enhanced coordination of the distribution of orders of protection and the creation of comprehensive education programs so that domestic and dating violence can be preempted before it begins.

The Committee would be happy to speak with your staff regarding any of these recommendations and will always welcome the opportunity to provide feedback in response to requests from your office regarding matters that may affect the health and safety of New York's survivors of domestic violence.

Respectfully,



Sandra Park
Chair, Domestic Violence Committee