



**NEW YORK
CITY BAR**

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**REPORT ON LEGISLATION BY THE
DOMESTIC VIOLENCE COMMITTEE**

**A.1986-B
S.5822**

**M. of A. Rosenthal
Sen. Golden**

AN ACT to amend the penal law and the criminal procedure law, in relation to the creation of the crime of aggravated family offense.

THIS BILL IS APPROVED

The Domestic Violence Committee of the New York City Bar Association supports A.1986-B/S.5822 (the “Bill”). This legislation would establish the crime of aggravated family offense, a felony offense for abusers who repeatedly engage in domestic violence, and will be an important tool for law enforcement to combat domestic violence.

The Domestic Violence Committee includes lawyers and law students who engage in policy and legal analysis, and attorney and public education on issues relating to domestic violence and other forms of gender-based violence. Our committee members are employed in a variety of arenas, including legal and social service agencies, district attorneys’ offices, law firms, law enforcement, government and academia.

BACKGROUND

Typically, domestic violence cases are part of a pattern of abuse in which the violence continues or escalates. According to the New York City’s Mayor’s Office to Combat Domestic Violence, 38% of battered women will be abused again within six months. Repeat offenders often leave their battered victims beaten, bloody and terrified, only to return to the families that they terrorize after serving little to no jail time. When victims know that reporting domestic violence leads to little punishment, and instead only succeeds in enraging batterers, they are less likely to report domestic abuse, even as it escalates.

Current penalties for repeat domestic abusers do not adequately reflect the gravity of these crimes. Many domestic violence crimes are categorized as misdemeanor offenses under New York law. For example, an offender who punches a victim in the face several times, causing lacerations, severe swelling and bleeding can only be charged with a misdemeanor offense. In fact, an offender who has been convicted of a hundred misdemeanor assaults is subject to the same sentence as

someone who has been convicted of his first misdemeanor assault. Those charged with misdemeanor offenses are commonly released the same night of the arraignment and, upon conviction, are usually not sentenced to any jail time. The maximum jail time on an “A” misdemeanor, which is the highest level misdemeanor, is one year of incarceration, with offenders serving approximately ten months. Consequently, an offender who has repeatedly beaten an intimate partner and has consistently violated an order of protection will usually serve less than ten months of incarceration, a sentence that does not account for the nature of the crime. Unlike other crimes, where a perpetrator is unlikely to continuously target a victim, perpetrators of domestic violence seek to control their victims through abuse and intimidate them into silence. The criminal justice system must take this aspect of domestic violence into account.

THE PROPOSED BILL

The Bill would recognize the problem of repeat domestic violence offenders by creating a crime of aggravated family offense in the Penal Law. If an offender is convicted of two or more “qualifying” specified offenses against a member of the same family or household, as defined in the Criminal Procedure Law 530.11(1), the offender can be charged with an E felony. The Bill uses the same definition of “family or household” as current law, protecting persons who are married, divorced, live together, have children together, and are related by consanguinity or affinity, as well as those in dating relationships (those who are or have been in an intimate relationship regardless of whether such persons have lived together at any time). The specified offenses enumerated in the Bill do not include the lower level offenses of an ACD (adjournment in contemplation of dismissal), disorderly conduct or harassment in the second degree. The Bill would, however, include a number of serious specified offenses such as criminal contempt, menacing, assault, strangulation and rape. The felony level charge of aggravated felony offense will allow law enforcement to hold offenders responsible for repeatedly committing these offenses against intimate partners and possibly prevent further abuse.

Creating a felony-level charge for offenders who repeatedly engage in domestic violence offenses will also enable court supervision of offenders for a longer period of time -- a minimum of five years probation and at maximum, the court will be given the authority to sentence a repeat offender to state prison time. In addition, an order of protection could be extended for a longer period of time, allowing the victim the necessary time to relocate and lessen the emotional ties with the offender.

Finally, the Bill describes the procedural safeguards that apply to this offense. The prosecution must show that the offender has been convicted of a qualifying specified offense in the preceding five years. If the offender is indicted of aggravated family offense, a special information must be filed with the court. The special information shall allege certain elements, including the conviction of the qualifying specified offense, that the offender was convicted of that offense within the preceding five years, and that the person against whom the offense was committed was a member of the same family or household. At trial, in the absence of the jury, the offender will be arraigned on the special information. The offender may admit to the allegations in the special information. If the offender admits to the allegations, then the allegations shall be deemed established and the prosecution may not adduce any evidence of the allegations at trial. If the offender remains mute or denies any of the allegations, the prosecution may present evidence to prove that element of the offense beyond a reasonable doubt, before the jury as a part of their case.

This process assures that the offender will not be prejudiced at trial. The burden of proof for the aggravated domestic violence offense rests squarely on the State.

CONCLUSION

The New York City Bar Association has a long history of working to protect victims of domestic violence and seeking fairness in New York's justice system. A.1986-B/S.5822 is a significant step forward in achieving these goals.

For the foregoing reasons, the Domestic Violence Committee of the New York City Bar Association supports the passage of the Bill.¹

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¹ The Committee notes that we suggested a modification to the bill language in our March 2012 memorandum to the Legislature. We proposed that the aggravating offense should include a felony level offense, not only misdemeanors. We understand, however, that the Assembly has since passed the bill with the intent of addressing the problem of repetitive misdemeanor offenses against domestic violence victims. While we stand by our suggestion, we fully support the instant legislation. The Committee urges the Senate to pass A.1986-B/S.5822 forthwith.