



**Legislative Affairs
(212) 382-6655**

DOMESTIC VIOLENCE COMMITTEE

**A.10492
S.7411**

**M. of A. Lentol
Senator Volker**

AN ACT to amend the penal law, in relation to criminal contempt in the first degree.

THIS BILL IS APPROVED

The Domestic Violence Committee of the New York City Bar Association supports Assembly Bill 10492 and Senate Bill 7411. This legislation enhances the penalty for domestic violence perpetrators who repeatedly violate orders of protection. Specifically, it provides that a second violation within five years would constitute the felony of criminal contempt in the first degree when the violation is of an order of protection for a “non-family offense” and when the conduct violates any part of the order of protection.

Domestic violence, which generally consists of a pattern of behaviors, typically escalates in severity over time. Criminal Court orders of protection, designed to prevent future domestic violence from occurring, are important protections against this escalation in violence when the defendant complies with the terms. Defendants who repeatedly violate orders of protection demonstrate a refusal to obey court orders and could pose a higher risk to victims subject to their escalating and unchecked violence. When the defendant is a “household or family member” of the protected party, these violations are treated seriously and can result in felony criminal contempt charges. Currently, however, repeat offenders who have violated an order against a protected party who is not a member of the same family or household as the offender may only be charged with a misdemeanor for a repeat violation. This bill would ensure that all protected parties receive the same protection.

In addition, the bill would protect victims of violence regardless of what provision of their order of protection was violated. Current case law has not held offenders

accountable because of a narrow interpretation of the “stay away” provision.¹ As a result, it is possible for an offender to commit another act of domestic violence, such as stalking or harassment, without this act being found to violate the order of protection, despite the plain language of the order prohibiting this behavior. Each provision of the order of protection is designed to specifically protect the victim of violence, and each provision must be enforced equally. There is no logical reason to enforce one portion of an order of protection differently from another.

The purpose of an order of protection is to prevent continued violence. Likewise, contempt charges are intended to punish those who would flagrantly disregard a court order and are therefore more likely to commit future offenses. This legislation addresses a critical gap in protection for all victims of domestic violence by eradicating the delineation between victims who are members of the same family and those who do not fall within this definition, such as those who are dating or cohabitants. There is no evidence that such victims are in less danger from their abusers and this law would help ensure their safety as well.

Furthermore, this legislation would punish those who violate provisions other than the “stay-away.” This is an important enhancement as there are other significant ways in which perpetrators can harm their victims, such as through third party contact and stalking behavior where the victim is not present. This amendment would close this gap as well and ensure that all violations would be punishable in a meaningful way.

For the foregoing reasons, the Domestic Violence Committee recommends enactment of this bill.

¹ People v. Dewall, 15 AD3d 498 (2d Department 2-14-05) (court interpreted “stay-away” provision narrowly and held that a perpetrator who waited outside his victim’s apartment had not committed a violation because the victim was not home at the time.)