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REPORT ON LEGISLATION BY
THE COMMITTEE ON CIVIL RIGHTS AND
THE COMMITTEE ON DOMESTIC VIOLENCE

A.755-A **M. of A. Paulin**
S.958-B **Senator C. Johnson**

and

A.1055-A **M. of A. Destito**
S.4460 **Senator C. Johnson**

THESE BILLS ARE APPROVED

The Association of the Bar of the City of New York urges enactment of A.755-A/S.958-B, which would amend the state's Human Rights Law to prohibit employment discrimination against victims of domestic violence, and A.1055-A/S.4460, which would amend the state's Human Rights Law to prohibit housing discrimination against victims of domestic violence.

Victims of domestic violence often lose jobs and housing due to discrimination based on their status as victims of such violence. Employers and landlords fear that the victim's presence in the workplace or housing complex will attract further violence by the abuser and harm to third parties, such as co-workers and other tenants. However, the economic security provided by a job and/or housing is critical to allowing a victim of violence (and her children) to leave a dangerous situation in a safe manner.

Employment Bill

Employment is crucial to victims' ability to build secure and independent lives. However, domestic violence often intrudes on the workplace – a location where an abuser fears losing control of his victim and, often, the one place where an abuser can find a victim who is trying to escape. Abusers frequently interfere with their partners' ability to work by harassing them in the workplace, limiting their access to transportation, and sabotaging childcare arrangements. Studies indicate that between 35 and 56% of employed battered women surveyed were harassed at work by their abusive partners, and according to the General Accounting Office, between one-fourth and one-half of domestic violence victims reported losing a job due,

at least in part, to domestic violence.[1] Employers may penalize or retaliate against employees who experience domestic violence or stalking.

A.755-A/S.958-B would amend the state's Human Rights Law, N.Y. Exec. L. § 296(1), to add victims of domestic violence to the list of groups protected from employment discrimination. The bill prohibits employers or licensing agencies from refusing to hire or employ, or barring or discharging from employment, an individual who is a victim of domestic violence, or to discriminate against such an individual in compensation or in the terms, conditions, or privileges of employment because she/he is or is a victim of domestic violence.

In describing who qualifies for protection from discrimination as a victim of domestic violence, the bill relies on the current definition of "family offense", changed by the Legislature in 2008 to increase access to Family Court. As a result, the bill appropriately provides coverage to the same group of people who are allowed to petition for orders of protection in the Family Court. Specifically, the bill defines "domestic violence victim" as "an individual who is a victim of an act which would constitute a family offense pursuant to subdivision one of section eight hundred twelve of the family court act." Family Court Act § 812(1) defines family offenses as acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, assault in the second degree, assault in the third degree or an attempted assault under the penal law between spouses or former spouses, or between parent and child, or between members of the same family or household.

Section 812(1) further states that "disorderly conduct" includes disorderly conduct not in a public place and that "members of the same family or household" means: "(a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another regardless of whether they still reside in the same household; (d) persons who have a child in common regardless of whether such persons have been married or have lived together at any time; and (e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time." In determining whether a relationship is an "intimate relationship," courts can consider but are not limited to the following factors: "the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship." Furthermore, neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts is deemed to constitute an "intimate relationship" under the Family Court Act.

Because the bill uses the same definition contained in the Family Court Act, individuals will benefit from the Legislature's expanded recognition of what constitutes domestic violence,

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[1] *See* U.S. Gen. Acct. Office, *Domestic Violence Prevalence and Implications For Employment Among Welfare Recipients*, at 19 (Nov. 1998). Domestic and sexual violence also places significant costs on employers in terms of medical expenses, lost productivity, and increased turnover. The Centers for Disease Control and Prevention have estimated that domestic violence costs employers between $5.8 billion and $13 billion annually. Centers for Disease Control and Prevention, *Costs of Intimate Partner Violence Against Women in the United States* (2003). Victims of domestic violence lose 8 million days of paid work each year – the equivalent of over 32,000 full-time jobs. *Id*.

and courts will be able to develop a uniform understanding of who should be able to access civil protections from abuse and discrimination.

Enactment of this legislation would extend the protection from employment discrimination currently afforded only to victims living in New York City and Westchester County to *all* citizens of New York State. *See* N.Y.C. Admin. Code § 8-107.1 (prohibiting employment discrimination against victims of domestic violence, sex offenses and stalking and providing for reasonable accommodations); Westchester County Code §§ 700.02, 700.03 (prohibiting employment discrimination against victims of domestic violence, sexual abuse and stalking, and providing for reasonable accommodations).[2]

Recommendation: The Committees would also support the inclusion of a "reasonable accommodation" provision in the bill, as proposed in the Governor's Program Bill #14 / S.5031 (Hassell-Thompson). This would require employers to reasonably accommodate, absent undue burden, an employee who must be absent from work for a reasonable time because he or she needs to access services or appear in court. The Association supported the inclusion of a "reasonable accommodation" provision when similar amendments were made to the New York City Human Rights Law several years ago.

Housing Bill

We strongly urge the Assembly and Senate to pass A.1055-A/S.4460, which would amend the state's Human Rights Law, N.Y. Exec. L. §§ 292 and 296, to add victims of domestic violence to the list of groups protected from housing discrimination. This bill is critical to assisting victims of domestic violence in New York State to separate from violent situations in a safe manner.

Domestic violence victims are often faced with a stark choice: remain in abusive relationships in order to have a place to live, or risk homelessness to ensure their safety and that of their family members. 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. 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]

Victims of domestic violence leaving emergency shelters, which only provide a temporary refuge, must quickly find permanent housing in order for them and their children to stay safe. But they have few safe, viable options. Currently there is a serious shortage of permanent public housing options that are available in a timely manner. Moreover, many communities have been forced to freeze their federally subsidized ("Section 8") housing voucher programs and project-based Section 8 programs due to recent federal funding cuts. Many

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[2] Illinois has also passed a law prohibiting employment discrimination against victims of domestic or sexual violence, as well as providing them with employment leave, so they can perform their jobs while keeping safe. *See* 320 Ill. Comp. Stat. 180/1-180/45.

[3] 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); 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).

victims of domestic violence are then forced to seek private housing; and when they do, they often face discrimination from landlords and sellers of property. Numerous women report being denied housing outright, and others report being threatened with eviction due to the violent acts of their abusers or because they have sought protection from the police and/or courts. This response to domestic abuse and related criminal activity -- eviction of the victim of violence in an attempt to "get rid" of the problem -- is a common one among landlords, as Congress has recognized. Congress also found that this response has serious consequences for women and their children who are dealing with violence.[4]

The bill would protect persons who are victims of domestic violence living in private and publicly-assisted housing from a variety of discriminatory housing practices. Landlords would be prohibited from: refusing to sell, rent or lease or otherwise deny or withhold housing accommodation; representing that any housing accommodation is not available for inspection, sale, rental or lease when it is in fact available; discriminating in the terms, conditions or privileges of publicly-assisted housing accommodations; making any written or oral inquiry or recording concerning the domestic violence status of anyone seeking to rent or lease publicly-assisted housing accommodations; discriminating in the terms, conditions or privileges of housing accommodations; and printing or circulating any statement or publication in connection with the prospective purchase, rental or lease of housing accommodation that expresses a limitation against domestic violence victims. Furthermore, it would be unlawful for any person or entity to obtain or provide information relating to the domestic violence status of someone who rents, leases or sub-leases a housing accommodation or who seeks to do so.

The bill correctly uses the same definition of "domestic violence victim" found in A.755-A/S.958-B discussed above, which accurately reflects the Legislature's expanded recognition of what constitutes domestic violence under the Family Court Act. As in the employment discrimination context, this updated definition will provide greater protection to victims and help create uniformity in the courts.

Significantly, this bill would fill a gap in the federal Violence Against Women Act ("VAWA"). VAWA protects victims of domestic violence, stalking and dating violence from discrimination in access to federal public housing and Section 8 housing, and provide those victims with defenses to eviction.[5] However, these protections do not apply to victims living in *private* housing. Because of the temporary nature of shelters and the shortage of public housing and subsidized housing in New York, numerous victims fleeing their abusers seek shelter in the private housing market and are not afforded such protections.

The District of Columbia, Indiana, North Carolina, Oregon, Rhode Island, Washington state, and Westchester County, New York already have enacted laws prohibiting housing discrimination against victims of domestic violence.[6] New York State should follow suit. By passing these bills, New York State can ensure that when its citizens take steps to ensure their

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[4] *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, 42 U.S.C. §§ 14043e(3) and (4).

[5] *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).

[6] *See* D.C. CODE § 2.1402.21; IND. CODE ANN. § 32-31-9-8; N.C. GEN. STAT. §§ 42-40, 42-42.2 42-42.3 & 42-45.1; OR. REV. STAT. ANN. § 90.449; R.I. GEN. LAWS §§ 34-37-1, -2, -2.4, -3 & -4; WASH. REV. CODE ANN. §§ 59.18.570, 575, 580 & 585; Westchester County Code §§ 700.02, 700.05, 700.11(h)(2).

safety and that of their children by leaving violent relationships, and then seek to lease, rent, purchase, or inhabit private housing, they are not further penalized by landlords or sellers who discriminate against them simply for being victims of domestic violence.

The anti-discrimination employment and housing bills will not impose an undue burden on employers or landlords. Like other anti-discrimination laws, the bills prohibit adverse actions against employees and tenants only when those actions are based on impermissible, discriminatory reasons.[7] The bills would only protect an employee and tenant who is discriminated against "because of" his or her status as a victim of domestic violence.

Conclusion

Based on the foregoing, the Association of the Bar of the City of New York strongly urges the enactment of the bills detailed above.

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[7] We are confident that courts, drawing on experience and extensive case law in other areas of anti-discrimination law, could distinguish between unlawful discrimination based on the stereotyping of victims of abuse (such as the discharge of a satisfactorily performing employee solely because the employer learned that she was a victim of abuse, or the eviction of a tenant solely because the landlord learned she was a victim of violence), and adverse actions based on legitimate employment or tenancy requirements that apply to all employees or tenants, regardless of their status. As early as 1985, the New York State Attorney General opined that a categorical refusal to rent to victims of domestic violence based on the fear of harm to other tenants would violate the fair housing provisions of the state Human Rights Law. *See* 1985 Op. Atty. Gen. N.Y. 45 (Nov. 22, 1985). *See also Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005) (denying landlord's motion for summary judgment and finding domestic violence victim stated prima facie claim of sex discrimination under federal Fair Housing Act when she was evicted after obtaining an order of protection); *Reynolds v. Fraser*, 781 N.Y.S.2d 885, 891 (Sup. Ct. New York Cty. 2004) (granting domestic violence victim's N.Y. C.P.L.R. art. 78 petition challenging her termination under N.Y.C. Admin. Code § 8-107.1, and noting that despite petitioner's performance problems that could have led to a legitimate termination at an earlier time, the employer chose to terminate her only after discovering she was a victim of domestic violence).