

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

REPORT ON LEGISLATION BY THE COMMITTEE ON DOMESTIC VIOLENCE

A.8375 M. of A. Weinstein

AN ACT to amend the Family Court Act and the Criminal Procedure law, in relation to adding certain sex offenses to enumerated family offenses

THIS BILL IS APPROVED

The Domestic Violence Committee of the New York City Bar Association supports Assembly Bill 8375. This legislation would expand the list of enumerated family offenses to include "sexual misconduct, forcible touching, sexual abuse in the third degree [and] sexual abuse in the second degree."

Currently, the Family Court Act excludes all sexual offenses from the list of family offenses for which domestic violence victims are provided protection. Only when proving enumerated family offenses can victims of domestic violence obtain an order of protection in family court.

New York State recognized and condemned intimate partner sexual violence over 20 years ago when it struck down the marital rape exemption in *People v. Liberta*, N.Y.2d 152 (1984). Yet intimate partner sexual abuse continues to be a significant –and, unfortunately, all-too-common - form of domestic violence as perpetrators may use sexual abuse to further control and hurt their victims. A recent national study found that two-thirds of women who had been physically assaulted by their intimate partner had also been sexually assaulted by that partner¹, yet one study estimates that only 16% of all sexual assaults are reported.²

Even when intimate partner sexual assaults are reported, criminal court may not be the most appropriate venue for addressing these issues. Victims of intimate partner sexual assault may refuse to even disclose the assault to law enforcement officials due to the embarrassment and shame associated with the experience. Even if reported, intimate partner sexual abuse may be difficult to prosecute in criminal court because such assaults often occur in private, are difficult to prove and victims may be reluctant to testify in open court. The instant legislation is especially important because it addresses lower level sexual crimes, which can be even more difficult to prove in criminal court.

² New York State Office for the Prevention of Domestic Violence, *Intimate Partner Sexual Abuse* Report.

¹ Sexual Assault Among Intimates: Frequency, Consequence, and Treatments, NIJ 2005 (NCJ 211678).

Incorporating sex offenses into the definition of family offense would allow victims to petition family courts for the protection they seek. Family courts may provide a more comfortable environment for victims to disclose and seek protection against sexual assault for several reasons. Family court not only has a lower burden of proof, but also tends to be a safer and more appropriate forum for victims to litigate matters of such a sensitive nature. Indeed, the family court environment may encourage victims to not only report the conduct initially in an environment where many intimate details of their family life are discussed, but also to pursue a final disposition. Moreover, victims, as the petitioners, have more control over a case in family court than they do as complainant/witnesses in criminal court, which may make the process easier when discussing sexual assault. Finally, litigants in family court may have access to lawyers and advocates who provide essential supportive services to ensure that victims receive the necessary support and protection.

In addition, abusers may commit family offenses in connection with acts of sexual abuse or misconduct. Therefore, as a practical matter, and for the sake of judicial efficiency, the family court should have jurisdiction to hear and consider those incidences arising out of the same set of facts, including sex offenses. Moreover, because of the sensitive nature of such crimes, litigants may feel uncomfortable raising allegations of sexual assault (and the Bench may be reluctant to hear them) unless they are specifically included in the list of enumerated family offenses and included in those offenses for which an order of protection can be granted. Because reports suggest that women who do report sexual assault are less likely to be re-victimized³, we must encourage victims of sexual assault to report these acts and seek the protection they need in a safe and sensitive environment, such as the family courts.

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

Reissued June 2009

2

³ <u>Id.</u>