

**NEW YORK
CITY BAR**

REPORT ON LEGISLATION

A. 1222
S. 3052

**M of A Paulin
Senator Robach**

and

A. 5916
S. 3072

**M of A Destito
Senator Robach**

THESE BILLS ARE APPROVED

The Association of the Bar of the City of New York strongly urges the Assembly and Senate to enact A.1222 and S.3052, bills which would amend the state's Human Rights Law to prohibit employment discrimination against actual or perceived victims of domestic violence and stalking, and A.5916 and S.3072, bills which would amend the state's Human Rights Law to prohibit housing discrimination against actual or perceived victims of domestic violence and stalking.

Victims of domestic violence, sexual assault, and stalking often lose jobs and housing due to discrimination based on their actual or perceived 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 Bills

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, sexual assault or stalking.

A.1222, sponsored by Assemblywoman Amy Paulin, and S.3052, sponsored by Senator Joe Robach, would amend the state's Human Rights Law, N.Y. Exec. L. § 296(1), to add victims of domestic violence and stalking to the list of groups protected from employment discrimination. The bills prohibit employers or licensing agencies from refusing to hire or employ, or barring or discharging from employment, an individual who is or is perceived to be a victim of domestic violence or stalking, or to discriminate against such an individual in compensation or in the terms, conditions, or privileges of employment because she/he is or is perceived to be a victim of domestic violence or stalking.

The bills are virtually identical, with one important exception: the definition of "domestic violence victim" used. A.1222 would utilize the more expansive definition of "domestic violence" found in the state Social Services Law, § 459(a) and the definition of "stalking" found in the state Penal Code, article 120. The Social Services Law, § 459(a) provides that a victim of domestic violence is a person who is a victim of an act committed by a "family or household member." "Family or household" members are defined to mean: persons related by consanguinity or affinity; persons legally married to one another; persons formerly married to one another regardless of whether they still reside in the same household; persons who have a child in common regardless of whether they were married or have lived together at any time; and unrelated persons who continually or at regular intervals live in the same household or who have lived in the same household. "Stalking" is defined in N.Y. Penal Code §§ 120.45, 120.50, 120.55 and 120.60, and can include the commission of a sex offense.

In contrast, S.3052 defines the term "domestic violence victim" to be a victim of a family offense, as defined by the state Criminal Procedure Law, § 530.11(1), or an offense committed by a member of the victim's immediate family, as defined in the state Penal Code, § 120.40. Unlike the Social Services Law, the definition of "members of the same family or household" in the Criminal Procedure Law *does not* include unrelated persons who live or have lived together in the same household continually or at regular intervals. See N.Y. Crim. Proc. L. § 530.11(1). The definition of "immediate family" in § 120.40 of the Penal Code includes a person who regularly resides or has regularly resided in the household of the victim, but only with regard to stalking offenses. The Senate bill would thus deny anti-discrimination protection to victims of domestic

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.*

violence who are in dating relationships and/or same-sex relationships, and elderly persons who live together or who suffer abuse at the hands of live-in caregivers, among other groups of vulnerable persons.

The Senate passed S.3052 on March 21, 2007. We strongly urge the Senate to amend the bill to conform the definition of “victim of domestic violence” and stalking to the definitions found in A.1222, in order to provide protection to greater numbers of vulnerable persons. We also strongly urge the Assembly to pass A.1222. 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

Housing Bills

We strongly urge the Assembly and Senate to pass A.5916, sponsored by Assemblywoman Roann DeStito, and S.3072, sponsored by Senator Joe Robach, 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. These bills are 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

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).

recent federal funding cuts. Many 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

A.5916 and S.3072, which are identical, would protect persons who are actually or are perceived to be victims of domestic violence and stalking 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.

Both bills use the definition of "domestic violence victim" found in the state Social Services Law, § 459(a) and the definition of "stalking" found in the state Penal Code, article 120. These are the same definitions of domestic violence and stalking used in A.1222, the Assembly bill regarding employment discrimination against victims of domestic violence and stalking and discussed above.

Significantly, these bills also would fill a gap in protection left by the recently-reauthorized federal Violence Against Women Act ("VAWA"). The new provisions of VAWA protect 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.

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(1)(5) & (6) (2006); 42 U.S.C. §§ 1437f(c)(9)(A); 1437f(c)(9)(B) & (C) (2006).

North Carolina, 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 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 or stalking.

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 Furthermore, employers and landlords should not be concerned about liability for discriminating against someone who they did not know was a victim of domestic violence, because the bills only would protect an employee and tenant "who is or is perceived by the actor to be" a victim of domestic violence or stalking. Employers and landlords cannot be held liable unless they have been informed that the employee or tenant in fact is a victim or otherwise have knowledge of the abuse and discriminate against the employee or tenant on this basis.

Conclusion

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

⁶ See N.C. GEN. STAT. §§ 42-40, 42-42.2 42-42.3 & 42-45.1; 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).

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).