

DOMESTIC VIOLENCE**DOMESTIC VIOLENCE****Statement of Position****As announced by the State Board, June 1983**

Domestic violence is a serious crime but because of the special relationship between the parties, the League of Women Voters of New York State believes that it should be possible to bring such cases in Criminal and Family Court.

Special training should be required for judges, police officers, medical personnel, attorneys, social workers, court personnel and others likely to have contact with perpetrators or victims of domestic violence. Both the victim of a violent act and the person who commits it need special services to break this pattern. The LWVNYS recognizes that the person who resorts to abuse of an individual needs help and therefore supports existing prevention and treatment programs and the creation of new programs as means of reducing domestic violence. Services such as shelters, counseling, legal services and hot lines are also needed to provide for the safety of the victims of domestic violence because of the ever present physical and psychological danger to them.

Programs to reduce the incidence and effects of domestic violence should be funded by a combination of public and private funds.

The League supported legislation in 1983, which set up a trust fund with state revenues to fund programs that contravene domestic violence. The Children and Family Trust Fund established in 1984 was passed with League support. Funding for this trust fund was passed the following year also with League support.

The League lobbied vigorously for the Family Protection and Domestic Violence Intervention Act of 1994. Passed by the legislature and signed into law, this measure provided much needed comprehensive domestic violence reform. The League position allowed us to support critical provisions in the legislation such as: individuals' ability to bring cases in either civil or criminal court, mandatory arrest for perpetrators of domestic violence, law enforcement, and judicial training.

At the 1995 LWVNYS convention, delegates supported editorial changes in the domestic violence position that reflects the changes made by the Family Protection and Domestic Violence Intervention Act in allowing cases to be brought in both the Criminal and Family courts. The original language read "... to bring such cases to **either** the Criminal or Family Court." The position now reads "... to bring such cases in Criminal **and** Family Court." Another change in the position's wording was from "... spouse ..." to "... individual ..."

In lobbying for the Family Prevention and Domestic Violence Intervention Act, the LWVNYS found that our position limited action to violence perpetrated against spouses. Recognizing that domestic violence is not limited to spouses, but rather occurs between many individuals in an intimate or formerly intimate relationship regardless of marital status, the League has lobbied for a broader

interpretation in statute of the definition of “family” with respect to the incidence of domestic violence. Proposed legislation would address the realities of domestic violence and the League concern that safety is afforded to all victims of battering.

The League has lobbied for the redefinition of family. The Assembly has passed the legislation each time, but the bill never gets out of the judiciary committee of the State senate.

In 1994, delegates to the LWVUS convention adopted by concurrence a position on Violence Prevention (**LWVUS Impact on Issues 2006-2008, p. 76**), based on work done by a number of state and local Leagues.

The LWVNY joined as Amicus Curiae in the Nussbaum v. Steinberg case, which was filed on February 6, 1995. In that case, Hedda Nussbaum sought money damages from Joel Steinberg for extensive physical and psychological injuries he inflicted upon her between 1978 and 1987.

Steinberg moved for summary judgment because almost all of the events alleged occurred more than one year before the action was commenced and as such were time-barred by CPLR 3211(a)(5). The Nussbaum brief opposed this action on the basis that CPLR 208 allows a tolling of the one-year tort statute of limitations upon her qualifying incapacity. This case would set a precedent for women to bring suit against an abuser notwithstanding the one-year statute of limitations based on proven diminished capacity. The League joined in support of Hedda Nussbaum believing that the case presents important issues concerning a battered woman's right to civil redress.

In 1996 and 1997, League supported time limit exemptions for domestic violence victims receiving public assistance. According to survey results released by the National Organization for Women Legal Defense Fund, in some areas 60%-80% of welfare recipients have been victims of domestic violence as adults.

In 1998-99, the League worked closely with the NYS Coalition Against Domestic Violence. Using the League's national position on violence prevention, we supported the Anti-Stalking legislation. (**LWVUS Impact on Issues 2006-2008, p. 76**). This bill would define stalking as a separate crime in the Penal Code adding stiffer penalties than were previously imposed for the crimes of menacing and harassing. The League believed the current laws against stalking were inadequate and placed women at risk. New York was the only state without a specific crime of stalking. The menacing and harassing statutes were rarely prosecuted and conduct that constitutes behavior commonly identified by the public as “stalking” was poorly defined in the statutes. Inconsistent definitions and law enforcement, judicial, and jury misinterpretations resulted in increased freedom for stalkers to perpetuate their intolerable behavior.

Previous attempts were made by the Legislature to address some forms of stalking by including stalking behavior in the Penal Code under menacing and harassment. However, it was poorly defined and left a very important loophole—stalkers needed to use a weapon or dangerous instrument to be prosecuted for more serious offenses. The Anti-Stalking legislation was combined with a clinic access bill, also supported by the League. The Assembly passed this bill in the final hour of the regular

session. This agreed-to legislation was passed by the Senate later in the year, signed by the governor and took effect December 1, 1999.

Other measures supported by the League in 1998-99 included lowering the evidentiary threshold for the proof of physical and serious physical injury and continued to lobby for legislation expanding the definition of family in the Family Court Act and Criminal Procedure Law (as noted above).

The HIV/partner notification bill supported under the League's position on health care contained a section on domestic violence, thanks to the League. As a result of the League's active involvement, we participated at a NYS Health Department conference designed to establish protocols for the domestic violence provision in the HIV/partner notification law and wrote a critique of the draft protocols when they were issued. In 2007, legislation was introduced, passed by the legislature, and signed by the Governor, which would require an **indicted** rape suspect, **before conviction**, to submit to an HIV testing. The victim would then be notified as to this suspects HIV status.

In 2003, the Legislature passed a number of measures, which were supported by the League, to further safeguard domestic violence victims and their children. Chapter 579 of the Laws of 2003 increased the maximum duration of orders of protection issued by a family court from one to two years. The duration of orders of protection where aggravating circumstances exist was increased from the current maximum of three years to five years. In addition, violation of a valid order of protection will constitute aggravating circumstances. Currently, victims of domestic violence who need continued protection must return to court to extend the order when it expires. This measure will help victims by giving the court greater discretion to issue orders of protection for longer periods of time. Chapter 261 of the Laws of 2003 extended the law that allows domestic violence victims to go to family court at night to obtain orders of protection without the abuser being present ("ex parte").

The League in conjunction with local and state Domestic Violence Coalitions has continued to lobby for legislation to protect and make it safer for victims of these crimes. Bills signed in the 2006 and 2007 legislative sessions included the following:

- Eliminates the statute of limitations on first degree rape, first degree criminal sexual act, first degree aggravated sexual abuse and first degree course of sexual conduct against a child.
 - Requires the Supreme Court to assign counsel to indigent people in divorce cases for issues in Family Court such as family offense, custody, and child support. This does not apply to the divorce action.
 - Allows protection of companion animals to be added to an order of protection issued in a criminal court or family court.
 - Extends the maximum length of criminal court orders of protection.
 - Amends the penal law regarding sexual contact with a child to eliminate the lower penalty when the sexually abused child is closely related to the perpetrator
 - Prohibits an insurance company from disclosing to the person against whom an order of protection was issued the address and telephone number of the insured victim.
 - Directs the NYS Office of Children and Family Services to facilitate the establishment of Child Advocacy Centers to serve child victims of sexual assault and serious physical abuse.
 - Relates to termination of a residential lease by victims of domestic violence.

- Authorizes an experimental program in which orders of protection filed and entered by the family courts of certain counties (Erie, Onondaga, Nassau, New York, Westchester, Richmond, Kings and Albany) shall be transmitted electronically.
- Provides for revocation or ineligibility for firearms license or surrender thereof for willful violation of order of protection involving physical injury.

In addition to the League's advocacy for expanded access to Family Court by redefining the definition of family, two other important bills have passed the state Assembly, but are still pending Senate consideration. The first bill is Prohibition of Employment Discrimination and the other is Prohibition of Housing Discrimination against victims of Domestic Violence. The League will continue to lobby on these issues.