

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 LWNYS 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 was established in 1984 and funding legislation was passed 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 LWNYS 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 LWNYS 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 be 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, based on work done by a number of state and local Leagues. The League subsequently endorsed the Violence Against Women Act (VAWA), which passed Congress and was signed by the President in the Fall of 1994 as part of a comprehensive crime bill.

This legislation has been renewed every five years. It is significant in that it created the first federal legislation acknowledging domestic violence and sexual assaults as crimes and provides federal resources to encourage coordinated community responses to combat violence.

In between the five year increments of reauthorization, it has been necessary to follow the appropriation process each year to be sure the programs are adequately funded.

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 attending regional meetings and lobbying on several initiatives. Using the League's national position on violence prevention, we supported the Anti-Stalking legislation. (*Impact On Issues*, 2002-2004, p. 66, LWVUS) 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. This bill was passed by the Assembly 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. We continue to monitor the success of the provision.

In 2003, the Legislature passed a number of measures, which were supported by the League, to further safeguard domestic violence victims and their children. Ch. 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. Ch. 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. Recent bills signed by the governor include:

- 6/23/06: 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.
- 8/26/06: 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.
- 7/26/06: Allows protection of companion animals to be added to an order of protection issued in a criminal court or family court.
- 8/25/06: Extends the maximum length of criminal court orders of protection.
- 11/1/06: 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
- 11/25/06: 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.

- 2/12/07: 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.
- 6/4/07: Relates to termination of a residential lease by victims of domestic violence.
- 7/18/07: 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.
- 8/19/07: Providing for revocation or ineligibility for firearms license or surrender thereof for willful violation of order of protection involving physical injury.

In the next two years, the League has noted the following activity. After 20 years of lobbying for this bill, the Expanded Access to Family Court Act was passed and signed into law on July 21, 2008. The League joined over a hundred organizations in a coalition at the beginning of the year and pressed for passage through phone calls, presentations, media releases etc. This is a significant event because it changed the definition of who can receive an order of protection in family court from any member of the same family or household to former spouse whether or not they are living together now or unrelated persons who continually or at regular intervals reside in the same household as well as persons who are, or have been, in a dating or intimate relationship whether or not they have ever lived together. This law has caught up with what intimate relationships represent in the 21st century. Over 3000 people, who would have been previously excluded, have used this law since July.

Persistence is an important aspect of League activity and one person can make a difference as well as a coalition. An example is the passage of a local bill in the Monroe County legislature against discrimination in housing. This bill was introduced in September of 2007 with the expectation that the majority party would bury the bill. However, Carly W. began her campaign. First, she prepared a letter for all the supporters to sign. Then she contacted every legislator in both parties on the state level. These people had been contacted for several years on issues of DV so they knew Carly and her expertise. They in turn wrote the local legislators in support of the bill. She next spoke at every open meeting of the legislature from September to December and explained its necessity from a variety of viewpoints.

Our local League wrote our letter of support. She told me that every time she met with the legislators, she would mention the League to show the broad support for this bill. On December 11, 2007, in the wee hours of the morning this anti-discrimination bill passed. It should be noted that the only other county in NYS to have anti-discrimination in housing legislation is Westchester County.

Now our efforts need to be directed to passing the anti-discrimination bills in housing and employment in 2009 on the State level.

Legislation passed in 2008:

- 7/6/08: "911 Law" which criminalizes interference with calls for emergency assistance?
- 5/2008: Free Security Freeze on Credit Report for DV victims
- 4/2008: Non-Penalties for Good faith Efforts to Protect Child in Custody/Visitation
- 9/25/08: Provides for Undocumented Immigrant Eligibility for DV Shelter
- 9/2008: Allows Child Protection Services Access to Criminal History Reports of Adults in Residence