

STATEMENT OF

CYRUS R. VANCE, JR.
NEW YORK COUNTY DISTRICT ATTORNEY

BEFORE THE COMMITTEES ON PUBLIC SAFETY AND WOMEN'S ISSUES

June 13, 2011

Good afternoon Chairman Vallone, Chairwoman Ferreras, and members of the Committees on Public Safety and Women's Issues. I am District Attorney Cyrus R. Vance, Jr. Thank you for this opportunity to discuss our efforts to end the vicious cycle of domestic violence.

It is no exaggeration to say that over the past several months, newspapers have reported nearly non-stop domestic violence headlines. Virtually every week the public is saddened and horrified by the news of another domestic violence related murder.

The NYPD received 249,440 domestic violence complaints last year. Every single one of them was a potential homicide. Since I took office in January 2010, there have been 13 domestic violence homicides in Manhattan. In just the past few months, numerous horrific homicides have been committed statewide arising out of or related to domestic violence. In my jurisdiction, Michael Kenny was indicted for allegedly stabbing Denise Kenny to death in a midtown hair salon. Reynaldo Lebron was indicted for shooting Massielle Abreu to death in front of their three children in Harlem. In the past three months, in other counties, two police officers have lost their lives while responding to domestic violence incidents.

But this is only a handful of high profile cases. Headlines simply cannot accommodate the stories behind the 5,466 domestic violence cases that worked their way through Manhattan criminal courts in 2010; the upwards of 700 domestic violence incidents reported to NYPD every single day, and the 67,761 domestic violence related home visits NYPD made in 2010.

This domestic violence pandemic spreads far beyond the borders of New York City. The Uniform Crime Reporting program outside of New York City found that in 2009, 26,251 assaults – that is 25% of all assaults – were committed by intimate partners statewide. That same year,

New York State courts issued 262,327 orders of protection. These statistics highlight the statewide scope of this problem.

Yet, these staggering numbers merely represent the incidents that have been reported to authorities. Domestic violence offenses are consistently some of the most underreported crimes. According to a National Violence Against Women Survey, only one-quarter of all physical assaults, one-fifth of all rapes and one-half of all stalking incidents committed against women by intimate partners were reported to the police. As these offenders evade prosecution, and the attendant criminal repercussion of their actions, evidence shows that they often escalate their behavior. In fact, 66% of domestic violence victims who have been killed had prior incidents of abuse that were never reported to the police.¹

The criminal justice system can, and I believe has a duty to alter these numbers and sad outcomes. But first, we have a responsibility to show that domestic violence reports will be dealt with seriously; to prevent the escalation of this violence; and to help victims escape the violence and return to a place of safety.

Ironically, a major obstacle to better protect women and children are laws that tie the hands of prosecutors seeking stronger sentences for repeat domestic violence offenders. Under current New York law, unless there is serious physical injury or physical injury caused by a weapon, most domestic violence crimes qualify merely as misdemeanors.

With only this misdemeanor charge at their disposal, prosecutors across the state see domestic violence abusers repeatedly cycle through the system, serving little or no jail time. Put differently there is little disincentive for them to do it again because the penalties are so low, even for repeat offenders. But, the opposite is true for the victim. The impact on the victims of repeated violence is severe and unconscionable. According to the Mayor's Office to Combat Domestic Violence, nearly 40% of battered women are victimized again within 6 months. From 2005 to 2010, in New York County alone, 679 individuals were convicted of two or more domestic violence offenses.

As an example, one particular defendant in Manhattan has more than 100 prior criminal convictions - yes, more than 100 - that include assaults against various girlfriends, year after year. Yet, this offender could punch his girlfriend in the face on 100 more occasions and still only be charged with a misdemeanor. This is abhorrent and unacceptable.

When a victim is repeatedly abused, but the consequences to the offender are the same every time, it sends a conflicting message about the importance of the victim and the gravity of the crime. Domestic violence is a matter of life and death – literally; evidence has shown time and time again that domestic violence can and does turn deadly.

That is why I worked closely with Senators Martin Golden, Daniel Squadron, Charles Fuschillo, and Timothy Kennedy, and Assemblywoman Linda Rosenthal and Speaker Silver to draft S1510-A / A1986-A, legislation that would create an E felony for repeatedly engaging in domestic violence. Since its introduction it has gained momentum and I am proud to report that more than 40 legislators, from both sides of the aisle, have signed on as co-sponsors. It is truly a bipartisan effort, and the reasons for this are clear. This bill is simple and straightforward. It enumerates “qualifying” domestic violence offenses, such as Aggravated Harassment and Strangulation, based upon the most common domestic violence convictions that my office saw last year. If an offender is convicted of two or more qualifying offenses against a member of the same family or household within the immediately preceding five years, the offender can be charged with an E felony.

This felony charge for repeat offenders will do several things to break the cycle of abuse. First, it sends a message to abusers and victims that the criminal justice system does not tolerate recurring acts of domestic violence. Second, families would be better protected from continued violence, because a felony order of protection lasts almost twice as long as one from a misdemeanor case. Under this felony charge, perpetrators of domestic violence would at a minimum be eligible for probation supervision for five years. In more serious cases, judges could incarcerate batterers in state prison. Finally, when incarceration is necessary and appropriate, these felony offenders would have much better access to re-entry and rehabilitative programs. Judges would also have the discretion to require offenders to participate in proven treatment programs.

In other words, creating an E felony for Aggravated Domestic Violence isn't simply about jail time; it is a concerted effort to break the cycle of domestic violence while providing families with the safety that they deserve.

Organizations throughout New York State have recognized and praised the value of this legislation. The Downstate Coalition for Crime Victims, The New York State Coalition Against Domestic Violence, Vera House (of Onondaga County), The New York State Law Enforcement

Council, The Violence Intervention Program, and Safe Horizon, the largest domestic violence victim services agency in the United States, are all advocates for our bill and are writing letters of support urging its passage. News outlets, including *The New York Daily News* and *The New York Observer*, have also endorsed our bill.

The reason for this support is clear. This bill represents a pragmatic and long overdue recognition that domestic violence is not a one-time event; it is a serious crime that often escalates. S 1510-A / A 1986-A would provide prosecutors with a valuable tool in the fight against domestic violence, and I urge the City Council to pass the resolution calling on the Legislature to pass the bills.

I caution that the fight against domestic violence does not, and cannot, end with this legislation. The relationship between the victim and abuser in domestic violence is often complicated, with victims who may be financially dependent upon their abusers, or after years of abuse blame themselves for the violence. This cycle of abuse and control makes victims particularly vulnerable to intimidation and threats aimed at preventing them from pursuing the prosecution of their abuser. Even in cases where the victim notifies law enforcement and an arrest is made, we know from long experience that it is extremely difficult to bring a case through to a disposition. Of the 26,280 domestic violence crimes that were arraigned citywide in 2010, fewer than 10,000 resulted in a conviction.

To address these complexities, my office, along with the Mayor's Office to Combat Domestic Violence and the borough president is working to bring a Family Justice Center to Manhattan. This Center is designed to bring under one roof services for those escaping domestic violence. Specifically, the Family Justice Center would focus on improving three types of services for domestic violence victims. The first is Crisis Intervention: The Center would offer victims and their children safety and emergency care at the time of a violent incident. It would also provide long and short-term individual and group counseling that is linguistically, culturally, and age appropriate. Second, it would provide legal assistance: The Center would offer legal counseling, in English and Spanish, as well as support the representation of clients in Family and Supreme Court in matters concerning orders of protection, support, paternity, custody/visitation, and matrimonial proceedings. Third, the Center would provide Educational Outreach. Employees would conduct on and off-site pro se and legal clinics on matrimonial and family court proceedings, immigration issues, and safety planning. The Family Justice Center's client-

centered approach will guide victims and enable them to determine their own path of action for improving their well-being.

These centers have served thousands of domestic violence victims in Brooklyn, Queens and the Bronx. It is essential that we provide the same services to the citizens of Manhattan.

My office is also dedicated to ensuring the best practices when prosecuting crimes of domestic violence. That is why last year I formed the Special Victims Bureau, to focus on domestic violence, sex crimes, child abuse, and elder abuse. The cases that fall under the purview of the Special Victims Bureau are highly sensitive and involve some of our most vulnerable victims. The consolidation of our resources in one bureau ensures that attorneys who have experience with the sensitive nature of these prosecutions are readily available to bring offenders to justice and to support these victims, whose lives are often upended due to the nature of these types of crimes. The Special Victims Bureau has greatly increased the ability to share information, coordinate training, access investigative resources, and match victims with the appropriate counseling and social services.

In addressing you today, I hope to call your attention to the devastation caused by the proliferation of domestic violence. But I come to you with a message, not of defeat, but of hope for the future. There is much that can – and must – be done in the fight against domestic violence. A very real step forward that we can take as a State is by adopting S 1510-A / A 1986-A to show that in New York, we recognize that domestic violence is a serious offense and that those who commit these crimes will be prosecuted commensurate to the gravity of their offense. This is a bill that all New Yorkers can proudly support. Innocent lives depend upon it.

¹ New York City Mayor's Office to Combat Domestic Violence, available at <http://www.nyc.gov/html/ocdv/html/publications/publications.shtml#brochures>.

FOR THE RECORD



Civil Practice
199 Water Street
New York, NY 10038
T (212) 577-3300
www.legal-aid.org



**Association of Legal Aid Attorneys
UAW 2325 (AFL-CIO)**

568 Broadway, 702A
New York, NY 10012-3225
212.343.0708 ▼ Fx 212.343.0966
alaa@alaa.org ▼ www.alaa.org



Blaine (Fin) V. Fogg
President

Steven Banks
Attorney-in-Chief

Adriene L. Holder
Attorney-in-Charge
Civil Practice

Joint Testimony of The Legal Aid Society, Civil Practice

and

UAW Local 2325 – Association of Legal Aid Attorneys (ALAA)

for

**New York City Council Committees on Women's Issues and
Public Safety**

June 13, 2011

INTRODUCTION & EXPERTISE OF THE LEGAL AID SOCIETY AND ALAA

The Legal Aid Society is the nation's oldest and largest non-profit law firm dedicated to serving low-income families and individuals. Through our three major practice areas, the Civil Practice, the Juvenile Rights Practice, and the Criminal Defense Practice, The Legal Aid Society handled over 300,000 legal matters for clients.

Founded in 1969, UAW Local 2325, the Association of Legal Aid Attorneys (ALAA), is the oldest and largest major union of lawyers in the United States. ALAA is affiliated with the United Auto Workers, Region 9a, which has over 60,000 active and retired members in New England, Puerto Rico and New York, including the City and Long Island up to Albany. ALAA

is comprised of some 830 attorneys across The Society's three practice areas. Every day, these ALAA members appear in court and administrative proceedings throughout the five boroughs and beyond, representing our clients' interests in proceedings ranging from matrimonial cases involving domestic violence in State Supreme Court to abuse and neglect proceedings in Family Court.

The Society's Civil Practice has offices in every borough of the City and handled more than 38,000 civil matters for its clients last year and won over 90 percent of cases that went to court or an administrative hearing. In addition, some 2 million low-income New Yorkers benefit from our pending class action law reform litigation. The Civil Practice works to improve the lives of needy New Yorkers by helping vulnerable families and individuals on issues ranging from domestic violence, health care, housing, employment and training, economic development, public assistance, and disability-related issues.

The Society's City-wide Family Law Practice includes a Domestic Violence Project that provides legal representation regarding divorce, custody, orders of protection, child support, adoption, economic justice and immigration remedies for undocumented survivors of domestic violence. Our Domestic Violence Project staff often works in close collaboration with other areas of the Society's Civil Practice to address holistically the myriad of legal issues faced by survivors of domestic violence, in particular access to housing, public assistance and health care. The Legal Aid Society's Domestic Violence Immigration Program staff plays an active role in the New York City Violence Against Women Act (VAWA) Advocates group, which is comprised of other legal service providers throughout the area providing representation and advocacy on immigration options for domestic violence survivors. This staff also participates in national and state-wide advocacy efforts for immigrant victims of domestic violence, most

recently in coalition-building around working to end New York State's participation in the so-named "Secure Communities" federal initiative. The Society's Domestic Violence Project staff also participates actively in the Lawyer's Committee Against Domestic Violence (LCADV), a coalition of over 100 lawyers from the greater New York City area whose work supports victims of domestic violence and their children.

ANTI-DOMESTIC VIOLENCE LEGISLATION

Our testimony focuses on two pieces of proposed legislation before the Council today: Resolution 0817-2011 regarding extending emergency shelter for victims of domestic violence and Resolution T2011-3145 concerning duties of interpreters with regard to orders of protection. The first section addresses The Legal Aid Society and ALAA's support of the first piece of legislation extending domestic violence victims' stay in shelter to a minimum of one-hundred-and-eighty days. We offer background information relevant to our clients in this area with a focus on the positive impact that this bill would have on our immigrant survivors of domestic violence and their families. The second section addresses our support of the second piece of legislation and the consequences of not translating properly or understanding thoroughly an order of protection. We look at the impact that failing to translate orders of protection has had on our clients' safety.

First Bill: Resolution 0817-2011: Extending shelter for DV survivors

The Legal Aid Society and ALAA strongly support the proposed legislation seeking to extend the maximum length of stay at an emergency residential shelter residential program for victims of domestic violence to not less than 180 days. While obtaining stable, safe housing when leaving shelter is an extraordinarily difficult endeavor for anyone, it is an especially daunting task for survivors of domestic violence and their children, who likely fled to shelter

because of violence and the risk of harm to themselves or their children. Extending the stay at these shelters to a minimum of 180 days would help provide these survivors of domestic violence with more stability and economic independence from their batterers. In addition, the increased number of days would help insure that immigrant survivors of domestic violence have a chance for the United States Citizenship and Immigration Service (USCIS) to adjudicate their petitions for DV-related immigration benefits.

Brief Summary of Common Legal Options for Undocumented Survivors of Domestic Violence and Sexual Assault

In 1994, Congress enacted the Violence Against Women Actⁱ (VAWA) to prevent citizen and lawful permanent resident batterers from using their control over different stages of the family immigration process of their spouses as part of the cycle of abuse. It is quite common for batterers to refuse to file a family visa petition for their spouses, threaten to withdraw a petition that has already been filed or threaten to have their spouses deported if they take any steps to report the abuse or leave the relationship. Many undocumented survivors rely on their abusive partner to provide economically to the household -- including providing shelter. VAWA legislation permits spouses of U.S. citizens and lawful permanent residents to initiate or complete this family petition process without their abuser's cooperation.ⁱⁱ This process is referred to as self-petitioning.

Immigrants who are married to their abusive citizen or resident spouses for less than two years when their residency applications are approved receive a conditional "green" card valid for two years. They must file jointly with their spouses to remove this condition on their lawful permanent residence within the ninety-day period prior to the expiration of their conditional residence.ⁱⁱⁱ This requirement gives batterers yet another opportunity to use the immigration

process to maintain control and domination over their spouses. A battered immigrant in this situation can apply for a battered spouse waiver to remove the conditions on her lawful residence by herself.^{iv}

In 2000, as part of the Victims of Trafficking and Violence Protection Act (VTPRA),^v Congress created a new non-immigrant category, the U visa, at least partially as a way to legalize battered immigrants who were not legally married or who were married to people without status. The U visa also helps victims of certain other crimes.

To qualify for a U visa, applicants must show that they are a victim of a qualifying crime, have suffered substantial physical or mental abuse as a result of that crime and that they are helping or were helping law enforcement in the investigation or prosecution. A law enforcement agency must sign a certification attesting to the victim's helpfulness or cooperation only. U visas are numerically capped at 10,000 visas a year.^{vi} They are intended to provide humanitarian relief to victims of crimes and to be used as a tool to assist law enforcement in the investigation or prosecution of crimes. Unlike many non-immigrant visas, the U visa provides a possible path to lawful permanent residency after three years in U non-immigrant status.

Connection between VAWA Relief and Public Benefits Programs for Undocumented Survivors of Domestic Violence

Lawful immigration status and economic assistance are two critical components on a battered immigrant's road to an independent, violence-free life. Mental and/or physical cruelty are often intertwined with economic control by the abuser. Public assistance and employment authorization go hand in hand to facilitate independence and stability, including housing

stability, for abused undocumented immigrants. Without this key component, many survivors of domestic violence return to their batterers.

Eligibility for Federal and New York State benefits programs for immigrant survivors of domestic violence are completely interdependent on the type of VAWA relief that a battered immigrant seeks. VAWA self-petitioners are eligible for Safety Net Assistance and Medicaid a few months after filing an application with USCIS. Within the group of VAWA self-petitioners, those whose eligibility is based on marriage to a U.S. citizen are able to receive employment authorization several months after applying for VAWA relief while their applications are adjudicated. VAWA self-petitioners whose eligibility is based on domestic violence perpetrated by a lawful permanent resident, however, must wait until their self-petitions are approved to receive employment authorization. Currently, a VAWA self-petition takes an average of 7.2 months to be approved according to USCIS's Website.^{vii} Increasing the stay in DV shelters to 180 days would allow immigrant survivors of domestic violence the chance to have their petitions adjudicated while they are still in DV shelter. The current limitation on the number of days people can stay in DV shelter makes this option an impossibility.

The Office of Temporary and Disability Assistance's (OTDA) current position is that non-interim relief U visa applicants must wait until their U visas are approved by USCIS. USCIS's Website presently indicates that a U approval takes 4 months.^{viii} However, the experience of the attorneys and advocates in our Domestic Violence Project is that it takes longer than four months for USCIS to approve an application. Moreover, to be eligible for a U visa, one must obtain a certification from a qualified law enforcement agency, such as the District Attorney, the Administration for Children's Services, or the New York City Police Department.

Some District Attorneys Offices in the City will not provide a certification until the criminal case has come to a close. That process alone can take well up to a year.

Employment authorization is critical in assisting both VAWA self-petitioners and U visa applicants with economic independence. It is especially crucial to secure transitional and other housing options. Neither approved VAWA self-petitioners nor approved U visa applicants are eligible for federally-funded housing programs or for New York City Housing Authority (NYCHA) programs. In recent years, the Department of Homeless Services, in coordination with other City agencies, established the Advantage NY Programs to help people transition out of shelter into stable, safe housing. However, the Advantage Program, which is currently not even available to new applicants leaving shelter and is the subject of litigation right now, has required that applicants receive federal disability benefits, which are not available to immigrants without status, or demonstrate a lawful ability to work. Many of our clients simply cannot do this in the timeframe they need to because they are not employment authorized while their cases are still pending with the USCIS. Even battered immigrants who have other qualifying members in the household, such as U.S. citizen children, find the unsubsidized portions of their rent cost prohibitive. These issues present an enormous hurdle for battered immigrants seeking to transition out of shelter and/or obtain more permanent housing. Extending the stay for survivors of domestic violence to 180 days will help ensure that USCIS has a chance to adjudicate their petitions and allow eligible survivors the chance to obtain employment authorization on their road to economic independence and stability.

Typical Examples of the Effects of Inadequate Stays in DV Shelters

Ms. M

Ms. M is a survivor of domestic violence who fled her abusive husband after a particularly brutal attack when he held her down to the ground and strangled her until she lost consciousness. She entered DV shelter with her 6-month-old daughter. Ms. M had a conditional green card when she entered shelter, but she had already filed a Battered Spouse Waiver with USCIS. While in the last 30 days of her stay in DV shelter, she received the happy news that her immigration application had been approved and that she would receive her permanent green card in the mail shortly. NYCHA contacted Ms. M, and she started looking at different NYCHA apartments.

When her permanent green card arrived, she happily showed it to NYCHA to demonstrate her eligibility for the housing. Unfortunately, USCIS had made an error on her green card, through no fault of her own, and NYCHA deemed Ms. M ineligible for housing. Feeling that she was left with no choice and with the DV shelter informing her that her stay was coming to an end, Ms. M and her baby returned to her husband's home.

If Ms. M had additional time in the DV shelter to sort out the error on her permanent green card and petition USCIS to replace the card, she would have been eligible for the NYCHA apartment and she would not have had to return to her husband's home – and his abuse.

Ms. G

Ms. G came to the United States from China to be with her husband whom she had met through church. Her husband told her that he would arrange for all of her immigration paperwork once she arrived here, and she looked forward to beginning their lives together. For a

short time after her arrival, she and her husband were happy. After around one year of marriage, she found out she was pregnant. Excited and nervous about the future as an expectant mother, she told her husband the good news. He slammed her against the refrigerator door and accused her of being a whore. Stunned at this attack, Ms. G begged her husband to calm down, and he apologized. But the abuse only got worse. Her husband held a gun to her head and told her that he would shoot her in her leg so that she would just bleed to death slowly and suffer. He told her that if she told anyone, he would have her deported and she would never see her baby boy again.

One afternoon, her husband drove her to the airport and threw her out of the car with a one-way ticket back to China. Terrified, Ms. G went to the police who took her to a DV shelter. Ms. G is eligible for a VAWA Self-Petition based on her marriage to her husband, but she was unaware of this immigration remedy. Without work authorization or status, Ms. G could not obtain employment sufficient to sustain herself outside of shelter. Towards the end of her stay in shelter, Ms. G was referred to The Legal Aid Society's Domestic Violence Project, which immediately began the process of investigating and preparing a Self-Petition. However, for Ms. G, there wasn't enough time for her to receive any benefits while she was still in the safety of the DV shelter, which is no surprise since even USCIS currently estimates that it will take at least 7.2 months to adjudicate a self-petition.

Without work authorization, Ms. G believed she could not properly provide for herself and her baby. Without the daycare provided in the DV shelter, she couldn't even go to the low-paying job that she had to get by. Left with no choice, Ms. G returned to her batterer. Shortly after she returned home, her husband filed for an order of protection against her, making up lies about what she had done to hurt him physically, and he filed for custody. When she was in DV shelter, he was unable to find her to serve her with these Family Court papers, but once she

returned home, he knew what to do to keep her under his power and control. Alone in this country, despondent, and forced out of her home again, Ms. G left her child with her husband to rent a room in Queens.

Conclusions

Extending the stay in DV shelter to a minimum of 180 days would be an extremely important step in helping survivors of partner violence obtain economic independence from their batterers and, ultimately, stable housing. The current time limits for DV shelter do not even afford an opportunity for immigrant survivors of DV to have their petitions adjudicated by USCIS, depriving them of the ability to receive work authorization or the ability to receive public assistance to help them build a bridge towards stability and independence.

Even non-immigrant survivors of domestic violence face great obstacles in obtaining stability and safety in the current inadequately short stays in DV shelter. The additional time in shelter will help these DV victims and their children receive the resources, training and counseling necessary to start a new chapter in their lives, free from violence and in stable, safe housing.

Second Bill: Resolution T2011-3145: Interpreting essential terms of OPs

The Legal Aid Society and ALAA support the proposed legislation amending the Family Court Act and Criminal Procedure Law to require court interpreters to translate the essential terms and conditions of temporary and permanent orders of protection (OPs) on the record. Through our Domestic Violence Project in the Civil Practice, we represent a large number of clients who do not speak English as their first language. Some can converse about basic topics in English but cannot read or write in English, or require interpreters for complex topics.

This bill is important not only to insure that the protected party understands the terms and conditions of the order but also so that person against whom the order of protection runs understands the legal effect of violating the order and exactly what behavior and actions are prohibited. The Legal Aid Society and ALAA hope that the Council will extend this legislation to include a requirement that the interpretation of essential terms and conditions also occurs in matrimonial actions in Supreme Court, as orders of protections may be sought in divorce actions pursuant to Section 252(1) of the Domestic Relations Law.

Background about Orders of Protection (OPs)

When courts issue orders of protection in Family, Criminal, and Supreme Courts, the process can happen in the blink of an eye. Oftentimes, judges in the custody, visitation, and order of protection parts of Family Court have a daily docket of eighty cases before 1pm. Faced with dozens of litigants waiting for their cases to be heard, the far-reaching legal consequences of the orders that are issued may not be explained fully to the affected parties.

It is also not uncommon for Family Court to issue cross orders of protection, meaning that intimate partners each have an order of protection against each other. There may be no inquiry into which party is actually the victim of domestic violence, especially in the first few court appearances. Thus, the actual victim of partner violence, who may not understand the terms and conditions of the order, can be in danger of violating an order of protection, not just the perpetrator.

Typical Examples of the Consequences of Failing to Interpret the Terms and Conditions of Orders of Protection (OPs)

Ms. F

Mr. F, who is from Italy, and Ms. F were in the midst of an uncontested divorce case and were having a hearing on some defects in their court papers to finalize the divorce when Ms. F's husband threatened her life. The Special Referee overheard the threat and, pursuant to Section 252(1) of the Domestic Relations Law, issued Ms. F an order of protection in her favor *sua sponte*. She placed the case on the contested divorce calendar.

Before the next court appearance, Mr. F repeatedly called Ms. F and sent her e-mails in clear violation of the temporary order of protection, which explicitly forbade telephonic contact and e-mails, no matter their content. The years of domestic violence had taken a toll on Ms. F's health, which is already poor because of a chronic illness that compromises her immune system. Ms. F remained fearful of her husband and wanted his repeated harassing phone calls to stop. Ms. F called the police and reported Mr. F's clear, verifiable violations of the order of protection.

Despite the clear evidence that Mr. F had violated the order of protection, the Assistant District Attorney (ADA) assigned to the case was reluctant to prosecute, claiming that Mr. F did not understand that the terms and conditions of the order of protection and the referee had not taken the time to interpret the temporary order of protection to explain its content and consequences. The ADA also explained that Mr. F had only sent videos of the children and that the other e-mails were a result of Mr. F's account's being "phished" or compromised. The calls, the ADA explained, were related to the pick up and drop off of the children and should be excused as well, especially since Mr. F did not understand the contents of the OP.

Ms. F knew that Mr. F understood the OP, and she was aware of the techniques he used to exert power and control over her. He had sent her the e-mail with the video of the children because he had told her for years that he watched her and the children and that he could take the children away from her and disappear into the night, but the ADA believed that Mr. F had a viable excuse because the OP hadn't been properly explained. Defeated, Ms. F felt she had no choice but to drop the criminal case and have the system reward her husband's abusive behavior.

Ms. B

Ms. B and her husband, Mr. B, are immigrants. Mr. B inflicted years of abuse on Ms. B, beating her mercilessly, many times while the children were forced to watch. Due to many reasons, including cultural and language barriers, Ms. B did not flee. Eventually, Ms. B's husband decided he did not want her anymore, and told her to leave. When she refused, he created an allegation of assault and she was arrested. At the arraignment, Mr. B received an order of protection in his favor, against Ms. B. The order of protection also included the children, so Ms. B could not see her children, who were now with her husband.

Though Ms. B could have petitioned for custody or visitation in Family Court, she was not aware of this remedy. The order of protection, she assumed, told her to stay away from her children just as she had to stay away from her husband. The exact terms of the order of protection, which stated that the order was subject to court ordered visitation, were never explained to her. Had she been aware of this, she would have asked to see her children sooner.

The criminal matter took 18 months to conclude, with an acquittal of all charges. As soon as it concluded, she ran to see her children. Had the order of protection been explained to her, she would not have gone over a year-and-a-half without seeing her children.

Conclusions

Passing legislation requiring that the essential terms and conditions of orders of protection be translated will help ensure that people accused of being batterers understand what they are prohibited from doing, and it will avoid future disputes about whether all parties understood the terms of the order when it was issued. We also urge the Council to advocate for a change in this legislation to make certain that it also applies to orders of protections in matrimonial cases brought under Section 252(1) of the Domestic Relations Law.

CLOSING

We appreciate the opportunity to describe some of our clients' experiences and the dramatic change that this legislation could have on the lives of survivors of domestic violence. The oversight of the City Council is important to ensure that DV survivors have a chance to forge a pathway to economic independence and stability, living their lives free from violence.

Respectfully submitted,

Steve Banks
Attorney-in-Chief
The Legal Aid Society

Deborah Wright
President
UAW Local 2325,
Association of Legal Aid Attorneys

ⁱ Violence Against Women Act of 1994, Pub. L. No. 103-322 40701-03, 108 Stat. 1902, 1953.

ⁱⁱ INA § 204(a)(1)(A)(iii) (spouse of USC) and INA § 204 (a)(1)(b)(ii) (spouse of LPR). Note: Immigrant children can self-petition when they are abused by their USC or lawful permanent resident parent under INA § 204(a)(1)(a)(iv) and INA § 204(a)(1)(B)(iii), respectively.

ⁱⁱⁱ INA § 216(c).

^{iv} INA § 216(c)(4).

^v Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No 106-386, div A, § 1513, 114 Stat. 1464 (Oct. 28, 2000) (“VTVPA”).

^{vi} INA § 214(p)(2)(A); 8 CFR § 214.12(d)(1).

^{vii} See <https://egov.uscis.gov/cris/processTimesDisplayInit.do>, last visited June 10, 2011. According to USCIS, these processing times are estimates. Many advocates would argue that these processing times are minimums and presume that the immigrant petitioner submits an entirely complete application. For many survivors of domestic violence, they do not have easy access to the documentation and proof required to prevail in these petitions easily without subsequent submissions and spending a great deal of time gathering evidence to support their applications.

^{viii} See Endnote vii, *supra*.

**Testimony before the New York City Council Committees on
Public Safety and Women's Issues:
Monday June 13, 2011, 10:00 am**



Good morning. My name is Tobi Erner, and I am a Licensed Social Worker with the Family Law Unit at Legal Services NYC, where I work on behalf of low-income survivors of domestic violence. I provide supportive counseling, court accompaniment, and case management to survivors while their cases are being litigated, and I advocate on their behalf with regards to public benefits, safety, immigration, language access, police reporting, and housing. I would like to thank the Council Members for your gracious invitation to testify at today's hearing.

Today I am going to speak about Resolution 817, which LS-NYC strongly endorses. The passage of Resolution 817 would undoubtedly contribute to the safety, stability, and self-sufficiency of thousands of domestic violence victims throughout New York City by extending the maximum length of stay at emergency DV shelters from 135 days to no less than 180 days. Of course, it would also be wonderful if OCFS could expand the number of badly needed shelter beds, but I realize that is not the topic of this resolution.

Especially in New York City, given our current crisis in publicly-funded housing, it is unfeasible for most indigent victims of domestic violence to become self-sufficient and secure permanent housing within 135 days of entering emergency shelter. Subsidized housing programs, like Section 8 and Advantage, which have previously assisted DV victims in their transition to self-sufficiency and stability, are no longer available. NYCHA waitlists extend for years, and to even secure DV Priority Status, a domestic violence victim has to be one of the rare few who has interfaced multiple times with police or the court system and has the appropriate documentation.

Even my client, Ms. H, whose husband threw her down the stairs while she was holding their infant daughter, is ineligible for DV Priority Status because she only has one police report to show for the years of abuse she experienced.

Furthermore, due to the volume of applications NYCHA receives on a daily basis, the wait for review can be lengthy. Some victims wait a month or longer to be notified that they have been given Priority Status and can wait another two to three months for an eligibility interview. If there are errors in the application itself, that wait will be extended even further. All the while, the clock is ticking on the victim's time in emergency shelter.

Low-income victims of domestic violence face unique obstacles which are not encountered by the general homeless population. After fleeing their batterers, DV victims are in immediate danger and need to be housed somewhere confidential and secure. It is well documented that victims are at greatest

Legal Services NYC
40 Worth Street, Suite 606, New York, NY 10013
Phone: 646-442-3600 Fax: 646-442-3601 www.LegalServicesNYC.org
Michael D. Young, Esq., Interim Executive Director
Joseph Steven Genova, Board Chair

risk of fatality when they attempt to end the abusive relationship¹. In one study of spousal homicide, more than half of the murders were committed at the time of the victim's separation from her batterer².

In addition to safe haven, many fleeing victims require supportive services to help them cope with the incredible stress and trauma that they have endured. It is extremely difficult to function, let alone focus on self-sufficiency, when one is suffering from depression, anxiety, or post-traumatic stress, as many DV victims are. For example, one of my clients, who is also a survivor of the Bosnian War, has intrusive flashbacks of her ex-husband's abuse, which she described as "worse than living in a war zone," and has vivid, debilitating nightmares to the point where she wakes up with her fists clenched and knuckles completely white. Another client of mine has uncontrollable panic attacks when she even sets foot into the borough where her ex-boyfriend held her captive, beat and raped her, and tried to throw her out the window of her apartment building. At emergency shelters, victims receive case management and other services that address the vast array of complex needs which are unique to the DV population, such as securing therapy for themselves and their children, safety planning, and legal referrals.

The result of the current emergency shelter time restriction and the scarcity of DV transitional housing, or Tier II's, compounded with the public housing crisis and the outrageous cost of renting in New York City, is that many victims are eventually forced to enter into a general population homeless shelter. Homeless shelters lack the confidentiality that DV shelters maintain and do not have services which address victims' unique set of needs. Furthermore, this shuffling around of the victims undoes progress that these women have made in their healing, in facilitating stability for their children, and in their housing and employment searches—as they are displaced to a new neighborhood or even an entirely new borough.

The threat of homelessness can also have a huge impact on custody proceedings. While the victim's housing situation is unstable, the abuser has more of an opportunity to juxtapose his resources against the victim's and make a stronger case for custody of the children. At least while the victim is in emergency shelter, it is apparent to the court that she is there as a direct result of the actions of the abuser and that she is, in fact, trying to protect her children. By comparison, once in a homeless shelter, a mother is more susceptible to judicial prejudice that she is unfit, unable, or simply not motivated enough to properly care for her children.

Unfortunately, for all of the aforementioned reasons and faced with the alternative of entering into a homeless shelter, many domestic violence victims ultimately decide to return to their abusers. Consider my client, Ms. V, an immigrant woman from Colombia who, after thirteen years in a sexually and physically abusive marriage, was determined to leave her husband after he strangled and made repeated threats to murder her. Ms. V came to my office with her luggage and two children in tow, and I was able to secure a placement for them in emergency shelter.

¹ Browne, A. (1987). When battered women kill. New York: Free Press; Heise L, Garcia-Moreno C. Violence by intimate partners. In: Krug E, Dahlberg LL, Mercy JA, et al., editors. World report on violence and health. Geneva (Switzerland): World Health Organization; 2002. p. 87-121.

² Barnard, G.W., Vera, H., Vera, M.I., & Newman, Gustave (1982). Till death do us part: A study of spouse murder. *Bulletin of the American Association of Psychiatry and Law*, 10, 271- 280.

Once in shelter, Ms. V began working with a caseworker to plan for her future, although progress towards self-sufficiency was slow. Ms. V's public assistance budget alone was not nearly enough to afford rent on an apartment. Since her husband had never allowed her to work or take classes, Ms. V. had no previous employment experience and her English was very limited. As is common for immigrant victims of DV, these factors were now stunting her employment prospects. Her children, who had witnessed the domestic violence, had suddenly begun hitting each other, and she became overwhelmed trying to manage their behavioral problems.

Eventually, after maxing out her time in emergency shelter, Ms. V was transferred to PATH in the Bronx, the central intake facility for all homeless families in New York City. She spent one night with her children in PATH, where she was confused and terrified. The next day, she called her husband. He convinced her to come live in an apartment in the building he owns, for which he promised to pay rent, but which once again placed Ms. V in a dangerous position where she would be reliant upon the very man who had led her to seek shelter in the first place.

As a social worker in this field, I am deeply familiar with how difficult it is for domestic violence victims to make the decision to leave, especially for those who are financially dependent upon their batterers. Leaving often means uprooting one's children, abandoning one's community and support system. It means not knowing if there will be food on the table. It means juggling countless appointments just to maintain a negligible amount of cash assistance. Most notably, as statistics demonstrate, it means an increased risk of violence by the abuser.

Conclusion

Given all of these factors and the limited low-income housing options in New York City, we should avoid further displacement of survivors, especially when their situations remain precarious. Fleeing victims of domestic violence need *time* and *support* to process the trauma that they have experienced and to stabilize their situations. LS-NYC urges the passage of Resolution 817, which affords victims more of that precious time. Thank you.

Tobi Erner, LMSW
Licensed Master Social Worker, Family Law Unit
Queens Legal Services
42-15 Crescent Street, 9th Floor Long Island City, NY 11101
Telephone: 347-592-2299

Anna Maria Diamanti
Director, Family Law Unit
South Brooklyn Legal Services
105 Court Street, 3rd Floor Brooklyn, NY 11201
Telephone: 718-246-3261

Caroline Kearney
Family Law Coordinator
Legal Support Unit
Legal Services NYC
40 Worth Street, suite 601 New York, NY 10013

June 13, 2011
Judith Kahan
CEO, Center Against Domestic Violence
Co-Chair, NYC Coalition of DV Residential Providers

Ted McCourtney
Director, Sarah Burke House
Sanctuary for Families
Steering Committee Member, NYC Coalition of DV Residential Providers

Testimony
to the
Women's Issues Committee
Public Safety Committee

In Favor of
Resolution 817 of 2011
Calling upon the New York State Office of Children and Family Services to
extend the maximum length of stay at emergency shelter residential
programs for victims of domestic violence to not less than 180 days

Good morning -

Thank you for the opportunity to address you today. My name is Ted McCourtney. I work for Sanctuary for Families as the Director of Sarah Burke House, a Tier II domestic violence shelter in the Bronx. Sanctuary for Families is a nonprofit agency dedicated exclusively to serving domestic violence and sex trafficking victims and their children. I am also a member of the steering committee of the New York City Coalition of DV Residential Providers, a coalition that includes all of the organizations providing domestic violence shelter in New York City.

My name is Judith Kahan and I am the Chief Executive Officer of the Center Against Domestic Violence. For thirty five years, the Center has worked toward a society free from violence by transforming the lives of victims and raising awareness in our communities. Our organization opened the first domestic violence emergency shelter in New York State and the provision of safe shelter is at the core of the Center's mission.

I stand before you as the cofounder and Co-Chair of the New York City Coalition of DV Residential Providers. The Coalition's positions are guided by

one principal – Safety. We advocate so that the women, children – and yes - men who turn to us for refuge from unspeakable abuse, can enter our shelters safely and can leave with the tools to build a secure life free of intimate partner violence.

The maximum stay in domestic violence emergency shelter is currently 90 days, with the possibility of a 45 day extension. There are four key reasons for extending the time in shelter to a maximum of 180 days:

- Longer stays avert homelessness and safety risks.

People “timed out” of shelters without secure permanent or transitional housing move in with family and friends known to their batterers – or worse yet, move back to the batterer. And the large numbers that go into the City homeless system are not safe from their batterers.

- Longer stays increase the likelihood that the person leaving shelter will have found an apartment

Studies show the current limit of a maximum of 135 days (90+45) does not provide enough time for victims to find permanent housing. People staying longer in shelter such as in domestic violence Tier 2 shelters, increase their rate of finding permanent housing from 11 percent to 65 percent.

- Longer stays increase the likelihood that the person leaving shelter has found a job.

The current time limit is too short for someone to find both employment and housing (in a safe location) before her shelter stay expires. Should the City and State reach agreement on a new housing subsidy system, domestic violence victims will likely still need to work to obtain, or retain, housing subsidies.

- Longer stays give people and families traumatized by domestic abuse and violence support to heal and rebuild their lives to avoid returning to an abusive situation.

Allowing enough time for victims to heal from trauma avoids re-traumatizing families by having them move multiple times into different shelter systems.

The only proven deterrent to domestic violence is safe shelter. The investment in the first 90 – 135 days of emergency shelter is tremendous. Increasing shelter stays by another possible 45 day extension will increase the return on that initial investment enormously, and, very importantly, longer stays are cost neutral.

- There are a finite number of spaces available for domestic violence survivors seeking emergency shelter in New York City. Allowing some of these people to stay longer does not add any cost to the system.
- Reducing the number of times a family is transferred from shelter to shelter reduces the trauma for these families, increases their stability, and prevents them from going to the already overburdened homeless system, thereby saving the City money.
- Permanent housing, even subsidized housing, is significantly more cost-effective than shelter.
- The costs of continued victimization can be counted in expensive emergency room visits, lost wages for survivors missing work, trauma to families, and the emotional and physical toll on victims, and their children.

For the foregoing reasons, The New York City Coalition of Domestic Violence Residential Providers strongly urges passage of this resolution.

Judith Kahan
CEO
Center Against Domestic Violence
25 Chapel Street
Brooklyn, NY 11201

Ted McCourtney
Director, Sarah Burke House
Sanctuary for Families
PO Box 1406
Wall Street Station
New York, NY 10268



Testimony before New York City Council
June 13, 2011

Sanctuary for Families is the largest non-profit organization in New York State dedicated exclusively to the needs of victims of domestic violence and sex trafficking serving over 10,000 individuals each year by providing shelter, counseling, legal assistance and representation and economic empowerment services

Sanctuary for Families supports enactment of legislation that will increase the safety of victims and accountability of their abusers.

T2011-3143 Creation of Crimes of Domestic Abuse in the First and Second Degrees

Sanctuary for Families does not support Senate bill S.3666-A or Assembly bill A.5890 establishing the crime of domestic abuse in the first and second degrees. While we support the intention of taking domestic violence seriously and facilitating the enforcement of federal laws prohibiting the sale of firearms to those who have been convicted of a misdemeanor crime of domestic violence, we are extremely concerned about the provision of this bill that would defer sentencing for felony domestic violence crimes while an abuser who has plead guilty has the opportunity to participate in a domestic violence, anger management, substance abuse treatment or mental health program. Deferring sentencing and allowing abusers to withdraw their guilty pleas to felony-level crimes of domestic violence after completion of such a program does not serve the interests of justice and holding abusers accountable.

The New York State Office for the Prevention of Domestic Violence has found that anger management programs are not effective at stopping the violence. Anger management programs operate based upon the theory that a perpetrator is unable to control certain violent or angry tendencies as a result of a triggering factor. Such an approach supports two dangerous myths: first, that the victim shares responsibility for the violence by triggering it; and second, that the batterer is not responsible for the violence since he is unable to control it. Domestic violence is a pattern of gender-based intimate partner, dating, or family violence with a central dynamic of power and control. It is characterized not by an inability to control angry feelings, but rather a gender-based sense of entitlement to use violence and threats of violence to exert control over a victim.

This bill supports a mental health approach to addressing criminal behavior. Numerous studies have shown that anger management as well as batterers' intervention programs do not "cure" perpetrators of domestic violence and do not stop the behavior once the programs end. In addition, tying domestic violence to substance abuse or mental health problems, although these issues are present in some cases, gives the false impression that these problems are the causes of the domestic violence and that fixing them will end the violence. This is not usually the case.

Of significant concern to us is the danger this would pose to victims. It can give victims a false sense of safety because the victim may mistakenly believe that such treatment programs can end the violence. After the abuser completes a treatment program and the court has allowed

withdrawal of a guilty plea, the victim may believe they can safely resume their relationship. However, such programs do not eliminate the power and control dynamics of domestic violence, and the victim will be exposed to serious danger of future harm.

A strong law enforcement approach that treats domestic violence as a crime and holds perpetrators accountable is the most effective method of combating domestic violence and protecting victims in our city.

T2011-3144 Inquiry Regarding Possession of Firearms

Sanctuary for Families supports Senate bill S.1003-A and Assembly bill A.2494-A, which would require judges in criminal and family court proceedings to inquire as to the possession of a firearm by the defendant or respondent when an order of protection is issued.

While current law provides for mandatory and permissive revocation or suspension of firearm licenses when an order of protection is issued, not all judges make an inquiry into whether the perpetrator is already in possession of a firearm. This law would help the courts to identify more cases in which a firearm should be removed from the possession of the perpetrator before it can be used against the victim.

T2011-3145 Language Access in the Court System

Sanctuary for Families supports the amendment of the Family Court Act and Criminal Procedure Law to ensure that litigants who are not fluent English speakers will understand the terms of any orders of protection issued on their behalf or against them. We support Assembly bill A.6113 and Senate bill S.1870 requiring the court to direct interpreters to translate the essential terms and conditions of any order of protection or temporary order of protection.

T2011-3146 Creation of E Felony of Aggravated Domestic Violence

Sanctuary for Families supports the creation of a crime of aggravated domestic violence aimed at enhancing penalties for serial offenders. Research show that nearly 40% of battered women will be revictimized within six months of the first attack. Domestic violence perpetrators frequently commit multiple crimes against each victim and often abuse additional victims after their first victim flees the abusive relationship. The commission of repeated crimes of domestic violence is one of the warning signs of potential domestic violence homicide.

Under current law, there are often minimal consequences for repeated attacks. Domestic violence perpetrators rarely face felony charges or are sentenced to any probation or jail time, so there is little deterrent effect as a result of prosecuting them. Victims and abusers learn that the criminal justice system is unlikely to hold perpetrators accountable.

Creating the crime of Aggravated Domestic Violence would allow victims to receive longer term orders of protection as a result of the felony convictions of their abusers. Research shows that final orders of protection deter repeated acts of domestic violence in 80 percent of cases. It would further send a critical message to domestic violence victims and their abusers, as well as to society as a whole, that our criminal justice system takes domestic violence seriously, holds perpetrators accountable, and is committed to protecting the safety of victims.



OFFICE OF THE DISTRICT ATTORNEY
RICHMOND COUNTY

DANIEL M. DONOVAN, JR.
DISTRICT ATTORNEY

130 STUYVESANT PLACE
STATEN ISLAND, NEW YORK 10301
TELEPHONE (718) 876-6300

June 13, 2011

**Staten Island District Attorney Daniel M. Donovan Jr.
Testimony to the City Council Committees on Public Safety and Women's Issues re: Domestic Violence
Act of 2011**

Members of the City Council, thank you for considering a resolution in support of my Domestic Violence Act of 2011 and for allowing me the opportunity to testify as to its merits. The legislation includes bills A5890, which is sponsored by Assemblyman Michael Cusick and currently in the Assembly Codes Committee; and S3666, which is sponsored by Andrew Lanza and in the Senate Codes Committee.

Every morning, I start my day at the office by examining every arrest that occurred on Staten Island in the previous 24 hours, making notes for my assistant district attorneys, then placing them into piles based on the type of crime – such as violent felonies, DWI's, drug cases, etc. By far, the largest pile I make each and every day is for domestic violence crimes. Though I have been the Staten Island District Attorney for nearly 8 years, and a prosecutor for more than 15 years, I am still appalled by the number of individuals who find it acceptable to physically assault their spouse or intimate partner.

Obviously, it is not just my borough that is affected. Every year in New York City, police file nearly a quarter of a million Domestic Incident Reports (DIRs). I feel we owe it to those victims to strengthen the law so we can effectively combat this crime.

First and foremost, we must recognize that domestic violence is unique when compared to other crimes. It is the one crime in which the perpetrator and the victim are intimate with each other, and either share a household, have a child in common or are in a marriage or domestic partnership. **Currently, there is no crime of “domestic violence” in New York.** Our state treats violence between spouses, ex-spouses, boyfriends, girlfriends or same-sex partners the same as a random barroom brawl, with no real way of tracking offenders. My proposal creates for the first time the crime of domestic abuse and includes behavior modification programs modeled on our drug treatment courts, as well as increased penalties where appropriate. I believe this proposal will have several positive outcomes:

- **It will help stop domestic violence before it escalates by increasing punishment and deterrence**

This bill would add two new crimes to the penal law: Domestic Abuse in the Second Degree [P.L. §120.80], an A misdemeanor, for domestic crimes involving physical injury in the context of a domestic relationship (*this is different than the crime of Assault in the Third Degree, in which the offender has to intend to cause physical injury*); and Domestic Abuse in the First Degree [P.L. §120.85], an E felony, for cases of a more serious nature and for repeat domestic abuse offenders.

In my experience, domestic violence often begins small, but can grow to horrific proportions. Nearly half of the homicides in my borough each year are domestic – and in most of those cases, there was a history of prior acts of violence. These new charges, and the tougher penalties they carry, will give prosecutors another tool to combat this crime and save lives.

- **It will help us effectively prosecute cases by requiring mandatory arrest for certain domestic violence cases in which the victim actually sustains physical injury:**

Currently, conduct such as pushing or shoving qualifies only as harassment, even when it results in physical injury. The proposed crime of Domestic Abuse in the Second Degree would elevate such conduct from a violation to a misdemeanor, thus bringing those crimes within the law which provides for mandatory arrests of misdemeanor crimes of domestic violence.

Significantly, however, this bill does so only in cases where physical injury has been sustained. This will avoid circumstances in which the mandatory arrest provision is used as a sword rather than a shield by perpetrators who falsely file cross-accusations against their victims.

- **It would create court-ordered treatment programs that work:**

Domestic Violence is our most underreported crime. My fear is that with the increase of penalties, even fewer women will be willing to report their abusers. In the hopes of overcoming this, and with the hope of mending some families torn by domestic violence, I have proposed a sentencing deferral provision. This provision would require the offender to plead guilty to the most serious charge in the case. Upon successful completion of an appropriate program, the previously entered guilty plea may be withdrawn, with the consent of the court and the prosecution and upon consultation with the victim, and a plea to a lesser charge would then be substituted.

- **It will give New York State the ability to report domestic violence misdemeanors to the FBI's National Instant Criminal Background Check System (NICS):**

Federal law prohibits firearms purchases by those convicted of a misdemeanor crime domestic violence. Since we have no crime of domestic violence in this state, federal databases record zero New Yorkers convicted of domestic violence. That's right -- Zero! An additional benefit of this proposal is that it would

establish an offense which by its title and definition clearly falls within the federal prohibition. Thus, reporting of such convictions will effectively be automatic, and NICS background checks of applicants for firearms permits and purchases will contain this important information.

I believe these proposed changes will not only be extremely effective, they are necessary and long overdue. I believe this state has an obligation to do all it can to end the cycle of violence and enact meaningful legislation targeting domestic abuse.

Once again, thank you for your time and your consideration of this legislation. I am happy to answer any questions.



OFFICE OF THE DISTRICT ATTORNEY, KINGS COUNTY
RENAISSANCE PLAZA at 350 JAY STREET
BROOKLYN, N.Y. 11201-2908
(718) 250-3300

CHARLES J. HYNES
District Attorney

**NYC COUNCIL COMMITTEES ON PUBLIC SAFETY & WOMEN'S ISSUES:
DISCUSSION OF PROPOSED DOMESTIC VIOLENCE RESOLUTIONS**

**June 13, 2011
10:00 A.M.**

**Representing Kings County District Attorney Charles J. Hynes:
Wanda Lucibello, Chief, Special Victims Division
(718) 250-3312
Lucibell@BrooklynDA.org**

Good morning and thank you for inviting me to address you here today.

Prosecuting acts of domestic violence and protecting domestic violence victims from their abusers have been among DA Hynes' top priorities during his 20+ years as District Attorney of Kings County.

OUTLINE OF TESTIMONY

1. Some Statistics:

- **With over 2.5 million people, Brooklyn has the largest population of the five New York City boroughs**
- **About one-third of the city's women reside in Brooklyn**
- **Brooklyn prosecutes the highest number of domestic violence cases in New York City – about 10,000 cases per year**
- **The vast majority of the cases are misdemeanor domestic violence prosecutions**
- **Since the passage of New York State's strangulation bill on November 11, 2010, Brooklyn has filed the highest number of strangulation cases in NYS, accounting for about 25% of all of the state's filings under the new law.**

2. The Family Justice Center:

- **We are committed to ensuring the safety of the victim, even if he or she becomes reluctant to go through with the prosecution. The creation of the city's first Family Justice Center in Brooklyn in 2005 has meant that many victims are getting the services and support they need.**

- **The Brooklyn FJC has a record of 41,831 clients who have visited the center on at least one occasion; 87,065 total client visits; and 7,356 total visits by children to the Children's Room – Margaret's Place.**
- **About one third of our Domestic Violence victims are foreign-born – in keeping also with the percentage of our FJC clients who are foreign-born.**
- **Along with our immigration attorneys at the FJC, we have filed about 500 U-Visa certifications for battered immigrants who qualify for these special visas.**

3. The EVE (Early Victim Engagement) Project

- **Has also helped ensure the safety of Domestic Violence victims and has also encouraged victims to continue with the prosecution of the offenders. EVE is a joint project between the Kings County DA's Office and the Office to Combat DV, NYPD, Safe Horizon, Safe Homes Project, Department of Probation, and Parole. It is funded by the Department of Justice/Office On Violence Against Women. Teams of Safe Horizon and KCDAO victim liaisons staff criminal court arraignments full time (9am-1am). Language Line is available to victim liaisons to call DV victims who are non-English-speaking. The liaisons assist victims via telephone with safety assessment and crisis intervention in real time after bail has been set and a protective order is issued.**
- **Victims of domestic violence are often ambivalent about participating in the prosecution of their batterers. Nonetheless, it is still important that the offender be brought to justice because of the threat posed by these offenders to the safety of the victim as well as the other members of the community. Prosecutors often use, where possible, other evidence such as 911 calls, calls from jail, and statements of defendants in order to prove DV charges without the testimony of the prosecution.**

4. I'd now like to comment on two bills in the State Legislature that are also the subject of preconsidered City Council resolutions:

- **Bill A06113: Requires orders of protection and temporary orders of protection issued in family court and criminal court to be translated by an interpreter into the native language of the parties. We are very fortunate indeed within New York City that we have access to court-certified interpreters who can thoroughly explain the written order and translate the judges' additional oral instructions, so that offenders clearly understand all of the provisions.**
- **Ultimately, it is the prosecutions' burden to prove at trial that the defendant knowingly violated the protective order. We often use the minutes recorded during court calendar calls to substantiate the fact that the defendant received sufficient information in his/her native language in order to support our burden of proof in a case of criminal contempt. The issue of translation of protective orders may ultimately be of greater concern in counties outside New York City.**

5. Bill Numbers S.3666, A.5890, S.1510:

- **These bills would greatly strengthen current laws so that domestic abusers could be more effectively blocked from re-engaging in violent conduct.**
- **Domestic Abuse in the Second Degree, a class A misdemeanor, would appropriately punish those offenders who, clearly meaning to intimidate and harass their victims, have caused them physical injury, but who, under current law, may not be chargeable with Assault in the Third Degree. Domestic Abuse in the First Degree would raise to an E felony a current Assault in the Third Degree when that assault is committed in a domestic violence situation. This enhancement rightly recognizes the special viciousness of domestic abuse and that, in the domestic violence context, what the law now characterizes as a misdemeanor assault so often indicates recurring and escalating violence.**
- **Domestic Abuse in the First Degree (new P.L. § 120.85(4)) provides a "bump-up" to a felony for repeat misdemeanor offenders of the new Domestic Abuse crimes. There should also be enhanced punishment for domestic abusers who repeatedly commit any of the whole spectrum of domestic violence misdemeanor offenses (e.g., stalking, aggravated harassment, criminal mischief, etc.), not just those abusers who have been specifically convicted of Domestic Abuse in the First Degree or Second Degree. Legislation proposed by Senator Squadron would in fact cover the wide variety of predicate misdemeanors which a domestic abuser may have committed in the past, and which should rightly serve to "bump-up" into a felony any additional domestic violence misdemeanor he or she commits in the future.**

6. In summary: We have made great strides in recognizing the crimes of domestic violence and addressing their impact on families. We must continue to find ways to provide victims with as many choices and options to safely leave battering relationships. Every county in the city needs a family justice center. When victims are able to walk in and choose from a variety of options including counseling, advocacy, meeting with a prosecutor, police officer, career services, housing and immigration assistance, as well as civil legal assistance – they will be able to get out of dangerous relationships at a much earlier point in time. The simple hypothesis is this: if you don't know what choices are available to leave a dangerous situation, you will stay longer. The longer you stay, the greater the danger. The longer the children witness the violence, the greater the chance that their full potential in society will either not be reached, or curtailed altogether in the form of their own dangerous behaviors. All of these proposals come from the right place: prevention of serial abuse, dangerous terrorism in the home, and blocking vicious and escalating deadly violence.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Wanda L. Jabello KCDAO
Address: 2 Broadway Pl 350 Jay Street
I represent: KCDAO Charles J. Hynes
Address: 350 Jay Street 15th floor

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. T201-3143 Res. No. _____

in favor in opposition

Date: 6-13-11

(PLEASE PRINT)

Name: Amanda Norejko
Address: 110 Wall Street, 11th floor, NY, NY 10005
I represent: Sanctuary for Families
Address: 110 Wall Street, 11th floor, NY, NY 10005

T201-3144-46
L in favor

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 817

in favor in opposition

Date: 6/13/11

(PLEASE PRINT)

Name: Tobi Emer
Address: _____
I represent: Queens Legal Services LS-NYC
Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 817

in favor in opposition

Date: 6/13/11

(PLEASE PRINT)

Name: Anna Maria Diamanti

Address: _____

I represent: ~~South~~ South Brooklyn Legal Services

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Michael Polenberg

Address: _____

I represent: Safe Horizon

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/13/11

(PLEASE PRINT)

Name: D.A. Cyrus R. Vance

Address: 1 Hagan Place

I represent: New York County District Attorney

Address: 1 Hagan Place NY NY 10013

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Leroy Frazer Jr

Address: _____

I represent: NY CDAO

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/13/11

(PLEASE PRINT)

Name: YOLANDA RUDICH

Address: 130 STUYVESANT PL SI NY 10301

I represent: D.A. DANIEL M. DONOVAN, JR

Address: 130 STUYVESANT PL SI

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Anne Grady

Address: 130 Stuyvesant Place

I represent: Daniel M. Donovan, Jr,

Address: District Attorney Richmond Co.

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 817

in favor in opposition

Date: 6-13-11

(PLEASE PRINT)

Name: Judith Kahan

Address: _____

I represent: NYC Coalition of OV Residential Providers

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 817

in favor in opposition

Date: 6-13-11

(PLEASE PRINT)

Name: Ted McLountney

Address: PO Box 1783, Bronx NY 10451

I represent: Sanctuary for Families

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆