

## MEMORANDUM OF CONCERN

### **DV-SPECIFIC CRIMES ARE NOT NEEDED IN NEW YORK TO PREVENT OFFENDERS FROM OBTAINING WEAPONS IN OTHER STATES**

The New York State Coalition Against Domestic Violence (NYSCADV) has historically opposed efforts to create domestic violence-specific crimes in New York. Crimes against victims of domestic violence are the same as those perpetrated against strangers. Yet in states that have domestic violence-specific crimes, they are often used as a means for plea bargaining to lesser offenses. Rarely do they achieve their intended objective of harsher penalties and jail time for convicted offenders. Further, there is no evidence suggesting DV-specific crimes lead to a reduction in domestic violence-related crime or an increase in safety of domestic violence victims.

Recently, Governor Cuomo proposed creating a domestic violence-specific misdemeanor crime in New York to ensure those convicted of heinous DV offenses are restricted, via the federal FBI National Instant Criminal Background Check System (or NICS), from receiving or possessing firearms in other states (Part Q of Public Protection and General Government Article VII Proposal [A.9505A/S.7505A]).

**NYSCADV wholeheartedly supports the inclusion of all individuals convicted of family offenses in New York in the NICS database to ensure they are unable to purchase or possess firearms in other states.** However, we believe this can be achieved with changes to New York's statutes, law enforcement procedures, and/or court procedures, rather than creating a new DV-specific crime.

In order for an individual's name to be entered into the NICS database, the individual must (1) be charged with a misdemeanor that includes the use or attempted use of physical force or the threatened use of a deadly weapon and, (2) at the time of the offense, have a familial or household relationship, or share a child in common, with the victim. In order to ensure pertinent information about New York's DV offenders is transmitted to the FBI for inclusion into the NICS database, New York requires prosecutors to provide notice to defendants within 45 days of arraignment that, should they ultimately be convicted of the charge, the court will hold a hearing solely to determine whether the defendant has a familial/household relationship with the victim. This is an overly bureaucratic process that takes up critical time and resources of judges and court personnel. As a result, while other states submit thousands of DV offenders' names into the NICS database each year (e.g., Connecticut has approximately 30,000 DV offenders currently in the NICS database), New York has approximately 300.

Rather than creating a new crime in New York State, which could have the unintended consequence of reducing penalties and jail time for DV offenders, NYSCADV recommends New York simplify its process by eliminating a court hearing to determine the familial/household relationship between the parties. Instead, and as recommended by the FBI, New York can develop a process whereby the charging document, plea agreement or other final court records demonstrate the case involved the use or attempted use of physical force or threatened use of a deadly weapon, and non-court documents such as police reports, marriage certificates, tax records, etc., demonstrate the familial/household relationship.

NYSCADV looks forward to working with the Legislature to simplify this process to ensure all DV offenders in NY are prevented from accessing firearms in other states.

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