

Close the Gaps



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**LEGISLATIVE
AWARENESS**

DAY

APRIL 29, 2014

The New York State Coalition Against Domestic Violence (NYSCADV)

SUPPORTS

Exempting parties liable for failure to obey or enforce domestic violence orders of protection from limited liability provisions.

A.899 Weinstein/S.6928 Golden

NYSCADV urges the legislature to stand behind existing laws by providing victims of domestic violence civil recourse.

Background:

Orders of protection are a widely sought after tool for legal protection from domestic violence offenders, which is evidenced by the fact that New York courts issued over 300,000 orders of protection in 2011 (OPDV, 2012). The effectiveness of these orders lies in the enforcement of them. Most violations of any of the conditions that a defendant or the respondent must observe are a crime and are subject to mandatory arrest. Swift and consistent enforcement of criminal contempt is the power behind the protection created by this legal document. Sadly, improper enforcement happens and, in some cases, leads to deadly consequences and diminishes the power of the law.

Several high profile cases point to the tragic result of the failure to enforce orders of protection. One that received national attention, and now international attention, is that of Jessica Gonzalez v. Castle Rock Police Department¹. The U.S. Supreme Court ruled that Jessica had no Constitutional right to police enforcement of her restraining order. Although it has not provided her any recourse, the Inter-American Commission on Human Rights (IACHR) later found that the United States violated the human rights of Jessica and her children.

Victims deserve the right to have recourse when the system fails them.

Several cases have shown that it is extremely hard to find law enforcement and municipalities liable for failing to obey or enforce orders of protection. ***This bill does not change that standard.*** But, in the situations where a court or jury does find any or all defendants liable, victims should be permitted to recover non-economic as well as economic damages from any or all defendants. This is currently prohibited by a procedural rule in the civil practice law and rules (CPLR) that limits a party's liability to its proportionate share of the damages in cases where it has been found liable.

Current law does not provide an exception to the proportionate share rule in cases of domestic violence. In 1999, a Court of Appeals decision in Morales v. Co. of Nassau² stated that the exception that is required to allow for ***this recourse can only be created by the legislature.*** Therefore, following the lead of the Court of Appeals, this bill adds a new paragraph to section 1602 of the CPLR to exempt domestic violence from apportionment of non-economic damages and restore the rule of joint liability to defendants found liable for failure to obey or enforce an order of protection. This bill does not change any standards of liability nor does it remove any immunities specifically granted in law to the police or public officials; it simply provides recourse for a victim when liability is found.

Improper enforcement of orders of protection diminishes the intent of the legislature.

The lack of an exception to the proportionate share rule in cases of domestic violence means that when parties are found liable, limited compensation is provided to the victim, leaving the victim to pay for costs of certain damages that an abuser is not able to cover and leaving little incentive for third parties such as law enforcement or municipalities to enforce orders of protection. This diminishes the State and the legislature's intentions when creating laws such as criminal contempt and mandatory arrest and it leaves victims unprotected.

¹ For a description of this case, read about it in Jessica's own words:

<http://www.aclu.org/human-rights-womens-rights/jessica-gonzales-v-usa>

² Morales v. Co. of Nassau, 94 N.Y. 2d 218 (N.Y. 1999)