

**New York State Executive Budget 2020**  
**Education, Labor and Family Assistance ("ELFA")**  
**Article VII Legislation**

**ELFA Part "J"** (DV Shelter) –Mid-York made the motion to support the legislation, Brooklyn second, all in favor. Motion carried.

Memo in Support Summary:

Purpose:

This bill would eliminate the State requirement that domestic violence victims seeking shelter in a domestic violence shelter apply for Public Assistance ("PA") and that providers charge victims with sufficient resources a fee for services.

Summary of Provisions and Statement in Support:

The Federal government has advised the State that its requirements that domestic violence victims seeking shelter in a domestic violence shelter apply for PA and that providers charge victims with sufficient resources a fee for services contradict Federal rules for Family Violence Prevention Services Act (FVPSA) funding. To comply with the Federal government's mandate, the FY 2020 Executive Budget would eliminate these requirements.

Comments from Sub-Committees:

Crim and DV support.

**ELFA Part "K"** (Reform PINS provisions) – majority voted to oppose the legislation because of the concerns raised by DV and Tanya Briendel. Motion to oppose made by Westchester, Queens second, all in favor of opposing. Motion carried.

Memo in Support Summary:

Purpose:

This bill would reform Person in Need of Supervision (PINS) provisions to reduce the placement of PINS in detention and residential settings.

Summary of Provisions and Statement in Support:

This bill would eliminate the ability of family courts to detain youth who are alleged to be a PINS and limit their ability to order residential foster care placement at the disposition of a PINS proceeding to only instances where the respondent youth meets the definition of a "sexually-exploited child" under New York's Safe Harbor Law.

Under existing law, family courts can place youth who are the subject of PINS proceedings into detention facilities or foster care based solely on allegations relating to non-criminal behavior (i.e., alleged to have been truant from school, incorrigible, disobedient or beyond the control of their parents). There is no equivalent model in the adult criminal justice system whereby an adult may be held in jail, or be removed from their home against their will, based on an allegation that the adult engaged in conduct which did not violate any law. Moreover, PINS detention is costly and produces negative outcomes for youth. The exception for a "sexually-exploited child" is to protect the child from further exploitation.

Comments from Sub-Committees:

Children's Rights and Crim Committees support this legislation.

DV Committee opposes for the following reason (copied and pasted from an email from Susan Pollet dated 1/26/19): The Educ, Labor + Fam Asst Art. VII bill (S 1506-A2006-Part K) completely eliminates all detention and placements of PINS except for sexually trafficked youth, a huge change for Family Court. (Current law eliminates State funding in 2020 but would still allow judges to order non-secure detention or foster care or placements to be county or NYC-funded, if needed). The Family Court Advisory and Rules Committee suggests that current law be retained because there ARE some cases (fortunately infrequent) where detention and/or placement is needed. Sometimes residential treatment-type placements are more appropriate than mental hospital commitments and many counties won't accept voluntary social services placements from parents of their teen-age children. If this proposal is destined to pass, the FCARC would recommend two additions: 1) revive the proposal made originally in 2015 in the Governor's original raise-the-age proposal that would establish a network of "family support centers" to provide a community-based alternative to PINS that has worked well in other states; and 2) include the FCARC proposal (2018 bill S 4766/A 7552, included in 2019 FCARC report for resubmission) to provide a sealing mechanism for PINS comparable to what exists for criminal and juvenile delinquency cases to mitigate collateral consequences of these non-criminal cases—automatic for dismissed, withdrawn and diverted cases and by motion after findings for youth who have not gotten into trouble for a period of time. Non-criminal PINS records sometimes appear in criminal pre-sentence investigations, causing collateral consequences that shouldn't attach to these cases.

**ELFA Part "T"** (Source of Income Discrimination) – majority voted to support the legislation. Motion to support by Adirondack, Mid-York second, all in favor except Westchester (abstain). Motion carried.

Memo in Support Summary:

Purpose:

This act would amend Human Rights Law to add lawful source of income as a protected class and to prohibit housing discrimination on the basis of lawful source of income.

Summary of Provisions and Statement in Support:

This bill will eliminate a significant barrier to housing for thousands of New Yorkers and prohibit landlords from discriminating against potential tenants based on their lawful source of income.

Across the state, this form of housing discrimination disproportionately impacts the most vulnerable New Yorkers, including individuals receiving disability benefits, single mothers receiving child support, armed service members receiving veterans' benefits, homeless families exiting shelters and the elderly receiving pensions or social security income.

Further, lawful source of income discrimination keeps individuals and families in homeless shelters or substandard housing for longer periods of time and prevents New Yorkers from accessing low-poverty, high opportunity neighborhoods.

Comments from Sub-Committees:

Diversity and Access to Justice Committees support.

**ELFA Part “V”** (Increase Protections Against Harassment in the Workplace)

Motion to support by Queens, Brooklyn second, all in favor except Westchester (abstain). Motion carried.

Memo in Support Summary:

Purpose:

This bill would bolster protections against sexual harassment in the workplace.

Summary of Provisions and Statement in Support:

In recognition of the harm sexual harassment poses to our workplaces, Governor Cuomo signed into law a sexual harassment package as part of the FY 2019 budget. This bill would further increase protections against such harassment.

This bill would amend section 300 of the Executive Law to ensure that judicial interpretations of similarly worded provisions of federal civil rights laws establish a floor for interpretations of Human Rights Law, rather than a ceiling.

Section 296 of the Executive Law would be amended to clarify that harassment is not limited to actions that are severe or pervasive.

Section 5-336 of the General Obligations Law would be amended to require that all non-disclosure agreements in employment contracts entered on or after January 1, 2020 include language stating that employees may still file a complaint of harassment or discrimination with a state or local agency and testify or participate in a government investigation.

This bill would also amend section 201-g of the Labor Law to require the Department of Labor to consult with the Division of Human Rights on the production and distribution of a workplace sexual harassment prevention poster that must be conspicuously posted by every employer to inform employees of their rights. (WBASNY suggested this last year and our committee is pleased to see the Governor agree and include it in the legislation this year.)

**ELFA Part “X”** (Ensure Breastfeeding is Protected in the Workplace)

Motion to support by Finger Lakes, Adirondack second, all in favor. Motion carried. (WBASNY previously supported lactation rooms in courthouses)

Memo in Support Summary:

Purpose:

This bill would amend the Executive Law to clarify that lactation is a pregnancy-related condition entitled to reasonable accommodations in the workplace.

Summary of Provisions and Statement in Support:

In 2015, Governor Cuomo signed the Breastfeeding Mother’s Bill of Rights, guaranteeing breastfeeding parents the right to use break time to express breast milk at work and the right to reasonable efforts by an employer to provide a private space to do so. In 2018, the Governor directed the Department of Financial Services to provide a clear reminder to health insurers that they must provide comprehensive lactation support services to new mothers. This bill would ensure employers are following such laws by clarifying that lactation is a pregnancy-related condition covered by the New York Human Rights Law requiring employers to make reasonable accommodations for lactation in the workplace. If

an employer fails provide such accommodations, it would be considered discrimination and the employer would be liable.

## **Public Protection and General Government ("PPGG")**

### **Article VII Legislation**

**PPGG, Part "Q"** (Sexual orientation panic defense) – Bronx moved to oppose the bill, Mid-York second. All support motion to oppose the legislation except Del-Chen (oppose motion), Nassau (oppose motion), Orange Sullivan (oppose motion), Staten Island (abstain), Westchester (abstain). Motion carried.

Summary and explanation for opposition:

Purpose:

This bill would prohibit a defendant from being able to ask a jury to find that a harmed individual's actual or perceived gender, gender identity, gender expression, or sexual orientation is to blame for a defendant's violent reaction – whether it be murder or a physical assault.

Summary of Provisions and Statement in Support:

This bill would prohibit a jury from considering whether it was reasonable for a defendant who acted under the influence of extreme emotional disturbance to use as an explanation or excuse that it resulted from the defendant's discovery of, knowledge about, or potential disclosure of the harmed individual's actual or perceived gender, gender identity, gender expression, or sexual orientation.

Under current law, there is no statute preventing a defendant from claiming that he or she acted in an extreme emotional disturbance or, his or her acts were justified because they were based on their discovery of, knowledge about, or potential disclosure of the harmed individual's actual or perceived gender, gender identity, gender expression, or sexual orientation.

Reason for opposition:

Takes away a defense that members felt should be available.

Comments of Sub-Committees:

Criminal Committee opposed the legislation, LGBTQ Committee did not respond to inquiry.

**PPGG Part "R"** (Rape Shield Law) – Motion to support (didn't record who made motion, sorry!), Queens second, all voted to support. Motion carried.

Memo in Support Summary:

Purpose:

This bill would amend the criminal procedure law in relation to admissibility of a victim's sexual conduct in a sex offense.

Summary of Provisions and Statement in Support:

New York criminal procedure law Section 60.42 currently prevents evidence of a victim's sexual conduct from being admissible in a prosecution for a sex offense or attempt to commit a sex offense as defined in Section 130 of the penal law. Also known as a rape shield

law, this provision provides crucial protection to victims of sexual violence from having their own sexual histories used against them when they seek justice in a court of law.

However, the current rape shield law suffers gaps that leave many, in particular those who are too often at high risk of violence, out. The current law does not apply to victims of sex trafficking crimes and it does not shield victims from having their own convictions for prostitution used against them. This bill would close these gaps.

Comments of Sub-Committees:

Criminal and DV Committees support.

**PPGG Part “T”** (SOL for Rape in 2nd and 3rd) – Nassau moved to support the legislation, Adirondack second. All voted to support except: Bronx (oppose), Orange/Sullivan (abstain), Queens (oppose), Staten Island (abstain), Westchester (abstain). Motion carried.

Memo in Support Summary:

Purpose:

This bill would amend the criminal procedure law to eliminate the statute of limitations for Rape in the 2nd and 3rd degrees.

Summary of Provisions and Statement in Support:

Statutes of limitations impose a ticking clock on how long victims are able to come forward if they want to seek criminal charges. For crimes of sexual violence in particular, the clock ticks against a culture of silence that prevents victims from speaking out. In recognition of this fact, states across the country are lengthening or eliminating the statutes of limitations on crimes of sexual violence. While New York removed the statute of limitations for Rape in the First Degree over a decade ago, a five-year statute of limitations remains for Rape in the Second Degree and Rape in the Third Degree. Therefore, this bill would remove the statute of limitations for Rape in the Second Degree and the Third Degree. Eliminating the statute of limitations for these crimes will allow victims the full opportunity to obtain justice.

Comments of Sub-Committees:

Criminal Committee felt a SOL should be included and that not having a SOL was prejudicial to those accused of rape several years after the fact. DV supports.

**PPGG Part “U”** (DV Survivors Justice) – The motion was made and seconded to support the legislation and all voted to support except Staten Island (abstain). Motion carried.

Memo in Support Summary:

Purpose:

This bill would amend the penal law and the criminal procedure law, in relation to sentencing and re-sentencing in domestic violence cases.

Summary of Provisions and Statement in Support:

This bill would expand sentencing and re-sentencing options for judges in cases in which defendant were domestic violence victims at the time of their offense. The bill specifies offenses that may be considered by judges for alternate sentencing and re-sentencing. It provides ranges for sentencing that could be imposed if the judge determines the defendant

or incarcerated person was a victim of domestic violence at the time of the offense and such abuse was a significant factor in committing the offense. The bill also allows eligible incarcerated persons access to their pre-sentencing reports to aid them in applying for re-sentencing appealing their sentences.

Comments of Sub-Committees:

DV and Crim support.

**PPGG Part “S”** (Cyber Sexual Abuse, fka “Revenge Porn”) – discussion had re: concerns about protecting children because they were most likely to be charged with these types of crimes and there was a discussion regarding adding an age cap (this legislation was discussed last year and the same concerns were discussed last year. WBASNY suggested a civil right of action last year and this year, a civil right of action is being proposed. That is the only portion being submitted for a vote.) Majority voted to support the new right of civil action portion of the legislation but to continue to raise the concerns that were included in our supporting statement from last year. Brooklyn made motion to support legislation, Adirondack second, all in favor except Queens (abstain). Motion carried.

Memo in Support Summary:

Purpose:

This bill would criminalize revenge porn.

Summary of Provisions and Statement in Support:

Advances in technology and social media have enabled new forms of sexual exploitation that are not sufficiently addressed by existing state law. Revenge porn is the non-consensual dissemination of sexually explicit images or videos intended to harm another. To send the message that this type of behavior has no place in New York, this bill will prohibit the unlawful publication of sexual materials consensually shared when the person had a reasonable expectation that such material would not be disclosed. Specifically, the crime will be a class A misdemeanor punishable by up to one year in jail or three years of supervision for any person who disseminates such materials. Further, this bill would create private right of action for such unlawful dissemination or publication of intimate images.

Comments of Sub-Committees:

Children’s Rights, DV, and Mat supported the legislation. Crim Committee felt that an age should be suggested (18) under which children will not be prosecuted.