

### Current Trends in Domestic Violence Laws

by Marla Marinucci and Jennifer W. Millner

The highly publicized incidents of domestic violence involving celebrities over the past few years have resulted in a drastic increase in the number of domestic violence bills introduced in the New Jersey Legislature. In the 2016-2017 legislative session alone, there were approximately 64 such bills introduced, and, thus far, only one has been signed into law by Governor Chris Christie. This article will give a brief overview of the current trends in the area of domestic violence law, and how the most recent domestic violence bills that are currently floating around the Legislature could ultimately impact the practice of law if they are signed into law.

On Dec. 5, 2016, Governor Christie signed A-1946 into law, which added cyber harassment to the list of the predicate acts that constitute domestic violence pursuant to N.J.S.A. 2C:25-19. The cyber harassment statute, found at N.J.S.A. 2C:33-4.1, which the governor signed into law on Jan. 21, 2014, provides in pertinent part:

\*\*\*

A person commits the crime of cyber-harassment if, while making a communication in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, the person:

- (1) threatens to inflict injury or physical harm to any person or the property of any person;
- (2) knowingly sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person; or
- (3) threatens to commit any crime against the person or the person's property.<sup>1</sup>

\*\*\*

The potential impact this 19th predicate act of domestic violence will have on family law practitioners who handle these types of matters remains to be seen. However, attorneys who regularly litigate domestic violence matters know all too well that photos and posts from Facebook and other social media outlets can often 'make' or 'break' the case. It is of paramount importance to not only be familiar with the cyber harassment statute as it relates to domestic violence, but also to understand the ramifications if one's client, who has to defend against a temporary restraining order on the grounds of cyber harassment, is also charged criminally.

As indicated above, the addition of cyber harassment as a predicate act of domestic violence was the only bill, of the 64 domestic violence bills that were introduced in the 2016-2017 legislative session, to become a law. The next few bills that will be touched upon, which were introduced during the most recent legislative session, seem to be gaining momentum:

The first noteworthy bill is S-805, which revises certain laws concerning domestic violence and firearms. In a nutshell, the bill proposes to enhance protections currently afforded to victims of domestic violence by requiring attackers to surrender their firearms while domestic violence restraining orders are in effect, or when they are convicted of a domestic violence crime or offense.<sup>2</sup> The bill also requires firearms purchaser identification cards and permits to purchase handguns to be revoked if the holder of the card or permit is convicted of a domestic violence crime or offense.<sup>3</sup> The bill passed the Senate on March 14, 2016, and the Assembly on April 7, 2016. It was conditionally vetoed by Governor

Christie on May 23, 2016. In his statement to the Senate, the governor wrote: “This bill contains redundant restrictions on firearms ownership while ignoring the larger problem of domestic violence, which in most cases does not involve a firearm.”<sup>4</sup> He further stated, “I am recommending a comprehensive plan to combat domestic violence, focusing on deterring and punishing abusers and protecting victims instead of limiting just one instrument of violence (which the law already restricts).”<sup>5</sup> The bill was then sent back to the Senate with various proposed amendments.<sup>6</sup> One such amendment involved expediting firearms purchaser cards and permits to purchase a handgun for victims of domestic violence.<sup>7</sup>

A-1957 expands the Address Confidentiality Program<sup>8</sup> to include victims of stalking or sexual assault. The Address Confidentiality Program provides qualified individuals who have been victims of domestic violence and fear further violent acts from their assailants with a designated address to be used as their mailing address.<sup>9</sup> The bill passed the Assembly on Feb. 18, 2016, and was referred to the Senate Judiciary Committee later that month. It stalled, possibly because the Office of Legislative Services estimates the bill would require the creation of one additional full-time equivalent position to operate the program, costing the state approximately \$100,000 annually.<sup>10</sup>

A-2061 also appears to have some support. It is important to note that the bill also comports with the governor’s desire, as set forth in his previously addressed conditional veto on May 23, 2016, to deter incidents of domestic violence by increasing the criminal penalties for the aggressors.<sup>11</sup> Specifically, A-2061 provides that an assault that occurs during a domestic violence incident in which the defendant knowingly obstructs the victim’s breathing or blood circulation by applying pressure on the throat or neck, or blocking the nose or mouth of such person, thereby causing or attempting to cause bodily injury, would constitute an aggravated assault.<sup>12</sup> Under current law, such an act would most likely be considered a simple assault.<sup>13</sup> By upgrading this type of assault to an aggravated assault, the defendant’s resulting punishment would be substantially increased if convicted.<sup>14</sup> The bill passed the Assembly on June 27, 2016, and was referred to the Senate Judiciary Committee on June 30, 2016. Following are a few noteworthy bills that have been introduced or re-introduced from prior legislative sessions, but have not made much progress.

A-1193/S-525 has the potential of impacting family law attorneys exponentially. The bill seeks to amend N.J.S.A. 2A:34-23 by prohibiting an award of alimony to domestic violence offenders. Further, it would allow termination of alimony based on conviction for a crime or offense involving domestic violence.<sup>15</sup> The bill was previously introduced during the 2014-2015 legislative session, and prior to the enactment of the revised alimony statute in Sept. 2014. The proposed bill seeks to create a paragraph (j), (which is currently in use), and add the following language:

\*\*\*

The court shall not award alimony to any person convicted of a crime or offense involving domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19) by the victim of that crime or offense. If the recipient of an existing alimony award is subsequently convicted of a crime or offense involving domestic violence against the payer spouse or partner, such conviction shall constitute changed circumstances for the purposes of a petition to terminate the alimony award. Nothing in this subsection shall be construed to limit the authority of the court to deny alimony for other bad acts.<sup>16</sup>

\*\*\*

It is clear from the above-cited text that if alimony has not yet been adjudicated, and if a person has either a final restraining order against them or has been convicted of a crime involving domestic violence, that alone precludes the person from receiving alimony from the victim. However, if said

person is receiving alimony from the victim and, thereafter, is convicted of a crime or offense involving domestic violence, this would constitute changed circumstances, permitting the victim to petition the court to terminate the alimony. What is interesting is that in those cases in which alimony is already in pay status, the language of the statute is not clear that the victim is entitled to an automatic termination, only that such an incident would constitute changed circumstances. A discussion of the impact this particular bill would have on matrimonial attorneys is probably not necessary, as one can only imagine how many high-wage earners either facing an alimony obligation or currently paying one, would flock to the courthouse seeking temporary restraining orders.

A-3089/S-1984 attempts to increase the punishment for defendants who commit an assault in the context of an incident of domestic violence. Similar to Assembly Bill 2061, discussed above, the bill seeks to upgrade a simple assault to an aggravated assault if the assault occurs during an act of domestic violence.<sup>17</sup> However, where A-2061 requires a strangulation, under A-3089/S-1984, there is no such requirement, and the assault is automatically upgraded to an aggravated assault if the act occurs during an incident involving domestic violence.<sup>18</sup>

Likewise, A-3577/S-1905 seeks to establish minimum terms of imprisonment for offenders who commit physically violent acts of domestic violence.<sup>19</sup> Specifically, the bill provides that a person will be sentenced as follows: 18 months for a crime of the fourth degree, five years for a crime of the third degree, 10 years for a crime of the second degree, and 20 years for a crime of the first degree, unless the provisions of any other law provide for a higher mandatory minimum term.<sup>20</sup>

Two more bills that aim to increase penalties for offenders of domestic violence are A-4466 and S-748. A-4466 would amend N.J.S.A. 2C:44-1 to add an aggravating factor for courts to consider when sentencing an individual who has committed a domestic violence offense against a minor.<sup>21</sup> S-748, a carryover from the 2014-2015 legislative session, also seeks to amend N.J.S.A. 2C:44-1, whereby the mere fact that the offense committed involved domestic violence would, in and of itself, be considered an aggravating factor for purposes of determining the appropriate sentence for the defendant.<sup>22</sup>

In addition to the above, there are numerous proposed bills involving mandatory domestic violence training for law enforcement and assistant county prosecutors;<sup>23</sup> judges and judicial personnel;<sup>24</sup> municipal prosecutors;<sup>25</sup> and public employers,<sup>26</sup> just to name a few. Some of the other bills introduced in the 2016-2017 session that do not fall into any one specific category, but demonstrate current trends in domestic violence laws, are as follows:

**A-2308/S-524:** This bill authorizes the court to include in domestic violence restraining orders a provision making the order applicable to a pregnant victim's child upon birth.

**A-2813:** Under this bill, all persons would be required to report incidents of domestic violence to law enforcement, and a failure to report would be a disorderly persons offense.

**A-2814:** This bill establishes the Domestic Violence Tuition Waiver Program, which would provide state-paid tuition or a tuition waiver, for one semester, to persons who are victims of domestic violence and who, as a result of the domestic violence, were unable to complete a course of study at an institution of higher education.

**A-4280:** Under this bill, domestic violence victims would be permitted to cancel television and telephone service contracts without paying an early termination fee, if they submit the request in writing and provide the service company with a copy of their restraining order.

**A-4530:** New Jersey cosmetology and hairstyling licensees would be required, under this bill, to complete domestic violence and sexual assault awareness education.

The domestic violence laws in this state are constantly evolving, and it cannot be understated how vital it is to stay current not only with the laws that are currently in effect, but also those that are being introduced in the Legislature. It appears one of the more dominant trends in the area of domestic violence law today involves increasing the punishment to domestic violence offenders in an effort to prevent such acts from occurring. Just knowing these types of bills are pending can have a significant impact on how one advocates for domestic violence clients in the future, even if the majority of the bills introduced never make it to the governor's desk.

*Marla Marinucci is a partner in the law firm of Russell & Marinucci located in Ocean City.  
Jennifer Weisberg Millner is a partner at Fox Rothschild, LLP in the firm's Princeton Office.*

#### Endnotes

1. N.J.S.A. 2C:33-4.1.
2. S-805, introduced Jan. 12, 2016.
3. Id.
4. Governor Chris Christie's Conditional Veto to S-805, May 23, 2016.
5. Id.
6. Id.
7. Id.
8. N.J.S.A. 47:4-1 et seq.
9. Id.
0. A-1957, Fiscal Estimate, Feb. 25, 2016.
1. Governor Chris Christie's Conditional Veto of S-805, May 23, 2016.
2. Assembly Bill 2061, introduced Jan. 27, 2016.
3. N.J.S.A. 2C:12-1(a).
4. A-2061, introduced Jan. 27, 2016.
5. A-1193, introduced Jan. 27, 2016; S-525, introduced Jan. 12, 2016.
6. A-1193, introduced Jan. 27, 2016; S-525, introduced Jan. 12, 2016.
7. A-3089, introduced Feb. 18, 2016; S-1984, introduced April 18, 2016.
8. Id.
9. A- 3577, introduced April 4, 2016; S-1905, introduced March 10, 2016.
20. Id.
21. A-4466, introduced Jan. 10, 2017.
22. S-748, introduced Jan. 12, 2016.
23. A-4040, introduced July 21, 2016; S-2546, introduced Sept. 26, 2016.
24. A-3390, introduced March 3, 2016.
25. A-2185, introduced Jan. 27, 2016; S-2547, Sept. 26, 2016.
26. A-4124, introduced Sept. 19, 2016; S-907, introduced Jan. 10, 2017; A-4125, introduced Sept. 19, 2016.