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## Domestic Violence Cases Reinforced; Warren Prosecutor Files Additional Charges

By Sheila McLaughlin, Enquirer Staff Writer

### THE ISSUE

In the past, anyone in a relationship – married or unmarried – was subject to Ohio’s domestic violence law, which makes a first offense a misdemeanor and subsequent charges felonies.

Conflict arose this year when an Ohio constitutional amendment, passed in November, prohibited the state from recognizing “legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effects of marriage.”

Some common pleas judges in the state, including Judge Neal Bronson in Warren County, have interpreted the amendment to mean that unmarried people are not covered by Ohio’s domestic violence statute.

LEBANON – A local prosecutor is taking additional steps to protect domestic violence cases involving unmarried couples after a judge ruled that Ohio’s recent ban on same-sex marriage voids part of the state’s 26-year-old domestic violence law.

At stake is whether domestic violence cases involving unmarried couples – either straight or gay – can be charged as felonies, which carry harsher penalties.

In addition to felony domestic violence charges, Warren County Prosecutor Rachel Hutzel is seeking grand jury indictments for felonious assault and misdemeanor assault.

Hutzel’s taking that position while her office appeals an April ruling by Common Pleas Judge Neal Bronson that reduced a felony domestic violence charge to a misdemeanor assault for a South Lebanon man with two previous domestic violation convictions.

Her approach is unique to Southwest Ohio, and those involved in the case predict that it will end up before the Ohio Supreme Court to clear up any statewide confusion.

The judge based his ruling on a constitutional amendment that Ohio voters passed in November defining marriage as a union “between one man and woman” and prohibiting the legal recognition of any other relationship that attempts to mimic marriage.

The law was intended to ban civil unions and same-sex marriages, but Bronson said it also applied to unmarried couples. Key to his decision was his interpretation of the domestic violence law, which protects “household members living as spouses.”

Hutzel said she’s adding the charges to protect domestic violence victims. “Our biggest concern is that we would end up with a victim who is unprotected because we didn’t have in place another charge and the (domestic violence charge) gets dismissed,” she said.

Judges elsewhere in the state have agreed with Bronson, and prosecutors have filed similar challenges in various appellate courts.

The Warren County case is on track to be decided first. The 12th District Court of Appeals in Middletown could rule as early as September.

Hutzel’s position is backed by the Ohio Prosecuting Attorneys Association, Ohio Coalition of Battered Women, Ohio Domestic Violence Network, Ohio NOW and Lambda Legal Defense, which have intervened in the court case.

A decision by the 12th District would be binding on courts in Butler, Clermont, Warren, Preble, Clinton, Brown, Madison and Fayette counties. Whatever happens, lawyers involved in the legal fight say they expect the case to wind up in the Ohio Supreme Court to clear up the confusion statewide.

Attorney Tom Eagle, who raised the constitutional question in the Warren County case, doubts he’d be satisfied with a 12th District ruling in the prosecutor’s favor: “Generally speaking, most defense attorneys would suggest a further appeal.”

Eagle said he challenged the criminal case against his client, Michael Carswell, on the constitutional issue because it was the best way to defend him. The pending domestic violence charge was filed as a third-degree misdemeanor, punishable by up to five years in prison. As a misdemeanor assault, Carswell faces up to six months in jail.

“The defendant doesn’t care about protecting unmarried people, married people or advocating the constitutionality of same-sex marriage,” Eagle said. “His issue is just to have the most favorable result.”

He said he hadn’t heard that Hutzel was adding charges against felony domestic violence suspects, but he wasn’t surprised by her action.

Prosecutors in Hamilton, Butler and Clermont counties said they aren’t stacking charges in felony domestic violence cases because they don’t feel threatened. Their judges have allowed felony domestic violence cases to proceed or defense lawyers haven’t challenged the issue.

Michael Smalz, who represents advocacy groups for battered women in the Warren County appeal, said he hasn't heard of anyone else in the state using the same tactic to protect cases. He is concerned battered women would be less likely to file charges against partners if the law is not upheld.

"They are almost inviting retaliation or retribution by their abuser if they take an action and it gets thrown out," Smalz said.

Janet Hoffman, executive director of the Abuse & Rape Crisis Shelter of Warren County, said women feel empowered by the extra steps Hutzler has taken.

"I think that helps back it up and say, 'We know this is a crime,'" she said.

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