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Few Laws Help Gays in Cases of Domestic Violence

By Kathleen Kingsbury

[NEW YORK] – After coming home for work, Marianne makes dinner for her family. She watches TV with her children and tucks them into bed. She surfs the Internet for cheap plane tickets to take the kids to DisneyWorld for Easter.

For Marianne, who asked that her last name not be used, such everyday tasks were impossible less than a year ago. Her husband, Jordan, who abused her regularly throughout their 12-year marriage, controlled her life with violence.

Finally, a police officer suggested to Marianne that she go to family court for help. She filed a restraining order against her husband, keeping him away from her home, work and children's school. It isn't perfect, but Marianne can at least live without fear.

However, a majority of states don't guarantee this protection to Lorena Adams. Razor cuts crisscross Adams' arms, scars of the nearly daily abuse she suffered at the hands of her partner, Miranda, for almost five years. **Only Hawaii's domestic-violence law explicitly gives gays and lesbians the right to restraining orders against abusive partners, and courts in only three other states – Ohio, Illinois and Kentucky – have consistently interpreted their states' laws to include same-sex relationships.**

In the rest of the United States, the ambiguous gender-neutral language of domestic-violence laws allows courts to deny protective orders to homosexual domestic-violence victims at their discretion. New York, which has 46,490 gay and lesbian households, second only to California, is one of seven states with statutes that specifically exclude same-sex partners. The others are Arizona, Delaware, Louisiana, Montana, South Carolina and Virginia.

“It is a matter of the government providing equal protection to all families, without distinction because of sexual orientation,” said Joe Travers, a spokesman for Empire State Pride Agenda, a New York gay and lesbian advocacy group.

As courts and legislatures nationwide debate whether same-sex marriage should be legal, there is little question that the violence that can plague heterosexual couples also affects lesbian, gay, bisexual and transgendered relationships. A 2002 study, financed by the National Institutes of Health, showed that domestic violence occurs between same-sex partners in one out of every four couples, a statistic that matches such occurrences in heterosexual relationships.

For gay men, “this study demonstrates that intimate partner abuse among men is a very serious public-health problem,” the study’s researchers wrote in the *American Journal of Public Health*’s December 2002 issue. “It sheds light on a subject that has long been taboo both within and outside this community – that is, men are also victims of battering and not solely perpetrators.”

Domestic-violence restraining orders are the most significant legal remedy available to abuse victims, according to the New York City Mayor’s Commission on Domestic Violence. Such orders ensure that abusers stay away from a victim’s home and workplace, but also can evict an abuser from a shared household and sometimes require an abuser to pay temporary monetary support, especially if the couple has children together. Without this help, partners, including Adams of New York City, often cannot escape a cycle of violence.

“I created a situation where I couldn’t leave for five years because my little girls and I were dependent on Miranda for money,” said Adams, who has two daughters from a previous marriage.

Adams had her partner arrested four times, but never pressed criminal charges against her. If she had been in a heterosexual relationship, she could have gone to family court to petition for a protective order without filing fees and domestic-violence advocates who provide for legal counsel.

But New York state law gives family courts jurisdiction only over people related by blood or marriage or who have children biologically in common – all categories that gay, lesbian, bisexual and transgendered couples do not fit. Her partner would have had to face jail time for assault for Adams to get a restraining order, which is also dependent on a prosecutor pursuing the case.

“Victims hesitate to have their partners arrested because it will mean they have to testify in court against someone they love or have children with,” said Jeannette Kossuth, a policy intern at the National Gay and Lesbian Antiviolence Project.

The New York State Assembly has passed bills every few years to reform these laws since 1987, most recently at the beginning of February. The new law would include anyone who lives together under the domestic-violence statute. The bills have never passed the state Senate, Travers said.

Other states deny same-sex partners protective orders through strict laws on sodomy. Florida protects people “residing as a family,” and Mississippi grants orders to persons “living as spouses,” but because sodomy laws in both states criminalize homosexuality and ban same-sex marriage, courts can limit protection to heterosexual couples. North Carolina broadened its law to include “former and current household members,” but a clause says that the law should not protect persons charged with a “crime against nature” prohibited by state sodomy laws.

In New York and these states, an abused partner must choose to leave a dangerous situation without protection. On Jan. 4, 2003, after her third visit to Harlem Hospital's emergency room in six months, Adams made a decision. She said she realized that her partner would kill her if she stayed, so she moved her children and herself into a battered women's shelter, where the family still lives.

"I know I don't have to be afraid of Miranda every day any more, but I also know New York laws don't protect me like a heterosexual woman," Adams said. "And that still scares me."

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