Earlier this year, the United Nations Committee on the Elimination of Racial Discrimination recommended that the U.S. do more to “prevent and punish violence and abuse against women belonging to racial, ethnic, and national minorities.” Now, the New York Legislature can take action. A recently reintroduced bill, which the Legislature has let languish in various versions for the past two decades, would ensure that the state’s family courts’ doors are open to all who need civil protective orders against domestic violence.

Right now, the family court law keeps those doors open only to victims who are or have been married to or have a child in common with their abuser. This means that many domestic violence victims, including individuals in same-sex couples or dating relationships, have to accuse their partner of a crime before they can get protection. Remarkably, New York is the only state in the nation with this narrow a law. Every other state, at a minimum, allows people who live with their abuser to seek a civil protective order. And many provide far more protection, enabling anyone being abused by a current or former intimate partner to seek civil law protection.

For many women of color and many immigrants, New York’s rule is particularly devastating. As reported in “Race Realities in New York City,” a volume submitted to the UN committee by New York City advocacy groups, the criminal protective order process poses risks that, for some, can be as serious as the abuse.

Before a criminal court can grant a protective order, the police must arrest the abuser and then turn the case over to a prosecutor. In family court, by contrast, the victim can begin a complaint on her (or his) own, and go before a judge trained to hear protective order petitions in domestic violence cases.

For many people of color who live in communities that fear police abuse, inviting the police to arrest a boyfriend or girlfriend may carry such serious consequences that they would rather suffer dangerous abuse in silence. For immigrants who live in fear of deportation, calling in the police is also often unimaginable, even when the abuse is horrific. Though victims want the abuse to stop, most do not want to put the abuser – or themselves – at risk of deportation.

Many lesbians, gay men, bisexuals, and transgender individuals sense themselves to be similarly vulnerable, with fears that the police will not understand their relationships, or, worse, will doubt that domestic violence can occur between same-sex partners.
New York’s current law not only causes harm through its different treatment of similarly situated domestic violence victims, but it also violates the International Convention on the Elimination of Racial Discrimination, ratified by the U.S. in 1994. The Convention requires the states, as well as the federal government, to ensure equal treatment in courts and eliminate laws that have the “purpose or effect” of causing race- or ethnicity-based harms.

Again, there is an easy solution. The Fair Access to Family Court bill would ensure family court access to anyone who is abused by an intimate partner, regardless of marital status. The bill has already passed the Assembly. Now it is the New York state Senate’s turn to act.

Passing this bill would eliminate the disparate racial impact of the current family court rules. It would bring New York closer to complying with international obligations not to discriminate based on race. And, for those who are desperately in need of protection, it would bring the state a step closer to providing critical help and saving lives.

By Suzanne B. Goldberg Sadie R. Holzman Jonathan A. Lieberman

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