**Talking Points for the “Access to Family Court” Bill**

1. **NY PROVIDES DOMESTIC VIOLENCE VICTIMS WITH INFERIOR PROTECTION:**

   - New York is the *only* state in the nation that does not allow victims of domestic violence to obtain civil orders of protection, or their equivalent, unless they and their abuser either: (1) are married to or divorced from each other; (2) are blood relatives; or (3) have a child in common.

   - In contrast, thirty-seven states and the District of Columbia allow victims of domestic violence to obtain protective orders against ROMANTIC PARTNERS, regardless of cohabitation or marital status.

   - Over one-third of all states in the U.S. added protection against abuse by dating and intimate partners over a decade ago, and another third have adopted these protections since. NY is out-of-step with necessary protections recognized by the majority of the country.

   - Senate Bill S6783 addresses these problems by defining the “family and household members” who are eligible for civil protective orders to include people “who are or have been in a dating or intimate relationship whether or not they have ever lived together.”

   - Expanding the eligibility of domestic violence victims to obtain civil protective orders is required to bring the NY Family Court Act in line with the definition of domestic violence used elsewhere in NY law. Through the NY Domestic Violence Prevention and Services Act of 1987 (Social Services Law 459-a et. seq.), NY is already committed to protecting domestic violence victims if they are or were cohabitating with an abuser or are considered a victim by the department providing services.

2. **RESTRICTING ACCESS TO FAMILY COURT LEAVES MANY PEOPLE IN DANGER:**

   - By excluding teenagers, dating partners, and same-sex couples from accessing Family Court, NY fails to protect many victims from life-threatening abuse.

   - There is no civil protection from intimate partner violence available outside of Family Court.

   - Victims often need to control the initiation, scope and course of legal claims as a way of protecting their safety and economic security. The civil process provides this kind of control; the criminal process does not.¹

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The current law does not reflect the realities of family life. Restricting unmarried family
members from obtaining civil protective orders leads to family and social instability, rather
than stability.

- What is at issue in Senate Bill 6783 is the state’s obligation to provide an effective
remedy for people facing violence. Senate Bill 6783 says nothing about rights and
privileges in other contexts.

A limited definition of “family and household member” for domestic violence protections
contrasts with NY case law that recognizes the reality of family life in other, similar realms.

- In some contexts, New York has already interpreted the term “family” to include
same-sex couples and others when doing so would “avoid objectionable
consequences,” “prevent hardship and injustice,” and “effectuate the purpose of a
remedial statute ‘designed to promote the public good.’”

3. CRIMINAL COURT IS NOT AN ADEQUATE ALTERNATIVE:

- Criminal court is reactive rather than proactive; victims must wait for the abuse to occur
before they can receive protection!

- Criminal court access requires police involvement, often preventing the most vulnerable
people from seeking protection!

  - The arrest of a sole breadwinner may be devastating for low-income victims of
domestic violence because a breadwinner may lose his or her job as a result of the
arrest. With a civil protective order, however, the breadwinner can still support the
family (and indeed can be ordered to) while living apart from the family.

  - Victims of color, immigrants, and same-sex couples may not call the police for
protection out of fear of discrimination or hostility.

  - Criminal Court takes control of a victim’s case and takes the case out of the victim’s
hands; Family Court allows the victim to make his or her own decisions about how to
proceed.

  - Family Court judges often have more training and expertise in the nuances of family
law and domestic violence.

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2 Sarah E. Warne, Rocks, Hard Places, and Unconventional Domestic Violence Victims: Expanding Availability of
where “the Court of Appeals mandated broad interpretation of New York City's rent control regulations to recognize
same-sex partners as ‘families’ and to qualify them for protection from eviction when the lease-holding partner
dies”).

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• A civil order of protection can include additional remedies, such as payment of medical expenses or participation in a batterer’s education program, while a criminal order cannot.

4. RESOURCE CONSTRAINTS DO NOT JUSTIFY LIMITING ACCESS TO FAMILY COURT:

➢ Allowing family courts to grant civil protective orders may conserve resources by providing sufficient protection to end an abusive situation without police involvement.

• Family Court protective orders can deter batterers, thereby preventing hospital bills for injuries, the need for police intervention, etc.3

• The criminal justice system is often more expensive because the severity of criminal punishment requires extensive procedures; Family Court does not result in criminal sanctions, and thus requires less elaborate procedures.

➢ It is not acceptable as a matter of state policy to limit the use of family court by protecting some victims in romantic relationships and not others.

5. JUDGES WILL BE ABLE TO DISTINGUISH BETWEEN DATING PARTNERS AND PEOPLE WHO LACK A ROMANTIC RELATIONSHIP

➢ At least twenty-one states have been able to implement statutes that cover “dating relationships” without specific statutory guidance on how this term should be defined. Senate Bill S6783 is enforceable as written and must be adopted immediately.

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3 A 2004 report analyzing the effectiveness of civil orders of protection found that a significant decline in the probability of abuse followed civil POs. Prior to filing a PO, 68% of the women reported physical violence. After filing, only 23% reported physical violence. (Mathew J. Carlson et al., Protective Orders and Domestic Violence: Risk Factors for Re-Abuse, 14 JOURNAL OF FAMILY VIOLENCE 205 (2004)).