



Maureen T. Shea

10/05/98 08:57:25 AM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:

Subject: RE: Commerce Appropriations Conference

----- Forwarded by Maureen T. Shea/WHO/EOP on 10/05/98 08:57 AM -----



Sharon Daly <SDaly @ CatholicCharitiesUSA.Org>

10/02/98 04:04:13 PM

Record Type: Record

To: Maureen T. Shea/WHO/EOP

cc:

Subject: RE: Commerce Appropriations Conference

Maureen, What about the immigrant women provisions in the Violence Against Women bill. That's also an important issue in conference. I thought the Administration cared about that. Pat Reuss at NOWLDF can fill you in on the details. This matters a lot to us.

-----Original Message-----

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Sent: Wednesday, September 30, 1998 2:31 PM

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Cc: Deborah_B._Mohile@who.eop.gov; Robin_Leeds@who.eop.gov
Subject: Commerce Appropriations Conference

The following are excerpts from a September 29 letter from Jack
Lew,
Director of the Office of Management and Budget, to Chairman Bob
Livingston
regarding the conference on the Commerce, Justice, and State,
the
Judiciary, and Related Agencies Appropriations Bill, FY 1999.
We thought
it would be helpful to you:

?The issues listed below are ones about which the Administration
has very
serious concerns. .. If the bill presented to the President does
not
address these issues, the President?s senior advisers would
recommend that
he veto the bill:

Legal Services Corporation:

The Administration appreciates the funding level of \$300 million
provided
for the Legal Services Corporation (LSC) in the Senate bill.
Notwithstanding the House amendment to increase funding above
the House
Committee level, the resulting House funding level for LSC
remains
unacceptable. ...We urge the conferees to fully fund the
President?s
request.

Department of Commerce:

Decennial Census. The language in the House bill that would
release funds
for only the first half of FY 1999 is unacceptable. It is
critical that
the Congress provide full-year funding for the Decennial Census
without any
restrictions on the use of statistical sampling. ...We strongly
urge the
conferees to remove the onerous House language restrictions and
provide
funding that will allow the Census Bureau to implement its
current plan.

Equal Employment Opportunity Commission:

The Administration strongly urges the conferees to fully fund the

President's request of \$279 million for the Equal Employment Opportunity

Commission (EEOC), \$18.5 million above the House level and \$25.4 million

above the Senate level. The additional resources are essential and would

allow EEOC to reduce the backlog of pending complaints and implement

much-needed reforms in the way all complaints are managed, including an

enhanced alternative dispute resolution program. We look forward to

working with the Congress to provide funding for EEOC and other programs

included in the President's civil rights enforcement initiative.

Department of Justice:

Brady Act Implementation. The Senate bill contains unacceptable language

that would undermine implementation of the Brady Act and the National

Instant Check System. The Administration urges the conferees to reject

this language and to continue to work with the Administration to keep guns

out of the hands of criminals, the mentally unstable, and other prohibited

purchasers.

Title V - At-Risk Children's Grant Program. The Administration strongly

urges the conferees to provide the \$95 million requested for the At-Risk

children's proposal. The At-Risk proposal supports community programs that

prevent young people from becoming involved in the criminal justice system,

including mentoring, truancy prevention, and gang intervention.

International Affairs Programs:

International Organizations and Peacekeeping. The Administration is

concerned that funding reductions and earmarks, especially in the Senate

version, for the Contributions to International Organizations (CIO) and

Contributions for International Peacekeeping Activities (CIPA)
accounts
would increase arrears and impair the ability of the United
States to
address foreign policy interests through the mechanism of U.N.
peacekeeping. .. we strongly oppose the authorization
requirement in both
versions of the bill that is intended to subject this important
foreign
policy measure to the unrelated issue of family planning
policy.?

Additional Concerns Expressed:

?Department of Justice:

Bureau of Prisons / Abortion. The Administration urges the
conferees to
strike language that would prohibit the Bureau of Prisons from
funding
abortions except in cases of rape or where the life of the
mother is
endangered.?



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LEGISLATIVE REFERENCE DIVISION
ECONOMICS , SCIENCE , AND GENERAL GOVERNMENT BRANCH

TO:

Julie Fernandez
Steve Mertens

FROM: INGRID SCHROEDER
phone: (202) 395-3883
FAX: (202) 395-3109

DATE: 10/5/98

NUMBER OF PAGES (including this cover sheet): 2

COMMENTS:

Battered aliens provisions P.L. 104-208

*Steve and I don't think they need
245(i) coverage

Please call (202) 395-3454 to report any difficulties with transmission of this fax.

(1) by striking "For purposes of paragraph (1), a" and inserting "A"; and

(2) by striking "relating to the hiring of individuals" and inserting the following: "if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)".

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to requests made on or after the date of the enactment of this Act.

TITLE V—RESTRICTIONS ON BENEFITS FOR ALIENS

Subtitle A—Eligibility of Aliens for Public Assistance and Benefits

SEC. 401. EXCEPTION TO INELIGIBILITY FOR PUBLIC BENEFITS FOR CERTAIN BATTERED ALIENS.

Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641) is amended by adding at the end the following new subsection:

"(c) **TREATMENT OF CERTAIN BATTERED ALIENS AS QUALIFIED ALIENS.**—For purposes of this title, the term 'qualified alien' includes—

"(1) an alien who—

"(A) has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the Attorney General, which opinion is not subject to review by any court) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

"(B) has been approved or has a petition pending which sets forth a prima facie case for—

"(i) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act,

"(ii) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act,

"(iii) suspension of deportation and adjustment of status pursuant to section 244(a)(3) of such Act, or

"(iv) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act, or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act; or

"(2) an alien—

"(A) whose child is battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or par-

ent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the Attorney General, which opinion is not subject to review by any court) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

"(B) who meets the requirement of clause (ii) of subparagraph (A).

This subsection shall not apply to an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty."

SEC. 502. PILOT PROGRAMS ON LIMITING ISSUANCE OF DRIVER'S LICENSES TO ILLEGAL ALIENS.

(a) **IN GENERAL.**—Pursuant to guidelines prescribed by the Attorney General not later than 6 months after the date of the enactment of this Act, all States may conduct pilot programs within their State to determine the viability, advisability, and cost-effectiveness of the State's denying driver's licenses to aliens who are not lawfully present in the United States. Under a pilot program a State may deny a driver's license to aliens who are not lawfully present in the United States. Such program shall be conducted in cooperation with relevant State and local authorities.

(b) **REPORT.**—Not later than 3 years after the date of the enactment of this Act, the Attorney General shall submit a report to the Judiciary Committees of the House of Representatives and of the Senate on the results of the pilot programs conducted under subsection (a).

SEC. 503. INELIGIBILITY OF ALIENS NOT LAWFULLY PRESENT FOR SOCIAL SECURITY BENEFITS.

(a) **IN GENERAL.**—Section 202 of the Social Security Act (42 U.S.C. 402) is amended by adding at the end the following new subsection:

"Limitation on Payments to Aliens

"(y) Notwithstanding any other provision of law, no monthly benefit under this title shall be payable to any alien in the United States for any month during which such alien is not lawfully present in the United States as determined by the Attorney General."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to benefits for which applications are on or after the first day of the first month that begins at least 60 days after the date of the enactment of this Act.

SEC. 504. PROCEDURES FOR REQUIRING PROOF OF CITIZENSHIP FOR FEDERAL PUBLIC BENEFITS.

Section 432(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1642) is amended—

(1) by striking "(1)" after the dash,

(2) by adding at the end the following:

Cleared to
go in the Senate

Sen put in CJS → 245(i) restoration
b/c Gregg was unhappy that Rogers/Smith
cut a
trade bait for when Gregg deals w/ Rogers
in conference.

~~Gregg put~~
OMB tried to put 245(i) back in.
DOT and NSC — said no.

We have been silent (so far)

We pushed to keep it in. So ~~that~~ we would have to
support it if it lives.

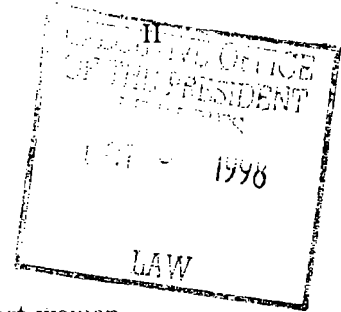
DOT wanted us to talk about VAWA
+ p. to keep 245(i) alive.

Are they already covered under existing law (?)

Admission →
= new visa
(including job
change)

105TH CONGRESS
2D SESSION

S. 2110



To reauthorize the Federal programs to prevent violence against women,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 21, 1998

Mr. BIDEN (for himself, Mr. SPECTER, Mrs. BOXER, Ms. SNOWE, Mrs. MURRAY, Ms. MOSELEY-BRAUN, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. WELLSTONE, Mr. DODD, Mr. KENNEDY, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reauthorize the Federal programs to prevent violence
against women, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Violence Against Women Act II”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—STRENGTHENING LAW ENFORCEMENT TO REDUCE VIOLENCE AGAINST WOMEN

- Sec. 101. Full faith and credit enforcement of protection orders.
- Sec. 102. Role of courts.
- Sec. 103. Reauthorization of STOP grants.
- Sec. 104. Control of date-rape drug.
- Sec. 105. Reauthorization of grants to encourage arrest policies.
- Sec. 106. Grants to reduce violent crimes against women on campus.
- Sec. 107. Violence against women in the military system.
- Sec. 108. Hate crimes prevention.
- Sec. 109. Reauthorization of rural domestic violence and child abuse enforcement grants.
- Sec. 110. National stalker and domestic violence reduction.
- Sec. 111. Amendments to domestic violence and stalking offenses.

TITLE II—STRENGTHENING SERVICES TO VICTIMS OF VIOLENCE

- Sec. 201. Legal assistance and attorney volunteers.
- Sec. 202. Shelters for battered women and children.
- Sec. 203. Victims of abuse insurance protection.
- Sec. 204. National domestic violence hotline.
- Sec. 205. Federal victims' counselors.
- Sec. 206. Battered women's employment protection.
- Sec. 207. Ensuring unemployment compensation.
- Sec. 208. Battered immigrant women.
- Sec. 209. Older women's protection from violence.

TITLE III—LIMITING THE EFFECTS OF VIOLENCE ON CHILDREN

- Sec. 301. Safe havens for children.
- Sec. 302. Study of child custody laws in domestic violence cases.
- Sec. 303. Reauthorization of runaway and homeless youth grants.
- Sec. 304. Reauthorization of victims of child abuse programs.

TITLE IV—STRENGTHENING EDUCATION AND TRAINING TO COMBAT VIOLENCE AGAINST WOMEN

- Sec. 401. Education and training of health professionals.
- Sec. 402. Education and training in appropriate responses to violence against women.
- Sec. 403. Rape prevention and education.
- Sec. 404. Violence against women prevention education among youth.
- Sec. 405. Education and training to end violence against and abuse of women with disabilities.
- Sec. 406. Community initiatives.
- Sec. 407. National commission on standards of practice and training for sexual assault examinations.
- Sec. 408. National workplace clearinghouse on violence against women.
- Sec. 409. Strengthening research to combat violence against women.

TITLE V—EXTENSION OF VIOLENT CRIME REDUCTION TRUST FUND

- Sec. 501. Extension.

(A) the date the State changes its statutes or regulations in order to comply with the amendments made by this section; or

(B) the end of the first session of the State legislature which begins after the date of enactment of this Act or which began prior to such date and remained in session for not less than 25 calendar days after such date;

except that in no case shall the amendments made by this Act apply before the date which is 180 days after the date of enactment of this Act. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature.

SEC. 208. BATTERED IMMIGRANT WOMEN.

(a) FINDINGS.—Congress finds that—

(1) the goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships;

(2) providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows

1 them to obtain protection orders against their abus-
2 ers and frees them to cooperate with law enforce-
3 ment and prosecutors in criminal cases brought
4 against their abusers and the abusers of their chil-
5 dren; and

6 (3) there are several groups of battered immi-
7 grant women and children who do not have access
8 to VAWA's immigration protections, which means
9 that their abusers are virtually immune from pros-
10 ecution because their victims can be deported and
11 the Immigration and Naturalization Service cannot
12 offer them protection no matter how compelling
13 their case under existing law.

14 (b) PURPOSES.—The purposes of this section are—

15 (1) to promote criminal prosecutions of all per-
16 sons who commit acts of battery or extreme cruelty
17 against immigrant women and children;

18 (2) to offer protection against domestic violence
19 occurring in family and intimate relationships that
20 are covered in State protection order, domestic vio-
21 lence, and family law statutes; and

22 (3) to correct erosions of Violence Against
23 Women Act immigration protections that occurred
24 as a result of the Illegal Immigration Reform and
25 Immigrant Responsibility Act of 1996.

(c) Section 502 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1998 (Public Law 105-119) is amended by adding at the end the following:

“(c) This section shall not be construed to prohibit a recipient from—

“(1) using funds derived from a source other than the Legal Services Corporation to provide related legal assistance (as that term is defined in subsection (b)(2)) to any alien who has been battered or subjected to extreme cruelty by a person with whom the alien has a relationship covered by the domestic violence laws of the State in which the alien resides or in which an incidence of violence occurred;

“(2) using Legal Services Corporation funds to provide related legal assistance to any alien who has been battered or subjected to extreme cruelty who qualifies for relief under sections 204(a)(1)(A)(iii).”.

(d)(1) Section 204(a)(1)(A) of the Immigration and Nationality Act is amended by adding at the end the following new clause:

“(vii) For the purposes of petitions filed under section 204(a)(1)(A)(iii) and (iv), loss or renunciation or changes to the abuser’s citizenship status after filing of

1 the petition shall not preclude the cat-
2 egorization of the eligible self-petitioning
3 spouse or children as an immediate rel-
4 ative.”.

5 (2) Section 204(a)(1)(B) of the Immigration and Na-
6 tionality Act is amended by adding at the end the follow-
7 ing new clause:

8 “(v)(I) for the purposes of petitions
9 filed or approved under section
10 204(a)(1)(B) (ii) and (iii), changes in the
11 immigration status of a lawful permanent
12 resident spouse or parent subsequent to
13 the filing of a petition under these sections
14 shall not adversely affect adjudication of
15 the petition and for approved petitions,
16 shall not affect the alien’s ability to adjust
17 status under section 245(a) or obtain sta-
18 tus as a lawful permanent resident based
19 on the approved self-petition under section
20 204(a)(1)(B) (ii) and (iii).

21 “(II) Upon the lawful permanent resi-
22 dent spouse or parent becoming a United
23 States citizen through naturalization, ac-
24 quisition of citizenship, or other means,
25 any petition filed with the Immigration

and Naturalization Service, and pending or approved under section 204(a)(1)(B) on behalf of an alien who has been battered or subjected to extreme cruelty to be automatically reclassified as a petition filed under section 204(a)(1)(A) of this Act even if the reclassification occurs after divorce.”.

(e)(1) Section 204A(b)(2) of the Immigration and Nationality Act is amended by adding at the end the following:

“(F) GOOD MORAL CHARACTER DETERMINATIONS.—For the purposes of making ‘good moral character’ determinations under this section, the Attorney General may waive the bar to issuing a finding of good moral character in the case of an alien who has been battered or subjected to extreme cruelty but who has also been convicted of, or who pled guilty to, violating a court order issued to protect the alien or forced prostitution, or who committed, or who was convicted of or pled guilty to committing a crime if the alien committed the crime under duress from the person who battered or subjected the alien to extreme cruelty, or to a do-

1 domestic violence-related crime when the Attorney
2 General determines that the alien acted in self-
3 defense. After finding that an alien has been
4 battered or subject to extreme cruelty and is
5 otherwise eligible for relief under this para-
6 graph, the Attorney General may enter a find-
7 ing of 'good moral character' despite the exist-
8 ence of a disqualifying criminal act or a crimi-
9 nal conviction.

10 "(G) INCLUSION OF OTHER ALIENS IN PE-
11 TITION.—An alien applying for relief under sec-
12 tion 244(a)(3) (as in effect before the enact-
13 ment of the Illegal Immigration Reform and
14 Immigrant Responsibility Act of 1996) or this
15 paragraph may include alien children, sons, or
16 daughters in their applications and the Attor-
17 ney General may adjust the status of the alien's
18 children, sons, daughters, or in the case of an
19 application filed by an alien child, parent."

20 (2) Section 212(h) is amended by adding at the end
21 the following new paragraph:

22 "(3) SPECIAL RULE FOR BATTERED IMMI-
23 GRANT WOMEN AND CHILDREN.—The Attorney
24 General, in her discretion, may waive the application
25 of subsection (a)(2) in the case of an alien granted

status under section 204(a)(1)(A) (iii), (iv), or (v) and section 204(a)(1)(B) (ii) or (iii) for humanitarian purposes, to assure family unity or when it is otherwise in the public interest.”.

(3) Section 212(a)(2)(A)(ii) of the Immigration and Nationality Act is amended—

(1) in subclause (II), by striking the period and inserting “, or”; and

(2) by adding after subclause (II) the following:

“(III) the crime was committed by the alien acting in self-defense or under duress caused by a person who subjected the alien to battering or extreme cruelty.”.

(4) Section 204(a)(1)(A) of the Immigration and Nationality Act is amended by adding at the end the following new clause:

“(vi)(I) For the purposes of making good moral character determinations under this section, the Attorney General may waive the bar to issuing a finding of ‘good moral character’ in the case of an alien who otherwise qualifies for relief under section 204(a)(1)(A)(iii), (iv), and (v), but who has also been convicted of, or who pled guilty to, violating a court order

1 issued to protect the alien or forced pros-
2 titution, or committed or who was con-
3 victed of or pled guilty to committing a
4 crime under duress from the person who
5 battered or subjected the alien to extreme
6 cruelty, or to a domestic violence-related
7 crime, when the Attorney General deter-
8 mines that the alien acted in self-defense.

9 “(II) After finding that an alien has
10 been battered or subjected to extreme cru-
11 elty and is otherwise eligible for relief
12 under section 204(a)(1)(A)(iii), (iv), or (v),
13 the Attorney General may enter a finding
14 of ‘good moral character’ despite the exist-
15 ence of a disqualifying criminal act or
16 criminal conviction.”.

17 (5) Section 204(a)(1)(B) of the Immigration and Na-
18 tionality Act is amended by adding at the end the follow-
19 ing new clause:

20 “(iv)(I) For the purposes of making
21 good moral character determinations under
22 this section, the Attorney General may
23 waive the bar to issuing a finding of good
24 moral character in the case of an alien who
25 otherwise qualifies for relief under section

forced pros-
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204(a)(1)(B) (ii) and (iii), but who has
 also been convicted of, or who pled guilty
 to, violating a court order issued to protect
 the alien or forced prostitution, or commit-
 ted or was convicted of or pled guilty to
 committing a crime under duress from the
 person who battered or subjected the alien
 to extreme cruelty, or to a domestic vio-
 lence-related crime, when the Attorney
 General determines that the alien acted in
 self-defense.

“(II) After finding that an alien has
 been battered or subjected to extreme cru-
 elty and is otherwise eligible for relief
 under section 204(a)(1)(B) (ii) and (iii),
 the Attorney General may in his or her
 sole discretion enter a finding of good
 moral character despite the existence of a
 disqualifying criminal act or criminal con-
 viction.”.

(6) Section 237(a)(2)(E) of the Immigration and Na-
 tionality Act is amended by inserting at the end the follow-
 ing new clause:

“(iii) The Attorney General may,
 upon determination that the alien was act-

1 ing in self-defense, that the alien was not
2 the primary perpetrator of violence in the
3 relationship; that the alien was found to
4 have violated a protection order intended
5 to protect the alien, that the alien was con-
6 victed of committing a crime under duress
7 from the person who subjected the alien to
8 battering or extreme cruelty or for human-
9 itarian purposes waive application of clause
10 (i) and clause (ii).”.

11 (f)(1) Section 204(a)(1)(A)(iii) of the Immigration
12 and Nationality Act is amended to read as follows:

13 “(iii) An alien—

14 “(I)(aa) who is the spouse of a
15 citizen or lawful permanent resident
16 of the United States, or

17 “(bb) (1) who believed he or she
18 had married a citizen or lawful per-
19 manent resident of the United States;
20 (2) who actually performed a mar-
21 riage ceremony with such citizen or
22 lawful permanent resident of the
23 United States; and (3) who otherwise
24 meets any applicable requirements
25 under this Act to establish the exist-

ence of and bona fides of a marriage;
 but (4) whose marriage is not legiti-
 mate solely because of the bigamy of
 such citizen or lawful permanent resi-
 dent of the United States;

“(II) who is a person of good
 moral character;

“(III) who is eligible to be classi-
 fied as an immediate relative under
 section 201(b)(2)(A)(i) or who would
 have been so classified but for the
 bigamy of the citizen or lawful perma-
 nent resident of the United States
 that the alien intended to marry; and

“(IV) who has resided in the
 United States with the alien's spouse
 or intended spouse,

may file a petition with the Attorney Gen-
 eral under this subparagraph for classifica-
 tion of the alien (and any child of the alien
 if such a child has not been classified
 under clause (iv)) under such section if the
 alien demonstrates to the Attorney General
 that the alien is residing in the United
 States, the marriage or the intent to marry

1 the United States citizen or lawful perma- 1
2 nent resident batterer was entered into in 2
3 good faith by the alien, and during the 3
4 marriage or relationship intended by the 4
5 alien to be legally a marriage, the alien or 5
6 a child of the alien has been battered or 6
7 has been the subject of extreme cruelty 7
8 perpetrated by the alien's spouse or in- 8
9 tended spouse." 9

10 (2) Section 204(a)(1)(A) of the Immigration and Na- 10
11 tionality Act is further amended— 11

12 (A) by inserting "(or if the alien's spouse is a 12
13 member of the United States Armed Forces sta- 13
14 tioned abroad on active duty the alien may file a pe- 14
15 tition at a United States consulate abroad)" after 15
16 "Attorney General" the first place it appears; and 16

17 (B) in clause (iii), by inserting "(or has resided 17
18 either within or outside the territory of the United 18
19 States with the citizen spouse if the alien's spouse 19
20 is a member of the United States Armed Forces sta- 20
21 tioned abroad on active duty)" after "and who has 21
22 resided in the United States with the alien's 22
23 spouse". 23

24 (3) Section 204(a)(1)(A)(iii)(I) of the Immigration 24
25 and Nationality Act is amended by striking "States," and

1 inserting "States (unless the alien's spouse is a member
2 of the United States military)".

3 (4) Section 204(a)(1)(A) of the Immigration and Na-
4 tionality Act is further amended—

5 (A) by inserting "(or if the alien's parent is a
6 member of the United States military stationed
7 abroad the alien may file a petition at a United
8 States consulate abroad)" after "Attorney General"
9 the first place it appears; and

10 (B) in clause (iv), by inserting "(or has resided
11 either within or outside the territory of the United
12 States with the citizen parent if the alien's parent
13 is a member of the United States Armed Forces)"
14 after "and who has resided in the United States
15 with the citizen parent".

16 (5) Section 204(a)(1)(A)(iv)(I) of the Immigration
17 and Nationality Act is amended by inserting "(unless the
18 alien's parent is a member of the United States military
19 stationed abroad)" after "United States".

20 (6) Section 204(a)(1)(B) of the Immigration and Na-
21 tionality Act is amended—

22 (A) by inserting "(or if the alien's spouse is a
23 member of the United States Armed Forces sta-
24 tioned abroad the alien may file a petition at a

1 United States consulate abroad)" after "Attorney
2 General" the first place it appears; and

3 (B) in clause (ii), by inserting "(or has resided
4 either within or outside the territory of the United
5 States with the legal permanent resident spouse if
6 the alien's spouse is a member of the United States
7 Armed Forces)" after "and who has resided in the
8 United States with the legal permanent resident
9 spouse".

10 (7) Section 204(a)(1)(B) of the Immigration and Na-
11 tionality Act is amended—

12 (A) by inserting "(or if the alien's parent is a
13 member of the United States military stationed
14 abroad the alien may file a petition at a United
15 States consulate abroad)" after "Attorney General"
16 the first place it appears; and

17 (B) in clause (iii), by inserting "or has resided
18 either within or outside the territory of the United
19 States with the permanent resident parent if the
20 alien's parent is a member of the United States
21 Armed Forces)" after "and who has resided in the
22 United States with the alien's permanent resident
23 alien parent".

er "Attorney" 1 (8) Section 204(a)(1)(A) of the Immigration and Na-
 tionality Act is amended by adding at the end the follow-
 ing: 2
 3

4 " (v) An alien who is the parent of a
 5 citizen of the United States, who is a per-
 6 son of good moral character, who is eligible
 7 to be classified as an immediate relative
 8 under section 201(b)(2)(A)(i), and who has
 9 resided in the United States with citizen
 10 daughter or son (or has resided either
 11 within or outside the territory of the
 12 United States with the citizen daughter or
 13 son if the alien's daughter or son is a
 14 member of the United States Armed
 15 Forces) may file a petition with the Attor-
 16 ney General (or if the alien's daughter or
 17 son is a member of the United States
 18 Armed Forces stationed abroad the alien
 19 may file a petition at a United States con-
 20 sulate abroad) under this subparagraph for
 21 classification of the alien under such sec-
 22 tion if the alien demonstrates to the Attor-
 23 ney General that the alien is residing in
 24 the United States (unless the alien's son of
 25 daughter is a member of the United States

1 Armed Forces) and during the period of
2 residence with the citizen son or daughter
3 the alien has been battered by or has been
4 the subject of extreme cruelty perpetrated
5 by the alien's citizen son or daughter.”.

6 (g)(1) Section 2001(a) of the Omnibus Crime Control
7 and Safe Streets Act of 1968 is amended by inserting “,
8 the Immigration and Naturalization Service and the Exec-
9 utive Office of Immigration Review,” after “Indian tribal
10 governments”.

11 (2) Section 2001(b)(1) of the Omnibus Crime Control
12 and Safe Streets Act of 1968 is amended by inserting “,
13 immigration and asylum officers, immigration judges,”
14 after “law enforcement officers”.

15 (3) Section 2001(b) of the Omnibus Crime Control
16 and Safe Streets Act of 1968 is amended—

17 (A) at the end of paragraph (6) by striking
18 “and”;

19 (B) at the end of paragraph (7) by striking the
20 period and inserting “; and”; and

21 (C) by inserting after paragraph (7) the follow-
22 ing new paragraph:

23 “(8) training justice system personnel on the
24 immigration provisions of the Violence Against
25 Women Act and their ramifications for victims of

domestic violence appearing in civil and criminal court proceedings and potential immigration consequences for the perpetrators of domestic violence.”.

(4) Section 2101(c) of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by inserting before the period “certify that their laws, policies, and practices do not discourage or prohibit prosecutors and law enforcement officers from granting access to information about the immigration status of a domestic violence perpetrator to the victim, the child, or their advocate”.

(5) Section 287(g)(10) of the Immigration and Nationality Act is amended by adding at the end the following: “It is the intent of the Congress that none of the provisions of this section have the effect of discouraging crime victim cooperation with law enforcement and prosecutors. Public policy favors encouraging prosecution of criminals, and nothing in this section shall be construed to discourage crime victims and domestic violence victims from reporting crimes committed against them to police, from cooperating in criminal prosecutions, or from obtaining from courts protection orders or other legal relief needed to protect crime victims from ongoing violence under State or Federal laws.”.

1 (h)(1) Section 245 of the Immigration and National-
2 ity Act (8 U.S.C. 1255) is amended—

3 (A) in subsection (a), by inserting “, or the sta-
4 tus of any other alien having an approved petition
5 for classification under subparagraph (A)(iii),
6 (A)(iv), (B)(ii) or (B)(iii) of section 204(a)(1),”
7 after “into the United States”;

8 (B) in subsections (c)(2) and (c)(4) by inserting
9 “or an alien having an approved petition for classi-
10 fication under subparagraph (A)(III), (A)(iv), (B)(ii)
11 or (B)(iii) of section 204(a)(1),” after “other than
12 an immediate relative as defined in section 201(b)”
13 each place it appears;

14 (C) in subsection (c)(5), by inserting “(other
15 than an alien having an approved petition for classi-
16 fication under subparagraph (A)(III), (A)(iv), (B)(ii)
17 or (B)(iii) of section 204(a)(1)),” after “an alien”;
18 and

19 (D) in subsection (c)(8), by inserting “(other
20 than an alien having an approved petition for classi-
21 fication under subparagraph (A)(III), and (A)(iv),
22 (B)(ii) or (B)(iii) of section 204(a)(1)),” after “any
23 alien”.

1 (2) The amendments made by paragraph (1) shall
 2 apply to applications for adjustment of status pending on
 3 or after the date of enactment of this Act.

4 (i)(1)(A) Paragraph (1) of section 240A(d) of the Im-
 5 migration and Nationality Act (8 U.S.C. 1229b(d)(1)) is
 6 amended to read as follows:

7 “(1) TERMINATION OF CONTINUOUS PERIOD.—

8 “(A) IN GENERAL.—Except as provided in
 9 subparagraph (b), for purposes of this section,
 10 any period of continuous residence or continu-
 11 ous physical presence in the United States shall
 12 be deemed to end when the alien is served a no-
 13 tice to appear under section 239(a) or when the
 14 alien has committed an offense referred to in
 15 section 212(a)(2) that renders the alien inad-
 16 missible to the United States under section
 17 212(a)(2) or removable from the United States
 18 under section 237(a)(2) or 237(a)(4), whichever
 19 is earliest.

20 “(B) SPECIAL RULE FOR BATTERED
 21 SPOUSE OR CHILD.—For purposes of subsection
 22 (b)(2), the service of a notice to appear referred
 23 to in subparagraph (A) shall not be deemed to
 24 end any period of continuous physical presence
 25 in the United States.”

1 (B) Section 240A(c)(3) of the Immigration and Na-
2 tionality Act (8 U.S.C. 1229b(d)(1)) is amended by adding
3 at the end the following new subsection:

4 “(C) Aliens in removal proceedings who
5 applied for cancellation of removal under sec-
6 tion 240A(b)(2).”.

7 (C) The amendments made by subparagraphs (A)
8 and (B) shall take effect as if included in the enactment
9 of section 304 of the Illegal Immigration Reform and Im-
10 migrant Responsibility Act of 1996 (Public Law 104-208;
11 110 Stat. 587).

12 (2)(A) Section 309(c)(5)(C) of the Illegal Immigra-
13 tion Reform and Immigrant Responsibility Act of 1996
14 (8 U.S.C. 1101 note) (as amended by section 203 of the
15 Nicaraguan Adjustment and Central American Relief Act)
16 is amended—

17 (i) by amending the subparagraph heading to
18 read as follows:

19 “(C) SPECIAL RULE FOR CERTAIN ALIENS
20 GRANTED TEMPORARY PROTECTION FROM DE-
21 PORTATION AND FOR BATTERED SPOUSES AND
22 CHILDREN.—”; and

23 (ii) in clause (i)—

24 (I) by striking “or” at the end of subclause
25 (IV);

(II) by striking the period at the end of
subclause (V) and inserting “; or”;
and

(III) by adding at the end the following:

“(VI) is an alien who was issued
an order to show cause or was in de-
portation proceedings prior to April 1,
1997, and who applied for suspension
of deportation under section 244(a)(3)
of the Immigration and Nationality
Act (as in effect before the date of the
enactment of the Act).”.

(B) The amendments made by subparagraph (A)
shall take effect as if included in the enactment of section
309 of the Illegal Immigration Reform and Immigrant Re-
sponsibility Act of 1996 (8 U.S.C. 1101 note).

(3) Section 240A(d)(2) of the Immigration and Na-
tionality Act is amended to read as follows:

“(2) An alien shall be considered to have failed
to maintain continuous physical presence in the
United States under subsections (b)(1) and (b)(2) if
the alien has departed from the United States for
any period in excess of 90 days or for periods in the
aggregate exceeding 180 days. In the case of an
alien applying for cancellation of removal under sub-

1 section (b)(2), the Attorney General may waive the
2 provisions of this subsection for humanitarian pur-
3 poses, provided that the alien demonstrates a sub-
4 stantial connection between the absences and the
5 battery or extreme cruelty forming the basis of the
6 application for cancellation of removal.”.

7 (j) Within six months of the enactment of this Act,
8 the Attorney General shall report to the Committees on
9 the Judiciary of the Senate and House of Representatives
10 on—

11 (1) the number of and processing times of
12 VAWA petitions at INS District Offices and at the
13 INS Regional Office in St. Albans, Vermont;

14 (2) INS policy and procedures by which an im-
15 migrant who is eligible for suspension of deportation
16 or cancellation of removal under can place herself in
17 deportation proceedings so that she may apply for
18 suspension of deportation or cancellation of removal;
19 and

20 (3) the average length of time at each INS of-
21 fice between the date that an immigrant eligible for
22 suspension of deportation or cancellation of removal
23 asks to be placed in deportation, and the date that
24 immigrant appears before an immigration judge to

1 file an application for suspension of deportation or
 2 cancellation of removal.

3 (k) Section 240(c)(6)(C) of the Immigration and Na-
 4 tionality Act is amended by adding the following new
 5 clause:

6 “(iv) SPECIAL RULE FOR BATTERED
 7 IMMIGRANT WOMEN AND CHILDREN.—

8 There is no time limit on the filing of a
 9 motion to reopen and the requirements of
 10 subparagraph (C)(iii) of this subsection do
 11 not apply and if the basis of the motion is
 12 to apply for relief under section
 13 204(a)(1)(A)(iii), (iv), or (v), section
 14 204(a)(1)(B)(ii) or (iii), section
 15 240A(b)(2), or section 244(a)(3) (as in ef-
 16 fect before that title III-A effective date of
 17 the Illegal Immigration Reform and Immi-
 18 grant Responsibility Act of 1996 (Public
 19 Law 104-208; division C; 110 Stat. 3009-
 20 625)).”

21 **SEC. 209. OLDER WOMEN'S PROTECTION FROM VIOLENCE.**

22 (a) VIOLENCE AGAINST WOMEN ACT AMEND-
 23 MENTS.—The Violence Against Women Act of 1994 (108
 24 Stat. 1902) is amended by adding at the end the following:

LRM ID: REJ427

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Wednesday, April 1, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ronald E. Jones

PHONE: (202)395-3386 **FAX:** (202)395-3109

SUBJECT: JUSTICE Draft Amendments to the Violence Against Women Act

DEADLINE: 3:00 PM Monday, April 6, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: These amendments were not prepared for formal transmittal. DOJ will use them in discussions with Committee staff.

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MARY SMITH

Department of Justice Proposed
Modifications to the Violence Against Women Act (VAWA)
Draft Discussion Paper

Introduction

In 1994, as part of the Violent Crime Control and Law Enforcement Act, Congress passed the Violence Against Women Act (VAWA), introduced by Senator Joseph Biden with strong bipartisan support. This landmark legislation, signed into law by President Clinton, recognized for the first time that domestic violence was a national problem, and that the federal government, working in partnership with state, local, and tribal governments, could play a major role in the fight to eliminate domestic violence.

Since its passage, the VAWA has promoted a fundamental change in our criminal justice system's response to crimes of domestic violence and sexual assault. For the first time, the federal government adopted a comprehensive approach for fighting violence against women, combining tough new penalties with programs to prosecute offenders and help women who are victims of violence. The Violence Against Women Office (VAWO), created within the Department of Justice in 1995, has helped to raise public awareness of the VAWA and the tools it provides to fight domestic violence. Under the leadership of the VAWO and the Violence Against Women Grants Office (VAWGO), the Department of Justice has provided a substantial commitment of resources -- more than \$1.6 billion over six years -- to train police, hire and train prosecutors, provide victim services, ensure victim safety, and hold offenders accountable. In every area of the country, programs and activities are underway that were not in place four years ago, including specialized police units, expanded services for previously underserved women, and a 24-hour national hotline -- 1-800-799-SAFE. Working in partnership, federal, state, local, and tribal law enforcement agencies have taken critical steps to break the cycle of domestic violence and sexual assault.

The struggle against domestic violence is far from over, however, and much work remains to be done. Based on our experience in implementing the VAWA, the Department has identified a number of changes, outlined below, which we believe will enhance the ability of federal, state and local governments to combat domestic violence. We look forward to working with Congress to ensure that these and other changes are included in legislation designed to continue the federal government's commitment to the fight against domestic violence.

Recommendations

1. REAUTHORIZATION OF THE VAWA

Under current law, the VAWA grant programs will expire in FY 2000. Given the work that remains to be done in combating violence against women, it is critical that these programs be reauthorized. Reauthorization is particularly important for state, local, and tribal governments, which look to the continuity of the VAWA as evidence of the federal government's commitment to the fight against domestic violence. Accordingly, we recommend that the VAWA be reauthorized through FY 2006.

2. EXPAND STATE, LOCAL, AND TRIBAL RESPONSES TO DOMESTIC VIOLENCE AND SEXUAL ASSAULT

The following recommendations for changes to the VAWA state and local assistance and the VAWA grant programs are designed to ensure that federal funds provided to state and local governments and victims service providers for the fight against domestic violence are put to their most effective use.

Courts and Judges - Judges play a crucial role in ensuring safety for domestic violence victims and in managing offender behavior and accountability. Too often, however, courts are unable to access funds for preventing domestic violence. For example, under the VAWA, courts are not among the criminal justice components eligible to receive STOP ("Services, Training, Officers, and Prosecutors") formula grants. In order to ensure that funds are available to educate and train judges and court administrators, the Department recommends that, wherever the statute enumerates criminal justice component elements, courts and judges be included along with police, prosecutors, and non-profit, non-governmental victim service providers. [See VAWA: Sec. 2001 (b); Sec. 2002 (c) (3) and (d); Sec. 2003; and Sec. 40295 (a).]

In particular, Section 2002(c) (3), governing the distribution of STOP formula grants, should be amended to read: "At least 25 percent of the amount granted shall be allocated, without duplication, to each of the following three areas: prosecution, law enforcement and victim services; and of the remaining funds, at least 15 percent of the amount granted shall be allocated to the courts."

Enforcement of Protection Orders - Section 2265 of the VAWA requires that every state and tribe give full faith and

credit to protection orders issued by other states. Enforcement of this provision depends in part on police officers and judges in one jurisdiction knowing that a valid protective order was issued in another jurisdiction. In order to assist in this information exchange, the Department recommends providing funds to ensure coordination and cooperation among the states and tribes, and the development of communications systems and other technology that promotes the enforcement of protection orders not only within jurisdictions, but across state lines and tribal boundaries.

Training and Technical Assistance/Evaluation and Research - Technical assistance and training play a critical role in ensuring that federal funds are spent in a way that will have the greatest possible impact on communities, particularly those communities that want to respond aggressively to violent crimes against women, but are unfamiliar with how to develop and implement programs that promote victim safety and offender accountability. Training and technical assistance can be delivered to communities in a variety of ways, including conferences, workshops, site visits, mentoring, and peer-to-peer counseling. Through these programs, communities learn from experts -- and from each other -- how best to develop and implement local programs that incorporate promising practices in the fight against domestic violence.

Evaluation and research is also critical to determining what programs work best in combating violence against women, and to understanding the impact of various programs on both domestic violence victims and the justice system.

As with other Crime Act programs, and with the Administration's current proposal on youth violence, the Department recommends that VAWA grant programs include a statutory set-aside for training and technical assistance for law enforcement officers, prosecutors, victim advocates, the judiciary, and other criminal justice system personnel. In addition, a similar set-aside should be provided for evaluation and research. [As an example, see Section 2806 of H.R. 810, the Youth Violence bill, which provides that "Two percent of all funds appropriated for this part shall be set aside for use by the Director of the Office of Juvenile Crime Control and Prevention for training and technical assistance consistent with this part." Similarly, Sec. 2807 of that bill creates a ten percent set-aside for research, statistics, and evaluations.]

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Civil Legal Assistance - Victims of domestic violence often must navigate not only the complexities of the criminal justice system, but also the civil justice system. When victims seek to obtain civil protection orders or obtain custody of their children they often have no legal representation simply because they cannot afford an attorney. In order to address this problem, the Department recommends that the Civil Legal Assistance Program, created as part of the FY98 Appropriations Act, be authorized as part of the VAWA statute, separate from STOP program funding. An independent authorization of this program will ensure continued support for civil legal assistance for victims of domestic violence, particularly where victim safety, custody and visitation, and relocation issues are involved.

Allocation of STOP Formula Grant Funds - Under current law, the percentage allocation of STOP formula funds attach to those funds indefinitely. In some cases, however, there may not be sufficient interest or need, or there may be a lack of quality applications, for the full 25 percent of the prosecution or law enforcement percentages. Meanwhile, in many jurisdictions, demand from victim service providers cannot be met.

The Department recommends that if, after two years, states have not received an adequate number of fundable proposals from law enforcement and prosecution agencies to meet their respective percentage requirements under STOP, the states should be allowed to award those funds for other VAWA statutory purposes as they see fit. [Amend Sec. 2002(c) (2), adding (E).]

Public Awareness and Education - Public education and awareness are essential to changing the culture of tolerance of violence against women. Accordingly, the Department recommends that jurisdictions be given the authority under STOP and the Grants to Encourage Arrest and Rural Programs to support public education campaigns that raise awareness about domestic violence and sexual assault, with the condition that support for such efforts should in no way detract from direct services to victims. [For STOP -- amend Sec. 2001(b), adding a new purpose area (8); for Arrest Programs -- Sec. 2101(b), adding a new purpose area (7).]

Rural Program The VAWA currently provides funds, in Section 40295(b), to address the unique challenges presented by domestic violence in rural states. Some states with

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large rural populations, including Kentucky and West Virginia, are not categorized as rural states because, although they have large rural populations, they also have large population centers that disqualify them under the current definition. To address this problem, the Department recommends that the Rural Program be amended to strike the current definition of rural state [based on 42 U.S.C. 3796bb(B)], and insert a new definition that comports more closely with the demographics of 1997. The Department will be happy to work with Congress to develop a definition that will ensure VAWA funds can be used to combat domestic violence in rural jurisdictions throughout the nation.

Direct Funding to Public and Private Agencies - Currently, under the Grants to Encourage Arrest Policies Program, OJP may only make awards to states, Indian tribal governments, and local units of government. In the future, the Department recommends that OJP have the authority to make grant awards directly to law enforcement agencies, prosecutors' offices, the courts, probation and parole agencies, and non-profit, non-governmental victim service agencies. Similarly, under the Rural Program, public and private entities may apply directly to OJP only if they are within a designated rural state. In the future, the Department recommends that OJP have the authority to make grant awards to public and private entities in rural jurisdictions located in non-rural states as well. [Arrest Program -- amend Sec. 2101(b); Rural -- amend Sec. 40295(a).]

In addition, under the STOP program, states should be given explicit authority to make awards from their law enforcement and prosecution funding allocations to not-for-profit agencies that would provide training or other services resulting in a direct benefit to law enforcement or prosecutors. (Should Congress follow our recommendation, discussed under "Courts and Judges" above, to specifically allocate a percentage of STOP formula grants to the courts, we recommend that those funds also be made available to non-for-profit agencies where doing so would similarly provide a direct benefit to the courts.) [Amend Sec. 2002(c)(3).]

3. RESTORE PROTECTION TO BATTERED IMMIGRANT WOMEN AND CHILDREN UNDER VAWA

The Department recommends that Congress amend Sections 245(a) and (c) of the Immigration and Nationality Act (INA) to restore an important provision of VAWA that allows battered

immigrant women with approved VAWA petitions to remain in the United States while processing their applications for permanent residency.

Recent amendments to the TNA effectively have eliminated the crucial relief that VAWA afforded to immigrant victims of domestic violence. Prior to VAWA's enactment, many battered immigrant women and children remained trapped in violent homes. Because the immigration laws give a U.S. citizen or resident spouse control over his spouse's immigration status, batterers could refuse to file immigration petitions for their victims and threaten them with deportation if they left their abusive spouse, reported the abuse, or cooperated with prosecutors. VAWA remedied the problem by enabling the battered spouses and children of U.S. citizens and legal permanent residents to file their own petitions for residency.

Because of the recent expiration of TNA section 245(I), immigrant victims of family violence with approved VAWA petitions can no longer remain in the United States lawfully while awaiting permanent resident status -- a wait that is currently over four years. Legislation therefore is necessary to prevent abused spouses and children of citizens and permanent residents from having to choose between continued abuse and deportation.

4. CLARIFYING THE VAWA'S CRIMINAL PROVISIONS

The Department recommends that Congress adopt a limited number of modifications to the federal criminal provisions of the VAWA. These modifications would clarify ambiguous language, including promoting consistency in the definitional language throughout the statute, and remove unnecessary or unintended obstacles to bringing prosecutions under the VAWA's criminal provisions. Draft language and an explanatory statement are attached.

Conclusion

The Department believes these recommendations will greatly enhance the ability of federal, state and local governments to combat domestic violence. We look forward to working with Congress to consider other changes these and other changes to the VAWA.

SEC. . AMENDMENTS TO DOMESTIC VIOLENCE AND STALKING OFFENSES

(a) Section 2261(a) of title 18, United States Code, is amended to read as follows:

"(a) Offenses. --

"(1) Travel or conduct of offender. -- A person who travels in interstate or foreign commerce or to or from Indian country with the intent to injure, harass, or intimidate a spouse or intimate partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

"(2) Causing travel of victim. -- A person who causes a spouse or intimate partner to travel in interstate or foreign commerce or to or from Indian country by force, coercion, duress, or fraud, and who, in the course of or as a result of such conduct or travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b)."

(b) Section 2261A of title 18, United States Code, is amended to read as follows:

"§ 2261A. Interstate stalking

"Whoever --

(1) with the intent to injure, harass, or intimidate another person, engages in the special maritime and territorial jurisdiction of the United States in conduct that places that person in reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's immediate family (as defined in section 115); or

(2) with the intent to injure, harass, or intimidate another person, travels in interstate or foreign commerce or to or from Indian country, and in the course of or as a result of such travel engages in conduct that places that person in reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's immediate family (as defined in section 115),

shall be punished as provided in section 2261."

(c) Section 2262(a) of title 18, United States Code, is amended to read as follows:

"(a) Offenses. --

"(1) Travel or conduct of offender. -- A person who travels in interstate or foreign commerce or to or from Indian country

- 2 -

with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

"(2) Causing travel of victim. -- A person who causes another person to travel in interstate or foreign commerce or to or from Indian country by force, coercion, duress, or fraud, and in the course of or as a result of such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b)."

(d) Section 2266 of title 18, United States Code, is amended

--

(1) by amending subparagraph (A) in the fourth paragraph to read as follows:

"(A) a spouse, a former spouse, a person who shares a child in common with the abuser, a person who cohabits or has cohabited with the abuser, and a person who has or has had a substantial dating relationship with the abuser; and";

(2) by inserting after the fourth paragraph the following:

"'substantial dating relationship' includes any amorous, romantic, or sexual relationship which is substantial considering the length and nature of the relationship and the frequency of the interaction between the parties.";

(3) by inserting after the first paragraph the following:

"'serious bodily injury' has the meaning stated in section 2119(2).", and

(4) by amending the final paragraph to read as follows:

"'travel in interstate or foreign commerce' does not include travel from one State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.".

Explanation

This section amends provisions in chapter 110A of the criminal code, relating to domestic violence, stalking, and violations of protection orders. Most of the amendments resolve inconsistencies in the scope and definition of the offenses in chapter 110A. The section also includes amendments which clarify language in these provisions or correct certain gaps in coverage.

The principal changes are as follows:

Clarification of bases of federal jurisdiction. The revised formulation harmonizes the language of the chapter 110A offenses and the usual jurisdictional language for offenses involving interstate or international movement of the offender or victim. Most offenses of this type refer to movement of persons "in interstate or foreign commerce," see, e.g., 18 U.S.C. 1952, 1958, 2421-23, but the chapter 110A offenses currently refer to cases in which a person moves across "a State line." This language in the chapter 110A offenses was intended to have the same scope as the usual "interstate or foreign commerce" language, since a person who enters or leaves the United States necessarily crosses a state line at the point of departure or entry on the international border. As a matter of policy, federal prosecution should be possible for (e.g.) a person who travels from Mexico or Canada into the United States to murder a spouse or intimate partner, where federal prosecution is possible when such a crime is committed following travel from one state to another.

Nevertheless, the difference of language has enabled defendants to argue that cases involving international travel -- as opposed to interstate travel within the United States -- are not covered. The proposed revision of the jurisdictional language will foreclose arguments of this type, and ensure that the intent of the current provisions to cover international as well as interstate travel will be consistently realized in practice.

The amendments also clarify that the jurisdictional scope of the offenses involving travel of the victim -- 18 U.S.C. 2261(a)(2) and 2262(a)(2) -- includes cases in which the offender engages in violent conduct or a protection order violation as part of pre-travel conduct which facilitates the interstate movement of the victim. This includes the common type of case in which the offender batters the victim into submission or unconsciousness and then embarks on an interstate trip with her in order to reduce the likelihood of apprehension and local prosecution. Creating the possibility of federal prosecution in such cases was a critical objective underlying the enactment of the existing offenses. To that end, the current offense language proscribes causing interstate travel of the victim by force, coercion, duress, or fraud, and engaging in a crime of violence

or a protection order violation in the course of "that conduct."

Nevertheless, defendants have argued that there is no liability if a violent assault on the victim was part of pre-travel conduct which enabled the defendant to cause the victim to travel interstate, as opposed to taking place during the subsequent travel. In United States v. Page, 1998 WL 54382 (6th Cir. 1998), a divided panel of the Sixth Circuit Court of Appeals adopted this erroneously restrictive interpretation of the current language of 18 U.S.C. 2261(a)(2), and reversed a conviction on the basis of this misinterpretation. The proposed revised language for 18 U.S.C. 2261(a)(2) and 2262(a)(2) forecloses such misunderstandings by covering explicitly cases in which the offender causes the victim to travel in interstate or foreign commerce, and commits or attempts to commit a crime of violence or violates a protection order in the course of "such conduct or travel." This makes it clear that the offenses reach pre-travel acts which are part of the conduct by which the offender causes the victim to travel interstate, as well as acts occurring during the travel itself.

Consistency concerning harm to victim. The offenses in chapter 110A are inconsistent concerning the requirement of harm to the victim. The domestic violence offenses in § 2261(a) require "bodily injury" to the victim. The stalking offense in § 2261A, and the protection order offense in § 2262(a)(1) involving interstate travel of the offender, do not require injury to the victim. However, the protection order offense in § 2262(a)(2) involving coerced or induced interstate travel of the victim requires an act that "injures" the victim.

There is no apparent reason for these inconsistencies. Moreover, the requirement of actual physical harm to the victim under some of the offenses in the chapter results in anomalous gaps in their coverage. For example, if a domestic abuser hunted down his former wife who had fled to another state and shot her, the domestic violence offense under § 2261(a)(1) would apply. However, if he shot at her and missed, there would be no liability under that provision, because his criminal conduct did not cause "bodily injury." Likewise, if an abuser violated a protection order by luring the victim across a state line to a place where he had planted a bomb, but the bomb failed to explode, there would be no possibility of liability under § 2262(a)(2) because the offender's conduct did not "injure" the victim.

The amendments in this section resolve these problems by consistently following the approach of the current provisions which do not require physical injury to the victim. As revised, the offenses continue to require the commission of serious wrongful conduct which provides an appropriate basis for criminal liability -- under § 2261, the commission or attempted commission

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of a crime of violence; under § 2261A, placing the victim in reasonable fear of death or serious bodily injury to the victim or an immediate family member; and under § 2262, conduct that violates a protection order.

Consistency in the protection order section. There are several inconsistencies between the protection order offense under § 2262(a)(1), involving interstate travel of the offender, and the protection order offense under § 2262(a)(2), involving interstate travel of the victim. These include: (1) The § 2262(a)(2) offense requires an act that injures the victim; the § 2262(a)(1) offense does not. (2) The § 2262(a)(2) offense can only be committed against a spouse or intimate partner; the § 2262(a)(1) offense is not so restricted. (3) The § 2262(a)(1) offense requires violation of "the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury"; there is nothing comparable in the § 2262(a)(2) offense.

There are also differences between the language of the protection order offense in § 2262(a)(1), which refers to violating the portion of a protection order involving protection against threats, harassment, or injury, and the definition of "protection order" in § 2266, which refers to orders issued for the purpose of preventing violence, threats, harassment, contact or communication, or physical proximity. The scope of the offense was meant to be coextensive with the definition, since provisions in a protection order that prohibit contact, communication, or physical proximity are a critical part of the protection it provides against threats, harassment, and injury. Nevertheless, the difference in language leaves room for defendants to argue that they cannot be held liable on the basis of violations of "stay away" provisions in an order.

There is no reason why the protection order offenses should be defined so differently, depending on whether it is the offender or the victim who travels interstate, or why the language defining the scope of the offense should differ from the language defining "protection order." The amendments in this section resolve these discrepancies and problems by consistently defining the § 2262 offenses to encompass violations of the portion of a protection order that prohibits or provides protection against violence, threats, contact, communication, or physical proximity, where the elements supporting federal jurisdiction are satisfied.

Definition of serious injury. The term "serious bodily injury" occurs in three places in chapter 110A: as part of penalty provisions in §§ 2261(b)(3) and 2262(b)(3), and as part of the definition of the stalking offense in § 2261A. Section 2261A specifies that "serious bodily injury" in that section has the meaning provided in 18 U.S.C. 1365(g)(3). The occurrences of

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the same term in the penalty provisions do not provide or cross-reference any definition.

A uniform definition of "serious bodily injury" is desirable in chapter 110A for reasons of consistency and clarity. The amendments in this section provide such a definition by adding a paragraph to the general definitional provision for the chapter, § 2266, which specifies that "serious bodily injury" has the meaning stated in 18 U.S.C. 2119(2). The definition of "serious bodily injury" in § 2119(2) is more adequate than the § 1365(g)(3) definition of "serious bodily injury" which is currently cross-referenced in the stalking offense, because the § 2119(2) definition explicitly encompasses serious sexual assaults.

Definition of spouse or intimate partner. The current definition of "spouse or intimate partner" in § 2266 is unduly narrow in some respects. Subparagraph (A) in the paragraph in § 2266 which defines that term covers present and former spouses, and a person having a child in common with an abuser. The subparagraph also attempts to extend the definition to cohabitation relationships -- in which a substantial proportion of domestic violence offenses occur -- but then apparently negates the extension by providing that such relationships qualify only if a person has cohabited with the abuser "as a spouse." Even if this limitation were removed, the definition would be unduly narrow, because it would not allow the § 2261 offense to be used (for example) in a case in which a man travels interstate to kill his mistress who is not his spouse and with whom he does not regularly live. The effect of the restrictions in the current definition is to produce a narrower scope of protection than that provided by state domestic violence laws, which typically encompass persons living in the same household, and also often protect persons in other dating or sexual relationships with an abuser.

The amendments in this section establish a more adequate scope of liability under the domestic violence offense by: (1) removing the "as a spouse" proviso in the part of the definition of "spouse or intimate partner" relating to cohabitators, and (2) extending the definition to encompass persons in substantial dating relationships.