

[DISCUSSION DRAFT]

JULY 14, 1997

105TH CONGRESS
1ST SESSION

H. CON. RES. _____

IN THE HOUSE OF REPRESENTATIVES

(for herself + Mr. Schumer)

Mrs. MORELLA submitted the following concurrent resolution; which was
referred to the Committee on _____

CONCURRENT RESOLUTION

Expressing the sense of Congress with respect to child custody, child abuse, and victims of domestic and family violence.

Whereas spousal violence has serious detrimental effects on children, even when they do not directly witness such violence;

Whereas courts still hold women to higher standards of conduct than they do men;

Whereas gender bias still exists within the courts, particularly those making and affecting child custody determinations;

Whereas gender bias has long existed and still exists within the mental health system;

Whereas, as a result of this gender bias, many myths are that women make false allegations of domestic violence or child abuse, and most particularly of child sexual abuse, during divorce and custody proceedings;

Whereas false accusations by women are in fact rare, occurring no more often than do other false reports of crimes, such as bank robbery;

Whereas the myth that women make false accusations is so widely believed that many child protective service agents have policies of not bothering to investigate such allegations when made during the pendency of divorce or custody proceedings or only superficially investigate such allegations;

Whereas there are many myths that fathers are discriminated against in custody proceedings, even though fathers fighting for custody actually win sole custody or joint custody in 70 percent of these disputes;

Whereas the American Psychological Association's Presidential Task Force on violence and the Family has found that—

(1) many therapists lack training to identify or assess family violence;

(2) fathers who abuse their children's mothers are more likely to dispute custody and visitation than are fathers who are not violent;

(3) those who batter their partners deny, lie about, or minimize their abusiveness and manipulate the courts and even their therapists, often by making false accusations that their victim is abusing them or the children;

(4) mutual violence between spouses is rare;

(5) witnessing one parent abuse the other is a form of psychological maltreatment of the child;

(6) children often become the secondary victims of batterers;

(7) physical separation often increases a man's need to control his partner and his children;

(9) mediation is generally inappropriate when there is domestic or family violence and may increase the violence;

(10) couples counseling is controversial in families where there is domestic or family violence because it may increase the violence;

(11) joint legal or physical custody arrangements forced on one or both parents are often detrimental to the well-being of the child and lead to worse outcomes for the child than when only one parent remains present and active in the child's life;

(12) women seldom make false reports of child abuse or battering;

(13) child sexual abuse allegations do not increase during divorce, but occur in only two to three percent of divorce cases and less than 10 percent of contested custody cases, and that child sexual abuse allegations are confirmed as often in custody cases as at other times when objective investigations are performed;

(14) it is common for children to recant child sexual abuse allegations, but that this does not mean that their earlier report was false;

(15) there is no data to support the phenomenon of parent alienation syndrome, although courts and custody evaluators frequently use the term to discount the children's fear in hostile and psychologically abusive situations;

(16) psychological evaluators not trained in domestic violence ignore or minimize the violence and give inappro-

priate pathological labels to women's responses to chronic victimization, including "parental alienation" to blame mothers for their children's reasonable fear or anger toward their violent fathers;

(17) because of the intergenerational cycle of abuse, a child is often at risk of abuse from grandparents who have raised an abusive child;

(18) removing children from their homes is not always safe or helpful as children in foster homes are at high risk for abuse by other adults or other children in foster care; and

(19) children who have a strong relationship with their mothers are most able to heal from abuse;

Whereas many courts and professionals use the baseless parental alienation syndrome to force mothers into joint or shared parenting arrangements or to give custody to fathers, especially when mothers try to protect themselves or their children from men who abuse them or their children;

Whereas parental alienation syndrome thinking has largely influenced legislation and judicial preference for "friendly parent" provisions, which favor giving custody to the parent who better fosters a good relationship between the child and the other parent;

Whereas almost every custody evaluator or judge recognizes how important it is for a child to have its comfort object particularly in times of stress, but often fails to recognize the importance for the child of maintaining its living arrangement with the child's fit prime custodial parent;

Whereas Congress never intended that the Parental Kidnapping Prevention Act be used—

(1) to encourage forcing shared parenting arrangements when it is not in the child's best interest;

(2) to prohibit an abused or protective parent from protecting themselves or their child;

(3) as a tool to punish a child for the parent's behavior by removing physical custody from a fit abused or protective parent; or

(4) as a tool to punish abused or protective parents who act to protect themselves or their children;

Whereas when there is domestic or family violence or major discord between the parents, shared parenting arrangements, couples counseling, or mediation arrangements only exacerbate the difficulties of the children and give the abusive parent more tools with which to victimize the other members of the family;

Whereas children who grow up not seeing abusive parents clearly held accountable for their abuse are reinforced in believing that domestic and family violence are socially acceptable and effective means of behavior; and

Whereas every State has legislation or judicial decisions that base its custody determinations on what is in the best interests of the child, but that only West Virginia recognizes the importance of the child maintaining its primary residence with a fit custodial parent: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring)*, That it is the sense of Congress that—

3 (1) for purposes of determining child custody, it
4 is not in the best interest of children to—

5 (A) not have a presumption that children
6 should have their main physical residence with

1 their prime custodial parent unless that parent
2 is unfit;

3 (B) force parents to share custody over the
4 objection of one or both parents or when there
5 is a history of domestic or family violence;

6 (C) punish abused or protective parents
7 who protect themselves or their children;

8 (D) presume that allegations of domestic
9 and family violence are likely to be made falsely
10 or for tactical advantage during custody and di-
11 vorce proceedings; and

12 (E) make "friendly parent" provisions a
13 factor when there is abuse by one parent
14 against the other or a child;

15 (2) child abuse and child sexual abuse allega-
16 tions should be fully and impartially investigated re-
17 gardless of when they are raised or whether the child
18 has recanted the allegation; and

19 (3) States should be far more protective of vic-
20 tims of domestic and family violence in custody and
21 visitation determinations and not order inappropri-
22 ate mediation, couples counseling, shared custody,
23 mutual orders of protection, unsupervised visitation,
24 or other measures than endanger true victims of do-
25 mestic and family violence.

[DISCUSSION DRAFT]

JULY 14, 1997

105TH CONGRESS
1ST SESSION**H. R. _____**

IN THE HOUSE OF REPRESENTATIVES*(for herself + Mr. Schumer)*Mrs. MORELLA introduced the following bill; which was referred to the
Committee on _____

A BILL

To provide grants to establish and operate supervised visitation centers for the purposes of facilitating supervised visitation of children and visitation exchange

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. FINDINGS AND PURPOSES.**

4 (a) **FINDINGS.**—Congress finds the following:

5 (1) Family violence does not necessarily cease
6 when family victims are legally separated by divorce
7 or otherwise not sharing a household.

1 (2) During separation and divorce, family vio-
2 lence often escalates, and child custody and visita-
3 tion become the new forum for the continuation of
4 abuse.

5 (3) Current child custody and visitation laws
6 are based on incorrect assumptions that divorcing or
7 separating parents share equal positions of power
8 and control. These assumptions are particularly
9 faulty when there is a history of domestic violence.
10 The abused spouse or intimate partners divorcing
11 and separating under such circumstances may con-
12 tinue to experience violence which is exacerbated by
13 and often escalates during child visitation and/or vis-
14 itation exchanges.

15 (4) Some perpetrators of violence use the chil-
16 dren as pawns to control the abused party and to
17 commit more violence during separation and/or di-
18 vorce.

19 (5) Approximately 90 percent of children in
20 homes in which their mothers are abused witness the
21 abuse.

22 (6) Women and children are at an elevated risk
23 of violence during the process of separation and/or
24 divorce.

1 (7) 50 to 70 percent of men who abuse their
2 spouses or partners also abuse their children.

3 (8) Up to 75 percent of all domestic assaults
4 reported to law enforcement agencies were inflicted
5 after separation of the couple.

6 (9) In one study of spousal homicide, over half
7 of the male defendants were separated from their
8 victims.

9 (10) 73 percent of battered women seeking
10 emergency medical services do so after separation.

11 (b) PURPOSES.—The purposes of section 2 are—

12 (1) to protect children from the trauma of wit-
13 nessing or experiencing violence, sexual abuse, ne-
14 glect, abduction, rape, or death during parent and
15 child visitation and/or visitation exchanges;

16 (2) to protect victims of domestic violence from
17 experiencing further violence during child visitation
18 and/or visitation exchanges; and

19 (3) to provide an ongoing safe haven for par-
20 ents and children during visitation or visitation ex-
21 changes.

22 **SEC. 2. GRANTS TO STATES TO PROVIDE FOR SUPERVISED**
23 **VISITATION CENTERS.**

24 (a) GRANTS TO STATES.—The Secretary of Health
25 and Human Services (hereafter in this section referred to

1 as the "Secretary") is authorized to award grants to
2 States to enable States to enter into contracts and cooper-
3 ative agreements with public or private nonprofit entities
4 to assist such entities in establishing and operating super-
5 vised visitation centers for the purposes of facilitating su-
6 pervised visitation and visitation exchange.

7 (b) CONSIDERATIONS.—In awarding such grants,
8 contracts, and cooperative agreements under paragraph
9 (1), the Secretary shall take into account—

10 (1) the number of families to be served by the
11 proposed visitation center to be established under
12 the grant, contract, or agreement;

13 (2) the extent to which supervised visitation
14 centers serve underserved populations; and

15 (3) the extent to which the applicant dem-
16 onstrates cooperation and collaboration with advo-
17 cates in the local community served, including the
18 State domestic violence coalition, State sexual as-
19 sault coalition, local shelters, and programs for do-
20 mestic violence and sexual assault victims.

21 (c) USE OF FUNDS.—

22 (1) IN GENERAL.—Amounts provided under a
23 grant, contract, or cooperative agreement awarded
24 under this subsection shall be used to establish su-
25 pervised visitation centers and for the purposes de-

1 scribed in subsection (a). In using such amounts,
2 grantees shall target the economically disadvantaged
3 and those individuals who could not otherwise afford
4 such visitation services. Other individuals shall be
5 permitted to use the services provided by the center
6 on a sliding fee basis.

7 (2) REGULATIONS AND APPLICANT REQUIRE-
8 MENTS.—The Secretary shall award grants, con-
9 tracts, and cooperative agreements under this sec-
10 tion in accordance with such regulations as the Sec-
11 retary may promulgate. The applicant shall—

12 (A) demonstrate recognized expertise in
13 the area of family violence and a record of high
14 quality service to victims of domestic violence
15 and sexual assault;

16 (B) be an entity located in the State or lo-
17 cality where State law requires the court to con-
18 sider evidence of domestic violence, whether or
19 not there is a conviction of any offense of do-
20 mestic violence or child abuse or the existence
21 of an order of protection against domestic vio-
22 lence, in making a custody decision; and

23 (C) demonstrate collaboration with and
24 support of the State domestic violence coalition,
25 sexual assault coalition, and local domestic vio-

1 lence and sexual assault shelter or program in
2 the locality in which the supervised visitation
3 center will be operated.

4 (d) REPORTING.—Not later than 60 days after the
5 end of each fiscal year, the Secretary shall report to Con-
6 gress information concerning—

7 (1) the number of persons served and the num-
8 ber of persons turned away from services categorized
9 by State and type of presenting problem that
10 underlies the need for supervised visitation or visita-
11 tion exchange (e.g. domestic violence, child abuse,
12 sexual assault, emotional assault, emotional or other
13 physical abuse, or a combination of factors);

14 (2) supervised visitation or visitation exchange
15 ordered by custody determination under a separation
16 or divorce decree or protection order, through child
17 protection services, or social services;

18 (3) other appropriate information designated in
19 regulations promulgated by the Secretary; and

20 (4) safety and security problems occurring dur-
21 ing the reporting period.

22 (e) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) IN GENERAL.—For the purpose of awarding
24 grants, contracts, and cooperative agreements under
25 this section, there are authorized to be appropriated

1 \$75,000,000 for fiscal year 1998, \$85,000,000 for
2 fiscal year 1999, and \$95,000,000 for fiscal year
3 2000.

4 (2) DISTRIBUTION.—Of the amounts appro-
5 priated under subparagraph (A) for each fiscal year,
6 not less than 90 percent shall be used to award
7 grants, contracts, or cooperative agreements.

8 (3) DISBURSEMENT.—Amounts appropriated
9 under this section shall be disbursed as categorical
10 grants through the 10 regional offices of the Depart-
11 ment of Health and Human Services.

[DISCUSSION DRAFT]

105TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mrs. MORELLA introduced the following bill; which was referred to the
Committee on _____

A BILL

To address domestic violence and child custody and child
protection interventions.

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.**

4 This Act may be cited as the "Domestic Violence,
5 Child Custody, and Child Protection Act of 1997".

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) In passing the Violence Against Women Act
2 of 1994, the Congress correctly identified domestic
3 violence, sexual assault, and child abuse as pressing
4 national problems.

5 (2) Witnessing domestic violence has a dev-
6 astating impact on children, placing them at a high
7 risk for anxiety, depression, substance abuse, and
8 suicide.

9 (3) Domestic violence is strongly correlated
10 with child abuse. Studies have found that between
11 50 and and 70 percent of men who abuse their fe-
12 male partners also abuse their children. A 1997
13 study documented that in 30 to 40 percent of cases
14 of child abuse and child fatalities, the child's mother
15 was also being abused. One study reported that girls
16 in violent homes are at a higher risk for sexual
17 abuse than girls in nonviolent homes.

18 (4) Discovery that domestic violence in their
19 home is affecting their children, or that a batterer
20 is also physically or sexually abusing a child, is fre-
21 quently a motivation for a protective parent to seek
22 divorce or custody of their children.

23 (5) Domestic violence often escalates during
24 marital separation and divorce, and abuse of a

1 batterer's children also escalates when their mother
2 is no longer available.

3 (6) According to the American Psychological
4 Association, individuals who batter their partner are
5 twice as likely to seek sole custody of their children
6 than nonviolent individuals, and they may misuse
7 the legal system as a forum for continuing abuse
8 through harassing and retaliatory legal actions. Cus-
9 tody and visitation disputes are more frequent when
10 there is a history of domestic violence.

11 (7) Batterers often take advantage of court-or-
12 dered visitation to threaten or harm their partner.

13 (8) A batterer's threats to take custody of chil-
14 dren are a reason adult victims of abuse frequently
15 cite for staying in abusive relationships. More than
16 50 percent of abductions result from domestic vio-
17 lence.

18 (9) Although courts should diligently protect
19 the interests of both parents in frequent and con-
20 tinuing contact with their children, in the case where
21 one parent has committed domestic violence or child
22 abuse, protection of the other parent and the chil-
23 dren is a vital consideration that should take prece-
24 dence.

1 (10) To respond to the problems of domestic vi-
2 olence in determining child custody, in 1990 the
3 Congress passed a concurrent resolution expressing
4 the sense of the Congress that there should be a pre-
5 sumption against granting custody to an abusive
6 spouse.

7 (11) Approximately 40 States require persons
8 making child custody and visitation determinations
9 to consider domestic violence when evaluating the
10 best interests of the child, and the model code devel-
11 oped by the National Council of Juvenile and Family
12 Court Judges recommends a rebuttable presumption
13 against giving custody to an abusive parent.

14 (12) Despite this trend in law against granting
15 custody to abusive parents, parents across the coun-
16 try have reported losing custody to abusive parents,
17 despite evidence of domestice violence against the
18 protective parent or sexual or physical abuse of the
19 child.

20 (13) According to the American Judges Foun-
21 dation, batterers are able to convince authorities
22 that the victim is unfit or undeserving of custody in
23 approximately 70 percent of contested cases and, ac-
24 cording to one study, in cases where abuse is re-
25 ported, the batterer is more likely to win custody

1 from a non-abusive parent than in cases where no
2 abuse is reported.

3 (14) Although the documented rate of any child
4 abuse allegations in custody cases is approximately
5 2 percent, and the rate of false accusations is the
6 same in the presence or absence of custody litigation,
7 there is a widespread myth that parents frequently
8 make up allegations of domestic violence or
9 child abuse to gain an advantage in custody or divorce
10 proceedings.

11 (15) In some jurisdictions, in direct violation of
12 Federal statutory mandates to investigate all allegations
13 of child abuse, child welfare officials have an
14 unwritten, illegal policy of refusing to investigate
15 charges of child abuse if there is a pending custody
16 or divorce action.

17 (16) Child welfare officials too often wrongly
18 charge protective parents who report domestic violence
19 or child abuse with failure to protect, with neglect,
20 or with criminal violations for false reporting,
21 resulting in the wrongful removal of the child from
22 the home, a temporary or permanent loss of custody,
23 visitation, or even termination of parental rights.

24 (17) Parents who report domestic violence or
25 child abuse may face unjust retaliation in the State

1 justice systems, including loss of custody, visitation,
2 termination of parental rights and, in some cases,
3 incarceration.

4 (18) Many of these cases feature the use of
5 spurious psychological "psyndromes", such as paren-
6 tal alienation syndrome, which has no scientific sup-
7 port according to the American Psychological Asso-
8 ciation, or malicious mother syndrome, which simi-
9 larly lacks well-documented supporting data in peer-
10 reviewed literature, to shift blame away from the
11 abusive parent and to punish the parent reporting
12 the abuse. These so-called syndromes are overwhelm-
13 ingly used against women seeking custody.

14 (19) Many of these cases include egregious
15 abuses of due process of State judicial officers,
16 guardians ad litem, and child welfare officials, such
17 as extensive ex parte communications with counsel
18 for the abusive parent, refusing to permit the protec-
19 tive parent to present evidence of domestic violence
20 or child abuse even when State law requires it to be
21 considered, or changing custody or visitation rights
22 without proper notice and opportunity to be heard.

23 (20) Too often guardians ad litem and custody
24 evaluators lack basic knowledge about the dynamics
25 and indicia of domestic violence and child abuse,

1 leading to erroneous decisions about what is in the
2 best interests of the child.

3 (21) Although the Federal courts do not handle
4 divorce or custody cases, the failure of the State jus-
5 tice systems to properly address domestic violence
6 and child abuse in custody, visitation, and termi-
7 nation of parental rights proceedings, where fun-
8 damental rights of parents to the care of their chil-
9 dren are at stake, in view of documented instances
10 of due process violations, may in some circumstances
11 invoke the civil rights jurisdiction of the Federal
12 courts.

13 **SEC. 3. DOMESTIC VIOLENCE TRAINING AND STANDARDS**
14 **FOR CHILD PROTECTIVE WORKERS.**

15 (a) **AMENDMENTS TO CAPTA FOR DOMESTIC VIO-**
16 **LENCE TRAINING.**—Section 106(b) of the Child Abuse
17 Prevention and Treatment Act (42 U.S.C. 5106a(b)) is
18 amended—

19 (1) by redesignating paragraph (4) as para-
20 graph (5); and

21 (2) by inserting after paragraph (3) the follow-
22 ing:

23 “(4) **DOMESTIC VIOLENCE TRAINING.**—To be
24 eligible to receive a grant under this section, a State
25 shall provide training in domestic violence, sexual as-

1 sault, and child abuse to all staff responsible for the
2 screening, intake, assessment, investigation, and re-
3 view of [reports of abuse and neglect] through the
4 development and implementation of training pro-
5 grams in cooperation and collaboration with advo-
6 cates in the [local community served,] [Note that
7 the grant money goes to the State to assist in im-
8 proving the “child protective services system of the
9 State”] including State domestic violence and sexual
10 assault coalitions, and local shelters, programs, and
11 crisis centers that serve domestic violence, sexual as-
12 sault, and child abuse victims.”.

13 (b) STANDARDS FOR EVALUATING FOSTER CARE
14 PLACEMENT WHERE A PARENT HAS COMMITTED DO-
15 MESTIC VIOLENCE.—

16 (1) IN GENERAL.—Section 475(5) of the Social
17 Security Act (42 U.S.C. 675(5)) is amended—

18 (A) by striking “and” at the end of sub-
19 paragraph (C);

20 (B) by striking the period at the end of
21 subparagraph (D) and inserting “; and”; and

22 (C) by adding at the end the following:

23 “(E)(i) in any case in which any individual
24 residing in the home of the child has committed
25 domestic violence, any review or determination

1 of the child's status (including any evaluation of
2 the child's health and safety or a determination
3 of reasonable efforts) shall give strong consider-
4 ation to keeping the child in the care of a non-
5 abusive parent, or returning the child to the
6 care of a nonabusive parent, and if, as a result
7 of such a review or evaluation, it is determined
8 that assistance (including assistance in enforce-
9 ing any court orders or otherwise assisting in
10 removing the abusive individual from the
11 home), support services, or referrals to domestic
12 violence programs are needed to accomplish
13 that goal, the State shall provide such assist-
14 ance, services or referrals;

15 "(ii) in any case in which an individual
16 who has abused the child is a victim of domestic
17 violence, the State shall consider whether pro-
18 viding assistance to the individual to address
19 domestic violence can prevent further abuse of
20 the child; and

21 "(iii) in any case in which there are allega-
22 tions of domestic violence by both parents of
23 the child, the State shall take into consideration
24 which parent is the primary aggressor."

1 (2) DOMESTIC VIOLENCE DEFINED.—Section
2 475 of such Act (42 U.S.C. 675(5)) is amended by
3 adding at the end the following:

4 “(7) The term ‘domestic violence’ means a sex-
5 ual or physical assault or a threat of death or seri-
6 ous bodily injury against the child, a parent of the
7 child, or another individual as covered by the domes-
8 tic violence laws of the State.”.

9 (c) AMENDMENTS TO THE SOCIAL SECURITY ACT
10 FOR DOMESTIC VIOLENCE TRAINING.—

11 (1) Section 474(a)(3) of the Social Security Act
12 (42 U.S.C. 674(a)(3)) is amended by inserting “, in-
13 cluding domestic violence training” after “training”
14 the 1st place such term appears in each of subpara-
15 graphs (A) and (B).

16 (2) Section 475 of such Act (42 U.S.C. 675) is
17 further amended by adding at the end the following:

18 “(8) The term ‘domestic violence training’
19 means training and educational programs on domes-
20 tic violence, sexual assault, and child abuse, which
21 programs are developed and implemented in coopera-
22 tion and collaboration with advocates in the local
23 community served by such programs (including the
24 State domestic violence and sexual assault coalitions,
25 and local shelters, programs, and crisis centers that

1 serve victims of domestic violence, sexual assault, or
2 child abuse).”.

3 (d) AUTHORIZATION OF APPROPRIATIONS.—[TO BE
4 SUPPLIED]

5 **SEC. 4. DOMESTIC VIOLENCE TRAINING AND STANDARDS**
6 **FOR GUARDIANS AD LITEM.**

7 (a) TRAINING REQUIREMENTS AND STANDARDS FOR
8 GUARDIANS AD LITEM.—Section 106(b) of the Child
9 Abuse Prevention and Treatment Act (42 U.S.C.
10 5106a(b)), as amended by section 3, is further amended—

11 (1) by redesignating paragraph (5) as para-
12 graph (6); and

13 (2) by inserting after paragraph (4) the follow-
14 ing:

15 “(5) GUARDIAN AD LITEM DOMESTIC VIOLENCE
16 TRAINING.—To be eligible to receive a grant under
17 this section, a State—

18 “(A) shall provide training in domestic vio-
19 lence, sexual assault, and child abuse for any
20 individual appointed to represent a child during
21 judicial proceedings where allegations of abuse
22 or neglect are raised through the development
23 and implementation of training programs in co-
24 operation and collaboration with advocates in
25 the [local community served,] [Note that the

1 grant money goes to the State to assist in im-
2 proving the "child protective services system of
3 the State"] including State domestic violence
4 and sexual assault coalitions, and local shelters,
5 programs, and crisis centers that serve domestic
6 violence, sexual assault, and child abuse victims;
7 and

8 "(B) shall establish mandatory guide-
9 lines—

10 "(i) to ensure that any individual ap-
11 pointed to represent a child during a judi-
12 cial proceeding where allegations of abuse
13 or neglect are raised—

14 "(I) must consider how abuse
15 and domestic violence impact the best
16 interest of the child; and

17 "(II) cannot represent the inter-
18 ests of or be retained or compensated
19 by another party accused of abuse;
20 and

21 "(ii) to place a priority on protecting
22 the safety of the child or any other family
23 member at risk of domestic violence or
24 child abuse."

1 (b) AUTHORIZATION OF APPROPRIATIONS.—[TO BE
2 SUPPLIED]

3 SEC. 5. EDUCATION AND TRAINING FOR JUDGES AND
4 COURT PERSONNEL

5 (a) STATE COURTS.—Section 40412 of the Violent
6 Crime Control and Law Enforcement act of 1994 is
7 amended—

8 (1) in paragraph 18, by striking “and” after
9 the semicolon;

10 (2) in paragraph (19), by striking the period
11 and inserting “; and”; and

12 (3) by adding at the end the following:

13 “(20) the issues raised by domestic violence and
14 child abuse in the determination of custody and visi-
15 tation, including the legitimate reasons parents may
16 report domestic violence and child abuse, the ways
17 domestic violence may relate to an abuser’s desire to
18 seek custody, the importance of relying on sound,
19 well-documented psychological evidence and well-
20 qualified experts in custody and visitation deter-
21 minations if abuse allegations are raised, the indicia,
22 dynamics and treatment of child sexual abuse, and
23 the current scientifically accepted and peer-reviewed
24 research on domestic violence and child abuse.”.

1 (b) FEDERAL COURTS.—~~Section~~ (d) of section
2 40421 of the Violent Crime Control and Law Enforcement
3 act of 1994 is amended to read as follows:

4 “(d) MODEL PROGRAMS.—~~The~~ Federal Judicial Cen-
5 ter, in carrying out section 620b(3) of title 28, United
6 States Code, shall include in the educational programs it
7 prepares (including the training programs for newly ap-
8 pointed judges), information regarding the topics de-
9 scribed in section 40412 of the Violent Crime Control and
10 Law Enforcement act of 1994 that pertain to issues within
11 the jurisdiction of the Federal courts, and shall prepare
12 materials necessary to implement this subsection.”.

13 (c) AUTHORIZATION OF APPROPRIATIONS.—Para-
14 graph (2) of section 40422 of the Violent Crime Control
15 and Law Enforcement act of 1994 is amended by inserting
16 “\$500,000 for each of fiscal years 1993, 1999, 2000,
17 2001, and 2002” after “1996”.

18 **SEC. 6. PREVENTION OF UNJUST CRIMINAL SANCTIONS.**

19 Section 106(b)(2) of the Child Abuse Prevention and
20 Treatment Act (42 U.S.C. 5106a(b)(2)) is amended—

21 (1) in subparagraph (C), by striking “and” at
22 the end;

23 (2) in subparagraph (D), by striking the period
24 at the end and inserting “: and”: and

25 (3) by adding at the end the following:

1 “(E) an assurance in the form of a certifi-
2 cation by the chief executive officer of the State
3 that the State has in effect and is enforcing a
4 State law that, not later than July 1, 1997,
5 permits the use of an affirmative defense to any
6 criminal custodial interference or parental kid-
7 napping charges in a case where a parent has
8 a good faith belief that failing to comply with
9 a court order regarding the custody or visita-
10 tion of their child is necessary to prevent seri-
11 ous physical or emotional harm to that parent
12 or the child.”.

PROPOSED INSERTION TO VIOLENCE AGAINST WOMEN ACT II

A Bill Protecting Rape Victims From Child Custody Disputes
Brought By The Rapist

A. No State shall compel any victim of a rape that resulted in a birth of a child to comply with any order giving parental or visitation rights to the person convicted of the rape of that victim. No provision of this act shall be interpreted to affect any order obligating such a person to provide child support or other forms of financial restitution to the victim or the child.

B. Such a victim may seek injunctive relief from a federal court of any order providing a person convicted of the rape of that victim with parental or visitation rights inconsistent with Section A.



1 abuse order entered before such date, the plan adminis-
2 trator—

3 (1) shall treat such order as a qualified child
4 abuse order if such administrator is paying benefits
5 pursuant to such order on such date, and

6 (2) may treat any other such order entered be-
7 fore such date as a qualified child abuse order even
8 if such order does not meet the requirements of such
9 amendments.

○

(e) ~~(d)~~ USE OF GRANT AMOUNT.—A grant under this section may be used for staff salaries, travel expenses, equipment, printing, and other reasonable expenses necessary to assemble, maintain, and disseminate to employers and labor organizations information on and appropriate responses to domestic ^{and sexual} violence, including—

(1) training to promote a better understanding of appropriate assistance to victims;

(2) conferences;

(3) outreach counseling;

(4) development of protocols and model workplace policies;

(5) coordination of victim services; and

(6) assessments of the workplace costs of domestic ^{and sexual} violence.

(f) ~~(e)~~ AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years 1998 through 2002.

↳ each for domestic violence and sexual violence plans

CRIME VICTIMS' EMPLOYMENT NON-DISCRIMINATION ACT

Sec. 1: Short Title

This bill may be cited as the "Crime Victims' Employment Non-discrimination Act."

Sec. 2: Findings and Purposes

(a). Findings. Congress finds that--

(1) Violent crime has a substantial impact on interstate commerce. This impact is well-documented and includes the following:

(A) According to the National Institute of Justice, crime costs an estimated \$450 billion annually in medical expenses, lost earnings, social service costs, pain, suffering, and reduced quality of life for victims, all of which harm our nation's productivity and drain our nation's resources. Violent crime accounts for \$426 billion of this amount.

(C) Rape exacts the highest costs-per-victim of any criminal offense, at an estimated total of \$127 billion per year. In 1992, an estimated 607,000 rapes and sexual assaults occurred in the United States. Other violent offenses take unacceptably high tolls on the economy as well, including assault (\$93 billion), murder (\$71 billion), drunk driving (excluding fatalities) (\$61 billion), and child abuse (\$56 billion);

(D) Violence is the leading cause of injury to women in the United States, and in the workplace, homicide is the leading cause of death to women; [* will get more figures documenting crime and costs against other groups and its impact on the workplace]

(E) Violent crime results in wage losses equivalent to 1 percent of all American earnings;

(F) Violent crime causes 3 percent of the nation's medical spending and 14

JUL 07 '97 02:16PM NOW LEGAL DEFENSE P.4
percent of injury-related medical spending;

(F) Employers pay nearly \$5 billion annually to cover the cost of crimes against employees and their families;

(2) In addition to the impact of crime on the economy as a whole, victims and their families suffer from crime and its effects on a daily basis:

(A) Domestic crime against adults accounts for approximately 15 percent of total crime costs in the United States each year;

(B) Between 1987-1990, people and households in the United States faced more than 49 million crime attempts annually, including more than 16 million violent crimes;

(3) American workers who have been victims of crime too often suffer adverse consequences in the workplace as a result of their experiences as crime victims. Crime victims are particularly vulnerable to changes in employment, pay, and benefits as a result of their victimization, and are therefore in need of legal protection:

(A) Nearly 50% of rape victims lose their employment or are forced to quit their jobs following the crime;

(B) One-quarter of battered women surveyed have lost a job due in part to the effects of domestic violence, and over half were harassed by their abusers at work;

[add other studies and cases: from victims' groups]

(4) Only twelve States have enacted statutes forbidding employers from taking adverse action against employees who have been victims of crime and must participate in the criminal justice process during working hours. No state explicitly protects crime victims from other adverse action which may result from their experiences and status as crime victims; and

JUL 27 1997 02:17PM HOW LEGAL DEFENSE P.3

(5) Existing Federal law does not explicitly protect crime victims from retaliation, discharge, or other penalties in the workplace which may result from their experiences and status as crime victims.

(b) Purposes. Pursuant to the affirmative power of Congress to enact this Act under section 5 of the Fourteenth Amendment to the Constitution, as well as under clause 3, section 8 of Article I of the Constitution, the purposes of this Act are—

(1) to promote the national interest in ensuring that crime victims can recover from the effects of crime and participate in the criminal justice process without fear of adverse economic consequences from their employers;

(2) to minimize the negative impact on interstate commerce from dislocations of employees and decreases in productivity that may arise when employees are victimized by crime;

(3) to promote the purposes of the Fourteenth Amendment by protecting the rights of victims of crime and by furthering the right of crime victims to employment free from equal protection and due process violations;

(4) to accomplish the purposes set forth in subsections (1), (2), and (3) of this section in a manner that accommodates the legitimate interests of employers and protects the safety of all of those in the workplace.

Sec. 3: Discrimination

(a) General rule: An employer shall not take or threaten to take any adverse job action against any employee who is or has been a victim of crime based upon that

employee's status, experience, or condition as a victim of crime.

(b) Definitions: For the purposes of this Act:

(1) an "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee, and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(2) "Employ" includes to suffer or permit to work for wages, benefits, or other compensation.

(3) an "employee" means any person employed by an employer. This term includes full- or part-time persons employed for a fixed time period, temporary or leased basis, independent contractors, and persons participating in work assignments as a condition of receipt of state or federal welfare benefits.

(4) "victim of crime" includes any employee whom an employer knows or has reason to know has been the target of an act or series of acts that would constitute a crime under applicable State or Federal penal law, or that would form the basis for obtaining an Order of Protection under applicable State or local law. This term also includes those employees against whom threats to commit such criminal offenses have been made, provided the employer knows or has reason to know that such threats have occurred. Evidence that such incidents were reported to the employer, by the alleged victim or by any other employee, shall create a presumption that the employer knows that the employee has been a "victim of crime" under this subsection.

(5) "adverse job action" means any action adversely affecting the employment status,

wages, or benefits payable to the victim, including:

- (A) demotion or suspension;
- (B) dismissal from employment;
- (C) refusal to hire;
- (D) involuntary transfers;
- (E) failure to make a reasonable accommodation of the victim's health and safety needs arising from the offense; and
- (F) loss of pay or benefits. This provision shall not interfere with lawful

employment policies providing for unpaid leave, except where state or federal law or the employer's existing leave policies provide for paid leave or continued benefits, that can lawfully be exercised to attend court proceedings or other activities related to the criminal offense.

(6) "based upon" the employee's status, condition, or experience as a crime victim means any action affecting the terms or conditions of employment, as defined in part (b)(4) of this section, which would not have been made in the absence of the employee's status, condition, or experience as a crime victim, and which does not qualify for the exemptions allowed by Section 6 of this Act.

(7) "reasonable accommodation" may include—

(A) job restructuring, part-time or modified work schedules, or reassignment to a vacant position or to another department or facility with equivalent wages and benefits, if necessary to protect the health or safety of the crime victim,

(B) making adjustments to existing facilities, for example, installing locks or

for the protections of this Act regardless of the location of the crime or threats to commit crime which have been perpetrated against the employee.

(3) No adverse job action for participation in criminal justice or civil proceedings:

It shall be unlawful under this section to take an adverse job action against an employee who has been a victim of crime because that employee was absent from work to testify in a criminal or civil proceeding or to assist in the preparation of a criminal or civil proceeding arising from the offense, and that testimony or preparation could not be made outside the employee's regular working hours. An employee who seeks protection from adverse job actions under this subsection must provide the employer with a minimum of twenty-four (24) hours notice prior to any such absences, and should make all good-faith efforts to provide as much notice as possible.

Sec. 4: Enforcement

(a) Civil action by employees

(1) Liability: Any employer who violates the provisions of this Act shall be liable to any eligible employee affected for--

(A) damages equal to the amount of any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation, and any interest on that amount calculated at the prevailing rate; and

(B) any punitive damages, up to three times the amount of actual damages sustained, as the finder of fact shall deem appropriate; and

(C) equitable relief as the court may deem appropriate, including employment,

alarms, which are necessary to protect the safety of the crime victim and others in the workplace.

(8) "undue hardship" means an action requiring significant difficulty or expense, or any action that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature of operation of the business, when considered in light of the following factors--

(A) the nature and cost of the accommodation needed under this chapter;

(B) the overall financial resources of the employer; the number of persons employed at the facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; and

(C) the relationship between the seriousness of the crime and injuries suffered by the employee, or threatened to be made against the employee, and the proposed accommodation. In cases where the employee is a victim of domestic violence, the employer shall take into account the fact that incidents of domestic violence frequently escalate in seriousness, and that threats against the employee may result in violence.

(c) Construction.

(1) **No disqualification for failure to prosecute:** An employee who otherwise meets the definition of "crime victim" under part (b)(3) of this section shall not be disqualified from this Act's protections if the crime alleged does not result in criminal prosecution or conviction of the perpetrator, provided the employer's actions otherwise fall within the prohibitions of this Act.

(2) **No limitation to victims of workplace crimes:** A crime victim shall be eligible

if, despite reasonable accommodation by the employer, the employee's experience as a crime victim has left the employee unable to perform the essential functions of the employee's job. For purposes of this chapter, consideration shall be given to the employer's judgment as to what functions of a job are essential.

(c) **Undue hardship:** It may be a defense to liability under this Act if the employer can demonstrate that reasonably accommodating the health and safety of the crime victim would impose an undue hardship on the operation of the business of the employer. To qualify for this exemption, an employer shall make good faith efforts to implement the employee's proposals for such reasonable accommodations.

(d) **Restoration to position.** An employee who is lawfully discharged, transferred, or suspended under subsection (a) of this section shall be entitled to restoration to the employee's former position provided the conditions necessitating the change in employment no longer persist, and provided that restoration does not constitute an undue burden. The employee shall be entitled--

(1) to be restored by the employer to the position of employment held by the employee when the discharge, transfer, or suspension commenced; or

(2) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(c) **Burden of Proof:** Once an employee establishes that an employer took an adverse job action against the employee after it knew or had reason to know that the employee had been a victim of crime, it shall be the employer's burden to prove:

(1) that the adverse job action was not based upon the employee's status,

reinstatement, transfer, promotion, and adoption of policies to prevent future violations.

(b) **Action by Department of Justice:** The Department of Justice may bring a civil action in any court of competent jurisdiction to recover the damages described in subsection (a)(1) of this section.

(c) **Exclusivity of Remedies:** These remedies shall be the exclusive remedies applicable to a claim under this title, unless after such claim arises the claimant voluntarily enters into an agreement to resolve the claim through arbitration or another procedure.

Section 5: Attorney's fees. Section 722 of the Revised Statutes (42 U.S.C. § 1988) is amended in the last sentence--[add language to effect technical amendment]

Sec.6: Defenses

(a) **Extraordinary threats to workplace safety:** It may be a defense to liability under this Act if an adverse job action was necessary to protect the safety of an employee or other persons at the place of employment; provided, to qualify for this exception, an employer must prove:

(1) That the employer took all reasonable steps to protect the safety of the crime victim and others at the workplace which, if successful, would not have required the adverse job action; and

(2) No less detrimental action was reasonably possible without endangering the safety of the employee or others at the workplace.

(b) **Essential job functions impaired:** It may be a defense to liability under this Act

condition, or experience as a victim of crime; or

(2) that the employer's actions fall within the defenses allowed by Section 6 of this Act.

105TH CONGRESS
1ST SESSION

H. R. 851

To amend the Family and Medical Leave Act of 1993 to allow leave to address domestic violence and its effects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 1997

Ms. ROYBAL-ALLARD (for herself, Mr. TORRES, Mrs. MORELLA, Mr. FROST, Mr. GUTIERREZ, Ms. SLAUGHTER, Ms. LOFGREN, Ms. NORTON, Mrs. MALONEY of New York, Ms. PELOSI, Mr. ACKERMAN, Mr. JACKSON of Illinois, Mr. CONYERS, Mr. LEWIS of Georgia, and Mr. BALDACC) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce, Government Reform and Oversight, and House Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Family and Medical Leave Act of 1993 to allow leave to address domestic violence and its effects, 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 AND REFERENCE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Battered Women’s Employment Protection Act ”.

1 (b) REFERENCE.—Whenever in this Act an amend-
2 ment or repeal is expressed in terms of an amendment
3 to, or repeal of, a section or other provision, the reference
4 shall be considered to be made to a section or other provi-
5 sion of the Family and Medical Leave Act of 1993.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) violence against women is the leading cause
9 of physical injury to women, and the Department of
10 Justice estimates that intimate partners commit
11 more than one million violent crimes against women
12 every year;

13 (2) approximately 95 percent of the victims of
14 domestic violence are women;

15 (3) in the United States, a woman is more like-
16 ly to be assaulted, injured, raped, or killed by a male
17 partner than by any other type of assailant;

18 (4) the Bureau of Labor Statistics predicts that
19 women will account for two-thirds of all new en-
20 trants into the work force between now and the year
21 2000;

22 (5) violence against women dramatically affects
23 women's work force participation, insofar as one-
24 quarter of battered women surveyed had lost a job

1 due at least in part to the effects of domestic vio-
2 lence, and over half had been harassed by their
3 abuser at work;

4 (6) a study by Domestic Violence Intervention
5 Services, Inc. found that 96 percent of employed do-
6 mestic violence victims had some type of problem in
7 the workplace as a direct result of their abuse or
8 abuser;

9 (7) the availability of economic support is a
10 critical factor in women's ability to leave abusive sit-
11 uations that threaten them and their children, and
12 over half of battered women surveyed stayed with
13 their batterers because they lacked resources to sup-
14 port themselves and their children;

15 (8) a report by the New York City Victims
16 Services Agency found that abusive spouses and
17 lovers harass 74 percent of battered women at work,
18 54 percent of battering victims miss at least 3 days
19 of work per month, 56 percent are late for work at
20 least 5 times per month, and a University of Min-
21 nesota study found that 24 percent of women in
22 support groups for battered women had lost a job
23 partly because of being abused;

24 (9) a survey of State unemployment insurance
25 agency directors by the Federal Advisory Council on

1 Unemployment Compensation found that in 31
2 States battered women who leave work as a result
3 of domestic violence do not qualify for unemploy-
4 ment benefits, in 9 States the determination often
5 varies depending on the facts and circumstances,
6 and in only 13 States are they usually considered
7 qualified for unemployment benefits;

8 (10) a study by the New York State Depart-
9 ment of Labor found that, when filing for unemploy-
10 ment insurance benefits, domestic violence victims
11 frequently hide their victimization and do not dis-
12 close the domestic violence as a reason for their
13 problems with the job or need to separate from em-
14 ployment;

15 (11) 49 percent of senior executives recently
16 surveyed said domestic violence has a harmful effect
17 on their company's productivity, 47 percent said do-
18 mestic violence negatively affects attendance, and 44
19 percent said domestic violence increases health care
20 costs, and the Bureau of National Affairs estimates
21 that domestic violence costs employers between 3
22 and 5 billion dollars per year; and

23 (12) existing Federal and State legislation does
24 not expressly authorize battered women to take leave
25 from work to seek legal assistance and redress,

1 counseling, or assistance with safety planning and
2 activities.

3 (b) PURPOSES.—Pursuant to the affirmative power
4 of Congress to enact this Act under section 5 of the Four-
5 teenth Amendment to the Constitution, as well as under
6 clause 1 of section 8 of Article I of the Constitution and
7 clause 3 of section 8 of Article I of the Constitution, the
8 purposes of this Act are—

9 (1) to promote the national interest in reducing
10 domestic violence by enabling victims of domestic vi-
11 olence to maintain the financial independence nec-
12 essary to leave abusive situations, to achieve safety
13 and minimize the physical and emotional injuries
14 from domestic violence, and to reduce the devastat-
15 ing economic consequences of domestic violence to
16 employers and employees, by—

17 (A) providing unemployment insurance for
18 victims of domestic violence who are forced to
19 leave their employment as a result of domestic
20 violence; and

21 (B) entitling employed victims of domestic
22 violence to take reasonable leave under the
23 Family and Medical Leave Act of 1993 to seek
24 medical help, legal assistance, counseling, and

1 safety planning and assistance without penalty
2 from their employer;

3 (2) to promote the purposes of the Fourteenth
4 Amendment by protecting the civil and economic
5 rights of victims of domestic violence and by further-
6 ing the equal opportunity of women to employment
7 and economic self-sufficiency;

8 (3) to minimize the negative impact on inter-
9 state commerce from dislocations of employees and
10 harmful effects on productivity, health care costs,
11 and employer costs from domestic violence; and

12 (4) to accomplish the purposes described in
13 paragraphs (1) , (2) and (3) in a manner that ac-
14 commodates the legitimate interests of employers.

15 **SEC. 3. UNEMPLOYMENT COMPENSATION.**

16 (a) UNEMPLOYMENT COMPENSATION.—Section
17 3304(a) of the Internal Revenue Code of 1986 is amend-
18 ed—

19 (1) by striking “and” at the end of paragraph
20 (18),

21 (2) by striking the period at the end of para-
22 graph (19) and inserting “; and”,

23 (3) by adding after paragraph (19) the follow-
24 ing:

1 “(20) compensation is to be provided where an
2 individual is separated from employment due to cir-
3 cumstances directly resulting from the individual’s
4 experience of domestic violence.”,

5 (4) by redesignating subsections (b) through (f)
6 as subsections (c) through (g), respectively, and

7 (5) by adding after subsection (a) the following:

8 “(b) CONSTRUCTION.—

9 “(1) For the purpose of determining, under
10 subsection (a)(20), whether an employee’s separation
11 from employment is ‘directly resulting’ from the in-
12 dividual’s experience of domestic violence, it shall be
13 sufficient if the separation from employment re-
14 sulted from—

15 “(A) the employee’s reasonable fear of fu-
16 ture domestic violence at or en route to or from
17 her place of employment;

18 “(B) the employee’s wish to relocate to an-
19 other geographic area in order to avoid future
20 domestic violence against the employee or the
21 employee’s family;

22 “(C) the employee’s need to recover from
23 traumatic stress resulting from the employee’s
24 experience of domestic violence;

1 “(D) the employer’s denial of the employ-
2 ee’s request for the temporary leave from em-
3 ployment to address domestic violence and its
4 effects authorized by section 102 of the Family
5 and Medical Leave Act of 1993; or

6 “(E) any other respect in which domestic
7 violence causes the employee to reasonably be-
8 lieve that termination of employment is nec-
9 essary for the future safety of the employee or
10 the employee’s family.

11 “(2) For purposes of subsection (a)(20), where
12 State law requires the employee to have made rea-
13 sonable efforts to retain employment as a condition
14 for receiving unemployment compensation, it shall be
15 sufficient that the employee—

16 “(A) sought protection from or assistance
17 in responding to domestic violence, including
18 calling the police or seeking legal, social work,
19 medical, clergy, or other assistance;

20 “(B) sought safety, including refuge in a
21 shelter or temporary or permanent relocation,
22 whether or not the employee actually obtained
23 such refuge or accomplished such relocation; or

1 “(C) reasonably believed that options such
2 as a leave, transfer, or alternative work sched-
3 ule would not be sufficient to guarantee the em-
4 ployee or the employee’s family’s safety.

5 “(3) For purposes of subsection (a)(20), where
6 State law requires the employee to actively search
7 for employment after separation from employment
8 as a condition for receiving unemployment com-
9 pensation, such requirement shall be deemed to be
10 met where the employee is temporarily unable to ac-
11 tively search for employment because the employee is
12 engaged in seeking safety or relief for the employee
13 or the employee’s family from domestic violence, in-
14 cluding—

15 “(A) going into hiding or relocating or at-
16 tempting to do so, including activities associ-
17 ated with such relocation or hiding, such as
18 seeking to obtain sufficient shelter, food, school-
19 ing for children, or other necessities of life for
20 the employee or the employee’s family;

21 “(B) actively pursuing legal protection or
22 remedies, including meeting with the police,
23 going to court to make inquiries or file papers,
24 meeting with attorneys, or attending court pro-
25 ceedings; or

1 “(C) participating in psychological, social,
2 or religious counseling or support activities to
3 assist the employee in ending domestic violence.

4 “(4) In determining if an employee meets the
5 requirements of paragraphs (1), (2), and (3), the
6 employer of an employee may require the employee
7 to provide—

8 “(A) documentation of the domestic vio-
9 lence, such as police or court records, or docu-
10 mentation of the domestic violence from a shel-
11 ter worker, attorney, clergy, or medical or other
12 professional from whom the employee has
13 sought assistance in addressing domestic vio-
14 lence and its effects; or

15 “(B) other corroborating evidence, such as
16 a statement from any other individual with
17 knowledge of the circumstances which provide
18 the basis for the claim, or physical evidence of
19 domestic violence, such as photographs, torn or
20 bloody clothes, etc.”.

21 All evidence of domestic violence experienced by an
22 employee, including an employee’s statement, any
23 corroborating evidence, and the fact that an em-
24 ployee has applied for or inquired about unemploy-
25 ment compensation available under section

1 3304(a)(20) shall be retained in the strictest con-
2 fidence of the employer, except to the extent con-
3 sented to by the employee where disclosure is nec-
4 essary to protect the employee's safety.”.

5 (b) SOCIAL SECURITY PERSONNEL TRAINING.—Sec-
6 tion 303(a) of the Social Security Act (42 U.S.C.
7 503(a)(4)) is amended by redesignating paragraphs (4)
8 through (10) as paragraphs (5) through (11), respectively,
9 and by adding after paragraph (3) the following:

10 “(4) Such methods of administration as will en-
11 sure that claims reviewers and hearing personnel are
12 adequately trained in the nature and dynamics of
13 domestic violence and in methods of ascertaining
14 and keeping confidential information about possible
15 experiences of domestic violence, so that employment
16 separations stemming from domestic violence are re-
17 liably screened, identified, and adjudicated and full
18 confidentiality is provided for the employee's claim
19 and submitted evidence.”.

20 (c) DEFINITIONS.—Section 3306 of the Internal Rev-
21 enue Code of 1986 is amended by adding at the end the
22 following:

23 “(u) DOMESTIC VIOLENCE.—The term ‘domestic vio-
24 lence’ includes abuse committed against an employee or
25 a family member of the employee by—

1 “(1) a current or former spouse of the em-
2 ployee;

3 “(2) a person with whom the employee shares
4 a child in common;

5 “(3) a person who is cohabitating with or has
6 cohabitated with the employee as a romantic or inti-
7 mate partner; or

8 “(4) a person from whom the employee would
9 be eligible for protection under the domestic vio-
10 lence, protection order, or family laws of the juris-
11 diction in which the employee resides or the em-
12 ployer is located.

13 “(v) ABUSE.—The term ‘abuse’ includes—

14 “(1) physical acts resulting in, or threatening to
15 result in, physical injury;

16 “(2) sexual abuse, sexual activity involving a
17 dependent child, or threats of or attempts at sexual
18 abuse;

19 “(3) mental abuse, including threats, intimida-
20 tion, acts designed to induce terror, or restraints on
21 liberty; and

22 “(4) deprivation of medical care, housing, food
23 or other necessities of life.”.

1 SEC. 4. ENTITLEMENT TO LEAVE FOR DOMESTIC VIO-
2 LENCE.

3 (a) AUTHORITY FOR LEAVE.—Section 102(a)(1) (29
4 U.S.C. 2612(a)(1)) is amended by adding at the end the
5 following:

6 “(E) In order to care for the child or par-
7 ent of the employee, if such child or parent is
8 addressing domestic violence and its effects.

9 “(F) Because the employee is addressing
10 domestic violence and its effects, the employee
11 is unable to perform any of the functions of the
12 position of such employee.”.

13 (b) DEFINITION.—Section 101 (29 U.S.C. 2611) is
14 amended by adding at the end the following:

15 “(14) ADDRESSING DOMESTIC VIOLENCE AND
16 ITS EFFECTS.—The term ‘addressing domestic vio-
17 lence and its effects’ means—

18 “(A) experiencing domestic violence,

19 “(B) seeking medical attention for or re-
20 covering from injuries caused by domestic vio-
21 lence,

22 “(C) seeking legal assistance or remedies,
23 including communicating with the police or an
24 attorney, or participating in any legal proceed-
25 ing related to domestic violence,

1 “(D) attending support groups for victims
2 of domestic violence,

3 “(E) obtaining psychological counseling re-
4 lated to experiences of domestic violence,

5 “(F) participating in safety planning and
6 other actions to increase safety from future do-
7 mestic violence, including temporary or perma-
8 nent relocation and

9 “(G) any other activity necessitated by do-
10 mestic violence which must be undertaken dur-
11 ing hours of employment.”.

12 (c) INTERMITTENT OR REDUCED LEAVE.—Section
13 102(b) (29 U.S.C. 2612(b)) is amended by adding at the
14 end the following:

15 “(3) DOMESTIC VIOLENCE.—Leave under sub-
16 paragraph (E) or (F) of subsection (a)(1) may be
17 taken by an employee intermittently or on a reduced
18 leave schedule. The taking of leave intermittently or
19 on a reduced leave schedule pursuant to this para-
20 graph shall not result in a reduction in the total
21 amount of leave to which the employee is entitled
22 under subsection (a) beyond the amount of leave ac-
23 tually taken.”.

1 (d) PAID LEAVE.—Section 102(d)(2) (29 U.S.C.
2 2612(d)) is amended by striking “(C) or (D)” and insert-
3 ing “(C), (D), (E), or (F)”.

4 (e) CERTIFICATION.—Section 103 (29 U.S.C. 2613)
5 is amended by redesignating subsection (e) as subsection
6 (f) and by inserting after subsection (d) the following:

7 “(e) DOMESTIC VIOLENCE.—In determining if an
8 employee meets the requirements of subparagraph (E) or
9 (F) of section 102(a)(1), the employer of an employee may
10 require the employee to provide—

11 “(1) documentation of the domestic violence,
12 such as police or court records, or documentation of
13 the domestic violence from a shelter worker, attor-
14 ney, clergy, or medical or other professional from
15 whom the employee has sought assistance in ad-
16 dressing domestic violence and its effects; or

17 “(2) other corroborating evidence, such as a
18 statement from any other individual with knowledge
19 of the circumstances which provide the basis for the
20 claim, or physical evidence of domestic violence, such
21 as photographs, torn or bloody clothes, etc.”.

22 (f) CONFIDENTIALITY.—Section 103 (29 U.S.C.
23 2613), as amended by subsection (e), is amended—

24 (1) in the title by adding before the period the
25 following: “; **CONFIDENTIALITY**”, and

1 (2) by adding at the end the following:

2 “(g) CONFIDENTIALITY.—All evidence of domestic vi-
3 olence experienced by an employee or the employee’s child
4 or parent, including an employee’s statement, any corrobo-
5 rating evidence, and the fact that an employee has re-
6 quested leave for the purpose of addressing domestic vio-
7 lence and its effects, shall be retained in the strictest con-
8 fidence by the employer, except to the extent consented
9 to by the employee where disclosure is necessary to protect
10 the employee’s safety.”.

11 **SEC. 5. ENTITLEMENT TO LEAVE FOR FEDERAL EMPLOY-**
12 **EES FOR DOMESTIC VIOLENCE.**

13 (a) **AUTHORITY FOR LEAVE.**—Section 6382 of title
14 5, United States Code is amended by adding at the end
15 the following:

16 “(E) In order to care for the child or parent of
17 the employee, if such child or parent is addressing
18 domestic violence and its effects.

19 “(F) Because the employee is addressing do-
20 mestic violence and its effects, the employee is un-
21 able to perform any of the functions of the position
22 of such employee.”.

23 (b) **DEFINITION.**—Section 6381 of title 5, United
24 States Code is amended by striking “and” at the end of

1 paragraph (5), by striking the period at the end of para-
2 graph (6) and inserting “; and” and by adding at the end
3 the following:

4 “(7) the term ‘addressing domestic violence and
5 its effects’ means—

6 “(A) experiencing domestic violence,

7 “(B) seeking medical attention for or re-
8 covering from injuries caused by domestic vio-
9 lence,

10 “(C) seeking legal assistance or remedies,
11 including communicating with the police or an
12 attorney, or participating in any legal proceed-
13 ing related to domestic violence,

14 “(D) attending support groups for victims
15 of domestic violence,

16 “(E) obtaining psychological counseling re-
17 lated to experiences of domestic violence,

18 “(F) participating in safety planning and
19 other actions to increase safety from future do-
20 mestic violence, including temporary or perma-
21 nent relocation and

22 “(G) any other activity necessitated by do-
23 mestic violence which must be undertaken dur-
24 ing hours of employment.”.

1 (c) INTERMITTENT OR REDUCED LEAVE.—Section
2 6382(b) of title 5, United States Code, is amended by add-
3 ing at the end the following:

4 “(3) Leave under subparagraph (E) or (F) of
5 subsection (a)(1) may be taken by an employee
6 intermittently or on a reduced leave schedule. The
7 taking of leave intermittently or on a reduced leave
8 schedule pursuant to this paragraph shall not result
9 in a reduction in the total amount of leave to which
10 the employee is entitled under subsection (a) beyond
11 the amount of leave actually taken.”.

12 (d) OTHER LEAVE.—Section 6382(d) of title 5, Unit-
13 ed States Code, is amended by striking “(C) or (D)” and
14 inserting “(C), (D), (E), or (F)”.

15 (e) CERTIFICATION.—Section 6383 of title 5, United
16 States Code, is amended by redesignating subsection (e)
17 as subsection (f) and by inserting after subsection (d) the
18 following:

19 “(e) DOMESTIC VIOLENCE.—In determining if an
20 employee meets the requirements of subparagraph (E) or
21 (F) of section 6382(a)(1), the employer of an employee
22 may require the employee to provide—

23 “(1) documentation of the domestic violence,
24 such as police or court records, or documentation of

1 the domestic violence from a shelter worker, attor-
2 ney, clergy, or medical or other professional from
3 whom the employee has sought assistance in ad-
4 dressing domestic violence and its effects; or

5 “(2) other corroborating evidence, such as a
6 statement from any other individual with knowledge
7 of the circumstances which provide the basis for the
8 claim, or physical evidence of domestic violence, such
9 as photographs, torn or bloody clothes, etc.”.

10 (f) CONFIDENTIALITY.—Section 6383 of title 5,
11 United States Code, as amended by subsection (e), is
12 amended—

13 (1) in the title by adding before the period the
14 following: “; **Confidentiality**”, and

15 (2) by adding at the end the following:

16 “(g) CONFIDENTIALITY.—All evidence of domestic vi-
17 olence experienced by an employee or the employee’s child
18 or parent, including an employee’s statement, any corrobo-
19 rating evidence, and the fact that an employee has re-
20 quested leave for the purpose of addressing domestic vio-
21 lence and its effects, shall be retained in the strictest con-
22 fidence by the employer, except to the extent consented
23 to by the employee where disclosure is necessary to protect
24 the employee’s safety.”.

1 **SEC. 6. EFFECT ON OTHER LAWS AND EMPLOYMENT BENE-**
2 **FITS.**

3 (1) MORE PROTECTIVE.—Nothing in this Act
4 or the amendments made by this Act shall be con-
5 strued to supersede any provision of any Federal,
6 State or local law, collective bargaining agreement,
7 or other employment benefit program which provides
8 greater unemployment compensation or leave bene-
9 fits for employed victims of domestic violence than
10 the rights established under this Act or such amend-
11 ments.

12 (2) LESS PROTECTIVE.—The rights established
13 for employees under this Act or the amendments
14 made by this Act shall not be diminished by any col-
15 lective bargaining agreement, any employment bene-
16 fit program or plan, or any State or local law.

17 **SEC. 7. EFFECTIVE DATE.**

18 (a) GENERAL RULE.—Except as provided in sub-
19 section (b), this Act and the amendments made by this
20 Act shall take effect upon the expiration of 180 days from
21 the date of the enactment of this Act.

22 (b) UNEMPLOYMENT COMPENSATION.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), the amendments made by section 3 shall

1 apply in the case of compensation paid for weeks be-
2 ginning on or after the expiration of 180 days from
3 the date of the enactment of this Act.

4 (2) MEETING OF STATE LEGISLATURE.—In the
5 case of a State with respect to which the Secretary
6 of Labor has determined that the State legislature
7 is required in order to comply with the amendments
8 made by section 3, the amendments made by section
9 3 shall apply in the case of compensation paid for
10 weeks which begin on or after the expiration of 180
11 days from the date of the enactment of this Act and
12 after the end of the first session of the State legisla-
13 ture which begins after the date of the enactment of
14 this Act or which began prior to the date of the en-
15 actment of this Act and remained in session for at
16 least 25 calendar days after such date of enactment.
17 For purposes of the preceding sentence, the term
18 “session” means a regular, special, budget, or other
19 session of a State legislature.

○

MEMORANDUM

TO: TOM FREEDMAN, MARY L. SMITH
FROM: DREW HANSEN
RE: VIOLENCE AGAINST WOMEN ACT II
DATE: AUGUST 20, 1997

These are brief summaries of the bills included in the proposed VAWA II packet.

I. Sexual Assault

Preventing Sexual Misconduct in Prisons (Conyers)

- Prohibits State Departments of Corrections from hiring persons guilty of custodial sexual misconduct; requires the creation and maintenance of databases to make sure that this does not happen.
- Requires criminal penalties for custodial sexual misconduct.
- Enforcement for the above provided by reduction of '94 crime law funds by 10%.
- Creates a National Sexual Contact Hotline (800 #) for prisons.

Protection from Sexual Predators (Slaughter)

- Mandates life imprisonment for interstate sexual crimes for persons convicted of a previous state or federal sex crime, and ensures that such life imprisonment sentences are without the possibility of parole.
- Commissions a NIJ study of persistent sexual predators.

Accuracy of Campus Crime Reporting (Duncan)

Makes it easier for university officials to submit sexual incident (not only arrest) statistics and makes such information public. Noncompliance leads to reduction in federal funding.

Law Enforcement and Campus Grants to Reduce Violent Crimes Against Women on Campus

Grants to help campus administration and law enforcement officials to develop strategies to combat violence against women (such as increasing campus security and developing and enhancing victim services). Grants are \$500,000 per state and encourage cooperation with other

federal agencies.

National Commission on Standards of Practice and Training for Sexual Assault Examination Act

Creates a national commission to evaluate standards and create new standards for sexual assault forensic examinations.

Rape Prevention Education Amendments

Gives grants of \$45-50 million to rape crisis centers and nonprofit/non-governmental state sexual assault coalitions to develop educational seminars, hotlines, professional training, information, and public education activities regarding rape. 25% of such grants must go to middle schools, junior highs, and high schools. (This follows the provision in the '94 crime bill that 15% of certain funds must go to rape prevention activities).

Mandatory Notification of Options for College and University Students

Requires university officials who receive reports of sexual assault to notify the victim of the following options and to make the policy widely known:

- To contact the local police instead of or in addition to campus police.
- To contact a local rape crisis center instead of or in addition to university services.
- To contact a national sexual assault hotline.

II. Domestic Violence

Full Faith and Credit of Protection Orders and Grant Program (Conyers)

- Reduces funds allocated under the 1968 crime bill to states that do not give full faith/credit to protection orders.
- Provides \$1 million per year for three years for grants to provide technical assistance to states in recognizing protection orders.

Prohibition on Transfer of Firearms to Intoxicated Individuals (Conyers)

Prohibits the transfer of firearms to intoxicated individuals.

Domestic Violence Identification and Referral Act of 1997 (Boxer/Morella)

Establishes preferred grant treatment for persons who have training in identifying, treating, and referring domestic violence victims.

Domestic Violence Victims Housing Act (Frank)

Expands Section 8 housing assistance by \$50 million for people who have left or are leaving a residence as a result of domestic violence.

Domestic Violence Legal Services Eligibility Act (Pelosi)

Mandates that the LSC prescribe an “income rule” for determining if a client who is a victim of domestic violence is eligible for assistance (i.e. only the income of the client will be the consideration).

Domestic Violence Insurance Protection Act (Sanders)

Prohibits providers of health insurance, workers’ compensation, auto medical insurance from using the fact that someone was a victim of domestic violence as a grounds for denying coverage, restricting coverage, refusing to renew coverage, increasing premiums, terminating coverage that was in a partner’s name after divorce or separation or after the partner terminates the policy. Enforced by FTC oversight and/or by private action against the insurer.

National Summit on Sports and Violence (H.Con.Res. Sanders)

Should convene a national summit among persons related to sports (teams, media, community leaders, etc.) to develop a multifaceted action plan to deter acts of violence, especially domestic violence and sexual assault.

Community Initiatives Act (Furse)

Reauthorization of \$12 million in grants through 2002 for community initiatives regarding domestic violence.

Battered Women’s Shelter Act (Lowey)

Grants for battered women’s shelters, starting from \$50 million for FY ‘96 and increasing to \$260 million for FY 2002.

III. Limiting the Effects of Violence on Children

Family Safety Act of 1997 (Morella)

- Provides protection for children in cases of so-called parental kidnaping and potential return of children to abusive parents. Aims to set up protection standards for interstate relocation when parents dispute custody. Makes it an affirmative defense to a charge of parental kidnaping that the defendant acted within visitation rights, was fleeing a domestic violence situation, and could not return the child because of circumstances beyond the defendant’s control.

- Funds a study of divorce and child custody cases in which domestic violence is a factor.
- Provides grants to states to enable them to enter into agreements to establish supervised visitation centers.

Concurrent Resolution Regarding Domestic Violence and Children (Morella)

Resolution that:

- It is not in the best interest of children to not have a presumption with prime custodial parent, to force parents to share custody in a domestic violence situation, to punish abused parents who protect themselves, to presume that allegations of domestic violence in custody and divorce proceedings are false, and to make 'friendly parent' provisions a factor when abuse is involved.
- Child abuse/child sexual abuse cases should be fully investigated regardless of when they are raised or whether the child has recanted the allegation.
- States should be far more protective of victims of domestic/family violence in custody and visitation determinations and not order inappropriate mediation, counseling, etc.

Creation of Supervised Child Visitation Centers (Morella)

Provides grants to states to establish supervised visitation centers. Grants are \$75 million in FY 1998 and rise to \$95 million by FY 2000.

Domestic Violence, Child Custody, and Child Protection Act (Morella)

- Requires states to provide training in domestic violence, sexual assault, and child abuse to staff responsible for investigation of reports of abuse and neglect to receive a grant under the Child Abuse Prevention and Treatment Act.
- Makes domestic violence a major consideration in foster care placement decisions.
- Requires states to provide training in domestic violence, sexual assault, and child abuse for anyone appointed to represent a child during judicial proceedings where abuse is an issue.
- Requires states to train judges and court personnel in the ways that domestic violence affects custody decisions, including the debunking of "parental alienation syndrome."
- Makes protection of children from potential abuse an affirmative defense to kidnaping or custodial interference charges.

ERISA Child Abuse Accountability Act (Maloney)

Permits the creation or assignment of rights to employee pension benefits if necessary to satisfy a judgment against a plan participant or beneficiary for physically, sexually, or emotionally abusing a child.

Rape and Child Custody

Protects rape victims from child custody disputes brought by the rapist: prohibits states from compelling victims of rape that resulted in birth of a child to comply with any order of parental/visitation rights, allows victims to seek redress in federal court.

IV. Domestic Violence in the Military

Civilian Jurisdiction for Crimes of Sexual Assault and Domestic Violence (DeWine)

Provides for civilian law enforcement proceedings against armed forces personnel who commit crimes of sexual assault and domestic violence.

Commission on Military Justice and Fairness Act (Maloney)

Establishes a Commission on Military Justice and Fairness to investigate certain aspects of the military justice system, including investigation of reports of sexual misconduct, sexual harassment, and unlawful gender discrimination.

Technical Amendments

Inserts new provisions regarding domestic violence into military justice regulations and provides for compensation with medical and dental care for victims who were dependents of armed forces members.

V. Crime Victims Assistance Act (Leahy)

A series of protections for victims of crime.

- Right to be notified of detention hearing and right to be heard on the issue of detention.
- Enhanced right to order of restitution.
- Right to be notified of escape or release from prison.
- Right to be notified of plea agreement and to be heard on merits of the plea agreement.
- Rights of notification and allocution at a probation revocation hearing.

- Enhanced right to be present at trial.
- Compliance assured by Attorney General review and by pilot programs to establish ombudsman programs for crime victims.
- Increased victim-assistance personnel, increased training for criminal justice officials to respond to the needs of victims.
- Other amendments to Victims of Crime Act of 1994.

VI. Protections for Women at High Risk

Older Women's Protection from Violence Act (Maloney)

- Creates long-term care ombudsman program and law school clinical programs on elder abuse.
- Creates training programs for law enforcement offices and social and health providers regarding elder abuse.
- Provides for grants to fund community initiatives, outreach programs, and other services to combat domestic violence against older women.

Protections Against Disabled Women

- Requires U.S. Attorney General to establish a disabled women's project within the office of Violence Against Women.
- Requires recipients of federal crime victim funds to comply with ADA. Programs should hire qualified disabled women to serve victims of crime.
- Requires DOJ to establish data collection services regarding disabled women and domestic violence.
- Requires AG to request studies on disabled women and domestic violence designed and conducted by disabled women who are qualified researchers.
- Requires AG to establish the authority to receive and perform criminal background checks on persons applying to be personal assistants.
- Funds a project in which disabled women develop training on sexual assault.
- Requires AG to fund a national education campaign by and for disabled women.
- These strategies should be implemented by a.) set-asides of a percentage of VAWA

funds, and 2.) prioritization of grant applications that include plans to meet the needs of women with disabilities.

Protections for Battered Immigrant Women

An array of protections for battered immigrant women.

- The AG may cancel removal of an alien if removal would cause extreme hardship to the alien's parent.
- Provides other anti-removal protections for immigrants.
- Allows the AG to waive the "good moral character" requirement for stopping deportation proceedings in cases of certain crimes committed under the influence of domestic violence.
- Makes it easier for abused spouses to stay in the country when their abuser is deported because of abuse.
- Adds protections for victims of domestic violence who are married to bigamists who are U.S. citizens and for victims of domestic violence who are in the United States because of derivative visas (i.e. visas depending on someone in the United States).
- Improves protections for non-citizen spouses of U.S. military personnel.
- Improves protections for elder abuse victims who are immigrants.
- Removes barriers to gaining lawful permanent resident status for immigrant VAWA applicants (including the barrier on drug use if such drug use was resorted to as a result of domestic violence).
- Improves access to VAWA suspension of deportation/cancellation of removal and suggests additional provisions for children.
- Makes it easier for battered immigrant women to receive work authorization.
- Preserves battered women's ability to naturalize.
- Gives access to files which are ordinarily protected by the Privacy Act so that battered women immigrant can make a case for relief.
- Expands access to Legal Services, SSI, and Food Stamps for battered immigrant women.
- Provides for training for relevant personnel.

VII. Workplace Safety

National Workplace Clearinghouse Domestic and Sexual Violence Grant

Authorizes the AG to make a grant to establish a national clearinghouse on domestic and sexual violence in the workplace.

Crime Victims' Employment Non-Discrimination Act

Prohibits employers from taking or threatening adverse job action against an employee who has been a victim of crime based on that employee's status, experience, or condition as a victim of crime.

Battered Women's Employment Protection Act (Wellstone/Roybal-Allard)

Extends the Family and Medical leave Act to allow leave to address domestic violence and its effects.

Workplace Violence Prevention Tax Credit Act (Lowey)

Provides a credit for employers for certain costs incurred to combat violence against women (i.e. costs of implementing workplace safety programs such as hiring new security personnel to address violent crimes against women, establishment of leave policies, etc.)

Education and Training Grants to Promote Responses to Violence Against Women (Biden)

Creates education and training grants to promote appropriate responses to violence against women.

Sense of Congress Regarding Workers' Compensation

Defines the sense of Congress regarding state workers' compensation laws as assuming that such laws should provide benefits to women who are victims of workplace violence and should permit the employee to pursue an action at law against the employer.

Employer Liability for Gender Related Violence (Maloney)

Creates employer liability for negligent conduct that results in an individual committing a gender-motivated crime of violence against another individual on premises controlled by the employer.

1 information to the States regarding the prevention
2 of custodial sexual misconduct in prisons.

3 (2) REQUIREMENTS.—Such guidelines shall in-
4 clude requirements that—

5 (A) prohibit a State department of correc-
6 tions from hiring staff who have been convicted
7 on criminal charges, or found liable in civil
8 suits, for custodial sexual misconduct; and

9 (B) each State department of corrections
10 maintain databases, including the names and
11 identifying information of individuals who have
12 been convicted on criminal charges or found lia-
13 ble in civil suits for custodial sexual misconduct
14 and to check these databases prior to hiring
15 any correctional staff.

16 (3) NATIONAL DATABASE.—This information
17 shall also be submitted to the Department of Justice
18 where it will be kept on a national database.

19 (b) RELEASE OF INFORMATION.—The information
20 collected under subsection (a)(2) shall be treated as pri-
21 vate data except that—

22 (1) such information may be disclosed to law
23 enforcement agencies for law enforcement purposes;

1 (2) such information may be disclosed to gov-
2 ernment agencies conducting confidential back-
3 ground checks; and

4 (3) the designated State law enforcement agen-
5 cy and any local law enforcement agency authorized
6 by the State agency may release relevant informa-
7 tion that is necessary to protect prisoners concerning
8 a specific person whose name is included in the
9 database, except that the identity of a victim of an
10 offense that requires information to be maintained
11 under this section shall not be released.

12 (c) IMMUNITY FOR GOOD FAITH CONDUCT.—Law
13 enforcement agencies, employees of law enforcement agen-
14 cies, and State officials shall be immune from liability for
15 good faith conduct in releasing information under this sec-
16 tion.

17 (d) INELIGIBILITY FOR FUNDS.—

18 (1) IN GENERAL.—A State that fails to imple-
19 ment the program as described under this section
20 shall not receive 10 percent of the funds that would
21 otherwise be allocated to the State under subtitle A
22 of title II of the Violent Crime Control and Law En-
23 forcement Act of 1994 (42 U.S.C. 13701).

24 (2) REALLOCATION.—Any funds that are not
25 allocated for failure to comply with this section shall

1 be reallocated to States that comply with this sec-
2 tion.

3 (3) COMPLIANCE DATE.—Each State shall have
4 not more than 3 years from the date of enactment
5 of this Act in which to implement this section, ex-
6 cept that the Attorney General may grant an addi-
7 tional 2 years to a State that is making good faith
8 efforts to implement this section.

9 SEC. 3. CRIMINALIZATION OF SEXUAL CONDUCT BETWEEN
10 CORRECTIONAL STAFF AND PRISONERS.

11 (a) REDUCTION OF FUNDS.—In addition to the re-
12 duction of funds under section 2(d), a State that does not
13 have criminal penalties or a State that fails to implement
14 criminal penalties explicitly prohibiting custodial sexual
15 misconduct by correctional staff against prisoners shall
16 not receive 10 percent of the funds that would otherwise
17 be allocated to the State under part A of title II of the
18 Violent Crime Control and Law Enforcement Act of 1994
19 (42 U.S.C. 13701).

20 (b) REALLOCATION.—Any funds that are not allo-
21 cated for failure to comply with this section shall be reallo-
22 cated to States that comply with this section.

23 (c) COMPLIANCE DATE.—Each State shall have not
24 more than 3 years from the date of enactment of this Act
25 in which to implement this section, except that the Attor-

1 ney General may grant an additional 2 years to a State
2 that is making good faith efforts to implement this sec-
3 tion.

4 SEC. 4. NATIONAL SEXUAL CONTACT HOTLINE FOR PRIS-
5 ONERS.

6 (a) IN GENERAL.—Not later than 1 year after the
7 date of the enactment of this Act, the Attorney General
8 shall create a national, confidential, toll-free telephone
9 hotline to collect data^{2, 3} to provide information and assist-
10 ance to prisoners who have experienced custodial sexual
11 misconduct by corrections staff.

12 (b) ACTIVITIES.—Funds authorized under this sec-
13 tion shall be utilized to establish and operate a national,
14 confidential, toll-free sexual contact hotline. Such funds
15 shall be used for activities, including—

16 (1) contracting with a carrier for the use of a
17 toll-free telephone line;

18 (2) employing, training, and supervising person-
19 nel to answer incoming calls and provide counseling
20 and referral services to callers;

21 (3) assembling, maintaining, and continually
22 updating a database of information and resources to
23 which callers may be referred throughout the United
24 States;

1 (4) publicizing the hotline to prisoners through-
2 out the United States; and

3 (5) tracking of the number of complaints, in-
4 cluding the name and location of the complainant,
5 the offender, and the incident.

6 (c) REPORTING OF INFORMATION.—Information re-
7 garding the number of complaints and the status of those
8 complaints shall be included in the Attorney General's an-
9 nual report.

10 (d) PROCESSING COMPLAINTS.—Complaints may be
11 referred to the criminal section of the Civil Rights Division
12 of the Department of Justice for investigation or for refer-
13 ral to the appropriate State agency for investigation.

14 (e) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated to carry out this section
16 \$300,000 for fiscal year 1997 and \$100,000 for each of
17 the fiscal years 1998, 1999, and 2000.

18 SEC. 5. DEFINITIONS.

19 For purposes of this Act—

20 (1) the term "corrections staff" means any em-
21 ployee, contractual employee, volunteer, or agent of
22 a correctional department who is working in any
23 contact position with any prisoners under the juris-
24 diction of that department; and

1 (2) the term "custodial sexual misconduct"
2 means any physical contact, directly or through the
3 clothing, with the sexual or intimate parts of a per-
4 son for the purpose of sexual gratification of either
5 party, when the parties involved are a person in cus-
6 tody of a correctional department and a member of
7 the corrections staff.

105TH CONGRESS
1ST SESSION

H. R. 305

To provide protection from sexual predators.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Ms. SLAUGHTER (for herself, Mr. ACKERMAN, Mr. FAZIO of California, Mr. Frost, Mr. GREEN, Mr. HINCHEY, Mr. HOLDEN, Ms. NORTON, Ms. JACKSON-LEE of Texas, Mrs. LOWEY, Mr. MCINTYRE, Ms. MCKINNEY, Mrs. MALONEY of New York, Mr. MANTON, Mrs. MEEK of Florida, Mr. MENENDEZ, Mrs. MINK of Hawaii, Mr. MORAN of Virginia, Mrs. MYRICK, Mr. OWENS, Ms. PELOSI, Mr. PORTER, and Mr. SCHUMER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide protection from sexual predators.

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.**

4 This Act may be cited as the "Protection from Sexual
5 Predators Act of 1997".

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) rape and sexual assaults continue to be seri-
2 ous threats to the safety of communities across
3 America;

4 (2) sexual offenders are much more likely than
5 any other category of criminals to repeat their
6 crimes again and again, even after serving time in
7 prison;

8 (3) the average rape sentence is just 10½
9 years, and the average time served is half of that,
10 approximately 5 years; and

11 (4) repeat sexual offenders frequently strike in
12 more than one State and, while States have primary
13 responsibility for the prosecution of sexual offenders,
14 the option of Federal prosecution provides a needed
15 additional tool to safeguard communities victimized
16 by these individuals.

17 (b) SENSE OF CONGRESS.—It is the sense of Con-
18 gress that—

19 (1) States should more seriously consider the
20 relatively high recidivism rate of sexual offenders
21 when deciding whether to plea bargain with a first-
22 time sexual offender and whether to grant parole to
23 sexual offenders; and

24 (2) States should review their treatment and
25 parole supervision programs for sexual offenders to

1 assure that these programs are fulfilling their goals,
2 and, if they are not, these programs should be im-
3 mediately replaced or abandoned.

4 **SEC. 3. FEDERAL JURISDICTION OVER RAPE AND SEXUAL**
5 **ASSAULT CASES.**

6 Section 2241 of title 18, United States Code, is
7 amended by adding at the end the following:

8 “(e) PUNISHMENT FOR SEXUAL PREDATORS.—(1)
9 Whoever, in a circumstance described in paragraph (2) of
10 this subsection—

11 “(A) violates this section; or

12 “(B) engages in conduct that would violate this
13 section, if the conduct had occurred in the special
14 maritime and territorial jurisdiction of the United
15 States, and—

16 “(i) that conduct is in interstate or foreign
17 commerce;

18 “(ii) the person engaging in that conduct
19 crossed a State line with intent to engage in the
20 conduct; or

21 “(iii) the person engaging in that conduct
22 thereafter engages in conduct that is a violation
23 of section 1073(1) with respect to an offense
24 that consists of the conduct so engaged in;
25 shall be imprisoned for life.

1 “(2) The circumstance referred to in paragraph (1)
2 of this subsection is that the defendant has previously
3 been convicted of another State or Federal offense for con-
4 duct which—

5 “(A) is an offense under this section or section
6 2242 of this title; or

7 “(B) would have been an offense under either
8 of such sections if the offense had occurred in the
9 special maritime or territorial jurisdiction of the
10 United States.”.

11 **SEC. 4. ADDITIONAL CONDITION FOR TRUTH IN SENTENC-**
12 **ING GRANTS.**

13 Section 20104 of the Violent Crime Control and Law
14 Enforcement Act of 1994 is amended by adding at the
15 end the following:

16 “(c) **ADDITIONAL REQUIREMENT.**—A State is not eli-
17 gible for a grant under this section unless such State has
18 provided assurances to the Attorney General that such
19 State has in effect laws which allow the court to impose
20 a sentence of life in prison without parole on a defendant
21 in a criminal case who is convicted of a State offense for
22 conduct that—

23 “(1) is an offense under section 2241 or 2242
24 of title 18, United States Code; or

1 “(2) would have been an offense under either of
2 such sections if the offense had occurred in the spe-
3 cial maritime or territorial jurisdiction of the United
4 States;
5 after having previously been convicted of another State or
6 Federal offense for conduct that was an offense described
7 in paragraph (1) or (2).”.

8 **SEC. 5. STUDY OF PERSISTENT SEXUAL PREDATORS.**

9 The National Institute of Justice, either directly or
10 through grant, shall carry out a study of persistent sexual
11 predators. Not later than one year after the date of the
12 enactment of this Act, such Institute shall report to Con-
13 gress and the President the results of such study. Such
14 report shall include—

15 (1) a synthesis of current research in psychol-
16 ogy, sociology, law, criminal justice, and other fields
17 regarding persistent sexual offenders, including—

18 (A) common characteristics of such offend-
19 ers;

20 (B) recidivism rates for such offenders;

21 (C) treatment techniques and their effec-
22 tiveness;

23 (D) responses of offenders to treatment
24 and deterrence; and

- 1 (E) the possibility of early intervention to
- 2 prevent people from becoming sexual predators;
- 3 and
- 4 (2) an agenda for future research in this area.

○

105TH CONGRESS
1ST SESSION

H. R. 715

To amend the Higher Education Act of 1965 to revise the campus security reporting provisions to provide for a more complete, timely, and accurate disclosure of crime reports and statistics, and to provide for specific methods of enforcement of the campus security provisions of such Act.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 1997

Mr. DUNCAN (for himself, Mr. SCHUMER, Mr. SHAYS, Mr. MEEHAN, Mr. QUINN, Mr. GREENWOOD, Mr. HILLEARY, Mr. FOLEY, Mr. FATTAH, Mr. KLUG, Mr. MARKEY, Mr. FOX of Pennsylvania, Mr. MCHALE, Mr. LIPINSKI, Mr. HASTINGS of Florida, Mr. MATSUI, Mr. PAYNE, and Mr. ANDREWS) introduced the following bill; which was referred to the Committee on Education and Workforce

A BILL

To amend the Higher Education Act of 1965 to revise the campus security reporting provisions to provide for a more complete, timely, and accurate disclosure of crime reports and statistics, and to provide for specific methods of enforcement of the campus security provisions of such Act.

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

1 **SECTION 1. SHORT TITLE; REFERENCES.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Accuracy in Campus Crime Reporting Act of 1997”.

4 (b) **REFERENCES.**—Except as otherwise provided
5 therein, whenever in this Act an amendment or repeal is
6 expressed in terms of a section or other provision, such
7 amendment or repeal shall be considered to be made to
8 a section or other provision of the Higher Education Act
9 of 1965 (20 U.S.C. 1001 et seq.).

10 **SEC. 2. DISCLOSURE OF CRIMES REPORTED AND DAILY**
11 **CRIME LOG.**

12 (a) **ANNUAL STATISTICS.**—Section 485(f)(1)(F) (20
13 U.S.C. 1092(f)(1)(F)) is amended—

14 (1) by striking “campus security authorities or
15 local police agencies” and inserting “campus security
16 or law enforcement; other campus officials (including
17 administrators, deans, disciplinary officers, athletic
18 department officials, housing officials, and coun-
19 selors) to whom crimes are reported; or local law en-
20 forcement”;

21 (2) by striking clauses (i) through (vi) and in-
22 serting the following:

23 “(i) homicide, including—

24 “(I) murder or nonnegligent man-
25 slaughter; or

26 “(II) negligent manslaughter;

- 1 “(ii) sex offenses, forcible or nonforcible;
- 2 “(iii) robbery;
- 3 “(iv) aggravated assault;
- 4 “(v) burglary;
- 5 “(vi) larceny;
- 6 “(vii) motor vehicle theft;
- 7 “(viii) arson;
- 8 “(ix) simple assault; and
- 9 “(x) vandalism.”.

10 (b) ANNUAL STATISTICS.—Section 485(f)(1)(H) (20
11 U.S.C. 1092(f)(1)(H)) is amended by striking “arrests
12 for” and inserting “incidents of”.

13 (c) ANNUAL SUBMISSION.—Paragraph (4) of section
14 485(f) (20 U.S.C. 1092(f)(4)) is amended to read as fol-
15 lows:

16 “(4)(A) Each institution participating in any pro-
17 gram under this title shall annually submit to the Sec-
18 retary a copy of the statistics required to be made avail-
19 able pursuant to paragraphs (1)(F) and (1)(H).

20 “(B) The Secretary shall collect such statistics and
21 report each set in its entirety, with each institution and
22 campus clearly identified, to the Committee on Education
23 and the Workforce of the House of Representatives, the
24 Committee on Labor and Human Resources of the Senate,
25 each participating institution, and the public via printed

1 and electronic means as the Secretary shall determine.
2 This report shall be issued on or before February 1 of
3 each year.”.

4 (d) COMPILATION METHOD.—Paragraph (6) of sec-
5 tion 485(f) (20 U.S.C. 1092(f)(6)) is amended to read as
6 follows:

7 “(6)(A) The statistics described in paragraphs (1)(F)
8 and (1)(H) shall be compiled in accordance with the stand-
9 ards and definitions used in the uniform crime reporting
10 system of the Department of Justice, Federal Bureau of
11 Investigation, and the modifications in such standards and
12 definitions as implemented pursuant to the Hate Crime
13 Statistics Act (28 U.S.C. 534, note).

14 “(B) The accuracy of the statistics described in para-
15 graphs (1)(F) and (1)(H) shall be certified by each official
16 charged with compiling statistics for inclusion.”.

17 (e) CRIME LOGS.—Section 485(f) is further amend-
18 ed—

19 (1) by redesignating paragraphs (4) through
20 (7) as paragraphs (5) through (8), respectively; and

21 (2) by inserting after paragraph (3) the follow-
22 ing new paragraph:

23 “(4)(A) Each institution participating in any pro-
24 gram under this title which maintains either a police or
25 security department of any kind shall make, keep, and

1 maintain a daily log, written in a form that can be easily
2 understood, recording in chronological order all crimes re-
3 ported to such police or security department, including—

4 “(i) the nature, date, time, and general location
5 of each crime;

6 “(ii) the disposition of the complaint, if known;

7 “(iii) if citations have been issued or charges
8 made, the names and addresses of all persons cited
9 or charged, and the charges against them; and

10 “(iv) if an arrest has been made, the names and
11 addresses of all persons arrested and the charges
12 against such persons arrested.

13 “(B) Unless otherwise required by law, each institu-
14 tion may, but is not required to, identify in its log the
15 alleged victim or victims, witnesses, or suspects who have
16 not been arrested or cited, relating to any investigation
17 of a crime.

18 “(C)(i) All entries which are required pursuant to
19 this paragraph shall, except where disclosure of such infor-
20 mation is prohibited by law, be open to public inspection
21 within 24 hours of the initial report being made to the
22 department, a campus security authority, or other campus
23 official.

24 “(ii) Where there is clear and convincing evidence
25 that the release of such information would jeopardize an

1 ongoing criminal investigation or the safety of an individ-
2 ual, cause a suspect to flee or evade detection, or result
3 in the destruction of evidence, such information may be
4 withheld until that damage is no longer likely to occur
5 from the release of such information. Under no cir-
6 cumstances, however, shall this exception permit the non-
7 reporting of the nature, date, time, and general location
8 of a reported crime.

9 “(iii) All exceptions to the reporting provisions of this
10 paragraph are to be construed as narrowly as possible.
11 Only that information which is protected from release by
12 law shall remain confidential. All other information relat-
13 ing to each report shall be public.

14 “(D) Reports may be disseminated by electronic
15 media, including computer networks, where it is reason-
16 ably assured the information will reach most of the cam-
17 pus population in a timely fashion.”.

18 (f) VICTIMS’ RIGHTS.—Paragraph (8) of section
19 485(f) (as redesignated by subsection (e) of this section)
20 is amended by striking subparagraph (C).

21 (g) DISCIPLINARY PROCEEDINGS.—Section 485(f) is
22 further amended by adding at the end the following new
23 paragraph:

24 “(9)(A) Each institution of higher education partici-
25 pating in any program under this title shall develop and

1 distribute as part of the report described in paragraph (1)
2 a statement of policy regarding—

3 “(i) such institution’s on-campus disciplinary
4 practices in cases of alleged infractions of the insti-
5 tution’s code of conduct, or other policies, resulting
6 from an act or series of acts that would constitute
7 a crime or crimes within the meaning of local, State,
8 or Federal law, whether or not those acts have actu-
9 ally resulted in criminal charges, prosecution, or
10 conviction; and

11 “(ii) the procedures followed once a crime has
12 occurred.

13 “(B) The policy described in subparagraph (A) shall
14 include a clear statement that—

15 “(i) all students reporting an offense shall be
16 informed of their options to notify proper law en-
17 forcement, including on-campus and local police;

18 “(ii) the accuser and the accused are entitled to
19 the same opportunities to have others present during
20 a campus disciplinary proceeding;

21 “(iii) both the accuser and the accused shall be
22 informed of the outcome of any campus disciplinary
23 proceeding brought alleging criminal misconduct;

1 “(iv) any campus disciplinary proceeding
2 brought alleging criminal misconduct shall be open;
3 and

4 “(v) all records of any such campus disciplinary
5 proceeding brought alleging criminal misconduct
6 shall be open to public inspection during the regular
7 business hours of the custodian of such records, ex-
8 cept for previously created education records not re-
9 lated to criminal allegations which are used during
10 the course of the proceeding.”.

11 (h) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on January 1, 1998.

13 **SEC. 3. EXEMPTION OF ALLEGATIONS OF CRIMINAL ACTIV-**
14 **ITY FROM EDUCATION RECORDS DEFINITION.**

15 (a) AMENDMENT.—Section 444(a)(4)(B) of the Gen-
16 eral Education Provisions Act (20 U.S.C. 1232g(a)(4)(B))
17 is amended—

18 (1) by redesignating clauses (iii) and (iv) as
19 clauses (iv) and (v), respectively; and

20 (2) by inserting after clause (ii) the following
21 new clause:

22 “(iii) records which are made or maintained by
23 any officer, office, department, or individual em-
24 ployee of an educational agency or institution
25 about—

1 “(I) individuals accused of committing or
2 participating in any criminal activity as defined
3 in local, State, or Federal law alleged to have
4 occurred while the individual was a student in
5 attendance, including audit or noncredit, at an
6 educational agency or institution, whether or
7 not those acts have actually resulted in criminal
8 charges, prosecution, or conviction which are
9 relative to the alleged misconduct;

10 “(II) the accused in subsequent internal
11 disciplinary proceedings of any kind resulting
12 from, or related to, the alleged activity, regard-
13 less of the terminology or nature of the institu-
14 tional infraction or policy violation alleged;

15 “(III) the time, duration, attendance pol-
16 icy, and location or locations of any such dis-
17 ciplinary proceedings;

18 “(IV) the findings relative to the accused
19 of any such disciplinary proceedings;

20 “(V) the current disposition or status of
21 the case, the sanctions incurred (if any), and
22 any subsequent findings or amendments to such
23 sanctions;

1 “(VI) accusations of criminal misconduct
2 and related sanctions from any previously at-
3 tended educational agencies or institutions
4 where such records were created on or after
5 September 1, 1998, and which are maintained
6 by the institution currently or most recently at-
7 tended by the individual; and

8 “(VII) any criminal acts required to be re-
9 ported under paragraph (1)(F), (1)(H), or (4)
10 of section 485(f) of the Higher Education Act
11 of 1965 (20 U.S.C. 1092(f)).”.

12 (b) **EFFECTIVE DATE.**—The amendments made by
13 this section shall take effect on September 1, 1998.

14 **SEC. 4. ENFORCEMENT.**

15 (a) **ENFORCEMENT.**—Section 485(f) (20 U.S.C.
16 1092(f)) (as amended by section 2) is further amended
17 by adding at the end the following new paragraph:

18 “(10)(A) If any participating institution of higher
19 education fails or refuses to comply with any provision of
20 this subsection, the Secretary shall forthwith terminate all
21 assistance to the institution under the applicable program
22 affected, or issue such other orders as specified below as
23 the Secretary may deem appropriate to achieve such com-
24 pliance.

1 “(B) For each separate count of noncompliance
2 found, the Secretary shall suspend not less than 1 percent
3 of the financial assistance provided by the Department to
4 such institution.”.

5 (b) RETALIATION.—Section 485(f) (as amended by
6 subsection (a)) is further amended by adding at the end
7 the following new paragraph:

8 “(11) No participating institution or other person
9 shall intimidate, threaten, coerce, or otherwise discrimi-
10 nate against any individual for the purpose of interfering
11 with the implementation of any provision of this sub-
12 section, or any rights or privileges accorded under this
13 subsection, or because the individual has complained, tes-
14 tified, assisted, or otherwise participated in any aspect of
15 an investigation, proceeding, or hearing.”.

16 (c) PROGRAM PARTICIPATION AGREEMENT RE-
17 QUIREMENTS.—Section 487(a)(12) (20 U.S.C.
18 1094(a)(12)) is amended—

19 (1) by striking “and” at the end of subpara-
20 graph (A);

21 (2) by striking the period at the end of sub-
22 paragraph (B) and inserting “; and”; and

23 (3) by adding at the end the following new sub-
24 paragraph:

1 “(C) the policies and crime statistics dis-
2 closed under section 485(f) are comprehensive
3 and accurate.”.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on September 1, 1998.

○

**PROPOSED AMENDMENTS FOR REAUTHORIZATION OF THE VIOLENCE
AGAINST WOMEN ACT**

Viz. At the appropriate place insert the following:

SEC. _____ TRANSFER OF RAPE PREVENTION AND EDUCATION PROGRAM.

Part J of Title III of the Public Health Service Act is amended by inserting after section 393A the following new section--

"Sec. 393B. USE OF ALLOTMENTS FOR RAPE PREVENTION EDUCATION.

"(a) PERMITTED USE.--Notwithstanding section 1904(a)(1), amounts transferred by the State for use under this part shall be used for rape prevention and education programs conducted by rape crisis centers and nongovernmental nonprofit State sexual assault coalitions for--

- "(1) educational seminars;**
- "(2) the operation of hotlines;**
- "(3) training programs for professionals;**
- "(4) the preparation of informational material;**
- "(5) the establishment of a National Resource Center on Sexual Assault; and**
- "(6) other efforts to increase awareness of the facts about, or to help prevent, sexual assault, including efforts to increase awareness in undeserved racial, ethnic, and language minority communities.**

"(b) TARGETING OF EDUCATION PROGRAMS.--States providing grant monies must ensure that at least 25 percent of the monies are devoted to educational programs targeted for middle school, junior high, and high school students. The programs targeted under this subsection shall be conducted by rape crisis centers and State sexual assault coalitions."

"(c) AUTHORIZATION OF APPROPRIATIONS.

"(1) IN GENERAL.--There are authorized to be appropriated to carry out this section--

- "(A) \$45,000,000 for fiscal year 1998;**
- "(B) \$50,000,000 for fiscal year 1999;**
- "(C) \$50,000,000 for fiscal year 2000.**
- "(D) \$50,000,000 for fiscal year 2001; and**
- "(E) \$50,000,000 for fiscal year 2002.**

Funds authorized to be appropriated under this section are appropriated from the Violent Crime Reduction Fund pursuant to section 31001(c) and section 310004 (d) (16), the third time it appears, of the Violent Crime and Law Enforcement Act of 1994 (42 U.S.C. 14211 and 42 U.S.C. 14214).

"(2) Of the amount appropriated for any fiscal year under this section, at least 15 percent of the total amount appropriated shall be used for making grants to State sexual assault coalitions to address public health issues associated with sexual assault through training, resource development, or similar research.

“(3) Of the amount appropriated for any fiscal year under this section, at least \$700,000 shall be made available for allotment under subsection (a)(5).

“(d) LIMITATIONS.—

“(1) Funds authorized under this section shall only be used for providing rape prevention and education programs.

“(2) A State may use funds under this section only so as to supplement, and, to the extent practicable, increase the level of funds that would be available from non-Federal sources for the activities described in subsection (a), and in no case may such funds be used to supplant funds from other sources.

“(3) A State may not use more than 2 percent of the funds received in each fiscal year under this section for surveillance studies or prevalence studies.

“(4) A State may not use more than 10 percent of funds received in each fiscal year under this section for administrative expenses.

“(e) DEFINITION.—For purposes of this section, the term ‘rape prevention and education’ includes education and prevention efforts directed at offenses committed by the offenders who are not known to the victim as well as offenders who are known to the victim.

“(f) TERMS.—

“(1) The Secretary shall make allotments to each State on the basis of the population of the State.

“(2) No State may use funds made available by reason of this subsection in any fiscal year for administration of any prevention program other than the rape prevention and education program for which allotments are made under this section.”.

“(3) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.”

SEC. _____ TECHNICAL AMENDMENT TO PUBLIC LAW 103-322.

(a) REPEAL.—Section 1910A of the Public Health and Human Services Act is repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) of this section shall take effect the day after the date of enactment of this Act.

DEPARTMENT OF EDUCATION TRAINING PROGRAMS

(a) **IN GENERAL --** The Department of Education, after consultation with individuals and organizations who have expertise in conducting outreach on college and university campuses, shall establish criteria to distribute and promote existing outreach programs on and around college and university campuses and among college and university populations in the areas of --

1. Promoting the services to student populations provided locally by rape crisis centers.
2. Opening a dialogue between local rape crisis centers and university and campus officials.
3. Increasing communication between local rape crisis centers and college and university student populations.
4. Working to prevent rapes on or around university and college campuses by publicly addressing the issues of date or acquaintance rape.
5. Raising awareness of the national sexual assault hotline.

(b) The Department of Education shall attempt, to the extent, practicable, to make training programs developed available in geographically diverse locations throughout the country.

MANDATORY NOTIFICATION OF OPTIONS FOR COLLEGE AND UNIVERSITY STUDENTS

(a) **IN GENERAL**-- The Department of Education shall require all colleges and universities receiving federal monies to notify anyone reporting a sexual assault to university and college authorities of--

1. The option to dial call local community police or law enforcement agencies instead of or in addition to campus police.
2. The option to call a local rape crisis center instead of or in addition to counseling services provide by college and university agencies.
3. The option to call the national sexual assault hotline.

(b) The Department of Education shall require all colleges and universities receiving federal monies to widely post, publish and distribute information listing the phone numbers of--

1. Local police departments serving areas around or near college and university populations.
2. Local rape crisis centers providing services around or near college and university campuses.
3. National sexual assault hotline.

1 (2) by striking the period at the end of para-
2 graph (9) and inserting “; or”; and

3 (3) by inserting after paragraph (9) the follow-
4 ing:

5 “(10) is intoxicated.”.

6 (b) POSSESSION PROHIBITION.—Section 922(g) of
7 such title is amended—

8 (1) by striking “or” at the end of paragraph
9 (8);

10 (2) by inserting “or” at the end of paragraph
11 (9); and

12 (3) by inserting after paragraph (9) the follow-
13 ing:

14 “(10) who is intoxicated,”.

15 (c) STATEMENT REQUIRED BY THE BRADY LAW.—
16 Section 922(s)(3)(B) of such title is amended—

17 (1) by striking “and” at the end of clause (vii);

18 (2) by inserting “and” at the end of clause
19 (viii); and

20 (3) by inserting after clause (viii) the following:

21 “(ix) is not intoxicated;”.

22 (d) INTOXICATED DEFINED.—Section 921(a) of such
23 title is amended by adding at the end the following:

24 “(34) The term ‘intoxicated’ means, with respect to
25 a person, that the mental or physcial condition of the per-

1 son is sufficently impaired, as a result of the presence in
2 the person's body of alcohol, a drug, or another substance,
3 to be prohibited by the law of the State in which the per-
4 son is located from operating a motor vehicle in the
5 State.”.

105TH CONGRESS
1ST SESSION

H. R. 884

To amend the Public Health Service Act to provide for the training of health professions students with respect to the identification and referral of victims of domestic violence.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1997

Mrs. MORELLA (for herself, Mr. SERRANO, and Mr. GANSKE) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend the Public Health Service Act to provide for the training of health professions students with respect to the identification and referral of victims of domestic violence.

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.**

4 This Act may be cited as the “Domestic Violence
5 Identification and Referral Act of 1997”.

1 SEC. 2. ESTABLISHMENT, FOR CERTAIN HEALTH PROFES-
2 SIONS PROGRAMS, OF PROVISIONS REGARD-
3 ING DOMESTIC VIOLENCE.

4 (a) TITLE VII PROGRAMS; PREFERENCES IN FINAN-
5 CIAL AWARDS.—Section 791 of the Public Health Service
6 Act (42 U.S.C. 295j) is amended by redesignating sub-
7 section (c) as subsection (d), and by inserting after sub-
8 section (b) the following subsection:

9 “(c) PREFERENCES REGARDING TRAINING IN IDEN-
10 TIFICATION AND REFERRAL OF VICTIMS OF DOMESTIC
11 VIOLENCE.—

12 “(1) IN GENERAL.—In the case of a health pro-
13 fessions entity specified in paragraph (2), the Sec-
14 retary shall, in making awards of grants or contracts
15 under this title, give preference to any such entity
16 (if otherwise a qualified applicant for the award in-
17 volved) that has in effect the requirement that, as a
18 condition of receiving a degree or certificate (as ap-
19 plicable) from the entity, each student have had sig-
20 nificant training in carrying out the following func-
21 tions as a provider of health care:

22 “(A) Identifying victims of domestic vio-
23 lence, and maintaining complete medical
24 records that include documentation of the ex-
25 amination, treatment given, and referrals made,

1 and recording the location and nature of the
2 victim's injuries.

3 "(B) Examining and treating such victims,
4 within the scope of the health professional's dis-
5 cipline, training, and practice, including, at a
6 minimum, providing medical advice regarding
7 the dynamics and nature of domestic violence.

8 "(C) Referring the victims to public and
9 nonprofit private entities that provide services
10 for such victims.

11 "(2) RELEVANT HEALTH PROFESSIONS ENTI-
12 TIES.—For purposes of paragraph (1), a health pro-
13 fessions entity specified in this paragraph is any en-
14 tity that is a school of medicine, a school of osteo-
15 pathic medicine, a graduate program in mental
16 health practice, a school of nursing (as defined in
17 section 853), a program for the training of physician
18 assistants, or a program for the training of allied
19 health professionals.

20 "(3) REPORT TO CONGRESS.—Not later than 2
21 years after the date of the enactment of the Domes-
22 tic Violence Identification and Referral Act of 1997,
23 the Secretary shall submit to the Committee on
24 Commerce of the House of Representatives, and the
25 Committee on Labor and Human Resources of the

1 Senate, a report specifying the health professions en-
2 tities that are receiving preference under paragraph
3 (1); the number of hours of training required by the
4 entities for purposes of such paragraph; the extent
5 of clinical experience so required; and the types of
6 courses through which the training is being pro-
7 vided.

8 “(4) DEFINITIONS.—For purposes of this sub-
9 section, the term ‘domestic violence’ includes behav-
10 ior commonly referred to as domestic violence, sexual
11 assault, spousal abuse, woman battering, partner
12 abuse, child abuse, elder abuse, and acquaintance
13 rape.”.

14 (b) TITLE VIII PROGRAMS; PREFERENCES IN FI-
15 NANCIAL AWARDS.—Section 860 of the Public Health
16 Service Act (42 U.S.C. 298b-7) is amended by adding at
17 the end the following subsection:

18 “(f) PREFERENCES REGARDING TRAINING IN IDEN-
19 TIFICATION AND REFERRAL OF VICTIMS OF DOMESTIC
20 VIOLENCE.—

21 “(1) IN GENERAL.—In the case of a health pro-
22 fessions entity specified in paragraph (2), the Sec-
23 retary shall, in making awards of grants or contracts
24 under this title, give preference to any such entity

1 (if otherwise a qualified applicant for the award in-
2 volved) that has in effect the requirement that, as a
3 condition of receiving a degree or certificate (as ap-
4 plicable) from the entity, each student have had sig-
5 nificant training in carrying out the following func-
6 tions as a provider of health care:

7 “(A) Identifying victims of domestic vio-
8 lence, and maintaining complete medical
9 records that include documentation of the ex-
10 amination, treatment given, and referrals made,
11 and recording the location and nature of the
12 victim’s injuries.

13 “(B) Examining and treating such victims,
14 within the scope of the health professional’s dis-
15 cipline, training, and practice, including, at a
16 minimum, providing medical advice regarding
17 the dynamics and nature of domestic violence.

18 “(C) Referring the victims to public and
19 nonprofit private entities that provide services
20 for such victims.

21 “(2) RELEVANT HEALTH PROFESSIONS ENTI-
22 TIES.—For purposes of paragraph (1), a health pro-
23 fessions entity specified in this paragraph is any en-
24 tity that is a school of nursing or other public or

1 nonprofit private entity that is eligible to receive an
2 award described in such paragraph.

3 “(3) REPORT TO CONGRESS.—Not later than 2
4 years after the date of the enactment of the Domes-
5 tic Violence Identification and Referral Act of 1997,
6 the Secretary shall submit to the Committee on
7 Commerce of the House of Representatives, and the
8 Committee on Labor and Human Resources of the
9 Senate, a report specifying the health professions en-
10 tities that are receiving preference under paragraph
11 (1); the number of hours of training required by the
12 entities for purposes of such paragraph; the extent
13 of clinical experience so required; and the types of
14 courses through which the training is being pro-
15 vided.

16 “(4) DEFINITIONS.—For purposes of this sub-
17 section, the term ‘domestic violence’ includes behav-
18 ior commonly referred to as domestic violence, sexual
19 assault, spousal abuse, woman battering, partner
20 abuse, child abuse, elder abuse, and acquaintance
21 rape.”.

○

Whereas the Congress supports the existing activities of the Citizenship Through Sports Alliance and its member organizations and encourages a broader array of efforts to promote responsible citizenship by teaching administrators, coaches, and athletes values that will help all who participate in our Nation's sports culture to become better citizens: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring)*, That it is the sense of the Congress that—

3 (1) a national summit should be promptly convened to develop a multifaceted action plan to deter
4 acts of violence, especially domestic violence and sexual assault;
5

6 (2) the members of the national summit referred to in paragraph (1) should include—

7 (A) sports, community, political, and media
8 leaders;
9

10 (B) individuals with experience in youth
11 advocacy;
12

13 (C) individuals with experience in
14 antiviolenace advocacy;

15 (D) members of the Citizenship Through
16 Sports Alliance;

17 (E) Members of Congress; and

18 (F) other governmental and community
19 leaders with specific expertise in education and
20 advocacy programs that serve to deter acts of

helped to positively shape the lives of countless individuals;

Whereas professional and amateur athletes, and sports coaches, administrators, volunteers, and team owners have participated in a variety of outstanding and valuable community service projects throughout the Nation;

Whereas many professional and amateur sports organizations have instituted educational programs and other measures to deter and sanction misconduct, including abuse of legal and illegal drugs, illegal gambling, discriminatory practices, and other unethical behavior;

Whereas acts of domestic violence and sexual assault are serious, indefensible crimes;

Whereas acts of domestic violence and sexual assault committed by athletes are often not taken seriously and go unpunished, sending an insidious and harmful message that this behavior is excusable and is not criminal;

Whereas most athletes do not commit acts of domestic violence or sexual assault and these athletes, as role models, can have a profound impact in deterring others from committing acts of domestic violence and sexual assault;

Whereas there exists a Citizenship Through Sports Alliance that is made up of the National Collegiate Athletic Association, the National Junior College Athletic Association, the National Association of Intercollegiate Athletics, the National Federation of State High School Associations, the United States Olympic Committee, Major League Baseball, the National Football League, the National Basketball Association, and the National Hockey League; and

1 violence, especially domestic violence and sexual
2 assault;

3 (3) the action plan referred to in paragraph (1)
4 should—

5 (A) be designed to encourage the participa-
6 tion of all administrators, coaches, and athletes,
7 from those involved in youth leagues to those
8 who are involved in professional sports;

9 (B) emphasize and promote values such as
10 self-respect and respect for others, tolerance,
11 non-discrimination, and gender equality as well
12 as teamwork, discipline, responsibility, and com-
13 mitment;

14 (C) encourage and promote participation in
15 sports as a positive character building activity;

16 (D) promote a sports culture that encour-
17 ages integrity, honesty, fairness, inclusion, tol-
18 erance, nonviolence, and a commitment to excel-
19 lence; and

20 (E) include a high-profile public education
21 program and media campaign to deter acts of
22 violence, especially domestic violence and sexual
23 assault; and

1 (4) the members of the national summit re-
2 ferred to in paragraph (1), and other sports, com-
3 munity, political and media leaders should assume
4 leadership roles deterring acts of domestic violence
5 and sexual assault and should support the measures
6 developed by the national summit referred to in
7 paragraph (1).

○

105TH CONGRESS
1ST SESSION

H. R. 1142

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to permit the creation or assignment of rights to employee pension benefits if necessary to satisfy a judgment against a plan participant or beneficiary for physically, sexually, or emotionally abusing a child.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 1997

Mrs. MALONEY of New York (for herself, Mr. RAMSTAD, Ms. NORTON, and Mr. SMITH of New Jersey) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to permit the creation or assignment of rights to employee pension benefits if necessary to satisfy a judgment against a plan participant or beneficiary for physically, sexually, or emotionally abusing a child.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “ERISA Child Abuse
3 Accountability Act of 1997”.

4 **SEC. 2. AMENDMENTS TO TITLE I OF THE EMPLOYEE RE-**
5 **TIREMENT INCOME SECURITY ACT OF 1974.**

6 (a) **CREATION OR ASSIGNMENT OF RIGHTS TO BENE-**
7 **FITS UNDER QUALIFIED CHILD ABUSE ORDERS.**—Sec-
8 tion 206(d)(3)(A) of the Employee Retirement Income Se-
9 curity Act of 1974 (29 U.S.C. 1056(d)(3)(A)) is amend-
10 ed—

11 (1) by inserting “or a child abuse order” after
12 “a domestic relations order”;

13 (2) by inserting “or a qualified child abuse
14 order” after “a qualified domestic relations order”;
15 and

16 (3) by inserting “or any qualified child abuse
17 order” after “any qualified domestic relations
18 order”.

19 (b) **QUALIFIED CHILD ABUSE ORDERS.**—Section
20 206(d)(3)(B) of such Act (29 U.S.C. 1056(d)(3)(B)) is
21 amended—

22 (1) in clause (i), by striking “the term” and in-
23 serting “The term”, and by striking “, and” at the
24 end and inserting a period;

25 (2) in clause (ii), by striking “the term” and in-
26 serting “The term”; and

1 (3) by adding at the end the following new
2 clauses:

3 “(iii) The term ‘qualified child abuse order’
4 means a child abuse order—

5 “(I) which creates or recognizes the
6 existence of an alternate payee’s right to,
7 or assigns to an alternate payee the right
8 to, receive all or a portion of the benefits
9 payable with respect to a participant under
10 a plan, and

11 “(II) with respect to which the re-
12 quirements of subparagraphs (C) and (D)
13 are met.

14 “(iv) The term ‘child abuse order’ means
15 any court order or other similar process for the
16 enforcement of a judgment rendered against a
17 participant or beneficiary under a plan for
18 physically, sexually, or emotionally abusing a
19 child. For purposes of this clause—

20 “(I) The term ‘judgment rendered for
21 physically, sexually, or emotionally abusing
22 a child’ means any legal claim perfected
23 through a final enforceable judgment,
24 which claim is based in whole or in part
25 upon the physical, sexual, or emotional

1 abuse of a child, whether or not that abuse
2 is accompanied by other actionable wrong-
3 doing, such as sexual exploitation or gross
4 negligence.

5 “(II) The term ‘child’ means an indi-
6 vidual under 18 years of age.”.

7 (c) EXEMPTION FROM PREEMPTION.—Section
8 514(b)(7) of such Act (29 U.S.C. 1144(b)(7)) is amended
9 by inserting “or qualified child abuse orders (within the
10 meaning of section 206(d)(3)(B)(iii))” before the period.

11 (d) CONFORMING AMENDMENTS.—Section 206(d)(3)
12 of such Act (29 U.S.C. 1056(d)(3)) is amended—

13 (1) in subparagraph (C), by inserting “or child
14 abuse order” after “A domestic relations order”;

15 (2) in subparagraph (D), by inserting “or child
16 abuse order” after “A domestic relations order”;

17 (3) in subparagraph (E)(i), by inserting “or
18 child abuse order” after “A domestic relations
19 order”;

20 (4) in subparagraph (G)(i), by inserting “or
21 child abuse order” after “any domestic relations
22 order”, by inserting “or child abuse orders” in sub-
23 clause (I) after “domestic relations orders”, and by
24 inserting “or a qualified child abuse order” in sub-

1 clause (II) after “a qualified domestic relations
2 order”;

3 (5) in subparagraph (G)(ii), by inserting “and
4 child abuse orders” after “domestic relations or-
5 ders”, by inserting “or child abuse order” after “do-
6 mestic relations order” each place it appears in sub-
7 clauses (II) and (III);

8 (6) in subparagraph (H)(i), by inserting “or
9 whether a child abuse order is a qualified child
10 abuse order” after “whether a domestic relations
11 order is a qualified domestic relations order”, and by
12 inserting “or a qualified child abuse order” after “to
13 be a qualified domestic relations order”;

14 (7) in subparagraph (H)(ii), by inserting “or a
15 qualified child abuse order” after “a qualified do-
16 mestic relations order”;

17 (8) in subparagraph (H)(iii), by inserting “or a
18 qualified child abuse order” after “a qualified do-
19 mestic relations order” each place it appears in sub-
20 clauses (I) and (II);

21 (9) in subparagraph (H)(iv), by inserting “or a
22 qualified child abuse order” after “a qualified do-
23 mestic relations order”;

1 (10) in subparagraph (H)(v), by inserting “or
2 child abuse order” after “the domestic relations
3 order”;

4 (11) in subparagraph (I)(i), by inserting “or
5 child abuse order” after “a domestic relations
6 order”, and by inserting “or qualified child abuse
7 order” after “a qualified domestic relations order”;

8 (12) in subparagraph (J), by inserting “or a
9 qualified child abuse order” after “a qualified do-
10 mestic relations order”;

11 (13) in subparagraph (K), by inserting “or
12 child abuse order” after “a domestic relations
13 order”; and

14 (14) in subparagraph (M), by inserting “or a
15 qualified child abuse order” after “a qualified do-
16 mestic relations order”.

17 **SEC. 3. AMENDMENTS TO THE INTERNAL REVENUE CODE**
18 **OF 1986.**

19 (a) CREATION OR ASSIGNMENT OF RIGHTS TO BENE-
20 FITS UNDER QUALIFIED CHILD ABUSE ORDERS.—Sub-
21 paragraph (B) of section 401(a)(13) of the Internal Reve-
22 nue Code of 1986 (relating to assignment of benefits) is
23 amended—

1 (1) by inserting "OR CHILD ABUSE ORDERS"
2 after "DOMESTIC RELATIONS ORDERS" in the
3 heading;

4 (2) by inserting "or a child abuse order" after
5 "a domestic relations order"; and

6 (3) by inserting "or a qualified child abuse
7 order" after "a qualified domestic relations order".

8 (b) QUALIFIED CHILD ABUSE ORDERS.—Paragraph
9 (1) of section 414(p) of such Code (defining qualified do-
10 mestic relations order) is amended—

11 (1) in the heading, by inserting "AND QUALI-
12 FIED CHILD ABUSE ORDER" after "ORDER"; and

13 (2) by adding at the end the following new sub-
14 paragraphs:

15 “(C) QUALIFIED CHILD ABUSE ORDER.—
16 The term ‘qualified child abuse order’ means a
17 child abuse order—

18 “(i) which creates or recognizes the
19 existence of an alternate payee’s right to,
20 or assigns to an alternate payee the right
21 to, receive all or a portion of the benefits
22 payable with respect to a participant under
23 a plan, and

1 “(ii) with respect to which the re-
2 quirements of paragraphs (2) and (3) are
3 met.

4 “(D) CHILD ABUSE ORDER.—

5 “(i) IN GENERAL.—The term ‘child
6 abuse order’ means any court order or
7 other similar process for the enforcement
8 of a judgment rendered against a partici-
9 pant or beneficiary under a plan for phys-
10 ically, sexually, or emotionally abusing a
11 child.

12 “(ii) DEFINITIONS.—For purposes of
13 this subparagraph—

14 “(I) The term ‘judgment ren-
15 dered for physically, sexually, or emo-
16 tionally abusing a child’ means any
17 legal claim perfected through a final
18 enforceable judgment, which claim is
19 based in whole or in part upon the
20 physical, sexual, or emotional abuse of
21 a child, whether or not that abuse is
22 accompanied by other actionable
23 wrongdoing, such as sexual exploi-
24 tation or gross negligence.

1 “(II) The term ‘child’ means an
2 individual under 18 years of age.”.

3 (c) CONFORMING AMENDMENTS.—Subsection (p) of
4 section 414 of such Code is amended—

5 (1) in paragraph (2), by inserting “or child
6 abuse order” after “A domestic relations order”;

7 (2) in paragraph (3), by inserting “or child
8 abuse order” after “A domestic relations order”;

9 (3) in paragraph (4)(A), by inserting “or child
10 abuse order” after “a domestic relations order”;

11 (4) in paragraph (6)(A), by inserting “or child
12 abuse order” after “any domestic relations order”,
13 by inserting “or child abuse orders” in clause (i)
14 after “domestic relations orders”, and by inserting
15 “or a qualified child abuse order” in clause (ii) after
16 “a qualified domestic relations order”;

17 (5) in paragraph (6)(B), by inserting “and
18 child abuse orders” after “domestic relations or-
19 ders”;

20 (6) in paragraph (7)(A), by inserting “or
21 whether a child abuse order is a qualified child
22 abuse order” after “whether a domestic relations
23 order is a qualified domestic relations order”, and by
24 inserting “or a qualified child abuse order” after “to
25 be a qualified domestic relations order”;

1 (7) in paragraph (7)(B), by inserting “OR
2 QUALIFIED CHILD SUPPORT ORDER” in the heading
3 after “QUALIFIED DOMESTIC RELATIONS ORDER”,
4 and by inserting “or a qualified child abuse order”
5 after “a qualified domestic relations order”;

6 (8) in paragraph (7)(C), by inserting “or a
7 qualified child abuse order” after “a qualified do-
8 mestic relations order” each place it appears in
9 clauses (i) and (ii);

10 (9) in paragraph (7)(D), by inserting “or a
11 qualified child abuse order” after “a qualified do-
12 mestic relations order”;

13 (10) in paragraph (7)(E), by inserting “or child
14 abuse order” after “the domestic relations order”;

15 (11) in paragraph (8), by inserting “or child
16 abuse order” after “a domestic relations order”;

17 (12) in paragraph (9), by inserting “or a quali-
18 fied child abuse order” after “a qualified domestic
19 relations order”;

20 (13) in paragraph (10), by inserting “or a
21 qualified child abuse order” after “a qualified do-
22 mestic relations order”; and

23 (14) in paragraph (11), by inserting “or a
24 qualified child abuse order” after “pursuant to a
25 qualified domestic relations order”, and by inserting

1 “or a child abuse order” after “pursuant to a do-
2 mestic relations order”.

3 (d) TAX TREATMENT OF DISTRIBUTIONS PURSUANT
4 TO QUALIFIED CHILD ABUSE ORDERS.—

5 (1) ALTERNATE PAYEE MUST INCLUDE BENE-
6 FITS IN GROSS INCOME.—Paragraph (1) of section
7 402(e) of such Code (relating to alternate payee
8 under qualified domestic relations order treated as
9 distributee) is amended by inserting “or a qualified
10 child abuse order (as defined in section 414(p))”
11 after “a qualified domestic relations order (as de-
12 fined in section 414(p))” each place it appears.

13 (2) ALLOCATION OF INVESTMENT IN THE CON-
14 TRACT.—Paragraph (10) of section 72(m) of such
15 Code (relating to determination of investment in the
16 contract in the case of qualified domestic relations
17 orders) is amended—

18 (A) in the heading, by inserting “AND
19 QUALIFIED CHILD ABUSE ORDERS” after
20 “QUALIFIED DOMESTIC RELATIONS ORDERS”;
21 and

22 (B) by inserting “or a qualified child abuse
23 order (as defined in section 414(p))” after “a
24 qualified domestic relations order (as defined in
25 section 414(p))”.

1 (3) CLARIFICATION OF ELIGIBILITY OF PARTIC-
2 IPANT FOR LUMP SUM TREATMENT.—

3 (A) Subparagraph (H) of section 402(d)(4)
4 of such Code (relating to balance to credit of
5 employee not to include amounts payable under
6 qualified domestic relations order) is amend-
7 ed—

8 (i) in the heading, by inserting “OR
9 QUALIFIED CHILD ABUSE ORDER” after
10 “QUALIFIED DOMESTIC RELATIONS
11 ORDER”; and

12 (ii) by inserting “or a qualified child
13 abuse order (within the meaning of section
14 414(p))” after “a qualified domestic rela-
15 tions order (within the meaning of section
16 414(p))”.

17 (B) Subparagraph (J) of section 402(d)(4)
18 of such Code is amended by inserting “, or
19 under a qualified child abuse order (within the
20 meaning of section 414(p)) of the balance to
21 the credit of an alternate payee,” after “former
22 spouse of the employee”.

23 **SEC. 4. EFFECTIVE DATE.**

24 The amendments made by this Act shall take effect
25 on January 1, 1998, except that, in the case of a child

II

105TH CONGRESS
1ST SESSION

S. 172

To amend title 18, United States Code, to set forth the civil jurisdiction of the United States for crimes committed by persons accompanying the Armed Forces outside of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. DEWINE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to set forth the civil jurisdiction of the United States for crimes committed by persons accompanying the Armed Forces outside of the United States, 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. CRIMINAL OFFENSES COMMITTED OUTSIDE**
4 **THE UNITED STATES BY PERSONS ACCOM-**
5 **PANYING THE ARMED FORCES.**

6 (a) IN GENERAL.—Title 18, United States Code, is
7 amended by inserting after chapter 211 the following new
8 chapter:

1 **"CHAPTER 212—CRIMINAL OFFENSES**
 2 **COMMITTED OUTSIDE THE UNITED**
 3 **STATES**

"Sec.

"3261. Criminal offenses committed by persons formerly serving with, or presently employed by or accompanying, the Armed Forces outside the United States.

"3262. Delivery to authorities of foreign countries.

"3263. Regulations.

"3264. Definitions for chapter.

4 **"§ 3261. Criminal offenses committed by persons for-**
 5 **merly serving with, or presently em-**
 6 **ployed by or accompanying, the Armed**
 7 **Forces outside the United States**

8 **"(a) IN GENERAL.—**Whoever, while serving with, em-
 9 ployed by, or accompanying the Armed Forces outside of
 10 the United States, engages in conduct that would con-
 11 stitute ^{or other} an offense punishable by imprisonment for more
 12 than 1 year if the conduct had been engaged in within
 13 the special maritime and territorial jurisdiction of the
 14 United States, shall be guilty of a like offense and subject
 15 to a like punishment.

16 **"(b) CONCURRENT JURISDICTION.—**Nothing con-
 17 tained in this chapter deprives courts-martial, military
 18 commissions, provost courts, or other military tribunals of
 19 concurrent jurisdiction with respect to offenders or of-
 20 fenses that by statute or by the law of war may be tried
 21 by courts-martial, military commissions, provost courts, or
 22 other military tribunals.

*in misdemeanor
domestic violence
sexual
assault*

3

1 “(c) ACTION BY FOREIGN GOVERNMENT.—No pros-
2 ecution may be commenced under this section if a foreign
3 government, in accordance with jurisdiction recognized by
4 the United States, has prosecuted or is prosecuting such
5 person for the conduct constituting such offense, except
6 upon the approval of the Attorney General of the United
7 States or the Deputy Attorney General of the United
8 States (or a person acting in either such capacity), which
9 function of approval shall not be delegated.

10 “(d) ARRESTS.—

11 “(1) LAW ENFORCEMENT PERSONNEL.—The
12 Secretary of Defense may designate and authorize
13 any person serving in a law enforcement position in
14 the Department of Defense to arrest outside of the
15 United States any person described in subsection (a)
16 if there is probable cause to believe that such person
17 engaged in conduct which constitutes a criminal of-
18 fense under subsection (a).

19 “(2) RELEASE TO CIVILIAN LAW ENFORCE-
20 MENT.—A person arrested under paragraph (1)
21 shall be released to the custody of civilian law en-
22 forcement authorities of the United States for re-
23 moval to the United States for judicial proceedings
24 in relation to conduct referred to in such paragraph
25 unless—

*in the in the Federal District
Court of the named jurisdiction
of ~~the~~ State prison
arrested longer*

1 “(A) such person is delivered to authorities
2 of a foreign country under section 3262; or

3 “(B) such person has had charges brought
4 against him or her under chapter 47 of title 10
5 for such conduct.

6 **“§ 3262. Delivery to authorities of foreign countries**

7 “(a) IN GENERAL.—Any person designated and au-
8 thorized under section 3261(d) may deliver a person de-
9 scribed in section 3261(a) to the appropriate authorities
10 of a foreign country in which the person is alleged to have
11 engaged in conduct described in subsection (a) if—

12 “(1) the appropriate authorities of that country
13 request the delivery of the person to such country
14 for trial for such conduct as an offense under the
15 laws of that country; and

16 “(2) the delivery of such person to that country
17 is authorized by a treaty or other international
18 agreement to which the United States is a party.

19 “(b) DETERMINATION BY THE SECRETARY.—The
20 Secretary of Defense shall determine which officials of a
21 foreign country constitute appropriate authorities for pur-
22 poses of this section.

23 **“§ 3263. Regulations**

24 “The Secretary of Defense shall issue regulations
25 governing the apprehension, detention, and removal of

1 persons under this chapter. Such regulations shall be uni-
2 form throughout the Department of Defense.

3 **§ 3264. Definitions for chapter**

4 "As used in this chapter—

5 "(1) the term 'Armed Forces' has the same
6 meaning as in section 101(a)(4) of title 10;

7 "(2) a person is 'employed by the Armed
8 Forces outside of the United States' if the person—

9 "(A) is employed as a civilian employee of
10 the Department of Defense, as a Department of
11 Defense contractor, or as an employee of a De-
12 partment of Defense contractor;

13 "(B) is present or residing outside of the
14 United States in connection with such employ-
15 ment; and

16 "(C) is not a national of the host nation;
17 and

18 "(3) a person is 'accompanying the Armed
19 Forces outside of the United States' if the person—

20 "(A) is a dependent of a member of the
21 armed forces;

22 "(B) is a dependent of a civilian employee
23 of the Department of Defense;

24 "(C) is residing with the member or civil-
25 ian employee outside of the United States; and

1 “(D) is not a national of the host nation.”

2 (b) CLERICAL AMENDMENT.—The table of chapters
3 at the beginning of part II of title 18, United States Code,
4 is amended by inserting after the item relating to chapter
5 211 the following:

 “212. Criminal Offenses Committed Outside the United
 States 3261”.

6 SEC. 2. MILITARY JUSTICE ACTIONS.

7 (a) DEFINITION.—For purposes of this section, the
8 term “Director” means the Director of the Federal Bu-
9 reau of Investigation.

10 (b) RECORDS OF MILITARY JUSTICE ACTIONS.—At
11 the time that a member of the Armed Forces is discharged
12 from a period of service in the Armed Forces or is released
13 from a period of active duty service in the Armed Forces,
14 the Secretary of the military department having jurisdic-
15 tion of the armed force of the member shall transmit to
16 the Director a copy of records of any penal actions taken
17 against the member under chapter 47 of title 10, United
18 States Code (the Uniform Code of Military Justice), dur-
19 ing that period.

20 (c) DNA ANALYSIS.—

21 (1) SAMPLES REQUIRED.—Any person who is
22 convicted of a crime of a sexual nature under the

105TH CONGRESS
1ST SESSION

H. R. 1072

To establish a commission to investigate certain policies and procedures with respect to the military justice system, including policies and procedures with respect to the investigation of reports of sexual misconduct, sexual harassment, and unlawful gender discrimination.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1997

Mrs. MALONEY of New York introduced the following bill; which was referred to the Committee on National Security

A BILL

To establish a commission to investigate certain policies and procedures with respect to the military justice system, including policies and procedures with respect to the investigation of reports of sexual misconduct, sexual harassment, and unlawful gender discrimination.

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.**

4 This Act may be cited as the "Commission on Mili-
5 tary Justice and Fairness Act".

7

1 Uniform Code of Military Justice shall, prior to mili-
2 tary discharge, transmit to the Secretary of the mili-
3 tary department having jurisdiction of the armed
4 force of the member, a sample of blood, saliva, or
5 other specimen collected from that person necessary
6 to conduct DNA analysis consistent with established
7 procedures for DNA testing by the Director.

8 (2) TRANSMISSION TO FBI.—Each sample
9 transmitted under paragraph (1) shall be transmit-
10 ted by the Secretary described in that paragraph in
11 a timely manner to the Director for inclusion in the
12 Combined DNA Identification System (CODIS) of
13 the Federal Bureau of Investigation.

○

1 SEC. 2. ESTABLISHMENT OF COMMISSION.

2 (a) ESTABLISHMENT.—There is established a com-
3 mission to be known as the “Commission on Military Jus-
4 tice and Fairness” (in this Act referred to as the “Com-
5 mission”).

6 (b) COMPOSITION.—The Commission shall be com-
7 posed of 15 members appointed as follows:

8 (1) Five members appointed by the President,
9 of whom one shall be chosen after consultation with
10 the Attorney General and one shall be chosen after
11 consultation with the Chief Justice of the United
12 States and not more than three of whom may be a
13 member of the Armed Forces on active duty or in
14 a retired status or a member of a reserve compo-
15 nent.

16 (2) Three members appointed by the majority
17 leader of the House of Representatives, not more
18 than one of whom may be a member of the Armed
19 Forces on active duty or in a retired status or a
20 member of a reserve component.

21 (3) Two members appointed by the minority
22 leader of the House of Representatives, not more
23 than one of whom may be a member of the Armed
24 Forces on active duty or in a retired status or a
25 member of a reserve component.

1 (4) Three members appointed by the majority
2 leader of the Senate, not more than one of whom
3 may be a member of the Armed Forces on active
4 duty or in a retired status or a member of a reserve
5 component.

6 (5) Two members appointed by the minority
7 leader of the Senate, not more than one of whom
8 may be a member of the Armed Forces on active
9 duty or in a retired status or a member of a reserve
10 component.

11 (c) INITIAL APPOINTMENTS.—Each member of the
12 Commission shall be appointed to the Commission not
13 later than 90 days after the date of the enactment of this
14 Act.

15 (d) CHAIRMAN.—There shall be a Chairman of the
16 Commission who shall be designated by the President at
17 the time of the appointment.

18 (e) PERIOD OF APPOINTMENT.—Each member shall
19 be appointed for the life of the Commission.

20 (f) VACANCIES.—Any vacancy shall be filled in the
21 same manner as the original appointment of a member
22 of the Commission.

23 (g) SECURITY CLEARANCES.—The Secretary of De-
24 fense shall provide expedited processing of security clear-
25 ances requested for members.

1 SEC. 3. FUNCTIONS OF COMMISSION.

2 The Commission shall investigate and make rec-
3 ommendations on the following:

4 (1) The existence of adequate safeguards for
5 members of the Armed Forces who report incidents
6 of sexual misconduct, sexual harassment, or unlaw-
7 ful gender discrimination, and whether adequate
8 protection from retribution is afforded to members
9 of the Armed Forces who report such incidents.

10 (2) The existence of adequate mechanisms for
11 investigating sexual misconduct, sexual harassment,
12 and unlawful gender discrimination in the Armed
13 Forces, including the existence of investigative mech-
14 anisms outside of the chain of command of a mem-
15 ber reporting allegations of such conduct.

16 (3) Whether investigating officers and trial
17 counsel in the Armed Forces are trained, and pos-
18 sess the resources and independence necessary, to
19 conduct fair and thorough investigations of allega-
20 tions of sexual misconduct, sexual harassment, and
21 unlawful gender discrimination.

22 (4) The number of incidents involving allega-
23 tions of sexual assault by members of the Armed
24 Forces that have been referred by a commanding of-
25 ficer for resolution through an administrative hear-

1 ing rather than court-martial proceedings, and the
2 reasons for such referrals.

3 (5) The availability of adequate mechanisms in
4 the Armed Forces for satisfactory resolution of com-
5 plaints of sexual misconduct, sexual harassment, or
6 unlawful gender discrimination, and whether the
7 award of damages and attorneys fees should be a
8 remedy available to military personnel who are vic-
9 tims of sexual misconduct, sexual harassment, or un-
10 lawful gender discrimination.

11 (6) Whether court-martial jurisdiction should
12 exist over non-service related offenses committed by
13 members of the Armed Forces.

14 (7) The procedures in the Armed Forces for ap-
15 prehending and charging an accused and the scope
16 of the discretionary power of commanding officers
17 with respect to such procedures and the court-mar-
18 tial trial process.

19 (8) The adequacy of the procedures for selec-
20 tion of jurors in the military justice system in pro-
21 tecting such jurors and ensuring impartial court-
22 martial trials.

23 (9) Whether permanent, uniform mechanisms
24 should be established to insulate judge advocate de-
25 fense counsel from other elements of the military

1 legal structure and provide such counsel with re-
2 sources equivalent to those resources available to
3 military trial counsel.

4 (10) Whether military judges should be af-
5 farded increased independence and some form of
6 tenure to protect them from retribution in response
7 to their rulings during the court-martial trial proc-
8 ess.

9 (11) The need for increased uniformity in sen-
10 tencing in the military justice system and whether
11 sentencing guidelines should be instituted.

12 (12) The adequacy and effectiveness of judicial
13 review of decisions regarding military personnel, and
14 whether the same right to Supreme Court review
15 should exist for courts-martial as for criminal cases
16 in State and Federal courts.

17 (13) The necessity for, and effectiveness of, cor-
18 rectional programs designed to rehabilitate offenders
19 to continue service as members of the Armed Forces
20 after serving a court-martial sentence.

21 (14) The procedural protections for enlisted
22 members of the Armed Forces who are career mili-
23 tary personnel and the power of commanding offi-
24 cers to deny reenlistment to such personnel who
25 have not yet qualified for retired pay.

1 (15) Statistical data collection and analysis
2 with respect to crime and sexual misconduct, sexual
3 harassment, and unlawful gender discrimination in
4 the Armed Forces, and whether such data is regu-
5 larly reported to the Federal Bureau of Investiga-
6 tion.

7 (16) The ability to exchange criminal records of
8 members of the Armed Forces among military courts
9 and other courts in the United States, and whether
10 information with respect to the criminal records of
11 members of the Armed Forces should regularly be
12 reported to the National Crime Information Center.

13 (17) Whether rulemaking committees that in-
14 clude civilian members and perform functions that
15 are similar to the functions performed by the rule-
16 making committees of the Judicial Conference of the
17 United States should be established for the military
18 justice system.

19 **SEC. 4. REPORT.**

20 Not later than one year after the date that all the
21 original members are appointed, the Commission shall
22 submit to the President and the Congress a report con-
23 taining a detailed statement of the Commission's findings
24 and conclusions and the Commission's recommendations
25 for administrative and legislative action.

1 SEC. 5. POWERS.

2 (a) HEARINGS AND SESSIONS.—The Commission
3 may, for the purpose of carrying out this Act, hold such
4 hearings, sit and act at such times and places, take such
5 testimony, and receive such evidence as the Commission
6 considers appropriate. The Commission may administer
7 oaths to witnesses appearing before it.

8 (b) OBTAINING INFORMATION.—The Commission
9 may secure directly from any department or agency of the
10 United States information necessary to enable it to carry
11 out this Act. Upon request of the Chairman of the Com-
12 mission, the head of that department or agency shall fur-
13 nish that information to the Commission in a full and
14 timely manner.

15 (c) SUBPOENA POWER.—(1) The Commission may
16 issue a subpoena to require the attendance and testimony
17 of witnesses and the production of any evidence relating
18 to any matter under investigation by the Commission.

19 (2) If a person refuses to obey an order or subpoena
20 of the Commission that is issued in connection with a
21 Commission hearing, the Commission may apply to the
22 United States district court in the judicial district in which
23 the proceeding is held for an order requiring the person
24 to comply with the subpoena or order.

1 (d) IMMUNITY.—The Commission is an agency of the
 2 United States for purposes of part V of title 18, United
 3 States Code (relating to immunity of witnesses).

4 (e) CONTRACT AUTHORITY.—The Commission may
 5 contract with and compensate government and private
 6 agencies or persons for goods and services, without regard
 7 to section 3709 of the Revised Statutes (41 U.S.C. 5).

8 **SEC. 6. COMMISSION PROCEDURES.**

9 (a) MEETINGS.—The Commission shall meet at the
 10 call of the Chairman or a majority of its members.

11 (b) QUORUM.—Eight members of the Commission
 12 shall constitute a quorum, but a lesser number may hold
 13 hearings.

14 (c) DELEGATION OF AUTHORITY.—Any member or
 15 agent of the Commission may, if authorized by the Com-
 16 mission, take any action that the Commission is author-
 17 ized to take by this Act.

18 **SEC. 7. PERSONNEL MATTERS.**

19 (a) PAY OF MEMBERS.—Members shall not be paid
 20 by reason of their service as members.

21 (b) TRAVEL EXPENSES.—Each member shall receive
 22 travel expenses, including per diem in lieu of subsistence,
 23 in accordance with sections 5702 and 5703 of title 5,
 24 United States Code.

1 (c) STAFF.—(1) The Commission may, without re-
2 gard to the provisions of title 5, United States Code, gov-
3 erning appointments in the competitive service, appoint a
4 staff director and such additional personnel as may be
5 necessary to enable the Commission to perform its duties.

6 (2) The Commission may fix the pay of the staff di-
7 rector and other personnel without regard to the provi-
8 sions of chapter 51 and subchapter III of chapter 53 of
9 title 5, United States Code, relating to classification of
10 positions and General Schedule pay rates, except that the
11 rate of pay fixed under this paragraph for the staff direc-
12 tor may not exceed the rate payable for level V of the Ex-
13 ecutive Schedule under section 5316 of such title and the
14 rate of pay for other personnel may not exceed the maxi-
15 mum rate payable for grade GS-15 of the General Sched-
16 ule.

17 **SEC. 8. OTHER ADMINISTRATIVE PROVISIONS.**

18 (a) POSTAL AND PRINTING SERVICES.—The Com-
19 mission may use the United States mails and obtain print-
20 ing and binding services in the same manner and under
21 the same conditions as other departments and agencies of
22 the United States.

23 (b) MISCELLANEOUS ADMINISTRATIVE AND SUP-
24 PORT SERVICES.—The Secretary of Defense shall furnish
25 the Commission, on a reimbursable basis, any administra-

1 tive and support services necessary for the Commission to
2 carry out its duties under this Act.

3 (c) EXPERTS AND CONSULTANTS.—The Commission
4 may procure temporary and intermittent services under
5 section 3109(b) of title 5, United States Code.

6 (d) STAFF OF FEDERAL AGENCIES.—Upon request
7 of the Commission, the head of any Federal department
8 or agency may detail, on a reimbursable basis, any of the
9 personnel of that department or agency to the Commission
10 to assist it in carrying out its duties under this Act.

11 (e) GIFTS, BEQUESTS, AND DEVISES.—The Commis-
12 sion may accept, use, and dispose of gifts, bequests, or
13 devises of services or property, both real and personal, for
14 the purpose of aiding or facilitating the work of the Com-
15 mission. Gifts, bequests, or devises of money and proceeds
16 from sales of other property received as gifts, bequests,
17 or devises shall be deposited in the Treasury and shall be
18 available for disbursement upon order of the Commission.

19 **SEC. 9. PAYMENT OF COMMISSION EXPENSES.**

20 (a) PAYMENT OUT OF DEPARTMENT OF DEFENSE
21 FUNDS.—The travel expenses and per diem allowances of
22 members and employees of the Commission, and the com-
23 pensation of employees of the Commission, shall be paid
24 out of funds available to the Department of Defense for
25 the payment of compensation, travel allowances, and per

1 diem allowances, respectively, of civilian employees of the
2 Department of Defense. The other expenses of the Com-
3 mission shall be paid out of funds available to the Depart-
4 ment of Defense for the payment of similar expenses in-
5 curred by that Department.

6 (b) PROMPT TRANSFER OF FUNDS.—The Secretary
7 of Defense shall promptly transfer funds to the Commis-
8 sion for payment of expenses incurred by the Commission
9 upon submission to the Department of Defense of the
10 amount of funds requested for such payment by the Chair-
11 man of the Commission.

12 **SEC. 10. TERMINATION OF COMMISSION.**

13 The Commission shall terminate not later than 90
14 days after submitting its report to the President and the
15 Congress pursuant to section 4.

○

July 10, 1997

To: Melanie Sloan
From: Donna Edwards

re: potential provisions for VAWA II

Here are the results of subcommittee meetings we've held on crime & VAWA fixes and military issues. Obviously there may be more to come or amendments as we continue to meet.

I. VAWA Fixes

Amend 42 U.S.C. 3796gg-1 with a new (3) and redesignate (3) as (4):

(3) at least 5 percent of the amount granted shall be allocated to the nonprofit state domestic violence and/or sexual-assault coalition in the state to facilitate participation of victim advocates in ~~the~~ statewide planning and implementation activities under this subtitle.

Also in 42 U.S.C. 3796gg-1 insert new (e)

“(e) MONITORING AND COMPLIANCE.—The Director shall have the authority to deny applications:

- (1) that do not meet the requirements set forth in subsection (d); and
- (2) for failure ~~to discuss in detail and~~ provide documentation, including a memorandum of understanding, for any collaborative efforts with other agencies or organizations.

REDESIGNATE LETTERS (e), (f), (g), and (h).

Amend 42 U.S.C. 3796gg-2 by adding at the end of (8) the following sentence:

The term “victim services” shall not include programs or activities that are targetted primarily for offenders.

Insert in Sec. 317.

EDUCATING YOUTH ABOUT DOMESTIC VIOLENCE.

“(a) GENERAL PURPOSE.—For purposes of this section, the Secretary shall in consultation with the Secretary of Education, implement a program for education of young people about domestic violence and violence among intimate partners.

“(b) NATURE OF PROGRAM.—The Secretary shall implement the program at primary schools, middle schools, secondary schools, and institutions or higher education. The program shall be implemented in consultation with educational experts, legal and psychological experts on battering, and victim advocate organizations such as battered women’s shelters, State coalitions and resource centers.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$XXX.

II. Supervised Visitation

Safe Visitation Act

Sec. 1. Purposes

- 1) To protect children from the trauma of witnessing or experiencing violence, sexual abuse, neglect, abduction, rape or death during parent/child visitation and/or visitation exchanges.

- 2) To protect victims of domestic violence from experiencing further violence during child visitation or and/or visitation exchanges.
- 3) To provide an ongoing safe haven for parents and children during visitation or visitation exchanges.

Sec. 2. Findings

- 1) Family violence does not necessarily cease when family victims are legally separated by divorce or otherwise not sharing a household.
- 2) During separation and divorce, family violence often escalates, and child custody and visitation become the new forum for the continuation of abuse.
- 3) Current child custody and visitation laws are based on incorrect assumptions that divorcing or separating parents share equal positions of power and control. These assumptions are particularly faulty when there is a history of domestic violence. The abused spouse or intimate partners divorcing and separating under such circumstances may continue to experience violence which is exacerbated by and often escalates during child visitation and/or visitation exchanges.
- 4) Some perpetrators of violence use the children as pawns to control the abused party and to commit more violence during separation and/or divorce.
- 5) Approximately 90 percent of children in homes in which their mothers are abused witness the abuse.
- 6) Women and children are at an elevated risk of violence during the process of separation and/or divorce.
- 7) Fifty to 70 percent of men who abuse their spouses or partners also abuse their children.
- 8) Up to 75 percent of all domestic assaults reported to law enforcement agencies were inflicted after the separation of the couple.
- 9) In one study of spousal homicide, over half of the male defendants were separated from their victims.
- 10) Seventy-three percent of battered women seeking emergency medical services do so after separation.

Sec. 4 Grants to States to Provide for Supervised Visitation Centers

- (a) **IN GENERAL.** – The Secretary of Health and Human Services (hereafter referred to in the Act as the “Secretary”) is authorized to award grants to states to enable states to enter into contracts and cooperative agreements with public or private nonprofit entities to assist such entities in establishing and operating supervised visitation centers for the purposes of facilitating supervised visitation and visitation exchange.
- (b) **CONSIDERATIONS.** – In awarding such grants, contracts and cooperative agreements, under subsection (a), the Secretary shall take into account –
 - (1) The number of families to be served by the proposed visitation center to be established under the grant, contract or agreement;
 - (2) the extent to which supervised visitation centers serve underserved populations.
 - (3) the extent to which the applicant demonstrates cooperation and collaboration with advocates in the local community served, including the state domestic violence coalition, state sexual assault coalition, local shelters and programs for domestic violence and sexual assault victims.
- (c) **USE OF FUNDS.** –
 - (1) **IN GENERAL.** – Amounts provided under a grant, contract or cooperative agreement awarded under this section shall be used to establish supervised visitation centers and for the purposes described in section 1. In using such amounts, grantees shall target the economically disadvantaged and those individuals who could not otherwise afford such visitation services. Other individuals shall be permitted to use the services provided by the center on a sliding fee basis.
 - (2) The Secretary shall award grants, contracts and cooperative agreements under this Act in accordance with such regulations as the Secretary may promulgate. The applicant shall:
 - (A) demonstrate recognized expertise in the area of family violence and a record of high quality service to victims of domestic violence and sexual assault; and
 - (B) be an entity located in the state or locality where state law requires the court to consider evidence of domestic violence, whether or not there is a conviction of any

offense of domestic violence or child abuse or the existence of an order of protection against domestic violence, in making a custody decision.

- (C) demonstrate collaboration with and support of the state domestic violence coalition, sexual assault coalition and local domestic violence and sexual assault shelter or program in the locality in which the supervised visitation center will be operated.

- (d) REPORTING. – Not later than 60 days after the end of each fiscal year, the Secretary shall report to the Congress information concerning:

- (1) number of persons served and number of persons turned away from services categorized by state and type of presenting problem that underlies the need for supervised visitation and/or visitation exchange (eg, domestic violence, child abuse, sexual assault, emotional or other physical abuse, or combinations of factors);
- (2) supervised visitation or visitation exchange ordered by custody determination under a separation or divorce decree or protection order; through child protection services; or social services
- (3) other appropriate information designated in regulations promulgated by the Secretary.
- (4) safety and security problems occurring during the reporting period.

- (e) Authorization of Appropriations.

- (1) IN GENERAL. – For the purpose of awarding grants, contracts and cooperative agreements under this Act, there are authorized to be appropriated \$75,000,000 for fiscal year 1998, \$85,000,000 for fiscal year 1999, \$95,000,000 for fiscal year 2000.

- (2) DISTRIBUTION.—Of the amounts appropriated under subsection (1) for each fiscal year, not less than 90 percent shall be used to award grants, contracts, or cooperative agreements.

DISBURSEMENT.—Amounts appropriated under this Act shall be disbursed as categorical grants through the Secretary.

III. Military

amend Title 10, Chapter 47, Article 128, paragraph 54b(3), to include a new offense of domestic violence:

“(d) Domestic Violence Assault

- (i) That the accused did cause physical harm to a spouse or intimate partner;
- (ii) or place a spouse or intimate partner in fear of physical harm;
- (iii) or cause a spouse or intimate partner to engage involuntarily in sexual activity by force, threat of force, or duress.”

Amend Title 10, Chapter 47, Article 133, paragraph 54 (e) by adding to the maximum punishment as follows:

“(10) Domestic Violence Assault. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for up to 10 years.”

Amend Chapter 53, Section 1059, (e)(A) as follows:

“...convicted by a court-martial ~~for a~~ for any offense which includes dependent-abuse offense as an underlying or principal factor ...”

Amend Chapter 53, Section 1059, (e)(A) as follows:

“...(if the underlying or principal basis for the separation includes a dependent abuse offense)...”

Amend Chapter 53, Section 1059, (g)(2) in the last line as follows:

"...period of eligibility for such payments, the Secretary may not resume such payments if the Secretary determines that there was ongoing abuse. Such determinations for resuming payments shall be reviewed on a case-by-case basis by the Secretary."

IV. Other

The United States Sentencing Commission shall study the following and report to the Congress:

- (1) sentences given to ^{persons} ~~men and women~~ incarcerated in federal and state prison for assault or homicide ~~related~~ crimes in which the relationship to the victim was a spouse, former spouse or intimate partner.
- (2) the effect of illicit drugs and alcohol on domestic violence and the sentences imposed for offenses involving such illicit drugs and alcohol where domestic violence occurred.
- (3) analysis delineated by race, gender, type of offense, and or other categories that would be useful for understanding the problem.
- (4) recommendations with respect to the offenses described in this section.

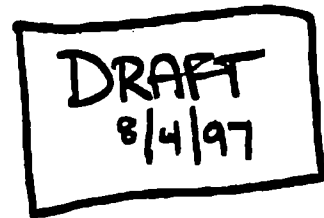
Sloan, Melanie

From: DEdwards[SMTP:DEdwards@news.mintz.com]
Sent: Monday, July 14, 1997 4:05 PM
To: Sloan, Melanie
Subject: more military stuff

thought I sent this, but can't really tell from my log, so here it is again. stuff i did not ~~put back on disk~~ that had been wiped out by my virus.

amend Title 10, Chapter 55, Section 1076(e)(1) as follows:

"Any abused dependent of a former member of a uniformed service described in paragraph (4) shall for the full period of transitional compensation be furnished with medical or dental care for the treatment of illness or injuries in facilities of the uniformed services under the same benefits to which the dependent would be entitled if the former service member had not been removed from the armed services."

**[DISCUSSION DRAFT]**

JULY 30, 1997

105TH CONGRESS
1ST SESSION**H. R. _____**

IN THE HOUSE OF REPRESENTATIVES

Mrs. MALONEY of New York introduced the following bill; which was referred
to the Committee on _____

A BILL

To

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.**

4 This Act may be cited as the "Older Women's Protec-
5 tion from Violence Act of 1977".

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) more than one million women age 65 and
9 over are victims of abuse each year;

1 (2) the reported incidence of elder abuse in
2 America increased by 94 percent between 1986 and
3 1991 and is expected to grow in the future;

4 (3) it is estimated that at least 5 percent of the
5 nation's elderly are victims of moderate to severe
6 abuse and the rate for all forms of abuse may be as
7 high as 10 percent;

8 (4) elder abuse is severely underreported with 1
9 in 5 cases being reported in 1980 and 1 in 8 cases
10 being reported now;

11 (5) elder abuse takes on many forms, including
12 physical abuse, sexual abuse, psychological (emo-
13 tional) abuse, neglect (active and passive), and fi-
14 nancial abuse;

15 (6) many older persons, particularly women and
16 minorities, fail to report abuse because of shame or
17 previously unsatisfactory experiences with police, dis-
18 trict attorneys, ^{clergy,} or social workers ^{or others} who lacked sensitiv-
19 ity to the concerns or needs of older people;

20 (7) many older persons fail to report abuse be-
21 cause they are dependent on their abusers and fear
22 being abandoned or institutionalized;

23 (8) identification of elder abuse is difficult be-
24 cause ^{many} elders are not tied into ~~many~~ social networks,
25 e.g., schools or jobs; and

1 (9) older persons critically need protection
2 against abuse, neglect, and exploitation.

3 SEC. 3. ELDER ABUSE PREVENTION PROGRAM.

4 Section 702(b) of the Older Americans Act of 1965
5 (42 U.S.C. 3058a(b)) is amended to read as follows:

6 "(b) PREVENTION OF ELDER ABUSE, NEGLECT, AND
7 EXPLOITATION.—There are authorized to be appropriated
8 to carry out chapter 3 such sums as may be necessary
9 without fiscal year limitation."

10 SEC. 4. LONG-TERM CARE OMBUDSMAN PROGRAM.

11 Section 303(a)(1) of the Older Americans Act of
12 1965 (42 U.S.C. 3023(a)(1)) is amended by inserting be-
13 fore the period the following: ", except that for grants
14 under section 321(a)(10) there are authorized to be appro-
15 priated such sums as may be necessary without fiscal year
16 limitation".

17 SEC. 5. LAW SCHOOL CLINICAL PROGRAMS ON ELDER
18 ABUSE.

19 The Attorney General may make grants to law school
20 clinical programs to enable such programs to include cases
21 which involve issues of domestic violence against older
22 women.

1 SEC. 6. TRAINING PROGRAMS FOR LAW ENFORCEMENT OF-
 2 FICES.

3 The Attorney General shall develop curricula and
 4 offer, or provide for the offering of, training programs to
 5 assist law enforcement officers and prosecutors in rec-
 6 ognizing and addressing instances of domestic violence di-
 7 rected against older women.

8 SEC. 7. TRAINING PROGRAMS FOR SOCIAL SERVICE AND
 9 HEALTH PROVIDERS.

10 The Secretary shall, in consultation with the Sec-
 11 retary of Education, develop curricula and implement
 12 training programs for protective service workers, health
 13 providers, ^{Social Workers} clergy, and other community-based social serv-
 14 ice providers, ^{in settings including but not limited to senior centers, adult day care, senior housing} to improve their ability to recognize and ad-
 15 dress instances of domestic violence directed against older
 16 women. Separate curricula and training programs shall be
 17 targeted to the clergy, adult protective services workers,
 18 medical students and physicians, and attorneys, including
 19 those specializing in family law.

20 SEC. 8. COMMUNITY INITIATIVES TO COMBAT DOMESTIC
 21 VIOLENCE AGAINST OLDER WOMEN.

22 The Secretary shall provide grants to nonprofit pri-
 23 vate organizations to establish projects in local commu-
 24 nities involving ^{diverse} ~~many~~ sectors of each community to coordi-
 25 nate intervention and prevention of domestic violence. In

1 awarding grants, the Secretary shall consider the impor-
2 tance of issues of domestic violence against older women.
3 SEC. 9. DOMESTIC VIOLENCE OUTREACH TO OLDER
4 WOMEN.

5 The Secretary shall develop and implement outreach
6 programs targeted toward older women who are victims
7 of domestic violence, including, but not limited to, pro-
8 grams directed toward senior housing complexes and sen-
9 ior centers.

10 SEC. 10. DOMESTIC VIOLENCE SERVICES FOR OLDER
11 WOMEN.

12 Section 311(a) of the Family Violence Prevention and
13 Services Act (42 U.S.C. 10410(a)) is amended by striking
14 "and" at the end of paragraph (4), by striking the period
15 at the end of paragraph (5) and inserting "; and", and
16 by adding after paragraph (5) the following:

17 "(6) domestic violence service programs tar-
18 geted at older women, including support groups and
19 counseling."

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**VIOLENCE AGAINST WOMEN ACT II
DRAFT RECOMMENDATIONS ON PROTECTIONS FOR VIOLENCE AGAINST
DISABLED WOMEN¹**

INTRODUCTION

Women and girls with disabilities live at the intersection of gender and disability bias. As a consequence, they experience higher rates of violence and lower rates of access to services than their non-disabled peers. Research suggests that women with disabilities are 2 to 12 times more likely to be victims of physical and sexual violence than women and children who are not disabled.

Policy makers must recognize that poverty, segregation, low rates of education and employment, as well as a social denial that disabled women and girls are targets of sexual and domestic violence leads to their increased vulnerability. Indeed, it is not a disability itself that creates vulnerability, but the social and political reaction to disability.

Despite the high incidence of violence experienced by women with disabilities, services are frequently non-existent, inaccessible or inadequate to meet their needs. Disability service providers frequently fail to screen clients for abuse histories. In addition, women with disabilities are frequently not believed when they report sexual and domestic violence, or their cases are not taken seriously by either the criminal justice system or service providers.

In consideration of the development of a second Violence Against Women Act, we contacted several people who were contacted around the United States with expertise on violence against women with disabilities. We provide the following recommendations with the hope and belief that their implementation could make a difference in the lives of women with disabilities.

RECOMMENDATIONS

1. The U.S. Attorney General should establish a disabled women's project within the office of Violence Against Women. This project should be staffed by a project director who is a disabled woman with expertise in violence against disabled women, a research associate, and an administrative assistant. This project would act as a clearinghouse as well as provide technical assistance to federal agencies and grantees on policy, procedures, and programs related to violence against disabled women and girls. The project director would also monitor compliance with federal disability rights laws by all Department

¹ The document has been prepared by Barbara Waxman Fiduccia, Director of the National Disabled Women's Policy Project of the Center for Women Policy Studies, in collaboration with Lacy Sloan, consultant to the N.O.W. Legal Defense and Education Fund. Contact person: Kathleen Stoll, Senior Policy Analyst, Center for Women Policy Studies, 202-872-1770.

grantees under VAWA.

2. Recipients of federal crime victim funds must comply with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act in all their programs and services. This includes public entities such as the states, counties, and cities, as well as non-profit entities. Priority must be given to the recruitment, training, and hiring of qualified disabled women as employees of programs and agencies that provide services to victims of crime. Program guidelines for grantees must stipulate their legal requirement to comply with these laws.
3. The DOJ should establish data collection systems to be employed by federal grantees of crime victim funding. This data collection effort would track service usage by disabled women and girls, and identify the barriers faced by disabled women and girls to the criminal justice system and victims of crime assistance services. The data would be used to establish future policy and funding priorities.
4. The attorney general should request studies designed and conducted by disabled women who are qualified researchers:
 - a. to determine the types of violent acts experienced by and are unique to the lives of disabled women and girls. Special attention must be paid to court cases (such as the Glen Ridge, New Jersey case) which limit the sexual consent rights of cognitively disabled women;
 - b. to assess states' crime penalties and the efficacy of these penalties when violence is directed at disabled women and girls. Particular attention should be paid to those state statutes which provide no penalties when a disabled wife is considered incompetent or is unable to resist marital rape, battery, or other acts of domestic violence. A task force should be established to study the risks associated with reforming those state laws when their effect is to undermine the sexual privacy and freedom of disabled women;
 - c. to assess the treatment of disabled women and girls by the criminal justice system following a report of violence. Particular attention should be paid to the treatment by police and prosecutors of disabled women and girls with cognitive and sensory disabilities as potential witnesses for the prosecution;
 - d. to develop methodologies to ensure that existing services are relevant for women with disabilities who are victims of violence. It is critical that services are meaningful to meet the needs of women with disabilities who have been victimized. Services such as disability-specific support groups, and treatment within existing services for women with disabilities, may be appropriate options along with existing integrated services. Particular attention should be paid to the necessity for domestic violence shelters to modify their service policies regarding the use of medication by residents, and the need to enable extensively disabled women to utilize personal

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assistant services within shelter environments; and,

c. to determine the training needs of police officers, victim assistance service providers, prosecutors, and judges to enable them to meet the emergency, personal, social, legal, and disability-related needs of disabled women and girls. Particular attention should be paid to the development of curricula to be included in the education of these social service and criminal justice system professionals throughout the country.

5. The attorney general should establish the authority to receive and perform criminal background checks on those persons who hold themselves out to be personal assistants. These background checks must be performed within 72 hours of the request. A significant amount of violence (including physical, sexual, emotional, and financial) is perpetrated by personal assistants who work in state institutions, nursing homes, group homes, as well as in the private homes of disabled women.

6. Funding should be earmarked for the development by disabled women of a system-wide training effort on sexual assault and domestic violence for disability community service providers (independent living center staff, vocational rehabilitation, special education teachers, residential facility staff, personal service assistants, case managers, etc.). Violence is all too common in a variety of settings within the disability community. These providers need training for the identification and prevention of violence in the lives of their clients.

7. The attorney general should make funds available for a national education campaign by and for disabled women and girls throughout the country. Particular attention should be paid to the development of curricula which train disabled women and girls to identify various types of violent acts and to access crime victim assistance services and programs and the criminal justice system.

8. The attorney general should establish strategies to implement the aforementioned recommendations: 1) set aside a percentage of VAWA funds for accessibility compliance efforts by grantees, as well as system-wide research and training regarding violence against women and girls with disabilities; and, 2) prioritize funding of grant applications that include plans to meet the needs of women with disabilities. This would mean that applicants for VAWA funding would receive more points if they were inclusive of the needs of women with disabilities.

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TO: MELANIE SLOAN
OFFICE OF REP. JOHN CONYERS

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FROM: KATHLEEN STOLL

DATE: 7/14/97

TIME: _____

NUMBER OF PAGES SENT (INCLUDING COVER SHEET): 4

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DAUGHTER OF VAWA PROTECTIONS FOR BATTERED IMMIGRANT WOMEN

1. Eligibility

A. Reinstating VAWA Eligibility For Caretakers of Elderly Parents

Many battered immigrant women act as the sole caretakers of their children and also their parents who are senior citizens. Under the Violence Against Women Act's original suspension of deportation provisions, battered immigrant women were permitted to show extreme hardship to themselves, their children, or their parents as an element of their VAWA suspension case. Battered immigrant women who were caretakers of their parents, many of whom might be U.S. citizens or lawful permanent residents, should be able to show that their deportation would result in extreme hardship for their parents or children who remain in the United States. IIRIRA, in preserving VAWA suspension for battered immigrants, amended this section to make the ability to prove extreme hardship to a parent available only to battered immigrant children.

Section 240A(b)(2) should be amended to allow battered immigrant women to present evidence of extreme hardship to themselves, their children, or their parents as part of their cancellation of removal case in the same manner in which they could in a suspension of deportation case. The purpose of VAWA was to grant immigration relief to battered immigrant women married to U.S. citizens or lawful permanent residents who were locked into abusive relationships by immigration laws. This proposed change returns VAWA eligibility to a narrow but needy group of women and helps guarantee that and that their U.S. citizen- or permanent resident-parents will not experience extreme hardship.

§240A(b)(2)(E) should be amended as follows:

"The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien demonstrates that -

(E) the removal would result in extreme hardship to the alien, the alien's child, or ~~(in the case of an alien who is a child) parent.~~"

Section 212(a)(9)(A)(iii) should be amended by adding at the end the following:

Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission. Clause (i) and (ii) shall also not apply to aliens granted status under sections 204(A)(1)(a)(iii) or (iv) or classification under sections 204(a)(1)(B)(ii) or

determines that the alien acted in self defense. After finding that an alien has been battered or subjected to extreme cruelty and would be otherwise eligible for relief under sections 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 criminal conviction."

Amend Section 244(a)(3) as in effect for aliens whose deportations proceedings commenced prior to 4/1/97 by adding at the end after "result in extreme hardship to the alien or the alien's parent or child." the following new language:

"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 plead guilty to, violating a court order issued to protect the alien or forced prostitution, to committing a crime under duress from the person who battered or subjected the alien to extreme cruelty, or who was convicted of or plead guilty to a domestic violence-related crime if the Attorney General determines that the alien acted in self defense. After finding that an alien has been battered or subjected to extreme cruelty and would otherwise qualify for relief under this section, the Attorney General may in his or her sole discretion enter a finding of good moral character despite the existence of a criminal conviction."

At § 240A(b)(2) add the following new section:

"(F) 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 plead guilty to, violating a court order issued to protect the alien or forced prostitution, or who was convicted of or plead guilty, to committing a crime under duress from the person who battered or subjected the alien to extreme cruelty, or to a domestic violence-related crime when the Attorney General determines that the alien acted in self defense."

Amend § 240A(b)(2)(D) as follows:

"...(A)nd has not been convicted of an aggravated felony unless the Attorney General waives application of this subparagraph for humanitarian purposes in the exercise of discretion."

At § 237 (a)(2)(e) add the following new section:

"(iii) The Attorney General may, upon determination that the alien was acting in self-defense, that the alien was not the primary perpetrator of violence in the relationship, that

(iii) when the alien demonstrates extreme hardship to the alien or the alien's spouse, parent or child.

B. Battered Women Who Otherwise Qualify for VAWA Who May Have Criminal Convictions

Since IIRIRA made crimes of domestic violence deportable offenses, some women who might otherwise qualify for VAWA relief are being denied protection because they were subject to a dual arrest or were prosecuted for violating their own protection orders. This amendment would allow the Attorney General to waive the required finding of "good moral character" in appropriate cases where battered women were either convicted of, or had pled guilty to, crimes they committed under duress from their abuser or to domestic violence-related crimes if they acted in self-defense or violated their own protection orders.

Additionally, the INS in the VAWA regulations has correctly defined battering or extreme cruelty to include forced prostitution. In light of this, it is important to allow the Attorney General to waive the bar to issuing a finding of "good moral character" in cases of immigrant women who have been forced into prostitution and are currently applying for suspension of deportation/cancellation of removal or self-petitioning.

At §204(a)(1)(A) add the following new section:

"(v) For the purposes of making good moral character determinations under Sections 204(a)(1)(A)(iii) and (iv) 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 VAWA relief, but who has also committed or pled guilty to being forced into prostitution, to committing a crime under duress from the person who battered or subjected the alien to extreme cruelty, to violating his/her own protection order, or to committing a domestic violence-related crime, if the Attorney General determines that the alien acted in self-defense. After finding that an alien has been battered or subjected to extreme cruelty and is otherwise eligible for relief under sections 204(a)(1)(A)(iii) and (iv), the Attorney General may enter a finding of 'good moral character' despite the existence of a criminal conviction."

At § 204(a)(1)(B) add the following new section:

"(iv) For the purposes of making good moral character determinations under Sections 204(a)(1)(B)(ii) and (iii) 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 VAWA relief, but committed or pled guilty to forced prostitution, to committing a crime under duress from the person who battered or subjected the alien to extreme cruelty, to violating his/her own protection order, or to committing a domestic violence related crime, if the Attorney General

the alien was convicted of violating the alien's own protection order, that the alien was convicted of committing a crime under duress from the person who subjected the alien to battering or extreme cruelty or for humanitarian purposes waive application of clause (i) and clause (ii)."

C. Exempt Women Battered By their U.S. Citizen Spouses From the Marriage Within 90 Days Requirement When Their Citizen Spouse Brought Them To the United States on a Fiancée Visa

Some abusive U.S. citizens bring their spouses to the U.S. on fiancé visas, but fail to marry them within the required 90 day period. When an alien fiancé is battered or subjected to extreme cruelty by his/her U.S. citizen fiancé, this 90-day requirement prevents the abuse victim from having access to any legal remedy. Section 245(d) of the Immigration and Nationality Act limits adjustment of status so that fiancées can only be adjusted to conditional spouse status. The following amendment seeks to waive this for immigrant fiancées and children battered by U.S. citizens.

Amend § 245(d) of the Immigration and Nationality Act to include the following:

"The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216. The Attorney General may not adjust, under subsection (a), the status of a non-immigrant alien described in section 101(a)(15)(K) (relating to an alien fiancée or fiancé or the minor child of such an alien) except to that of an alien lawfully admitted to the United States on a conditional basis under section 216 as a result of the marriage of the non-immigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's non-immigrant status under section 101(a)(15)(K). Aliens who are self-petitioning for permanent resident status under sections 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii); 204(a)(1)(B)(iii) are exempt the application of this subsection."

D. Preserving and Upgrading of Abuser's Status

The regulations issued by INS implementing VAWA offer no protection to VAWA applicants against loss of the abuser's immigration status that occurs between filing of the self-petition and approval of the petition by INS. Loss of an abuser's immigration status could happen quite rapidly, for example when the abuser is deported because of the abuse. This amendment would require that, for the purposes of VAWA applicants, once the petition has been approved, that approval relates back to the date of filing so the status of the lawful permanent resident or the United States citizen spouse is determined as of the filing date for purposes of the spouse or children's eligibility under VAWA. This ensures the alien spouse's self-petition will not be undermined if the status of the United State citizen or lawful permanent resident spouse forfeits or loses his

immigration status for any reason, including the abusive spouse's deportation, or decision to give up his/her immigration status or citizenship.

Additionally, cases of VAWA applicants whose spouses are U.S. citizens are processed much faster than cases of VAWA applicants whose spouses or parents are lawful permanent residents. Cases of abuse victims married to citizens can be completed in 6 months where as cases of those married to lawful permanent residents can take up to 4 years. Some lawful permanent resident spouses will upgrade their immigration status to that of a citizen while the VAWA applications filed while the spouse was a lawful permanent resident were pending. Qualified applicants for VAWA should be able to benefit from that upgrade in status through an automatic conversion of their VAWA petition to that of a spouse of a citizen in the same way they would have benefitted if the abusive lawful permanent resident spouse had filed a petition on the victim's behalf. VAWA applicants should be able to benefit from an upgrade in status whether or not a divorce has been finalized before the upgrade occurs, so long as the parties were married when the original VAWA petition was filed.

At § 204(1)(A)(1) add the following new section:

"(vi) For the purposes of petitions filed under Sections 204(a)(1)(A)(iii) and (iv) loss or renunciation or changes to the abuser's citizenship status after filing of the petition shall not preclude the categorization of the self-petitioning spouse or children as an immediate relative."

At section 204(a)(1)(B) add the following new section:

"(v) For the purposes of petitions filed under Sections 204(a)(1)(B)(ii) and (iii) changes in the immigration status of a lawful permanent resident spouse or parent subsequent to the filing of a petition under these sections shall not adversely effect adjudication of the petition. Upgrades in the immigration status of a lawful permanent resident spouse to that of a United States citizen shall result in consideration of any petition filed with the Immigration and Naturalization Service and pending under section 204(a)(1)(B) on behalf of an alien who has been battered or subjected to extreme cruelty to automatically reclassified as a petition filed under Section 204(a)(1)(A) of this Act even if the upgrade occurs after divorce."

2. Extended VAWA Protections

A. Abusers of Fiancée

VAWA eligibility should be created for victims who were brought into the United States by U.S. citizen batterers under fiancée visas when the citizen never married the fiancée but subjected

her to battering or extreme cruelty. Such provisions would offer protection to a limited category of immigrants battered by United States citizens who brought the alien to the United States on a fiancée visa, never married her, but subjected her to battering or extreme cruelty. Such a provision would help ensure that these U.S. citizen abusers can be prosecuted for the crimes they commit against their fiancées by allowing fiancées brought here and abused to testify against their abuser without fear of deportation. This provision may also help deter citizens from bringing multiple fiancées to the United States and abusing them.

B. Spouses of U.S. Citizen or Lawful Permanent Resident Bigamists

Domestic violence advocacy programs have been receiving calls from battered immigrant women who are married to U.S. citizens and lawful permanent residents who can prove that they have been battered or subjected to extreme cruelty, that they are of good moral character and that their deportation would cause extreme hardship, but in investigating the VAWA case the abuse victim discovers that her abusive husband never divorced his previous wife. Battered immigrant spouses of U.S. citizens and lawful permanent residents whose husbands have committed bigamy should be able obtain relief under VAWA as they would if their husband had not committed bigamy. Denying immigrant women and children who have been battered or subjected to extreme cruelty by bigamists access to VAWA encourages bigamy and abuse and shields bigamists who are also abusers from criminal prosecution. U.S. citizen abusers and lawful permanent residents should not be able to escape criminal liability for their actions through bigamy when immigrant victims fear testifying against their batterers in court because they are afraid that testifying will result in even more abuse or deportation.

Amend §240A(b)(2) to add the following:

"The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien demonstrates that -

(A) the alien has been battered or subjected to extreme cruelty in the United States by a spouse, parent or individual who has brought the alien into the country under a fiancée visa and has not married the alien or the batterers has committed bigamy against the alien and is a United States citizen or lawful permanent resident (or is the alien child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent)...."

and Amend §204(a)(1)(A)(iii)40701(a)(1)(C)(iii) of IIRIRA:

"An alien who is the spouse of a citizen of the United States or who has been brought into the country by and United States citizen on a fiancée visa but never married the citizen or

is an illegitimate spouse due to the citizen's bigamy, and is not legally married to the citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) or who would have been so classified but for the actions of the U.S. citizen with whom the alien intended to legally marry, and who has resided in the United States with the alien's spouse or intended spouse may file a petition with the Attorney General under this subparagraph for classification 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....

(A) the alien is residing in the United States, the marriage or relationship between the alien and the batterers, or their intention to marry was entered into in good faith by the alien, and during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse; and”

C. Non-Immigrant Visa Derivatives

Alien spouses and children who are not unlawfully present in the United States are often abused by the spouse or parent on whose non-immigrant status their ability to stay in the U.S. is based. Derivative spouses and children of non-immigrant visa holders are not eligible for VAWA because the visa holder is not a United States citizen or a lawful permanent resident. Since they have no relief under VAWA, these victims often remain silent about the abuse they are experiencing because they fear that they will suffer even greater abuse, or that they will be deported (along with the abuser) if they report their abuser to the proper authorities and the abuser is convicted of a domestic violence-related crime. These women should be protected by VAWA as battered abuse victims who are in this country legally but whose ability to remain here is derivative to an abuser.

Amend § 240A(b)(2)(A):

or “the alien has been battered or subjected to extreme cruelty in the United States by a spouse parent who is a United States citizen, or lawful permanent resident or a non-immigrant visa holder (or is the parent of....”

D. Protection for Spouses of Members of the United States Military

The frequency of abuse in military families is proportionately much greater than in civilian families. Various stresses associated with military life contribute to increased risk of battery¹. Under current VAWA provisions, non-citizen spouses and children of U.S. military members who often

¹See Nomi's article.

reside outside of the United States are not eligible for immigration relief as this statute only applies to those residing within the continental United States, Alaska, Hawaii, Guam and the Virgin Islands. Consequently, these victims of domestic violence are left without protection afforded to other non-citizen spouses and children of U.S. citizens or lawful permanent residents by virtue of their place of residence. Many spouses and children of abusive U.S. citizen or lawful permanent residents who are members of the U.S. armed forces may have resided in the United States for short periods of time and were sent out of the United States on one or more occasions as their spouse was transferred between bases or assignments. Women and children who are living with spouses or parents who are members of the U.S. military living outside of the United States are not necessarily living in the countries of their nationality. Thus for those who are abused they are extremely isolated and totally dependant on their U.S. citizen or lawful permanent resident abusive spouse or parent. In such circumstances they will not have community contacts or support systems that can help them.

This provision would allow spouses and children of U.S. military personnel stationed overseas who are battered or subjected to extreme cruelty by their U.S. citizen and lawful permanent resident spouse or parent who is a member of the U.S. Armed Forces to be eligible for VAWA relief. Requirements that applicants be residing in the United States should include waivers for these victims of domestic violence and U.S. consulates should be authorized to accept applications for VAWA relief. Self-petitions could be accepted at consulates abroad and forwarded to the Vermont Service Center for processing.

Amend §204(a)(1)(A)(iii) to state:

“...(A)nd who has resided in the United States with the alien’s spouse (unless the alien’s spouse is a member of the U.S. military), may file a petition in the United States or at a United States Consulate abroad with the Attorney General....”

Amend subsection (I) of §204(a)(1)(A)(iii) to state:

“...(T)he alien is residing in the United States (unless the alien’s spouse is a member of the U.S. military), the marriage between the alien and the spouse....”

Amend §204(a)(1)(A)(iii) to state:

“An alien who is the spouse of a citizen of the United States...and who has resided in the United States with the citizen spouse (unless the alien’s spouse is a member of the U.S. military), may file a petition in the United States or at a United States Consulate abroad with the Attorney General....”

Amend §204(a)(1)(A)(iv) to state:

"An alien who is the child of a citizen of the United States...and who has resided in the United States with the citizen parent (unless the alien's parent is a member of the U.S. military), may file a petition in the United States or at a United States Consulate abroad with the Attorney General...."

Amend subsection (I) of §204(a)(1)(iv) to state:

"...(T)he alien is residing in the United States (unless the alien's parent is a member of the U.S. military) and during the period of residence...."

Amend §204(a)(1)(B)(ii) to state:

"An alien who is the spouse of an alien lawfully admitted for permanent residence...and who has resided in the United States with the alien's legal permanent resident spouse (unless the alien's spouse is a member of the U.S. military), may file a petition in the United States or at a United States Consulate abroad with the Attorney General...."

Amend §204(a)(1)(B)(iii) to state:

"An alien who is the child of an alien lawfully admitted for permanent residence...and who has resided in the United States with the alien's permanent resident alien parent (unless the parent is a member of the U.S. military), may file a petition in the United States or at a United States Consulate abroad with the Attorney General...."

E. Elder Abuse

Elder abuse is a significant problem affecting many individuals in the United States. Some elder abuse is perpetrated by adult children against their aging parents. Elder abuse victims who are U.S. citizens or lawful permanent residents can avail themselves of the criminal and civil court protections available to protect victims of elder abuse. Many elder immigrants come to the United States in the first place because their sons or daughters who are in the United States legally bring them here. However, when the son or daughter is a citizen and is abusive to the elder parent the son or daughter may never file an immigration petition for the parent. These elder abuse victims who have no legal status in this country and are abused by their sons or daughters, are afraid to seek court protection orders because they fear that if they do so, their sons or daughters will have them deported. Parents who are abused by United States citizen sons or daughters should be able to obtain protection from elder abuse under VAWA.

Amend §204(a)(1)(A) by adding at the end:

"(v) An alien who is the parent of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who has resided in the United States with citizen daughter or son may file a petition with the Attorney General under this subparagraph for classification of the alien under such section if the alien demonstrates to the Attorney General that--

(I) the alien is residing in the United States and during the period of residence with the citizen son or daughter the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen son or daughter; and

(II) the alien is a person whose removal, in the opinion of the Attorney General, would result in extreme hardship to the alien or a spouse or child of the alien."

3. Exclusion and Inadmissibility

A. Granting the Attorney General The Discretion to Waive Substantial Connection for Battered Immigrant Women Who Otherwise Qualify for VAWA Who Enter After 4/1/97

Several new grounds of inadmissibility pose barriers to gaining lawful permanent resident status for many VAWA applicants. The only way for battered immigrant women to overcome these barriers is to show a substantial connection between the domestic violence suffered and the reason they are inadmissible. Battered women who enter the United States after April 1, 1997 will be eligible for VAWA only if they can show that their unlawful entry into the country was substantially connected to their abuse. This provision will, over time, create a category of battered immigrant women and children who are spouses and children of U.S. citizens and lawful permanent residents but cannot receive VAWA protection. These women and children will again be locked in exactly the types of relationships with abusive citizen and lawful permanent resident spouses and parents that VAWA sought to end. Without providing the Attorney General the discretion to waive the substantial connection requirement for humanitarian purposes, the Attorney General would be forced to deny VAWA protection to the following battered immigrant.

A battered immigrant woman enters the United States after April 1, 1997 and later married a U.S. citizen with whom she has two children. The citizen spouse abuses her resulting in her hospitalization on several occasions, one of which was for injuries which were inflicted during her second pregnancy. The most recent incident was an assault with intent to kill which occurred in front of several witnesses. The state wishes to prosecute the U.S. citizen abuser spouse for his crimes and wishes to help the abuse victim obtain legal permanent resident status through VAWA so that she can cooperate in the prosecution without fear of deportation.

The Attorney General should for humanitarian purposes have the discretion to waive the requirement that this abuse victim demonstrate a substantial connection between the abuse and the victim's unlawful entry into the United States for abuse victims who in all other ways qualify for relief under VAWA.

Changing the language of INA Section 212(a)(6)(ii)(III) will give the Attorney General the discretion to waive the substantial connection requirement for some needy battered immigrants who entered or reentered the United States after April 1, 1997. It will also give the Attorney General the same discretion to waive this requirement for battered immigrants who may have entered the country legally but who have overstayed their visas and who have received voluntary departure from the United States. Voluntary departure was the only workable avenue before IIRIRA for many applicants to obtain work authorization under the VAWA immigration regulations. However voluntary departure was strictly curtailed under IIRIRA and VAWA applicants who obtained work authorization in this way could be potentially harmed by the provisions of Section 212(a)(9)(B).

Many VAWA-eligible battered immigrants entered the United States legally and then later married U.S. citizen or lawful permanent resident spouses who because of abuse refused to obtain permanent residency for the immigrant spouse or child as a means of perpetrating abuse. Over time the immigrant was forced by the abuser's behavior to violate the terms of their visa and go out of legal immigration status. Section 212(a)(9)(B) provides a VAWA exemption for these abuse victims when there was a substantial connection between the abuse and the victims going out of legal immigration status. Here too in some cases such as the one described above the victim may have gone out of legal immigration status before she married the abuser. Even in the most compelling cases the Attorney General under the current law would be unable to offer VAWA protection.

VAWA originally offered protection to all abuse immigrant victims who were abused by their U.S. citizen or lawful permanent resident spouses or parents. VAWA did this recognizing that this group of battered immigrants were particularly at risk for abuse and their abusers were protected from prosecution for their crimes because they could deport their abuse victims. Granting the Attorney General the ability to waive substantial connection for humanitarian purposes in appropriate cases would provide the kind of protection VAWA intended for the most needy and endangered battered immigrant women and children.

Amend § 212(a)(6)(A)(ii)(III) of the Immigration and Nationality Act to include the following:

"(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States *or the alien's unlawful presence in the United States. In appropriate cases, for humanitarian purposes the Attorney General may waive this requirement if the alien is otherwise eligible to receive Lawful Permanent Resident Status under Sections 204(a)(1)(A)(iii) or (iv) or 204(a)(1)(B)(ii) or (iii) or 244(a) or 240A of the Immigration and Nationality Act..*"

B. Public Charge Exclusion Not Applicable to Cases of Battered Immigrant Women

IIRIRA clarified that aliens who have been battered or subjected to extreme cruelty who qualify for self petitioning for lawful permanent resident status under sections 204(a)(1)(A)(iii) and (iv) or 204(a)(1)(B)(ii) and (iii) are exempted from the obligation of submitting an "affidavit of support" from their abuser. This provision also appears to appropriately exempt VAWA applicants from being excluded on public charge grounds, but the INS has not interpreted this provision to exempt battered immigrant women and children from exclusion on public charge grounds.

IIRIRA granted battered immigrant women and children limited access to certain public benefits that they must rely on to survive when they flee their abusers. An amendment is needed to clarify that battered immigrants who are allowed to receive benefits to escape abuse will not then be deemed inadmissible because of their reliance on these public benefits on public charge grounds. This amendment is particularly necessary since many VAWA applicants who are spouses of lawful permanent residents who should be eligible to receive work authorization under VAWA based on INS regulations and instructions to the field are still not being granted work authorization although INS began in May of 1997 to authorize access to public benefits for this group of applicants. Until INS begins granting the work authorization they have authorized VAWA applicants will not be able to work legally and will in some cases have no choice but to rely on public benefits.

At § 212(a)(4) add the following new section:

EXCEPTION

"(E) The spouse or child of an alien who qualifies for status as a spouse or child of a United States citizen pursuant to clause (ii), (iii) or (iv) of section 204(a)(1)(A) or clause (i), (ii) or (iii) of Section 204(a)(1)(B) who have been battered or subjected to extreme cruelty shall be exempted from the provisions of Section (A) of this section.

C. Preserving VAWA Eligibility for Battered Immigrants in Light of IIRIRA's New Grounds of Inadmissibility

Three new Sections of IIRIRA that are intended to deter people from remaining unlawfully in the United States. Battered immigrant women and children married to U.S. citizens and Lawful permanent residents are often unlawfully present in the U.S.. For extended periods of time because their abuser has made sure they did not gain lawful immigration status and used that unlawful status as a tool to continue perpetrating abuse. For this reason battered immigrants eligible for VAWA are exempted from inadmissibility under two of the three new inadmissibility sections (212(a)(6)(A) and 212(a)(9)(B)). A similar exemption was omitted in 212(a)(9)(C). An exemption is also needed because in addition to the problems described above, U.S. citizen and lawful permanent resident abusers who wish their family violence victims to remain undocumented will prevent battered

immigrants from learning about or attending immigration proceedings by threats, intimidation, coercion or providing misinformation.

Section 212(a)(9)(C)(ii) should be amended by adding at the end the following

Clause (i) shall not apply to an alien described in paragraph (6)(A)(ii)(I) and (II).

D. Admission of Immigrant Excludable for Fraud or Willful Misrepresentation of Material Fact

The INA recognizes that it is appropriate, particularly in the cases of immigrant spouses and children of U.S. citizens and lawful permanent residents, that the Attorney General have the discretion to waive the fraud and misrepresentation grounds of inadmissibility. As the statute currently exists, the Attorney General does not have this discretion in cases of battered immigrant women and children who otherwise qualify for relief under VAWA, who deserve the same access to waivers for fraud or misrepresentation they would have if their U.S. citizen or lawful permanent resident spouse had petitioned for them. As a result, there are otherwise-qualified VAWA applicants who can prove that they were abused by a U.S. citizen or lawful permanent resident spouse or parent and who can prove that their deportation would cause extreme hardship still do not receive discretionary review regarding permanent residency through VAWA. Battered women and children should be eligible to apply for waivers a manner similar to what is authorized for spouses and children of citizens and residents.

Amend § 212(i)(1) as follows:

“The Attorney General may waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, parent, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse, ~~or parent, son or daughter~~ of such an alien or in the case of an alien granted status under sections 04(a)(1)(A)(ii) or (iii) or classification under sections 204(a)(1)(B)(ii) or (iii), the alien demonstrates extreme hardship to the alien or the alien's United States citizen or lawful permanent resident parent, child, son or daughter.

D. Student Visa Holders Married to U.S. Citizen or Lawful Permanent Resident Abusers

Many students who marry U.S. citizens and lawful permanent residents allow their student visas to expire or otherwise violate the conditions of their student visas because their spouses promise to file family-based petitions for them. Citizens and lawful permanent residents who marry

students who are in the United States on student visa and who subject their spouses to battering or extreme cruelty will often through threats, coercion, power and control force their spouses on student visas to violate the terms of their visa by changing schools, working or quitting school. If the citizen or lawful permanent resident spouse fails to pursue a family visa petition on behalf of a non-immigrant spouse who relies on the citizen or lawful permanent resident to obtain permanent residency and the spouse never acts on the petition, the non-immigrant on a student visas now will face IIRIRA's now face a five-year bar to gaining lawful permanent residence. For battered immigrant spouses who had student visas but who otherwise qualify for VAWA, the Attorney General should have discretion to waive this bar for humanitarian purposes.

Amend § 212(a)(6)(G) to add at the end:

"unless the non-immigrant qualifies for relief because of battering or extreme cruelty under sections 204(a)(1)(A)(iii) or (iv), 204(a)(1)(B)(ii) or (iii), or section 240A(b)(2).

E. Domestic Violence And Substance Use

Some victims of domestic violence resort to temporary use of drugs to diminish the pain they feel as a consequence of domestic violence. Others are forced to use drugs by their abusers who threaten continued abuse if they do not partake. Some battered immigrant women who are married to U.S. citizen or lawful permanent resident abusers who have otherwise strong, compelling VAWA cases will have no access to this relief under current law because of such activities. Under current law, even those who can show that they are rehabilitated or who only used drugs on a single occasion may be barred from gaining lawful permanent residence. The Attorney General should have the discretion to waive this harsh consequence in cases where the drug use was associated with domestic violence.

At § 212(g), add at the end the following new section:

"(4) subsection (a)(1)(iv) in the case of any alien granted status under sections 204(a)(1)(A)(ii) or (iii) or classification under sections 204(a)(1)(B)(ii) or (iii) when the alien demonstrates a substantial connection between the battering or extreme cruelty and use of substances."

4. Adjustment of Status Under § 245(i)

Currently section 245(i) provides VAWA self-petitioners with a mechanism, however imperfect, to obtain permanent resident status without leaving the United States. Section 245(i) is a provision of the INA that allows persons who are eligible to receive permanent residency but who

entered the country illegally or are not currently in legal immigration status to pay a penalty of \$1,000 and adjust to permanent resident status without being required to leave the U.S.. This provision of law, however, is due to sunset in September of 1997.

If section 245(i) is allowed to sunset, many battered women and their children will be placed in grave danger if they are required to leave the country to obtain lawful permanent residency under VAWA. Their protection orders will no longer protect them when they leave the borders of the United States. In fact, all VAWA applicants will have already demonstrated that they will suffer extreme hardship if returned to their home country. It is incongruous and dangerous to require battered women and children to return to such places after they have proven that returning to that country will cause extreme hardship to themselves, their children or their parents.

It is inappropriate to make battered VAWA applicants who have already proven extreme hardship leave the United States to obtain permanent residency, just as it would be inappropriate to require asylees to return to their home country to obtain permanent resident visas. In the cases of both asylees and battered immigrants gaining permanent residency through VAWA both groups should receive equivalent protection and be allowed to obtain their permanent residency status without being required to leave the protections of the United States. Battered immigrants are the only category of immigrants who will be affected by the sunset of 245(i) that will have already proven to INS's satisfaction that their deportation will cause extreme hardship. Battered immigrants whom INS has already agreed in granting their VAWA cases will be at risk if deported should not be required to leave the country and remain abroad for three months in order to obtain their lawful permanent residency.

Even the current system that allows battered VAWA self-petitioners who are undocumented at the time they file their immigration petition to pay a \$1,000 fine to be able to adjust their status without leaving the United States is dangerous for some petitioners. Since abusers often control all of the family's financial assets, it may be impossible for battered immigrant women to pay the Section 245(i) penalty. Across the country, some VAWA eligible women and children are returning to abusive relationships because they cannot pay the Section 245(i) adjustment penalty. The following amendment ensures that battered immigrant women and children who are granted permanent residency through VAWA self-petitions will not be forced to leave the United States or remain outside of the United States to obtain their residency status.

Amend §245(a) as follows:

"The status of an alien applying under sections 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii) or the status of an alien or an alien who was inspected and admitted...."

Amend §245(c)(2) as follows:

"...(A)n alien (other than an immediate relative as defined in section 1151(b) of this title, *an alien applying under sections: 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)* or a special immigrant as..."

Amend §245(c),(4) as follows:

"...(other than an immediate relative as defined in section 1151(b) of this title, *an alien applying under sections: 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)* who was admitted..."

Amend §245(c),(5) by adding to the end as follows:

"...(other than an alien applying under sections: 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)."

Amend §245(c),(6) by adding to the end as follows:

"...(other than an alien applying under sections: 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)."

Amend §245(c),(7) by adding to the end as follows:

"...(other than an alien applying under sections: 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)."

Amend §245(c),(8) by adding to the end as follows:

"...(other than an alien applying under sections: 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)."

5. Problems With VAWA Suspension/Cancellation

A. Lack of Access to VAWA Suspension/Cancellation

VAWA contained two alternative forms of immigration relief that were to be available to battered women and children who are the spouses and children of U.S. citizens and lawful permanent residents: (1) self-petitioning for immigrant visa status, and (2) suspension of deportation/cancellation of removal. INS has implemented a system for granting self-petitions. However, as discussed below, some VAWA eligible applicants are not qualified to file self-petitions

and can only file for VAWA suspension of deportation/cancellation of removal. Applications for VAWA suspension/cancellation must be filed in immigration proceedings with the permission of the immigration judge. INS has the discretion to decide whether or not to initiate deportation proceedings against VAWA eligible applicants. If INS refuses to institute removal proceedings against VAWA-eligible applicants, they are effectively barred from access to VAWA relief. In several jurisdictions INS has refused to initiate removal proceedings against VAWA applicants, and in others INS has only commenced proceedings after substantial delay.

Two groups of women who are unable to self-petition and can only apply for suspension of deportation or cancellation of removal are battered immigrant women whose spouses obtained a divorce before they could file a VAWA self petition, and battered women who needed to divorce their spouse in order to end continuing abuse and were divorced before they learned about or could file a VAWA self-petition. For either of these groups, suspension of deportation is the only VAWA option available to them. Additionally, IIRIRA created a limited access to crucial public benefits only for battered immigrant women and children eligible under VAWA who had already filed a case with the INS. Since in many parts of the country there is no practical mechanism to file for suspension of deportation/cancellation of removal, many VAWA applicants are not able to file for immigration relief and are also barred from the access they potentially were supposed to have to public benefits.

One way to resolve this problem would be to amend VAWA provisions to make self-petitioning available to certain battered immigrant women, and their children, who otherwise qualify but were divorced from their spouses before they could file their self-petitions. Victims of domestic violence should be able to continue to file VAWA self-petitions for up to five years after the date of their divorce from a U.S. citizen or lawful permanent resident spouse.

§204(a)(1)(a)(iii) should be amended to read:

"An alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is or would have been eligible to be classified as an immediate relative under Section 201(b)(2)(A)(i) or who could have been so classified within 5 years prior to petitioning for immigration status as an immediate relative under section 201(b)(2)(A)(i). and who has resided in the United States with the alien's spouse may file a petition with the Attorney General under this subparagraph"

§204(a)(1)(a)(iv) should be amended to read:

"An alien who is the child of a citizen of the United States, who is a person of good moral character, who is or would have been eligible to be classified as an immediate relative under Section 201(b)(2)(A)(i) or who could have been so classified within 5 years prior to petitioning for immigration status as an immediate relative under section 201(b)(2)(A)(i).