"(2) would have been an offense under either of such sections if the offense had occurred in the special maritime or territorial jurisdiction of the United States;

after having previously been convicted of another State or Federal offense for conduct that was an offense described in paragraph (1) or (2).".

SEC. 5. STUDY OF PERSISTENT SEXUAL PREDATORS.

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

(1) a synthesis of current research in psychology, sociology, law, criminal justice, and other fields regarding persistent sexual offenders, including—

(A) common characteristics of such offenders;

(B) recidivism rates for such offenders;

(C) treatment techniques and their effectiveness;

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

"(2) The circumstance referred to in paragraph (1) of this subsection is that the defendant has previously been convicted of another State or Federal offense for conduct which—

"(A) is an offense under this section or section 2242 of this title; or

"(B) would have been an offense under either of such sections if the offense had occurred in the special maritime or territorial jurisdiction of the United States.".

SEC. 4. ADDITIONAL CONDITION FOR TRUTH IN SENTENCING GRANTS.

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

"(c) ADDITIONAL REQUIREMENT.—A State is not eligible for a grant under this section unless such State has provided assurances to the Attorney General that such State has in effect laws which allow the court to impose a sentence of life in prison without parole on a defendant in a criminal case who is convicted of a State offense for conduct that—

"(1) is an offense under section 2241 or 2242 of title 18, United States Code; or assure that these programs are fulfilling their goals, and, if they are not, these programs should be immediately replaced or abandoned.

SEC. 3. FEDERAL JURISDICTION OVER RAPE AND SEXUAL ASSAULT CASES.

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

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

"(A) violates this section; or

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

"(i) that conduct is in interstate or foreign commerce;

"(ii) the person engaging in that conduct crossed a State line with intent to engage in the conduct; or

"(iii) the person engaging in that conduct thereafter engages in conduct that is a violation of section 1073(1) with respect to an offense that consists of the conduct so engaged in;

shall be imprisoned for life.

(1) rape and sexual assaults continue to be serious threats to the safety of communities across America;

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

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

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

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

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

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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

crimes on new and innocent victims, tough and certain punishment is required at the national level. America's children and women need your support. Please contact me or Stuart Spencer in my office (5-3615) to join as a cosponsor.

Sincerely,

Louise

Louise M. Slaughter
Member of Congress

COMMITTEE ON RULES
SUBCOMMITTEE
RULES AND ORGANIZATION
OF THE HOUSE

CAUCUS FOR WOMEN'S ISSUES

CONGRESSIONAL ORGANIZATION
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July 9, 1997

Stop Sexual Predators

Dear Colleague:

Last month's decision by the U.S. Supreme Court affirming the right of the State of Kansas to keep five-time convicted sex offender Leroy Hendricks in jail should be wake-up call for Congress. A patchwork of weak state laws had allowed this sexual predator to spend a lifetime drifting from Washington State to Kansas, preying on children in local communities.

We cannot sufficiently protect our children and families with widely differing state laws. A federal law should have been in place that stopped Hendricks in his tracks long ago.

The **Protection from Sexual Predators Act**, HR 305, is a measure that would do just that. During the last Congress this legislation passed the House of Representatives overwhelmingly by a vote of 411-4. This bill allows for the federal prosecution of rapes and serious sexual assaults committed by ***repeat*** offenders. It requires that repeat offenders, convicted under this section, automatically be sentenced to life in prison without parole. In other words, two strikes, and you're in.

The U.S. Department of Justice released chilling statistics showing that 60 percent of convicted sex offenders are on parole or probation. The study suggested showed that recidivism rates of sex offenders are astonishingly high -- released rapists are 10.5 times more likely to repeat their crime than other criminals.

Support for **the Protection from Sexual Predators Act** is growing, with over 57 bipartisan cosponsors and the following organizations endorsing the bill:

National Center for Missing & Exploited Children
Jacob Wetterling Foundation
Vanished Children's Alliance
National Federation of Republican Women
LOCK (Lock Out Child Krime)
National Coalition Against Sexual Assault
Women's National Democratic Club
National Federation of Democratic Women
National Women's Political Caucus
Klaas Foundation for Children
National Association of Chiefs of Police
International Union of Police Associations AFL-CIO
Jimmy Ryce Center for Victims of Predatory Abduction
PAR (People Against Rape)

[illegible] of letting sexual predators revolve in and out of the judicial system, repeating their

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web: http://www.house.gov/slaughter/

Fax from the Washington, D.C. Office of
Congresswoman Louise M. Slaughter, 28th District of New York

Please Deliver To: ANITA ZAID

Organization: DOJ

Fax Number: 307 - 3911

From Stuart Spencer

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63 current co sponsors - Please contact me with any questions. I would be thrilled to hear any input from your office. Thanks -

(If you did not receive all pages, please call 202-225-3615. Thank you.)

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Fact Sheet
The Protection from Sexual Predators Act of 1997 (HR 305)
Authored by Rep. Louise Slaughter (D-NY)

Action during the 104th: The ***Protection from Sexual Predators Act***, authored by Rep. Louise M. Slaughter, was included as an amendment to HR 2974, the Crimes Against Children and Elderly Persons Increased Punishment Act, which enhances jail sentences for crimes against our society's most vulnerable citizens. HR 2974 passed the House with overwhelming support (414-4) on May 7, 1996. Rep. Slaughter reintroduced the measure January 7, 1997 in the 105th Congress:

- Allows **federal prosecution** of rapes and serious sexual assaults committed by repeat offenders -- people who have prior convictions from either federal or state courts.
- Requires that **Repeat offenders** convicted under this section are automatically sentenced to **life in prison without parole**. **In other words, two strikes, you're in.**
- Would give local district attorneys the option of pursuing federal prosecution to ensure that these predators remain in jail, since many states have far less severe punishment available under their laws.
- Adds a condition to the Truth in Sentencing Incentive Grants for Prison Construction-- states must allow courts to sentence repeat sex offenders to life in prison without parole.
- Authorizes a study of persistent sexual predators by the National Institute of Justice.

The **Protection From Sexual Predators Act** is currently in the House Judiciary Committee.

This bill puts a jailhouse between law abiding Americans and society's most reprehensible criminals: the **repeat sexual predator**. Here's what we know about them:

- **A small number** of hardened felons make up this group;
- Their crimes are vicious and **their sentences short**. The average rape sentence is just 10.5 years, and the average time served is only half of that-- five years in jail.
- Frequently, **habitual rapists attack victims** in a number of **different** states, and courts often give inadequate consideration to convictions in other jurisdictions;
- Some psychologists conclude that the **sociopathic behavior of these predators can never be cured**. These criminals attack over and over again and many of them admit that if they are released from jail, they will strike again.

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cies and safety standards to assist employers in avoiding liability under this section.

O

against the person of another if that crime is a crime of violence as defined in section 16 of title 18, United States Code; and

(B) includes any conduct that would constitute a felony described in subparagraph (A) but for the relationship between the person engaging in that conduct and the individual against whom such conduct is directed.

(c) LIMITATION AND PROCEDURES.—

(1) LIMITATION.—Nothing in this section entitles a person to a cause of action under subsection (a) for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by a preponderance of the evidence, to be motivated by gender.

(2) NO PRIOR CRIMINAL ACTION.—Nothing in this section requires a prior criminal complaint, prosecution, or conviction to establish the elements of a cause of action under subsection (a).

(3) CONCURRENT JURISDICTION.—The Federal and State courts shall have concurrent jurisdiction over actions brought pursuant to this Act.

(d) MATERIALS TO ASSIST EMPLOYERS.—The Equal Employment Opportunity Commission shall create and provide materials to employers regarding personnel poli-

SECTION 1. SHORT TITLE.

This Act may be cited as the "Employer Liability for Gender-Related Violence Act of 1997".

SEC. 2. NEGLIGENTLY ALLOWING GENDER-MOTIVATED VIOLENCE.

(a) CAUSE OF ACTION.—An employer—

(1) whose business is in or affects interstate or foreign commerce; and

(2) whose negligent conduct results in a person's (including a person who acts under color of statute, ordinance, regulation, custom, or usage of any State) committing a crime of violence motivated by gender against another person on premises under the control of the employer;

shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.

(b) DEFINITIONS.—For the purposes of this Act—

(1) the term "crime of violence motivated by gender" means a crime of violence committed because of gender or on the basis of gender; and

(2) the term "crime of violence"—

(A) means an act or series of acts that would constitute a crime, for which imprisonment of more than one year may be imposed,

105TH CONGRESS
1ST SESSION

H. R. 1332

To protect the civil rights of victims of gender-motivated violence and to promote public safety, health, and regulate activities affecting interstate commerce by creating employer liability for negligent conduct that results in an individual's committing a gender-motivated crime of violence against another individual on premises controlled by the employer.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 1997

Mrs. MALONEY of New York (for herself, Mr. CONYERS, Mrs. MINK of Hawaii, and Ms. CHRISTIAN-GREEN) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, 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 protect the civil rights of victims of gender-motivated violence and to promote public safety, health, and regulate activities affecting interstate commerce by creating employer liability for negligent conduct that results in an individual's committing a gender-motivated crime of violence against another individual on premises controlled by the employer.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, and will help improve the productivity and safety of American workplaces.

B. Consequently, it is the sense of Congress that:

1. State workers' compensation laws should provide benefits to women who are victims of workplace violence who are eligible for such benefits, including full compensation for physical and non-physical injuries;

2. State workers' compensation laws should also permit the employee to pursue an action at law against an employer, other than statutory workers' compensation benefits, based on the employer's role in the act of workplace violence.

SENSE OF CONGRESS REGARDING WORKPLACE VIOLENCE AGAINST WOMEN AND WORKERS' COMPENSATION

A. Congress finds that:

1. Workplace violence against women seriously threatens the safety and productivity of our country's workplaces;

2. This violence includes sexual and other assaults committed by managers, supervisors, co-workers, clients, individuals with whom employees have had intimate relationships and others;

3. The prevalence of violence against women at work is dramatic: homicide is the leading cause of death for women on the job; eight percent of all rapes occur in the workplace; women who are victims of violent workplace crimes are twice as likely as men to know their attackers; husbands, boyfriends and ex-partners commit fifteen percent of workplace homicides against women; and studies have shown that three-quarters of battered women who work were harassed by their abuser at work either by phone or in person;

4. These acts of workplace violence have a devastating impact on women's physical and emotional health and financial security, resulting in increased health care and other associated costs;

5. Women frequently are denied legal redress to recover for losses that have resulted from the workplace violence:

   a. In some instances, women are denied workers' compensation recovery, for example, if they are deemed not to have suffered a physical injury after they are raped;

   b. In addition, in approximately half the states, interpretations of state workers' compensation laws may preclude women from pursuing legal claims, for example, for an employers' negligence that resulted in the violence, and may limit their recovery to the amount permitted by workers' compensation statutes;

6. Other states recognize that workplace violence against women, including rapes and sexual assaults, may fall within various exceptions to state workers' compensation laws; and

7. Affording victims of workplace violence against women access to legal redress outside the workers' compensation system will assist women in recovering from these violent crimes, will encourage employers to take all reasonable preventive measures,

(c) ~~(b)~~ AUTHORITY.—The Attorney General may make grants in accordance with this section to public and private nonprofit entities that, in the determination of the Attorney General, have—

(1) nationally recognized expertise in the area of domestic and sexual violence; and

(2) a record of commitment and quality responses to reduce domestic violence. and sexual

(d) ~~(c)~~ PURPOSE.—Grants under this section shall be used for purposes of developing, testing, presenting, and disseminating model programs to provide education and training to individuals (other than law enforcement officers and prosecutors) who are likely to come into contact with victims of domestic and sexual violence during the course of their employment (including welfare caseworkers, child protection workers, campus security and resident assistants, attorneys, clergy, and court personnel).

(e) ~~(d)~~ 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 program

new (b) DEFINITION OF SEXUAL VIOLENCE.— In this section, the term "sexual violence" has the same meaning as the term "sexual assault" in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2).

(3) DEDUCTION FOR UNUSED CREDITS.—Subsection (c) of section 196 of such Code (relating to deduction for certain unused business credits) is amended by striking "and" at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting ", and", and by adding at the end the following new paragraph:

"(8) the workplace safety program credit determined under section 45D."

(c) CREDIT NOT A DEFENSE IN LEGAL ACTIONS.—The allowance of a credit under section 45D of the Internal Revenue Code of 1986 (as added by this Act) shall not absolve employers of their responsibilities under any other law and shall not be construed as a defense to any legal action (other than legal action by the Secretary of the Treasury under such Code).

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

"Sec. 45D. Workplace safety program credit."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

105TH CONGRESS
1ST SESSION

S. ______

IN THE SENATE OF THE UNITED STATES

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

A BILL

To authorize the Attorney General to provide education and training grants to promote appropriate responses to violence against women.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EDUCATION AND TRAINING GRANTS TO PROMOTE APPROPRIATE RESPONSES TO VIOLENCE AGAINST WOMEN.

(a) DEFINITION OF DOMESTIC VIOLENCE.—In this section, the term "domestic violence" has the same meaning as in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–2).

(new (6))

sion of this title for any amount for which a credit is allowed under this section."

(b) CARRYFORWARD, CARRYBACK, AND DEDUCTION FOR UNUSED CREDITS.—

(1) CARRYFORWARD AND CARRYBACK.—Subsection (b) of section 38 of such Code (relating to general business credit) is amended by striking "plus" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting ", plus", and by adding at the end the following new paragraph:

"(13) the workplace safety program credit determined under section 45D."

(2) TRANSITIONAL RULE FOR CARRYBACKS.—Subsection (d) of section 39 of such Code (relating to transitional rules) is amended by adding at the end the following new paragraph:

"(8) NO CARRYBACK OF SECTION 45D CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the workplace safety program credit determined under section 45D may be carried back to a taxable year beginning on or before the date of the enactment of section 45D."

"(iv) a person similarly situated to a spouse of the victim under the domestic violence or family laws of the jurisdiction in which the employee resides or the employer is located, or

"(v) any other adult person against a victim who is protected from the person's acts under the domestic or family violence laws of the jurisdiction in which the employee resides or the employer is located.

"(3) EMPLOYEE AND EMPLOYER.—

"(A) IN GENERAL.—The term 'employee' includes any employee of the employer or of any related person, and any spouse or dependent of such an employee.

"(B) PARTNERS AND PARTNERSHIPS.—The term 'employee' includes a partner and the term 'employer' includes a partnership.

"(C) RELATED PERSONS.—Persons shall be treated as related to each other if such persons are treated as a single employer under subsection (a) or (b) of section 52.

"(c) COORDINATION WITH OTHER PROVISIONS.—No credit or deduction shall be allowed under any other provicity, county, State, or country for the purpose of maintaining the employee's safety from violent crimes against women.

"(C) NOTIFICATION OF POSSIBLE TAX CONSEQUENCES.—In no event shall any cost for goods or services which may be included in the income of any employee receiving or benefiting from such goods or services be treated as a violence against women safety and education cost unless the employer notifies the employee in writing of the possibility of such inclusion.

"(2) VIOLENT CRIMES AGAINST WOMEN.—

"(A) IN GENERAL.—The term 'violent crimes against women' includes sexual assault and domestic violence.

"(B) DOMESTIC VIOLENCE.—The term 'domestic violence' includes felony or misdemeanor crimes of violence committed by—

"(i) a current or former spouse of the victim,

"(ii) a person with whom the victim shares a child in common,

"(iii) a person who is cohabitating with or has cohabitated with the victim as a spouse, "(x) the publication of a regularly disseminated newsletter or other regularly disseminated educational materials about violent crimes against women,

"(xi) the implementation of leave policies for the purpose of allowing victims of violent crimes against women to pursue legal redress against assailants, including leave from work to attend meetings with attorneys, to give evidentiary statements or depositions, and to attend hearings or trials in court,

"(xii) the implementation of flexible work policies for the purpose of allowing employees who are victims of violent crimes against women, or employees at risk with respect to such crimes, to avoid assailants, or

"(xiii) the implementation of transfer policies for the purpose of allowing employees subjected to violent crimes against women to change office locations within the company in order to avoid assailants, including payment of costs for the transfer and relocation of an employee to another against women, for the use of individual employees,

"(v) the retention of an attorney to provide legal services to employees seeking restraining orders or other legal recourse from violent crimes against women,

"(vi) the establishment of medical services addressing the medical needs of employees who are victims of violent crimes against women,

"(vii) the retention of a financial expert or an accountant to provide financial counseling to employees seeking to escape from violent crimes against women,

"(viii) the establishment of an education program for employees, consisting of seminars or training sessions about violent crimes against women,

"(ix) studies of the cost, impact, or extent of violent crimes against women at the employer's place of business, if such studies are made available to the public and protect the identity of employees included in the study, "(iv) educating employees about the issue of violent crimes against women, or

"(v) implementing human resource or personnel policies initiated to protect employees from violent crimes against women.

"(B) TYPES OF COSTS.—Such term includes costs certified by the Attorney General to the Secretary as being for the purpose of—

"(i) the hiring of new security personnel in order to address violent crimes against women,

"(ii) the creation of buddy systems or escort systems for walking employees to parking lots, parked cars, subway stations, or bus stops, in order to address violent crimes against women,

"(iii) the purchase or installation of new security equipment, including surveillance equipment, lighting fixtures, cardkey access systems, and identification systems, in order to address violent crimes against women,

"(iv) the establishment of a hotline or a counseling service about violent crimes

1986 is amended by adding at the end the following new section:

"SEC. 45D. WORKPLACE SAFETY PROGRAM CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the workplace safety program credit determined under this section for the taxable year is, for any employer, an amount equal to 40 percent of the violence against women safety and education costs paid or incurred by such employer during the taxable year.

"(b) DEFINITIONS.—For purposes of this section—

"(1) VIOLENCE AGAINST WOMEN SAFETY AND EDUCATION COST.—

"(A) IN GENERAL.—The term 'violence against women safety and education cost' means any cost certified by the Attorney General to the Secretary as being for the purpose of—

"(i) ensuring the safety of employees from violent crimes against women,

"(ii) providing counseling to employees with respect to violent crimes against women,

"(iii) providing legal or medical services to employees subjected to, or at risk from, violent crimes against women, workplace violence takes on American women and American businesses;

(9) 49 percent of senior executives recently surveyed said domestic violence has a harmful effect on their company's productivity, 47 percent said spousal abuse negatively impacts attendance, and 44 percent said domestic violence increases health care costs;

(10) 94 percent of corporate security and safety directors at companies nationwide rank domestic violence as a high-risk security problem;

(11) the public and private sectors—including the legal, medical, social services, business, and religious communities—must come together to combat violence against women in the workplace; and

(12) the Congress, too, must play a role in encouraging companies to promulgate workplace education and safety programs to combat violence against women.

SEC. 3. CREDIT FOR COSTS TO EMPLOYERS OF IMPLEMENTING WORKPLACE SAFETY PROGRAMS TO COMBAT VIOLENCE AGAINST WOMEN.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of garding the serious problem of workplace violence against women;

(2) there is an increased recognition that workplace violence against women has severe implications for the health, safety, and economic well-being of women, as well as the efficiency and profitability of American companies;

(3) recent crime statistics clearly show the serious threat of workplace violence against women;

(4) homicide is the leading cause of death for women on the job, and husbands, boyfriends, and ex-partners commit 15 percent of all workplace homicides against women;

(5) an estimated 8 percent of all rapes occur while victims are working or on duty, at an average annual number of 13,000 workplace rapes each year;

(6) husbands and boyfriends commit 13,000 acts of violence against women in the workplace every year;

(7) women are more likely than men to be attacked at work by someone known to them, and 5 percent of women victimized at work are attacked by a husband, boyfriend, or ex-partner;

(8) surveys of business executives and corporate security directors also underscore the heavy toll that

105TH CONGRESS
1ST SESSION

H. R. 1071

To amend the Internal Revenue Code of 1986 to provide a credit for employers for certain costs incurred to combat violence against women.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1997

Mrs. LOWEY introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to provide a credit for employers for certain costs incurred to combat violence against women.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Workplace Violence Prevention Tax Credit Act of 1997".

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) there is an increasing awareness by the business community and the country as a whole re-

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profit entity that meets the requirements of subsection (~~e~~), in order to provide for the establishment and operation of a national clearinghouse and resource center to provide information and assistance to employers and labor organizations in their efforts to develop and implement appropriate responses to assist victims of domestic and sexual violence.

(d) ~~(e)~~ GRANTEES.—Each applicant for a grant under this section shall submit to the Attorney General an application, which shall—

(1) demonstrate that the applicant—

(A) has a nationally recognized expertise in the area of domestic and/or sexual violence and a record of commitment and quality responses to reduce domestic and/or sexual violence; and

(B) will provide matching funds from non-Federal sources in an amount equal to not less than 10 percent of the total amount of the grant under this section; and

(2) include a plan to maximize, to the extent practicable, outreach to employers (including private companies, as well as public entities such as universities, and State and local governments) in developing and implementing appropriate responses to assist employees who are victims of domestic and sexual violence.

(b) DEFINITION OF SEXUAL VIOLENCE.—In this section, the term "sexual violence" has the same meaning as the term "sexual assault" in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 gg-2).

105TH CONGRESS
1ST SESSION

S. ______

IN THE SENATE OF THE UNITED STATES

__________ introduced the following bill; which was read twice and referred to the Committee on __________

A BILL

To authorize the Attorney General to make a National Workplace Clearinghouse Domestic and Sexual Violence Grant.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NATIONAL WORKPLACE CLEARINGHOUSE ON DOMESTIC and Sexual VIOLENCE GRANT.

(a) DEFINITION OF DOMESTIC VIOLENCE.—In this section, the term "domestic violence" has the same meaning as in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–2). new (b)

~~(b)~~ (c) AUTHORITY.—The Attorney General may make a grant in accordance with this section to a private, nonand who has resided in the United States with the citizen parent may file a petition with the Attorney General under this subparagraph ...."

§204(a)(1)(B)(ii) should read:

"An alien who is the spouse *or, within 5 years prior to petitioning, was the spouse* of an alien lawfully admitted for permanent residence, who is a person of good moral character, who is or *would have been* eligible for classification under section 203(a)(2)(A), and who has resided in the United States with the alien legal permanent resident spouse may file a petition with the Attorney General under this subparagraph for classification...."

§204(a)(1)(B)(iii) should read:

"An alien who is the child *or, within 5 years prior to petitioning, was the child* of an alien lawfully admitted for permanent residence, who is a person of good moral character, who is or *would have been* eligible for classification under section 203(a)(2)(A), and who has resided in the United States with the alien legal permanent resident spouse may file a petition with the Attorney General under this subparagraph for classification...."

B. The 90/180 day continuous presence requirement

In suspension of deportation cases under VAWA (in cases instituted before April 1, 1997) battered women need only prove that their absence from the United States was brief, casual and innocent a standard that gave immigration judges some latitude to provide humanitarian relief to battered immigrant women fully considering the exigencies of their cases and the effect of the abuser's violence. IIRIRA however, imposes strict time limitations that will place some VAWA cancellation of removal applicants at increased risk because there is no flexibility in the new standard. Section 240A(d)(2) of the INA mandates that during the three year period required foe VAWA cancellation eligibility, VAWA cancellation of removal applicants must maintain continuous physical presence in the United States by limiting their absences from the country to no more than 90 days, or 180 days in the aggregate.

This new inflexible standard increases the abuser's control over his battered immigrant spouse or child. An abuser who wishes to undermine his abuse victim's cooperation with authorities in his criminal prosecution for domestic violence need only remove the victim from the country for a period of more than 90 days to make her ineligible for VAWA immigration benefits and the likelihood that he will be able to avoid prosecution and perhaps the loss of his own permanent residency status will be secure. Such departure under duress may easily exceed 90/180 days and would prevent a successful VAWA claim. The following amendment to the existing provision allows the Attorney General to waive the 90/180 statutory cap on breaks in continuous presence for humanitarian purposes when the applicant for suspension of deportation has been a victim of battering or extreme cruelty.

§240A(d)(2) should be amended to state:

> "An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsections (b)(1) and (b)(2) if the alien has departed from the United States for any period in excess of 90 days or for periods in the aggregate exceeding 180 days. *In the case of an alien who has been battered or subjected to extreme cruelty the Attorney General may waive the provisions of this section for humanitarian purposes".*

Amend Section 244(b)(1) as in effect for aliens whose deportations proceedings commenced prior to 4/1/97 to state:

> "The requirement of continuous physical presence in the United States specified in paragraphs (1)(2) and (3) of subsection (a)...

C. Provisions for Children

For many battered women who are divorced from their abusive spouses, but have undocumented children who may or may not themselves be victims of abuse, the only immigration relief for which they may be eligible is suspension of deportation or cancellation of removal. Current law does not, however, permit battered immigrant women with undocumented children to include their children as applicants on their suspension of deportation or cancellation of removal petitions. Instead, these women must wait until they have received lawful permanent residency through suspension of deportation/cancellation of removal before they complete separate petitions for legal permanent residency for their children. This presents several problems.

First there are several areas of the country where VAWA suspension applicants cannot get INS to initiate a VAWA case against them. These severe delays can and do adversely affect their children who may turn 21 before their mother can petition for them or while a petition is pending that their mother can only file once she has received permanent residency through VAWA causing significant additional delays because of the long backlog of persons waiting for family related visas. VAWA self-petitioning allows battered immigrant women to include their minor, unmarried children in their own petitions so that the amount of delay for children and the risk of aging out of family 2A eligibility is reduced. The same is not true for VAWA suspension. Since suspension of deportation is the only VAWA option for women whose abusers divorced them before they could file for relief, their children are by the current provisions needlessly disadvantaged. Children who will benefit from this provision generally could have obtained their lawful permanent residency through the abusive citizen or resident spouse had he chosen to petition for them. The proposed change would also streamline the process for immigration judges granting relief, to family members victimized by citizens and lawful permanent residents.

Amend Section 240A(b)(2) by adding at the end the following:

> *(F) "An alien applying for relief under Section 244(a)(3) or Section 240A(b)(2) may include alien children, sons or daughters in their petitions."*

D. Issuance of Notices to Appear Will Not Toll 3 Year Period of Continuous Presence or the Aliens's Unlawful Presence in the United States.

The Violence Against Women Act sought to ensure that all battered immigrant women and children who were married to or the children of U.S. citizens and lawful permanent residents who had been battered or subjected to extreme cruelty could file for their lawful permanent residency without the cooperation of their abusive spouse. IIRIRA included provisions intended to preserve VAWA's protections for battered immigrants. However, the Board of Immigration Appeals recently issued an opinion in In the matter of NJB that could significantly harm battered immigrant women who otherwise qualified for VAWA to lose their ability to apply. It could harm both VAWA eligible battered immigrant women and children who had orders to show cause issued before April 1, 1997 and will also harm VAWA eligible battered immigrant women and children who had notices to appear issued against them on or after April 1, 1997. The law should be amended to preserve the original intent of VAWA to provide relief from deportation to battered immigrants who had been continuously present in the United States for more than three years and who can show that they were subjected to battering or extreme cruelty in the United States by a U.S. citizen or lawful permanent resident spouse or parent. To achieve this the time for accruing the three years continuous presence should not stop artificially as of the date of the issuance of an order to show cause or a notice to appear by INS.

What NJB means for battered immigrant women and children who would otherwise qualify for VAWA suspension of deportation or cancellation of removal is that abuse victims will not be able to count towards the three years they must be in the United States to fie for suspension of deportation or cancellation of removal time accrued after they received an order to show cause or a notice to appear in deportation or removal proceedings. Allowing the issuance of an order to show cause to cut a battered immigrant women's ability to accrue the three years she needs for VAWA suspension of deportation leaves many women who were to benefit from VAWA without relief.

For many battered immigrant women whose spouses divorced them before they could file their VAWA self-petitions, NJB and the permanent IIRIRA amendments to the INA cut them off from all relief and condemns them to a life on ongoing abuse. They cannot benefit from VAWA and their citizen and resident husbands will be difficult to prosecute for the crimes they commit. These women may have had orders to show cause issued against them that their spouses never informed them of because the abusive spouse controls what mail the abused wife receives. She may have known about a deportation hearing and was prevented from going by her citizen or lawful permanent resident abusive spouse. In other cases the spouse may have told her that he took care of everything with INS and she has nothing to worry about. Any aspect of immigration law, its interpretation or its implementation that undermines that ability of an immigrant battered woman or child who would otherwise be able to prove eligibility for VAWA-- because they can prove that they were abused by a citizen or resident spouse, are of good moral character and would suffer extreme hardship if deported-- is an unconscionable retraction of the protection VAWA was intended to offer.

At § 240A(b)(2) add the following new section:

> "(B)*(i)* the alien has been physically present in the United States for a continuous period of not less than three years immediately preceding the date of such application*;*
> *(ii) for purposes of this subsection the issuance of a charging document removal proceedings shall not toll the 3 year period of continuous physical presence in the United States."*

Amend Section 244(1)(b) as in effect for aliens whose deportations proceedings commenced prior to 4/1/97 as follows:

> "(B)*(i)* the alien has been physically present in the United States for a continuous period of not less than three years immediately preceding the date of such application*;*
> *(ii) for purposes of this subsection the issuance of a charging document in deportation proceedings shall not toll the 3 year period of continuous physical presence in the United States."*

E. Motions to Reopen

IIRIRA enacted harsh new time limits for the filing of motions to reopen in removal proceedings. Many victims of domestic violence who are now eligible for VAWA are barred from applying for VAWA cancellation of removal because their spouses turned them into INS years ago and they have had final orders of deportation entered against them, sometimes without their knowledge. In addition, if the deportation order was entered in abstentia, these otherwise VAWA eligible applicants would have to leave the United States in order to obtain their permanent residency. Once they have left the country to obtain their immigrant visas they become inadmissible for 10 years under Section 212(a)(9)(A)(ii)(II) because they have departed the United States while an order of removal was outstanding. These battered immigrants could potentially obtain for the Attorney General permission to reapply, but processing that permission is likely to require weeks or months during which the battered immigrant who has already proved that her deportation would result in extreme hardship is stranded outside of the United States and potentially unable to protect her children from ongoing abuse. Given the various waivers for battered immigrants contained in

IIRIRA this result was clearly not intended by Congress. Like asylum seekers who in several important instances are permitted file late motions to reopen, VAWA-eligible applicants should not be barred from relief merely because they have failed to file motions to reopen in a timely fashion, especially since this failure often is the result of the violence they have suffered. An exception for VAWA applicants should be added that parallels the exception for asylum seekers.

Amend §240(c)(6)(ii) to add the following:

> "sections 204(a)(1)(A)(iii) or (iv), sections 204(a)(1)(B)(ii) or (iii), section 240A(b)(2), or to apply for relief under" before "sections 208 or 241(b)(3)...."

6. Work Authorization

All VAWA applicants need to be able to survive economically if they are to be able to leave their abusers. Obtaining legal permission from INS to work is a key prerequisite to a VAWA applicant's ability to leave the abuser. While both the INS VAWA regulations and the directive to the INS field offices that were issued in May of 1997 authorize District Directors and INS service centers to grant deferred action status and work authorization to VAWA applicants married to lawful permanent resident abusers, INS officials across the country have refused to act on deferred action requests for VAWA applicants. Deferred action is a prerequisite to receiving work authorization.

Congress should express its will in a sense of Congress resolution that clarifies that 8 C.F.R. Section 274a.12(a) must be amended to add at the end the following subsection:

> *(13) an alien who has properly filed an application for relief under 204(a)(1)(A)(iii)or(iv) or 204(a)(1)(B)(ii) or (iii).*

7. Preserving Battered Immigrant Women's Ability to Naturalize

Under the INA as it is currently drafted, battered immigrant women and children who are the spouses and children of United States citizens are entitled, as are all immigrant spouses and children of U.S. Citizens, to file for naturalization after 3 years of lawful permanent residency. However, battered immigrant women whose abusive citizen spouses divorce them before they naturalize are currently penalized as they must wait 5 years before they can naturalize. There is no reason that battered immigrant spouses and children of U.S. citizens should not have the same advantages that all spouses and children of U.S. citizens are granted. Even widows or widowers of U.S. citizen spouses who die retain their ability to naturalize after three years. Battered immigrant women married to U.S. citizen abusers should retain their eligibility to naturalize after 3 years even if they divorce their abusers. This change would benefit battered immigrants who apply under VAWA and who are sponsored by their spouses or parents.

Section 8 U.S.C. 1430, § 319(a) should be amended as follows:

> "Any person whose spouse is a citizen of the United States, *or any person who obtained status as a Lawful Permanent Resident because they were married to, or are the child of a U.S. citizen spouse who battered them or subjected them to extreme cruelty,* may be naturalized...."

8. Amendments to the Privacy Act

Battered immigrant women and children who may be eligible for relief under VAWA must be able to confirm before they can file for VAWA relief that their spouse is a U.S. citizen or lawful permanent resident. When the abusive spouse is a naturalized citizen or lawful permanent resident, the INS keeps files containing the information an abuse victim needs to obtain in order to find out the immigration status of the abuser. Some abusers who have told their spouses that they are lawful permanent residents and have lied about this status in order to maintain power and control over their spouses and children, so that they remain able to continue to perpetrate the abuse. Battered immigrant women and children who may be eligible for VAWA should be able to verify their abuser's immigration status before filing their VAWA petition .

In addition, the INS prefers that VAWA victims submit primary evidence which often consists of official or public records wherever possible to support their VAWA case. Often these records are already in INS files as part of the abuser's immigration file and may be difficult, impossible or inordinately expensive for the abuse victim to obtain from another source. These documents might include the abuser's birth certificate, a divorce decree from a prior marriage, or a green card. Battered women need access to these documents. It is also important however that information contained in the naturalization or permanent resident's file of a citizen or lawful permanent resident who is a victim of abuse be protected so that their abusers cannot use INS records to track their abuse victims or to continue to perpetrate abuse against them. The following amendment to the Privacy Act grants access to INS files on the immigration status of abusive U.S. citizens or legal permanent residents for their spouses and children who need this information to protect themselves without endangering others who need such information protected.

Amend the Privacy Act, 5 U.S.C. §522a(b) by adding the following:

> *"(13) to the spouse or child of a naturalized U.S. citizen or lawful permanent resident who requests information from the INS regarding the immigration status of their spouse or parent, or who needs to obtain documentation in the form of official or public records or*

copies thereof contained in the immigration file of a spouse or parent for the purpose of animmigration case or other domestic violence-related court or administrative court hearing; unless the records are those of a person who has presented to the INS evidence in the form of a judicial finding, administrative determination, or a police report demonstrating that the naturalized citizen or lawful permanent resident has been battered or subjected to extreme cruelty by their spouse or parent."

9. Legal Services

Battered immigrant women and children eligible under state law to obtain protection orders need to be able to access assistance from Legal Services attorneys who can represent them in protection order cases and other matters, including immigration cases and facilitate their freedom from domestic violence. Legal Services programs should be able to use non-federal funds to represent battered women and children without regard to their immigration status.

Public Law 104 should be amended as follows:

> "Section 504 of Public Law 104-134 (110 Stat. 1321-132 et seq.) shall not be construed to prohibit a recipient (as that term is used in that section) from using funds derived from a source other than the Legal Services Corporation to provide related legal assistance to any person with whom an alien (as that term is used in subsection (a)(11) of that section) has a relationship covered by the domestic violence laws of the State in which the alien resides or in which an incidence of violence occurred."

10. Access to SSI and Food Stamps for Battered Immigrant Women and Children

Battered women fall into a precarious position with respect to public benefits in light of their non-citizen status. Many benefits that are available to victims of abuse who are U.S. citizens are denied to immigrant women. Due to the unique needs of battered immigrant women, IIRIRA granted VAWA eligible battered immigrant women access to Medicaid and TANF.

But for some battered immigrant women, particularly those who have become disabled because of domestic violence, access to TANF and Medicaid is not enough. Domestic violence interferes with their ability to work and they need access to SSI. For other battered women access to TANF may not be sufficient, without access to Food Stamps, to be able to create a safe home apart from her abuser. Some battered immigrant women, particularly those eligible only for suspension of deportation who live in a region of the country where the local INS office has refused to file their cases, cannot obtain work authorization and must be able to get TANF and Food Stamps to escape violence.

By extending the access to SSI and Food Stamps to battered immigrant women, a relatively modest sub-group of people most desperately in need of assistance, hope and peace can be restored to their lives.

Amend § 402 Limited Eligibility of the Qualified Aliens for Certain Federal Programs (8 USC 1612) by adding at the end of 402(D) the following new subsection:

> *"(E) CERTAIN BATTERED ALIENS-- Paragraph 1 shall not apply to an alien who- has been battered or subjected to extreme cruelty in the United States by a spouse, parent, son or daughter or by a member of the spouse or parent's family residing in the same household as the alien, and the spouse or parent consented to, or acquiesced in, such battery or cruelty but only if (in the opinion of the Attorney General, which opinion is not subjected to review by any court) there is a substantial connection between such battery or cruelty and the need for benefits provided."*

11. Training

A. Training For INS and Immigration Judges

Amend § 40421 of the Violence Against Women Act to make grant money available for training of federal judges, including Executive Officer of Immigration Review judges, officers who work for the Immigration and Naturalization Service and the INS asylum officicers and others at the Department of Justice who work on welfare and immigration issues affecting batterered immigrant women and children on the nature of and types of laws related to domestic violence. These judges need to be aware of all information, studies, and data in order to form an accurate and informed opinions.

The new changes to the Immigration and Nationality Act pose new risks to VAWA applicants. And creates a need for expanded funding to states to be used for training justice system personnel of VAWA's immigration provisions and the immigration consequences of pleas and convictions. Current funding is limited to law enforcement and prosecution training, but should be expanded to ensure that all officials are properly informed of the nature of existing laws affecting battered immigrant spouses and children.

VAWA also should be amended to include mandatory training programs for military officials on VAWA provisions. Such training needs to be implemented in order to ensure that all members of the U.S. military are fully aware of the VAWA rules and regulations protecting abuse victims and prosecuting batterers.

Add the following new section at the end of VAWA § 40121:

"Section 2007: Each branch of the United States military is required to train its supervisory military officers on domestic violence, the dynamics of domestic violence in military families, the types of protection available for battered immigrant women in the Violence Against Women Act, and the problems of domestic violence in families in which a U.S. citizen or lawful permanent resident member of the military is married to a non-U.S. citizen."

Amend § 40121 of VAWA 42 U.S.C. 3711-- Sec 2001 (a):

"The purpose of this part is to assist States, Indian tribal governments, *the Immigration and Naturalization Service and the Executive Office of Immigration Review,* and units of local government...."

Amend § 40121 of VAWA 42 U.S.C. 3711-- Sec 2001 (b)(1):

"...(T)raining law enforcement officers, *immigration and asylum officers, immigration judges,* and prosecutors...."

Amend § 40121 of VAWA 42 U.S.C. 3711-- Sec 2001 (b) by adding the following:

"(8) training justice system personnel on the immigration provisions of the Violence Against Women Act and their ramifications for victims of domestic violence appearing in civil and criminal court proceedings and potential immigration consequences for the perpetrators of domestic violence."

Restrictions of VAWA Prosecution and Law Enforcement Grants

Battered immigrant women who are eligible for relief under the VAWA must be able to prove the immigration status of their abuser in order to obtain VAWA relief. It is often difficult for abuse victims to obtain information about their abuser's immigration status. VAWA should encourage prosecutors and law enforcement officers to cooperate with immigrant domestic violence victims by providing battered immigrant women and children with information about the immigration status of their abusive spouse or parent.

Amend § 40121 of VAWA Section 2101(c) to add at the end:

"...(C)ertify that their laws, policies and practices do not discourage or prohibit prosecutors and law enforcement officers from denying access to information about the immigration status of a domestic violence perpetrator to the victim, the child, or their advocate."

B. The State Department:

Battered immigrant women applying for relief under the Violence Against Women Act's immigration provisions must, as part of their VAWA case, present evidence to the Immigration and Naturalization Service about the conditions in their home country with respect to domestic violence. Funding should be provided to the State Department to work with non-governmental organizations and women's groups to obtain information on domestic violence programs, services, and laws to include in their country reports on human rights and gender issues. Such information can be used by VAWA applicants in helping to establish extreme hardship. Additionally, State Department consular officials are increasingly being called to address issues that arise in domestic violence cases including international child abduction cases under the Hague Convention. Officers untrained in domestic violence have on several occasions taken action that placed U.S. citizen women and children at risk of being denied their rightful legal recourse. Funding should be provided to train consular officers on domestic violence. Such training will also be needed if consular officers are called upon to handle VAWA cases filed by spouses of members of the military living abroad and to provide information about domestic violence laws to persons immigrating as spouses of U.S. citizens and lawful permanent residents.

Amend section: (I was not sure what to amend for this one. If some one could point us in the right direction I would be happy to draft it.).

(E) the possibility of early intervention to prevent people from becoming sexual predators; and

(2) an agenda for future research in this area.

○

8th Congressional District

San Francisco, California

Fax Transmission from The Washington Office of Congresswoman Nancy Pelosi

① John Lane
(213) 893-8339

②.

Phone #: 202/225-4965

Fax #: 202/225-8259

ATTENTION: Ametha

FROM: Terri McCullough

DATE: 23 July

# of Pages: 3
(Including cover sheet)

Message/Instructions:

Per your request

Action Required:

I

105TH CONGRESS
1ST SESSION

H. R. 1076

To amend the Legal Services Corporation Act to prescribe an income rule for determining if a client who is a victim of domestic violence is eligible for assistance.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1997

Mr. PELOSI (for herself, Mr. BALDACCI, Mr. BARRETT of Wisconsin, Mr. BEREUTER, Mr. BOUCHER, Ms. BROWN of Florida, Mr. CONYERS, Mr. DEFAZIO, Ms. DEGETTE, Ms. ESHOO, Mr. EVANS, Mr. FARR of California, Mr. FOGLIETTA, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GEPHARDT, Mr. GREEN, Mr. HASTINGS of Florida, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Mrs. JOHNSON of Connecticut, Mrs. KENNELLY of Connecticut, Mr. LAFALCE, Mr. LEWIS of Georgia, Ms. LOFGREN, Mr. MCDERMOTT, Mrs. MALONEY of New York, Mr. MARKEY, Mr. MARTINEZ, Mrs. MEEK of Florida, Ms. MOLINARI, Mrs. MORELLA, Ms. NORTON. Mr. OLVER, Mr. OWENS, Mr. PAYNE, Mr. ROMERO-BARCELÓ, Mr. ROTHMAN, Mr. SABO, Mr. SANDERS, Ms. SLAUGHTER, Mr. STARK, Mr. TORRES, Ms. WATERS, Ms. WOOLSEY, Mr. YATES, Ms. ROYBAL-ALLARD, Mr. FALEOMAVAEGA, and Mrs. LOWEY) introduced the following bill; which was referred to the Committee on Judiciary.

A BILL

To amend the Legal Services Corporation Act to prescribe an income rule for determining if a client who is a victim of domestic violence is eligible for assistance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Domestic Violence Legal Services Eligibility Act".

SEC. 2. INCOME RULE FOR VICTIMS OF DOMESTIC VIOLENCE.

Section 1007(a) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)) is amended by inserting after and below paragraph (10) the following: "In establishing income levels under paragraph (2)(A) to determine if a client is eligible for assistance, the Corporation, in the case of a client who is the victim of domestic violence, shall prescribe that only the income of such a client will be considered in making such determination. For purposes of the preceding sentence, the term 'domestic violence' has the meaning given such term by section 2003(1) of the Omnibus Crime Control and Safe Streets Act of 1988 (42 U.S.C. 3796gg–2(1)).".

○

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FAX FROM THE WASHINGTON OFFICE OF CONGRESSMAN BARNEY FRANK

TODAY'S DATE: 7/23

TO: Anitha Vaith (?)

FROM: Marcia Kuntz

FAX NUMBER: 307-3911

NUMBER OF PAGES [INCLUDING THIS ONE]: ________

If this fax does not transmit properly, please call 202-225-5931.

COMMENTS:

hope this is what you were expecting....

(Original signature of Member)

105TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on ____________________

A BILL

To provide rental assistance under section 8 of the United States Housing Act of 1937 for victims of domestic violence to enable such victims to relocate.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Domestic Violence Victims Housing Act".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

The budget authority under section 5(c) of the United States Housing Act of 1937 for assistance under subsections (b) and (o) of section 8 of such Act is authorized to be increased by $50,000,000 on or after October 1, 1997 and by such sums as may be necessary on or after October 1, 1998.

SEC. 3. USE OF AMOUNTS FOR HOUSING ASSISTANCE FOR VICTIMS OF DOMESTIC VIOLENCE.

(a) IN GENERAL.—Amounts available pursuant to section 2 shall be made available by the Secretary of Housing and Urban Development only to public housing agencies and qualified nonprofit organizations only for use for providing tenant-based rental assistance on behalf of families victimized by domestic violence (as such term is defined in section 4 of this Act) who have left or are leaving a residence as a result of the domestic violence.

(b) DETERMINATION.—For purposes of subsection (a), a family victimized by domestic violence shall be considered to have left or to be leaving a residence as a result of domestic violence if the public housing agency or qualified nonprofit organization providing rental assistance under this Act determines that the member of the family who was subject to the domestic violence reasonably believes that relocation from such residence will assist in avoiding future domestic violence against such member or another member of the family.

(c) ALLOCATION.—Amounts made available pursuant to section 2 shall be allocated by the Secretary on the basis of a national competition to the public housing agencies and qualified nonprofit organizations that submit applications to the Secretary that best demonstrate a need for such assistance and the ability to undertake and carry out a program under this Act, as the Secretary shall determine.

SEC. 4. DEFINITIONS RELATING TO DOMESTIC VIOLENCE.

For purposes of this Act, the following definitions shall apply:

(1) ABUSE.—The term "abuse" includes any act that constitutes or causes, any attempt to commit, or any threat to commit—

(A) any bodily injury or physical illness, including placing, by physical menace, another in fear of imminent serious bodily injury;

(B) any rape, sexual assault, or involuntary sexual activity, or any sexual activity with a dependent child;

(C) the infliction of false imprisonment or other nonconsensual restraints on liberty of movement;

(D) deprivation of medical care, housing, food, or other necessities of life; or

(E) mental or psychological abuse, including repeated or severe humiliation, intimidation, criticism, acts designed to induce terror, or verbal abuse.

(2) DOMESTIC VIOLENCE.—The term "domestic violence" means abuse that is committed against an individual by—

(A) a spouse or former spouse of the individual;

(B) an individual who is the biological parent or stepparent of a child of the individual subject to the abuse, who adopted such child, or who is a legal guardian to such a child;

(C) an individual with whom the individual subject to the abuse is or was cohabiting;

(D) a current or former romantic, intimate, or sexual partner of the individual; or

(E) an individual from whom the individual subject to the abuse would be eligible for protection under the domestic violence, protection order, or family laws of the applicable jurisdiction.

(3) FAMILY VICTIMIZED BY DOMESTIC VIOLENCE.—

(A) IN GENERAL.—The term "family victimized by domestic violence" means a family or household that includes an individual who has been determined under subparagraph (B) to have been subject to domestic violence, but does not include any individual described in paragraph (3) who committed the domestic violence. The term includes any such family or household in which only a minor or minors are the individual or individuals who was or were subject to domestic violence only if such family or household also includes a parent, stepparent, legal guardian, or other responsible caretaker for the child.

(B) DETERMINATION THAT FAMILY OR INDIVIDUAL WAS SUBJECT TO DOMESTIC VIOLENCE.—For purposes of subparagraph (A), a determination under this subparagraph is a determination that domestic violence has been committed, which is made by any agency or official of a State or unit of general local government (including a public housing agency) based upon—

(i) information provided by any medical, legal, counseling, or other clinic, shelter, or other program or entity licensed, recognized, or authorized by the State or unit of general local government to provide services to victims of domestic violence;

(ii) information provided by any agency of the State or unit of general local government that provides or administrates the provision of social, medical, legal, or health services;

(iii) information provided by any clergy;

(iv) information provided by any hospital, clinic, medical facility, or doctor licensed or authorized by the State or unit of general local government to provide medical services;

(v) a petition or complaint filed in a court or law or documents or records of action of any court or law enforcement agency, including any record of any protection order, injunction, or temporary or final order issued by civil or criminal courts or any police report; or

(vi) any other reliable evidence that domestic violence has occurred.

SEC. 5. OTHER DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) PUBLIC HOUSING AGENCY.—The term "public housing agency" has the meaning given the term in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

(2) QUALIFIED NONPROFIT ORGANIZATION.—The term "qualified nonprofit organization" means a private organization that—

(A) is organized, or has as one of its primary purposes, to provide shelter or transitional housing for victims of domestic violence;

(B) is organized under State or local laws;

(C) has no part of its net earnings inuring to the benefit of any member, shareholder, founder, contributor, or individual; and

(D) is approved by the Secretary as to financial responsibility.

(3) SECRETARY.—The term "Secretary" means the Secretary of Housing and Urban Development.

(4) STATE.—The term "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam,

the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(5) UNIT OF GENERAL LOCAL GOVERNMENT.—The term "unit of general local government" has the meaning given the term in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)).

Child Care
Sd. U.

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)~~

Separate

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.

MEMORANDUM

TO: TOM FREEDMAN, MARY L. SMITH

FROM: DREW HANSEN

RE: CRIME VICTIMS' EMPLOYMENT NON-DISCRIMINATION ACT

DATE: AUGUST 21, 1997

CURRENT LAW

Several states have provisions that forbid employers from taking adverse action against employees who have been victims of crime and must participate in the criminal justice process during working hours. States having such a law include: Arkansas, Colorado, Connecticut, Delaware, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Missouri, Montana, and Vermont. The exact language of the statute and the penalties prescribed vary from state to state (copies of the Connecticut, Iowa, and Indiana statutes are attached.) In addition, the proposed 1992 Uniform Victims of Crime Act has a provision similar to most existing state statutes on the issue (attached).

No state or federal law explicitly protects crime victims from other adverse action which may result from their experiences and status as crime victims.

PROPOSED LEGISLATION

The proposed bill (attached) creates protections from employment discrimination for victims of crime. The general rule is that "An employer shall not take or threaten to take any adverse 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."

- "Adverse action" includes actions such as demotion or suspension, dismissal, or refusal to hire, as well as a more general "failure to make a reasonable accommodation of the victim's health and safety needs arising from the offense." This "reasonable accommodation" is defined as potentially including job restructuring, allowing the affected employee to take part-time or modified work, and installing locks or other protections at the work place.

- The bill specifically excludes adverse job action for participation in criminal justice or civil proceedings.

- The provisions of the bill are to be enforced by liability for damages equal to the amount of wages, etc. lost, as well as punitive damages and equitable relief. The DOJ can bring a civil action to recover the damages.

- The protections of the bill go into effect even if the crime involved does not result in criminal prosecution.
- Defenses to liability are provided in case the employer's compliance would result in threats to other employees, impairment of essential job functions, or undue hardship to the employer's business.

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 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

(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 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

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, 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 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,

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.

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GENERAL STATUTES OF CONNECTICUT

THIS DOCUMENT IS CURRENT THROUGH THE 1997 EDITION (1995-1996 SESSIONS)

TITLE 54. CRIMINAL PROCEDURE
CHAPTER 961. TRIAL AND PROCEEDINGS AFTER CONVICTION
PART I. DISCOVERY, TRIAL AND WITNESSES

Conn. Gen. Stat. § 54-85b (1997)

Sec. 54-85b. Employer not to discharge employee appearing as witness. Penalty. Action for damages and reinstatement.

(a) An employer shall not deprive an employee of his employment, penalize or threaten or otherwise coerce him with respect thereto, because the employee obeys a legal subpoena to appear before any court of this state as a witness in any criminal proceeding. Any employer who violates this section shall be guilty of criminal contempt and shall be fined not more than five hundred dollars or imprisoned not more than thirty days or both.

(b) If an employer discharges, penalizes or threatens or otherwise coerces an employee in violation of subsection (a) of this section, the employee, within ninety days of such action, may bring a civil action for damages and for an order requiring his reinstatement or otherwise rescinding such action. If the employee prevails, he shall be allowed a reasonable attorney's fee to be fixed by the court.

HISTORY: (P.A. 81-186.)

TITLE NOTES

____________ *Statutory rules of court practice and procedure do not violate constitutional separation of powers (dissent). *161 C. 501*. Cited. 30 CA 381, 392.

CHAPTER NOTES

____________ *In a criminal matter, unless the state makes out a prima facie case of guilt, no unfavorable inference may be drawn from the failure of the accused to testify. *147 C. 502*. The fact that one or more persons jointly charged with the commission of a crime pleaded guilty is not admissible, on the trial of another person so charged, to establish that the crime was committed. A plea of guilty is, in effect, a confession of guilt which, having been made by one of those charged with the crime, can be no more than hearsay as to another who is so charged. The state must prove the whole case against any accused. Sequestration of witnesses is in discretion of trial court. Request must be seasonably made, must be specific and supported by sound reasons, and it must appear probable that, if witnesses were to hear one another's testimony, they would attempt falsely to give corroborating testimony. If these conditions are met, a denial of the motion could constitute an abuse of discretion. It is within the discretion of the court to grant or deny a defendant the right to inspect statements of the state's witnesses in the possession of the state's attorney. *150 C. 195.* The corpus delicti, that is, that the crime charged has been committed by someone, cannot be established by the extrajudicial confession of the defendant unsupported by corroborative evidence. 22 CS 385; 23 CS 420. §In a criminal case the accused cannot compel the prosecution to produce documents which he himself has made. Furthermore, facts sought to be disclosed must be shown to be exclusively within the knowledge of the state. 23 CS 41. Proof of guilt must exclude not every possible, but every reasonable, supposition of the innocence of the accused. 23 CS 299. In criminal case the state may rest its case upon evidence sufficient to make out prima facie case. A prima facie case is made out when the evidence indicates to a reasonable person such a strong probability of guilt that a denial or explanation by the defendant is reasonably called for. When the state has made out a prima facie case of guilt, an adverse inference may be drawn from the failure of defendant to testify in his own behalf. 23 CS 412. Information disclosed to a prosecuting attorney to enable him to perform the duties of his office is privileged on grounds of public policy, and the adverse party has no right to demand its production. 23 CS 459. If accused has reason to believe witness under examination had made prior statement which was contradictory to his testimony, accused may request statement to be produced for examination by court. Further use of such statement rests in discretion of court. 24 CS 377.

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CODE OF IOWA 1996

*** THIS DOCUMENT IS CURRENT THROUGH THE 1997 EDITION (1996 LEGISLATION) ***

TITLE XVI. CRIMINAL LAW AND PROCEDURE
SUBTITLE 3. CRIMINAL CORRECTIONS
CHAPTER 910A. VICTIM AND WITNESS PROTECTION

Iowa Code § 910A.12 (1996)

910A.12 Employment practices.

An employer shall not discharge an employee from or take or fail to take action regarding an employee's promotion or proposed promotion or take action to reduce an employee's wages or benefits, for actual time worked, due to the service of an employee as a witness in a criminal proceeding. An employer who violates this section commits a simple misdemeanor, and an employee shall be entitled to recover damages. Damages recoverable under this section include but are not limited to, actual damages, court costs, and reasonable attorney fees. The employee may also petition the court for imposition of a cease and desist order against the person's employer and for reinstatement to the person's previous position of employment.

HISTORY: 86 Acts, ch 1178, § 13

NOTES:
Chapter Notes:

Purpose of 1986 amendments; 86 Acts, ch 1178, § 1

Chapter Cross Reference:

Referred to in § 236.14, 562A.27A, 562B.25A

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BURNS INDIANA STATUTES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1997 SUPPLEMENT
*** (1997 SPECIAL SESSION) ***

TITLE 35. CRIMINAL LAW AND PROCEDURE
ARTICLE 44. OFFENSES AGAINST PUBLIC ADMINISTRATION
CHAPTER 3. INTERFERENCE WITH GOVERNMENTAL OPERATIONS

Burns Ind. Code Ann. § 35-44-3-11.1 (1997)

§ 35-44-3-11.1. Interference with witness service

A person who knowingly or intentionally:

(1) Dismisses an employee;

(2) Deprives an employee of employment benefits; or

(3) Threatens such a dismissal or deprivation;

because the employee has received or responded to a subpoena in a criminal proceeding commits interference with witness service, a Class B misdemeanor.

HISTORY: P.L.131-1985, § 18.

purposes could include the need for the prosecution to retain the property for trial, retrial, or during an appellate process that could result in a retrial.

Library References

American Digest System

Punishment and prevention of crime; civil liabilities to persons injured; reparation, see Criminal Law ⚬1220.

Encyclopedias

Victim and witness protection statutes, see C.J.S. Criminal Law § 1783 et seq.

WESTLAW Electronic Research

Criminal law cases: 110k[add key number].

See, also, WESTLAW Electronic Research Guide following the Explanation.

§ 207. Limitations on Employer.

An employer may not discharge or discipline a victim or a representative of the victim for:

(1) participation at the [prosecutor's] request in preparation for a criminal justice proceeding; or

(2) attendance at a criminal justice proceeding if the attendance is reasonably necessary to protect the interests of the victim.

Comment

This is similar to a number of current provisions. *See, e.g.*, Conn.Gen.Stat.Ann. § 54–85b(a) (West 1985) ("An employer shall not deprive an employee of his employment, penalize or threaten or otherwise coerce him with respect thereto, because the employee obeys a legal subpoena to appear before any court of this state as a witness in any criminal proceeding"); Ind.Code Ann. § 35–44–3–11.1 (West 1986) (misdemeanor to dismiss employee, deprive employee of employment benefits, or threaten to do so, because employee has received or responded to subpoena in criminal proceeding); Iowa Code Ann. § 910A.12 (West Supp.1992) ("An employer shall not discharge an employee from or take or fail to take action regarding an employee's promotion or proposed promotion or take action to reduce an employee's wages or benefits, for actual time worked, due to the service of an employee as a witness in a criminal proceeding").

"Discipline" does not mean merely failing to pay an employee for time not worked. Docking pay for *more* than the time missed is discipline.

ABA Victim/Witness Guideline 5 provides:

> Victims and witnesses who request it should be provided with employer and creditor intercession to seek employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process, and to seek consideration from creditors if the victim is unable, temporarily, to continue payments.

See Ill.Ann.Stat. ch. 38, para. 1404(14) (Smith–Hurd Supp.1992) (victim entitled to "appropriate employer intercession services by the State's Attorney or victim advocate personnel to ensure that employers of victims will cooperate with the criminal justice system in order to minimize an employee's loss of pay and other benefits resulting from court appearances").

Many victim/witness programs provide "on-call" programs whereby the victims and witnesses are called in when needed for trial. This enables the witness to remain at work until actually needed, there-by eliminating wasted time in the waiting room.

Library References

American Digest System

Punishment and prevention of crime; civil liabilities to persons injured; reparation, see Criminal Law ⇐1220.

Encyclopedias

Victim and witness protection statutes, see C.J.S. Criminal Law § 1783 et seq.

WESTLAW Electronic Research

Criminal law cases: 110k[add key number].
See, also, WESTLAW Electronic Research Guide following the Explanation.

§ 208. Information from [Law Enforcement Agency].

(a) After initial contact between a victim and a [law enforcement agency] responsible for investigating a crime, the [agency] shall promptly give in writing to the victim:

(1) an explanation of the victim's rights under this [Act];

(2) information concerning the availability of:

(i) assistance to victims, including medical, housing, counseling, and emergency services;

(ii) compensation for victims under this [Act] and the name, street address, and telephone number of the [agency] to contact;

(iii) protection of the victim, including protective court orders; and

(iv) access by the victim and a defendant to public records related to the case.

(b) As soon as practicable, the [law enforcement agency] shall give to the victim, as relevant, the following:

(1) information as to the suspect's identity unless inconsistent with law enforcement purposes;

(2) information as to whether the suspect has been taken into custody, has escaped, or has been released, and any conditions imposed on the release;

(3) the file number of the case and the name, street address, and telephone number of a [law enforcement officer] assigned to investigate the case; and

(4) the [prosecutor's] name, office address, and telephone number.

Comment

Victims should be informed of the general rule that public records related to criminal proceedings are open to public inspection, of any relevant exceptions to that general rule, and of any relevant procedures whereby a victim may request the court to limit public access. As members of the public with a particular interest in the case, victims of crime should be allowed access to all records and transcripts of the criminal proceedings.

Subsection (a)(2)(iv) deals with *public* records and does not envision disclosure

UNIFORM LAWS ANNOTATED

Volume 11A

Criminal Law and Procedure

With
Annotations From State and Federal Courts

WEST PUBLISHING CO.
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UNIFORM VICTIMS OF CRIME ACT

1992 ACT

See, also, the Uniform Crime Victims Reparations Act (1973 Act), supra.

Historical Notes

The Uniform Victims of Crime Act was approved by the National Conference of Commissioners on Uniform State Laws in 1992. It supersedes the Uniform Crime Victims Reparations Act approved in 1973.

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