the costs of suit and reasonable fees for the aggrieved individual's attorneys and expert witnesses. With respect to compensatory damages, the aggrieved individual may elect, at any time prior to the rendering of final judgment, to recover in lieu of actual damages, an award of statutory damages in the amount of $5,000 for each violation.

SEC. 9. EFFECTIVE DATE.

This Act shall apply with respect to any action taken on or after the date of the enactment of this Act, except that section 4 shall only apply to actions taken after the expiration of 60 days after such date.

○

105TH CONGRESS
1ST SESSION

H. CON. RES. 29

Expressing the sense of the Congress that a national summit of sports, political, community, and media leaders should be promptly convened to develop a multifaceted action plan to deter acts of violence, especially domestic violence and sexual assault.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1997

Mr. SANDERS (for himself and Mrs. MORELLA) submitted the following concurrent resolution; which was referred to the Committee on Education and the Workforce

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CONCURRENT RESOLUTION

Expressing the sense of the Congress that a national summit of sports, political, community, and media leaders should be promptly convened to develop a multifaceted action plan to deter acts of violence, especially domestic violence and sexual assault.

Whereas involvement in sports commonly places individuals in a unique context of competition that provides an opportunity to teach, learn, and hone qualities of responsible citizenship, including values that promote self-respect and respect for others, and deter acts of violence, especially domestic violence and sexual assault;

Whereas professional and amateur athletes and sports coaches are role models with great national influence and have helped to positively shape the lives of countless individuals;

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

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

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

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

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

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

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

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

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

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

(A) sports, community, political, and media leaders;

(B) individuals with experience in youth advocacy;

(C) individuals with experience in antiviolence advocacy;

(D) members of the Citizenship Through Sports Alliance;

(E) Members of Congress; and

(F) other governmental and community leaders with specific expertise in education and advocacy programs that serve to deter acts of violence, especially domestic violence and sexual assault;

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

(A) be designed to encourage the participation of all administrators, coaches, and athletes, from those involved in youth leagues to those who are involved in professional sports;

(B) emphasize and promote values such as self-respect and respect for others, tolerance, non-discrimination, and gender equality as well as teamwork, discipline, responsibility, and commitment;

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

(D) promote a sports culture that encourages integrity, honesty, fairness, inclusion, tolerance, nonviolence, and a commitment to excellence; and

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

(4) the members of the national summit referred to in paragraph (1), and other sports, community, political and media leaders should assume leadership roles deterring acts of domestic violence and sexual assault and should support the measures developed by the national summit referred to in paragraph (1).

○

105TH CONGRESS
1ST SESSION

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

Ms. FURSE introduced the following bill; which was referred to the Committee on ____________

A BILL

To amend the Family Violence Prevention and Services Act to reauthorize grants for community initiatives.

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

SECTION 1. DEMONSTRATION GRANTS FOR COMMUNITY INITIATIVES.

Section 318(h) of the Family Violence Prevention and Services Act (42 U.S.C. 10418(h)) is amended to read as follows:

"(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section

$12,000,000 for each of the fiscal years 1998, 1999, 2000, 2001, and 2002.".

105TH CONGRESS
1ST SESSION

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

Mrs. LOWEY introduced the following bill; which was referred to the Committee on ____________

A BILL

To amend the Family Violence Prevention and Services Act to increase the authorization of appropriations for fiscal years 1998 through 2000 and to authorize appropriations for fiscal years 2001 and 2002.

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 "Battered Women's Shelters Act".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR FAMILY VIOLENCE PREVENTION AND SERVICES.

Section 310(a) of the Family Violence Prevention and Services Act (42 U.S.C. 10409(a)) is amended to read as follows:

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this title—

"(1) $50,000,000 for fiscal year 1996;

"(2) $60,000,000 for fiscal year 1997;

"(3) $120,000,000 for fiscal year 1998;

"(4) $160,000,000 for fiscal year 1999;

"(5) $200,000,000 for fiscal year 2000;

"(6) $260,000,000 for fiscal year 2001; and

"(7) $260,000,000 for fiscal year 2002.".

[DISCUSSION DRAFT]

JULY 14, 1997

105TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mrs. MORELLA (for herself and Mr. SCHUMER) introduced the following bill; which was referred to the Committee on ________________________

A BILL

To [TO BE SUPPLIED].

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 "Family Safety Act of 1997".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Section 7(a) of the Parental Kidnaping Prevention Act of 1980 (94 Stat. 3568; 42 U.S.C. 1305 note) is amended—

(1) in paragraph (1), by inserting "or Tribes, where not inconsistent with the Indian Child Welfare Act" after "different States";

(2) in paragraph (2), by striking "and conflicting" and inserting ", conflicting, and inadequate to protect parents or children from domestic or family violence or parental abduction nor punish them when they seek to protect themselves";

(3) in paragraph (3)—

(A) by inserting "perpetration of domestic and family violence, and the threat to kidnap a child," after "resort to the"; and

(B) by inserting before the semicolon the following: "and results in inadequate protection and further endangerment of victims of domestic and family violence"; and

(4) in paragraph (4), by inserting after "due process of law," the following: "the inappropriate placement of children in the custody of abusive parents or punishment of nonabusing parents who attempt to protect themselves or their children,".

(b) CONCLUSION.—Section 7(b) of such Act is amended by inserting after "it is necessary" the following: "to establish a national system for recording all custody and family or domestic violence orders of protection, to establish defenses of any civil or criminal parental custodial interference or abduction charge or claim, to establish standards to prevent children from being returned to abusive parents in cases of parental abduction,".

(c) PURPOSES.—Section 7(c) of such Act is amended—

(1) redesignating paragraphs (3) through (6) as paragraphs (5) through (8), respectively;

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

"(3) promote cooperation between State and tribal courts to protect parents and children from an incidence or pattern of domestic or family violence;

"(4) promote realistic and protection standards for interstate relocation when parents dispute custody, particularly in cases where there is domestic or family violence;";

(3) in paragraph (7) (as so redesignated), by inserting before the semicolon at the end the following: ", consistent with not endangering or inappropriately punishing children or parents who are victims of domestic or family violence"; and

(4) in paragraph (8) (as so redesignated), by inserting before the period at the end the following: "or to abuse the child or exert coercive control over

the other parent, except when the abduction or wrongful removal is done in an attempt to protect the parent or any child in the parent's care".

SEC. 3. DEFENSE TO CIVIL OR CRIMINAL CUSTODIAL INTERFERENCE OR PARENTAL ABDUCTION CHARGE OR CLAIM.

Section 1073 of title 18, United States Code, is amended by striking "Whoever moves" and inserting "(a) Whoever moves" and by adding at the end the following new subsection:

"(b) It shall be an affirmative defense to a civil or criminal custodial interference or parental abduction charge or claim, including any civil or criminal contempt of court, that—

"(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that such order was obtained pursuant to section 1738A of title 28, and where not inconsistent with such section, with the Uniform Child Custody Jurisdiction Act and was in effect at the time of the offense;

"(2) the defendant was fleeing an incidence or pattern of domestic or family violence; or

"(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.".

SEC. 4. FULL FAITH AND CREDIT GIVEN TO CHILD CUSTODY DETERMINATIONS

(a) SECTION INTENT.—Section 1738A(a) of title 28, United States Code, is amended by adding at the end the following: "This section is intended to preempt any inconsistent State law and to apply to every proceeding in the United States or its territories that is not governed by inconsistent aspects of any treaty to which the United States Government is a signatory or has ratified that involves custody and visitation concerning a minor child. Any protection order, whether consensual or not, issued consistent with section 2265 of title 18 shall be res judicata and be given full faith and credit.".

(b) DEFINITIONS.—Section 1738A(b) of such title is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively; by redesignating paragraphs (4) through (6) as para-

graphs (7) through (9), respectively; and by redesignating paragraphs (7) and (8) as paragraphs (11) and (12), respectively;

(2) by inserting before paragraph (2) (as so redesignated) the following:

"(1) 'abuse' includes any act not done accidentally or in an attempt to protect oneself or another, that is more probable than not to realistically constitute, cause, attempt, or threaten—

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

"(B) any rape, sexual assault, or involuntary deviate sexual intercourse, 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 stalking, repeated or severe humiliation, intimidation, coercive control, isolation, criticism, acts designed to induce terror, or verbal abuse;";

(3) by inserting after paragraph (4) (as so redesignated) the following:

"(5) 'domestic or family violence' means abuse that is committed directly or indirectly 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 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;

"(6) 'family victimized by domestic or family violence' means a family or household that includes one or more individuals subject to domestic or family violence, but does not include any individual who committed the domestic violence;"; and

(3) by inserting after paragraph (9) (as so redesignated) the following:

"(10) 'primary aggressor' means, in cases where there are or have been mutual allegations of abuse, the person who—

"(A) has more power within the relationship;

"(B) has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, or physically cause severe pain or injury;

"(C) is in less danger of being injured if the parties are kept apart;

"(D) is less afraid of the other person; or

"(E) acted in an attempt to protect himself or herself or another, to flee, or to avert an event worse confrontation;".

(c) CONDITION FOR CUSTODY DETERMINATION.—Section 1738A(c)(2)C) of such title is amended by inserting after "abandoned," the following: "or because the parent, the child, or another child in the parent's care or custody is the victim of domestic violence by the other parent,".

(d) JURISDICTION.—Section 1738A(d) of such title is amended by inserting before the period at the end the following: ", except that after 2 years have passed while a child is legally living in another State, the court of the original State shall decline jurisdiction".

(e) CHILD CUSTODY DETERMINATIONS.—Section 1738A of such title is amended—

(1) by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following:

"(g) A court should decline to exercise jurisdiction on behalf of the parent who has engaged in domestic or family violence, has wrongfully taken the child from another State without justification, or engaged in similar reprehensible conduct."; and

(2) by adding at the end the following:

"(i) A court should decline to exercise jurisdiction on behalf of a parent who has engaged in domestic or family violence, has wrongfully taken the child from another State without justification, or engaged in similar reprehensible conduct.

"(j) It shall be an affirmative defense to a civil or criminal custodial interference or parental abduction charge or claim, including any civil or criminal contempt of court, that—

"(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that such order was obtained pursuant to this section and is not inconsistent with the Uniform Child Custody Jurisdiction Act and was in effect at the time of the offense;

"(2) the defendant was fleeing an incident or pattern of domestic violence; or

"(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

"(k) No custodial parent may be prevented from permanently removing a minor child from the State except upon opposition from the child's other parent upon a showing that it is not in the child's best interest, taking into account the effect of restricting the travel on the custodial parent and after considering alternate visitation arrangements, and where the noncustodial parent—

"(1) has been visiting regularly, except for circumstances beyond his or her control;

"(2) has not exacerbated the custodial parent's financial difficulties, including as a result of not making child support or spousal payments, unless such noncustodial parent is unable to pay through circumstances beyond such parent's control;

"(3) has not perpetrated domestic or family violence as a primary aggressor; and

"(4) has not removed or failed to return, or threatened to remove or not return, the child from the jurisdiction without justification.

"(l) Absent a finding that the nonviolent parent is unfit or unavailable, there shall be a presumption that sole or shared physical or legal custody shall not be transferred over the objection of the nonviolent parent to any parent who has perpetrated domestic or family violence against the other parent or another adult. In cases where both parents have been found by a preponderance of the evidence to have perpetrated domestic or family violence against the other parent or an adult, the court shall make findings as to which parent was the primary aggressor, and if only one parent acted as the primary aggressor, only that parent shall be treated as the perpetrator of domestic or family violence under this section.

"(m) Every party shall have an ongoing duty to disclose at the time of their first appearance or their filing a first pleading in any case, whichever is first, and during the pendency of any proceeding any information that they may have regarding any other domestic violence or custody case involving themselves, the other parties or involving any child whose custody is at issue. Any party who is a victim of domestic violence or has in the party's care or custody a child who has reason to fear disclosure of the child's whereabouts and has removed themselves to a confidential address, shall be exempt from disclosing such address, school, or workplace, including such telephone numbers and any other identifying information that might compromise such person's safety, except disclosing ex parte, in camera, the name of any State where the child lived within the 6 months prior to the filing of the pending custody action. Courts shall permit such parties to use post office addresses, addresses of attorneys, or other court authorized procedure so that this confidential information will not be disclosed. Intentional disclosure of such information shall be a crime punishable by a fine under title 18 and imposition of such penalty shall not preclude other foreseeable remedies, including restitution. Negligent disclosure of such information shall be punishable by a fine under title 18.".

SEC. 5. STUDY OF DIVORCE AND CHILD CUSTODY CASES IN WHICH DOMESTIC VIOLENCE IS A FACTOR.

(a) STUDY.—The Attorney General, in consultation with the State Justice Institute, shall conduct a nationwide study of divorce and child custody cases in which domestic violence is a factor, to determine the following:

(1) The effect of mediation on the level of domestic abuse in the relationship.

(2) In States that require mediation of divorce cases, a comparison of the outcome (distribution of property and assets, child custody orders, and child support awards) of cases involving domestic violence to those in which domestic violence is not an issue.

(3) The effect of joint custody on the level of abuse of both the battered adult and the children, including the likelihood of abuse during visitation exchanges.

(4) In States that have joint custody presumptions, a comparison of the outcome (child custody and child support awards) of cases involving domestic violence to those in which domestic violence is not an issue.

(5) In States that consider domestic violence as a factor in making custody determinations, a comparison of the outcome (child custody and child support awards) of cases involving domestic violence to those in which domestic violence is not an issue.

(6) A comparison of the outcome (distribution of property and assets, child custody orders, and

child support awards) of cases involving domestic violence in States that require consideration of domestic violence as a factor in such decisions to States that do not require consideration of domestic violence.

(7) In States where Child Protective Services has a policy to screen and identify for domestic violence the outcomes of cases involving domestic violence, including when children are removed and placed in foster care or when neglect charges are brought, under what circumstances the agency may seek termination of parental rights.

(b) REPORT.—Based on the study under subsection (a), the Attorney General shall issue a report to each State attorney general's office and to the Chief Justice of each State, detailing the findings and recommendations under the study regarding the appropriate use of mediation and joint custody presumptions and consideration of domestic violence as a factor in divorce and child custody cases involving domestic violence.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the study required by this section $500,000.

SEC. 6. SUPERVISED VISITATION.

(a) GRANTS TO STATES TO PROVIDE FOR SUPERVISED VISITATION CENTERS.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") is authorized to award grants to States to enable States to enter into contracts and cooperative agreements with public or private nonprofit entities to assist such entities in establishing and operating supervised visitation centers for the purposes of facilitating supervised visitation and visitation exchange.

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

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

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

(3) the extent to which the applicant demonstrates cooperation and collaboration with advocates in the local community served, including the State domestic violence coalition, State sexual assault coalition, local shelters, and programs for domestic violence and sexual assault victims.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Amounts provided under a grant, contract, or cooperative agreement awarded under this subsection shall be used to establish supervised visitation centers and for the purposes described in subsection (a). In using such amounts, grantees shall target the economically disadvantaged and those individuals who could not otherwise afford such visitation services. Other individuals shall be permitted to use the services provided by the center on a sliding fee basis.

(2) REGULATIONS AND APPLICANT REQUIREMENTS.—The Secretary shall award grants, contracts, and cooperative agreements under this section in accordance with such regulations as the Secretary may promulgate. The applicant shall—

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

(B) be an entity located in the State or locality where State law requires the court to consider evidence of domestic violence, whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an order of protection against domestic violence, in making a custody decision; and

(C) demonstrate collaboration with and support of the State domestic violence coalition, sexual assault coalition, and local domestic violence and sexual assault shelter or program in the locality in which the supervised visitation center will be operated.

(d) REPORTING.—Not later than 60 days after the end of each fiscal year, the Secretary shall report to Congress information concerning—

(1) the number of persons served and the number of persons turned away from services categorized by State and type of presenting problem that underlies the need for supervised visitation or visitation exchange (e.g. domestic violence, child abuse, sexual assault, emotional assault, emotional or other physical abuse, or a combination of factors);

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

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

(4) safety and security problems occurring during the reporting period.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—For the purpose of awarding grants, contracts, and cooperative agreements under this section, there are authorized to be appropriated $75,000,000 for fiscal year 1998, $85,000,000 for fiscal year 1999, and $95,000,000 for fiscal year 2000.

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

(3) DISBURSEMENT.—Amounts appropriated under this section shall be disbursed as categorical grants through the 10 regional offices of the Department of Health and Human Services.

[DISCUSSION DRAFT]

JULY 14, 1997

105TH CONGRESS
1ST SESSION

H. CON. RES. __

IN THE HOUSE OF REPRESENTATIVES

(for herself & Mr. Schumer)

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

CONCURRENT RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) mutual violence between spouses is rare;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) not have a presumption that children should have their main physical residence with their prime custodial parent unless that parent is unfit;

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

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

(D) presume that allegations of domestic and family violence are likely to be made falsely or for tactical advantage during custody and divorce proceedings; and

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

(2) child abuse and child sexual abuse allegations should be fully and impartially investigated regardless of when they are raised or whether the child has recanted the allegation; and

(3) States should be far more protective of victims of domestic and family violence in custody and visitation determinations and not order inappropriate mediation, couples counseling, shared custody, mutual orders of protection, unsupervised visitation, or other measures than endanger true victims of domestic and family violence.

[DISCUSSION DRAFT]

JULY 14, 1997

105TH CONGRESS
1ST SESSION

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

(for herself + Mr. Schumer)

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

A BILL

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

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

SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

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

(2) During separation and divorce, family violence often escalates, and child custody and visitation become the new forum for the continuation of abuse.

(3) Current child custody and visitation laws are based on incorrect assumptions that divorcing or separating parents share equal positions of power and control. These assumptions are particularly faulty when there is a history of domestic violence. The abused spouse or intimate partners divorcing and separating under such circumstances may continue to experience violence which is exacerbated by and often escalates during child visitation and/or visitation exchanges.

(4) Some perpetrators of violence use the children as pawns to control the abused party and to commit more violence during separation and/or divorce.

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

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

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

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

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

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

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

(1) to protect children from the trauma of witnessing or experiencing violence, sexual abuse, neglect, abduction, rape, or death during parent and child visitation and/or visitation exchanges;

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

(3) to provide an ongoing safe haven for parents and children during visitation or visitation exchanges.

SEC. 2. GRANTS TO STATES TO PROVIDE FOR SUPERVISED VISITATION CENTERS.

(a) GRANTS TO STATES.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") is authorized to award grants to States to enable States to enter into contracts and cooperative agreements with public or private nonprofit entities to assist such entities in establishing and operating supervised visitation centers for the purposes of facilitating supervised visitation and visitation exchange.

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

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

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

(3) the extent to which the applicant demonstrates cooperation and collaboration with advocates in the local community served, including the State domestic violence coalition, State sexual assault coalition, local shelters, and programs for domestic violence and sexual assault victims.

(c) USE OF FUNDS.—

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

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

(2) REGULATIONS AND APPLICANT REQUIREMENTS.—The Secretary shall award grants, contracts, and cooperative agreements under this section in accordance with such regulations as the Secretary may promulgate. The applicant shall—

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

(B) be an entity located in the State or locality where State law requires the court to consider evidence of domestic violence, whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an order of protection against domestic violence, in making a custody decision; and

(C) demonstrate collaboration with and support of the State domestic violence coalition, sexual assault coalition, and local domestic violence and sexual assault shelter or program in the locality in which the supervised visitation center will be operated.

(d) REPORTING.—Not later than 60 days after the end of each fiscal year, the Secretary shall report to Congress information concerning—

(1) the number of persons served and the number of persons turned away from services categorized by State and type of presenting problem that underlies the need for supervised visitation or visitation exchange (e.g. domestic violence, child abuse, sexual assault, emotional assault, emotional or other physical abuse, or a combination of factors);

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

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

(4) safety and security problems occurring during the reporting period.

(e) AUTHORIZATION OF APPROPRIATIONS.—

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

$75,000,000 for fiscal year 1998, $85,000,000 for fiscal year 1999, and $95,000,000 for fiscal year 2000.

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

(3) DISBURSEMENT.—Amounts appropriated under this section shall be disbursed as categorical grants through the 10 regional offices of the Department of Health and Human Services.

[DISCUSSION DRAFT]

105TH CONGRESS
1ST SESSION

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

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

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, Child Custody, and Child Protection Act of 1997".

SEC. 2. FINDINGS.

The Congress finds the following:

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

(2) Witnessing domestic violence has a devastating impact on children, placing them at a high risk for anxiety, depression, substance abuse, and suicide.

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

(4) Discovery that domestic violence in their home is affecting their children, or that a batterer is also physically or sexually abusing a child, is frequently a motivation for a protective parent to seek divorce or custody of their children.

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

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

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

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

(8) A batterer's threats to take custody of children are a reason adult victims of abuse frequently cite for staying in abusive relationships. More than 50 percent of abductions result from domestic violence.

(9) Although courts should diligently protect the interests of both parents in frequent and continuing contact with their children, in the case where one parent has committed domestic violence or child abuse, protection of the other parent and the children is a vital consideration that should take precedence.

(10) To respond to the problems of domestic violence in determining child custody, in 1990 the Congress passed a concurrent resolution expressing the sense of the Congress that there should be a presumption against granting custody to an abusive spouse.

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

(12) Despite this trend in law against granting custody to abusive parents, parents across the country have reported losing custody to abusive parents, despite evidence of domestice violence against the protective parent or sexual or physical abuse of the child.

(13) According to the American Judges Foundation, batterers are able to convince authorities that the victim is unfit or undeserving of custody in approximately 70 percent of contested cases and, according to one study, in cases where abuse is reported, the batterer is more likely to win custody

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

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

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

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

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

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

(18) Many of these cases feature the use of spurious psychological "psyndromes", such as parental alienation syndrome, which has no scientific support according to the American Psychological Association, or malicious mother syndrome, which similarly lacks well-documented supporting data in peer-reviewed literature, to shift blame away from the abusive parent and to punish the parent reporting the abuse. These so-called syndromes are overwhelmingly used against women seeking custody.

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

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

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

(21) Although the Federal courts do not handle divorce or custody cases, the failure of the State justice systems to properly address domestic violence and child abuse in custody, visitation, and termination of parental rights proceedings, where fundamental rights of parents to the care of their children are at stake, in view of documented instances of due process violations, may in some circumstances invoke the civil rights jurisdiction of the Federal courts.

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

(a) AMENDMENTS TO CAPTA FOR DOMESTIC VIOLENCE TRAINING.—Section 106(b) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)) is amended—

(1) by redesignating paragraph (4) as paragraph (5); and

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

"(4) DOMESTIC VIOLENCE TRAINING.—To be eligible to receive a grant under this section, a State shall provide training in domestic violence, sexual assault, and child abuse to all staff responsible for the screening, intake, assessment, investigation, and review of [reports of abuse and neglect] through the development and implementation of training programs in cooperation and collaboration with advocates in the [local community served,] [Note that the grant money goes to the State to assist in improving the "child protective services system of the State"] including State domestic violence and sexual assault coalitions, and local shelters, programs, and crisis centers that serve domestic violence, sexual assault, and child abuse victims.".

(b) STANDARDS FOR EVALUATING FOSTER CARE PLACEMENT WHERE A PARENT HAS COMMITTED DOMESTIC VIOLENCE.—

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

(A) by striking "and" at the end of subparagraph (C);

(B) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(C) by adding at the end the following:

"(E)(i) in any case in which any individual residing in the home of the child has committed domestic violence, any review or determination of the child's status (including any evaluation of the child's health and safety or a determination of reasonable efforts) shall give strong consideration to keeping the child in the care of a nonabusive parent, or returning the child to the care of a nonabusive parent, and if, as a result of such a review or evaluation, it is determined that assistance (including assistance in enforcing any court orders or otherwise assisting in removing the abusive individual from the home), support services, or referrals to domestic violence programs are needed to accomplish that goal, the State shall provide such assistance, services or referrals;

"(ii) in any case in which an individual who has abused the child is a victim of domestic violence, the State shall consider whether providing assistance to the individual to address domestic violence can prevent further abuse of the child; and

"(iii) in any case in which there are allegations of domestic violence by both parents of the child, the State shall take into consideration which parent is the primary aggressor.".

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

"(7) The term 'domestic violence' means a sexual or physical assault or a threat of death or serious bodily injury against the child, a parent of the child, or another individual as covered by the domestic violence laws of the State.".

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

(1) Section 474(a)(3) of the Social Security Act (42 U.S.C. 674(a)(3)) is amended by inserting ", including domestic violence training" after "training" the 1st place such term appears in each of subparagraphs (A) and (B).

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

"(8) The term 'domestic violence training' means training and educational programs on domestic violence, sexual assault, and child abuse, which programs are developed and implemented in cooperation and collaboration with advocates in the local community served by such programs (including the State domestic violence and sexual assault coalitions, and local shelters, programs, and crisis centers that serve victims of domestic violence, sexual assault, or child abuse).".

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

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

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

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

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

"(A) shall provide training in domestic violence, sexual assault, and child abuse for any individual appointed to represent a child during judicial proceedings where allegations of abuse or neglect are raised through the development and implementation of training programs in cooperation and collaboration with advocates in the [local community served,] [Note that the grant money goes to the State to assist in improving the "child protective services system of the State"] including State domestic violence and sexual assault coalitions, and local shelters, programs, and crisis centers that serve domestic violence, sexual assault, and child abuse victims; and

"(B) shall establish mandatory guidelines—

"(i) to ensure that any individual appointed to represent a child during a judicial proceeding where allegations of abuse or neglect are raised—

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

"(II) cannot represent the interests of or be retained or compensated by another party accused of abuse; and

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

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

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

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

(1) in paragraph 18, by striking "and" after the semicolon;

(2) in paragraph (19), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(20) the issues raised by domestic violence and child abuse in the determination of custody and visitation, including the legitimate reasons parents may report domestic violence and child abuse, the ways domestic violence may relate to an abuser's desire to seek custody, the importance of relying on sound, well-documented psychological evidence and well-qualified experts in custody and visitation determinations if abuse allegations are raised, the indicia, dynamics and treatment of child sexual abuse, and the current scientifically accepted and peer-reviewed research on domestic violence and child abuse.".

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

"(d) MODEL PROGRAMS.—The Federal Judicial Center, in carrying out section 620(b)(3) of title 28, United States Code, shall include in the educational programs it prepares (including the training programs for newly appointed judges), information regarding the topics described in section 40412 of the Violent Crime Control and Law Enforcement act of 1994 that pertain to issues within the jurisdiction of the Federal courts, and shall prepare materials necessary to implement this subsection.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Paragraph (2) of section 40422 of the Violent Crime Control and Law Enforcement act of 1994 is amended by inserting "$500,000 for each of fiscal years 1998, 1999, 2000, 2001, and 2002" after "1996".

SEC. 6. PREVENTION OF UNJUST CRIMINAL SANCTIONS.

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

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(E) an assurance in the form of a certification by the chief executive officer of the State that the State has in effect and is enforcing a State law that, not later than July 1, 1997, permits the use of an affirmative defense to any criminal custodial interference or parental kidnapping charges in a case where a parent has a good faith belief that failing to comply with a court order regarding the custody or visitation of their child is necessary to prevent serious physical or emotional harm to that parent or the child.".

105TH CONGRESS
1ST SESSION

H. R. 1142

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 1997

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

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A BILL

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

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 "ERISA Child Abuse Accountability Act of 1997".

SEC. 2. AMENDMENTS TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) CREATION OR ASSIGNMENT OF RIGHTS TO BENEFITS UNDER QUALIFIED CHILD ABUSE ORDERS.—Section 206(d)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(d)(3)(A)) is amended—

(1) by inserting "or a child abuse order" after "a domestic relations order";

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

(3) by inserting "or any qualified child abuse order" after "any qualified domestic relations order".

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

(1) in clause (i), by striking "the term" and inserting "The term", and by striking ", and" at the end and inserting a period;

(2) in clause (ii), by striking "the term" and inserting "The term"; and

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

"(iii) The term 'qualified child abuse order' means a child abuse order—

"(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

"(II) with respect to which the requirements of subparagraphs (C) and (D) are met.

"(iv) The term 'child abuse order' means any court order or other similar process for the enforcement of a judgment rendered against a participant or beneficiary under a plan for physically, sexually, or emotionally abusing a child. For purposes of this clause—

"(I) The term 'judgment rendered for physically, sexually, or emotionally abusing a child' means any legal claim perfected through a final enforceable judgment, which claim is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence.

"(II) The term 'child' means an individual under 18 years of age.".

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

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

(1) in subparagraph (C), by inserting "or child abuse order" after "A domestic relations order";

(2) in subparagraph (D), by inserting "or child abuse order" after "A domestic relations order";

(3) in subparagraph (E)(i), by inserting "or child abuse order" after "A domestic relations order";

(4) in subparagraph (G)(i), by inserting "or child abuse order" after "any domestic relations order", by inserting "or child abuse orders" in subclause (I) after "domestic relations orders", and by inserting "or a qualified child abuse order" in sub-

clause (II) after "a qualified domestic relations order";

(5) in subparagraph (G)(ii), by inserting "and child abuse orders" after "domestic relations orders", by inserting "or child abuse order" after "domestic relations order" each place it appears in subclauses (II) and (III);

(6) in subparagraph (H)(i), by inserting "or whether a child abuse order is a qualified child abuse order" after "whether a domestic relations order is a qualified domestic relations order", and by inserting "or a qualified child abuse order" after "to be a qualified domestic relations order";

(7) in subparagraph (H)(ii), by inserting "or a qualified child abuse order" after "a qualified domestic relations order";

(8) in subparagraph (H)(iii), by inserting "or a qualified child abuse order" after "a qualified domestic relations order" each place it appears in subclauses (I) and (II);

(9) in subparagraph (H)(iv), by inserting "or a qualified child abuse order" after "a qualified domestic relations order";

(10) in subparagraph (H)(v), by inserting "or child abuse order" after "the domestic relations order";

(11) in subparagraph (I)(i), by inserting "or child abuse order" after "a domestic relations order", and by inserting "or qualified child abuse order" after "a qualified domestic relations order";

(12) in subparagraph (J), by inserting "or a qualified child abuse order" after "a qualified domestic relations order";

(13) in subparagraph (K), by inserting "or child abuse order" after "a domestic relations order"; and

(14) in subparagraph (M), by inserting "or a qualified child abuse order" after "a qualified domestic relations order".

SEC. 3. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(a) CREATION OR ASSIGNMENT OF RIGHTS TO BENEFITS UNDER QUALIFIED CHILD ABUSE ORDERS.—Subparagraph (B) of section 401(a)(13) of the Internal Revenue Code of 1986 (relating to assignment of benefits) is amended—

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

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

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

(b) QUALIFIED CHILD ABUSE ORDERS.—Paragraph (1) of section 414(p) of such Code (defining qualified domestic relations order) is amended—

(1) in the heading, by inserting "AND QUALIFIED CHILD ABUSE ORDER" after "ORDER"; and

(2) by adding at the end the following new subparagraphs:

"(C) QUALIFIED CHILD ABUSE ORDER.—The term 'qualified child abuse order' means a child abuse order—

"(i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and "(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

"(D) CHILD ABUSE ORDER.—

"(i) IN GENERAL.—The term 'child abuse order' means any court order or other similar process for the enforcement of a judgment rendered against a participant or beneficiary under a plan for physically, sexually, or emotionally abusing a child.

"(ii) DEFINITIONS.—For purposes of this subparagraph—

"(I) The term 'judgment rendered for physically, sexually, or emotionally abusing a child' means any legal claim perfected through a final enforceable judgment, which claim is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence.

"(II) The term 'child' means an individual under 18 years of age.".

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

(1) in paragraph (2), by inserting "or child abuse order" after "A domestic relations order";

(2) in paragraph (3), by inserting "or child abuse order" after "A domestic relations order";

(3) in paragraph (4)(A), by inserting "or child abuse order" after "a domestic relations order";

(4) in paragraph (6)(A), by inserting "or child abuse order" after "any domestic relations order", by inserting "or child abuse orders" in clause (i) after "domestic relations orders", and by inserting "or a qualified child abuse order" in clause (ii) after "a qualified domestic relations order";

(5) in paragraph (6)(B), by inserting "and child abuse orders" after "domestic relations orders";

(6) in paragraph (7)(A), by inserting "or whether a child abuse order is a qualified child abuse order" after "whether a domestic relations order is a qualified domestic relations order", and by inserting "or a qualified child abuse order" after "to be a qualified domestic relations order";

(7) in paragraph (7)(B), by inserting "OR QUALIFIED CHILD SUPPORT ORDER" in the heading after "QUALIFIED DOMESTIC RELATIONS ORDER", and by inserting "or a qualified child abuse order" after "a qualified domestic relations order";

(8) in paragraph (7)(C), by inserting "or a qualified child abuse order" after "a qualified domestic relations order" each place it appears in clauses (i) and (ii);

(9) in paragraph (7)(D), by inserting "or a qualified child abuse order" after "a qualified domestic relations order";

(10) in paragraph (7)(E), by inserting "or child abuse order" after "the domestic relations order";

(11) in paragraph (8), by inserting "or child abuse order" after "a domestic relations order";

(12) in paragraph (9), by inserting "or a qualified child abuse order" after "a qualified domestic relations order";

(13) in paragraph (10), by inserting "or a qualified child abuse order" after "a qualified domestic relations order"; and

(14) in paragraph (11), by inserting "or a qualified child abuse order" after "pursuant to a qualified domestic relations order", and by inserting

"or a child abuse order" after "pursuant to a domestic relations order".

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

(1) ALTERNATE PAYEE MUST INCLUDE BENEFITS IN GROSS INCOME.—Paragraph (1) of section 402(e) of such Code (relating to alternate payee under qualified domestic relations order treated as distributee) is amended by inserting "or a qualified child abuse order (as defined in section 414(p))" after "a qualified domestic relations order (as defined in section 414(p))" each place it appears.

(2) ALLOCATION OF INVESTMENT IN THE CONTRACT.—Paragraph (10) of section 72(m) of such Code (relating to determination of investment in the contract in the case of qualified domestic relations orders) is amended—

(A) in the heading, by inserting "AND QUALIFIED CHILD ABUSE ORDERS" after "QUALIFIED DOMESTIC RELATIONS ORDERS"; and

(B) by inserting "or a qualified child abuse order (as defined in section 414(p))" after "a qualified domestic relations order (as defined in section 414(p))".

(3) CLARIFICATION OF ELIGIBILITY OF PARTICIPANT FOR LUMP SUM TREATMENT.—

(A) Subparagraph (H) of section 402(d)(4) of such Code (relating to balance to credit of employee not to include amounts payable under qualified domestic relations order) is amended—

(i) in the heading, by inserting "OR QUALIFIED CHILD ABUSE ORDER" after "QUALIFIED DOMESTIC RELATIONS ORDER"; and

(ii) by inserting "or a qualified child abuse order (within the meaning of section 414(p))" after "a qualified domestic relations order (within the meaning of section 414(p))".

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

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect on January 1, 1998, except that, in the case of a child abuse order entered before such date, the plan administrator—

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

(2) may treat any other such order entered before such date as a qualified child abuse order even if such order does not meet the requirements of such amendments.

○

PROPOSED INSERTION TO VIOLENCE AGAINST WOMEN ACT II

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

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

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

II

105TH CONGRESS
1ST SESSION

S. 172

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

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

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

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A BILL

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

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

SECTION 1. CRIMINAL OFFENSES COMMITTED OUTSIDE THE UNITED STATES BY PERSONS ACCOMPANYING THE ARMED FORCES.

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

"CHAPTER 212—CRIMINAL OFFENSES COMMITTED OUTSIDE THE UNITED STATES

"Sec.
"3261. Criminal offenses committed by persons formerly serving with, or presently employed by or accompanying, the Armed Forces outside the United States.
"3262. Delivery to authorities of foreign countries.
"3263. Regulations.
"3264. Definitions for chapter.

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

"(a) IN GENERAL.—Whoever, while serving with, employed by, or accompanying the Armed Forces outside of the United States, engages in conduct that would constitute ~~an~~ or other offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, shall be guilty of a like offense and subject to a like punishment.

a misdemeanor domestic violence or sexual assault offense

"(b) CONCURRENT JURISDICTION.—Nothing contained in this chapter deprives courts-martial, military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by courts-martial, military commissions, provost courts, or other military tribunals.

"(c) ACTION BY FOREIGN GOVERNMENT.—No prosecution may be commenced under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General of the United States or the Deputy Attorney General of the United States (or a person acting in either such capacity), which function of approval shall not be delegated.

"(d) ARRESTS.—

"(1) LAW ENFORCEMENT PERSONNEL.—The Secretary of Defense may designate and authorize any person serving in a law enforcement position in the Department of Defense to arrest outside of the United States any person described in subsection (a) if there is probable cause to believe that such person engaged in conduct which constitutes a criminal offense under subsection (a).

"(2) RELEASE TO CIVILIAN LAW ENFORCEMENT.—A person arrested under paragraph (1) shall be released to the custody of civilian law enforcement authorities of the United States for removal to the United States for judicial proceedings in relation to conduct referred to in such paragraph unless—

in the in the Federal District Court of the named jurisdic[illegible] of ~~[illegible]~~ of the person arrested origin.

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

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

"§ 3262. Delivery to authorities of foreign countries

"(a) In General.—Any person designated and authorized under section 3261(d) may deliver a person described in section 3261(a) to the appropriate authorities of a foreign country in which the person is alleged to have engaged in conduct described in subsection (a) if—

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

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

"(b) Determination by the Secretary.—The Secretary of Defense shall determine which officials of a foreign country constitute appropriate authorities for purposes of this section.

"§ 3263. Regulations

"The Secretary of Defense shall issue regulations governing the apprehension, detention, and removal of persons under this chapter. Such regulations shall be uniform throughout the Department of Defense.

"§ 3264. Definitions for chapter

"As used in this chapter—

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

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

"(A) is employed as a civilian employee of the Department of Defense, as a Department of Defense contractor, or as an employee of a Department of Defense contractor;

"(B) is present or residing outside of the United States in connection with such employment; and

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

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

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

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

"(C) is residing with the member or civilian employee outside of the United States; and

"(D) is not a national of the host nation."

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

"212. Criminal Offenses Committed Outside the United States .... 3261".

SEC. 2. MILITARY JUSTICE ACTIONS.

(a) DEFINITION.—For purposes of this section, the term "Director" means the Director of the Federal Bureau of Investigation.

(b) RECORDS OF MILITARY JUSTICE ACTIONS.—At the time that a member of the Armed Forces is discharged from a period of service in the Armed Forces or is released from a period of active duty service in the Armed Forces, the Secretary of the military department having jurisdiction of the armed force of the member shall transmit to the Director a copy of records of any penal actions taken against the member under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), during that period.

(c) DNA ANALYSIS.—

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

Uniform Code of Military Justice shall, prior to military discharge, transmit to the Secretary of the military department having jurisdiction of the armed force of the member, a sample of blood, saliva, or other specimen collected from that person necessary to conduct DNA analysis consistent with established procedures for DNA testing by the Director.

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

○

105TH CONGRESS
1ST SESSION

H. R. 1072

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1997

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

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A BILL

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

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 "Commission on Military Justice and Fairness Act".

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the "Commission on Military Justice and Fairness" (in this Act referred to as the "Commission").

(b) COMPOSITION.—The Commission shall be composed of 15 members appointed as follows:

(1) Five members appointed by the President, of whom one shall be chosen after consultation with the Attorney General and one shall be chosen after consultation with the Chief Justice of the United States and not more than three of whom may be a member of the Armed Forces on active duty or in a retired status or a member of a reserve component.

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

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

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

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

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

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

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

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

(g) SECURITY CLEARANCES.—The Secretary of Defense shall provide expedited processing of security clearances requested for members.

SEC. 3. FUNCTIONS OF COMMISSION.

The Commission shall investigate and make recommendations on the following:

(1) The existence of adequate safeguards for members of the Armed Forces who report incidents of sexual misconduct, sexual harassment, or unlawful gender discrimination, and whether adequate protection from retribution is afforded to members of the Armed Forces who report such incidents.

(2) The existence of adequate mechanisms for investigating sexual misconduct, sexual harassment, and unlawful gender discrimination in the Armed Forces, including the existence of investigative mechanisms outside of the chain of command of a member reporting allegations of such conduct.

(3) Whether investigating officers and trial counsel in the Armed Forces are trained, and possess the resources and independence necessary, to conduct fair and thorough investigations of allegations of sexual misconduct, sexual harassment, and unlawful gender discrimination.

(4) The number of incidents involving allegations of sexual assault by members of the Armed Forces that have been referred by a commanding officer for resolution through an administrative hear-

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

(5) The availability of adequate mechanisms in the Armed Forces for satisfactory resolution of complaints of sexual misconduct, sexual harassment, or unlawful gender discrimination, and whether the award of damages and attorneys fees should be a remedy available to military personnel who are victims of sexual misconduct, sexual harassment, or unlawful gender discrimination.

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

(7) The procedures in the Armed Forces for apprehending and charging an accused and the scope of the discretionary power of commanding officers with respect to such procedures and the court-martial trial process.

(8) The adequacy of the procedures for selection of jurors in the military justice system in protecting such jurors and ensuring impartial court-martial trials.

(9) Whether permanent, uniform mechanisms should be established to insulate judge advocate defense counsel from other elements of the military

legal structure and provide such counsel with resources equivalent to those resources available to military trial counsel.

(10) Whether military judges should be afforded increased independence and some form of tenure to protect them from retribution in response to their rulings during the court-martial trial process.

(11) The need for increased uniformity in sentencing in the military justice system and whether sentencing guidelines should be instituted.

(12) The adequacy and effectiveness of judicial review of decisions regarding military personnel, and whether the same right to Supreme Court review should exist for courts-martial as for criminal cases in State and Federal courts.

(13) The necessity for, and effectiveness of, correctional programs designed to rehabilitate offenders to continue service as members of the Armed Forces after serving a court-martial sentence.

(14) The procedural protections for enlisted members of the Armed Forces who are career military personnel and the power of commanding officers to deny reenlistment to such personnel who have not yet qualified for retired pay.

(15) Statistical data collection and analysis with respect to crime and sexual misconduct, sexual harassment, and unlawful gender discrimination in the Armed Forces, and whether such data is regularly reported to the Federal Bureau of Investigation.

(16) The ability to exchange criminal records of members of the Armed Forces among military courts and other courts in the United States, and whether information with respect to the criminal records of members of the Armed Forces should regularly be reported to the National Crime Information Center.

(17) Whether rulemaking committees that include civilian members and perform functions that are similar to the functions performed by the rulemaking committees of the Judicial Conference of the United States should be established for the military justice system.

SEC. 4. REPORT.

Not later than one year after the date that all the original members are appointed, the Commission shall submit to the President and the Congress a report containing a detailed statement of the Commission's findings and conclusions and the Commission's recommendations for administrative and legislative action.

SEC. 5. POWERS.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths to witnesses appearing before it.

(b) OBTAINING INFORMATION.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chairman of the Commission, the head of that department or agency shall furnish that information to the Commission in a full and timely manner.

(c) SUBPOENA POWER.—(1) The Commission may issue a subpoena to require the attendance and testimony of witnesses and the production of any evidence relating to any matter under investigation by the Commission.

(2) If a person refuses to obey an order or subpoena of the Commission that is issued in connection with a Commission hearing, the Commission may apply to the United States district court in the judicial district in which the proceeding is held for an order requiring the person to comply with the subpoena or order.

(d) IMMUNITY.— The Commission is an agency of the United States for purposes of part V of title 18, United States Code (relating to immunity of witnesses).

(e) CONTRACT AUTHORITY.—The Commission may contract with and compensate government and private agencies or persons for goods and services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

SEC. 6. COMMISSION PROCEDURES.

(a) MEETINGS.—The Commission shall meet at the call of the Chairman or a majority of its members.

(b) QUORUM.—Eight members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(c) DELEGATION OF AUTHORITY.—Any member or agent of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take by this Act.

SEC. 7. PERSONNEL MATTERS.

(a) PAY OF MEMBERS.—Members shall not be paid by reason of their service as members.

(b) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(c) STAFF.—(1) The Commission may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint a staff director and such additional personnel as may be necessary to enable the Commission to perform its duties.

(2) The Commission may fix the pay of the staff director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay fixed under this paragraph for the staff director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title and the rate of pay for other personnel may not exceed the maximum rate payable for grade GS–15 of the General Schedule.

SEC. 8. OTHER ADMINISTRATIVE PROVISIONS.

(a) POSTAL AND PRINTING SERVICES.—The Commission may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the United States.

(b) MISCELLANEOUS ADMINISTRATIVE AND SUPPORT SERVICES.—The Secretary of Defense shall furnish the Commission, on a reimbursable basis, any administrative and support services necessary for the Commission to carry out its duties under this Act.

(c) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(d) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this Act.

(e) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

SEC. 9. PAYMENT OF COMMISSION EXPENSES.

(a) PAYMENT OUT OF DEPARTMENT OF DEFENSE FUNDS.—The travel expenses and per diem allowances of members and employees of the Commission, and the compensation of employees of the Commission, shall be paid out of funds available to the Department of Defense for the payment of compensation, travel allowances, and per diem allowances, respectively, of civilian employees of the Department of Defense. The other expenses of the Commission shall be paid out of funds available to the Department of Defense for the payment of similar expenses incurred by that Department.

(b) PROMPT TRANSFER OF FUNDS.—The Secretary of Defense shall promptly transfer funds to the Commission for payment of expenses incurred by the Commission upon submission to the Department of Defense of the amount of funds requested for such payment by the Chairman of the Commission.

SEC. 10. TERMINATION OF COMMISSION.

The Commission shall terminate not later than 90 days after submitting its report to the President and the Congress pursuant to section 4.

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July 10, 1997

To: Melanie Sloan
From: Donna Edwards

re: potential provisions for VAWA II

Here are the results of subcommittee meetings we've held on crime & VAWA fixes and military issues. Obviously there may be more to come or amendments as we continue to meet.

I. VAWA Fixes

Amend 42 U.S.C. 3796gg-1 with a new (3) and redesignate (3) as (4):

(3) at least 5 percent of the amount granted shall be allocated to the nonprofit state domestic violence and/or sexual-assault coalition in the state to facilitate participation of victim advocates in ~~the~~ statewide planning and implementation activities under this subtitle.

Also in 42 U.S.C. 3796gg-1 insert new (e)

"(e) MONITORING AND COMPLIANCE.—The Director shall have the authority to deny applications:

(1) that do not meet the requirements set forth in subsection (d); and
(2) for failure ~~to discuss in detail and~~ provide documentation, including ~~a~~ memoranda of understanding, for any collaborative efforts with other agencies or organizations.

REDESIGNATE LETTERS (e), (f), (g), and (h).

Amend 42 U.S.C. 3796gg-2 by adding at the end of (8) the following sentence:

The term "victim services" shall not include programs or activities that are targetted primarily for offenders.

Insert in Sec. 317.

EDUCATING YOUTH ABOUT DOMESTIC VIOLENCE.

"(a) GENERAL PURPOSE.—For purposes of this section, the Secretary shall in consultation with the Secretary of Education, implement a program for education of young people about domestic violence and violence among intimate partners.

"(b) NATURE OF PROGRAM.—The Secretary shall implement the program at primary schools, middle schools, secondary schools, and institutions or higher education. The program shall be implemented in consultation with educational experts, legal and psychological experts on battering, and victim advocate organizations such as battered women's shelters, State coalitions and resource centers.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $XXX.

II. Supervised Visitation

Safe Visitation Act

Sec. 1. Purposes

1) To protect children from the trauma of witnessing or experiencing violence, sexual abuse, neglect, abduction, rape or death during parent/child visitation and/or visitation exchanges.

2) To protect victims of domestic violence from experiencing further violence during child visitation or and/or visitation exchanges.
3) To provide an ongoing safe haven for parents and children during visitation or visitation exchanges.

Sec. 2. Findings

1) Family violence does not necessarily cease when family victims are legally separated by divorce or otherwise not sharing a household.
2) During separation and divorce, family violence often escalates, and child custody and visitation become the new forum for the continuation of abuse.
3) Current child custody and visitation laws are based on incorrect assumptions that divorcing or separating parents share equal positions of power and control. These assumptions are particularly faulty when there is a history of domestic violence. The abused spouse or intimate partners divorcing and separating under such circumstances may continue to experience violence which is exacerbated by and often escalates during child visitation and/or visitation exchanges.
4) Some perpetrators of violence use the children as pawns to control the abused party and to commit more violence during separation and/or divorce.
5) Approximately 90 percent of children in homes in which their mothers are abused witness the abuse.
6) Women and children are at an elevated risk of violence during the process of separation and/or divorce.
7) Fifty to 70 percent of men who abuse their spouses or partners also abuse their children.
8) Up to 75 percent of all domestic assaults reported to law enforcement agencies were inflicted after the separation of the couple.
9) In one study of spousal homicide, over half of the male defendants were separated from their victims.
10) Seventy-three percent of battered women seeking emergency medical services do so after separation.

Sec. 4 Grants to States to Provide for Supervised Visitation Centers

(a) IN GENERAL. – The Secretary of Health and Human Services (hereafter referred to in the Act as the "Secretary") is authorized to award grants to states to enable states to enter into contracts and cooperative agreements with public or private nonprofit entities to assist such entities in establishing and operating supervised visitation centers for the purposes of facilitating supervised visitation and visitation exchange.
(b) CONSIDERATIONS. – In awarding such grants, contracts and cooperative agreements, under subsection (a), the Secretary shall take into account –

    (1) The number of families to be served by the proposed visitation center to be established under the grant, contract or agreement;
    (2) the extent to which supervised visitation centers serve underserved populations.
    (3) the extent to which the applicant demonstrates cooperation and collaboration with advocates in the local community served, including the state domestic violence coalition, state sexual assault coalition, local shelters and programs for domestic violence and sexual assault victims.

(c) USE OF FUNDS. –
    (1) IN GENERAL. -- Amounts provided under a grant, contract or cooperative agreement awarded under this section shall be used to establish supervised visitation centers and for the purposes described in section 1. In using such amounts, grantees shall target the economically disadvantaged and those individuals who could not otherwise afford such visitation services. Other individuals shall be permitted to use the services provided by the center on a sliding fee basis.
    (2) The Secretary shall award grants, contracts and cooperative agreements under this Act in accordance with such regulations as the Secretary may promulgate. The applicant shall:
        (A) demonstrate recognized expertise in the area of family violence and a record of high quality service to victims of domestic violence and sexual assault; and
        (B) be an entity located in the state or locality where state law requires the court to consider evidence of domestic violence, whether or not there is a conviction of any

offense of domestic violence or child abuse or the existence of an order of protection against domestic violence, in making a custody decision.

(C) demonstrate collaboration with and support of the state domestic violence coalition, sexual assault coalition and local domestic violence and sexual assault shelter or program in the locality in which the supervised visitation center will be operated.

(d) REPORTING. – Not later than 60 days after the end of each fiscal year, the Secretary shall report to the Congress information concerning:

(1) number of persons served and number of persons turned away from services categorized by state and type of presenting problem that underlies the need for supervised visitation and/or visitation exchange (eg, domestic violence, child abuse, sexual assault, emotional or other physical abuse, or combinations of factors).

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

(3) other appropriate information designated in regulations promulgated by the Secretary.

(4) safety and security problems occurring during the reporting period.

(e) Authorization of Appropriations.

(1) IN GENERAL. – For the purpose of awarding grants, contracts and cooperative agreements under this Act, there are authorized to be appropriated $75,000,000 for fiscal year 1998, $85,000,000 for fiscal year 1999, $95,000,000 for fiscal year 2000.

(2) DISTRIBUTION.—Of the amounts appropriated under subsection (1) for each fiscal year, not less than 90 percent shall be used to award grants, contracts, or cooperative agreements.

DISBURSEMENT.—Amounts appropriated under this Act shall be disbursed as categorical grants through the Secretary.

III. Military

amend Title 10, Chaper 47, Article 128, paragraph 54b(3), to include a new offense of domestic violence:

"(d) Domestic Violence Assault

(i) That the accused did cause physical harm to a spouse or intimate partner;

(ii) or place a spouse or intimate partner in fear of physical harm;

(iii) or cause a spouse or intimate partner to engage involuntarily in sexual activity by force, threat of force, or duress."

Amend Title 10, Chapter 47, Article 133, paragraph 54 (e) by adding to the maximum punishment as follows:

"(10) Domestic Violence Assault. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for up to 10 years."

Amend Chapter 53, Section 1059, (e)(A) as follows:

"...convicted by a court-martial ~~for a~~ <u>for any offense which includes</u> dependent-abuse ~~offense~~ <u>as an underlying or principal factor</u> ..."

Amend Chapter 53, Section 1059, (e)(A) as follows:

"...(if the <u>underlying or principal</u> basis for the separation includes ~~a~~ dependent abuse ~~offense~~)..."

Amend Chapter 53, Section 1059, (g)(2) in the last line as follows:

"...period of eligibility for such payments, the Secretary may ~~not~~ resume such payments if the Secretary determines that there was ongoing abuse. Such determinations for resuming payments shall be reviewed on a case-by-case basis by the Secretary.

IV. Other

The United States Sentencing Commission shall study the following and report to the Congress:

(1) sentences given to persons ~~men and women~~ incarcerated in federal and state prison for assault or homicide ~~related~~ crimes in which the relationship to the victim was a spouse, former spouse or intimate partner.
(2) the effect of illicit drugs and alcohol on domestic violence and the sentences imposed for offenses involving such illicit drugs and alcohol where domestic violence occurred.
(3) analysis delineated by race, gender, type of offense, and or other categories that would be useful for understanding the problem.
(4) recommendations with respect to the offenses described in this section.

Sloan, Melanie

From: DEdwards[SMTP:DEdwards@news.mintz.com]
Sent: Monday, July 14, 1997 4:05 PM
To: Sloan, Melanie
Subject: more military stuff

thought I sent this, but can't really tell from my log, so here it is again. stuff i did not put ~~back on disk~~ that had been wiped out by my virus.

amend Title 10, Chapter 55, Section 1076(e)(1) as follows:

"Any abused dependent of a former member of a uniformed service described in paragraph (4) shall for the full period of transitional compensation be furnished with medical or denal care for the treatment of illness or injuries in facilities of the uniformed services under the same benefits to which the dependent would be entitled if the former service member had not been removed from the armed services."

Sloan, Melanie

From: DEdwards[SMTP:DEdwards@news.mintz.com]
Sent: Monday, July 14, 1997 3:48 PM
To: Sloan, Melanie
Subject: more military stuff

Here's something I forgot to include that had been wiped off of my disk
–

amend Title 10, Chapter 55, Section 1076(e)(1) as follows:

Any abused dependent of a former member of a uniformed service described in paragraph (4) shall for the full period of transitional compensation be furnished with medical or dental care for the treatment of illness or injuries in facilities of the uniformed services with the same benefits as were in place for the dependent during the period of active service of the former member of the uniformed service.

105TH CONGRESS
1ST SESSION

S. ______

IN THE SENATE OF THE UNITED STATES

Mr. LEAHY (for himself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on ______________

A BILL

To enhance rights and protections for victims of crime.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Crime Victims Assistance Act".

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

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

TITLE I—VICTIM RIGHTS

Subtitle A—Amendments to Title 18, United States Code

Sec. 101. Right to be notified of detention hearing and right to be heard on the issue of detention.

(3) the term "Indian tribe" has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

(4) the term "Judicial Conference" means the Judicial Conference of the United States established under section 331 of title 28, United States Code;

(5) the term "law enforcement officer" means an individual authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law, and includes corrections, probation, parole, and judicial officers;

(6) the term "Office of Victims of Crime" means the Office of Victims of Crime of the Department of Justice;

(7) the term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(8) the term "unit of local government" means any—

(A) city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; or

TITLE I—VICTIM RIGHTS

Subtitle A—Amendments to Title 18, United States Code

SEC. 101. RIGHT TO BE NOTIFIED OF DETENTION HEARING AND RIGHT TO BE HEARD ON THE ISSUE OF DETENTION.

Section 3142 of title 18, United States Code, is amended by adding at the end the following:

"(k) NOTIFICATION OF RIGHT TO BE HEARD.—

"(1) IN GENERAL.—In any case involving a defendant who is arrested for a felony offense involving death or serious bodily injury to any person, or a threat of death or serious bodily injury to any person, in which a detention hearing is scheduled pursuant to subsection (f)—

"(A) the Government shall make a reasonable effort to notify the victim of the hearing, and of the right of the victim to be heard on the issue of detention; and

"(B) at the hearing under subsection (f), the court shall inquire of the Government as to whether the efforts at notification of the victim under subparagraph (A) were successful and, if so, whether the victim wishes to be heard on

SEC. 103. ENHANCED RIGHT TO ORDER OF RESTITUTION.

Section 3664(d)(2)(A)(iv) of title 18, United States Code, is amended by inserting ", and the right of the victim (or the family of a victim who is deceased or incapacitated) to attend the sentencing hearing and to make a statement to the court at the sentencing hearing" before the semicolon.

SEC. 104. RIGHT TO BE NOTIFIED OF ESCAPE OR RELEASE FROM PRISON.

(a) IN GENERAL.—Chapter 315 of title 18, United States Code, is amended by adding at the end the following:

"§ 4286. Right of victims of crime to be notified of release or escape of defendant

"(a) IN GENERAL.—In any case involving a defendant who is incarcerated in a Federal prison facility pursuant to a judgment of conviction for a felony offense involving death or serious bodily injury to any person, or a threat of death or serious bodily injury to any person, the Bureau of Prisons shall make a reasonable effort to notify the victim of the impending release from custody of the defendant, or, if applicable, the escape from custody of the defendant.

"(b) TIMING AND CONTENTS OF NOTIFICATIONS.—In carrying out this section, the Bureau of Prisons shall ensure that—

(1) in subsection (a)—

(A) in paragraph (1), by striking "as provided in paragraph (2)" and inserting "as provided in paragraph (3)";

(B) by redesignating paragraph (2) as paragraph (3);

(C) by inserting after paragraph (1) the following:

"(2) Whoever uses physical force or the threat of physical force, or attempts to do so, with intent to—

"(A) influence, delay, or prevent the testimony of any person in an official proceeding;

"(B) cause or induce any person to—

"(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

"(ii) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

"(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; and

Subtitle B—Amendments to Federal Rules of Criminal Procedure

SEC. 121. RIGHT TO BE NOTIFIED OF PLEA AGREEMENT AND TO BE HEARD ON MERITS OF THE PLEA AGREEMENT.

(a) IN GENERAL.—Rule 11 of the Federal Rules of Criminal Procedure is amended by adding at the end the following:

"(i) RIGHTS OF VICTIMS.—

"(1) IN GENERAL.—In any case involving a defendant who is charged with a felony offense involving death or serious bodily injury to any person, or a threat of death or serious bodily injury to any person—

"(A) the Government, prior to a hearing at which a plea of guilty or nolo contendere is entered, shall make a reasonable effort to notify the victim of—

"(i) the date and time of the hearing; and

"(ii) the right of the victim to attend the hearing and to address the court; and

"(B) if the victim attends a hearing described in subparagraph (A), the court, before

Congress a report containing recommendations for amending the Federal Rules of Criminal Procedure to provide enhanced opportunities for victims of felony offenses involving death or serious bodily injury to any person, or the threat of death or serious bodily injury to any person, to be heard on the issue of whether or not the court should accept a plea of guilty or nolo contendere.

(B) INAPPLICABILITY OF OTHER LAW.—Chapter 131 of title 28, United States Code, does not apply to any recommendation made by the Judicial Conference under this paragraph.

(3) CONGRESSIONAL ACTION.—Except as otherwise provided by law, if the Judicial Conference—

(A) submits a report in accordance with paragraph (2) containing recommendations described in that paragraph, and those recommendations are the same as the amendment made by subsection (a), then the amendment made by subsection (a) shall become effective 30 days after the date on which the recommendations are submitted to Congress under paragraph (2);

(1) in subsection (b)—

(A) in paragraph (4), by striking subparagraph (D) and inserting the following:

"(D) a victim impact statement, identifying, to the maximum extent practicable—

"(i) each victim of the offense;

"(ii) an itemized account of any economic loss suffered by each victim as a result of the offense;

"(iii) any physical injury suffered by each victim as a result of the offense, along with its seriousness and permanence;

"(iv) a description of any change in the personal welfare or familial relationships of each victim as a result of the offense; and

"(v) a description of the impact of the offense upon each victim."; and

(B) by adding at the end the following:

"(7) VICTIM IMPACT STATEMENTS.—

"(A) IN GENERAL.—Any probation officer preparing a presentence report shall—

"(i) make a reasonable effort to notify each victim of the offense that such a re-heard under subdivision (c)(1), and" before "the right of allocution".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall become effective as provided in paragraph (3).

(2) ACTION BY JUDICIAL CONFERENCE.—

(A) RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, the Judicial Conference shall submit to Congress a report containing recommendations for amending the Federal Rules of Criminal Procedure to provide enhanced opportunities for victims of felony offenses involving death or serious bodily injury to any person, or the threat of death or serious bodily injury to any person, to participate during the presentencing phase of the criminal process.

(B) INAPPLICABILITY OF OTHER LAW.—Chapter 131 of title 28, United States Code, does not apply to any recommendation made by the Judicial Conference under this paragraph.

(3) CONGRESSIONAL ACTION.—Except as otherwise provided by law, if the Judicial Conference—

(4) APPLICATION.—Any amendment made pursuant to this section (including any amendment made pursuant to the recommendations of the United States Sentencing Commission under paragraph (2)) shall apply in any proceeding commenced on or after the effective date of the amendment.

SEC. 123. RIGHTS OF NOTIFICATION AND ALLOCUTION AT A PROBATION REVOCATION HEARING.

(a) IN GENERAL.—Rule 32.1 of the Federal Rules of Criminal Procedure is amended by adding at the end the following:

"(d) RIGHTS OF VICTIMS.—

"(1) IN GENERAL.—At any hearing pursuant to subsection (a)(2) involving one or more persons who have been convicted of a felony offense involving death or serious bodily injury to any person, or a threat of death or serious bodily injury to any person, the Government shall make reasonable effort to notify the victim of the offense of—

"(A) the date and time of the hearing; and

"(B) the right of the victim to attend the hearing and to address the court regarding whether the terms or conditions of probation or supervised release should be modified.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall become effective as provided in paragraph (3).

(2) ACTION BY JUDICIAL CONFERENCE.—

(A) RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, the Judicial Conference shall submit to Congress a report containing recommendations for amending the Federal Rules of Criminal Procedure to ensure that reasonable efforts are made to notify victims of felony offenses involving death or serious bodily injury to any person, or the threat of death or serious bodily injury to any person, of any revocation hearing held pursuant to rule 32.1(a)(2) of the Federal Rules of Criminal Procedure.

(B) INAPPLICABILITY OF OTHER LAW.—Chapter 131 of title 28, United States Code, does not apply to any recommendation made by the Judicial Conference under this paragraph.

(3) CONGRESSIONAL ACTION.—Except as otherwise provided by law, if the Judicial Conference—

(A) submits a report in accordance with paragraph (2) containing recommendations deed States Sentencing Commission under paragraph (2)) shall apply in any proceeding commenced on or after the effective date of the amendment.

Subtitle C—Amendment to Federal Rules of Evidence

SEC. 131. ENHANCED RIGHT TO BE PRESENT AT TRIAL.

(a) IN GENERAL.—Rule 615 of the Federal Rules of Evidence is amended—

(1) by striking "At the request" and inserting the following:

"(a) IN GENERAL.—Except as provided in subsection (b), at the request";

(2) by striking "This rule" and inserting the following:

"(b) EXCEPTIONS.—Subsection (a)";

(3) by striking "exclusion of (1) a party" and inserting the following: "exclusion of—

"(1) a party";

(4) by striking "person, or (2) an officer" and inserting the following: "person;

"(2) an officer";

(5) by striking "attorney, or (3) a person" and inserting the following: "attorney;

"(3) a person";

necessary to maintain order during a court proceeding; or

"(2) to limit or otherwise affect the ability of a witness to be present during court proceedings pursuant to section 3510 of title 18, United States Code.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall become effective as provided in paragraph (3).

(2) ACTION BY JUDICIAL CONFERENCE.—

(A) RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, the Judicial Conference shall submit to Congress a report containing recommendations for amending the Federal Rules of Evidence to provide enhanced opportunities for victims of felony offenses involving death or serious bodily injury to any person, or the threat of death or serious bodily injury to any person, to attend judicial proceedings, even if they may testify as a witness at the proceeding.

(B) INAPPLICABILITY OF OTHER LAW.—Chapter 131 of title 28, United States Code,

(C) fails to comply with paragraph (2), the amendments made by subsection (a) shall become effective 360 days after the date of enactment of this Act.

(4) APPLICATION.—Any amendment made pursuant to this section (including any amendment made pursuant to the recommendations of the United States Sentencing Commission under paragraph (2)) shall apply in any proceeding commenced on or after the effective date of the amendment.

Subtitle D—Remedies for Noncompliance

SEC. 141. REMEDIES FOR NONCOMPLIANCE.

(a) GENERAL LIMITATION.—Any failure to comply with any amendment made by this Act shall not give rise to a claim for damages, or any other action against the United States, or any employee of the United States, any court official or officer of the court, or an entity contracting with the United States, or any action seeking a rehearing or other reconsideration of action taken in connection with a defendant.

(b) REGULATIONS TO ENSURE COMPLIANCE.—

(1) IN GENERAL.—Notwithstanding subsection (a), not later than 1 year after the date of enactment of this Act, the Attorney General and the

ultimate arbiter of the complaint, and there shall be no judicial review of the final decision of the Attorney General by a complainant.

SEC. 142. PILOT PROGRAMS TO ESTABLISH OMBUDSMAN PROGRAMS FOR CRIME VICTIMS.

(a) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term "Director" means the Director of the Office of Victims of Crime.

(2) OFFICE.—The term "Office" means the Office of Victims of Crime.

(3) QUALIFIED PRIVATE ENTITY.—The term "qualified private entity" means a private entity that meets such requirements as the Attorney General, acting through the Director, may establish.

(4) QUALIFIED UNIT OF STATE OR LOCAL GOVERNMENT.—The term "qualified unit of State or local government" means a unit or a State or local government that meets such requirements as the Attorney General, acting through the Director, may establish.

(5) VOICE CENTERS.—The term "VOICE Centers" means the Victim Ombudsman Information Centers established under the program under subsection (b).

(b) PILOT PROGRAMS.—

(B) CONTENTS OF AGREEMENT.—The agreement referred to in subparagraph (A) shall specify that—

(i) the VOICE Center shall be established in accordance with this section; and

(ii) except with respect to meeting applicable requirements of this section concerning carrying out the duties of a VOICE Center under this section (including the applicable reporting duties under subsection (c) and the terms of the agreement) each VOICE Center shall operate independently of the Office; and

(C) the Office shall have no supervisory or decisionmaking authority over the day-to-day operations of a VOICE Center.

(c) OBJECTIVES.—

(1) MISSION.—The mission of each VOICE Center established under a pilot program under this section shall be to assist a victim of a Federal or State crime to ensure that the victim—

(A) is fully apprised of the rights of that victim under applicable Federal or State law; and fairness, dignity, and compassion throughout the criminal justice process.

(d) OVERSIGHT.—

(1) TECHNICAL ASSISTANCE.—The Office may provide technical assistance to each VOICE Center.

(2) ANNUAL REPORT.—Each qualified private entity or qualified unit of State or local government that carries out a pilot program to establish and operate a VOICE Center under this section shall prepare and submit to the Director, not later than 1 year after the VOICE Center is established, and annually thereafter, a report that—

(A) describes in detail the activities of the VOICE Center during the preceding year; and

(B) outlines a strategic plan for the year following the year covered under subparagraph (A).

(e) REVIEW OF PROGRAM EFFECTIVENESS.—

(1) GAO STUDY.—Not later than 2 years after the date on which each VOICE Center established under a pilot program under this section is fully operational, the Comptroller General of the United States shall conduct a review of each pilot program carried out under this section to determine the effectiveness of the VOICE Center that is the subject of

the amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the "False Claims Act"), may be used by the Director to make grants under subsection (b).

TITLE II—VICTIM ASSISTANCE INITIATIVES

SEC. 201. INCREASE IN VICTIM ASSISTANCE PERSONNEL.

There are authorized to be appropriated such sums as may be necessary to enable the Attorney General to—

(1) hire 50 full-time or full-time equivalent employees to serve victim-witness advocates to provide assistance to victims of any criminal offense investigated by any department or agency of the Federal Government; and

(2) provide grants through the Office of Victims of Crime to qualified private entities to fund 50 victim-witness advocate positions within those organizations.

SEC. 202. INCREASED TRAINING FOR STATE AND LOCAL LAW ENFORCEMENT, STATE COURT PERSONNEL, AND OFFICERS OF THE COURT TO RESPOND EFFECTIVELY TO THE NEEDS OF VICTIMS OF CRIME.

Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title fices, State courts, county jails, State correctional institutions, and qualified private entities, to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments relating to the criminal proceedings at issue.

"(b) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the 'False Claims Act'), may be used for grants under this section.".

(b) VIOLENT CRIME REDUCTION TRUST FUND.—Section 310004(d) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14214(d)) is amended—

(1) in the first paragraph designated as paragraph (15) (relating to the definition of the term "Federal law enforcement program"), by striking "and" at the end;

(2) in the first paragraph designated as paragraph (16) (relating to the definition of the term "Federal law enforcement program"), by striking the period at the end and inserting "; and"; and

(3) by inserting after the first paragraph designated as paragraph (16) (relating to the definition

(A) the need for and the potential impact of all legislation introduced in either the House of Representatives or the Senate for amending the Constitution of the United States to establish rights for victims of crime, which shall include an examination of, among other issues—

(i) the means of enforcing those constitutional rights;

(ii) the financial cost to the States of establishing and enforcing those constitutional rights, including any cost to prosecutors, law enforcement officials, corrections officials, and the criminal and civil justice system;

(iii) the likely effects of a constitutional amendment on the administration of justice at the Federal, State, and local levels, including any effect on prosecutorial and judicial functions and any effect on the rights of the accused;

(iv) whether alternative means to an amendment to the Constitution, such as legislation, regulation, Executive order, or action by State or local government, could achieve the same goal of providing en-

ensure the passage of victims' rights legislation;

(iv) the implementation problems, if any, that have resulted from the passage of State constitutional amendments or the enactment of State laws establishing enhanced rights and protections for victims of crime; and

(v) the extent to which the Constitution of the United States has served as a barrier to the exercise of rights established by State constitutional amendments or laws establishing enhanced rights and protections for victims of crime.

(2) REPORT.—

(A) IN GENERAL.—Not later than 2 years after the date on which the seventh initial member is appointed to the Commission in accordance with this section, the Commission shall submit to Congress a report describing the findings of the Commission with respect to the study conducted under paragraph (1).

(B) RECOMMENDATIONS.—The report submitted to Congress under this paragraph shall include recommendations of the Commission for

(i) IN GENERAL.—Subject to clause (ii), each member of the Commission who is an officer or employee of the Federal Government shall serve without additional compensation for the service of that member as an officer or employee of the United States, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

(ii) LIMITATION.—A member referred to in clause (i) may not receive reimbursement for expenses in amounts in excess of the maximum amounts authorized under section 456 of title 28, United States Code.

(B) PRIVATE MEMBERS.—

(i) IN GENERAL.—Subject to clause (ii), members of the Commission who are not officers or employees of the Federal Government shall receive—

(I) a per diem of $200 for each day (including travel time) during which the member is engaged in the

Code, governing appointments in the competitive service or the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(B) COMPENSATION.—Compensation of personnel appointed under this subsection shall not exceed the annual maximum rate of base pay for a position above GS–15 of the General Schedule under section 5108 of title 5, United States Code.

(8) EXPERTS AND CONSULTANTS.—The executive director appointed under paragraph (6) may procure personal services of experts and consultants as authorized by section 3109 of title 5, United States Code, at rates not to exceed the highest level payable under the General Schedule pay rates under section 5332 of title 5, United States Code.

(9) SERVICES.—The Administrative Office of the United States Courts shall provide administrative services, including financial and budgeting services, for the Commission on a reimbursable basis. The Federal Judicial Center shall provide necessary research services to the Commission on a reimbursable basis.

(f) TERMINATION.—The Commission shall terminate on the date which is 90 days after the date on which a report is submitted to Congress under subsection (b)(2).

(g) CONGRESSIONAL CONSIDERATION.—Not later than 60 days after the date on which the Commission submits a report to Congress under subsection (b)(2), the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives shall conduct a joint hearing to assess the report.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission, to remain available until expended, $2,000,000 to carry out this section.

SEC. 205. AMENDMENTS TO VICTIMS OF CRIME ACT OF 1994.

(a) CRIME VICTIMS FUND.—Section 1402 of the Victims of Crime Act of 1994 (42 U.S.C. 10601) is amended—

(1) in subsection (b)—

(A) in paragraph (3), by striking "and" at the end;

(B) in paragraph (4), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

(A) in each of paragraphs (1) and (2), by striking "40" and inserting "60"; and

(B) in paragraph (3), by inserting "and evaluation" after "administration"; and

(2) in subsection (b)(7), by inserting "because the identity of the offender was not determined beyond a reasonable doubt in a criminal trial, because criminal charges were not brought against the offender, or" after "deny compensation to any victim".

(c) CRIME VICTIM ASSISTANCE.—Section 1404 of the Victims of Crime Act of 1994 (42 U.S.C. 10603) is amended—

(1) in subsection (c)—

(A) in paragraph (1)—

(i) by striking the comma after "Director";

(ii) by inserting "or enter into cooperative agreements" after "make grants";

(iii) by striking subparagraph (A) and inserting the following:

"(A) for demonstration projects, evaluation, training, and technical assistance services to eligible organizations;"

(2) in subsection (d)—

(A) by striking paragraph (1) and inserting the following:

"(1) the term 'State' includes—

"(A) the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other territory or possession of the United States; and

"(B) for purposes of a subgrant under subsection (a)(1) or a grant or cooperative agreement under subsection (c)(1), the United States Virgin Islands and any agency of the government of the District of Columbia or the Federal Government performing law enforcement functions in and on behalf of the District of Columbia.";

(B) in paragraph (2)—

(i) in subparagraph (C), by striking "and" at the end; and

(ii) by adding at the end the following:

"(E) public awareness and education and crime prevention activities that promote, and are conducted in conjunction with, the provision of victim assistance; and

"(C) tribal organization;

"(D) organization—

"(i) described in section 501(c) of the Internal Revenue Code of 1986; and

"(ii) exempt from taxation under section 501(a) of such Code; or

"(E) other entity that the Director determines to be appropriate.".

(d) COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OF MASS VIOLENCE.—Section 1404B of the Victims of Crime Act of 1994 (42 U.S.C. 10603b) is amended—

(1) in subsection (a), by striking "1404(a)" and inserting "1402(d)(4)(B)"; and

(2) in subsection (b), by striking "1404(d)(4)(B)" and inserting "1402(d)(4)(B)".

SEC. 206. TECHNICAL CORRECTION.

Section 233(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (110 Stat. 1245) is amended by striking "1 year after the date of enactment of this Act" and inserting "October 1, 1999".

SEC. 207. SERVICES FOR VICTIMS OF CRIME AND DOMESTIC VIOLENCE.

Section 504 of Public Law 104–134 (110 Stat. 1321–132 et seq.) shall not be construed to prohibit a recipient tice system and related criminal justice agencies to improve the capacity of the system and agencies to—

(A) protect the community served by the system and agencies; and

(B) ensure accountability of the offender and the system.

DRAFT
8/4/97

[DISCUSSION DRAFT]

JULY 30, 1997

105TH CONGRESS
1ST SESSION

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To

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 "Older Women's Protection from Violence Act of 1977".

SEC. 2. FINDINGS.

The Congress finds that—

(1) more than one million women age 65 and over are victims of abuse each year;

(2) the reported incidence of elder abuse in America increased by 94 percent between 1986 and 1991 and is expected to grow in the future;

(3) it is estimated that at least 5 percent of the nation's elderly are victims of moderate to severe abuse and the rate for all forms of abuse may be as high as 10 percent;

(4) elder abuse is severely underreported with 1 in 5 cases being reported in 1980 and 1 in 8 cases being reported now;

(5) elder abuse takes on many forms, including physical abuse, sexual abuse, psychological (emotional) abuse, neglect (active and passive), and financial abuse;

(6) many older persons, particularly women and minorities, fail to report abuse because of shame or previously unsatisfactory experiences with police, district attorneys, clergy, or social workers or others who lacked sensitivity to the concerns or needs of older people;

(7) many older persons fail to report abuse because they are dependent on their abusers and fear being abandoned or institutionalized;

(8) identification of elder abuse is difficult because many elders are not tied into ~~many~~ social networks, e.g., schools or jobs; and

(9) older persons critically need protection against abuse, neglect, and exploitation.

SEC. 3. ELDER ABUSE PREVENTION PROGRAM.

Section 702(b) of the Older Americans Act of 1965 (42 U.S.C. 3058a(b)) is amended to read as follows:

"(b) PREVENTION OF ELDER ABUSE, NEGLECT, AND EXPLOITATION.—There are authorized to be appropriated to carry out chapter 3 such sums as may be necessary without fiscal year limitation.".

SEC. 4. LONG-TERM CARE OMBUDSMAN PROGRAM.

Section 303(a)(1) of the Older Americans Act of 1965 (42 U.S.C. 3023(a)(1)) is amended by inserting before the period the following: ", except that for grants under section 321(a)(10) there are authorized to be appropriated such sums as may be necessary without fiscal year limitation".

SEC. 5. LAW SCHOOL CLINICAL PROGRAMS ON ELDER ABUSE.

The Attorney General may make grants to law school clinical programs to enable such programs to include cases which involve issues of domestic violence against older women.

SEC. 6. TRAINING PROGRAMS FOR LAW ENFORCEMENT OFFICES.

The Attorney General shall develop curricula and offer, or provide for the offering of, training programs to assist law enforcement officers and prosecutors in recognizing and addressing instances of domestic violence directed against older women.

SEC. 7. TRAINING PROGRAMS FOR SOCIAL SERVICE AND HEALTH PROVIDERS.

The Secretary shall, in consultation with the Secretary of Education, develop curricula and implement training programs for protective service workers, health providers, social workers clergy, and other community-based social service providers, in settings including but not limited to senior centers, adult day car senior housing to improve their ability to recognize and address instances of domestic violence directed against older women. Separate curricula and training programs shall be targeted to the clergy, adult protective services workers, medical students and physicians, and attorneys, including those specializing in family law.

SEC. 8. COMMUNITY INITIATIVES TO COMBAT DOMESTIC VIOLENCE AGAINST OLDER WOMEN.

The Secretary shall provide grants to nonprofit private organizations to establish projects in local communities involving ~~many~~ diverse sectors of each community to coordinate intervention and prevention of domestic violence. In awarding grants, the Secretary shall consider the importance of issues of domestic violence against older women.

SEC. 9. DOMESTIC VIOLENCE OUTREACH TO OLDER WOMEN.

The Secretary shall develop and implement outreach programs targeted toward older women who are victims of domestic violence, including, but not limited to, programs directed toward senior housing complexes and senior centers.

SEC. 10. DOMESTIC VIOLENCE SERVICES FOR OLDER WOMEN.

Section 311(a) of the Family Violence Prevention and Services Act (42 U.S.C. 10410(a)) is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting "; and", and by adding after paragraph (5) the following:

"(6) domestic violence service programs targeted at older women, including support groups and counseling.".

VIOLENCE AGAINST WOMEN ACT II
DRAFT RECOMMENDATIONS ON PROTECTIONS FOR VIOLENCE AGAINST DISABLED WOMEN[1]

INTRODUCTION

Women and girls with disabilities live at the intersection of gender and disability bias. As a consequence, they experience higher rates of violence and lower rates of access to services than their non-disabled peers. Research suggests that women with disabilities are 2 to 12 times more likely to be victims of physical and sexual violence than women and children who are not disabled.

Policy makers must recognize that poverty, segregation, low rates of education and employment, as well as a social denial that disabled women and girls are targets of sexual and domestic violence leads to their increased vulnerability. Indeed, it is not a disability itself that creates vulnerability, but the social and political reaction to disability.

Despite the high incidence of violence experienced by women with disabilities, services are frequently non-existent, inaccessible or inadequate to meet their needs. Disability service providers frequently fail to screen clients for abuse histories. In addition, women with disabilities are frequently not believed when they report sexual and domestic violence, or their cases are not taken seriously by either the criminal justice system or service providers.

In consideration of the development of a second Violence Against Women Act, we contacted several people were contacted around the United States with expertise on violence against women with disabilities. We provide the following recommendations with the hope and belief that their implementation could make a difference in the lives of women with disabilities.

RECOMMENDATIONS

1. The U.S. Attorney General should establish a disabled women's project within the office of Violence Against Women. This project should be staffed by a project director who is a disabled woman with expertise in violence against disabled women, a research associate, and an administrative assistant. This project would act as a clearinghouse as well as provide technical assistance to federal agencies and grantees on policy, procedures, and programs related to violence against disabled women and girls. The project director would also monitor compliance with federal disability rights laws by all Department

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1 The document has been prepared by Barbara Waxman Fiduccia, Director of the National Disabled Women's Policy Project of the Center for Women Policy Studies, in collaboration with Lacy Sloan, consultant to the N.O.W. Legal Defense and Education Fund. Contact person: Kathleen Stoll, Senior Policy Analyst, Center for Women Policy Studies, 202-872-1770.

grantees under VAWA.

2. Recipients of federal crime victim funds must comply with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act in all their programs and services. This includes public entities such as the states, counties, and cities, as well as non-profit entities. Priority must be given to the recruitment, training, and hiring of qualified disabled women as employees of programs and agencies that provide services to victims of crime. Program guidelines for grantees must stipulate their legal requirement to comply with these laws.

3. The DOJ should establish data collection systems to be employed by federal grantees of crime victim funding. This data collection effort would track service usage by disabled women and girls, and identify the barriers faced by disabled women and girls to the criminal justice system and victims of crime assistance services. The data would be used to establish future policy and funding priorities.

4. The attorney general should request studies designed and conducted by disabled women who are qualified researchers:

a. to determine the types of violent acts experienced by and are unique to the lives of disabled women and girls. Special attention must be paid to court cases (such as the Glen Ridge, New Jersey case) which limit the sexual consent rights of cognitively disabled women;

b. to assess states' crime penalties and the efficacy of these penalties when violence is directed at disabled women and girls. Particular attention should be paid to those state statutes which provide no penalties when a disabled wife is considered incompetent or is unable to resist marital rape, battery, or other acts of domestic violence. A task force should be established to study the risks associated with reforming those state laws when their effect is to undermine the sexual privacy and freedom of disabled women;

c. to assess the treatment of disabled women and girls by the criminal justice system following a report of violence. Particular attention should be paid to the treatment by police and prosecutors of disabled women and girls with cognitive and sensory disabilities as potential witnesses for the prosecution;

d. to develop methodologies to ensure that existing services are relevant for women with disabilities who are victims of violence. It is critical that services are meaningful to meet the needs of women with disabilities who have been victimized. Services such as disability-specific support groups, and treatment within existing services for women with disabilities, may be appropriate options along with existing integrated services. Particular attention should be paid to the necessity for domestic violence shelters to modify their service policies regarding the use of medication by residents, and the need to enable extensively disabled women to utilize personal assistant services within shelter environments; and,

e. to determine the training needs of police officers, victim assistance service providers, prosecutors, and judges to enable them to meet the emergency, personal, social, legal, and disability-related needs of disabled women and girls. Particular attention should be paid to the development of curricula to be included in the education of these social service and criminal justice system professionals throughout the country.

5. The attorney general should establish the authority to receive and perform criminal background checks on those persons who hold themselves out to be personal assistants. These background checks must be performed within 72 hours of the request. A significant amount of violence (including physical, sexual, emotional, and financial) is perpetrated by personal assistants who work in state institutions, nursing homes, group homes, as well as in the private homes of disabled women.

6. Funding should be earmarked for the development by disabled women of a system-wide training effort on sexual assault and domestic violence for disability community service providers (independent living center staff, vocational rehabilitation, special education teachers, residential facility staff, personal service assistants, case managers, etc.). Violence is all too common in a variety of settings within the disability community. These providers need training for the identification and prevention of violence in the lives of their clients.

7. The attorney general should make funds available for a national education campaign by and for disabled women and girls throughout the country. Particular attention should be paid to the development of curricula which train disabled women and girls to identify various types of violent acts and to access crime victim assistance services and programs and the criminal justice system.

8. The attorney general should establish strategies to implement the aforementioned recommendations: 1) set aside a percentage of VAWA funds for accessibility compliance efforts by grantees, as well as system-wide research and training regarding violence against women and girls with disabilities; and, 2) prioritize funding of grant applications that include plans to meet the needs of women with disabilities. This would mean that applicants for VAWA funding would receive more points if they were inclusive of the needs of women with disabilities.

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DAUGHTER OF VAWA
PROTECTIONS FOR BATTERED IMMIGRANT WOMEN

1. Eligibility

A. Reinstating VAWA Eligibility For Caretakers of Elderly Parents

Many battered immigrant women act as the sole caretakers of their children and also their parents who are senior citizens. Under the Violence Against Women Act's original suspension of deportation provisions, battered immigrant women were permitted to show extreme hardship to themselves, their children, or their parents as an element of their VAWA suspension case. Battered immigrant women who were caretakers of their parents, many of whom might be U.S. citizens or lawful permanent residents, should be able to show that their deportation would result in extreme hardship for their parents or children who remain in the United States. IIRIRA, in preserving VAWA suspension for battered immigrants, amended this section to make the ability to prove extreme hardship to a parent available only to battered immigrant children.

Section 240A(b)(2) should be amended to allow battered immigrant women to present evidence of extreme hardship to themselves, their children, or their parents as part of their cancellation of removal case in the same manner in which they could in a suspension of deportation case. The purpose of VAWA was to grant immigration relief to battered immigrant women married to U.S. citizens or lawful permanent residents who were locked into abusive relationships by immigration laws. This proposed change returns VAWA eligibility to a narrow but needy group of women and helps guarantee that and that their U.S. citizen- or permanent resident-parents will not experience extreme hardship.

§240A(b)(2)(E) should be amended as follows:

> "The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien demonstrates that -
>
> ...
>
> (E) the removal would result in extreme hardship to the alien, the alien's child, or ~~(in the case of an alien who is a child)~~ parent."

Section 212(a)(9)(A)(iii) should be amended by adding at the end the following:

> Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission. *Clause (i) and (ii) shall also not apply to aliens granted status under sections 204(A)(1)(a)(iii) or (iv) or classification under sections 204(a)(1)(B)(ii) or*

(iii) when the alien demonstrates extreme hardship to the alien or the alien's spouse, parent or child.

B. Battered Women Who Otherwise Qualify for VAWA Who May Have Criminal Convictions

Since IIRIRA made crimes of domestic violence deportable offenses, some women who might otherwise qualify for VAWA relief are being denied protection because they were subject to a dual arrest or were prosecuted for violating their own protection orders. This amendment would allow the Attorney General to waive the required finding of "good moral character" in appropriate in cases where battered women were either convicted of, or had pled guilty to, crimes they committed under duress from their abuser or to domestic violence-related crimes if they acted in self-defense or violated their own protection orders.

Additionally, the INS in the VAWA regulations has correctly defined battering or extreme cruelty to include forced prostitution. In light of this, it is important to allow the Attorney General to waive the bar to issuing a finding of "good moral character" in cases of immigrant women who have been forced into prostitution and are currently applying for suspension of deportation/cancellation of removal or self-petitioning.

At §204(a)(1)(A) add the following new section:

"(v) For the purposes of making good moral character determinations under Sections 204(a)(1)(A)(iii) and (iv) the Attorney General may waive the bar to issuing a finding of 'good moral character' in the case of an alien who otherwise qualifies for VAWA relief, but who has also committed or pled guilty to being forced into prostitution, to committing a crime under duress from the person who battered or subjected the alien to extreme cruelty, to violating his/her own protection order, or to committing a domestic violence- related crime, if the Attorney General determines that the alien acted in self-defense. After finding that an alien has been battered or subjected to extreme cruelty and is otherwise eligible for relief under sections 204(a)(1)(A)(iii) and (iv), the Attorney General may enter a finding of 'good moral character' despite the existence of a criminal conviction."

At § 204(a)(1)(B) add the following new section:

"(iv) For the purposes of making good moral character determinations under Sections 204(a)(1)(B)(ii) and (iii) the Attorney General may waive the bar to issuing a finding of good moral character in the case of an alien who otherwise qualifies for VAWA relief, but committed or pled guilty to forced prostitution, to committing a crime under duress from the person who battered or subjected the alien to extreme cruelty, to violating his/her own protection order, or to committing a domestic violence related crime, if the Attorney General

determines that the alien acted in self defense. After finding that an alien has been battered or subjected to extreme cruelty and would is otherwise eligible for relief under sections 204(a)(1)(B)(ii) and (iii), the Attorney General may in his or her sole discretion enter a finding of good moral character despite the existence of a criminal conviction."

Amend Section 244(a)(3) as in effect for aliens whose deportations proceedings commenced prior to 4/1/97 by adding at the end after "result in extreme hardship to the alien or the alien's parent or child." the following new language:

"For the purposes of making good moral character determinations under this section, the Attorney General may waive the bar to issuing a finding of good moral character in the case of an alien who has been battered or subjected to extreme cruelty but who has also been convicted of, or who plead guilty to, violating a court order issued to protect the alien or forced prostitution,, to committing a crime under duress from the person who battered or subjected the alien to extreme cruelty, or who was convicted of or plead guilty to a domestic violence-related crime if the Attorney General determines that the alien acted in self defense. After finding that an alien has been battered or subjected to extreme cruelty and would otherwise qualify for relief under this section, the Attorney General may in his or her sole discretion enter a finding of good moral character despite the existence of a criminal conviction."

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

"(F) For the purposes of making 'good moral character' determinations under this section, the Attorney General may waive the bar to issuing a finding of good moral character in the case of an alien who has been battered or subjected to extreme cruelty, but who has also been convicted of, or who plead guilty to, violating a court order issued to protect the alien or forced prostitution, or who was convicted of or plead guilty , to committing a crime under duress from the person who battered or subjected the alien to extreme cruelty, or to a domestic violence-related crime when the Attorney General determines that the alien acted in self defense."

Amend § 240A(b)(2)(D) as follows:

"...(A)nd has not been convicted of an aggravated felony *unless the Attorney General waives application of this subparagraph for humanitarian purposes in the exercise of discretion."*

At § 237 (a)(2)(e) add the following new section:

"(iii) The Attorney General may, upon determination that the alien was acting in self-defense, that the alien was not the primary perpetrator of violence in the relationship, that

the alien was convicted of violating the alien's own protection order, that the alien was convicted of committing a crime under duress from the person who subjected the alien to battering or extreme cruelty or for humanitarian purposes waive application of clause (i) and clause (ii)."

C. Exempt Women Battered By their U.S. Citizen Spouses From the Marriage Within 90 Days Requirement When Their Citizen Spouse Brought Them To the United States on a Fiancée Visa

Some abusive U.S. citizens bring their spouses to the U.S. on fiancé visas, but fail to marry them within the required 90 day period. When an alien fiancé is battered or subjected to extreme cruelty by his/her U.S. citizen fiancé, this 90-day requirement prevents the abuse victim from having access to any legal remedy. Section 245(d) of the Immigration and Nationality Act limits adjustment of status so that fiancées can only be adjusted to conditional spouse status. The following amendment seeks to waive this for immigrant fiancées and children battered by U.S. citizens.

Amend § 245(d) of the Immigration and Nationality Act to include the following:

"The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216. The Attorney General may not adjust, under subsection (a), the status of a non-immigrant alien described in section 101(a)(15)(K) (relating to an alien fiancée or fiancé or the minor child of such an alien) except to that of an alien lawfully admitted to the United States on a conditional basis under section 216 as a result of the marriage of the non-immigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's non-immigrant status under section 101(a)(15)(K). *Aliens who are self-petitioning for permanent resident status under sections 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii); 204(a)(1)(B)(iii) are exempt the application of this subsection."*

D. Preserving and Upgrading of Abuser's Status

The regulations issued by INS implementing VAWA offer no protection to VAWA applicants against loss of the abuser's immigration status that occurs between filing of the self-petition and approval of the petition by INS. Loss of an abuser's immigration status could happen quite rapidly, for example when the abuser is deported because of the abuse. This amendment would require that, for the purposes of VAWA applicants, once the petition has been approved, that approval relates back to the date of filing so the status of the lawful permanent resident or the United States citizen spouse is determined as of the filing date for purposes of the spouse or children's eligibility under VAWA . This ensures the alien spouse's self-petition will not be undermined if the status of the United State citizen or lawful permanent resident spouse forfeits or loses his immigration status for any reason, including the abusive spouse's deportation, or decision to give up his/her immigration status or citizenship.

Additionally, cases of VAWA applicants whose spouses are U.S. citizens are processed much faster than cases of VAWA applicants whose spouses or parents are lawful permanent residents Cases of abuse victims married to citizens can be completed in 6 months where as cases of those married to lawful permanent residents can take up to 4 years. Some lawful permanent resident spouses will upgrade their immigration status to that of a citizen while the VAWA applications filed while the spouse was a lawful permanent resident were pending. Qualified applicants for VAWA should be able to benefit from that upgrade in status through an automatic conversion of their VAWA petition to that of a spouse of a citizen in the same way they would have benefitted if the abusive lawful permanent resident spouse had filed a petition on the victim's behalf. VAWA applicants should be able to benefit from an upgrade in status whether or not a divorce has been finalized before the upgrade occurs, so long as the parties were married when the original VAWA petition was filed.

At § 204(1)(A)(1) add the following new section:

> *"(vi) For the purposes of petitions filed under Sections 204(a)(1)A)(iii) and (iv) loss or renunciation or changes to the abuser's citizenship status after filing of the petition shall not preclude the categorization of the self-petitioning spouse or children as an immediate relative."*

At section 204(a)(1)(B) add the following new section:

> *"(v) For the purposes of petitions filed under Sections 204(a)(1)(B)(ii) and (iii) changes in the immigration status of a lawful permanent resident spouse or parent subsequent to the filing of a petition under these sections shall not adversely effect adjudication of the petition. Upgrades in the immigration status of a lawful permanent resident spouse to that of a United States citizen shall result in consideration of any petition filed with the Immigration and Naturalization Service and pending under section 204(a)(1)(B) on behalf of an alien who has been battered or subjected to extreme cruelty to automatically reclassified as a petition filed under Section 204(a)(1)(A) of this Act even if the upgrade occurs after divorce."*

2. Extended VAWA Protections

A. Abusers of Fiancée

VAWA eligibility should be created for victims who were brought into the United States by U.S. citizen batterers under fiancée visas when the citizen never married the fiancée but subjected her to battering or extreme cruelty. Such provisions would offer protection to a limited category of immigrants battered by United States citizens who brought the alien to the United States on a fiancée visa, never married her, but subjected her to battering or extreme cruelty. Such a provision would help ensure that these U.S. citizen abusers can be prosecuted for the crimes they commit against their fiancees by allowing fiancées brought here and abused to testify against their abuser without fear of deportation. This provision may also help deter citizens from bringing multiple fiancées to the United States and abusing them.

B. Spouses of U.S. Citizen or Lawful Permanent Resident Bigamists

Domestic violence advocacy programs have been receiving calls from battered immigrant women who are married to U.S. citizens and lawful permanent residents who can prove that they have been battered or subjected to extreme cruelty, that they are of good moral character and that their deportation would cause extreme hardship, but in investigating the VAWA case the abuse victim discovers that her abusive husband never divorced his previous wife. Battered immigrant spouses of U.S. citizens and lawful permanent residents whose husbands have committed bigamy should be able obtain relief under VAWA as they would if their husband had not committed bigamy. Denying immigrant women and children who have been battered or subjected to extreme cruelty by bigamists access to VAWA encourages bigamy and abuse and shields bigamists who are also abusers from criminal prosecution. U.S. citizen abusers and lawful permanent residents should not be able to escape criminal liability for their actions through bigamy when immigrant victims fear testifying against their batterers in court because they are afraid that testifying will result in even more abuse or deportation.

Amend §240A(b)(2) to add the following:

"The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien demonstrates that -

(A) the alien has been battered or subjected to extreme cruelty in the United States by a spouse*, parent or individual who has brought the alien into the country under a fiancée visa and has not married the alien or the batterers has committed bigamy against the alien and* is a United States citizen or lawful permanent resident (or is the alien child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent)...."

and Amend §204(a)(1)(A)(iii)40701(a)(1)(C)(iii) of IIRIRA:

"An alien who is the spouse of a citizen of the United States *or who has been brought into the country by and United States citizen on a fiancée visa but never married the citizen or* *is an illegitimate spouse due to the citizen's bigamy, and is not legally married to the citizen,* who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) *or who would have been so classified but for the actions of the U.S. citizen with whom the alien intended to legally marry,* and who has resided in the United States with the alien's spouse *or intended spouse* may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien if such a child has not been classified under clause (iv)) under such section if the alien demonstrates to the Attorney General that....

(A) the alien is residing in the United States, the marriage *or relationship* between the alien and the batterers, *or their intention to marry* was entered into in good faith by the alien, and during the marriage *or relationship intended by the alien to be legally a marriage,* the alien
or a child of the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's spouse *or intended spouse*; and ...."

C. Non-Immigrant Visa Derivatives

Alien spouses and children who are not unlawfully present in the United States are often abused by the spouse or parent on whose non-immigrant status their ability to stay in the U.S. is based. Derivative spouses and children of non-immigrant visa holders are not eligible for VAWA because the visa holder is not a United States citizen or a lawful permanent resident. Since they have no relief under VAWA, these victims often remain silent about the abuse they are experiencing because they fear that they will suffer even greater abuse, or that they will be deported (along with the abuser) if they report their abuser to the proper authorities and the abuser is convicted of a domestic violence-related crime. These women should be protected by VAWA as battered abuse victims who are in this country legally but whose ability to remain here is derivative to an abuser.

Amend § 240A(b)(2)(A):

"the alien has been battered or subjected to extreme cruelty in the United States by a spouse
or parent who is a United States citizen, ~~or~~ lawful permanent resident *or a non-immigrant visa holder* (or is the parent of...."

D. Protection for Spouses of Members of the United States Military

The frequency of abuse in military families is proportionately much greater than in civilian families. Various stresses associated with military life contribute to increased risk of battery[1]. Under current VAWA provisions, non-citizen spouses and children of U.S. military members who often

[1]See Nomi's article.

reside outside of the United States are not eligible for immigration relief as this statute only applies to those residing within the continental United States, Alaska, Hawaii, Guam and the Virgin Islands. Consequently, these victims of domestic violence are left without protection afforded to other non-citizen spouses and children of U.S. citizens or lawful permanent residents by virtue of their place of residence. Many spouses and children of abusive U.S. citizen or lawful permanent residents who are members of the U.S. armed forces may have resided in the United States for short periods of time and were send out of the United States on one or more occasions as their spouse was transferred between bases or assignments. Women and children who are living with spouses or parents who are members of the U.S. military living outside of the United States are not necessarily living in the countries of their nationality. Thus for those who are abused they are extremely isolated and totally dependant on their U.S. citizen or lawful permanent resident abusive spouse or parent. In such circumstances they will not have community contacts of support systems that can help them.

This provision would allow spouses and children of U.S. military personnel stationed overseas who are battered or subjected to extreme cruelty by their U.S. citizen and lawful permanent resident spouse or parent who is a member of the U.S. Armed Forces to be eligible for VAWA relief. Requirements that applicants be residing in the United States should include waivers for these victims of domestic violence and U.S. consulate should be authorized to access applications for VAWA relief. Self-petitions could be accepted at consulates abroad and forwarded to the Vermont Service Center for processing.

Amend §204(a)(1)(A)(iii) to state:

> "...(A)nd who has resided in the United States with the alien's spouse (*unless the alien's spouse is a member of the U.S. military*), may file a petition *in the United States or at a United States Consulate abroad* with the Attorney General...."

Amend subsection (I) of §204(a)(1)(A)(iii) to state:

> "...(T)he alien is residing in the United States *(unless the alien's spouse is a member of the U.S. military)*, the marriage between the alien and the spouse...."

Amend §204(a)(1)(A)(iii) to state:

> "An alien who is the spouse of a citizen of the United States...and who has resided in the United States with the citizen spouse *(unless the alien's spouse is a member of the U.S. military)*, may file a petition *in the United States or at a United States Consulate abroad* with the Attorney General...."

Amend §204(a)(1)(A)(iv) to state:

> "An alien who is the child of a citizen of the United States...and who has resided in the United States with the citizen parent *(unless the alien's parent is a member of the U.S. military)*, may file a petition *in the United States or at a United States Consulate abroad* with the Attorney General...."

Amend subsection (I) of §204(a)(1)(iv) to state:

> "...(T)he alien is residing in the United States *(unless the alien's parent is a member of the U.S. military)* and during the period of residence...."

Amend §204(a)(1)(B)(ii) to state:

> "An alien who is the spouse of an alien lawfully admitted for permanent residence...and who has resided in the United States with the alien's legal permanent resident spouse *(unless the alien's spouse is a member of the U.S. military)*, may file a petition *in the United States or at a United States Consulate abroad* with the Attorney General...."

Amend §204(a)(1)(B)(iii) to state:

> "An alien who is the child of an alien lawfully admitted for permanent residence...and who has resided in the United States with the alien's permanent resident alien parent *(unless the parent is a member of the U.S. military)*, may file a petition *in the United States or at a United States Consulate abroad* with the Attorney General...."

E. Elder Abuse

Elder abuse is a significant problem affecting many individuals in the United States. Some elder abuse is perpetrated by adult children against their aging parents. Elder abuse victims who are U.S. citizens or lawful permanent residents can avail themselves of the criminal and civil court protections available to protect victims of elder abuse. Many elder immigrants come to the United States in the first place because their sons or daughters who are in the United States legally bring them here. However, when the son or daughter is a citizen and is abusive to the elder parent the son or daughter may never file an immigration petition for the parent. These elder abuse victims who have no legal status in this country and are abused by their sons or daughters, are afraid to seek court protection orders because they fear that if they do so, their sons or daughters will have them deported. Parents who are abused by United States citizen sons or daughters should be able to obtain protection from elder abuse under VAWA.

Amend §204(a)(1)(A)by adding at the end:

"(v) An alien who is the parent of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who has resided in the United States with citizen daughter or son may file a petition with the Attorney General under this subparagraph for classification of the alien under such section if the alien demonstrates to the Attorney General that--

(I) the alien is residing in the United States and during the period of residence with the citizen son or daughter the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen son or daughter; and

(II) the alien is a person whose removal, in the opinion of the Attorney General, would result in extreme hardship to the alien or a spouse or child of the alien."

3. Exclusion and Inadmissibility

A. Granting the Attorney General The Discretion to Waive Substantial Connection for Battered Immigrant Women Who Otherwise Qualify for VAWA Who Enter After 4/1/97

Several new grounds of inadmissibility pose barriers to gaining lawful permanent resident status for many VAWA applicants. The only way for battered immigrant women to overcome these barriers is to show a substantial connection between the domestic violence suffered and the reason they are inadmissible. Battered women who enter the United States after April 1, 1997 will be eligible for VAWA only if they can show that their unlawful entry into the country was substantially connected to their abuse. This provision will, over time, create a category of battered immigrant women and children who are spouses and children of U.S. citizens and lawful permanent residents but cannot receive VAWA protection. These women and children will again be locked in exactly the types of relationships with abusive citizen and lawful permanent resident spouses and parents that VAWA sought to end. Without providing the Attorney General the discretion to waive the substantial connection requirement for humanitarian purposes, the Attorney General would be forced to deny VAWA protection to the following battered immigrant.

A battered immigrant woman enters the United States after April 1, 1997 and later married a U.S. citizen with whom she has two children. The citizen spouse abuses her resulting in her hospitalization on several occasions, one of which was for injuries which were inflicted during her second pregnancy. The most recent incident was an assault with intent to kill which occurred in front of several witnesses. The state wishes to prosecute the U.S. citizen abuser spouse for his crimes and wishes to help the abuse victim obtain legal permanent resident status through VAWA so that she can cooperate in the prosecution without fear of deportation.

The Attorney General should for humanitarian purposes have the discretion to waive the requirement that this abuse victim demonstrate a substantial connection between the abuse and the victim's unlawful entry into the United States for abuse victims who in all other ways qualify for relief under VAWA.

Changing the language of INA Section 212(a)(6)(ii)(III) will give the Attorney General the discretion to waive the substantial connection requirement for some needy battered immigrants who entered or reentered the United States after April 1, 1997. It will also give the Attorney General the same discretion to waive this requirement for battered immigrants who may have entered the country legally but who have overstayed their visas and who have received voluntary departure from the United States. Voluntary departure was the only workable avenue before IIRIRA for many applicants to obtain work authrourization under the VAWA immigration regulations. However voluntary departure was strictly curtailed under IIRIRA and VAWA applicants who obtained work authorization in this was could be potentially harmed by the provisions of Section 212(a)(9)(B).

Many VAWA-eligible battered immigrants entered the United States legally and then later married U.S. citizen or lawful permanent resident spouses who because of abuse refused to obtain permanent residency for the immigrant spouse or child as a means of perpetrating abuse. Over time the immigrant was forced by the abuser's behavior to violate the terms of their visa and go out to legal immigration status. Section 212(a)(9)(B) provides a VAWA exemption for these abuse victims when there was a substantial connection between the abuse and the victims going out of legal immigration status. Here too in some cases such as the one described above the victim may have gone out of legal immigration status before she married the abuser. Even in the most compelling cases the Attorney General under the current law would be unalbe to offer VAWA protection.

VAWA originally offered protection to all abuse immigrant victims who were abused by their U.S. citizen or lawful permanent resident spouses or parents. VAWA did this recognizing that this group of battered immigrants were particularly at risk for abuse and thier abuser's were protected from prosecution for their crimes because they could deport their abuse victims. Granting the Attorney General the ability to waive substantial connection for humanitarian purposes in appropriate cases would provide the kind of protection VAWA intended for the most needy and endangered battered immigrant women and children.

Amend § 212(a)(6)(A)(ii)(III) of the Immigration and Nationality Act to include the following:

> "(III) there was a substantial connection between the battery or cruelty described in subclause (I) or (II) and the alien's unlawful entry into the United States *or the alien's unlawful presence in the United States In appropriate cases, for humanitarian purposes the Attorney General may waive this requirement if the alien is otherwise eligible to receive Lawful Permanent Resident Status under Sections 204(a)(1)(A)(iii) or (iv) or 204(a)(1)(B)(ii) or (iii) or 244(a) or 240A of the Immigration and Nationality Act.."*

B. Public Charge Exclusion Not Applicable to Cases of Battered Immigrant Women

IIRIRA clarified that aliens who have been battered or subjected to extreme cruelty who qualify for self petitioning for lawful permanent resident status under sections 204(a)(1)(A)(iii) and (iv) or 204(a)(1)(B)(ii)and (iii) are exempted from the obligation of submitting an "affidavit of support" from their abuser. This provision also appears to appropriately exempt VAWA applicants from being excluded on public charge grounds, but the INS has not interpreted this provision to exempt battered immigrant women and children from exclusion on public charge grounds.

IIRIRA granted battered immigrant women and children limited access to certain public benefits that they must rely on to survive when they flee their abusers. An amendment is needed to clarify that battered immigrants who are allowed to receive benefits to escape abuse will not then be deemed inadmissable because of their reliance on these public benefits on public charge grounds. This amendment is particularly necessary since many VAWA applicants who are spouses of lawful permanent residents who should be eligible to receive work authorization under VAWA based on INS regulations and instructions to the field are still not being granted work authorization although INS began in May of 1997 to authorize access to public benefits for this group of applicants. Until INS begins granting the work authorization they have authorized VAWA applicants will not be able to work legally and will in some cases have no choice but to rely on public benefits.

At § 212(a)(4) add the following new section:

EXCEPTION
"(E) The spouse or child of an alien who qualifies for status as a spouse or child of a United States citizen pursuant to clause (ii), (iii) or (iv) of section 204(a)(1)(A) or clause (i), (ii) or (iii) of Section 204(a)(1)(B) who have been battered or subjected to extreme cruelty shall be exempted from the provisions of Section (A) of this section.

C. Preserving VAWA Eligibility for Battered Immigrants in Light of IIRIRA's New Grounds of Inadmissibility

Three new Sections of IIRIRA that are intended to deter people from remaining unlawfully in the United States. Battered immigrant women and children married to U.S. citizens and Lawful permanent residents are often unlawfully present in the U.S.. For extended periods of time because their abuser has made sure they did not gain lawful immigration status and used that unlawful status as a tool to continue perpetrating abuse. For this reason battered immigrants eligible for VAWA are exempted from inadmissibility under two of the three new inadmissibility sections (212(a)(6)(A) and 212(a)(9)(B)). A similar exemption was omitted in 212(a)(9)(C). An exemption is also needed because in addition to the problems described above, U.S. citizen and lawful permanent resident abusers who wish their family violence victims to remain undocumented will prevent battered immigrants from learning about or attending immigration proceedings by threats, intimidation, coercion or providing misinformation.

Section 212(a)(9)(C)(ii) should be amended by adding at the end the following

Clause (i) shall not apply to an alien described in paragraph (6)(A)(ii)(I) and (II).

D. Admission of Immigrant Excludable for Fraud or Willful Misrepresentation of Material Fact

The INA recognizes that it is appropriate, particularly in the cases of immigrant spouses and children of U.S. citizens and lawful permanent residents, that the Attorney General have the discretion to waive the fraud and misrepresentation grounds of inadmissibility. As the statute currently exists, the Attorney General does not have this discretion in cases of battered immigrant women and children who otherwise qualify for relief under VAWA, who deserve the same access to waivers for fraud or misrepresentation they would have if their U.S. citizen or lawful permanent resident spouse had petitioned for them. As a result, there are otherwise-qualified VAWA applicants who can prove that they were abused by a U.S. citizen or lawful permanent resident spouse or parent and who can prove that their deportation would cause extreme hardship still do not receive discretionary review regarding permanent residency through VAWA. Battered women and children should be eligible to apply for waivers a manner similar to what is authroized for spouses and children of citizens and residents.

Amend § 212(i)(1) as follows:

"The Attorney General may waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, *parent*, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse, ~~or~~ parent, *son or daughter* of such an alien *or in the case of an alien granted status under sections 04(a)(1)(A)(ii) or (iii) ro classification under sections 204(a)(1)(B)(ii) or (iii), the alien demonstrates extreme hardship to the alien or the alien's United States citizen or lawful permanent resident parent, child, son or daughter.*.

D. Student Visa Holders Married to U.S. Citizen or Lawful Permanent Resident Abusers

Many students who marry U.S. citizens and lawful permanent residents allow their student visas to expire or otherwise violate the conditions of their student visas because their spouses promise to file family-based petitions for them. Citizens and lawful permanent residents who marry students who are in the United States on student visa and who subject their spouses to battering or extreme cruelty will often through threats, coercion, power and control force their spouses on student visas to violate the terms of their visa by changing schools, working or quitting school. If the citizen or lawful permanent resident spouse fails to pursue a family visa petition on behalf of a non-immigrant spouse who relies on the citizen or lawful permanent resident to obtain permanent residency and the spouse never acts on the petition, the non-immigrant on a student visas now will face IIRIRA's now face a five-year bar to gaining lawful permanent residence. For battered immigrant spouses who had student visas but who otherwise qualify for VAWA, the Attorney General should have discretion to waive this bar for humanitarian purposes.

Amend § 212(a)(6)(G) to add at the end:

> "unless the non-immigrant qualifies for relief because of battering or extreme cruelty under sections 204(a)(1)(A)(iii) or (iv), 204(a)(1)(B)(ii) or (iii), or section 240A(b)(2).

E. Domestic Violence And Substance Use

Some victims of domestic violence resort to temporary use of drugs to diminish the pain they feel as a consequence of domestic violence. Others are forced to use drugs by their abusers who threaten continued abuse if they do not partake. Some battered immigrant women who are married to U.S. citizen or lawful permanent resident abusers who have otherwise strong, compelling VAWA cases will have no access to this relief under current law because of such activities. Under current law, even those who can show that they are rehabilitated or who only used drugs on a single occasion may be barred from gaining lawful permanent residence. The Attorney General should have the discretion to waive this harsh consequence in cases where the drug use was associated with domestic violence.

At § 212(g), add at the end the following new section:

> "*(4) subsection (a)(1)(iv) in the case of any alien granted status under sections 204(a)(1)(A)(ii) or (iii) or classification under sections 204(a)(1)(B)(ii) or (iii) when the alien demonstrates a substantial connection between the battering or extreme cruelty and use of substances."*

4. Adjustment of Status Under § 245(i)

Currently section 245(i) provides VAWA self-petitioners with a mechanism, however imperfect, to obtain permanent resident status without leaving the United States. Section 245(i) is a provision of the INA that allows persons who are eligible to receive permanent residency but who entered the country illegally or are not currently in legal immigration status to pay a penalty of $1,000 and adjust to permanent resident status without being required to leave the U.S.. This provision of law, however, is due to sunset in September of 1997.

If section 245(i) is allowed to sunset, many battered women and their children will be placed in grave danger if they are required to leave the country to obtain lawful permanent residency under VAWA. Their protection orders will no longer protect them when they leave the borders of the United States. In fact, all VAWA applicants will have already demonstrated that they will suffer extreme hardship if returned to their home country. It is incongruous and dangerous to require battered women and children to return to such places after they have proven that returning to that country will cause extreme hardship to themselves, their children or their parents.

It is inappropriate to make battered VAWA applicants who have already proven extreme hardship leave the United States to obtain permanent residency, just as is would be inappropriate to require asylees to return to their home country to obtain permanent resident visas. In the cases of both asylees and battered immigrants gaining permanent residency through VAWA both groupd should receive equivalant protection and be allow to obtain their permanent residency status without being required to leave the protections of the United States. Battered immigrants are the only category of immigrants who will be affected by the sunset of 245(i) that will have already proven to INS's satisfaction that their deportation will cause extreme hardship. Battered immigrants whom INS has already agreed in granting their VAWA cases will be at risk if deported should not be required to leave the country and remain abroad for three months in order to obtain their lawful permanent residency.

Even the current system that allows battered VAWA self-petitioners who are undocumented at the time they file their immigration petition to pay a $1,000 fine to be able to adjust their status without leaving the United States is dangerous for some petitioners. Since abusers often control all of the family's financial assets, it may be impossible for battered immigrant women to pay the Section 245(i) penalty. Across the country, some VAWA eligible women and children are returning to abusive relationships because they cannot pay the Section 245(i) adjustment penalty. The following amendment ensures that battered immigrant women and children who are granted permanent residency through VAWA self-petitions will not be forced to leave the United States or remain outside of the United States to obtain their residency status.

Amend §245(a) as follows:

"The status of an alien *applying under sections 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii) or the status of an alien* or an alien who was inspected and admitted...."

Amend §245(c)(2) as follows:

"...(A)n alien (other than an immediate relative as defined in section 1151(b) of this title, *an alien applying under sections: 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)* *or* a special immigrant as..."

Amend §245(c),(4) as follows:

"...(other than an immediate relative as defined in section 1151(b) of this title, *an alien applying under sections: 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)* who was admitted..."

Amend §245(c),(5) by adding to the end as follows:

"...*(other than an alien applying under sections: 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)*."

Amend §245(c),(6) by adding to the end as follows:

"...*(other than an alien applying under sections: 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)*."

Amend §245(c),(7) by adding to the end as follows:

"...*(other than an alien applying under sections: 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)*."

Amend §245(c),(8) by adding to the end as follows:

"...*(other than an alien applying under sections; 204(a)(1)(A)(iii); 204(a)(1)(A)(iv); 204(a)(1)(B)(ii) and (iii)*."

5. Problems With VAWA Suspension/Cancellation

A. Lack of Access to VAWA Suspension/Cancellation

VAWA contained two alternative forms of immigration relief that were to be available to battered women and children who are the spouses and children of U.S. citizens and lawful permanent residents: (1) self-petitioning for immigrant visa status, and (2) suspension of deportation/cancellation of removal. INS has implemented a system for granting self-petitions. However, as discussed below,some VAWA eligible applicants are not qualified to file self-petitions and can only file for VAWA suspension of deportation/cancellation of removal. Applications for VAWA suspension/cancellation must be filed in immigration proceedings with the permission of the immigration judge. INS has the discretion to decide whether or not to initiate deportation proceedings against VAWA eligible applicants. If INS refuses to institute removal proceedings against VAWA-eligible applicants, they are effectively barred from access to VAWA relief. In several jurisdictions INS has refused to initiate removal proceedings against VAWA applicants, and in others INS has only commenced proceedings after substantial delay.

Two groups of women who are unable to self-petition and can only apply for suspension of deportation or cancellation of removal are battered immigrant women whose spouses obtained a divorce before they could file a VAWA self petition, and battered women who needed to divorce their spouse in order to end continuing abuse and were divorced before they learned about or could file a VAWA self-petition. For either of these groups, suspension of deportation is the only VAWA option available to them. Additionally, IIRIRA created a limited access to crucial public benefits only for battered immigrant women and children eligible under VAWA who had already filed a case with the INS. Since in many parts of the country there is no practical mechanism to file for suspension of deportation/cancellation of removal, many VAWA applicants are not able to file for immigration relief and are also barred from the access they potentially were supposed to have to public benefits.

One way to resolve this problem would be to amend VAWA provisions to make self-petitioning available to certain battered immigrant women, and their children, who otherwise qualify but were divorced from their spouses before they could file their self-petitions. Victims of domestic violence should be able to continue to file VAWA self-petitions for up to five years after the date of their divorce from a U.S. citizen or lawful permanent resident spouse.

§204(a)(1)(a)(iii) should be amended to read:

> "An alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is *or would have been* eligible to be classified as an immediate relative under Section 201(b)(2)(A)(i) *or who could have been so classified within 5 years prior to petitioning for immigration status as an immediate relative under section 201(b)(2)(A)(i),* and who has resided in the United States with the alien's spouse may file a petition with the Attorney General under this subparagraph ...."

§204(a)(1)(a)(iv) should be amended to read:

> "An alien who is the child of a citizen of the United States, who is a person of good moral character, who is *or would have been* eligible to be classified as an immediate relative under Section 201(b)(2)(A)(i) *or who could have been so classified within 5 years prior to petitioning for immigration status as an immediate relative under section 201(b)(2)(A)(i),*

and 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.).

(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, nonprofit entity that meets the requirements of subsection (~~c~~ d), 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) ~~(c)~~ 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.

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

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

(2) conferences;

(3) outreach counseling;

(4) development of protocols and model workplace policies;

(5) coordination of victim services; and

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

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

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.

(e) **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,