Calendar No. 283

102D CONGRESS
1st Session

SENATE

REPORT
102-197

THE VIOLENCE AGAINST WOMEN ACT OF 1991

OCTOBER 29, 1991.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 15, as amended]

The Committee on the Judiciary, to which was referred the bill (S. 15), having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

CONTENTS

59-010

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Violence Against Women Act of 1991".

SEC. 2. TABLE OF CONTENTS.

TITLE I—SAFE STREETS FOR WOMEN

SEC. 101. SHORT TITLE.

This title may be cited as the "Safe Streets for Women Act of 1991"

Subtitle A—Federal Penalties for Sex Crimes

SEC. 111. REPEAT OFFENDERS.

(a) IN GENERAL.—Chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 2247. Repeat offenders

"Any person who a violates a provision of this chapter, after one or more prior convictions for an offense punishable under this chapter, or after one or more prior convictions under the laws of any State or foreign country relating to aggravated sexual abuse, sexual abuse, or abusive sexual contact, is punishable by a term of imprisonment up to twice that otherwise authorized."

(b) TABLE OF SECTIONS.—The table of sections for chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following:

"2247. Repeat offenders.".

SEC. 112. FEDERAL PENALTIES.

(a) RAPE AND AGGRAVATED RAPE.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to provide that a defendant convicted of aggravated sexual abuse under section 2241 of title 18, United States Code, or sexual abuse under section 2242 of title 18, United States Code, shall be assigned a base offense level under chapter 2 of the sentencing guidelines that is at least 4 levels greater than the base offense level applicable to criminal sexual abuse under the guidelines in effect on November 1, 1990, or otherwise shall amend the guidelines applicable to such offenses so as to achieve a comparable minimum guideline sentence. In amending such guidelines, the Sentencing Commission shall review the appropriateness of existing specific offense characteristics or other adjustments applicable to such offenses, and make such changes as it deems appropriate, taking into account the severity of rape offenses, with or without aggravating factors; the unique nature and duration of the mental injuries inflicted on the victims of such offenses; and any other relevant factors.

(b) EFFECT OF AMENDMENT.—If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instructions set forth in subsection (a) so as to achieve a comparable result.

SEC. 113. MANDATORY RESTITUTION FOR SEX CRIMES.

(a) IN GENERAL.—Chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 2248. Mandatory restitution

"(a) IN GENERAL.—Notwithstanding the terms of section 3663 of this title, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

"(b) SCOPE AND NATURE OF ORDER.—(1) The order of restitution under this section shall direct that—

"(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to paragraph (2); and

"(B) the United States Attorney enforce the restitution order by all available and reasonable means.

"(2) For purposes of this subsection, the term 'full amount of the victim's losses' includes any costs incurred by the victim for—

"(A) medical services relating to physical, psychiatric, or psychological care;

"(B) physical and occupational therapy or rehabilitation;

"(C) lost income;

"(D) attorneys' fees; and

"(E) any other losses suffered by the victim as a proximate result of the offense.

"(3) Restitution orders under this section are mandatory. A court may not decline to issue an order under this section because of—

"(A) the economic circumstances of the defendant; or

"(B) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

"(4)(A) Notwithstanding the terms of paragraph (3), the court may take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution is to be paid.

"(B) For purposes of this paragraph, the term 'economic circumstances' includes—

"(i) the financial resources and other assets of the defendant;

"(ii) projected earnings, earning capacity, and other income of the defendant; and

"(iii) any financial obligations of the defendant, including obligations to dependents.

"(C) An order under this section may direct the defendant to make a single lump-sum payment or partial payments at specified intervals. The order shall also provide that the defendant's restitutionary obligation takes priority over any criminal fine ordered.

"(D) In the event that the victim has recovered for any amount of loss through the proceeds of insurance or any other source, the order of restitution shall provide that restitution be paid to the person who provided the compensation, but that restitution shall be paid to the victim before any restitution is paid to any other provider of compensation.

"(5) Any amount paid to a victim under this section shall be set off against any amount later recovered as compensatory damages by the victim from the defendant in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(c) PROOF OF CLAIM.—(1) Within 60 days after conviction and, in any event, no later than 10 days prior to sentencing, the United States Attorney (or his delegee), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or his delegee) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or his delegee) shall advise the victim that the victim may file a separate affidavit.

"(2) If no objection is raised by the defendant, the amounts attested to in the affidavit filed pursuant to subsection (1) shall be entered in the court's restitution order. If objection is raised, the court may require the victim or the United States Attorney (or his delegee) to submit further affidavits or other supporting documents, demonstrating the victim's losses.

"(3) If the court concludes, after reviewing the supporting documentation and considering the defendant's objections, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. Any records filed, or testimony heard, pursuant to this section, shall be in camera in the judge's chambers.

"(4) In the event that the victim's losses are not ascertainable 10 days prior to sentencing as provided in subsection (c)(1), the United States Attorney (or his delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

"(d) DEFINITIONS.—For purposes of this section, the term 'victim' includes the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court: *Provided,* That in no event shall the defendant be named as such representative or guardian.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 109A of title 18, United States Code, is amended by adding at the end thereof the following:

"2248. Mandatory restitution.".

SEC. 114. AUTHORIZATION FOR FEDERAL VICTIM'S COUNSELORS.

There is authorized to be appropriated for fiscal year 1992, $1,500,000 to the United States Attorneys for the purpose of appointing Victim/Witness Counselors for the prosecution of sex crimes.

Subtitle B—Law Enforcement and Prosecution Grants to Reduce Violent Crimes Against Women

SEC. 121. GRANTS TO COMBAT VIOLENT CRIMES AGAINST WOMEN.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by—

(1) redesignating part N as part O;

(2) redesignating section 1401 as section 1501; and

(3) adding after part M the following:

"PART N—GRANTS TO COMBAT VIOLENT CRIMES AGAINST WOMEN

"SEC. 1401. PURPOSE OF THE PROGRAM AND GRANTS.

"(a) GENERAL PROGRAM PURPOSE.—The purpose of this part is to assist States, Indian tribes, cities, and other localities to develop effective law enforcement and prosecution strategies to combat violent crimes against women and, in particular, to focus efforts on those areas with the highest rates of violent crime against women.

"(b) PURPOSES FOR WHICH GRANTS MAY BE USED.—Grants under this part shall provide additional personnel, training, technical assistance, data collection and

other equipment for the more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women and specifically, for the purposes of—

"(1) training law enforcement officers and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of sexual assault and domestic violence;

"(2) developing, training, or expanding units of law enforcement officers and prosecutors specifically targeting violent crimes against women, including the crimes of sexual assault and domestic violence;

"(3) developing and implementing police and prosecution policies, protocols, or orders specifically devoted to identifying and responding to violent crimes against women, including the crimes of sexual assault and domestic violence;

"(4) developing, installing, or expanding data collection systems, including computerized systems, linking police, prosecutors, and courts or for the purpose of identifying and tracking arrests, prosecutions, and convictions for the crimes of sexual assault and domestic violence; and

"(5) developing, enlarging, or strengthening victim services programs, including sexual assault and domestic violence programs, to increase reporting and reduce attrition rates for cases involving violent crimes against women, including the crimes of sexual assault and domestic violence.

"Subpart 1—High Intensity Crime Area Grants

"SEC. 1411. HIGH INTENSITY GRANTS.

"(a) IN GENERAL.—The Director of the Bureau of Justice Assistance (hereafter in this part referred to as the 'Director') shall make grants to areas of 'high intensity crime' against women.

"(b) DEFINITION.—For purposes of this part, a 'high intensity crime area' means an area with one of the 40 highest rates of violent crime against women, as determined by the Bureau of Justice Statistics pursuant to section 1412.

"SEC. 1412. HIGH INTENSITY GRANT APPLICATION.

"(a) COMPUTATION.—Within 45 days after the date of enactment of this part, the Bureau of Justice Statistics shall compile a list of the 40 areas with the highest rates of violent crime against women based on the combined female victimization rate per population for assault, sexual assault (including, but not limited to, rape), murder, robbery, and kidnapping.

"(b) USE OF DATA.—In calculating the combined female victimization rate required by subsection (a), the Bureau of Justice Statistics may rely on—

"(1) existing data collected by States, municipalities, Indian reservations or statistical metropolitan areas showing the number of police reports of the crimes listed in subsection (a); and

"(2) existing data collected by the Federal Bureau of Investigation, including data from those governmental entities already complying with the National Incident Based Reporting System, showing the number of police reports of crimes listed in subsection (a).

"(c) PUBLICATION.—After compiling the list set forth in subsection (a), the Bureau of Justice Statistics shall convey it to the Director who shall publish it in the Federal Register.

"(d) QUALIFICATION.—Upon satisfying the terms of subsection (e), any high intensity crime area shall be qualified for a grant under this subpart upon application by the chief executive officer of the governmental entities responsible for law enforcement and prosecution of criminal offenses within the area and certification that—

"(1) the funds shall be used to reduce the rate of violent crimes against women and for at least 3 of the purposes outlined in section 1401(b);

"(2) grantees and subgrantees shall develop a plan for implementation, and otherwise consult and coordinate program grants, with nongovernmental nonprofit victim services programs; and

"(3) at least 25 percent of the amount granted shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

"(e) APPLICATION REQUIREMENTS.—The application requirements provided in section 513 of this title shall apply to grants made under this subpart. In addition, each application must provide the certifications required by subsection (d) including documentation from nonprofit nongovernmental victim services programs showing their participation in developing the plan required by subsection (d)(2). Applications shall—

"(1) include documentation from the prosecution, law enforcement, and victim services programs to be assisted showing—

"(A) need for the grant funds;
"(B) intended use of the grant funds; and
"(C) expected results from the use of grant funds; and
"(2) proof of compliance with the requirements for the payment of forensic medical exams provided in section 162 of this title.

"(f) DISBURSEMENT.—
"(1) No later than 60 days after the receipt of an application under this subpart, the Director shall either disburse the appropriate sums provided for under this subpart or shall inform the applicant why the application does not conform to the terms of section 513 of this title or to the requirements of this section.
"(2) In disbursing monies under this subpart, the Director shall ensure, to the extent practicable, that grantees—
"(A) equitably distribute funds on a geographic basis;
"(B) determine the amount of subgrants based on the population to be served; and
"(C) give priority to areas with the greatest showing of need.

"(g) GRANTEE REPORTING.—Upon completion of the grant period under this subpart, the grantee shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this part. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

"Subpart 2—Other Grants to States to Combat Violent Crimes Against Women

"SEC. 1421. GENERAL GRANTS TO STATES.

"(a) GENERAL GRANTS.—The Director is authorized to make grants to States, for use by States, units of local government in the States, and nonprofit nongovernmental victim services programs in the States, for the purposes outlined in section 1401(b), and to reduce the rate of violent crimes against women.

"(b) AMOUNTS.—From amounts appropriated, the amount of grants under subsection (a) shall be—
"(1) $500,000 to each State; and
"(2) that portion of the then remaining available money to each State that results from a distribution among the States on the basis of each State's population in relation to the population of all States.

"(c) QUALIFICATION.—Upon satisfying the terms of subsection (d), any State shall be qualified for funds provided under this part upon certification that—
"(1) the funds shall be used to reduce the rate of violent crimes against women and for at least 3 of the purposes outlined in section 1401(b);
"(2) grantees and subgrantees shall develop a plan for implementation, and otherwise consult and coordinate, with nonprofit nongovernmental victim services programs, including sexual assault and domestic violence victim services programs;
"(3) at least 25 percent of the amount granted shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

"(d) APPLICATION REQUIREMENTS.—The application requirements provided in section 513 of this title shall apply to grants made under this subpart. In addition, each application shall include the certifications of qualification required by subsection (c) including documentation from nonprofit nongovernmental victim services programs showing their participation in developing the plan required by subsection (c)(2). Applications shall—
"(1) include documentation from the prosecution, law enforcement, and victim services programs to be assisted showing—
"(A) need for the grant funds;
"(B) intended use of the grant funds; and
"(C) expected results from the use of grant funds; and
"(2) proof of compliance with the requirements for the payment of forensic medical exams provided in section 162 of this title.

"(e) DISBURSEMENT.—(1) No later than 60 days after the receipt of an application under this subpart, the Director shall either disburse the appropriate sums provided for under this subpart or shall inform the applicant why the application does not conform to the terms of section 513 of this title or to the requirements of this section.

"(2) In disbursing monies under this subpart, the Director shall issue regulations to ensure that States will—

"(A) equitably distribute monies on a geographic basis including nonurban and rural areas, and giving priority to localities with populations under 100,000;

"(B) determine the amount of subgrants based on the population and geographic area to be served; and

"(C) give priority to areas with the greatest showing of need, as demonstrated by comparing population and geographic areas to be served to the availability of existing sexual assault and domestic violence services.

"(f) GRANTEE REPORTING.—Upon completion of the grant period under this subpart, the State grantee shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this subpart. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

"SEC. 1422. GENERAL GRANTS TO TRIBES.

"(a) GENERAL GRANTS.—The Director is authorized to make grants to Indian tribes, for use by tribes, tribal organizations or nonprofit nongovernmental victim services programs on Indian reservations, for the purposes outlined in section 1401(b), and to reduce the rate of violent crimes against women in Indian country.

"(b) AMOUNTS.—From amounts appropriated, the amount of grants under subsection (a) shall be awarded on a competitive basis to tribes, with minimum grants of $35,000 and maximum grants of $300,000.

"(c) QUALIFICATION.—Upon satisfying the terms of subsection (d), any tribe shall be qualified for funds provided under this part upon certification that—

"(1) the funds shall be used to reduce the rate of violent crimes against women and for at least 3 of the purposes outlined in section 1401(b); and

"(2) at least 25 percent of the grant funds shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

"(d) APPLICATION REQUIREMENTS.—(1) Applications shall be made directly to the Director and shall contain a description of the tribes' law enforcement responsibilities for the Indian country described in the application and a description of the tribes' system of courts, including whether the tribal government operates courts of Indian offenses as defined in 25 U.S.C. 1301 or CFR courts under 25 CFR 11 et seq.

"(2) Applications shall be in such form as the Director may prescribe and shall specify the nature of the program proposed by the applicant tribe, the data and information on which the program is based, and the extent to which the program plans to use or incorporate existing services available in the Indian country where the grant will be used.

"(3) The term of any grant shall be for a minimum of 3 years.

"(e) GRANTEE REPORTING.—At the end of the first 12 months of the grant period and at the end of each year thereafter, the Indian tribal granted shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this subpart. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

"(f) DEFINITIONS.—(1) The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

"(2) The term 'Indian country' has the meaning given to such term by section 1151 of title 18, United States Code.

"Subpart 3—General Terms and Conditions

"SEC. 1431. GENERAL DEFINITIONS.

"As used in this part—

"(1) the term 'victim services program' means any public or private nonprofit program that assists victims, including (A) nongovernmental nonprofit organizations such as rape crisis centers, battered women's shelters, or other rape or domestic violence programs, including nonprofit nongovernmental organizations assisting victims through the legal process and (B) victim/witness programs within governmental entities;

"(2) the term 'sexual assault' includes not only assaults committed by offenders who are strangers to the victim but also assaults committed by offenders who are known or related by blood or marriage to the victim; and

"(3) the term 'domestic violence' includes felony or misdemeanor offenses committed by a current or former spouse of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse, or any other person similarly situated to a spouse who is protected under the domestic or family violence laws of the jurisdiction receiving grant monies.

"SEC. 1432. GENERAL TERMS AND CONDITIONS.

"(a) NONMONETARY ASSISTANCE.—In addition to the assistance provided under subparts 1 or 2, the Director may direct any Federal agency, with or without reimbursement, to use its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts.

"(b) BUREAU REPORTING.—No later than 180 days after the end of each fiscal year for which grants are made under this part, the Director shall submit to the Judiciary Committees of the House and the Senate a report that includes, for each high intensity crime area (as provided in subpart 1) and for each State and for each grantee Indian tribe (as provided in subpart 2)—

"(1) the amount of grants made under this part;

"(2) a summary of the purposes for which those grants were provided and an evaluation of their progress; and

"(3) a copy of each grantee report filed pursuant to sections 1412(g) and 1421(f).

"(c) REGULATIONS.—No later than 45 days after the date of enactment of this part, the Director shall publish proposed regulations implementing this part. No later than 120 days after such date, the Director shall publish final regulations implementing this part.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year 1992, 1993, and 1994, $100,000,000 to carry out the purposes of subpart 1, and $190,000,000 to carry out the purposes of subpart 2, and $10,000,000 to carry out the purposes of section 1422 of subpart 2.".

Subtitle C—Safety for Women in Public Transit and Public Parks

SEC. 131. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT CRIME IN PUBLIC TRANSPORTATION.

Section 24 of the Urban Mass Transportation Act of 1964 is amended to read as follows:

"GRANTS TO PREVENT CRIME IN PUBLIC TRANSPORTATION

"SEC. 24. (a) GENERAL PURPOSE.—From funds authorized under section 21, and not to exceed $10,000,000, the Secretary shall make capital grants for the prevention of crime and to increase security in existing and future public transportation systems. None of the provisions of this Act may be construed to prohibit the financing of projects under this section where law enforcement responsibilities are vested in a local public body other than the grant applicant.

"(b) GRANTS FOR LIGHTING, CAMERA SURVEILLANCE, AND SECURITY PHONES.—

"(1) From the sums authorized for expenditure under this section for crime prevention, the Secretary is authorized to make grants and loans to States and local public bodies or agencies for the purpose of increasing the safety of public transportation by—

"(A) increasing lighting within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

"(B) increasing camera surveillance of areas within and adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

"(C) providing emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages; or

"(D) any other project intended to increase the security and safety of existing or planned public transportation systems.

"(2) From the sums authorized under this section, at least 75 percent shall be expended on projects of the type described in subsection (b)(1) (A) and (B).

"(c) REPORTING.—All grants under this section are contingent upon the filing of a report with the Secretary and the Department of Justice, Office of Victims of Crime, showing crime rates in or adjacent to public transportation before, and for a 1-year

period after, the capital improvement. Statistics shall be broken down by type of crime, sex, race, and relationship of victim to the offender.

"(d) INCREASED FEDERAL SHARE.—Notwithstanding any other provision of this Act, the Federal share under this section for each capital improvement project which enhances the safety and security of public transportation systems and which is not required by law (including any other provision of this chapter) shall be 90 percent of the net project cost of such project.

"(e) SPECIAL GRANTS FOR PROJECTS TO STUDY INCREASING SECURITY FOR WOMEN.—From the sums authorized under this section, the Secretary shall provide grants and loans for the purpose of studying ways to reduce violent crimes against women in public transit through better design or operation of public transit systems.

"(f) GENERAL REQUIREMENTS.—All grants or loans provided under this section shall be subject to all the terms, conditions, requirements, and provisions applicable to grants and loans made under section 2(a)."

SEC. 132. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT CRIME IN NATIONAL PARKS.

The Act of August 18, 1970, the National Park System Improvements in Administration Act (90 Stat. 1931; 16 U.S.C. 1a-1 et seq.) is amended by adding at the end thereof the following:

"SEC. 13. NATIONAL PARK SYSTEM CRIME PREVENTION ASSISTANCE.

"(a) From the sums authorized pursuant to section 7 of the Land and Water Conservation Act of 1965, and not to exceed $10,000,000, the Secretary of the Interior is authorized to provide Federal assistance to reduce the incidence of violent crime in the National Park System.

"(b) The Secretary shall direct the chief official responsible for law enforcement within the National Park Services to—

"(1) compile a list of areas within the National Park System with the highest rates of violent crime;

"(2) make recommendations concerning capital improvements, and other measures, needed within the National Park System to reduce the rates of violent crime, including the rate of sexual assault; and

"(3) publish the information required by paragraphs (1) and (2) in the Federal Register.

"(c) No later than 120 days after the date of enactment of this section, and based on the recommendations and list issued pursuant to subsection (b), the Secretary shall distribute funds throughout the National Park Service. Priority shall be given to those areas with the highest rates of sexual assault.

"(d) Funds provided under this section may be used for the following purposes—

"(1) to increase lighting within or adjacent to public parks and recreation areas;

"(2) to provide emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public parks and recreation areas;

"(3) to increase security or law enforcement personnel within or adjacent to public parks and recreation areas; and

"(4) any other project intended to increase the security and safety of public parks and recreation areas."

SEC. 133. GRANTS FOR CAPITAL IMPROVEMENTS TO PREVENT CRIME IN PUBLIC PARKS.

Section 6 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-8) is amended by adding at the end thereof the following new subsection:

"(h) CAPITAL IMPROVEMENT AND OTHER PROJECTS TO REDUCE CRIME.—In addition to assistance for planning projects, and in addition to the projects identified in subsection (e), and from amounts appropriated, the Secretary shall provide financial assistance to the States, not to exceed $15,000,000 in total, for the following types of projects or combinations thereof:

"(1) For the purpose of making capital improvements and other measures to increase safety in urban parks and recreation areas, including funds to—

"(A) increase lighting within or adjacent to public parks and recreation areas;

"(B) provide emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public parks and recreation areas;

"(C) increase security personnel within or adjacent to public parks and recreation areas; and

"(D) any other project intended to increase the security and safety of public parks and recreation areas.

"(2) In addition to the requirements for project approval imposed by this section, eligibility for assistance under this subsection is dependent upon a showing of need. In providing funds under this subsection, the Secretary shall give priority to those projects proposed for urban parks and recreation areas with the highest rates of crime and, in particular, to urban parks and recreation areas with the highest rates of sexual assault.

"(3) Notwithstanding the terms of subsection (c), the Secretary is authorized to provide 70 percent improvement grants for projects undertaken by any State for the purposes outlined in this subsection. The remaining share of the cost shall be borne by the State."

Subtitle D—National Commission on Violent Crime Against Women

SEC. 141. ESTABLISHMENT.

There is established a commission to be known as the National Commission on Violent Crime Against Women (hereinafter referred to as "the Commission").

SEC. 142. DUTIES OF COMMISSION.

(a) GENERAL PURPOSE OF THE COMMISSION.—The Commission shall carry out activities for the purposes of promoting a national policy on violent crime against women, and for making recommendations for how to reduce violent crime against women.

(b) FUNCTIONS.—The Commission shall perform the following functions—

(1) evaluate the adequacy of, and make recommendations regarding, current law enforcement efforts at the Federal and State levels to reduce the rate of violent crimes against women;

(2) evaluate the adequacy of, and make recommendations regarding, the responsiveness of State prosecutors and State courts to violent crimes against women;

(3) evaluate the adequacy of, and make recommendations regarding, the adequacy of current education, prevention, and protection services for women victims of violent crime;

(4) evaluate the adequacy of, and make recommendations regarding, the role of the Federal Government in reducing violent crimes against women;

(5) evaluate the adequacy of, and make recommendations regarding, national public awareness and the public dissemination of information essential to the prevention of violent crimes against women;

(6) evaluate the adequacy of, and make recommendations regarding, data collection and government statistics on the incidence and prevalence of violent crimes against women;

(7) evaluate the adequacy of, and make recommendations regarding, the adequacy of State and Federal laws on sexual assault and the need for a more uniform statutory response to sex offenses, including sexual assaults and other sex offenses committed by offenders who are known or related by blood or marriage to the victim;

(8) evaluate the adequacy of, and make recommendations regarding, the adequacy of State and Federal laws on domestic violence and the need for a more uniform statutory response to domestic violence; and

(9) evaluate and make recommendations regarding the feasibility of maintaining the confidentiality of addresses of domestic violence victims in voting, welfare, and public records.

SEC. 143. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—

(1) APPOINTMENT.—The Commission shall be composed of 15 members as follows:

(A) Five members shall be appointed by the President—

(i) three of whom shall be—

(I) the Attorney General;

(II) the Secretary of Health and Human Services; and

(III) the Director of the Federal Bureau of Investigation,

who shall be nonvoting members, except that in the case of a tie vote by the Commission, the Attorney General shall be a voting member;

(ii) two of whom shall be selected from the general public on the basis of such individuals being specially qualified to serve on the Commission by reason of their education, training, or experience; and

(iii) at least one of whom shall be selected for their experience in providing services to women victims of sexual assault or domestic violence.

(B) Five members shall be appointed by the Speaker of the House of Representatives on the joint recommendation of the Majority and Minority Leaders of the House of Representatives.

(C) Five members shall be appointed by the President pro tempore of the Senate on the joint recommendation of the Majority and Minority Leaders of the Senate.

(2) CONGRESSIONAL COMMITTEE RECOMMENDATIONS.—In making appointments under subparagraphs (B) and (C) of paragraph (1), the Majority and Minority Leaders of the House of Representatives and the Senate shall duly consider the recommendations of the Chairmen and Ranking Minority Members of committees with jurisdiction over laws contained in title 18 of the United States Code.

(3) REQUIREMENTS OF APPOINTMENTS.—The Majority and Minority Leaders of the Senate and the House of Representatives shall—

(A) select individuals who are specially qualified to serve on the Commission by reason of their experience in State or national efforts to fight violence against women and demonstrate experience in State or national advocacy or service organizations specializing in sexual assault and domestic violence; and

(B) engage in consultations for the purpose of ensuring that the expertise of the ten members appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate shall provide as much of a balance as possible and, to the greatest extent possible, cover the fields of law enforcement, prosecution, judicial administration, legal expertise, public health, social work, victim compensation boards, and victim advocacy.

(4) TERM OF MEMBERS.—Members of the Commission (other than members appointed under paragraph (1)(A)(i)) shall serve for the life of the Commission.

(5) VACANCY.—A vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(b) CHAIRMAN.—Not later than 15 days after the members of the Commission are appointed, such members shall select a Chairman from among the members of the Commission.

(c) QUORUM.—Seven members of the Commission shall constitute a quorum, but a lesser number may be authorized by the Commission to conduct hearings.

(d) MEETINGS.—The Commission shall hold its first meeting on a date specified by the Chairman, but such date shall not be later than 60 days after the date of the enactment of this Act. After the initial meeting, the Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least six times.

(e) PAY.—Members of the Commission who are officers or employees or elected officials of a government entity shall receive no additional compensation by reason of their service on the Commission.

(f) PER DIEM.—Except as provided in subsection (e), members of the Commission shall be allowed travel and other expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

(g) DEADLINE FOR APPOINTMENT.—Not later than 45 days after the date of the enactment of this Act, the members of the Commission shall be appointed.

SEC. 144. REPORTS.

(a) IN GENERAL.—Not later than 1 year after the date on which the Commission is fully constituted under section 143, the Commission shall prepare and submit a final report to the President and to congressional committees that have jurisdiction over legislation addressing violent crimes against women, including the crimes of domestic and sexual assault.

(b) CONTENTS.—The final report submitted under paragraph (1) shall contain a detailed statement of the activities of the Commission and of the findings and conclusions of the Commission, including such recommendations for legislation and administrative action as the Commission considers appropriate.

SEC. 145. EXECUTIVE DIRECTOR AND STAFF.

(a) EXECUTIVE DIRECTOR.—

(1) APPOINTMENT.—The Commission shall have an Executive Director who shall be appointed by the Chairman, with the approval of the Commission, not later than 30 days after the Chairman is selected.

(2) COMPENSATION.—The Executive Director shall be compensated at a rate not to exceed the maximum rate of the basic pay payable under GS–18 of the General Schedule as contained in title 5, United States Code.

(b) STAFF.—With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission.

(c) APPLICABILITY OF CIVIL SERVICE LAWS.—The Executive Director and the additional personnel of the Commission appointed under subsection (b) may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Executive Director may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed $200 per day.

SEC. 146. POWERS OF COMMISSION.

(a) HEARINGS.—For the purpose of carrying out this subtitle, the Commission may conduct 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 before the Commission.

(b) DELEGATION.—Any member or employee of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take under this subtitle.

(c) ACCESS TO INFORMATION.—The Commission may request directly from any executive department or agency such information as may be necessary to enable the Commission to carry out this subtitle, on the request of the Chairman of the Commission.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

SEC. 147. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1992, $500,000 to carry out the purposes of this subtitle.

SEC. 148. TERMINATION.

The Commission shall cease to exist 30 days after the date on which its final report is submitted under section 144. The President may extend the life of the Commission for a period of not to exceed one year.

Subtitle E—New Evidentiary Rules

SEC. 151. SEXUAL HISTORY IN ALL CRIMINAL CASES.

The Federal Rules of Evidence are amended by inserting after rule 412 the following:

"Rule 412A. Evidence of victim's past behavior in other criminal cases

"(a) REPUTATION AND OPINION EVIDENCE EXCLUDED.—Nothwithstanding any other provision of law, in a criminal case, other than a sex offense case governed by rule 412, reputation or opinion evidence of the past sexual behavior of an alleged victim is not admissible.

"(b) ADMISSIBILITY.—Notwithstanding any other provision of law, in a criminal case, other than a sex offense case governed by rule 412, evidence of an alleged victim's past sexual behavior (other than reputation and opinion evidence) may be admissible if—

"(1) the evidence is admitted in accordance with the procedures specified in subdivision (c); and

"(2) the probative value of the evidence outweighs the danger of unfair prejudice.

"(c) PROCEDURES.—(1) If the defendant intends to offer evidence of specific instances of the alleged victim's past sexual behavior, the defendant shall make a written motion to offer such evidence not later than 15 days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could

not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

"(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If necessary, the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the alleged victim and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the defendant seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

"(3) If the court determines on the basis of the hearing described in paragraph (2), that the evidence the defendant seeks to offer is relevant, not excluded by any other evidentiary rule, and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies the evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined. In its order, the court should consider (A) the chain of reasoning leading to its finding of relevance, and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences.".

SEC. 152. SEXUAL HISTORY IN CIVIL CASES.

The Federal Rules of Evidence, as amended by section 151 of this Act, are amended by adding after rule 412A the following:

"Rule 412B. Evidence of past sexual behavior in civil cases

"(a) REPUTATION AND OPINION EVIDENCE EXCLUDED.—Notwithstanding any other provision of law, in a civil case in which a defendant is accused of actionable sexual misconduct, as defined in subdivision (d), reputation or opinion evidence of the plaintiff's past sexual behavior is not admissible.

"(b) ADMISSIBLE EVIDENCE.—Notwithstanding any other provision of law, in a civil case in which a defendant is accused of actionable sexual misconduct, as defined in subdivision (d), evidence of a plaintiff's past sexual behavior other than reputation or opinion evidence may be admissible if—

"(1) admitted in accordance with the procedures specified in subdivision (c); and

"(2) the probative value of such evidence outweighs the danger of unfair prejudice.

"(c) PROCEDURES.—(1) If the defendant intends to offer evidence of specific instances of the plaintiff's past sexual behavior, the defendant shall make a written motion to offer such evidence not later than 15 days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the plaintiff.

"(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If necessary, the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the plaintiff and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the defendant seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

"(3) If the court determines on the basis of the hearing described in paragraph (2), that the evidence the defendant seeks to offer is relevant, not excluded by any other evidentiary rule, and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the plaintiff may be examined or cross-examined. In its order, the court should consider (A) the chain of reasoning leading to its finding of relevance, and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences.

"(d) DEFINITIONS.—For purposes of this rule, a case involving a claim of actionable sexual misconduct, includes, but is not limited to, sex harassment or discrimination claims brought pursuant to title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000(e)) and gender bias claims brought pursuant to title III of the Violence Against Women Act of 1991.".

SEC. 153. AMENDMENTS TO RAPE SHIELD LAW.

Rule 412 of the Federal Rules of Evidence is amended—

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

"(e) INTERLOCUTORY APPEAL.—Notwithstanding any other provision of law, any evidentiary rulings made pursuant to this rule are subject to interlocutory appeal by the government or by the alleged victim.

"(f) RULE OF RELEVANCE AND PRIVILEGE.— If the prosecution seeks to offer evidence of prior sexual history, the provisions of this rule may be waived by the alleged victim."; and

(2) by adding at the end of subdivision (c)(3) the following: "In its order, the court should consider (A) the chain of reasoning leading to its finding of relevance; and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences."

SEC. 154. EVIDENCE OF CLOTHING.

The Federal Rules of Evidence are amended by adding after rule 412 the following:

"Rule 413. Evidence of victim's clothing as inciting violence

"Notwithstanding any other provision of law, in a criminal case in which a person is accused of an offense under chapter 109A of title 18, United States Code, evidence of an alleged victim's clothing is not admissible to show that the alleged victim incited or invited the offense charged."

Subtitle F—Assistance to Victims of Sexual Assault

SEC. 161. EDUCATION AND PREVENTION GRANTS TO REDUCE SEXUAL ASSAULTS AGAINST WOMEN.

Part A of title XIX of the Public Health and Health Services Act (42 U.S.C. 300w et seq.) is amended as follows:

(1) by adding at the end thereof the following new section:

"§ 1910A. Use of allotments for rape prevention education

"(a) Notwithstanding the terms of section 1904(a)(1) of this title, amounts transferred by the State for use under this part may be used for rape prevention and education programs conducted by rape crisis centers or similar nongovernmental nonprofit entities, which programs may include—

"(1) educational seminars;

"(2) the operation of hotlines;

"(3) training programs for professionals;

"(4) the preparation of informational materials; and

"(5) other efforts to increase awareness of the facts about, or to help prevent, sexual assault.

"(b) States providing grant monies must assure that at least 15 percent of the monies are devoted to education programs targeted for middle school, junior high school, and high school students.

"(c) There are authorized to be appropriated under this section for each fiscal year 1992, 1993, and 1994, $65,000,000 to carry out the purposes of this section.

"(d) Funds authorized under this section may only be used for providing rape prevention and education programs.

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

"(f) States shall be allotted funds under this section pursuant to the terms of sections 1902 and 1903, and subject to the conditions provided in this section and sections 1904 through 1909."

SEC. 162. RAPE EXAM PAYMENTS.

No State or other grantee is entitled to funds under title I of the Violence Against Women Act of 1990 unless the State or other grantee incurs the full cost of forensic medical exams for victims of sexual assault. A State or other grantee does not incur

the full medical cost of forensic medical exams if it chooses to reimburse the victim after the fact unless the reimbursement program waives any minimum loss or deductible requirement, provides victim reimbursement within a reasonable time (90 days), permits applications for reimbursement within one year from the date of the exam, and provides information to all subjects of forensic medical exams about how to obtain reimbursement.

SEC. 163. EDUCATION AND PREVENTION GRANTS TO REDUCE SEXUAL ABUSE OF FEMALE RUNAWAY, HOMELESS, AND STREET YOUTH.

Part A of the Runaway and Homeless Youth Act (42 U.S.C. 5711 et seq.) is amended by—

(1) redesignating sections 316 and 317 as sections 317 and 318, respectively; and

(2) inserting after section 315 the following new section:

"GRANTS FOR PREVENTION OF SEXUAL ABUSE AND EXPLOITATION

"SEC. 315. (a) IN GENERAL.—The Secretary shall make grants under this section to private, nonprofit agencies for street-based outreach and education, including treatment, counseling, and information and referral, for female runaway, homeless, and street youth who have been subjected to or are at risk of being subjected to sexual abuse.

"(b) PRIORITY.—In selecting among applicants for grants under subsection (a), the Secretary shall give priority to agencies that have experience in providing services to female runaway, homeless, and street youth.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 1992, 1993, and 1994.

"(d) DEFINITIONS.—For the purposes of this section—

"(1) the term 'street-based outreach and education' includes education and prevention efforts directed at offenses committed by offenders who are not known to the victim as well as offenders who are known to the victim; and

"(2) the term 'street youth' means a female less than 21 years old who spends a significant amount of time on the street or in other areas of exposure to encounters that may lead to sexual abuse."

SEC. 164. VICTIM'S RIGHT OF ALLOCUTION IN SENTENCING.

Rule 32 of the Federal Rules of Criminal Procedure is amended by—

(1) striking "and" following the semicolon in subdivision (a)(1)(B);

(2) striking the period at the end of subdivision (a)(1)(C) and inserting "; and";

(3) inserting after subdivision (a)(1)(C) the following:

"(D) if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at the sentencing hearing and determine if the victim wishes to make a statement and to present any information in relation to the sentence.";

(4) in the second to last sentence of subdivision (a)(1), striking "equivalent opportunity" and inserting "opportunity equivalent to that of the defendant's counsel";

(5) in the last sentence of subdivision (a)(1) inserting "the victim," before "or the attorney for the Government."; and

(6) adding at the end the following:

"(f) DEFINITIONS.—For purposes of this rule—

"(1) the term 'victim' means any individual against whom an offense for which a sentence is to be imposed has been committed, but the right of allocution under subdivision (a)(1)(D) may be exercised instead by—

"(A) a parent or legal guardian in case the victim is below the age of eighteen years or incompetent; or

"(B) one of more family members or relatives designated by the court in case the victim is deceased or incapacitated;

if such person or persons are present at the sentencing hearing, regardless of whether the victim is present; and

"(2) the term 'crime of violence or sexual abuse' means a crime that involved the use or attempted or threatened use of physical force against the person or property of another, or a crime under chapter 109A of title 18, United States Code."

TITLE II—SAFE HOMES FOR WOMEN

SEC. 201. SHORT TITLE.

This title may be cited as the "Safe Homes for Women Act of 1990"

Subtitle A—Interstate Enforcement

SEC. 211. INTERSTATE ENFORCEMENT.

(a) IN GENERAL.—Part 1 of title 18, United States Code, is amended by inserting after chapter 110 the following:

"Chapter 110A—Violence Against Spouses

"§ 2261. Traveling to commit spousal abuse

"(a) IN GENERAL.—Any person who travels across State lines—

"(1) and who, in the course of or as a result of such travel, commits an act that injures his or her spouse or intimate partner; or

"(2) for the purpose of harassing, intimidating, or injuring a spouse or intimate partner and who, in furtherance of that purpose, commits an act that injures his or her spouse or intimate partner,

shall be fined not more than $1,000 or imprisoned for not more than 10 years but not less than 3 months, or both, in addition to any fine or term of imprisonment provided under State law.

"(b) CAUSING THE CROSSING OF STATE LINES.—Any person who causes a spouse or intimate partner to cross State lines by force, coercion, duress or fraud and, in the course or as a result of that conduct, commits an act that injures his or her spouse or intimate partner, shall be fined not more than $1,000 or imprisoned for not more than 10 years but not less than 3 months, or both, in addition to any fine or term of imprisonment provided under State law.

"(c) NO STATE LAW.—If no fine or term of imprisonment is provided for under the law of the State where the injury occurs, a person violating this section shall be punished as follows:

"(1) If permanent disfigurement or life-threatening bodily injury results, by imprisonment for not more than 20 years; where serious bodily injury results, by fine under this title or imprisonment for not more than 10 years, or both; where bodily injury results, by fine under this title or imprisonment for not more than 5 years, or both.

"(2) If the offense is committed with intent to commit another felony, by fine under this title or imprisonment for not more than 10 years, or both.

"(3) If the offense is committed with a dangerous weapon, with intent to do bodily harm, by fine under this title or imprisonment for not more than 5 years, or both.

"(4) If the offense constitutes sexual abuse, as that conduct is described under chapter 109A of title 18, United States Code (without regard to whether the offense was committed in the maritime, territorial or prison jurisdiction of the United States) by fine or term of imprisonment as provided for the applicable conduct under chapter 109A.

"(d) CRIMINAL INTENT.—The criminal intent of the offender required to establish an offense under subsection (b) is the general intent to do the acts that result in injury to a spouse or intimate partner and not the specific intent to violate the law of a State.

"(e) NO PRIOR STATE CRIMINAL ACTION NECESSARY.—Nothing in this section requires a prior criminal prosecution or conviction under State law to justify Federal prosecution.

"§ 2262. Interstate violation of protection orders

"(a) IN GENERAL.—Any person against whom a valid protection order has been entered who travels across State lines—

"(1) and who, in the course of or as a result of such travel, commits an act that injures his or her spouse or intimate partner in violation of a valid protection order issued by a State; or

"(2) for the purpose of harassing, injuring, finding, contacting, or locating a spouse or intimate partner and who, in furtherance of that purpose, commits an act that injures his or her spouse or intimate partner in violation of a valid protection order issued by a State, shall be punished as provided in subsection (c) of this section.

"(b) CAUSING THE CROSSING OF STATE LINES.—Any person who causes a spouse or intimate partner to cross State lines by force, coercion, duress or fraud, and, in the course or as a result of that conduct, commits an act that injures his or her spouse or intimate partner in violation of a valid protection order issued by a State shall be punished as provided in subsection (c) of this section.

"(c) PENALTIES.—

"(1) If permanent disfigurement or life-threatening bodily injury results, by imprisonment for not more than 20 years; where serious bodily injury results, by fine under this title or imprisonment for not more than 10 years, or both; where bodily injury results, by fine under this title or imprisonment for not more than 5 years, or both.

"(2) If the offense is committed with intent to commit another felony, by fine under this title or imprisonment for not more than 10 years, or both.

"(3) If the offense is committed with a dangerous weapon, with intent to do bodily harm, by fine under this title or imprisonment for not more than 5 years, or both.

"(4) If the offender has previously violated any prior protection order issued against that person for the protection of the same victim, by fine under this title or imprisonment for not more than 5 years and not less than 6 months, or both.

"(5) If the offense constitutes sexual abuse, as that conduct is described under chapter 109A of title 18, United States Code (without regard to whether the conduct was committed in the special maritime, territorial or prison jurisdiction of the United States) by fine or term of imprisonment as provided for the applicable offense under chapter 109A.

"(d) CRIMINAL INTENT.—The criminal intent required to establish the offense provided in subsection (a) is the general intent to do the acts which result in injury to a spouse or intimate partner and not the specific intent to violate a protection order or State law.

"(e) NO PRIOR STATE CRIMINAL ACTION NECESSARY.—Nothing in this section requires a prior criminal prosecution or conviction under State law to justify Federal prosecution.

"§ 2263. Interim protections

"In furtherance of the purposes of this chapter, and to protect against abuse of a spouse or intimate partner, any judge or magistrate before whom a criminal case under this chapter is brought, shall have the power to issue temporary orders of protection for the protection of an abused spouse or intimate partner pending final adjudication of the case, upon a showing of a likelihood of danger to the abused spouse or intimate partner.

"§ 2264. Restitution

"(a) IN GENERAL.—In addition to any fine or term of imprisonment provided under this chapter, and notwithstanding the terms of section 3663 of this title, the court shall order restitution to the victim of an offense under this chapter.

"(b) SCOPE AND NATURE OF ORDER.—(1) The order of restitution under this section shall direct that—

"(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to subsection (3); and

"(B) the United States Attorney enforce the restitution order by all available and reasonable means.

"(2) For purposes of this subsection, the term 'full amount of the victim's losses' includes any costs incurred by the victim for—

"(A) medical services relating to physical, psychiatric, or psychological care;

"(B) physical and occupational therapy or rehabilitation; and

"(C) lost income;

"(D) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

"(E) any other losses suffered by the victim as a proximate result of the offense.

"(3) Restitution orders under this section are mandatory. A court may not decline to issue an order under this section because of—

"(A) the economic circumstances of the defendant; or

"(B) the fact that victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance.

"(4)(A) Notwithstanding the terms of paragraph (3), the court may take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution is to be paid, including—

"(i) the financial resources and other assets of the defendant;

"(ii) projected earnings, earning capacity, and other income of the defendant; and

"(iii) any financial obligations of the offender, including obligations to dependents.

"(B) An order under this section may direct the defendant to make a single lump-sum payment, or partial payments at specified intervals. The order shall provide that the defendant's restitutionary obligation takes priority over any criminal fine ordered.

"(C) In the event that the victim has recovered for any amount of loss through the proceeds of insurance or any other source, the order of restitution shall provide that restitution be paid to the person who provided the compensation, but that restitution shall be paid to the victim before any restitution is paid to any other provider of compensation.

"(5) Any amount paid to a victim under this section shall be set off against any amount later recovered as compensatory damages by the victim from the defendant in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(c) PROOF OF CLAIM.—(1) Within 60 days after conviction and, in any event, no later than 10 days prior to sentencing, the United States Attorney (or his delegee), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or his delegee) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or his delegee) shall advise the victim that the victim may file a separate affidavit.

"(2) If no objection is raised by the defendant, the amounts attested to in the affidavit filed pursuant to subsection (1) shall be entered in the court's restitution order. If objection is raised, the court may require the victim or the United States Attorney (or his delegee) to submit further affidavits or other supporting documents, demonstrating the victim's losses.

"(3) If the court concludes, after reviewing the supporting documentation and considering the defendant's objections, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. Any records filed, or testimony heard, pursuant to this section, shall be in camera in the judge's chambers.

"(4) In the event that the victim's losses are not ascertainable 10 days prior to sentencing as provided in subsection (c)(1), the United States Attorney (or his delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

"(d) RESTITUTION AND CRIMINAL PENALTIES.—An award of restitution to the victim of an offense under this chapter shall not be a substitute for imposition of punishment under sections 2261 and 2262.

"(e) DEFINITIONS.—For purposes of this section, the term 'victim' includes the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court: *Provided,* That in no event shall the defendant be named as such representative or guardian.

"§ 2265. Full faith and credit given to protection orders

"(a) FULL FAITH AND CREDIT.—Any protection order issued consistent with the terms of subsection (b) by the court of one State (the issuing State) shall be accorded full faith and credit by the court of another State (the enforcing State) and enforced as if it were the order of the enforcing State.

"(b) PROTECTION ORDER.—A protection order issued by a State court is consistent with the provisions of this section if—

"(1) such court has jurisdiction over the parties and matter under the law of such State; and

"(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

"(c) CROSS OR COUNTER PETITION.—A protection order issued by a State court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—

"(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

"(2) if a cross or counter petition has been filed, if the court did not make specific findings that each party was entitled to such an order.

"§ 2266. Definitions for chapter

"As used in this chapter—

"(1) the term 'spouse or intimate partner' includes—

"(A) a present or former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and

"(B) any other person similarly situated to a spouse, other than a child, who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides;

"(2) the term 'protection order' includes any injunction or other order issued for the purpose of preventing violent or threatening acts by one spouse against his or her spouse or intimate partner, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion of an abused spouse or intimate partner;

"(3) the term 'act that injures' includes any act, except those done in self-defense, that results in physical injury or sexual abuse;

"(4) the term 'State' includes a State of the United States, the District of Columbia, and any Indian tribe, commonwealth, territory, or possession of the United States; and

"(5) the term 'travel across State lines' includes any such travel except travel across State lines by an Indian tribal member when that member remained at all times on tribal lands.".

(b) TABLE OF CHAPTERS.—The table of chapters for part 1 of title 18, United States Code, is amended by inserting after the item for chapter 110 the following:

"110A. Violence against spouses ..... 2261.".

Subtitle B—Arrest in Spousal Abuse Cases

SEC. 221. ENCOURAGING ARREST POLICIES.

The Family Violence Prevention and Services Act (42 U.S.C. 10400) is amended by adding after section 311 the following:

"SEC. 312. ENCOURAGING ARREST POLICIES.

"(a) PURPOSE.—To encourage States, Indian tribes and localities to treat spousal violence as a serious violation of criminal law, the Secretary is authorized to make grants to eligible States, Indian tribes, municipalities, or local government entities for the following purposes:

"(1) to implement pro-arrest programs and policies in police departments and to improve tracking of cases involving spousal abuse;

"(2) to centralize and coordinate police enforcement, prosecution, or judicial responsibility for, spousal abuse cases in one group or unit of police officers, prosecutors, or judges;

"(3) to educate judges in criminal and other courts about spousal abuse and to improve judicial handling of such cases.

"(b) ELIGIBILITY.—(1) Eligible grantees are those States, Indian tribes, municipalities or other local government entities that—

"(A) demonstrate, through arrest and conviction statistics, that their laws or policies have been effective in significantly increasing the number of arrests made of spouse abusers; and

"(B) certify that their laws or official policies—

"(i) mandate arrest of spouse abusers based on probable cause that violence has been committed or mandate arrest of spouses violating the terms of a valid and outstanding protection order; or

"(ii) permit warrantless misdemeanor arrests of spouse abusers and encourage the use of that authority;

"(C) demonstrate that their laws, policies, practices and training programs discourage 'dual' arrests of abused and abuser and the increase in arrest rates demonstrated pursuant to paragraph (1)(A) is not the result of increased dual arrests; and

"(D) certify that their laws, policies, and practices prohibit issuance of mutual protection orders in cases where only one spouse has sought a protective order, and require findings of mutual aggression to issue mutual protective orders in cases where both parties file a claim.

"(2) For purposes of this section, the term 'protection order' includes any injunction issued for the purpose of preventing violent or threatening acts of spouse abuse, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

"(3) For purposes of this section, the term 'spousal or spouse abuse' includes felony or misdemeanor offenses committed by a current or former spouse of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabited with the victim as a spouse, or any other person protected under the domestic or family violence laws of the jurisdiction receiving grant monies.

"(4) The eligibility requirements provided in this section shall take effect one year after the date of enactment of this section.

"(c) DELEGATION AND AUTHORIZATION.—The Secretary shall delegate to the Attorney General of the United States the Secretary's responsibilities for carrying out this section to the Attorney General. There are authorized to be appropriated not in excess of $25,000,000 for each fiscal year to be used for the purpose of making grants under this section.

"(d) APPLICATION.—An eligible grantee shall submit an application to the Secretary. Such application shall—

"(1) contain a certification by the chief executive officer of the State, Indian tribes, municipality, or local government entity that the conditions of subsection (b) are met;

"(2) describe the entity's plans to further the purposes listed in subsection (a);

"(3) identify the agency or office or groups of agencies or offices responsible for carrying out the program; and

"(4) identify and include documentation showing the nonprofit nongovernmental victim services programs that will be consulted in developing, and implementing, the program.

"(e) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to a grantee that—

"(1) does not currently provide for centralized handling of cases involving spousal or family violence in any one of the areas listed in this subsection—police, prosecutors, and courts; and

"(2) demonstrates a commitment to strong enforcement of laws, and prosecution of cases, involving spousal or family violence.

"(f) REPORTING.—Each grantee receiving funds under this section shall submit a report to the Secretary evaluating the effectiveness of the plan described in subsection (d)(2) and containing such additional information as the Secretary may prescribe.

"(g) REGULATIONS.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section. No later than 120 days after such date, the Secretary shall publish final regulations implementing this section."

Subtitle C—Funding for Shelters

SEC. 231. AUTHORIZATION.

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

"SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

"(a) There are authorized to be appropriated to carry out the provisions of this title, $85,000,000 for fiscal year 1992, $100,000,000, for fiscal year 1993, and $125,000,000 for fiscal year 1994.

"(b) Of the sums authorized to be appropriated under subsection (a) of this section for any fiscal year, not less than 80 percent shall be used by the Secretary for making grants under section 303.

"(c) Of the sums authorized to be appropriated under subsection (a) of this section for any fiscal year, not more than 5 percent shall be used by the Secretary for making grants under section 314.

"(d) Of the sums authorized to be appropriated under subsection (a) of this section for any fiscal year, not less than 5 percent shall be used by the Secretary for making grants under section 308A."

Subtitle D—Family Violence Prevention and Services Act Amendments

SEC. 241. EXPANSION OF PURPOSE.

Section 302(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10401(1)) is amended by striking "to prevent" and inserting "to increase public awareness about and prevent" and by striking "demonstrate the effectiveness of assisting" and inserting "assist".

SEC. 242. EXPANSION OF STATE DEMONSTRATION GRANT PROGRAM.

(a) INCREASING PUBLIC AWARENESS.—Section 303(a)(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(a)(1)) is amended by striking "to prevent" and inserting "to increase public awareness about and prevent,"

(b) EXPANSION OF PROGRAM.—Section 303(a)(2)(B)(ii) is amended by striking "alcohol and drug abuse treatment"

SEC. 243. GRANTS FOR PUBLIC INFORMATION CAMPAIGNS.

The Family Violence Prevention and Services Act is amended by adding at the end thereof the following new section:

"GRANTS FOR PUBLIC INFORMATION CAMPAIGNS

"SEC. 314. (a) The Secretary may make grants to public or private nonprofit entities to provide public information campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.

"(b) No grant, contract, or cooperative agreement shall be made or entered into under this section unless an application that meets the requirements of subsection (c) has been approved by the Secretary.

"(c) An application submitted under subsection (b) shall—

"(1) provide such agreements, assurances, and information, be in such form and be submitted in such manner as the Secretary shall prescribe through notice in the Federal Register, including a description of how the proposed public information campaign will target the population at risk, including pregnant women;

"(2) include a complete description of the plan of the application for the development of a public information campaign;

"(3) identify the specific audiences that will be educated, including communities and groups with the highest prevalence of domestic violence;

"(4) identify the media to be used in the campaign and the geographic distribution of the campaign;

"(5) describe plans to test market a development plan with a relevant population group and in a relevant geographic area and give assurance that effectiveness criteria will be implemented prior to the completion of the final plan that

will include an evaluation component to measure the overall effectiveness of the campaign;

"(6) describe the kind, amount, distribution, and timing of informational messages and such other information as the Secretary may require, with assurances that media organizations and other groups with which such messages are placed will not lower the current frequency of public service announcements; and

"(7) contain such other information as the Secretary may require.

"(d) A grant, contract, or agreement made or entered into under this section shall be used for the development of a public information campaign that may include public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other mode of conveying information that the Secretary determines to be appropriate.

"(e) The criteria for awarding grants shall ensure that an applicant—

"(1) will conduct activities that educate communities and groups at greatest risk;

"(2) has a record of high quality campaigns of a comparable type; and

"(3) has a record of high quality campaigns that educate the population groups identified as most at risk.".

SEC. 244. FUND DISTRIBUTION TO STATES.

Section 304(a)(1) of the Family Violence Prevention and Services Act is amended by striking "$50,000" and inserting "$500,000".

SEC. 245. INDIAN TRIBES.

Section 303(b)(1) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(b)(1)) is amended by striking "is authorized to make" and inserting "from sums appropriated shall make no less than 10 percent available for"

SEC. 246. FUNDING LIMITATIONS.

Section 303(c) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(c)) is amended by—

(1) striking "$50,000 and" and all that follows through "$150,000"; and

(2) striking "$50,000" and inserting "$75,000"

SEC. 247. GRANTS TO ENTITIES OTHER THAN STATES; LOCAL SHARE.

The first sentence of section 303(f) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(f)) is amended to read as follows: "No grant may be made under this section to an entity other than a State or Indian tribe unless the entity provides 35 percent of the funding of the program or project funded by the grant."

SEC. 248. SHELTER AND RELATED ASSISTANCE.

(a) CHANGE OF PERCENTAGES.—Section 303(g) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(g)) is amended by striking "not less than 60 percent" and inserting "not less than 75 percent".

(b) DEFINITION OF RELATED ASSISTANCE.—Section 309(5) of the Family Violence Prevention and Services Act is amended to read as follows:

"(5) The term 'related assistance' includes any, but does not require all, of the following—

"(A) food, shelter, medical services, and counseling with respect to family violence, including counseling by peers individually or in groups;

"(B) transportation, legal assistance, referrals for appropriate health-care services (including alcohol and drug abuse treatment), and technical assistance with respect to obtaining financial assistance under Federal and State programs;

"(C) comprehensive counseling and self-help services to abusers, preventive health (including nutrition, exercise, and prevention of substance abuse), educational services and employment training; and

"(D) child care services for children who are victims of family violence or the dependents of such victims."

SEC. 249. LAW ENFORCEMENT TRAINING AND TECHNICAL ASSISTANCE GRANTS.

Section 311 of the Family Violence Protection and Services Act (42 U.S.C. 10410(b)) is repealed.

SEC. 250. REPORT ON RECORDKEEPING.

Not later than 120 days after the date of enactment of this Act, the Government Accounting Office shall complete a study of, and shall submit to Congress a report and recommendations on, problems of recordkeeping of criminal complaints involving domestic violence. The study and report shall examine efforts to date of the FBI and Justice Department to collect statistics on domestic violence and the feasibility

of, including a suggested timetable for, requiring that the relationship between an offender and victim be reported in Federal and State records of crimes of assault, aggravated assault, rape, and other violent crimes.

SEC. 251. MODEL STATE LEADERSHIP INCENTIVE GRANTS FOR DOMESTIC VIOLENCE INTERVENTION.

The Family Violence Prevention Services Act, as amended by section 103 of this Act, is amended by adding at the end thereof the following new section:

"MODEL STATE LEADERSHIP GRANTS FOR DOMESTIC VIOLENCE INTERVENTION

"SEC. 315. (a) The Secretary, in cooperation with the Attorney General, shall award grants to not less than 10 States to assist in becoming model demonstration States and in meeting the costs of improving State leadership concerning activities that will—

"(1) increase the number of prosecutions for domestic violence crimes;

"(2) encourage the reporting of incidences of domestic violence;

"(3) facilitate 'arrests and aggressive' prosecution policies; and

"(4) provides court advocacy for victims of domestic violence.

"(b) To be designated as a model State under subsection (a), a State shall have in effect—

"(1) a law that requires mandatory arrest of a person that police have probable cause to believe has committed an act of domestic violence or probable cause to believe has violated an outstanding civil protection order;

"(2) a law or policy that discourages dual arrests;

"(3) statewide prosecution policies that—

"(A) authorize and encourage prosecutors to pursue cases where a criminal case can be proved, including proceeding without the active involvement of the victim if necessary; and

"(B) implement model projects that include either—

"(i) a 'no-drop' prosecution policy; or

"(ii) a vertical prosecution policy; and

"(C) limit diversion to extraordinary cases, and then only after an admission before a judicial officer has been entered;

"(4) statewide laws, policies, or guidelines for judges that—

"(A) prohibit the issuance of mutual protective orders in cases where only one spouse has sought a protective order and require findings of mutual aggression to issue mutual protective orders in cases where both parties file a claim;

"(B) require that any history of child abuse be considered detrimental to the child and discourage custody or joint custody orders by spouse abusers; and

"(C) encourage the understanding of domestic violence as a serious criminal offense and not a trivial dispute;

"(5) develop and disseminate methods to improve the criminal justice system's response to domestic violence to make existing remedies as easily available as possible to victims of domestic violence, including reducing delay, eliminating court fees, and providing easily understandable court forms.

"(c)(1) In addition to the funds authorized to be appropriated under section 310, there are authorized to be appropriated to make grants under this section $25,000,000 for fiscal year 1992 and such sums as may be necessary for each of the fiscal years 1993 and 1994.

"(2) Funds shall be distributed under this section so that no State shall receive more than $2,500,000 in each fiscal year under this section.

"(3) The Secretary shall delegate to the Attorney General the Secretary's responsibilities for carrying out this section and shall transfer to the Attorney General the funds appropriated under this section for the purpose of making grants under this section."

SEC. 252. FUNDING FOR TECHNICAL ASSISTANCE CENTERS.

The Family Violence Prevention and Services Act is amended by inserting after section 308 the following:

"SEC. 308A. TECHNICAL ASSISTANCE CENTERS.

"(a) PURPOSE.—The purpose of this section is to provide training and technical assistance to State, Indian tribal, and local domestic violence programs and to other professionals who provide services to victims of domestic violence. From the sums authorized under this title, the Secretary shall provide grants to or contract with, private nonprofit organizations, for the establishment and maintenance of one na-

tional and six special-issue resource centers serving defined geographic areas. One national resource center shall offer resource, policy, and/or training assistance to Federal, State, Indian tribal, and local government agencies on issues pertaining to domestic violence and serve a coordinating and resource-sharing function among domestic violence service providers, and maintain a central resource library. The special issue resource centers shall provide information, training and technical assistance to State, tribal and local domestic violence service providers. In addition, each national center shall specialize in one of the following areas of domestic violence service, prevention or law:

"(1) criminal justice response to domestic violence, including court-mandated abuser treatment;

"(2) child custody issues in domestic violence cases;

"(3) use of the self-defense plea by domestic violence victims;

"(4) health care response and access to health care resources for domestic violence victims;

"(5) victims' access to, and quality of, effective legal assistance, including civil litigation; and

"(6) the response of child protective service agencies to battered mothers of abused children.

"(b) ELIGIBILITY.—Eligible grantees are private non-profit organizations that—

"(1) focus primarily on domestic violence;

"(2) provide documentation to the Secretary demonstrating a minimum of three years experience with issues of domestic violence, particularly in the specific area for which it is applying;

"(3) include on its advisory boards representatives from domestic violence programs who are geographically and culturally diverse; and

"(4) demonstrate strong support from domestic violence advocates for their designation as the special-issue resource center.

"(c) REPORTING.—Each grantee receiving funds under this section shall submit a report to the Secretary evaluating the effectiveness of the plan described and containing such additional information as the Secretary may prescribe.

"(d) REGULATIONS.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section."

Subtitle E—Youth Education and Domestic Violence

SEC. 261. EDUCATING YOUTH ABOUT DOMESTIC VIOLENCE.

(a) GENERAL PURPOSE.—For purposes of this section, the Secretary shall delegate his powers to the Secretary of Education, hereinafter referred to as the "Secretary" The Secretary shall select, implement and evaluate four model programs for education of young people about domestic violence and violence among intimate partners.

(b) NATURE OF PROGRAM.—The Secretary shall select, implement and evaluate separate model programs for four different audiences: primary schools, middle schools, secondary schools, and institutions of higher education. These model programs shall be selected, implemented, and evaluated with the input of educational experts, legal and psychological experts on battering, and victim advocate organizations such as battered women's shelters, State coalitions and resource centers. The participation of each of these groups or individual consultants from such groups is essential to the selection, implementation, and evaluation of programs that meet both the needs of educational institutions and the needs of the domestic violence problem.

(c) REVIEW AND DISSEMINATION.—Not later than 24 months after the date of enactment of this Act, the Secretary shall transmit the design and evaluation of the model programs, along with a plan and cost estimate for nationwide distribution, to the relevant committees of Congress for review.

(d) AUTHORIZATION.—There are authorized to be appropriated under this section for fiscal year 1992, $400,000 to carry out the purposes of this section.

Subtitle F—Confidentiality for Abused Persons

SEC. 271. CONFIDENTIALITY OF ABUSED PERSON'S ADDRESS.

No later than 90 days after the enactment of this Act, the Postmaster General shall promulgate regulations to secure the confidentiality of abused persons' addresses or otherwise prohibit the disclosure of an abused person's address consistent with the following guidelines:

(1) confidentiality shall be provided upon the presentation to an appropriate postal official of an existing and valid court order for the protection of an abused spouse;

(2) disclosure of addresses to State or Federal agencies for legitimate law enforcement or other governmental purposes shall not be prohibited; and

(3) compilations of addresses existing at the time the order is presented to an appropriate postal official shall be excluded from the scope of the proposed regulations.

Subtitle G—Domestic Violence Coalitions

SEC. 281. GRANTS FOR STATE DOMESTIC VIOLENCE COALITIONS.

The Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 316. GRANTS FOR STATE DOMESTIC VIOLENCE COALITIONS.

"(a) IN GENERAL.—The Secretary shall provide grants to States to fund eligible State domestic violence coalitions to enable such coalitions to conduct the activities described in subsection (c).

"(b) ALLOTMENT OF FUNDS.—

"(1) AMOUNT.—In determining the amount of a grant to which a State is entitled under this section for a fiscal year, the Secretary shall divide the amount appropriated for each such fiscal year under subsection (f) equally among the States.

"(2) STATES.—For purposes of this section, the term 'States' means—

"(A) each of the 50 States;

"(B) the District of Columbia; and

"(C) Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands which together shall be considered as the equivalent of one State and receive not less than 1.5 percent of the amounts available for allotment under paragraph (1).

"(c) ELIGIBILITY.—To be eligible to receive funds from a State under a grant received under this section, a State domestic violence coalition shall be a nonprofit statewide coalition whose—

"(1) membership includes a majority of programs for victims of domestic violence in the State;

"(2) whose membership is representative of the programs described in paragraph (1); and

"(3) whose purpose is to provide services, community education, and technical assistance to such programs to establish and maintain shelter and related services for victims of domestic violence and their children.

"(d) ACTIVITIES.—Funds received by a State domestic violence coalition under this section shall be utilized to further the purposes of domestic violence intervention and prevention through activities including—

"(1) working with the judicial and law enforcement agencies to encourage appropriate responses to domestic violence cases and examine issues that include—

"(A) the inappropriateness of mutual protection orders;

"(B) the prohibition of mediation where there is domestic violence;

"(C) the use of mandatory arrests of accused offenders;

"(D) the discouraging of dual arrests;

"(E) the adoption of aggressive and vertical prosecution policies and procedures;

"(F) the use of mandatory requirements for presentence investigations;

"(G) the length of time taken to prosecute cases or reach plea agreements;

"(H) the use of plea agreements;

"(I) the testifying of victims at post-conviction sentencing and release hearings;

"(J) the consistency of sentencing in such cases and as compared with other violent crimes;

"(K) the restitution of victims;

"(L) the provision of training and technical assistance to law enforcement and court officials and other professionals;

"(M) the reporting practices of, and significance to be accorded to, prior convictions (both felony and misdemeanor) and protection orders;

"(N) the interstate extradition in cases of domestic violence crimes;

"(O) statewide and regional planning; and

"(P) such other matters as the Secretary and the coalitions believe merit investigations;

"(2) working with family law judges, child protective services agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases as well as cases where domestic violence and child abuse are both present, including—

"(A) the inappropriateness of mutual protection orders;

"(B) the prohibition of mediation where there is domestic violence;

"(C) the inappropriate use of marital or conjoint counseling in domestic violence cases;

"(D) the provision of training and technical assistance to family law judges and court personnel;

"(E) the presumption of granting custody to domestic violence victims;

"(F) the issuance of comprehensive protection orders to grant fullest protections possible to victim of domestic violence, including temporary support and maintenance;

"(G) the ability of the child protective service to develop supportive responses to enable victims to protect their children;

"(H) supervised visitations where the child and abused victim are not endangered; and

"(I) permitting a domestic violence victim to remove children from State when child or parent safety is at risk; and

"(3) conducting public education campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $15,000,000 for each fiscal year to carry out this section.

"(f) REPORTING.—Each State domestic violence coalition receiving funds under this section shall submit a report to the Secretary describing the coordination, training, and technical assistance and public education services performed using such funds and evaluating the effectiveness of such services.

"(g) REGULATIONS.—Not later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after such date of enactment, the Secretary shall publish final regulations implementing this section."

TITLE III—CIVIL RIGHTS

SEC. 301. CIVIL RIGHTS.

(a) FINDINGS.—The Congress finds that—

(1) crimes motivated by the victim's gender constitute bias crimes in violation of the victim's right to be free from discrimination on the basis of gender;

(2) current law provides a civil rights remedy for gender crimes committed in the workplace, but not for gender crimes committed on the street or in the home; and

(3) State and Federal criminal laws do not adequately protect against the bias element of gender-motivated crimes, which separates these crimes from acts of random violence, nor do those laws adequately provide victims of gender-motivated crimes the opportunity to vindicate their interests;

(4) existing bias and discrimination in the criminal justice system often deprives victims of gender-motivated crimes of equal protection of the laws and the redress to which they are entitled;

(5) gender-motivated violence has a substantial adverse effect on interstate commerce, by deterring potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved, in interstate commerce;

(6) gender-motivated violence has a substantial adverse effect on interstate commerce, by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products;

(7) a Federal civil rights action as specified in this section is necessary to guarantee equal protection of the laws and to reduce the substantial adverse effects of gender-motivated violence on interstate commerce; and

(8) victims of gender-motivated violence have a right to equal protection of the laws, including a system of justice that is unaffected by bias or discrimination and that, at every relevant stage, treats such crimes as seriously as other violent crimes.

(b) RIGHTS, PRIVILEGES AND IMMUNITIES.—All persons within the United States shall have the same rights, privileges and immunities in every State as is enjoyed by all other persons to be free from crimes of violence motivated by the victim's gender, as defined in subsection (d).

(c) CAUSE OF ACTION.—Any person, including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State, who commits a crime of violence motivated by gender and thus deprives another of the rights, privileges or immunities secured by the Constitution or laws as enumerated in subsection (b) shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as the court may deem appropriate.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "crime of violence motivated by gender" means any crime of violence, as defined in paragraph (2), committed because of gender or on the basis of gender; and

(2) the term "crime of violence" means an act or series of acts that would come within the meaning of State or Federal offenses described in section 16 of title 18, United States Code, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States.

(e) LIMITATION AND PROCEDURES.—

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

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

SEC. 302. CONFORMING AMENDMENT.

The Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. 1988) is amended—

(1) in the last sentence, by striking "or" after "Public Law 92-318,"; and

(2) by adding after "1964," the following: ", or title III of the Violence Against Women Act of 1991,".

SEC. 303. SENSE OF THE SENATE CONCERNING PROTECTION OF THE PRIVACY OF RAPE VICTIMS.

(a) FINDINGS AND DECLARATION.—The Congress finds and declares that—

(1) there is a need for a strong and clear Federal response to violence against women, particularly with respect to the crime of rape;

(2) rape is an abominable and repugnant crime, and one that is severely underreported to law enforcement authorities because of its stigmatizing nature;

(3) the victims of rape are often further victimized by a criminal justice system that is insensitive to the trauma caused by the crime and are increasingly victimized by news media that are insensitive to the victim's emotional and psychological needs;

(4) rape victims' need for privacy should be respected;

(5) rape victims need to be encouraged to come forward and report the crime of rape without fear of being revictimized through involuntary public disclosure of their identities;

(6) rape victims need a reasonable expectation that their physical safety will be protected against retaliation or harassment by an assailant;

(7) the news media should, in the exercise of their discretion, balance the public's interest in knowing facts reported by free news media against important privacy interests of a rape victim, and an absolutist view of the public interest leads to insensitivity to a victim's privacy interest; and

(8) the public's interest in knowing the identity of a rape victim is small compared with the interests of maintaining the privacy of rape victims and encouraging rape victims to report and assist in the prosecution of the crime of rape.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that news media, law enforcement officers, and other persons should exercise restraint and respect a rape victim's privacy by not disclosing the victim's identity to the general public or facilitating such disclosure without the consent of the victim.

TITLE IV—SAFE CAMPUSES FOR WOMEN

SEC. 401. SHORT TITLE.

This title may be cited as the "Safe Campuses for Women Act of 1990".

SEC. 402. FINDINGS.

The Congress finds that—

(1) rape prevention and education programs are essential to an educational environment free of fear for students' personal safety;

(2) sexual assault on campus, whether by fellow students or not, is widespread among the Nation's higher education institutions: experts estimate that 1 in 7 of the women now in college have been raped and over half of college rape victims know their attackers;

(3) sexual assault poses a grave threat to the physical and mental well-being of students and may significantly impair the learning process; and

(4) action by schools to educate students may make substantial inroads on the incidence of rape, including the incidence of acquaintance rape on campus.

SEC. 403. GRANTS FOR CAMPUS RAPE EDUCATION.

Title X of the Higher Education Act of 1965 is amended to add at the end thereof the following:

"PART D—GRANTS FOR CAMPUS RAPE EDUCATION

"SEC. 1071. GRANTS FOR CAMPUS RAPE EDUCATION.

"(a) IN GENERAL.—(1) The Secretary of Education is authorized to make grants to or enter into contracts with institutions of higher education for rape education and prevention programs under this section.

"(2) The Secretary shall make financial assistance available on a competitive basis under this section. An institution of higher education or consortium of such institutions which desires to receive a grant or enter into a contract under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require in accordance with regulations.

"(3) The Secretary shall make every effort to ensure the equitable participation of private and public institutions of higher education and to ensure the equitable geographic participation of such institutions. In the award of grants and contracts under this section, the Secretary shall give priority to institutions who show the greatest need for the sums requested.

"(b) GENERAL RAPE PREVENTION AND EDUCATION GRANTS.—Grants under this section shall be used to educate and provide support services to student victims of rape or sexual assault. Grants may be used for the following purposes:

"(1) to provide training for campus security and college personnel, including campus disciplinary or judicial boards, that address the issues of rape, sexual assault, and other gender-motivated crimes;

"(2) to develop, disseminate, or implement campus security and student disciplinary policies to prevent and discipline rape, sexual assault and other gender-motivated crimes;

"(3) to develop, enlarge or strengthen support services programs including medical or psychological counseling to assist victims' recovery from rape, sexual assault, or other gender-motivated crimes;

"(4) to create, disseminate, or otherwise provide assistance and information about victims' options on and off campus to bring disciplinary or other legal action; and

"(5) to implement, operate, or improve rape education and prevention programs, including programs making use of peer-to-peer education.

"(c) MODEL GRANTS.—Not less than 25 percent of the funds authorized under this section shall be available for grants for model demonstration programs to be coordinated with local rape crisis centers for the development and implementation of quality rape prevention and education curricula and for local programs to provide services to student rape victims.

"(d) ELIGIBILITY.—No institution of higher education or consortium of such institutions shall be eligible for a grant under this section unless—

"(1) its student code of conduct, or other written policy governing student behavior, explicitly prohibits not only rape but all forms of sexual assault; and

"(2) it has in effect and implements a written policy requiring the disclosure to the victim of any sexual assault the outcome of any investigation by campus police or campus disciplinary proceedings brought pursuant to the victim's complaint against the alleged perpetrator of the sexual assault: *Provided,* That nothing in this section shall be interpreted to authorize disclosure to any person other than the victim.

"(e) APPLICATIONS.—(1) In order to be eligible to receive a grant under this section for any fiscal year, an institution of higher education, or consortium of such institutions, shall submit an application to the Secretary at such time and in such manner as the Secretary shall prescribe.

"(2) Each such application shall—

"(A) set forth the activities and programs to be carried out with funds granted under this part;

"(B) contain an estimate of the cost for the establishment and operation of such programs;

"(C) explain how the program intends to address the issue of acquaintance rape;

"(D) provide assurances that the Federal funds made available under this section shall be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purpose described in this part, and in no case to supplant such funds; and

"(E) include such other information and assurances as the Secretary reasonably determines to be necessary.

"(f) GRANTEE REPORTING.—Upon completion of the grant period under this section, the grantee institution or consortium of institutions shall file a performance report with the Secretary explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this section. The Secretary shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

"(g) DEFINITIONS.—(1) Except as otherwise provided, the terms used in this part shall have the meaning provided under section 2981 of this title.

"(2) For purposes of this subchapter, the following terms have the following meanings:

"(A) The term 'rape education and prevention' includes programs that provide educational seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, the preparation of informational materials, and any other effort to increase campus awareness of the facts about, or to help prevent, sexual assault.

"(B) The term 'Secretary' means the Secretary of Education.

"(h) GENERAL TERMS AND CONDITIONS.—(1) REGULATIONS.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section. No later than 120 days after such date, the Secretary shall publish final regulations implementing this section.

"(2) No later than 180 days after the end of each fiscal year for which grants are made under this section, the Secretary shall submit to the committees of the House of Representatives and the Senate responsible for issues relating to higher education and to crime, a report that includes—

"(A) the amount of grants made under this section;

"(B) a summary of the purposes for which those grants were provided and an evaluation of their progress; and

"(C) a copy of each grantee report filed pursuant to subsection (e) of this section.

"(3) For the purpose of carrying out this subchapter, there are authorized to be appropriated $20,000,000 for the fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995."

SEC. 404. REQUIRED CAMPUS REPORTING OF SEXUAL ASSAULT.

Section 204(f) of the Crime Awareness and Campus Security Act of 1990 is amended to read as follows:

"(F) Statistics concerning the occurrence on campus, during the most recent school year, and during the 2 preceding school years for which data are avail-

able, of the following criminal offenses reported to campus security authorities or local police agencies—

"(i) murder;
"(ii) rape or sexual assault;
"(iii) robbery;
"(iv) aggravated assault;
"(v) burglary; and
"(vi) motor vehicle theft.

TITLE V—EQUAL JUSTICE FOR WOMEN IN THE COURTS ACT OF 1991

SECTION 501. SHORT TITLE.

This title may be cited as the "Equal Justice for Women in the Courts Act of 1991".

Subtitle A—Education and Training for Judges and Court Personnel in State Courts

SEC. 511. GRANTS AUTHORIZED.

The State Justice Institute is authorized to award grants for the purpose of developing, testing, presenting, and disseminating model programs to be used by States in training judges and court personnel in the laws of the States on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender.

SEC. 512. TRAINING PROVIDED BY GRANTS.

Training provided pursuant to grants made under this subtitle may include current information, existing studies, or current data on—

(1) the nature and incidence of rape and sexual assault by strangers and nonstrangers, marital rape, and incest;

(2) the underreporting of rape, sexual assault, and child sexual abuse;

(3) the physical, psychological, and economic impact of rape and sexual assault on the victim, the costs to society, and the implications for sentencing;

(4) the psychology of sex offenders, their high rate of recidivism, and the implications for sentencing;

(5) the historical evolution of laws and attitudes on rape and sexual assault;

(6) sex stereotyping of female and male victims of rape and sexual assault, racial stereotyping of rape victims and defendants, and the impact of such stereotypes on credibility of witnesses, sentencing, and other aspects of the administration of justice;

(7) application of rape shield laws and other limits on introduction of evidence that may subject victims to improper sex stereotyping and harassment in both rape and nonrape cases, including the need for sua sponte judicial intervention in inappropriate cross-examination;

(8) the use of expert witness testimony on rape trauma syndrome, child sexual abuse accommodation syndrome, post-traumatic stress syndrome, and similar issues;

(9) the legitimate reasons why victims of rape, sexual assault, and incest may refuse to testify against a defendant;

(10) the nature and incidence of domestic violence;

(11) the physical, psychological, and economic impact of domestic violence on the victim, the costs to society, and the implications for court procedures and sentencing;

(12) the psychology and self-presentation of batterers and victims and the implications for court proceedings and credibility of witnesses;

(13) sex stereotyping of female and male victims of domestic violence, myths about presence or absence of domestic violence in certain racial, ethnic, religious, or socioeconomic groups, and their impact on the administration of justice;

(14) historical evolution of laws and attitudes on domestic violence;

(15) proper and improper interpretations of the defenses of self-defense and provocation, and the use of expert witness testimony on battered woman syndrome;

(16) the likelihood of retaliation, recidivism, and escalation of violence by batterers, and the potential impact of incarceration and other meaningful sanctions for acts of domestic violence including violations of orders of protection;

(17) economic, psychological, social and institutional reasons for victims' inability to leave the batterer, to report domestic violence or to follow through on complaints, including the influence of lack of support from police, judges, and court personnel, and the legitimate reasons why victims of domestic violence may refuse to testify against a defendant;

(18) the need for orders of protection, and the implications of mutual orders of protection, dual arrest policies, and mediation in domestic violence cases;

(19) recognition of and response to gender-motivated crimes of violence other than rape, sexual assault and domestic violence, such as mass or serial murder motivated by the gender of the victims; and

(20) current information on the impact of pornography on crimes against women, or data on other activities that tend to degrade women.

SEC. 513. COOPERATION IN DEVELOPING PROGRAMS IN MAKING GRANTS UNDER THIS TITLE.

The State Justice Institute shall ensure that model programs carried out pursuant to grants made under this subtitle are developed with the participation of law enforcement officials, public and private nonprofit victim advocates, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts.

SEC. 514. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1992, $600,000 to carry out the purposes of this subtitle. Of amounts appropriated under this section, the State Justice Institute shall expend no less than 40 percent on model programs regarding domestic violence and no less than 40 percent on model programs regarding rape and sexual assault.

Subtitle B—Education and Training for Judges and Court Personnel in Federal Courts

SEC. 521. AUTHORIZATIONS OF CIRCUIT STUDIES; EDUCATION AND TRAINING GRANTS.

(a) STUDY.—In order to gain a better understanding of the nature and the extent of gender bias in the Federal courts, the circuit judicial councils are encouraged to conduct studies of the instances, if any, of gender bias in their respective circuit. The studies may include an examination of the effects of gender on—

(1) the treatment of litigants, witnesses, attorneys, jurors, and judges in the courts, including before magistrate and bankruptcy judges;

(2) the interpretation and application of the law, both civil and criminal;

(3) treatment of defendants in criminal cases;

(4) treatment of victims of violent crimes;

(5) sentencing;

(6) sentencing alternatives, facilities for incarceration, and the nature of supervision of probation and parole;

(7) appointments to committees of the Judicial Conference and the courts;

(8) case management and court sponsored alternative dispute resolution programs;

(9) the selection, retention, promotion, and treatment of employees;

(10) appointment of arbitrators, experts, and special masters; and

(11) those aspects of the topics listed in section 512 of subtitle A that pertain to issues within the jurisdiction of the Federal courts.

(b) CLEARINGHOUSE.—The Judicial Conference of the United States shall designate an entity within the Judicial branch to act as a clearinghouse to disseminate any reports and materials issued by the gender bias task forces under subsection (a) and to respond to requests for such reports and materials. The gender bias task forces shall provide this entity with their reports and related material.

(c) MODEL PROGRAMS.—The Federal Judicial Center, in carrying out the provisions of section 620(b)(3) of title 28, is authorized to—

(1) include in the educational programs it presents and prepares, including the training programs for newly appointed judges, information on issues related to gender bias in the courts including such areas as are listed in subsection (a) along with such other topics as the Federal Judicial Center deems appropriate;

(2) prepare materials necessary to implement this subsection; and

(3) take into consideration the findings and recommendations of the studies conducted pursuant to subsection (a), and to consult with individuals and groups

with relevant expertise in gender bias issues as it prepares or revises such materials.

SEC. 522. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated—

(1) $400,000 to the Salaries and Expenses Account of the Courts of Appeals, District Courts, and other Judicial Services, to carry out the provisions of section 521(a) to be available until expended through fiscal year 1995.

(2) $100,000 to the Federal Judicial Center to carry out the purposes of subsection (c) section 521 and any activities designated by the Judicial Conference under section 521(b); and

(3) Such sums as are necessary to the Administration Office of the United States Courts to carry out any activities designated by the Judicial Conference under section 521(b).

(b) THE JUDICIAL CONFERENCE OF THE UNITED STATES.—Judicial Conference of the United States Courts shall allocate funds to Federal circuit courts under this subtitle that—

(1) undertake studies in their own circuits; or

(2) implement reforms recommendations as a result of such studies in their own or other circuits, including education and training.

Funds shall be allocated to Federal circuits under this subtitle on a first come first serve basis in an amount not to exceed $50,000 on the first application. If within six months after the date funds authorized under this Act become available funds are still available, circuits that have received funds may reapply for additional funds, with not more than $200,000 going to any one circuit.

I. PURPOSE

When Chairman Biden first introduced the Violence Against Women Act in June of 1990, he emphasized the need to concentrate the fight against an escalating blight of violence against women. He warned that "we can't afford for it to get much worse." [1] Unfortunately, that warning is more urgent today than when it was made almost a year and one-half ago.

In the 16 months since the bill was first introduced, more women than ever before in this country have become the victims of violence:

An estimated 1.3 million more women were attacked by a rapist;

An estimated 4 million more women were beaten in their homes; and

Even in the places we feel safest, like suburban America, rape rates rose faster than the rates of any other major crime last year.[2]

The urgency of Chairman Biden's warning reflects not only the increasing numbers of victims, but also the puzzling persistence of public policies, laws, and attitudes that treat some crimes against women less seriously than other violent crimes. Women bear the disproportionate burden of some of the most pernicious crimes, like rape, and some of the most persistent crimes, like beatings in the home. At the same time, survivors of these crimes often face barriers to justice not shared by male victims of assault: barriers of law, barriers of enforcement, and perhaps most importantly, the even stronger barriers of attitude.

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[1] "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. 3 (June 20, 1990).

[2] These figures were calculated for the 16-month period using: (1) 1990 FBI Uniform Crime reports (rapes reported to the police); and (2) estimates of domestic violence incidents reported by Dr. Angela Browne, "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. 117 (Dec. 11, 1990).

Despite decades of law reform in the States, we are reminded of the prevalence of these prejudices on a daily basis. For example, State courts studies of gender bias report the following:

> In Georgia, a judge reported that one of his colleagues, in a case of repeated domestic abuse, "mocked," "humiliated," and "ridiculed" the victim and "led the courtroom in laughter as the woman left * * *." Subsequently, the woman was killed by her estranged husband.[3]
>
> In Vermont, a probation officer questioned whether a 9-year-old girl was a "real victim," since he had heard she was a "tramp." [4]
>
> In California, a judge commented at a hearing that a domestic violence victim "probably should have been hit." [5]
>
> A Connecticut prosecutor badgered a 15-year-old: "Come on, you can tell me. You're probably just worried that your boyfriend got you pregnant, right? Isn't that why you're saying he raped you?" [6]
>
> A Florida judge commented during sentencing that he felt sorry for a confessed rapist because his victim was such a "pathetic" woman.[7]
>
> A Georgia detective investigating a rape told the victim's mother that since the 14-year-old said "no" only once, it might not be considered a rape.[8]
>
> In Maryland, a judge stated in court that he didn't believe anything that the abuse victim was saying "because I don't believe that anything like this could happen to me." [9]

If these cases had involved the typical male assault victim, our reactions might be far different. Typically, we do not ask whether the victim of a barroom brawl is a real victim; we do not comment that the victim deserved to be hit; we do not inquire whether there was resistance or whether the victim said "no" persistently enough; we do not believe that the crime may have been fabricated altogether. Until the stereotypes upon which these scenarios are built seem as foreign for the victims of rape and domestic violence as they do for the victims of barroom brawls, our criminal justice system will pose barriers for women it does not pose for others in our society.

The Violence Against Women Act responds both to the enormity of the problem and to the subtle prejudices that lurk behind our failures to address the problem effectively. The bill uses several different complementary strategies, attacking the problem on a number of different fronts. It treats violence against women as a

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[3] Supreme Court of Georgia, "Report on Gender and Justice in the Judicial System" at 235 (1991).

[4] Vermont Supreme court and Vermont Bar Association, "Report of the Vermont Task Force on Gender Bias in the Legal System" at 140 (1991).

[5] Administrative Office of the California Courts, Judicial Council, "Achieving Equal Justice for Women and Men in the Courts" 65 (1990).

[6] Report of the Connecticut Task Force on Gender Bias" at 17-18 (1991).

[7] "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 102d Cong., 1st sess. (Apr. 9, 1991) (testimony of Gill Freeman).

[8] Supreme Court of Georgia, "Report on Gender and Justice in the Judicial System" at 100 (1991).

[9] Maryland Special Joint Committee, "Gender Bias in the Courts" 2-3 (1989).

major law enforcement priority, takes aim at the attitudes that nurture violence against women, and provides the help that survivors need. It increases penalties for Federal rape violations, upgrades evidentiary protections, and provides substantial new resources for education and prevention. Finally, and perhaps most importantly, the bill declares—for the first time—that gender-motivated crimes are a violation of the victim's civil rights, a proposal that sends a powerful message condemning crimes that not only ravage individuals but systematically deprive women of equal rights under the law.

As Senator Biden has said before, none of the proposals in this bill, alone or together, are likely to end violence against women. However, the legislation is an important step in the right direction, in the direction of developing what we need the most—a national consensus that this society will not tolerate this kind of violence and the terror it spawns.

II. Legislative History

A. Introduction and Consideration of S. 15

On January 14, 1991, Chairman Biden, joined by 25 Senators, including Senators Simon and DeConcini, introduced S. 15, the Violence Against Women Act of 1991. On March 20, 1991, Representative Barbara Boxer, joined by 22 Members of the House of Representatives, introduced a companion bill, H.R. 1502.

S. 15 is substantially similar to legislation introduced in the 101st Congress, S. 2754. The Judiciary Committee held three hearings on S. 15's predecessor during the 101st Congress. The first hearing, held on June 20, 1990, focused on gender issues raised in rape cases; the second hearing, held on August 29, 1990, considered the particular vulnerability of young women on campus to sexual assaults; and the third hearing, held on December 11, 1990, concentrated on crimes of domestic violence. At the October 4, 1990, executive business meeting, Senator Biden offered a substitute bill for the committee's consideration that included provisions authored by Senator Simon and Senator Coats. By voice vote, the Judiciary Committee reported the bill favorably to the floor. See Sen. Rep. 101-545. No action was taken on the bill prior to the end of the 101st Congress.

During the 102d Congress, the Judiciary Committee held one hearing on S. 15 on April 9, 1991. This hearing focused on the bill's civil rights remedy for gender-motivated crime. The Honorable Roland Burris, attorney general of Illinois, and the Honorable Bonnie Campbell, attorney general of Iowa, testified in support of a comprehensive Federal response, including a civil rights remedy. Gill Freeman, vice-chair of the Florida Supreme Court Gender Bias Implementation Committee, and Amy Kaylor, a survivor of abuse, testified about the need for "back-stop" Federal remedies. Prof. Cass Sunstein of the University of Chicago School of Law and Prof. Burt Neuborne of the New York University School of Law testified that the Congress possesses the constitutional power to enact a civil rights remedy for victims of gender-motivated crime.

B. Revision of S. 15

After consultation with members of the committee and based on comments submitted to the committee by numerous individuals and groups, including other Senators, a modified version of S. 15 was offered by Chairman Biden at the July 18, 1991, executive business meeting of the Judiciary Committee. This substitute bill included proposals authored by Senator Kohl on runaway and homeless girls, Senator DeConcini on victims' advocates in the Federal system, and Senator Reid on domestic violence coalitions.

During the committee's executive committee meeting, Senator Grassley offered two amendments to the substitute. The chairman accepted the first amendment concerning victim impact statements and it was adopted by voice vote. The second amendment expressed the Sense of the Senate concerning the privacy of rape victims' names. This amendment was adopted by a vote of 14–0. The substitute was then reported favorably out of committee by voice vote.

III. Discussion

Violent attacks by men now tops the list of dangers to an American woman's health.[10] Every 15 seconds, a woman is battered and, every 6 minutes, a woman is raped in the United States.[11] Last year, more women were beaten by their husbands than were married.[12] 1990 saw a record number of rapes reported to the police.[13] Our family homicide rate is higher than the total homicide rate for countries like Germany or Denmark.[14]

Unfortunately, as the figures have skyrocketed, our attention has waned. Problems of lesser scope and danger have received far more public concern and attention. Drunk driving, heart attacks, and cancer—not violent attacks by men—are commonly perceived to be the most serious public health threats to women. Yet the figures clearly demonstrate that violence puts women at greater risk.[15] Our society has, up until now, chosen not to appreciate the significance of these figures. We have systematically underestimated the problem, in seriousness, in scope, and intensity. We have inadvertently accepted this violence as somehow "normal" and, as a result, we have been too quick to accept a system that places greater burdens on some female crime victims than on male victims.

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[10] See, e.g., Van Hightower and McManus, "Limits of State Constitutional Guarantees," 49 Public Administration Review 269, 269 (May/June 1989) (quoting Surgeon General's statement that battering is "the single largest cause of injury to women in the United States").

[11] FBI Uniform Crime Reports 7 (1988); National Coalition Against Domestic Violence (telephone communication); National Woman Abuse Prevention Project Fact Sheets (on file with the Judiciary Committee).

[12] Judiciary Committee calculation based on estimates of domestic violence provided by the National Coalition Against Domestic Violence, the National Woman Abuse Prevention Project, and the testimony of Dr. Angela Browne, "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. 117 (Dec. 11, 1990) ("4 million women severely assaulted by male partners annually").

[13] FBI Uniform Crime Reports (1990).

[14] "Women and Violence," hearings before the Committee on the Judiciary, 101st Cong., 2d sess. 95 (testimony of Dr. Angela Browne) 168 (Dec. 11, 1990).

[15] For example, a woman is 10 times more likely to be raped than she is to die in a car crash; a woman is 8 times more likely to be victimized by a violent crime than to die of heart disease and 15 times more likely to be a crime victim than to die of cancer. U.S. Department of Justice, "Report to the Nation on Crime and Justice" at 24 (2d ed. 1988) (comparison of crime risks an other life events).

A. Violence Against Women: Underestimating the Problem

Our country has an unfortunate blind spot when it comes to certain crimes against women. Historically, crimes against women have been perceived as anything but crime—as a "family" problem, as a "private" matter, as sexual "miscommunication." That tradition of ambivalence has led to oxymoronic labels such as "date rape," and "domestic violence," both of which suggest that the violence described is somehow less violent or less harmful or less serious if it takes place in a social setting or at home. Until we name a problem, we cannot hope to see it for what it is. And until we name all violence against women as crime, it will be seen neither as violence nor as crime.

1. UNDERESTIMATING THE NUMBERS

In part, we have been unable to see the enormity of the problem because we have failed to measure the problem fully or accurately. For example, this country has no yearly official estimates of the number of victims beaten in their home. Existing figures are estimates based on special victimization studies.[16] Similarly, this country has no yearly official estimates of acquaintance rape. Although in 1988 Congress mandated that data be collected showing the relationship of victims and perpetrators in major crimes, many States and designated Federal agencies are still in the process of complying with that statutory command.[17]

Substantial undercounting plagues the estimates we do have for some of the most serious crimes against women. As one witness put it, "it is almost certain that the national estimate of * * * rapes and rape * * * understates the total number." [18] "[V]irtually all rape experts agree that the NCS [National Crime Survey] estimates of the number of rape cases are substantially inaccurate and low." [19] At least in part, undercounting results because official statistics do not reflect a substantial number of acquaintance rape cases. But it is also true that the Justice Department's attempts to estimate the number of crime victims (now being revised) have avoided asking victims whether they have been raped.[20]

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[16] See "Women and Violence," hearing before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. 116–17 (Dec. 11, 1990) (testimony of Dr. Angela Browne).

[17] 1988 Crime Bill, Public Law 100–690, 102 Stat. 4517 ("The Attorney General shall require, and include in uniform crime reports, data that include—(1) the age of the victim; and (2) the relationship of the victim to the offender, for crimes of murder, aggravated assault, simple assault, rape, sexual offenses and offenses against children.") (Nov. 18, 1988).

[18] "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. (Aug. 29, 1990) 38 (testimony of Dr. Mary Koss quoting NCS); see also *id.* at 32 ("independent investigations have consistently suggested a far higher incidence of rape than is revealed by federal statistics"); *id.* at 30 ("It is the consensus of major researchers in the field that NCS data create a false picture of rape.").

[19] The Violence Against Women Act of 1990, 101st Cong., 1st sess. Report No. 101–545 (quoting Dr. Dean Kilpatrick in testimony before a House committee).

[20] Testimony before the committee reported that "[m]ost of the NCS [National Crime Survey] crime screening questions are very concrete." For example, victims are asked, "Were you knifed, shot at, or attacked with some other weapon * * *?" For rape, the person is asked, "Did someone try to attack you in some other way?" As the National Crime Survey itself puts it, "No one in the survey is ever asked directly if she has been raped." "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. 29 (Aug. 29, 1990) (testimony of Dr. Mary Koss) (quoting National Crime Survey).

2. UNDERSTANDING THE INTENSITY

We have underestimated the problem not only because of faulty statistical measures, but also because the sheer volume of these crimes dulls our sensitivity to the victims. The violence is so common, "we have become numb to its immensity, to its everydayness." [21] For example, it is common to conceive of "domestic violence" as a trivial squabble, a push or a shove. In fact, one-third of all such incidents, if reported, would be classified as felony rape, robbery, or aggravated assault; the remaining two-thirds involve bodily injury at least as serious as the injury inflicted in 90 percent of all robberies and aggravated assaults.[22] Far worse, family violence may account for a significant number of murders in this country; last year, one-third of all women murdered in America were murdered by present or former husbands or boyfriends.[23]

3. UNDERESTIMATING THE SILENT MAJORITY OF VICTIMS

Unfortunately, our willingness to see violence against women as criminal behavior of enormous scope and seriousness is encouraged by the unwilling silence of many survivors. Rape and domestic violence are some of the most underreported crimes in America.[24] For a host of reasons—including fear of retaliation and the lingering stigma of sex crimes and violence in the home—vast numbers of these crimes are left unreported to police or other authorities. Both literally and figuratively, these crimes remain hidden from public view.

4. UNDERESTIMATING THE TOTAL EFFECT

We have also underestimated the effect these crimes have on every woman in society. The cost of violence against women must be measured not only in the lives scarred or lost by the violence itself, but the lives left unfulfilled because of the fear of violence. Recent studies estimate, for example, the "fear of rape is central to the day-to-day concerns of about a third of women * * *." [25] This reaction is important because rape is, for many women, a "bellwether" crime, coloring "their perceived risk of other violent crimes." [26]

This fear takes a substantial toll on the lives of all women, in lost work, social, an even leisure opportunities. For example, one recent study showed that three-quarters of women never go to the movies alone after dark because of the fear of rape and nearly 50 percent do not use public transit alone after dark for the same reason.[27] Women accommodate their fears by restricting their be-

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[21] National Network of Women's Funds, "Special Supplement on Violence Against Women" at S8 (April 1991).

[22] National Institute of Justice, "Civil Protection Orders: Legislation, Current Court Practice, and Enforcement" at 4 (1990).

[23] FBI Uniform Crime Reports (1990). In some States the percentages are even higher. See, e.g., Joint Report of the Vermont Supreme Court and the Vermont Bar Association, "Gender Justice" at 1 ("A Vermont woman is more likely to be murdered as a result of domestic violence than as a result of a confrontation with a stranger.") (January 1991).

[24] "Women and Violence," hearings before the Senate Judiciary Committee, 101st Cong., 2d sess. 34 (testimony of Dr. Mary Koss) (Aug. 29, 1990) ("forcible rape is still recognized as one of the most underreported of all index crimes").

[25] M. Gordon and S. Riger, "The Female Fear" at 21 (1989).

[26] M. Gordon and S. Riger, "The Female Fear" at 121 (1989).

[27] M. Gordon and S. Riger, "The Female Fear" at 15 (1989).

havior. Due in large part to the fear of rape, a woman is eight times more likely than a man to avoid walking in her own neighborhood after dark.[28] Women take substantial precautionary means to avoid crime. For example, while 52 percent of women surveyed never walked by parks or empty lots alone after dark, only 13 percent of men employed this strategy to avoid crime.[29]

5. UNDERESTIMATING THE PREJUDICES

Violence against women cries out for attention not only because we have underestimated the problem's scope and intensity, but also because we have underestimated the staying power of subtle prejudices barring equal access to our criminal justice system for many women crime survivors. More than one witness has explained to the committee that "the system" often works against, not for, the victim.[30] To some extent, this sense of "double victimization" is a sad, but inevitable, byproduct of a criminal justice system in which cases are brought in the name of the State, not the victim. At the same time, there is reason to believe that the sense of "double victimization" will only end when attitudes about violent crimes against women have changed.

Testimony before the committee showed that victim-blaming attitudes are all too pervasive in this country; they are shared by women and men alike. Witnesses testified that stereotypes like "she asked for it," "she made it up," or "no harm was done" are frighteningly common.[31] Despite States' most fervent efforts at legislative reform, these stereotypes persist and continue to distort the criminal justice system's response to violence against women. They encourage victims' unwilling silence and they blunt society's outrage. Unless, and until, they are changed, we will continue to underestimate the problem of violence against women.

B. The Violence Against Women Act: A National Response

The Violence Against Women Act cannot hope to eradicate all violent crime against women. Nevertheless, it is Chairman Biden's best effort at drafting the kind of legislative response that will make a difference in the fight. Its aim is to telescope our vision, highlighting past obstacles, flushing out improper stereotypes, and recognizing the problem for what it is: a national tragedy played out every day in the lives of millions of American women at home, in the workplace, and on the street.

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[28] M. Gordon and S. Riger, "The Female Fear" at 15 (1989).

[29] M. Gordon and S. Riger, "The Female Fear" at 15 (1989).

[30] "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 102d Cong., 1st sess. (testimony of Attorney General Bonnie Campbell, Attorney General Roland Burris, Gill Freeman (Apr. 9, 1991)); "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. (testimony of Christine Shunk, Marla Hansen (June 20, 1990); testimony of Mary Koss, Robin Warshaw (Aug. 29, 1991)).

[31] "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 102nd Cong., 1st sess. (testimony of Amy Kaylor, Gill Freeman (Apr. 9, 1991)); "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. (testimony of Dr. Mary Koss, Robin Warshaw, Christine Shunk, Nicole Snow (Aug. 29, 1990)); Marla Hansen, Helen Neuborne (June 20, 1990); see also "Acquaintance Rape" (Parrot and Bechholder, eds. 1991).

1. TITLE I—SAFE STREETS FOR WOMEN

Title I of the bill—the Safe Streets for Women Act—signals that crimes against women must be taken seriously as a law enforcement priority. First, this title makes significant improvements in the Federal system's response to crimes against women, increasing and revising Federal penalties for rape and expanding existing evidentiary protections to insure that no federal criminal trial becomes a showcase for the victim's sexual history. Second, this title insures that States will have the necessary resources to target these crimes as a top law enforcement priority, providing a total of $300 million to States and areas most in need of assistance. Third, this title takes simple, but necessary, measures to increase safety for women in public parks and on public transit. Existing funding is earmarked to put more lights and security cameras in bus stops and adjacent parking lots, in national parks, State parks, and subway stations. Fourth, this title recognizes that we cannot combat violent crimes against women effectively unless we begin to change the attitudes that nurture violence. Accordingly, it authorizes a twentyfold increase in funding for rape prevention and education, targeting students as early as junior high school.

This title also includes several additions to the bill made since its introduction, including Senator DeConcini's proposal for special funding of victim/witness counselors in Federal courts and Senator Kohl's program for runaway and homeless girls. Senator Grassley's committee amendment requiring victim impact statements is also included in this title.

2. TITLE II—SAFE HOMES FOR WOMEN

Title II of the bill—the Safe Homes for Women Act—focuses on crimes of domestic violence. National leadership on this issue is sorely needed. To put it in the words of one witness, "we have to make a * * * clear[er], a louder statement that this is criminal, that in this country this is not accepted, nor will it be tolerated." [32] Title II responds to this challenge in four important ways. First, title II creates a Federal remedy for interstate crimes of abuse: crimes committed against spouses during interstate travel and crimes committed by spouse abusers who follow their spouses across State lines for the purpose of further abuse. Second, title II requires that each State honor protective orders issued by another State. Third, title II recognizes that the Federal Government needs to provide more resources to fight domestic violence. Coupled with funds available for domestic violence under title I, title II provides much-needed Federal assistance, including substantial funding for battered women's shelters. Fourth, title II provides significant incentives to encourage States to treat domestic violence as a serious crime. For States suffering from strain on their systems because of increased arrests, the bill provides additional assistance to centralize and systematize the process. For other States seeking a more dramatic solution, this title creates a model State program, encour-

[32] Women and Violence," hearings before the Committee on the Judiciary, 101st Cong., 2d sess. (testimony of Dr. Angela Browne) (Dec. 11, 1990).

aging comprehensive reform in arrest, prosecution, and judicial policies.

In his additional views, Senator Hatch suggests that S. 15 and, in particular its interstate spouse abuse remedy, has some effect upon the admissibility of coerced confessions under 18 U.S.C. 3501 or the Supreme Court's decision in *Miranda* v. *Arizona,* 384 U.S. 436 (1966). The committee does not hold this view. Nothing in S. 15 bears remotely on the issue of coerced confessions, 18 U.S.C. 3501, or *Miranda* v. *Arizona,* 384 U.S. 436 (1966).

3. TITLE III—CIVIL RIGHTS FOR WOMEN

Title II of the bill—the Civil Rights for Women Act—creates the first civil rights remedy aimed at violent gender-based discrimination against women. It allows women to vindicate their right to be free of gender-based violence through a civil suit for monetary or other relief. In so doing, it recognizes that State remedies are inadequate to fight bias crimes against women and, at the same time, sends a powerful message that violence based on gender assaults an ideal of equality shared by the entire nation.

As a result of a committee amendment by Senator Grassley, this title also includes a Sense of the Senate resolution on the privacy of rape victims' names.

4. TITLE IV—SAFE CAMPUSES FOR WOMEN

Title IV of the bill—the Safe Campuses for Women Act—focuses on the special problems facing young women on campus. It creates the first Federal program for college rape education and prevention. Qualifying programs would include educational seminars, peer-to-peer counseling, the installation and operation of hotlines, the preparation of informational materials, and any other effort that would increase awareness of the facts about sexual assault. To alleviate the financial burden, the bill provides $20 million in grant monies to the neediest institutions. Grantee colleges meet two basic conditions: campus policies must bar sexual assault and campus authorities must inform victims of the outcome of campus disciplinary proceedings against alleged attackers. Finally, this title amends the Student-Right-to-Know and Campus Security Act by requiring colleges to report not only rapes, as defined by the FBI, but also all forms of sexual assault.[33]

5. TITLE V—EQUAL JUSTICE FOR WOMEN IN THE COURTS

Title V of the bill—the Equal Justice in Courts Act—was sponsored by Senator Simon and included as an amendment to the original bill in 1990. This title provides training for State and Federal judges on a number of issues, including sexual assault and domestic violence and gender stereotyping. Training curricula must be developed in conjunction with a broad array of experts, includ-

[33] The FBI's Uniform Crime Report definition of "rape" does not include forms of sexual assault that most people would consider rape. For example, it does not include rape where there is no vaginal-penile penetration; it does not include sodomy; it does not include rape by use of an object. See "Women and Violence," hearings before the Senate Judiciary Committee, 101st Cong., 2d sess. 29 (Aug. 29, 1990) (testimony of Dr. Mary Koss).

ing law enforcement officials, volunteer victim advocates, prosecutors, defense attorneys, and other legal experts.

C. The Civil Rights Remedy: A National Call for Protection Against Violent Gender-Based Discrimination

Title III of the Violence Against Women Act provides the first civil rights remedy for serious "gender-based" violence, allowing any victim of such a crime to bring a Federal action against their attacker for damages and other relief. Since the bill's introduction in the 101st Congress, questions have arisen about the purpose, scope, and application of title III's civil rights remedy. A special hearing was held on April 9, 1991, to help elucidate the more subtle legal aspects of these questions and hear testimony on Congress' power to enact such a measure. Based on that testimony and other information provided to the committee, we set forth in detail below a full explanation of the title III remedy.

1. THE PURPOSE: A CIVIL RIGHTS REMEDY FOR GENDER-MOTIVATED CRIMES

While this society has announced, and upheld, a national commitment against violent discrimination for 120 years, that commitment has never adequately protected victims of gender-motivated violence. It is the fundamental purpose of title III of the Violence Against Women Act to correct that imbalance by providing these victims with an effective antidiscrimination remedy for violently expressed prejudice.

a. Including gender-bias where it has been excluded before

For years, it has seemed obvious that this society cannot tolerate attacks against persons because of their race, religion, or political beliefs. Indeed, Congress first passed laws barring such discrimination in 1871.[34] Attacks motivated by gender, however, have been greeted with far less indignation and, not surprisingly, far less legal protection. For example, the 1871 Federal law that provides a civil remedy against violent discrimination, 42 U.S.C. 1985, has been largely unavailable to women for two reasons. First, it is an unsettled question whether section 1985(3) applies to claims of sexual discrimination. Second, the statute requires more than one perpetrator committing the discriminatory violence, leaving most gender-motivated crimes against women unprotected.[35]

More recent legislation has not filled the "gender gap" left by traditional antibias crime laws. In the past 10 years, almost every State has rushed to pass laws that increase criminal penalties or provide civil remedies for the victims of hate crimes. Few if any of those State laws originally covered gender bias, and less than a dozen now do.[36] Just last year, the Congress passed the Hate

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[34] Ku Klux Klan Act of 1871.

[35] NOW Legal Defense & Education Fund, "Facts on the Civil Rights Provision" (October 1991) at 4 ("[c]onspiratorial group attacks on women are not the primary cause of gender violence"; the most "common and damaging form of gender discrimination [is] acts of violence committed by private individuals" acting alone) (on file with the Senate Judiciary Committee).

[36] See National Organization for Victim Assistance, "A Legislative Directory 1988/1989" (indicating California and New York hate crimes laws cover, in part, gender bias). According to the Anti-Defamation League, as many as eight other States now include gender bias in their hate crimes laws.

Crimes Statistics Act, requiring the collection of statistics on crimes motivated by race, ethnicity, national origin, and sexual orientation. Gender-motivated hate crimes were not mentioned.[37]

The Violence Against Women Act aims to put gender-motivated bias crimes against women on the same footing as other bias crimes. Whether the attack is motivated by racial bias or ethnic bias or gender bias, the results are often the same. The victims of this violence are reduced to symbols of group hatred they have no individual power to change or escape. The violence not only wounds physically, it degrades and terrorizes, instilling fear and inhibiting the lives of all those similarly situated. "Placing this violence in the context of the civil rights laws recognizes it for what it is—a hate crime." [38]

Given the failure of recent legislative proposals to recognize gender-motivated crime, it is especially important to acknowledge its discriminatory dimensions now. As Illinois Attorney General Roland Burris testified before the committee: "Until women as a class have the same protection offered others who are the object of irrational, hate-motivated abuse and assault, we as a society should feel humiliated and ashamed." [39]

2. THE NEED: STATE REMEDIES ARE INADEQUATE IN PRACTICE AND IN THEORY

As we explained above, we need title III because no existing anti-bias crime laws fully protect against gender-based assaults. But we also need title III because existing State remedies have proven insufficient to protect women against some of the most persistent and serious of crimes. Women often face barriers of law, of practice, and of prejudice not shared by other crime victims.

Traditional State law sources of protection have often proven to be difficult avenues of redress for some of the most serious crimes against women. Study after study commissioned by the highest courts of the States—from Florida to New York, California to New Jersey, Nevada to Minnesota—has concluded that crimes disproportionately affecting women are often treated less seriously than comparable crimes against men.[40] "[C]ollectively these reports pro-

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[37] The Hate Crimes Statistics Act of 1990, Public Law 101-275.

[38] "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. (testimony of Professor Burt Neuborne) (Apr. 9, 1991).

[39] "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. (testimony of Attorney General Roland Burris) (Apr. 9, 1991).

[40] Administrative Office of the California Courts, Judicial Council, "Achieving Equal Justice for Women and Men in the Courts" 65 (1990) (established by Chief Justice of California Supreme Court); Colorado Supreme Court Task Force on Gender Bias in the Courts, Gender & Justice in the Colorado Courts (1990); Connecticut Task Force, Gender, Justice and the Courts (1991) (established by Chief Justice of Connecticut Supreme Court (1991); Florida Supreme Court Gender Bias Study Commission, "Report" (1990); Supreme Court of Georgia, "Gender and Justice in the Courts" (1991); Illinois Task Force, Gender Bias in the Courts (1990) (established by three bar associations at the direction of the Chief Justice of the Illinois Supreme Court); Maryland Special Joint Committee, "Gender Bias in the Courts" (1989) (established by Chief Justice of Maryland Supreme Court); Massachusetts Supreme Judicial Court, Gender Bias Study of the Court System in Massachusetts (1989); Michigan Supreme Court Task Force on Gender Issues in the Courts, "Final Report" (1989); Minnesota Supreme Court Task Force for Gender Fairness in the Courts, "Final Report," reprinted in 15 Wm. Mitchell L. Rev. No. 4 (1989); Nevada Supreme Court Gender Bias Task Force, "Justice for Women"; New Jersey Supreme Court Task Force, "Women in the Courts" (1984); New York Task Force on Women in the Courts, "Report," reprinted in 15 Fordham Urban Law Journal No. 1 (1986); Rhode Island Supreme Court Committee on Women in the Courts (1987); Utah Task Force on Gender and Justice, "Report to the

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vide overwhelming evidence that gender bias permeates the court system and that women are most often its victims." [41]

Consider the typical rape victim. In theory, she has certain criminal and civil remedies at her disposal. In practice, few are able to use those remedies. Few even report the crime. Of those survivors who actively seek judicial remedies, only a small percentage are vindicated. Estimates show that a rape survivor may have as little as a 5-percent chance of having her rapist convicted.[42] Less than 1 percent of all victims have collected damages.[43] These facts belie claims that State laws provide "adequate" remedies for the victims of these crimes.

At least in part, State remedies fail because legal rules and practices continue to shine a spotlight of suspicion on the victim. Any person would think twice of reporting and prosecuting a crime if the police started out by demanding a polygraph exam, the prosecutor suggested that the victim had not complained promptly enough, the defense counsel charged that the victim was emotionally unbalanced, and the judge announced to the jury at the end of the trial that the victim's testimony under oath should be viewed with suspicion. As set forth in more detail below, rape survivors routinely confront these practices—practices that the typical victim of a barroom brawl never faces. As one scholar summed it up, "[v]ictims of other crimes are simply not treated with such suspicion." [44]

a. Legally sanctioned disbelief: Putting victims on trial

Over 300 years ago, English jurist Matthew Hale cautioned that rape is a charge "easily to be made and hard to be proved, and harder to be defended by the party accused, tho' ever so innocent." [45] This officially expressed skepticism about the truth of a rape victims' complaint soon took the form of special rules requiring victims to produce corroborating witnesses, to show "prompt complaint," or to demonstrate "utmost resistance" to the attack.[46] In the late 1970's, many States began to abolish those rules. Unfortunately, the spirit of Sir Hale's words lives on in laws, practices,

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Utah Judicial Council" (1990); Vermont Supreme Court and Vermont Bar Association, "Gender and Justice: Report of the Vermont Task Force on Gender Bias in the Legal System" (1991); Washington State Task Force, "Gender and Justice in the Courts" (1989) (established by Chief Justice of Washington Supreme Court); Wisconsin Equal Justice Task Force, "Final Report" (1991) (established by Chief Justice of Wisconsin Supreme Court).

[41] Lynn Hecht Shafran "Trial" at 28 (February 1990).

[42] See "Crime Pays But So Does Imprisonment" (March 1990); see also H. Feild & L. Bienen, "Jurors and Rape" 95 (1980) ("an individual who commits rape has only about 4 chances in 100 of being arrested, prosecuted, and found guilty of any offense"); Note, "The Empirical, Historical and Legal Case Against the Cautionary Instruction: A Call For Legislative Reform," 1988 Duke Law J. 154, 160 ("Only 2 percent to 15 percent of actual cases of rape ever reach the trial stage.").

[43] Jury Verdict Research, Inc. (the 1-percent figure is based on a report from Jury Verdict Research, Inc., that shows only 255 civil jury trials in sex assault cases over a 10-year period; that figure does not include cases that were dropped before they reached the jury, cases tried to a judge, and cases that were dismissed).

[44] Note, "The Empirical, Historical and Legal Case Against the Cautionary Instruction: A Call For Legislative Reform," 1988 Duke Law J. 154, 163 ("Imagine a bank robber acquitted because he was tempted by the money in the bank or an aggravated assault charge dropped because the victim was small and presented an inviting target.").

[45] 1 M. Hale, "History of the Pleas of the Crown" (1680) (Emlyn ed. 1847).

[46] S. Estrich, "Real Rape" (1987).

and stereotypes based on the same suspicion of unfounded rape complaints.[47]

b. Legalizing violence against married women

For example, some victims still have no legal remedies at all. Fearful of unfounded rape complaints,[48] some States have eliminated entire classes of persons from the scope of rape statutes. For example, in some States, a parent cannot be sued for raping his child, a wife cannot sue a husband for raping her, and a rapist married to his victim cannot be convicted.[49] Although many States have reformed their laws at least in part, it is still the case in a substantial number of States that married women face restrictions that other rape victims do not because laws make spousal rape more difficult to prove or treat it less seriously than other rape offenses.[50]

c. Practices deterring victims from reporting and prosecuting crimes of violence

Women assaulted by sexual means are routinely subject to legal hurdles other victims never face. For example, in many jurisdictions, "judges admit into evidence and place great emphasis on the speed with which the victim complained of the alleged rape to a third party," reviving in practice the "prompt complaint" rule.[51] Other States still permit judges to authorize psychiatric exams of rape victims to show that they are not credible witnesses.[52] Indeed, manuals for criminal defense attorneys encourage these motions on the theory that rape complaints are likely to be the product of emotionally disturbed individuals.[53] There are still counties where

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[47] One measure of this incompleteness is that rape reporting and prosecution rates have not changed substantially with law reform. K. Polk, "Rape Reform and Criminal Justice Processing," 31 Crime & Delinquency 1991 (1985).

[48] "There is no empirical data to prove that there are more false charges of rape than of any other violent crime. Estimates indicate that only 2 percent of all rape reports prove to be false, a rate comparable to the false report rate for other crimes." M. Torrey, "When Will We Be Believed? Rape Myths and the Idea of a Fair Trail in Rape Prosecutions" (forthcoming 24 U.C. Davis L. Rev. 1013 (1991)); Parrot and Bechholder, eds., "Acquaintance Rape" at 28 (1991) ("[A]ccording to police records, false reports are no more likely for rape than they are for other serious crimes.")

[49] *See, e.g., State* v. *Getward*, 365 S.E.2d 209 (N.C. App. 1988) (barring prosecution of husband rapist); *Barnes* v. *Barnes*, No. 66A03-8910-CV-440 (Ind. Ct. App. 1991) (barring incest suit).

[50] "As of 1990, seven states still do not include marital rape as a prosecutable offense and an additional 26 states allowed prosecutions only under restricted circumstances." Parrot and Bechhofer, eds., "Acquaintance Rape" at 29 (1991). In 1991, four States enacted laws making spousal rape a crime. Los Angeles times at A7 (Oct. 23, 1991). However, most States still only allow marital rape to be charged where there is evidence of physical injury or under other restrictions. See R. West, "Marital Rape and the Fourteenth Amendment," 42 Fla. L. Rev. 45, 46 (1990) ("The majority [of States] continue to permit rape or sexual assault within marriage by according it a lower level of criminality than extramarital rape * * * by criminalizing only certain kinds of marital rape, or by criminalizing only first-degree rape") (citing statutes from States, id., at 46 n.6). Moreover, some States have made the situation worse by extending special marital rape rules to "cohabitants and formerly married persons." Id. at 48 n. 11 (citing cases).

[51] M. Torrey, "When Will We Be Believed? Rape Myths and the Idea of a Fair trial in Rape Prosecutions" (forthcoming, 24 U.C. Davis L. Rev. 1013 (1991)). this stereotype exists despite a wealth of judicially accepted evidence that "a significant number of women who are raped do not report the rape for several days or may even experience a 'silent reaction' and not tell anyone of the assault." Id.

[52] Annot., "Necessity or Permissibility of Mental Examination to Determine Competency or Credibility of Complainant in Sexual Offense Prosecution," 45 ALR4th 310, 317-19 (listing cases showing courts have power to order psychiatric exams to determine victims' credibility).

[53] "Defense of Sex Crimes" 53.05[4] ("It often appears that the prosecuting witness may suffer from psychological problems which may be wholly or partially responsible for the accusation, or

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a rape survivor must pass a polygraph test before her complaint will be investigated.[54]

Many of these rules operate, in effect, to put the victim—not he attacker—on trial. For example, as one law review article notes, the Model Penal code has recommended an instruction cautioning the jury to evaluate rape victims' testimony with "special care in view of the emotional involvement of the witness."[55] Another legal scholar has recently concluded that it is still permissible in over half of the States to give Sir Hale's original common-law jury instruction, even though several courts have rejected the instruction as inappropriate, outdated, and unnecessary.[56]

Finally, despite the rape shield law, survivors' efforts to obtain alternate remedies are often thwarted by the fear that the trial will become a showcase for her intimate life. We had hoped, long ago, to exclude a rape victim's sex life from criminal trails by "rape shield laws."[57] But those laws do not apply in civil cases. Accordingly, if a victim seeks damages for her rape, she must be prepared to risk embarrassing and harassing questions about the intimate details of her sex life. For example, a recent civil case in Iowa, the trial judge authorized the defense lawyer to ask the victim about her sex life after the rape and whether she "enjoyed" those experiences, about her "illegitimate" relationship to her boyfriend and use of birth control, and about her reputation of having "wild parties" with a lot of men "coming and going."[58]

d. Prevailing stereotypes prevent equal treatment

Even if we could eradicate these legal rules and practices tomorrow, it is unlikely that prosecution and reporting rates for rape would increase. The sad fact is that law reform has failed to eradicate the stereotypes that drive the system to treat these crimes against women differently from other crimes. Studies report "pervasive suspicion of rape victims' credibility," infecting the criminal justice system at every step of the way.[59] Judges and juries expect

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at least have bearing on the witness's credibility") (1989). This guidance owes much to the singularly unfounded and discriminatory remarks in a famous treatise on evidence, see 3A J. Wigmore, Evidence section 924a at 737 (1970) (advocating that every complainant of a sexual offense be examined by a psychiatrist to determine whether she fantasized the attack).

[54] "Women and Violence," hearings before the Committee on the Judiciary (testimony of Gill Freeman) (Apr. 9, 1991).

[55] Model Penal Code section 213.6(5) (quoted in M. Torrey, "When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions" (forthcoming, 24 U.C. Davis L. Rev. 1013 (1991)).

[56] Note, "*The Empirical, Historical and Legal Case Against the Cautionary Instruction: A Call for Legislative Reform*," 1988 Duke Law J. 154, 156 ("over half of the states allow the cautionary instruction to be issued at the conclusion of a rape trial").

[57] These shield laws are not always successful. See, e.g., Washington, State Task Force, "Gender & Justice in the Courts" at 41 (discussing 1988 criminal case in which defense counsel requested the names of all the victim's prior sex partners; the "victim refused to answer the question, the trail judge ordered her to answer it. When she continued to refuse, the trial judge ordered her testimony suppressed." Eventually, the Washington Supreme Court overruled the trial judge.) (1989); Illinois task Force, "Gender Bias in the Courts" at 113 (1990) ("defendants continue to try to bring out information about a victim's sexual history at trial by raising issues which indirectly involve the victim's prior sexual conduct with persons other than the defendant"); "General & Justice in the Colorado Courts" at 92 ("Many of the attorneys in the Task Force survey reported that improper questioning of victims in sexual assault cases is fairly common in Colorado courts.").

[58] *Sindelar* v. *Weiner*, Civ. No. 89-1177 (Iowa).

[59] Illinois Task Force, "General Bias in the Courts" at 99 (1990); Summary Report of the Connecticut Task Force, "Gender, Justice and the Courts" at 18 ("A majority of attorneys * * *

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more corroboration in sexual assault cases then in other cases of a similar class, even when there is no such legal requirement.[60] For example, a 1990 Colorado Supreme Court study showed that 41 percent of judges surveyed believed that juries give sexual assault victims less credibility then other crime victims.[61]

As if the credibility issues were not burdensome enough, survivors must also face pervasive victim-blaming attitudes. As one witness testified, in her State, "there persists the widespread belief that people who are raped precipitate in some way, whether it be by dress, having a drink in a bar, accepting a ride in a car or accepting a date." [62] These stereotypes may persist despite the best of intentions. As one Minnesota judge put it: "some jury decisions seem to find 'fault' on the part of the women victims notwithstanding instructions to the contrary * * *. I feel unable to remedy the situation as it is in the minds and the attitudes of the jurors." [63]

These attitudes lead to very serious consequences in "acquaintance" rape cases. The crime for which young women are most vulnerable is the one least likely to be labeled a crime. As two witnesses testified, in some counties, acquaintance rape cases simply are not prosecuted.[64] For example, a Colorado report indicates that a district attorney justified his failure to bring serious acquaintance rape charges because "when the victim and perpetrator know each other * * * 'those cases are extremely hard to convince a jury beyond a reasonable doubt that the sexual assault was without consent.' " [65] Similarly, a recent Florida Supreme Court study concluded:

> Prosecutors and law enforcement repeatedly testified in Commission hearings that convictions in such cases are virtually impossible to obtain. In many circuits State attorney offices do not file acquaintance-rape cases because they feel convictions are unlikely.[66]

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responding to the task force's questionnaire agreed that sexual assault victims are accorded less credibility in court than other victims.") (1991); "Gender Bias Study of the Court System in Massachusetts" at 107 ("Almost half of the district attorneys and public defenders reported that jurors accord sexual assault victims less credibility than they do victims of other felonies of like seriousness.") (1989); "Report of the Florida Gender Bias Commission" at 156 ("Despite research and statutory recognition that sexual assault is a crime of violence and not a crime of passion, there is a perception that society still expects victims to prove they did not 'cause' the assault."); Supreme Court of Georgia, "Gender and Justice in the Courts" at 93 ("[Victims'] credibility is significantly diminished from the outset only because of their status as a female victim of rape." (emphasis in original)) (1991).

[60] See "Final Report of the Michigan Supreme Court Task Force on Gender Issues in the Courts;" Illinois Task force, "Gender Bias in the Courts" at 99 (1990)

[61] Colorado Supreme Court Task Force on Gender Bias in the Courts, "Gender & Justice In the Colorado Courts" at 91 (1990).

[62] "Women and Violence," hearing before the Committee on the Judiciary, U.S. Senate, 102d Cong., 2d sess. (testimony of Gill Freeman) (Apr. 9, 1991).

[63] Minnesota Supreme Court Task Force for Gender Fairness in the Courts, reprinted in 15 Wm. Mitchell L. Rev. No. 4 at 897 (1989). In the State of Washington, a task force found that almost a quarter of the judges believed that rape victims "sometimes" or "frequently" precipitate their sexual assaults because of what they wear and/or actions preceding the incidents. "Report of the Washington State Task Force on Gender and Justice in the Courts" at 40.

[64] "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 102d Cong., 1st sess. (testimony of Gill Freeman); see also "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. (June 20, 1990) (testimony of Linda Fairstein).

[65] Colorado Supreme court Task Force on Gender Bias in the Courts, "Gender Justice in the Colorado Courts" at 91 (1990). See "Final Report of the Wisconsin Equal Justice Task Force" at 71 (reporting testimony that the cases that do not get "prosecuted probably fall more heavily into the range of date and acquaintance rape, anytime there is a sexual assault where alcohol is involved, and or course marital rape") (January 1991).

[66] "Report of the Florida Supreme Court General Bias Study Commission" at 142 (1990).

This combination of local prejudices, legal barriers, and legally recognized disbelief of women victims argues strongly for a Federal, not a State, remedy for gender-biased crimes. In an alternative Federal forum, antiquated State procedural rules are irrelevant and local immunities inapplicable. Damage questions will not revolve around the victim's "sex life," her dating history, or her clothing, but the harm to her interest in equality. Federal Rules of Evidence help to protect against the use of improper stereotypes. And Federal judges and juries are better insulated from the kind of local pressures that frequently put the victim, not the offender, on trial.

3. THE SCOPE GENERAL-MOTIVATED, NOT RANDOM, CRIMES

One of the most serious misunderstanding of title III has concerned its scope. For example, some have wrongly suggested that it will cover random muggings or beatings in the home or elsewhere. This argument is incorrect and is belied by the text of the proposed statute: this is a discrimination statute, not a felony protection bill. The cause of action provided under title III is strictly limited to violent felonies "motivated by gender." A special limitation section added since the original introduction of the bill specifically provides that "random" crimes not motivated by gender are not covered by the statute and do not give rise to a cause of action.

a. Title III does not cover divorce actions

Some Senators and the U.S. Judicial Conference have questioned whether title III would involve Federal courts in divorce cases or domestic relations disputes. There is nothing in title III that even vaguely touches on issues relating to the dissolution of marriage, child custody, child support or alimony. The only remedy title III provides is for violent crimes motivated by gender discrimination.[67] It is not a Federal divorce law.

Some have asked whether title III will cause individuals in contested divorces to bring frivolous actions as a means to gain advantage of pending divorce proceedings. The premise of this question is that the Federal courts will be swamped with frivolous suits filed for their a terrorem value. This concern may be based not only on a mistaken reading of the statute (Title III does not cover random beatings in the home or elsewhere). More importantly, there is no reason to assume that women—any more than any other group—will file false and vindictive civil rights claims for ulterior purposes.[68] Sanctions exist for filing improper lawsuits in Federal court; they are available for improper cases filed under title III as for any other frivolous federal lawsuit.

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[67] That married claimants could, in theory, sue under this law does not convert it into a divorce law. Married claimants can now sue, in theory, under any Federal law, but no one claims that the possibility of such a suit transforms all Federal laws into a "divorce" law.

[68] Cf. *State of New York* v. *Liberta*, 64 N.Y.2d 152 (1984) (rejecting assumption that married women are likely to falsify rape complaints in striking down marital rape exemption), cert. denied, 471 U.S. 1020 (1985).

b. Title III does not create a general Federal law for all assaults or rapes against women

In a similar vein, some have suggested that title III will supplant all State tort law because it provides a general remedy for all random assaults and beatings. As the Supreme Court has held, Congress does not create a "Federal tort law" when it legislates a civil rights remedy for violent acts based on discriminatory motivation.[69] Discriminatory motivation is clearly required by title III of the Violence Against Women Act and the plaintiff bears the burden of proving that motivation. In order for a cause of action to arise under title III, the plaintiff must prove that the crime of violence—whether an assault, a kidnaping, or a rape—was motivated by gender.

c. A civil rights remedy is appropriate for acts that are otherwise criminal

Some have asked whether a civil rights remedy is proper where the legislation covers acts otherwise prohibited by State criminal laws. Title III breaks no new ground here. This country has a 120-year-old tradition in which civil rights laws have been used to fight discriminatory violence. Today, we often associate civil rights laws with employment or housing discrimination. But civil rights violations encompass not only subtle interference with voting or employment rights but also illegal uses of physical force. Indeed, the Supreme Court has specifically recognized that a violent gender-based assault may constitute discrimination. *Meritor Savings Bank, FSB* v. *Vinson,* 477 U.S. 57 (1986). In this, title III's civil rights provision simply makes explicit what the Court has already held: that violence motivated by gender "is not merely an individual crime or a personal injury, [it] is a form of discrimination." [70]

d. The mere existence of State remedies is no bar to a Federal civil rights remedy

It is simply wrong to suggest that no civil rights remedies are appropriate where the conduct covered is also prohibited by State criminal and civil laws. If that argument held true, we would have no civil rights laws on the books today. Each and every one of the existing civil rights laws covers an area in which some aspects are also covered by State laws. What State laws do not provide, and cannot by their very nature, is a national antidiscrimination standard. While traditional criminal charges and personal injury suits focus on the harm to the individual, a civil rights claim redresses an assault on a commonly shared ideal of equality. This was Congress' understanding over 120 years ago when it passed the first civil rights laws against violent discrimination; that understanding remains true today as well.

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[69] See *Griffin* v. *Breckenridge,* 403 U.S. 88, 102 (1971).

[70] "Women and Violence", hearings before the Committee on the Judiciary, U.S. Senate, 101st Cong., 2d sess. (written testimony of Helen Neuborne (June 20, 1990)).

4. THE MECHANICS: PROOF REQUIREMENTS AND SPECIFIC CASES

Proof of "gender-motivation" under title III should proceed in the same ways proof of race or sex discrimination proceeds under other civil rights laws. Judges and juries will determine "motivation" from the "totality of the circumstances" surrounding the event.

Consider existing law, which prohibits racially motivated attacks. In such cases, if a black civil rights worker is beaten by a Ku Klux Klan member who has been terrorizing a predominately African-American neighborhood, the chances are good that the attack is "motivated by racial bias." At trial, the victim's lawyers will prove all the circumstances showing the bias: that the victim was of one race (black) and the attacker from another race (white); that the attacker does not typically assault white persons and has a history of assaulting black persons; that the attacker belonged to a white-supremacist organization; and that the attacker shouted racial epithets during the assault. None of these circumstances taken individually would prove that the attack was racially motivated, but taken together they show racial bias.

Gender-motivated crimes should be viewed in precisely the same way. Consider the case of a serial rapist who violates his victims as he hurls misogynist slurs. The victim's lawyers would prove exactly the same type of "circumstances" that the lawyer in the "race" case proved: that the victim was of one sex (female) and the attacker a different sex (male); that the attacker did not kidnap and rape men, but had a long history of attacking women; and that the attacker shouted antiwoman epithets during the assault. Again, the jury might not be convinced by any one of these circumstances individually—but all together show gender bias.

Obviously, these cases are extreme; everyone would agree that they show bias.[71] However, they do illustrate what it means to prove "bias" from "circumstantial evidence." For decades, the courts have successfully used that technique to determine whether crimes are racially motivated; we feel confident that they can do the same for gender-motivated crimes.[72]

a. The definition of gender-based crimes is supported by existing statutory precedent

The definition of gender-motivated crime is based on title VII, which prohibits discrimination in employment "because * * * of sex." 42 U.S.C. 2000e–2. Hence, title III defines crimes motivated by gender to be crimes committed "because * * * of gender." The phraseology "motivated by," "because of," "on the basis of" or "based on" sex or gender is used interchangeably in caselaw discus-

[71] Nothing in these examples is intended to suggest that these are the only kinds of cases where the circumstances show bias. Ku Klux Klan members are not the only persons who commit racially motivated attacks; indeed, most hate crimes are not committed by persons with such official ties.

[72] Generally accepted guidelines for identifying hate crimes may also be useful in assessing whether the circumstances show gender-motivation. The following characteristics are used to determine whether a crime is bias related: language used by the perpetrator; the severity of the attack (including mutilation); the lack of provocation; previous history of similar incidents; absence of any other apparent motive (battery without robbery, for example); common sense (burning a cross on a lawn has bias implications). Center for Women Policy Studies, "Violence Against Women as Bias Motivated Hate Crime: Defining the Issues" at 9 (1990).

sions of title VII. This body of caselaw will provide substantial guidance to the trier of fact in assessing whether the requisite discrimination was present.[73]

We note that, during the 101st Congress, the definition of "gender-motivated" crime provided that a cause of action would arise only if the defendant's conduct was shown to be "overwhelmingly" motivated by gender. The term "overwhelmingly" was eliminated in the version of the bill introduced in the 102d Congress because there is no counterpart to such language in any other civil rights remedy. Testimony before the committee made clear that inclusion of the term "overwhelmingly" would pose an unnecessary and harmful burden on women, creating a "special disability that nobody else has" and "feed[ing] into precisely the sorts of biases that the law is trying to eliminate." [74] Accordingly, the language was eliminated from the legislation considered by the committee during the 102d Congress.

b. The remedy does not require a higher standard of proof than would normally apply in a civil rights case

Title III provides that the remedy is governed by a "preponderance of the evidence" standard and that a prior criminal complaint or conviction is not necessary for recovery. It is a basic legal rule that civil cases (such as the civil remedy established by title III) do not require the kind of proof "beyond a reasonable doubt" demanded in criminal cases. Literally thousands of civil rights cases have proceeded under the traditional civil "preponderance" standard; title III simply follows suit.

c. Title III does not undermine existing civil rights laws or protections

This legislation is in no way intended to undermine existing civil rights protections under 42 U.S.C. 1981, 1983, or 1985(3) or under title VII, 42 U.S.C. 2000e. It should be read in harmony with, not in derogation of, those provisions.

d. Title III is intended to apply primarily against individuals and its "under color of law" language should be interpreted consistently with existing law

The title III remedy applies primarily against individuals who have committed a crime of violence motivated by gender, as Chairman Biden and other committee members have indicated on various occasions. However, like all other civil rights statutes, title III is also drafted to bar action taken under "color of law." As such, questions have been raised about the extent to which governmental entities may be sued under title III.

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[73] See, e.g., *Meritor Savings Bank* v. *Vinson*, 477 U.S. 57 (1986); *Phillips* v. *Martin Marietta*, 400 U.S. 542 (1971); *McKinney* v. *Dole*, 765 F.2d 1129 (D.C. Cir. 1985).

[74] "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 102d Cong. 1st sess. (testimony of Professor Cass Sunstein) ("I have never heard of something like this in any criminal or civil law, that there has to be overwhelming proof. 'Overwhelming' is a novel word. And why women should be uniquely faced with this burden is a mystery to me."); accord "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 102d Cong., 1st sess. (testimony of Professor Burt Neuborne) ("It would complicate the statute immensely; it would make its application much more expensive and much more difficult, and what's worse, it is not necessary").

The term "under color of law" has been interpreted by numerous Supreme Court decisions construing the scope of 42 U.S.C. 1983. Title III does not permit any claim or remedy [75] against a governmental entity that is not allowed under section 1983. For example, like section 1983, title III does not permit suits against a municipality simply because the government employed an individual who committed a gender-motivated crime. It is well-established that municipal liability may not be predicated upon respondeat superior or vicarious liability. See *Monell* v. *New York City Dep't of Social Services,* 436 U.S. 658, 694 (1978). Similarly, like section 1983, title III does not permit damage suits against a State or a State official acting in his or her official capacity. See *Will* v. *Michigan Dep't of State Police,* 491 U.S. 58 (1989). Finally, as we indicated in the prior committee report, like section 1983, title III does not permit a claim on the grounds that a governmental entity has violated a citizen's due process rights by failing to protect him or her, as the Supreme Court held in *DeShaney* v. *Winnebago,* 489 U.S. 189 (1989) (no due process violation for failure to protect where no special relationship).

In summary, the "under color of law" language in title III permits claims against governmental entities only where a governmental entity could be sued under section 1983. Future interpretation of Title III's "under color of law" language should be governed by the prevailing interpretation of the similar language in section 1983.

5. THE POWER: CONGRESS HAS THE CONSTITUTIONAL POWER TO ENACT TITLE III

Congress' power to enact title III is firmly based in the Commerce Clause and section 5 of the 14th amendment. Professors Burt Neuborne and Cass Sunstein both testified that the constitutional basis for this remedy is sound. As Professor Sunstein concluded, "the constitutional objections to the bill are quite weak. * * * we are talking here about something that is in the core of the Equal Protection Clause as it was originally understood * * *." [76]

a. The Commerce Clause

There is no doubt that the Congress has the power to create the title III remedy under the Constitution's Commerce Clause. The Commerce Clause is a broad grant of power allowing Congress to reach conduct that has even the slightest effect on interstate commerce. Indeed, because the required effect is so slight, the Supreme Court has rarely, if ever, struck down an assertion of congressional power under the Commerce Clause during the last half century.

The Commerce Clause gives Congress authority to act even if the proposed law, on its face, has nothing to do with "commerce." For example, civil rights laws and Federal criminal laws have both been created based on Congress' power under the Commerce

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[75] For example, punitive damages are generally not available against municipalities, *Newport* v. *Fact Concerts, Inc.,* 453 U.S. 247 (1981).

[76] "Women and Violence," hearings before the Committee on the Judiciary, 102d Cong., 2d sess. (Apr. 9, 1991).

Clause. Congress' power under the Commerce Clause also reaches conduct that may seem purely local in nature. For example, street corner sales of home-manufactured drugs can be made illegal by Congress because of the Commerce Clause power.[77]

Gender-based violence meets the modest threshold required by the Commerce Clause. Gender-based crimes and the fear of gender-based crimes restricts movement, reduces employment opportunities, increases health expenditures, and reduces consumer spending, all of which affect interstate commerce and the national economy. Gender-based violence bars its most likely targets—women—from full participation in the national economy. For example, studies report that almost 50 percent of rape victims lose their jobs or are forced to quit because of the crime's severity.[78] Even the fear of gender-based violence affects the economy because it deters women from taking jobs in certain areas or at certain hours that pose a significant risk of such violence.[79]

b. The 14th amendment

The Constitution authorizes Congress to pass appropriate legislation to enforce the 14 amendment's guarantee of equal rights. Title III is "appropriate" legislation for two reasons: first, it attacks gender-motivated crimes that threaten women's equal rights; second, it provides a "necessary" remedy to fill the gaps and rectify the biases of existing State laws.

Title III takes aim at gender-discrimination prohibited under the 13 amendment. In service of this end, it creates an "appropriate" remedy—a civil action in Federal court by a victim of gender-based violence against his or her attacker. This kind of private action has been sanctioned by the Supreme Court as appropriate to remedy violent discrimination.[80]

Under the 14th amendment, there is no clearer case of Congress' power to legislate than when States have failed to protect equal rights. As Professor Sunstein explained, "the criminal justice system is not providing equal protection of the laws to women, in the classic sense." [81] For example, many States, rape survivors must overcome barriers of proof and local prejudice that other crime victims need not hurdle; they bear the burden of painful and prejudicial attacks on their credibility that other crime victims do not shoulder; they may be forced to expose their private life and

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[77] See, e.g., Perez v. *United States,* 402 U.S. 146 (1971) (local crimes within Commerce Clause power).

[78] E. Ellis, B. Atkeson, and K. Calhoun, "An Assessment of Long-Term Reaction To Rape," 90 J. Abnormal Psychology No. 3, 264 (1981).

[79] For example, women often refuse higher paying night jobs in service/retail industries because of the fear of attack. Those fears are justified: the No. 1 reason why women die on the job is homicide and the highest concentration of those women is in service/retail industries. 39 Morbidity & Mortality Weekly, No. 32 at 544–45 (1990) (42 percent of deaths on the job of women are homicide; only 12 percent of the deaths on the job of men are homicide). See also discussion, supra, on the restrictive effects the fear of rape has on women's lives.

[80] See United States v. Guest, 383 U.S. 745 (1966). While the 14th amendment itself only covers actions by the States, Congress' power to enforce the amendment includes the power to create a private remedy as the most effective means to fight public discrimination. *Katzenbach* v. *Morgan,* 384 U.S. 641 (1966); *District of Columbia* v. *Carter,* 409 U.S. 418, 423, 424 n.8 (1973) (that "[t]he Fourteenth Amendment itself 'erects no shield against merely private conduct' * * * is not to say * * * is not to say that Congress may not proscribe purely private conduct under sec. 5 of the Fourteenth Amendment.")

[81] "Women and Violence," hearings before the Committee on the Judiciary, U.S. Senate, 102d Cong., 1st sess. (Apr. 9, 1991) (testimony of Professor Sunstein).

intimate conduct to win a damage award unlike any other civil litigant; and, finally, in some cases, they are barred from suit altogether by tort immunity doctrines and marital exclusions. Moreover, since these burdens are disproportionately borne by women, they should fail traditional standards for scrutinizing gender discrimination.[82]

IV. Vote of the Committee

On July 18, 1991, the Committee on the Judiciary by voice vote approved an amendment in the nature of a substitute by Senator Biden, along with amendments by Senator Grassley. The committee ordered the Violence Against Women Act of 1991, as amended, favorably reported.

V. Section-by-Section Analysis

Subtitle A—Federal penalties for sex crimes

This subtitle increases Federal penalties for the Federal crimes of sexual abuse.

Section 101. Short title: This section provides the short title of title I, the "Safe Streets for Women Act of 1990."

Section 111. Repeat offenders: This section authorizes judges to increase sentences for repeat sex offenders up to twice the term of punishment otherwise authorized by statute. Rape is one of the most highly recidivist crimes and repeat offenses must be treated extremely seriously.

Section 112. Federal penalties: This section directs the Sentencing Commission to revise its current penalties for criminal sexual abuse to revise upward the base offense level; to adjust specific offense characteristics to avoid redundancy; to accord greater parity between stranger rape and acquaintance rape cases; and to take account of the unique nature and duration of the mental injuries inflicting on the victims of such offenses. While it is the intent of Congress to defer to the Commission on the precise manner in which these reforms are accomplished and the specific offense characteristics are revised, the Commission must, at a minimum, raise the existing base level offense (approximately 6 years) by at least four levels.

Section 113. Mandatory Restitution. This section requires sex offenders to pay costs incurred by victims as a proximate result of a sex crime. Under current law, a court may, but is not required to, order "restitution" or the payment of costs incurred. Often, it is simply assumed that the defendant does not, and will never, have the resources to pay the victims' costs. This section reverses those assumptions, requiring the court to order the defendant to pay the victims' expenses. The defendant's resources are not relevant to the plaintiff's entitlement to a restitution award or the amount of the award, but only the method of payment. This does not mean, however, that in determining the method of payment, the judge may

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[82] See V. Berger, "Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom," 77 Col. L. Rev. 1, 45 (1977).

take into account other obligations of the defendant, including obligations to dependents.

Special procedures are provided in this section to ensure that the restitutionary obligation will be determined quickly (no later than 10 days prior to sentencing), under an expedited procedure to avoid wasting excess judicial time, and that the confidentiality of the victim's records is respected. However, these procedural provisions are not intended to undermine any substantive rights of a criminal defendant.

Section 114. Federal victims' counselors. This section, authored by Senator DeConcini, authorizes the expenditure of $1.5 million to the Executive Office of the United States' Attorneys for the purpose of providing additional rape crises and other victims' counselors in the Federal system.

Subtitle B—Law enforcement and prosecution grants to reduce violent crimes against women

This subtitle creates two grant programs attacking violent crimes against women. Part A targets $100 million in funds to the 40 most dangerous areas in the country for women. Part B provides $200 million for each of the 50 States, with each State receiving at least $500,000.

Section 121. Grants to combat violent crimes against women: This section amends title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) to provide grants to combat violent crimes against women. The purpose of the new grants is to assist States, cities, and other localities to develop effective law enforcement and prosecution strategies to combat violent crimes against women and, in particular, to focus efforts on those areas with the highest rates of violent crime against women.

Subpart 1 grants target the 40 most dangerous areas in the country for women. The Justice Department is directed to create a list of those areas and publish the list in the FEDERAL REGISTER not less than 45 days after the bill's enactment. To collect this data, the Bureau of Justice Statistics need not conduct a new victimization survey, but may rely upon existing data for reported crimes gathered by cities, States, or the FBI.

Subpart 2 grants are general moneys available to any State. Each State is entitled to a minimum $500,000, with the remaining sums divided among the States based on the State's population. In disbursing moneys under the subpart, the Director shall take into account geographic basis, the population served, and give priority to areas with the greatest showing of need.

Conditions for subpart 1 and 2 grants: Under either subpart, grants must be used for specified purposes, including training for police and prosecutors; expanding or creating units of police or prosecutors focusing on crimes against women; developing protocols for police and prosecutors on the handling of domestic violence and sexual assault cases; developing or expanding computer systems to track complaints; and boosting resources for victim services programs. Any qualifying fund recipient must certify that at least 25 percent of the amount granted shall be allocated to each of the following three areas individually: prosecution, law enforcement, and victim services.

To qualify for funds under this section, grantees must comply with certain statutory conditions. First, grantees must certify that programs will be coordinated with local volunteer service agencies, such as rape crisis centers and battered women's shelters. Second, any grantee seeking funds under this section or any other title I program must have in place laws or policies that require the State, not the victim, to pay for forensic rape exams. (See section 162 below.)

Grants to tribes: Drafted in conjunction with the Select Committee on Indian Affairs, this section provides grants to Indian tribes to reduce the rate of violent crimes against women in Indian country. Grants are to be provided on a competitive basis, ranging from $35,000 to $300,000. At least 25 percent of the grant funds shall be allocated to prosecution, law enforcement, and victim services.

General definitions: Subpart 3 provides a set of general definitions. Subsection (1) defines victim services programs as broadly as possible to include public and private groups, nongovernmental and governmental organizations. Grants are not to be limited to public governmental organizations such as law enforcement agencies. Grants should also be available to rape crisis centers, battered women's shelters, and other victims' assistance organizations. Subsection (2) defines sexual assault to include assaults committed by strangers and by acquaintances. Subsection (3) defines domestic violence to cover a specified core of persons—spouses, cohabitants and those with a child in common—and otherwise incorporates state law definitions for the jurisdiction receiving moneys.

Subtitle C—Safety for women in public transit and public parks

This subtile targets existing funds to add lighting, camera surveillance, and security phones in national and State parks.

Section 131. Grants for capital improvements to prevent crime in public transportation: This section authorizes the use of existing public transit funds to target crime, including crimes against women. It amends the Urban Mass Transportation Act to authorize the Secretary of Transportation to use $10 million in mass transit funds to increase lighting, camera surveillance and emergency telephones in bus stops, subway stations, or adjacent parking lots. The Federal share for these capital improvement projects shall be 90 percent.

Section 132. Grants for capital improvements to prevent crime in national parks: This section authorizes the use of existing national park funds to target crime, including crimes against women. It amends the National Park System Improvements in Administration Act (16 U.S.C. 1a et seq.) to authorize the Secretary of the Interior to allocate $10 million for Federal assistance to reduce violent crime in the National Park system. Funds are to be allocated to the areas most in need of assistance, with priority granted to those areas with high rates of sexual assault, as determined by the chief official responsible for law enforcement within the National Park Service.

Section 133. Grants for capital improvements to prevent crime in public parks. This section authorizes the use of existing State park funds to target crime, including crimes against women. It amends the Land and Water Conservation Fund Act of 1965 to authorize

the Secretary of the Interior to allocate $15 million from the Land and Water Conservation Fund for Federal assistance to reduce violent crime in State parks. Funds are to be allocated to the neediest areas, with a priority given to urban parks and recreation areas with the highest rates of crime.

Subtitle D—National commission on violent crime against women

Section 141. Establishment: This section creates a national commission to study the Nation's response to violent crimes against women and for making recommendations on how to reduce crimes against women.

Section 142. Duties of commission: This section specifies the duties of the commission. Among the topics to be studied by the commission are: the need for more uniform State laws on domestic violence and sexual assault, the adequacy of current data on violent crimes against women, and the need for national educational and awareness efforts.

Section 143. Membership: Five members are to be chosen by the President, three of whom shall be the Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Bureau of Investigation. The remaining 10 members are to be held chosen by the majority and minority leaders of the Senate and the House of Representatives and should include representatives from a broad cross-section of interested parties, including persons with expertise in law enforcement, prosecution, victim advocacy, judicial administration, and other legal and constitutional issues.

Section 144–48. These sections require a commission report, provide for an executive director and staff, authorize appropriations, and terminate the commission after 1 year.

Subtitle E—New evidentiary rules

This subtitle creates three new Federal Rules of Evidence. Congress has plenary power to make such changes and has exercised that power in the past by enacting rule 412, the Federal rape shield law, on which the new rules in this section are based.

Section 151. Sexual history criminal cases: This section applies the principles of rape shield law to all criminal cases, not just the sex assault cases where current rule 412 applies. It creates a new evidentiary rule, rule 412A, governing all criminal cases brought under title 18, United States Code. Subsection (a) of new rule 412A bars reputation and opinion evidence of past sexual behavior in all criminal cases, tracking the same language that now governs reputation and opinion evidence under rule 412.

Subsection (b) provides that evidence of specific instances of a victim's past sexual behavior is admissible only if the evidence is relevant, its probative value outweighs is prejudicial effect, and it is offered in accordance with the procedures outlined in subsection (c), procedures similar to those governing the admissibility of evidence under the current rape shield rule, rule 412.

Subsection (c) provides that, in ruling on an offer of proof, the court should articulate the reasoning processes that led it to conclude that the evidence was relevant and probative given the potential for the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences.

Section 152. Sexual history in civil cases: This section extends the principles of rule 412A to civil claims of actionable sexual misconduct. It creates a new evidentiary rule, rule 412B, that governs the use of prior sexual history in cases involving claims of sex harassment and discrimination brought pursuant to title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) and gender bias claims brought pursuant to title III of this act. Like rule 412A, this rule bars the use of reputation or opinion evidence of prior sexual history. Also like rule 412A, this rule provides that prior sexual history shall be admitted only if relevant and only if its probative value outweighs its prejudicial effect. The procedures for offering potentially admissible evidence in this rule are identical to those in rule 412A. This rule is consistent with existing Federal court decisions holding that prior sex acts are not discoverable nor relevant in civil sex harassment cases.

Section 153. Amendments to the rape shield law: This section makes three amendments to the existing rape shield law, rule 412. First, it codifies existing law permitting a victim to take an interlocutory appeal of an adverse ruling under the rape shield law. Second, it provides for the rare case in which a victim may want to introduce evidence of prior sexual history (or a lack thereof), clarifying that a victim may waive the rule's protections. Third, rule 412's procedures are conformed to those included in new rules 412A and 412B.

Section 154. Evidence of clothing: This section provides that evidence of clothing may not be admitted to show that a victim incited or invited a rape. Nothing in this section is intended to bar the use of clothing when it is relevant to an issue in the case such as injury or identity.

Subtitle F—Assistance to victims of sexual assault

Section 161. Education and prevention grants to reduce sexual assaults against women. This subtitle authorizes a twentyfold increase in rape prevention and education funding, from $3.5 million to $65 million. Funds are to be provided to volunteer nonprofit service providers, such as rape crisis centers. At least 15 percent of funds must be allocated for education of junior high school and high school students on rape prevention.

Section 162. Rape exam payments: Grantees seeking any title I funds must provide payment for forensic rape exams. To meet this requirement, it is preferable that States or localities reimburse hospitals, not victims, for the expense of the exam. However, it is sufficient that a State or locality reimburse the victim after the fact if the reimbursement scheme requires prompt payment (within 90 days), provides information about reimbursement to the victim at the time of the exam, permits applications for reimbursement for up to 1 year after the date of the exam, and includes no minimum loss or deductible.

Section 163. Education and prevention grants to reduce sexual abuse of female runaway, homeless, and street youth: This section, authored by Senator Kohl, amends the Runaway and Homeless Youth Act by targeting a special $10 million grant program for the prevention of sexual abuse and exploitation of young runaway,

homeless, and street youth who are sexual assault victims or at risk of being subjected to sexual abuse.

Section 164. This section provides a victim's right to make a statement at the sentencing of criminal defendants. Authored by Senator Grassley as an amendment to the bill, this section amends existing rule 32 of the Federal Rules of Criminal Procedure. It requires judges, at the time of sentencing, to address the victim and determine if the victim wishes to make a statement in court. If the victim so wishes, the court shall allow such an impact statement in any case involving a crime of violence or sexual abuse.

TITLE II—SAFE HOMES FOR WOMEN ACT

Subtitle A—Interstate enforcement

Section 201. Short title: This section provides the short title of title II, the "Safe Homes for Women Act of 1990."

Section 211. Interstate enforcement: This section creates a new chapter in the Criminal Code to punish spouse abusers who cross State lines to continue abuse. The first part of this section was substantially redrafted in the 1991 Violence Against Women Act to reflect more accurately the original intent. Subsection (a) covers cases where the injury occurs during or as a direct result of interstate travel. Subsection (b) covers cases where a spouse crosses a State line for the purpose of furthering abuse. (For example, where the perpetrator follows an estranged spouse to another State). The "purpose" prong of this part of the statute may be demonstrated by objective evidence—a history of abuse, the result of the travel (that is, further battering), and the timing of the travel. Finally, this section also creates new penalties for persons who cross State lines and who violate a valid stay-away order protecting a spouse from abuse.

Section 211 also provides enhanced protection for victims of the new domestic violence crimes created under this chapter. First, it specifically authorizes courts to enter orders of protection pending final adjudication of a case, upon a showing that the victim is in danger of further injury by the alleged abuser. Second, it provides for victim restitution on the same terms and conditions as provided in section 113.

Finally, section 211 makes protective orders issued by one State good in the other 49 States. Under current law, a spouse who obtains a "stay away" order in one State may lose the protection of that order if she crosses State lines. Modeled on existing law addressing child custody in parental kidnapping cases, this section provides that any valid protective order issued by a State should be given "full faith and credit" by a sister State.

Subtitle B—Arrest in spousal abuse cases

This subtitle encourages States to treat domestic violence as a serious crime. It creates a new $25 million grant program for those States with policies encouraging or requiring arrest of spouse abusers. Eligible grantees are those States, municipalities, or local government entities demonstrating that their laws have significantly increased the number of arrests of spouse abusers and certifying that their laws or policies either encourage or mandate arrest of

spouse abusers. Grants are targeted for increased centralization, training and education, and implementation of pro-arrest policies.

Subtitle C—Funding for shelters

This subtitle increases the funding authorization for battered women's shelters to $75 million, providing $85 million in 1992, $100 million in 1993, and $125 million in 1994.

Subtitle D—Family Violence Prevention and Services Act amendments

This subtitle makes a number of improvements in existing legislation on family violence, the Family Violence Prevention and Services Act.

Section 241. Expansion of purpose: This section makes clear that Federal programs on domestic violence should help to increase public awareness about domestic violence.

Section 242. Expansion of State demonstration grant program: This section makes clear that grants may be made for the purpose of increasing awareness about domestic violence.

Section 243. Grants for public information campaigns: This section provides grants for public information campaigns, including public service announcements, print media, billboards, and public transit advertising. As provided in subtitle C, no more than 5 percent of funds authorized under the act may be used for public information campaigns. Groups qualifying for such grants must have experience in conducting such campaigns, provide assurances that education will be targeted to groups at the greatest risk and provide any other information that the Secretary of Health and Human Services may require.

Section 244. Fund Distribution to States: This section increases the maximum amount of grants receivable from $50,000 to $500,000.

Section 245. Indian tribes: This section provides that no less than 10 percent of funds authorized under the act shall be made available to Indian tribes.

Section 246. Funding limitations: This section eliminates statutory language that limits funding to any one entity to $150,000.

Section 247. Grants to entities other than States; local share: This section provides that demonstration grants may be made only to those entities providing 35 percent of the project funding.

Section 248. Shelter and related assistance: This section clarifies that at least 75 percent of authorized and appropriated moneys must be spent on shelter assistance, with the remaining 25 percent devoted to special grants. It also broadens the scope of services that may be entitled to grant moneys and redefines the term (related assistance). Rather than simply providing shelter, moneys may be used for day care services, educational services, and other specified purposes.

Section 249. Law enforcement training and technical assistance grants: This section repeals existing law enforcement grants because of overlap with longer and more comprehensive programs in title I of S. 15.

Section 250. Report on recordkeeping: This section requires the Attorney General to submit to Congress a report and recommenda-

tion on the problems of recording domestic violence complaints, arrests, and convictions. The report must also address the feasibility of, and provide a timetable for, requiring national statistics that reflect the relationship of the offender and the victim for aggravated assault, rape, and other violent crimes.

Section 251. Model State leadership incentive grants for domestic violence intervention: This section authorizes a new $25 million grant program to encourage national leadership in the States on domestic violence. Sums will be awarded to 10 States. To qualify, a State must have (1): a law that requires mandatory arrest of a person that police have probable cause to believe has committed an act of domestic violence or probable cause to believe has violated an outstanding civil protection order; and (2) a law or policy discouraging dual arrests. In addition, a "model State" must develop statewide policies that encourage prosecutors to pursue cases where a criminal can be proved, with or without active participation of the victim; implement model projects on 'no-drop' prosecution or vertical prosecution, and limit diversion to extraordinary cases. Finally a "model State" must develop statewide policies for judicial handling of cases that prohibit the automatic issuance of mutual restraining orders and discourage custody by abusing spouses.

Section 252. Funding for technical assistance centers: This section provides for one national and six special-issue resource centers serving defined geographic areas, providing technical assistance centers for domestic violence shelters.

Subtitle E—Youth education and domestic violence

Section 261. Educating youth about domestic violence: Added in the 1991 version of the Violence Against Women Act, this subtitle provides a new program for educating our youth about domestic violence. It directs the Secretary of Education to select, implement, and evaluate model programs on this subject for four different audiences: primary schools, middle schools, secondary schools, and institutions of higher education. No later than 24 months after the date of enactment of the act, the Secretary shall transmit the design and evaluation of the model programs, along with a plan and cost estimate for nationwide distribution, to the relevant committees of Congress for review.

Subtitle F—Confidentiality for abused persons

Section 271. Confidentiality of an abused person's address: This section enhances protection for abused women by requiring the Post Office to assist in maintaining the confidentiality of an abused person's address. Under existing law and practice, an abused person who seeks a change of address from the post office risks disclosure of that address to her abuser. This section rectifies that problem by authorizing the Postmaster General to promulgate regulations to secure confidentiality or otherwise prohibit the disclosure of an abused person's address consistent with guidelines set forth in the statute. Nothing in this section should be construed as prohibiting the compilation of addresses or the disclosure of addresses to State or Federal agencies for legitimate law enforcement or other governmental purposes.

Subtitle G—Domestic violence coalitions

Section 281. Grants for State domestic violence coalitions. Authored by Senator Reid, this new subtitle provides grants for statewide domestic violence coalitions. Funds are to be utilized for a number of activities including working with the judicial and law enforcement agencies to encourage appropriate responses to domestic violence cases. Authorizations numbering $15 million is authorized to carry out the purposes of the subtitle.

TITLE III—CIVIL RIGHTS FOR WOMEN

Sections 301-02. Civil rights: This section provides a civil rights remedy for gender-motivated crimes. Modeled on sections 1981, 1983, and 1985(3), this section provides a Federal court remedy to victims of gender-based violence. The conduct covered under this section includes any crime of violence motivated by gender. Compensatory and punitive damages, where appropriate, may be recovered along with other relief.

Like the statutes on which it is modeled—42 U.S.C. 1981 and 1985(3)—this section reaches gender-based discrimination by private persons and by persons acting under color of State law. It should be interpreted in light of the purposes, need, and scope described in part C of this committee's report.

Since the original draft of this title, three changes have been made. First, several findings have been added to the bill to make clear the basis and purposes of the remedy. Second, the term "overwhelmingly" has been omitted as unnecessarily restrictive, as explained above in part C of this committee's report. Third, language enumerating various crimes has been eliminated from the definition of a "gender-motivated" crime, to eliminate the negative implication that *only* these crimes would give rise to a cause of action under title III.

In a committee amendment, Senator Grassley added a new section 303 to this title on the privacy of rape victims' names. The new section provides a sense of the Senate resolution that "news media, law enforcement officers, and other persons should exercise restraint and respect a rape victim's privacy by not disclosing the victim's identify to the general public or facilitating such disclosure without the consent of the victim."

TITLE IV—SAFE CAMPUSES FOR WOMEN ACT

Section 401. Short title: This section provides the short title to this title, the "Safe Campuses of Women Act of 1990."

Section 402. Findings: This section finds that rape prevention and education is essential to an educational environmental free of fear; that rape on campus is widespread and poses a grave threat not only to students' physical well-being but also to their educational opportunities; and that action by colleges and universities may make significant progress in helping to prevent rape, including acquaintance rape.

Section 403. Grants for campus rape education: This section authorizes the first Federal program for college rape education. The Secretary of Education is authorized to provide $20 million in grants, on a competitive basis to institutions for the purpose of pro-

viding rape education. Two types of grants are available—grants for model demonstration programs developed in coordination with existing rape crisis centers and grants for the implementation and operation of existing programs. Applications must assure the Secretary that Federal funds shall be used to supplement, not to replace, funds already allocated for campus rape prevention activities. Priority for all grants is given to the neediest institutions. No college or university shall be eligible for a grant under this section unless: (1) its student code of conduct or other policy governing student behavior prohibits rape and all forms of sexual assault; and (2) its policies require disclosure to sexual assault victims the outcome of campus disciplinary proceedings.

Section 404. Required campus reporting of sexual assault: This section amends the Crime Awareness and Campus Security Act of 1990, requiring that colleges and universities maintain statistics not only of rape but also sexual assault.

TITLE V—EQUAL JUSTICE FOR WOMEN IN THE COURTS ACT OF 1990

Section 501. Short title: This section provides the short title of this title, the "Equal Justice for Women in the Courts Act of 1990."

Subtitle A—Education and training for judges and court personnel in the State courts

This subtitle provides training for State court judges on a number of subjects related to crimes against women.

Section 511. Grants authorized: This section authorizes the State Justice Institute to provide grants for the purpose of developing, testing, and presenting model programs to be used in the States on domestic violence and sexual assault.

Section 512. Training provided by grants: This section outlines training subjects such as the nature and incidence of rape; the physical, psychological and economic impact of rape and domestic violence; the application of rape shield laws; the use of testimony on rape trauma syndrome, and legitimate reasons why women victims of crimes do not report those crimes.

Section 513. Cooperation in developing programs in making grants under this title: This section provides that the Attorney General shall insure that model programs are carried out in conjunction with a variety of persons with knowledge and expertise in the criminal justice process, including law enforcement personnel, victim advocates, prosecutors, defense attorneys, and recognized legal experts.

Section 514. Authorization of appropriations: This section authorizes $600,000 to carry out the purposes of subtitle A, the training of State court judges.

Subtitle B—Education and training for judges and court personnel in Federal courts

While subtitle A addresses the problems faced by State court judges, this subtitle focuses on Federal court judges. It has been substantially redrafted since the bill's original introduction.

Section 521. Education and training grants: This section provides that the Federal circuit judicial councils conduct a study of the

nature and extent of gender bias in their respective circuits. The Federal Judicial Center shall maintain a clearinghouse for these reports.

This section also directs the Federal Judicial Center to include information on gender bias in its educational programs, including training Federal judges and court personnel.

Section 522. Authorization of appropriations: This section authorizes $500,000 to carry out the purposes of subtitle B, including $100,000 to the Federal Judicial Center.

VI. Estimated Cost of Legislation

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 404 of the Congressional Budget Act of 1974, the committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 13, 1991.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 15, the Violence Against Women Act of 1991. Enactment of S. 15 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 15.
2. Bill title: Violence Against Women Act of 1991.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary, July 23, 1991.
4. Bill purpose: S. 15 would make a number of changes and additions to federal laws related to violence and crimes against women. Title I of the bill would:

Increase federal penalties and require restitution for certain sex crimes;

Authorize $1.5 million for fiscal year 1992 to the United States Attorneys for the purpose of appointing Victim/Witness Counselors for the prosecution of sex crimes;

Authorize $100 million for each of fiscal years 1992, 1993, and 1994 for grants to areas of "high intensity crime" against women;

Authorize $190 million for each of fiscal years 1992, 1993, and 1994 for general grants to states to combat violent crimes against women;

Authorize $10 million for each of fiscal years 1992, 1993, and 1994 for general grants to Indian tribes to reduce the rate of violent crimes against women in Indian country;

Earmark up to $10 million in urban mass transportation discretionary capital grants to increase the safety and security of public transportation systems;

Authorize up to $10 million to reduce the incidence of violent crime in the National Park System and up to $15 million for state grants to make capital improvements to increase safety in public parks and recreation areas;

Establish a National Commission on Violent Crime Against Women and authorize $500,000 for fiscal year 1992 for said commission;

Amended the Federal Rules of Evidence with respect to past sexual behavior of alleged victims;

Authorize $65 million for each of fiscal years 1992, 1993, and 1994 for state grants to provide rape prevention and education programs; and

Authorize $10 million for each of fiscal years 1992, 1993, and 1994 for grants to private, nonprofit agencies to reduce sexual abuse of female runaway, homeless, and street youth.

Title II of the bill would:

Establish federal penalties and require restitution for violence against spouses, particularly violence involving travel across state lines;

Authorize up to $25 million annually for grants to state and local governments to encourage states and localities to treat spousal violence as a serious violation of criminal law;

Authorize $85 million for fiscal year 1992, $100 million for fiscal year 1993, and $125 million for fiscal year 1994 to carry out the provisions of the Family Violence Prevention and Services Act;

Authorize $25 million for fiscal year 1992 and such sums as may be necessary for each of fiscal years 1993 and 1994 for model state leadership incentive grants for domestic violence intervention;

Make a number of other changes to the Family Violence Prevention and Services Act;

Authorize $400,000 for fiscal year 1992 for a program on youth education and domestic violence; and

Authorize $15 million annually for grants to states for domestic violence coalitions.

Title III of the bill would create a cause of action for the recovery of compensatory and punitive damages for crimes of violence overwhelmingly motivated by the victim's gender.

Title IV of the bill would authorize $20 million for fiscal year 1992 and such sums as may be necessary for fiscal years 1993, 1994, and 1995 for grants to or contracts with institutions of higher education for rape education and prevention programs.

Title V of the bill would:

Authorize $600,000 for fiscal year 1992 for grants to develop, test, present, and disseminate model programs to be used by states in training judges and court personnel in the laws of the

states on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender; and

Authorize for fiscal year 1992, $100,000 for the Federal Judicial Center and $400,000 to the salaries and expenses Account of the Courts of Appeals, District Courts, and other Judicial Services, to study the nature and extent of gender bias in the federal courts and to develop, test, present, and disseminate model programs to be used in training federal judges and court personnel in the laws on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995	1996
Estimated authorization level	574	562	589	62	40
Estimated outlays	174	399	550	434	197

The costs of this bill would fall within budget functions 300, 500, 550 and 750.

Basis of estimate: The estimate assumes that the Congress will appropriate the full amounts authorized for each fiscal year. For programs with specific amounts authorized for 1992 and such sums authorizations for subsequent years, we have projected the indefinite authorizations by adjusting the 1992 level for inflation. (These include the model state leadership incentive grants and grants for campus rape education.) The outlay estimates are based on the historical spending rates for these or similar activities.

There is no budget authority or spending associate with the earmarking of up to $10 million in urban mass transportation discretionary capital grants to increase the safety and security of public transportation systems. S. 15 would earmark existing contract authority, but would not increase the amounts available.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. CBO estimates that enactment of S. 15 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

7. Estimated cost to State and local governments: Most of the funding authorized by S. 15 is in the form of grants to state and local governments. Several provisions of the bill would affect the allowed uses of funds by grant recipients.

One provision of S. 15 could affect state eligibility for certain grants authorized by the bill and could result in increased costs to the states. This provision would require that states incur the full cost of forensic medical exams for victims of sexual assault. Currently, most states cover at least part of the cost of forensic medical exams. States would need to meet this requirement only in order to be eligible for certain grant funds; the requirement would not otherwise need to be met. We do not expect the increased costs—to states that do not currently cover the full cost of forensic medical exams—to be significant.

8. Estimate comparison: None.
9. Previous CBO estimate: None.
10. Estimate prepared by: Mark Grabowicz.
11. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

VII. Regulatory Impact Statement

Pursuant to paragraph 11(B), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that the act will not have any direct regulatory impact.

VIII. Chairman Biden's Responses to Questions Submitted by Senator Grassley

Question 1. Under rule 412 of the Federal Rules of Evidence as currently written, in prosecutions under most Federal sexual crimes, evidence relating to the past sexual history of the victim is inadmissible. The only exceptions are to prove that the accused was or was not the source of the victim's injury or that the victim consented to intercourse. Under rule 404 as currently written, evidence regarding the prior sexual history of victims could not be admitted in prosecutions for other Federal sexual crimes.

As I understand this bill, in prosecutions for violation of Federal statutes not governed by rule 412, evidence of past sexual acts of the victim will be admissible if the probative value of such evidence is greater than its prejudicial effect. If this is correct, the bill will expand testimony concerning the victim's sexual behavior beyond what is now permitted. Does it make sense to use such evidence to show that the victim had bad character merely because it may be barely more probative than prejudicial? Moreover, won't the victim have a reduced incentive to bring sexual abuse cases, if her past conduct will be admissible.

Answer. Your question is based on an improper reading of existing Rules of Evidence and of the Rules of Evidence proposed in the Violence Against Women Act. Under current law, evidence of past sexual acts is admissible in any prosecution other than a Federal rape prosecution, subject only to relevancy requirements.[1] Contrary to the suggestion in your question, these rules do not expand the admissibility of prior sexual acts, they limit the admissibility of such evidence.

For example, under current law, defense counsel may inquire about a victim's past sexual behavior in any criminal case—kidnapping, mail fraud, or murder—as long as he can show some relevancy. Rule 412A, as proposed by the Violence Against Women Act, would bar introduction of prior sexual acts in those criminal cases unless defense counsel hurdles two barriers. To gain admission of such evidence, the defendant must: (1) follow procedures to ensure fair consideration of the victim's claims that the evidence is prejudicial and irrelevant; and (2) show that the relevance of the victim's prior sexual acts outweighs the prejudicial effect of introduc-

[1] Rule 404 is irrelevant because it permits evidence of past sexual acts for any purpose other than to prove character, e.g., to prove motive, opportunity, pattern, consent, etc.

ing that evidence. Without the Violence Against Women Act, defense counsel would face neither of these additional burdens.

Finally, your statement that victims will have less of an incentive to bring sexual abuse cases is not correct in light of the nature of these rules. The proposed evidentiary rules do not apply to sexual abuse cases. And, as indicated above, since the rules restrict, rather than expand, the amount of admissible evidence, there is no chilling effect on victims' willingness to prosecute.

Question 2. On page 49 of the bill, under section 2261a, the statute provides that "Any person who travels across State lines * * * and who, in the course of or as a result of such travel, commits an act that injures his or her spouse or intimate partner * * * shall be fined not more than $1,000 or imprisoned for not more than 10 years but not less than 3 months, or both * * *." The criminal intent provision for subsection B does not apply to A, as I read the bill.

Thus, it appears to me that if a wife, driving her husband across the Mississippi from Iowa to Illinois then deliberately ran a red light, the result of which was to injure her husband, she would be fined and/or sentenced up to 10 years in prison. Is this a proper reading of section 2261a?

Answer. Section 2261a makes it a crime for a spouse abuser to cross a State line and commit spouse abuse. If the statute were limited to acts "during the course" of interstate travel, then it would be a crime only if the violence were committed just as the abuser had one foot in one State and one foot in another. Hence, section 2261a also applies to acts done after or as a result of the interstate travel. Other Federal criminal laws involving interstate travel cover similar types of acts. See e.g., 18 U.S.C. 875 (interstate threats and extortion); 18 U.S.C. 1343 (fraud by use of interstate facilities); 18 U.S.C. 1201 (kidnapping persons across State lines); 18 U.S.C. 1231 (transporting persons for the purpose of strikebreaking); 18 U.S.C. 1952 (interstate travel in aid of racketeering); 18 U.S.C. 1958 (interstate travel to commit murder-for-hire).

Your hypothetical case would *not* be covered under section 2261a of the Violence Against Women Act. It is an established principle of criminal law that no person may be found guilty of any crime without a finding of "mens rea" or the intent to commit that crime. This principle applies to every criminal statute, including section 2261a. Your hypothetical involves no intent to commit the crime of spouse abuse; by definition, your example involves only the intent to run a red light.

Your hypothetical raises a common problem in the criminal law: the perpetrator commits a minor act with criminal intent but that act leads to a more serious result that the perpetrator did not intend. Traditionally, the criminal intent to do the first act cannot be transferred to the second act. Consider your precise example, but assume that the man dies. The wife could not be prosecuted for murder under a Federal criminal law barring murder during interstate travel if the only intent she had was to run the red light. To justify a murder prosecution you would have to show that she intended to murder the man by running the red light. Similarly, under section 2261a of the Violence Against Women Act, the running of a red light alone does not suffice to justify a charge.

Question 3. Title III of the bill creates a cause of action against any person, including a person acting under color of law, show commits, a crime of violence motivated by gender. The bill does not define "person."

Would a victim be able to sue the employer of a person acting under color of law (that is a municipality, State, or the Federal Government) if the victim alleged, that the governmental agency was in some way connected to the commission of the criminal act? I am concerned that many "persons" liable under title III would not have deep pockets, and victims might sue governmental entities unless "persons" are limited to actual human offenders.

Answer. First, title III does not permit claims against a municipality, State or Federal Government simply because these governmental entities employed an individual who committed a "gender-motivated" crime. It is well established that the term "under color of state law"—as used in all existing civil rights laws—does not encompass claims based on respondeat superior or vicarious liability. Employees' acts are no basis for suing governmental employers under existing civil rights law; they are no basis for suing under title III.

Second, as we have indicated in the prior committee report and in the present committee report, title III does not permit a claim because a municipality, State or the Federal Government has "failed to protect" a citizen. Current law announced by the Supreme Court bars such claims and there is nothing in title III that would overrule the Court's due process analysis. See *DeShaney* v. *Winnebago,* 489 U.S. 189 (1989).

Question 4. As I understand it, title III creates a civil rights cause of action for anyone whose right to be free of gender-related crimes of violence is violated. I share the concerns of the Office of Judical Impact Assessments of the Administrative Office of the United States Courts. That Office states that title III alone will generate as many as 53,800 civil tort cases, of which 13,450 will reach Federal courts. The Administrative Office expects that the annual cost of title III will be $43.6 million and 450 staff years. This result will occur, of course, even though the victims benefitted by title III already have actionable tort claims under State law for any harm redressed under title III.

Moreover, title III will bring many domestic cases into Federal coiurts, an unprecedented Federal intrusion into an area of law that for more than 200 years has been the sole province of the States. Spousal abuse is a serious problem, but is clogging the Federal courts with these kinds of cases the appropriate way to resolve these terrible situations? Should busy courts turn their attention from other important areas to address matters that already can be remedied in State courts without the enormous expense in time and money that this title will generate?

Answer. First, your question is based on a misunderstanding of title III. Title III does not cover everyday domestic violence cases, nor does it cover random muggings. This is stated clearly in the committee report and it is the only fair reading of the statutory language. Indeed, title III expressely bars any cause of action for a random crime, including crimes motivated by personal animosity.

Second, the judicial impact statement of the Administrative Office of the Courts is based on the same improper interpretation of the statute. Its wild estimates of 450 staff years and 53,000 cases are based on a reading of the statute that includes random crimes and domestic violence cases. Since those cases cannot be brought under title III, the judicial impact statement is obviously inaccurate.

Third, if civil rape cases are any measure of the number of the cases that are likely to be brought under title III, then the impact on the Federal courts is likely to be minimal. Jury Verdict Research, Inc., reports trial verdicts in 255 civil rape cases over a 10-year period. Not all of those cases may fall within the ambit of a "gender-bias" crime, but even assuming that they did, 255 cases spread over a 10-year period hardly requires the kind of major resources the Judicial Conference has suggested in its impact statement.

Fourth, title III breaks no new ground by attacking discriminatory violence. As the Supreme Court has held, Congress does not create a "federal tort law" when it legislates a civil rights remedy for violent acts based on discriminatory motivation. *Griffin* v. *Breckenridge,* 403 U.S. at 102. Discriminatory motivation is clearly required by title III of the Violence Against Women Act and the plaintiff bears the burden to prove that motivation.

IX. ADDITIONAL VIEWS OF MR. HATCH

I support S. 15 in its entirety. While I am usually opposed to laws that make Federal crimes out of conduct that has previously been punishable by the States, S. 15's federalizing, in title II, of certain spousal abuse cases will mark such a bold step forward in the ability of prosecutors to discover and punish this form of criminal activity that it should be supported.

It is entirely appropriate that the Federal Government should take the lead in strengthening the ability of prosecutors to bring charges of spousal abuse in the interstate context. For too long it has been the Federal courts—through nonconstitutional rules concerning pretrial interrogation and through judge-fashioned exclusionary rules—that have stood in the way of effective enforcement of existing laws for the protection of women and have allowed known, confessed rapists and other abusers of women to go free. One of the main reasons why our system fails is because known, confessed, admitted abusers of women are continually allowed to go free—usually on technical arguments entirely unrelated to guilt or innocence—often to return to a home situation in which the abuse occurred.

This happens because too many of our Federal judges place a higher value on procedural niceties than on truth. While it is always regrettable that a criminal who has voluntarily confessed his come should be allowed to go free, that outrageous result is entirely indefensible in situations of spousal and parental abuse, situations in which the criminal and victim are so often related or otherwise linked. Returning a husband, father, or stepfather to the home in which he has confessed, voluntarily, to having abused a young girl or adult woman should be considered a crime equal to the original offense.

Most State judges would not, I suspect, choose to return an abused wife or child to the home where the abuse was suffered at the hands of an admittedly guilty husband, parent, or stepparent, simply because a procedural right of the confessed criminal has been violated. But the Federal Government has taken that decision away from the judges by decreeing that whenever the most technical *Miranda* violation occurs the confessed defendant cannot be convicted on the basis of his or her confession. It should be remembered that Ernesto Miranda was a confessed rapist convicted by the State of Arizona but freed by the Federal Government despite a finding that his confession had been voluntarily given. *Miranda* v. *Arizona,* 384 U.S. 436 (1966).

While the civil rights transgression is to be regretted and should be punished, it is simply nonsensical and irresponsible to ignore the plain evidence that a violent crime against a woman has occurred. But that is what the Federal Government has told the State they must do. And S. 15 does nothing to change this.

One pertinent quotation eloquently summarizes the problem:

> [C]rime will not be effectively abated so long as criminals who have voluntarily confessed their crimes are released on mere technicalities. The traditional right of the people to have their prosecuting attorneys place in evidence before juries the voluntary confessions and incriminating statements made by defendants simply must be restored.

These are the views of a majority of the members of this committee, as we stated in reporting 18 U.S.C. 3501 to the floor in 1968. That law attempted to overrule the *Miranda* case in Federal prosecutions, by reaffirming the preexisting constitutional standard of voluntariness in admitting confessions. Congress' attempt to overrule *Miranda* in the Federal system by enactment of 18 U.S.C. 3501 has been upheld as a valid and constitutional exercise of congressional authority. See *United States* v. *Crocker,* 510 F.2d 1129 (10th Cir. 1975).

By enacting S. 15 and bringing at least one limited class of women within the expanded protection for victims that 18 U.S.C. 3501 provides under Federal law, we will finally take a first step in freeing the States from the two-decade-old tyranny of the *Miranda* case.

S. 15 tells the prosecutors of violent crimes against women that they no longer have to turn a blind eye to clear instances of violence against women. If, considering all of the circumstances, the court is convinced that the defendant voluntarily confessed to rape or other violent crime against a woman, then, under 18 U.S.C. 3501, the confession can be admitted in court, and, where appropriate, in proceedings to obtain protective orders. That, I submit, shows true concern for violence against women, not just the ability to throw money at a problem.

The Supreme Court has repeatedly held that the *Miranda* rules are not constitutional rights but are only prophylactic measures designed to reduce the likelihood of coercion taking place in custodial questioning. S. 15, by bringing one class of criminal cases into the Federal system, ensures that coerced confessions will not be admitted, but it will not allow completely voluntary ones to be withheld, as a rigid application of *Miranda* too often does.

Let me illustrate my remarks by citing one typical case. In *State* v. *Oldham,* 618 S.W.2d 647 (Mo. banc 1981), a stepfather voluntarily confessed—fully and freely—to having committed horrible acts of child abuse with respect to his 2-year-old stepdaughter, acts requiring hospitalization and surgery. However, Oldham's conviction was thrown out of court. Here is why.

When the defendant was first brought to the police station after being arrested he was informed of his Miranda rights. He indicated that he had no statement to make and he spoke by telephone to his attorney who advised him to remain silent. Soon after that time, his arresting officer was relieved of duty. When the new shift came on, the supervising officer was unable to determine from the file whether Oldham had been read all of his rights and sent a policewoman to read him his rights again. The policewoman told the defendant that she needed to be certain that he knew his rights. The

defendant answered that he did know his rights, but nevertheless wanted to confess to his crime. As he began to make a statement, the policewoman once more reminded the defendant that he could "stop making a statement at any time he wished." Nevertheless, the defendant continued his confession.

Despite the clear evidence that the confession in the *Oldham* case was voluntarily given and was not the result of any inducement or plea arrangement of any kind, two Missouri appellate courts concluded that Federal law constrained them to release the prisoner. They held that once a defendant invokes his right to remain silent, no subsequent confession is admissible in court. The defendant was allowed to return home to live once more with the stepdaughter he had abused. Instead of being allowed to prevent violence against women, the State of Missouri was compelled to sanction it.

Perhaps the worst result of cases like *Oldham* is the fact that they brand as illegitimate the completely voluntary admissions of child abuse, and other forms of violence against women, thus making that evidence—those facts—unusable in any later proceeding. How can juvenile officials do their job in these circumstances? Though they know that this individual has gravely injured a little girl, a 2-year-old, yet they cannot proceed against the criminal. They cannot remove the girl from the home because the only evidence that provides a reason to remove the child cannot be used in any proceeding. A 2-year-old cannot testify. What if the criminal were to strike again but did not confess? No jury would ever be told that the stepfather had earlier abused the child. They might not have enough evidence to convict without that information, and the girl might once again be forced to return home to an abusive situation.

I am genuinely concerned about violence against women. It is violence against a woman to return an injured child from the hospital straight back to the home of her confessed abuser. Any judge-fashioned remedy that would allow such a crime to happen does not deserve the name of law. It is sophistry in the service of convenience. It allows judges to think that they are enforcing civil rights while the more important rights—those of a defenseless 2-year-old girl—are simply ignored.

I support the rights of abused women and children: I want to see their admitted abusers punished and, even more important, I want to see that the crime cannot occur again. That is why I support S. 15's limited attempt to bring sanity to this area of the law—at least with respect to interstate crimes of spousal abuse.

But the bottom-line question endures: how can the women of America ever believe the Federal Government to be serious in its concern for violence against women when it is so willing to turn a blind eye to cases of known, confessed, undenied and undeniable violence against women and children? Until an adequate answer is provided for that fundamental question—until the rights of women are no longer subordinated to the supposed rights of confessed criminals—then S. 15, important as it is, will be nothing more than a small first step on the long path to justice for abused women.

ORRIN G. HATCH.

X. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2754, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE—TITLE 16 CONSERVATION

* * * * * * *

§ 1a–1. National Park System: administration; declaration of findings and purpose

* * * * * * *

SEC. 13. NATIONAL PARK SYSTEM CRIME PREVENTION ASSISTANCE.

(a) From the sums authorized pursuant to section 7 of the Land and Water Conservation Act of 1965, and not to exceed $10,000,000, the Secretary of the Interior is authorized to provide Federal assistance to reduce the incidence of violent crime in the National Park System.

(b) The Secretary shall direct the chief official responsible for law enforcement within the National Park Services to—

(1) compile a list of areas within the National Park System with the highest rates of violent crime;

(2) make recommendations concerning capital improvements, and other measures, needed within the National Park System to reduce the rates of violent crime, including the rate of sexual assault; and

(3) publish the information required by paragraphs (1) and (2) in the Federal Register.

(c) No later than 120 days after the date of enactment of this section, and based on the recommendations and list issued pursuant to subsection (b), the Secretary shall distribute funds throughout the National Park Service. Priority shall be given to those areas with the highest rates of sexual assault.

(d) Funds provided under this section may be used for the following purposes—

(1) to increase lighting within or adjacent to public parks and recreation areas;

(2) to provide emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public parks and recreation areas;

(3) to increase security or law enforcement personnel within or adjacent to public parks and recreation areas; and

(4) any other project intended to increase the security and safety of public parks and recreation areas.

* * * * * * *

§ 460*l*–8. Financial assistance to States

(a) AUTHORITY OF SECRETARY OF THE INTERIOR; PAYMENTS TO CARRY OUT PURPOSES OF LAND AND WATER CONSERVATION PROVISIONS.—The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to provide financial assistance to the States from moneys available for State purposes. Payments may be made to the States by the Secretary as hereafter provided, subject to such terms and conditions as he considers appropriate and in the public interest to carry out the purposes of this part, for outdoor recreation: (1) planning, (2) acquisition of land, waters, or interests in land or waters, or (3) development.

* * * * * * *

(h) CAPITAL IMPROVEMENT AND OTHER PROJECTS TO REDUCE CRIME.—In addition to assistance for planning projects, and in addition to the projects identified in subsection (e), and from amounts appropriated, the Secretary shall provide financial assistance to the States, not to exceed $15,000,000 in total, for the following types of projects or combinations thereof:

(1) For the purpose of making capital improvements and other measures to increase safety in urban parks and recreation areas, including funds to—

(A) increase lighting within or adjacent to public parks and recreation areas;

(B) provide emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public parks and recreation areas;

(C) increase security personnel within or adjacent to public parks and recreation areas; and

(D) any other project intended to increase the security and safety of public parks and recreation areas.

(2) In addition to the requirements for project approval imposed by the section, eligibility for assistance under this subsection is dependent upon a showing of need. In providing funds under this subsection, the Secretary shall give priority to those projects proposed for urban parks and recreation areas with the highest rates of crime and, in particular, to urban parks and recreation areas with the highest rates of sexual assault.

(3) Notwithstanding the terms of subsection (c), the Secretary is authorized to provide 70 percent improvement grants for projects undertaken by any State for the purposes outlined in this subsection. The remaining share of the cost shall be borne by the State.

* * * * * * *

UNITED STATES CODE—TITLE 18

CRIMES AND CRIMINAL PROCEDURE

TABLE OF TITLES AND CHAPTERS

PART I—CRIMES

CHAPTER 109A—SEXUAL ABUSE

§ 2247. Repeat offenders

Any person who violates a provision of this chapter, after one or more prior convictions for an offense punishable under this chapter, or after one or more prior convictions under the laws of any State or foreign country relating to aggravated sexual abuse, sexual abuse, or abusive sexual contact, is punishable by a term of imprisonment up to twice that otherwise authorized.

§ 2248. Mandatory restitution

(a) IN GENERAL.—Notwithstanding the terms of section 3663 of this title, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) SCOPE AND NATURE OF ORDER.—(1) The order of restitution under this section shall direct that—

(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victims's losses as determined by the court, pursuant to paragraph (2); and

(B) the United States Attorney enforce the restitution order by all available and reasonable means.

(2) For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for—

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) lost income;

(D) attorneys' fees; and

(E) any other losses suffered by the victim as a proximate result of the offense.

(3) Restitution orders under this section are mandatory. A court may not decline to issue an order under this section because of—

(A) the economic circumstances of the defendant; or

(B) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(4)(A) Notwithstanding the terms of paragraph (3), the court may take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution is to be paid.

(B) For purposes of this paragraph, the term "economic circumstances" includes—

(i) the financial resources and other assets of the defendant;

(ii) projected earnings, earning capacity, and other income of the defendant; and

(iii) any financial obligations of the defendant, including obligations to dependents.

(C) An order under this section may direct the defendant to make a single lump-sum payment or partial payments at specified intervals. The order shall also provide that the defendant's restitutionary obligation takes priority over any criminal fine ordered.

(D) In the event that the victim has recovered for any amount of loss through the proceeds of insurance or any other source, the order of restitution shall provide that restitution be paid to the person who provided the compensation, but that restitution shall be paid to the victim before any restitution is paid to any other provider of compensation.

(5) Any amount paid to a victim under this section shall be set off against any amount later recovered as compensatory damages by the victim from the defendant in—

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of the State.

(c) PROOF OF CLAIM.—(1) Within 60 days after conviction and, in any event, no later than 10 days prior to sentencing, the United States Attorney (or his delegee), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or his delegee) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or his delegee) shall advise the victim that the victim may file a separate affidavit.

(2) If no objection is raised by the defendant, the amounts attested to in the affidavit filed pursuant to subsection (1) shall be entered in the court's restitution order. If objection is raised, the court may require the victim or the United States Attorney (or his delegee) to submit further affidavits or other supporting documents, demonstrating the victim's losses.

(3) If the court concludes, after reviewing the supporting documentation and considering the defendant's objections, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. Any records filed, or testimony heard, pursuant to this section, shall be in camera in the judge's chambers.

(4) In the event that the victim's losses are not ascertainable 10 days prior to sentencing as provided in subsection (c)(1), the United States Attorney (or his delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

(d) DEFINITIONS.—For purposes of this section, the term "victim" includes the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court: Provided, That in no event shall the defendant be named as such representative or guardian.

CHAPTER 110—SEXUAL EXPLOITATION OF CHILDREN

* * * * * * *

CHAPTER 110A—VIOLENCE AGAINST SPOUSES

§ 2261. Traveling to commit spousal abuse

(a) IN GENERAL.—Any person who travels across State lines—

(1) and who, in the course of or as a result of such travel, commits an act that injures his or her spouse or intimate partner; or

(2) for the purpose of harassing, intimidating, or injuring a spouse or intimate partner and who, in furtherance of that purpose, commits an act that injures his or her spouse or intimate partner,

shall be fined not more than $1,000 or imprisoned for not more than 10 years but not less than 3 months, or both, in addition to any fine or term of imprisonment provided under state law.

(b) CAUSING THE CROSSING OF STATE LINES.—Any person who causes a spouse or intimate partner to cross State lines by force, coercion, duress or fraud and, in the course or as a result of that conduct, commits an act that injures his or her spouse or intimate partner, shall be fined not more than $1,000 or imprisoned for not more

than 10 years but not less than 3 months, or both, in addition to any fine or term of imprisonment provided under State law.

(c) NO STATE LAW.—If no fine or term of imprisonment is provided for under the law of the State where the injury occurs, a person violating this section shall be punished as follows:

(1) If permanent disfigurement or life-threatening bodily injury results, by imprisonment for not more than 20 years; where serious bodily injury results, by fine under this title or imprisonment for not more than 10 years, or both; where bodily injury results, by fine under this title or imprisonment for not more than 5 years, or both.

(2) If the offense is committed with intent to commit another felony, by fine under this title or imprisonment for not more than 10 years, or both.

(3) If the offense is committed with a dangerous weapon, with intent to do bodily harm, by fine under this title or imprisonment for not more than 5 years, or both.

(4) If the offense constitutes sexual abuse, as that conduct is described under chapter 109A of title 18, United States Code (without regard to whether the offense was committed in the maritime, territorial or prison jurisdiction of the United States) by fine or term of imprisonment as provided for the applicable conduct under chapter 109A.

(d) CRIMINAL INTENT.—The criminal intent of the offender required to establish an offense under subsection (b) is the general intent to do the acts that result in injury to a spouse or intimate partner and not the specific intent to violate the law of a State.

(e) NO PRIOR STATE CRIMINAL ACTION NECESSARY.—Nothing in this section requires a prior criminal prosecution or conviction under State law to justify Federal prosecution.

§ 2262. Interstate violation of protection orders

(a) IN GENERAL.—Any person against whom a valid protection order has been entered who travels across State lines—

(1) and who, in the course of or as a result of such travel, commits an act that injures his or her spouse or intimate partner in violation of a valid protection order issued by a State; or

(2) for the purpose of harassing, injuring, finding, contacting, or locating a spouse or intimate partner and who, in furtherance of that purpose, commits an act that injures his or her spouse or intimate partner in violation of a valid protection order issued by a State, shall be punished as provided in subsection (c) of this section.

(b) CAUSING THE CROSSING OF STATE LINES.—Any person who causes a spouse or intimate partner to cross State lines by force, coercion, duress, or fraud, and, in the course or as a result of that conduct, commits an act that injures his or her spouse or intimate partner in violation of a valid protection order issued by a State shall be punished as provided in subsection (c) of this section.

(c) PENALTIES.—

(1) If permanent disfigurement or life-threatening bodily injury results, by imprisonment for not more than 20 years; where serious bodily injury results, by fine under this title or imprisonment for not more than 10 years, or both; where bodily

injury results, by fine under this title or imprisonment for not more than 5 years, or both.

(2) If the offense is committed with intent to commit another felony, by fine under this title or imprisonment for not more than 10 years, or both.

(3) If the offense is committed with a dangerous weapon, with intent to do bodily harm, by fine under this title or imprisonment for not more than 5 years, or both.

(4) If the offender has previously violated any prior protection order issued against that person for the protection of the same victim, by fine under this title or imprisonment for not more than 5 years and not less than 6 months, or both.

(5) If the offense constitutes sexual abuse, as that conduct is described under chapter 109A of title 18, United States Code (without regard to whether the conduct was committed in the special maritime, territorial or prison jurisdiction of the United States) by fine or term of imprisonment as provided for the applicable offense under chapter 109A.

(d) CRIMINAL INTENT.—The criminal intent required to establish the offense provided in subsection (a) is the general intent to do the acts which result in injury to a spouse or intimate partner and not the specific intent to violate a protection order or State law.

(e) NO PRIOR STATE CRIMINAL ACTION NECESSARY.—Nothing in this section requires a prior criminal prosecution or conviction under State law to justify Federal prosecution.

§ 2263. Interim protections

In furtherance of the purposes of this chapter, and to protect against abuse of a spouse or intimate partner, any judge or magistrate before whom a criminal case under this chapter is brought, shall have the power to issue temporary orders of protection for the benefit of an abused spouse or intimate partner pending final adjudication of the case, upon a showing of a likelihood of danger to the abused spouse or intimate partner.

§ 2264. Restitution

(a) IN GENERAL.—In addition to any fine or term of imprisonment provided under this chapter, and notwithstanding the terms of section 3663 of this title, the court shall order restitution to the victim of an offense under this chapter.

(b) SCOPE AND NATURE OF ORDER.—(1) The order of restitution under this section shall direct that—

(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to subsection (3); and

(B) the United States Attorney enforce the restitution order by all available and reasonable means.

(2) For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for—

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation; and

(C) lost income;

(D) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

(E) any other losses suffered by the victim as a proximate result of the offense.

(3) Restitution orders under this section are mandatory. A court may not decline to issue an order under this section because of—

(A) the economic circumstances of the defendant; or

(B) the fact that victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance.

(4)(A) Notwithstanding the terms of paragraph (3), the court may take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution is to be paid, including—

(i) the financial resources and other assets of the defendant;

(ii) projected earnings, earning capacity, and other income of the defendant; and

(iii) any financial obligations of the offender, including obligations to dependents.

(B) An order under this section may direct the defendant to make a single lump-sum payment, or partial payments at specified intervals. The order shall provide that the defendant's restitutionary obligation takes priority over any criminal fine ordered.

(C) In the event that the victim has recovered for any amount of loss through the proceeds of insurance or any other source, the order of restitution shall provide that restitution be paid to the person who provided the compensation, but that restitution shall be paid to the victim before any restitution is paid to any other provider of compensation.

(5) Any amount paid to a victim under this section shall be set off against any amount later recovered as compensatory damages by the victim from the defendant in—

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of the State.

(c) PROOF OF CLAIM.—(1) Within 60 days after conviction and, in any event, no later than 10 days prior to sentencing, the United States Attorney (or his delegee), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or his delegee) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or his delegee) shall advise the victim that the victim may file a separate affidavit.

(2) If no objection is raised by the defendant, the amounts attested to in the affidavit filed pursuant to subsection (1) shall be entered in the court's restitution order. If objection is raised, the court may require the victim or the United States Attorney (or his delegee) to submit further affidavits or other supporting documents, demonstrating the victim's losses.

(3) If the court concludes, after reviewing the supporting documentation and considering the defendant's objections, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. Any records filed, or testimony

heard, pursuant to this section, shall be in camera in the judge's chambers.

(4) In the event that the victim's losses are not ascertainable 10 days prior to sentencing as provided in subsection (c)(1), the United States Attorney (or his delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

(d) RESTITUTION AND CRIMINAL PENALTIES.—An award of restitution to the victim of an offense under this chapter shall not be a substitute for imposition of punishment under sections 2261 and 2262.

(e) DEFINITIONS.—For purposes of this section, the term "victim" includes the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court: Provided, That in no event shall the defendant be named as such representative or guardian.

§ 2265. Full faith and credit given to protection orders

(a) FULL FAITH AND CREDIT.—Any protection order issued consistent with the terms of subsection (b) by the court of one State (the issuing State) shall be accorded full faith and credit by the court of another State (the enforcing State) and enforced as if it were the order of the enforcing State.

(b) PROTECTION ORDER.—A protection order issued by a State court is consistent with the provisions of this section if—

(1) such court has jurisdiction over the parties and matter under the law of such State; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) CROSS OR COUNTER PETITION.—A protection order issued by a State court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) if a cross or counter petition has been filed, if the court did not make specific findings that each party was entitled to such an order.

§ 2266. Definitions for chapter

As used in this chapter—

(1) the term "spouse or intimate partner" includes—

(A) a present or former spouse, a person who shares a child in common with the abuser, and a person who cohabits with the abuser as a spouse; and

(B) any other person similarly situated to a spouse, other than a child, who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides;

(2) the term "protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts by one spouse against his or her spouse or intimate partner, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion of an abused spouse or intimate partner;

(3) the term "act that injures" includes any act, except those done in self-defense, that results in physical injury or sexual abuse;

(4) the term "State" includes a State of the United States, the District of Columbia, and any Indian tribe, commonwealth, territory, or possession of the United States; and

(5) the term "travel across State lines" includes any such travel except travel across State lines by an Indian tribal member when that member remained at all times on tribal lands.

FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 32. Sentence and Judgment

(a) SENTENCE.—

(1) IMPOSITION OF SENTENCE. * * * At the sentencing hearing, the court shall afford the counsel for the defendant and the attorney for the Government an opportunity to comment upon the probation officer's determination and on other matters relating to the appropriate sentence. Before imposing sentence, the court shall also—

(A) determine that the defendant and defendant's counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)(3)(B);

(B) afford counsel for the defendant an opportunity to speak on behalf of the defendant; [and]

(C) address the defendant personally and determine if the defendant wishes to make a statement to present any information in mitigation of the sentence[.]; *and*

(D) if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at the sentencing hearing and determine if the victim wishes to make a statement and to present any information in relation to the sentence.

The attorney for the Government shall have an [equivalent opportunity] *opportunity equivalent to that of the defendant's counsel* to speak to the court. Upon a motion that is jointly filed by the defendant and by the attorney for the Government, the court may hear in camera such a statement by the defendant, counsel for the defendant, *the victim,* or the attorney for the Government.

* * * * * * *

(e) PROBATION.—After conviction of an offense not punishable by death or by life imprisonment, the defendant may be placed on probation if permitted by law.

(f) DEFINITIONS.—For purposes of this rule—

(1) the term "victim" means any individual against whom an offense for which a sentence is to be imposed has been committed, but the right of allocution under subdivision (a)(1)(D) may be exercised instead by—

(A) a parent or legal guardian in case the victim is below the age of eighteen years or incompetent; or

(B) one of more family members or relatives designated by the court in case the victim is deceased or incapacitated;

if such person or persons are present at the sentencing hearing, regardless of whether the victim is present; and

(2) the term "crime of violence or sexual abuse" means a crime that involved the use or attempted or threatened use of physical force against the person or property of another, or a crime under chapter 109A of title 18, United States Code.

UNITED STATES CODE—TITLE 28

JUDICIARY AND JUDICIAL PROCEDURE

Federal Rules of Evidence

* * * * * * *

Rule 412. Rape cases; relevance of victim's past behavior

(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of an offense under chapter 109A of title 18, United States Code, reputation or opinion evidence of the past sexual behavior of an alleged victim of such offense is not admissible.

* * * * * * *

In its order, the court should consider (A) the chain of reasoning leading to its finding of relevance; and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the

potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury interferences.

* * * * * * *

(e) INTERLOCUTORY APPEAL.—Notwithstanding any other provision of law, any evidentiary rulings made pursuant to this rule are subject to interlocutory appeal by the government or by the alleged victim.

(f) RULE OF RELEVANCE AND PRIVILEGE.—If the prosecution seeks to offer evidence of prior sexual history, the provisions of this rule may be waived by the alleged victim.

Rule 412A. Evidence of victim's past behavior in other criminal cases

(a) REPUTATION AND OPINION EVIDENCE EXCLUDED.—Notwithstanding any other provision of law, in a criminal case, other than a sex offense case governed by rule 412, reputation or opinion evidence of the past sexual behavior of an alleged victim is not admissible.

(b) ADMISSIBILITY.—Notwithstanding any other provision of law, in a criminal case, other than a sex offense case governed by rule 412, evidence of an alleged victim's past sexual behavior (other than reputation and opinion evidence) may be admissible if—

(1) the evidence is admitted in accordance with the procedures specified in subdivision (c); and

(2) the probative value of the evidence outweighs the danger of unfair prejudice.

(c) PROCEDURES.—(1) If the defendant intends to offer evidence of specific instances of the alleged victim's past sexual behavior, the defendant shall make a written motion to offer such evidence not later than 15 days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If necessary, the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the alleged victim and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the defendant seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence that the defendant seeks to offer is relevant, not excluded by any other evidentiary rule, and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the

extent an order made by the court specifies the evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined. In its order, the court should consider (A) the chain of reasoning leading to its finding of relevance, and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences.

Rule 412B. Evidence of past sexual behavior in civil cases

(a) REPUTATION AND OPINION EVIDENCE EXCLUDED.—Notwithstanding any other provision of law, in a civil case in which a defendant is accused of actionable sexual misconduct, as defined in subdivision (d), reputation or opinion evidence of the plaintiff's past sexual behavior is not admissible.

(b) ADMISSIBLE EVIDENCE.—Notwithstanding any other provision of law, in a civil case in which a defendant is accused of actionable sexual misconduct, as defined in subdivision (d), evidence of a plaintiff's past sexual behavior other than reputation or opinion evidence may be admissible if—

(1) admitted in accordance with the procedures specified in subdivision (c); and

(2) the probative value of such evidence outweighs the danger of unfair prejudice.

(c) PROCEDURES.—(1) If the defendant intends to offer evidence of specific instances of the plaintiff's past sexual behavior, the defendant shall make a written motion to offer such evidence not later than 15 days before the date on which the trail in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier though the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the plaintiff.

(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If necessary, the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the plaintiff offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the defendant seeks to offer in the trail depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the court determines on the basis of the hearing described in paragraph (2), that the evidence the defendant seeks to offer is relevant, not excluded by any other evidentiary rule, and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the plaintiff may be examined or cross-examined. In its order, the court should consider (A) the chain of

reasoning leading to its finding of relevance, and (B) why the probative value of the evidence outweighs the danger of unfair prejudice given the potential of the evidence to humiliate and embarrass the alleged victim and to result in unfair or biased jury inferences.

(d) DEFINITIONS.—For purposes of this rule, a case involving a claim of actionable sexual misconduct, includes, but is not limited to, sex harassment or discrimination claims brought pursuant to title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000(e)) and gender bias claims brought pursuant to title III of the Violence Against Women Act of 1991.

Rule 413. Evidence of victim's clothing as inciting violence

Notwithstanding any other provision of law, in a criminal case in which a person is accused of an offense under chapter 109A of title 18, United States Code, evidence of an alleged victim's clothing is not admissible to show that the alleged victim incited or invited the offense charged.

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UNITED STATES CODE—TITLE 42

PUBLIC HEALTH AND WELFARE

CHAPTER 21—CIVIL RIGHTS

* * * * * * *

§ 1988. Proceedings in vindication of civil rights; attorney's fees

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, **[**or**]** title VI of the Civil Rights Act of 1964, *or title III of the Violence Against Women Act of 1991,* the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

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TITLE IX—HEALTH SERVICES AND FACILITIES

Subtitle A—Block Grants

PREVENTIVE HEALTH, HEALTH SERVICES, AND PRIMARY CARE HEALTH BLOCK GRANTS

SEC. 901. Effective October 1, 1981, the Public Health Service Act is amended by adding at the end the following new title:

"TITLE XIX—BLOCK GRANTS

"PART A—PREVENTIVE HEALTH AND HEALTH SERVICES BLOCK GRANT

* * * * * * *

§ 1910A. Use of allotments for rape prevention education

(a) Notwithstanding the terms of section 1904(a)(1) of this title, amounts transferred by the State for use under this part may be used for rape prevention and education programs conducted by rape crisis centers of similar nongovernmental nonprofit entities, which programs may include—

(1) educational seminars;

(2) the operation of hotlines;

(3) training programs for professionals;

(4) the preparation of informational materials; and

(5) other efforts to increase awareness of the facts about, or to help prevent, sexual assault.

(b) States providing grant monies must assure that at least 15 percent of the monies are devoted to education programs targeted for middle school, junior high school, and high school students.

(c) There are authorized to be appropriated under this section for each fiscal year 1992, 1993, and 1994, $65,000,000 to carry out the purposes of this section.

(d) Funds authorized under this section may only be used for providing rape prevention and education programs.

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

(f) States shall be allotted funds under this section pursuant to the terms of sections 1902 and 1903, and subject to the conditions provided in this section and sections 1904 through 1909.

* * * * * * *

TITLE III—FAMILY VIOLENCE PREVENTION AND SERVICES

SHORT TITLE

SEC. 301. This title may be cited as the "Family Violence Prevention and Services Act".

DECLARATION OF PURPOSE

SEC. 302. It is the purpose of this title to—

(1) [demonstrate the effectiveness of assisting] *assist* States in efforts [to prevent] *to increase public awareness about and prevent* family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents; and

(2) provide for technical assistance and training relating to family violence programs to States, local public agencies (including law enforcement agencies), nonprofit organizations, and other persons seeking such assistance.

STATE DEMONSTRATION GRANTS AUTHORIZED

SEC. 303. (a)(1) In order to assist in supporting the establishment, maintenance, and expansion of programs and projects [to prevent] *to increase public awareness about and prevent* incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents, the Secretary is authorized, in accordance with provisions of this title, to make demonstration grants to States.

(2) No demonstration grant may be made under this subsection unless the chief executive officer of the State seeking such grant submits an application to the Secretary at such time and in such manner as the Secretary may reasonably require. Each such application shall—

(A) * * *

(B) provide, with respect to funds provided to a State under this subsection for any fiscal year, that—

(i) not more than 5 percent of such funds will be used for State administrative costs; and

(ii) in the distribution of funds by the State under this subsection, the State will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by nonprofit private organizations, particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, [alcohol

and drug abuse treatment,] and self-help services to abusers and victims;

* * * * * * *

(3) The Secretary shall approve any application that meets the requirements of this subsection, and the Secretary shall not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove and after opportunity for correction of any deficiencies.

(b)(1) The Secretary [is authorized to make] *from sums appropriated shall make no less than 10 percent available for* demonstration grants to Indian tribes and tribal organizations for projects designed to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

(2) No demonstration grant may be made under this subsection unless an application is made to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary deems essential to carry out the purposes and provisions of this title. Such application shall comply, as applicable, with the provisions of this title. Such application shall comply, as applicable, with the provisions of clauses (C) (with respect only to involving knowledgeable individuals and organizations), (D), and (E) of subsection (a)(2).

(c) No demonstration grant may be made under this section in any fiscal year to any single entity (other than to a State) for an amount in excess of [$50,000 and the total amount of such grants to any such single entity may not exceed $150,000.] *$75,000.*

(d) No funds provided through demonstration grants made under this section may be used as direct payment to any victim of family violence or to any dependent of such victim.

(e) No income eligibility standard may be imposed upon individuals with respect to eligibility for assistance or services supported with funds appropriated to carry out this title.

(f) [No demonstration grant may be made under this section to any entity other than a State unless the entity provides for the following local share as a proportion of the total amount of funds provided under this title to the project involved: 35 percent in the first year such project receives a grant under this title, 55 percent in the second such year, and 65 percent in the third such year.] *No grant may be made under this section to an entity other than a State or Indian tribe unless the entity provides 35 percent of the funding of the program or project funded by the grant.* Except in the case of a public entity, not less than 50 percent of the local share of such agency or organization shall be raised from private sources. The local share required under this subsection may be in cash or in-kind. The local share may not include any Federal funds provided under any authority other than this title.

(g) The Secretary shall assure that [not less than 60 percent] *not less than 75 percent* of the funds distributed under subsection (a) or (b) shall be distributed to entities for the purpose of providing immediate shelter and related assistance to victims of family violence and their dependents.

ALLOTMENT OF FUNDS

SEC. 304. (a) From the sums appropriated under section 310 for grants to States for any fiscal year, each State shall be allotted for payment in a grant authorized under section 303(a) an amount which bears the same ratio to such sums as the population of such State bears to the population of all States, except that—

(1) each State shall be allotted not less that whichever is the greater of the following amounts: one-half of 1 percent of the amounts available for grants under section 303(a) for the fiscal year for which the allotment is made, or [$50,000] *$500,000*; and

* * * * * * *

SEC. 308. (a) The Secretary shall operate a national information and research clearinghouse on the prevention of family violence (including the abuse of elderly persons) in order to—

(1) collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance to victims of family violence and their dependents; and

(2) provide information about alternative sources of assistance available with respect to the prevention of incidents of family violence and the provision of immediate shelter and related assistance to victims of family violence and their dependents.

(b) The Secretary shall ensure that the activities of the national information and research clearinghouse operated under subsection (a) are coordinated with the information clearinghouse maintained by the National Center on Child Abuse and Neglect under section 2 of the Child Abuse Prevention and Treatment Act.

SEC. 308A. TECHNICAL ASSISTANCE CENTERS.

(a) PURPOSE.—The purpose of this section is to provide training and technical assistance to State, Indian tribal, and local domestic violence programs and to other professionals who provide services to victims of domestic violence. From the sums authorized under this title, the Secretary shall provide grants to, or contract with, private nonprofit organizations, for the establishment and maintenance of one national and six special-issue resource centers serving defined geographic areas. One national resource center shall offer resource, policy, and/or training assistance to Federal, State, Indian tribal, and local government agencies on issues pertaining to domestic violence and serve a coordinating and resource-sharing function among domestic violence service providers, and maintain a central resource library. The special issue resource centers shall provide information, training and technical assistance to State, tribal and local domestic violence service providers. In addition, each national center shall specialize in one of the following areas of domestic violence service, prevention or law:

(1) criminal justice response to domestic violence, including court-mandated abuser treatment;

(2) child custody issues in domestic violence cases;

(3) use of the self-defense plea by domestic violence victims;

(4) health care response and access to health care resources for domestic violence victims;

(5) victims' access to, and quality of, effective legal assistance, including civil litigation; and

(6) the response of child protective service agencies to battered mothers of abused children.

(b) ELIGIBILITY.—Eligible grantees are private non-profit organizations that—

(1) focus primarily on domestic violence;

(2) provide documentation to the Secretary demonstrating a minimum of three years experience with issues of domestic violence, particularly in the specific area for which it is applying;

(3) include on its advisory boards representatives from domestic violence programs who are geographically and culturally diverse; and

(4) demonstrate strong support from domestic violence advocates for their designation as the special-issue resource center.

(c) REPORTING.—Each grantee receiving funds under this section shall submit a report to the Secretary evaluating the effectiveness of the plan described and containing such additional information as the Secretary may prescribe.

(d) REGULATIONS.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section.

DEFINITIONS

SEC. 309. As used in this title:

(1) The term "family violence" means any act or threatened act of violence, including any forceful detention of an individual, which—

* * * * * * *

[(5) The term "related assistance"—

[(A) includes counseling and self-help services to abusers, victims, and dependents in family violence situations (which shall include counseling of all family members to the extent feasible) and referrals for appropriate health-care services (including alcohol and drug abuse treatment), and

[(B) may include food, clothing, child care, transportation, and emergency services (but not reimbursement for any health-care services) for victims of family violence and their dependents.]

(5) The term "related assistance" includes any, but does not require all, of the following—

(A) food, shelter, medical services, and counseling with respect to family violence, including counseling by peers individually or in groups;

(B) transportation, legal assistance, referrals for appropriate health-care services (including alcohol and drug abuse treatment), and technical assistance with respect to obtaining financial assistance under Federal and State programs;

(C) comprehensive counseling and self-help services to abusers, preventive health (including nutrition, exercise, and prevention of substance abuse), educational services and employment training; and

(D) child care services for children who are victims of family violence or the dependents of such victims.

[AUTHORIZATION OF APPROPRIATIONS

[SEC. 310. (a) There are authorized to be appropriated to carry out the provisions of this title $11,000,000 for fiscal year 1985 and $26,000,000 for each of the fiscal years 1986 and 1987.

[(b) Of the sums appropriated under subsection (a) for any fiscal year, not less than 85 percent shall be used by the Secretary for making grants under section 303.]

SEC. 310. AUTHORIZATION OF APPROPRIATIONS.

(a) There are authorized to be appropriated to carry out the provisions of this title, $85,000,000 for fiscal year 1992, $100,000,000, for fiscal year 1993, and $125,000,000 for fiscal year 1994.

(b) Of the sums authorized to be appropriated under subsection (a) of this section for any fiscal year, not less than 80 percent shall be used by the Secretary for making grants under section 303.

(c) Of the sums authorized to be appropriated under subsection (a) of this section for any fiscal year, not more than 5 percent shall be used by the Secretary for making grants under section 314.

(d) Of the sums authorized to be appropriated under subsection (a) of this section for any fiscal year, not less than 5 percent shall be used by the Secretary for making grants under section 308A.

[LAW ENFORCEMENT TRAINING AND TECHNICAL ASSISTANCE GRANTS AND CONTRACTS]

[SEC. 311. Repealed.]

SEC. 312. ENCOURAGING ARREST POLICIES.

(a) PURPOSE.—To encourage States, Indian tribes and localities to treat spousal violence as a serious violation of criminal law, the Secretary is authorized to make grants to eligible States, Indian tribes, municipalities, or local government entities for the following purposes:

(1) to implement pro-arrest programs and policies in police departments and to improve tracking of cases involving spousal abuse;

(2) to centralize and coordinate police enforcement, prosecution, or judicial responsibility for, spousal abuse cases in one group or unit of police officers, prosecutors, or judges;

(3) to educate judges in criminal and other courts about spousal abuse and to improve judicial handling of such cases.

(b) ELIGIBILITY.—(1) Eligible grantees are those States, Indian tribes, municipalities or other local government entities that—

(A) demonstrate, through arrest and conviction statistics, that their laws or policies have been effective in significantly increasing the number of arrests made of spouse abusers; and

(B) certify that their laws or official policies—

(i) mandate arrest of spouse abusers based on probable cause that violence has been committed or mandate arrest of spouses violating the terms of a valid and outstanding protection order; or

(ii) permit warrantless misdemeanor arrests of spouse abusers and encourage the use of that authority;

(C) demonstrate that their laws, policies, practices and training programs discourage "dual" arrests of abused and abuser and the increase in arrest rates demonstrated pursuant to paragraph (1)(A) is not the result of increased dual arrests; and

(D) certify that their laws, policies, and practices prohibit issuance of mutual protection orders in cases where only one spouse has sought a protective order, and require findings of mutual aggression to issue mutual protective orders in cases where both parties file a claim.

(2) For purposes of this section, the term "protection order" includes any injunction issued for the purpose of preventing violent or threatening acts of spouse abuse, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

(3) For purposes of this section, the term "spousal or spouse abuse" includes felony or misdemeanor offenses committed by a current or former spouse of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabited with the victim as a spouse, or any other person protected under the domestic or family violence laws of the jurisdiction receiving grant monies.

(4) The eligibility requirements provided in this section shall take effect one year after the date of enactment of this section.

(c) DELEGATION AND AUTHORIZATION.—The Secretary shall delegate to the Attorney General of the United States the Secretary's responsibilities for carrying out this section to the Attorney General. There are authorized to be appropriated not in excess of $25,000,000 for each fiscal year to be used for the purpose of making grants under this section.

(d) APPLICATION.—An eligible grantee shall submit an application to the Secretary. Such application shall—

(1) contain a certification by the chief executive officer of the State, Indian tribes, municipality, or local government entity that the conditions of subsection (b) are met;

(2) describe the entity's plans to further the purposes listed in subsection (a);

(3) identify the agency or office or groups of agencies or offices responsible for carrying out the program; and

(4) identify and include documentation showing the nonprofit nongovernmental victim services programs that will be consulted in developing, and implementing, the program.

(e) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to a grantee that—

(1) does not currently provide for centralized handling of cases involving spousal or family violence in any one of the areas listed in this subsection—police, prosecutors, and courts; and

(2) demonstrates a commitment to strong enforcement of laws, and prosecution of cases, involving spousal or family violence.

(f) REPORTING.—Each grantee receiving funds under this section shall submit a report to the Secretary evaluating the effectiveness of the plan described in subsection (d)(2) and containing such additional information as the Secretary may prescribe.

(g) REGULATIONS.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section. No later than 120 days after such date, the Secretary shall publish final regulations implementing this section.

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GRANTS FOR PUBLIC INFORMATION CAMPAIGNS

SEC. 314. (a) The Secretary may make grants to public or private nonprofit entities to provide public information campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.

(b) No grant, contract, or cooperative agreement shall be made or entered into under this section unless an application that meets the requirements of subsection (c) has been approved by the Secretary.

(c) An application submitted under subsection (b) shall—

(1) provide such agreements, assurances, and information, be in such form and be submitted in such manner as the Secretary shall prescribe through notice in the Federal Register, including a description of how the proposed public information campaign will target the population at risk, including pregnant women;

(2) include a complete description of the plan of the application for the development of a public information campaign;

(3) identify the specific audiences that will be educated, including communities and groups with the highest prevalence of domestic violence;

(4) identify the media to be used in the campaign and the geographic distribution of the campaign;

(5) describe plans to test market a development plan with a relevant population group and in a relevant geographic area and give assurance that effectiveness criteria will be implemented prior to the completion of the final plan that will include an evaluation component to measure the overall effectiveness of the campaign;

(6) describe the kind, amount, distribution, and timing of informational messages and such other information as the Secretary may require, with assurances that media organizations and other groups with which such messages are placed will not lower the current frequency of public service announcements; and

(7) contain such other information as the Secretary may require.

(d) A grant, contract, or agreement made or entered into under this section shall be used for the development of a public information campaign that may include public service announcements, paid educational messages for print media, public transit advertising, electronic broadcast media, and any other mode of conveying information that the Secretary determines to be appropriate.

(e) The criteria for awarding grants shall ensure that an applicant—

(1) will conduct activities that educate communities and groups at greatest risk;

(2) has a record of high quality campaigns of a comparable type; and

(3) has a record of high quality campaigns that educate the population groups identified as most at risk.

MODEL STATE LEADERSHIP GRANTS FOR DOMESTIC VIOLENCE INTERVENTION

SEC. 315. (a) The Secretary, in cooperation with the Attorney General, shall award grants to not less than 10 States to assist in becoming model demonstration States and in meeting the costs of improving State leadership concerning activities that will—

(1) increase the number of prosecutions for domestic violence crimes;

(2) encourage the reporting of incidences of domestic violence;

(3) facilitate "arrests and aggressive" prosecution policies; and

(4) provides court advocacy for victims of domestic violence.

(b) To be designated as a model State under subsection (a), a State shall have in effect—

(1) a law that requires mandatory arrest of a person that police have probable cause to believe has committed an act of domestic violence or probable cause to believe has violated an outstanding civil protection order;

(2) a law or policy that discourages dual arrests;

(3) statewide prosecution policies that—

(A) authorize and encourage prosecutors to pursue cases where a criminal case can be proved, including proceeding without the active involvement of the victim if necessary; and

(B) implement model projects that include either—

(i) a "no-drop" prosecution policy; or

(ii) a vertical prosecution policy; and

(C) limit diversion to extraordinary cases, and then only after an admission before a judicial officer has been entered;

(4) statewise laws, policies, or guidelines for judges that—

(A) prohibit the issuance of mutual protective orders in cases where only one spouse has sought a protective order and require findings of mutual aggression to issue mutual protective orders in cases where both parties file a claim;

(B) require that any history of child abuse be considered detrimental to the child and discourage custody or joint custody orders by spouse abusers; and

(C) encourage the understanding of domestic violence as a serious criminal offense and not a trivial dispute;

(5) develop and disseminate methods to improve the criminal justice system's response to domestic violence to make existing remedies as easily available as possible to victims of domestic violence, including reducing delay, eliminating court fees, and providing easily understandable court forms.

(c)(1) In addition to the funds authorized to be appropriated under section 310, there are authorized to be appropriated to make grants under this section $25,000,000 for fiscal year 1992 and such sums as may be necessary for each of the fiscal years 1993 and 1994.

(2) Funds shall be distriuted under this section so that no State shall receive more than $2,500,000 in each fiscal year under this section.

(3) The Secretary shall delegate to the Attorney General the Secretary's responsibilities for carrying out this section and shall transfer to the Attorney General the funds appropriated under this section for the purpose of making grants under this section.

SEC. 316. GRANTS FOR STATE DOMESTIC VIOLENCE COALITIONS.

(a) IN GENERAL.—The Secretary shall provide grants to States to fund eligible State domestic violence coalitions to enable such coalitions to conduct the activities described in subsection (c).

(b) ALLOTMENT OF FUNDS.—

(1) AMOUNT.—In determining the amount of a grant to which a State is entitled under this section for a fiscal year, the Secretary shall divide the amount appropriated for each such fiscal year under subsection (f) equally among the States.

(2) STATES.—For purposes of this section, the term "States" means—

(A) each of the 50 States;

(B) the District of Columbia; and

(C) Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands which together shall be considered as the equivalent of one State and receive not less than 1.5 percent of the amounts available for allotment under paragraph (1).

(c) ELIGIBILITY.—To be eligible to receive funds from a State under a grant received under this section, a State domestic violence coalition shall be a nonprofit statewide coalition whose—

(1) membership includes a majority of programs for victims of domestic violence in the State;

(2) whose membership is representative of the programs described in paragraph (1); and

(3) whose purpose is to provide services, community education, and technical assistance to such programs to establish and maintain shelter and related services for victims of domestic violence and their children.

(d) ACTIVITIES.—Funds received by a State domestic violence coalition under this section shall be utilized to further the purposes of domestic violence intervention and prevention through activities including—

(1) working with the judicial and law enforcement agencies to encourage appropriate responses to domestic violence cases and examine issues that include—

(A) the inappropriateness of mutual protection orders;

(B) the prohibition of mediation where there is domestic violence;

(C) the use of mandatory arrests of accused offenders;

(D) the discouraging of dual arrests;

(E) the adoption of aggressive and vertical prosecution policies and procedures;

(F) the use of mandatory requirements for presentence investigations;

(G) the length of time taken to prosecute cases or reach plea agreements;

(H) the use of plea agreements;

(I) the testifying of victims at post-conviction sentencing and release hearings;

(J) the consistency of sentencing in such cases and as compared with other violent crimes;

(K) the restitution of victims;

(L) the provision of training and technical assistance to law enforcement and court officials and other professionals;

(M) the reporting practices of, and significance to be accorded to, prior convictions (both felony and misdemeanor) and protection orders;

(N) the interstate extradition in cases of domestic violence crimes;

(O) statewide and regional planning; and

(P) such other matters as the Secretary and the coalitions believe merit investigations;

(2) working with family law judges, child protective services agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases as well as cases where domestic violence and child abuse are both present, including—

(A) the inappropriations of mutual protection orders;

(B) the prohibition of mediation where there is domestic violence;

(C) the inappropriate use of marital or conjoint counseling in domestic violence cases;

(D) the provision of training and technical assistance to family law judges and court personnel;

(E) the presumption of granting custody to domestic violence victims;

(F) the issuance of comprehensive protection orders to grant fullest protections possible to victim of domestic violence, including temporary support and maintenance;

(G) the ability of the child protective service to develop supportive responses to enable victims to protect their children;

(H) supervised visitations where the child and abused victim are not endangered; and

(I) permitting a domestic violence victim to remove children from State when child or parent safety is at risk; and

(3) conducting public education campaigns regarding domestic violence through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other vehicles for information that shall inform the public concerning domestic violence.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $15,000,000 for each fiscal year to carry out this section.

(f) REPORTING.—Each State domestic violence coalition receiving funds under this section shall submit a report to the Secretary describing the coordination, training, and technical assistance and public education services performed using such funds and evaluating the effectiveness of such services.

(g) REGULATIONS.—Not later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after such date of enactment, the Secretary shall publish final regulations implementing this section.

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100 Statute 1560

HIGHER EDUCATION AMENDMENTS OF 1986

(Public Law 99-498)

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TITLE X—IMPROVEMENT OF POSTSECONDARY EDUCATION

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"PART C—INNOVATIVE PROJECTS FOR COMMUNITY SERVICES AND STUDENT FINANCIAL INDEPENDENCE

"STATEMENT OF PURPOSE

"SEC. 1061. It is the purpose of this part to support innovative projects in order to determine the feasibility of encouraging student participation in community service projects in exchange for educational services or financial assistance and thereby reduce the debt acquired by students in the course of completing postsecondary educational programs.

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PART D—GRANTS FOR CAMPUS RAPE EDUCATION

SEC. 1071. GRANTS FOR CAMPUS RAPE EDUCATION.

(a) IN GENERAL.—(1) The Secretary of Education is authorized to make grants to or enter into contracts with institutions of higher

education for rape education and prevention programs under this section.

(2) The Secretary shall make financial assistance available on a competitive basis under this section. An institution of higher education or consortium of such institutions which desires to receive a grant or enter into a contract under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require in accordance with regulations.

(3) The Secretary shall make every effort to ensure the equitable participation of private and public institutions of higher education and to ensure the equitable geographic participation of such institutions. In the award of grants and contracts under this section, the Secretary shall give priority to institutions who show the greatest need for the sums requested.

(b) GENERAL RAPE PREVENTION AND EDUCATION GRANTS.—Grants under this section shall be used to educate and provide support services to student victims of rape or sexual assault. Grants may be used for the following purposes:

(1) to provide training for campus security and college personnel, including campus disciplinary or judicial boards, that address the issues of rape, sexual assault, and other gender-motivated crimes;

(2) to develop, disseminate, or implement campus security and student disciplinary policies to prevent and discipline rape, sexual assault and other gender-motivated crimes;

(3) to develop, enlarge or strengthen support services programs including medical or psychological counseling to assist victims' recovery from rape, sexual assault, and other gender-motivated crimes;

(4) to create, disseminate, or otherwise provide assistance and information about victims' options on and off campus to bring disciplinary or other legal action; and

(5) to implement, operate, or improve rape education and prevention programs, including programs making use of peer-to-peer education.

(c) MODEL GRANTS.—Not less than 25 percent of the funds authorized under this section shall be available for grants for model demonstration programs to be coordinated with local rape crisis centers for the development and implementation of quality rape prevention and education curricula and for local programs to provide services to student rape victims.

(d) ELIGIBILITY.—No institution of higher education or consortium of such institutions shall be eligible for a grant under this section unless—

(1) its student code of conduct, or other written policy governing student behavior, explicitly prohibits not only rape but all forms of sexual assault; and

(2) it has in effect and implements a written policy requiring the disclosure to the victim of any sexual assault the outcome of any investigation by campus police or campus disciplinary proceedings brought pursuant to the victim's complaint against the alleged perpetrator of the sexual assault: Provided, That noth-

ing in this section shall be interpreted to authorize disclosure to any person other than the victim.

(e) APPLICATIONS.—(1) In order to be eligible to receive a grant under this section for any fiscal year, an institution of higher education, or consortium of such institutions, shall submit an application to the Secretary at such time and in such manner as the Secretary shall prescribe.

(2) Each such application shall—

(A) set forth the activities and programs to be carried out with funds paid under this part;

(B) contain an estimate of the cost for the establishment and operation of such programs;

(C) explain how the program intends to address the issue of acquaintance rape;

(D) provide assurances that the Federal funds made available under this section shall be used to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purpose described in this part, and in no case to supplant such funds; and

(E) include such other information and assurances as the Secretary reasonably determines to be necessary.

(f) GRANTEE REPORTING.—Upon completion of the grant period under this section, the grantee institution or consortium of institutions shall file a performance report with the Secretary explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this section. The Secretary shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

(g) DEFINITIONS.—(1) Except as otherwise provided, the terms used in this part shall have the meaning provided under section 2981 of this title.

(2) For purposes of this subchapter, the following terms have the following meanings:

(A) The term "rape education and prevention" includes programs that provide educational seminars, peer-to-peer counseling, operation of hotlines, self-defense courses, the preparation of informational materials, and any other effort to increase campus awareness of the facts about, or to help prevent, sexual assault.

(B) The term "Secretary" means the Secretary of Education.

(h) GENERAL TERMS AND CONDITIONS.—(1) REGULATIONS.—No later than 45 days after the date of enactment of this section, the Secretary shall publish proposed regulations implementing this section. No later than 120 days after such date, the Secretary shall publish final regulations implementing this section.

(2) No later than 180 days after the end of each fiscal year for which grants are made under this section, the Secretary shall submit to the committees of the House of Representatives and the Senate responsible for issues relating to higher education and to crime, a report that includes—

(A) the amount of grants made under this section;

(B) a summary of the purposes for which those grants were provided and an evaluation of their progress; and

(C) a copy of each grantee report filed pursuant to subsection (f) of this section.

(3) For the purpose of carrying out this subchapter, there are authorized to be appropriated $20,000,000 for the fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993, 1994, and 1995.

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101 Statute 237

THE SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT OF 1987

(Public Law 100-17)

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[CRIME PREVENTION AND SECURITY

[SEC. 24. From funds made available pursuant to section 21 of this Act, the Secretary is authorized to make capital grants to public mass transit systems for crime prevention and security. None of the provisions of this Act may be construed to prohibit the financing of projects under this section where law enforcement responsibilities are vested in a local public body other than the grant applicant.]

GRANTS TO PREVENT CRIME IN PUBLIC TRANSPORTATION

SEC. 24. (a) GENERAL PURPOSE.—From funds authorized under section 21, and not to exceed $10,000,000, the Secretary shall make capital grants for the prevention of crime and to increase security in existing and future public transportation systems. None of the provisions of this Act may be construed to prohibit the financing of projects under this section where law enforcement responsibilities are vested in a local public body other than the grant applicant.

(b) GRANTS FOR LIGHTING, CAMERA SURVEILLANCE, AND SECURITY PHONES.—

(1) From the sums authorized for expenditure under this section for crime prevention, the Secretary is authorized to make grants and loans to States and local public bodies or agencies for the purpose of increasing the safety of public transportation by—

(A) increasing lighting within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

(B) increasing camera surveillance of areas within and adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages;

(C) providing emergency phone lines to contact law enforcement or security personnel in areas within or adjacent to public transportation systems, including bus stops, subway stations, parking lots, or garages; or

(D) any other project intended to increase the security and safety of existing or planned public transportation systems.

(2) From the sums authorized under this section, at least 75 percent shall be expended on projects of the type described in subsection (b)(1) (A) and (B).

(c) REPORTING.—All grants under this section are contingent upon the filing of a report with the Secretary and the Department of Justice, Office of Victims of Crime, showing crime rates in or adjacent to public transportation before, and for a 1-year period after, the capital improvement. Statistics shall be broken down by type of crime sex, race, and relationship of victim to the offender.

(d) INCREASED FEDERAL SHARE.—Notwithstanding any other provision of this Act, the Federal share under this section for each capital improvement project which enhances the safety and security of public transportation systems and which is not required by law (including any other provision of this chapter) shall be 90 percent of the net project cost of such project.

(e) SPECIAL GRANTS FOR PROJECTS TO STUDY INCREASING SECURITY FOR WOMEN.—From the sums authorized under this section, the Secretary shall provide grants and loans for the purpose of studying ways to reduce violent crimes against women in public transit through better design or operation of public transit systems.

(f) GENERAL REQUIREMENTS.—All grants or loans provided under this section shall be subject to all the terms, conditions, requirements, and provisions applicable to grants and loans made under section 2(a).

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ANTI-DRUG ABUSE ACT OF 1988

(Public Law 100-690)

PART M—REGIONAL INFORMATION SHARING SYSTEMS GRANTS

SEC. 1301. REGIONAL INFORMATION SHARING SYSTEMS GRANTS.

(a) * * *

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(b) TECHNICAL AMENDMENTS.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking out the items relating to part N and section 1401, and inserting in lieu thereof the following new items:

PART M—REGIONAL INFORMATION SHARING SYSTEMS GRANTS

SEC. 1301. Regional Information Sharing Systems Grants.

PART N—GRANTS TO COMBAT VIOLENT CRIMES AGAINST WOMEN

SEC. 1401. PURPOSE OF THE PROGRAM AND GRANTS.

(a) GENERAL PROGRAM PURPOSE.—The purpose of this part is to assist States, Indian tribes, cities, and other localities to develop effective law enforcement and prosecution strategies to combat violent

crimes against women and, in particular, to focus efforts on those areas with the highest rates of violent crime against women.

(b) PURPOSES FOR WHICH GRANTS MAY BE USED.—Grants under this part shall provide additional personnel, training, technical assistance, data collection and other equipment for the more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women and specifically, for the purposes of—

(1) training law enforcement officers and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of sexual assault and domestic violence;

(2) developing training, or expanding units of law enforcement officers and prosecutors specifically targeting violent crimes against women, including the crimes of sexual assault and domestic violence;

(3) developing and implementing police and prosecution policies, protocols, or orders specifically devoted to identifying and responding to violent crimes against women, including the crimes of sexual assault and domestic violence;

(4) developing, installing, or expanding data collection systems, including computerized systems, linking police, prosecutors, and courts for the purpose of identifying and tracking arrests, prosecutions, and convictions for the crimes of sexual assault and domestic violence; and

(5) developing, enlarging or strengthening victim services programs, including sexual assault and domestic violence programs, to increase reporting and reduce attrition rates for cases involving violent crimes against women, including the crimes of sexual assault and domestic violence.

Subpart 1—High Intensity Crime Area Grants

SEC. 1411. HIGH INTENSITY GRANTS.

(a) IN GENERAL.—The Director of the Bureau of Justice Assistance (hereafter in this part referred to as the "Director") shall make grants to areas of "high intensity crime" against women.

(b) DEFINITION.—For purposes of this part, a "high intensity crime area" means an area with one of the 40 highest rates of violent crime against women, as determined by the Bureau of Justice Statistics pursuant to section 1412.

SEC. 1412. HIGH INTENSITY GRANT APPLICATION.

(a) COMPUTATION.—Within 45 days after the date of enactment of this part, the Bureau of Justice Statistics shall compile a list of 40 areas with the highest rates of violent crime against women based on the combined female victimization rate per population of assault, sexual assault (including, but not limited to, rape), murder, robbery, and kidnapping.

(b) USE OF DATA.—In calculating the combined female victimization rate required by subsection (a), the Bureau of Justice Statistics may rely on—

(1) existing data collected by States, municipalities, Indian reservations or statistical metropolitan areas showing the

number of police reports of the crimes listed in subsection (a); and

(2) existing data collected by the Federal Bureau of Investigation, including data from those governmental entities already complying with the National Incident Based Reporting System, showing the number of police reports of crimes listed in subsection (a).

(c) PUBLICATION.—After compiling the list set forth in subsection (a), the Bureau of Justice Statistics shall convey it to the Director who shall publish it in the Federal Register.

(d) QUALIFICATION.—Upon satisfying the terms of subsection (e), any high intensity crime area shall be qualified for a grant under this subpart upon application by the chief executive officer of the governmental entities responsible for law enforcement and prosecution of criminal offenses within the area of certification that—

(1) the funds shall be used to reduce the rate of violent crimes against women and for at least three of the purposes outlined in section 1401(b);

(2) grantees and subgrantees shall develop a plan for implementation, and otherwise consult and coordinate program grants, with nongovernmental nonprofit victim services programs; and

(3) at least 25 percent of the amount granted shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

(e) APPLICATION REQUIREMENTS.—The application requirements provided in section 513 of this title shall apply to grants made under this subpart. In addition, each application must provide the certifications required by subsection (d) including documentation from nonprofit nongovernmental victim services programs showing their participation in developing the plan required by subsection (d)(2). Applications shall—

(1) include documentation from the prosecution, law enforcement, and victim services programs to be assisted showing—

(A) need for the grant funds;

(B) intended use of the grant funds; and

(C) expected results from the use of grant funds; and

(2) proof of compliance with the requirements for the payment of forensic medical exams provided in section 162 of this title.

(f) DISBURSEMENT.—

(1) No later than 60 days after the receipt of an application under this subpart, the Director shall either disburse the appropriate sums provided for under this subpart or shall inform the applicant why the application does not conform to the terms of section 513 of this title or to the requirements of this section.

(2) In disbursing monies under this subpart, the Director shall ensure, to the extent practicable, that grantees—

(A) equitably distribute funds on a geographic basis;

(B) determine the amount of subgrants based on the population to be served; and

(C) give priority to areas with the greatest showing of need.

(g) GRANTEE REPORTING.—Upon completion of the grant period under this subpart, the grantee shall file a performance report with

the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this part. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

Subpart 2—Other Grants to States to Combat Violent Crimes Against Women

SEC. 1421. GENERAL GRANTS TO STATES.

(a) GENERAL GRANTS.—The Director is authorized to make grants to States, for use by States, units of local government in the States, and nonprofit nongovernmental victim services programs in the States, for the purposes outlined in section 1401(b), and reduce the rate of violent crimes against women.

(b) AMOUNTS.—From amounts appropriated, the amount of grants under subsection (a) shall be—

(1) $500,000 to each State; and

(2) that portion of the then remaining available money to each State that results from a distribution among the States on the basis of each State's population in relation to the population of all States.

(c) QUALIFICATION.—Upon satisfying the terms of subsection (d), any State shall be qualified for funds provided under this part upon certification that—

(1) the funds shall be used to reduce the rate of violent crimes against women and for at least three of the purposes outlined in section 1401(b);

(2) grantees and subgrantees shall develop a plan for implementation, and otherwise consult and coordinate, with nonprofit nongovernmental victim services programs, including sexual assault and domestic violence victim services programs;

(3) at least 25 percent of the amount granted shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

(d) APPLICATION REQUIREMENTS.—The application requirements provided in section 513 of this title shall apply to grants made under this subpart. In addition, each application shall include the certifications of qualification required by subsection (c) including documentation from nonprofit nongovernmental victim services programs showing their participation in developing the plan required by subsection (c)(2). Applications shall—

(1) include documentation from the prosecution, law enforcement, and victim services programs to be assisted showing—

(A) need for the grant funds;

(B) intended use of the grant funds; and

(C) expected results from the use of grant funds; and

(2) proof of compliance with the requirements for the payment of forensic medical exams provided in section 162 of this title.

(e) DISBURSEMENT.—(1) No later than 60 days after the receipt of an application under this subpart, the Director shall either disburse the appropriate sums provided for under this subpart or shall inform the applicant why the application does not conform to the

terms of section 513 of this title or to the requirements of this section.

(2) In disbursing monies under this subpart, the Director shall issue regulations to ensure that States will—

(A) equitably distribute monies on a geographic basis including nonurban and rural areas, and giving priority to localities with populations under 100,000;

(B) determine the amount of subgrants based on the population and geographic area to be served; and

(C) give priority to areas with the greatest showing of need, as demonstrated by comparing population and geographic areas to be served to the availability of existing sexual assault and domestic violence services.

(f) GRANTEE REPORTING.—Upon completion of the grant period under this subpart, the State grantee shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this subpart. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

SEC. 1422. GENERAL GRANTS TO TRIBES.

(a) GENERAL GRANTS.—The Director is authorized to make grants to Indian tribes, for use by tribes, tribal organizations or nonprofit nongovernmental victim services programs on Indian reservations, for the purposes outlined in section 1401(b), and to reduce the rate of violent crimes against women in Indian country.

(b) AMOUNTS.—Form amounts appropriated, the amount of grants under subsection (a) shall be awarded on a competitive basis to tribes with minimum grants of $35,000 and maximum grants of $300,000.

(c) QUALIFICATION.—Upon satisfying the terms of subsection (d), any tribe shall be qualified for funds provided under this part upon certification that—

(1) the funds shall be used to reduce the rate of violent crimes against women and for at least 3 of the purposes outlined in section 1401(b); and

(2) at least 25 percent of the grant of the grant funds shall be allocated to each of the following three areas: prosecution, law enforcement, and victim services.

(d) APPLICATION REQUIREMENTS.—(1) Applications shall be made directly to the Director and shall contain a description of the tribes' law enforcement responsibilities for the Indian country described in the application and a description of the tribes' system of courts, including whether the tribal government operates courts of Indian offenses as defined in 25 U.S.C. 1301 or CFR courts under 25 CFR 11 et seq.

(2) Applications shall be in such form as the Director may prescribe and shall specify the nature of the program proposed by the applicant tribe, the data and information on which the program is based, and the extent to which the program plans to use or incorporate existing services available in the Indian country where the grant will be used.

(3) The term of any grant shall be for a minimum of 3 years.

(e) GRANTEE REPORTING.—At the end of the first 12 months of the grant period and at the end of each year thereafter, the Indian tribal granted shall file a performance report with the Director explaining the activities carried out together with an assessment of the effectiveness of those activities in achieving the purposes of this subpart. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report.

(f) DEFINITIONS.—(1) the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

(2) The term "Indian Country" has the meaning given to such term by section 1151 of title 18, United States Code.

Subpart 3—General Terms and Conditions

SEC. 1431. GENERAL DEFINITIONS.

As used in this part—

(1) the term "victim services program" means any public or private nonprofit program that assists victims, including (A) nongovernmental nonprofit organizations such as rape crisis centers, battered women's shelters, or other rape or domestic violence programs, including nonprofit nongovernmental organizations assisting victims through the legal process and (B) victim/witness programs within governmental entities;

(2) the term "sexual assault" includes not only assaults committed by offenders who are strangers to the victim but also assaults committed by offenders who are known or related by blood or marriage to the victim; and

(3) the term "domestic violence" includes felony or misdemeanor offenses committed by a current or former spouse of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse, or any other person similarly situated to a spouse who is protected under the domestic or family violence laws of the jurisdiction receiving grant monies.

SEC. 1432. GENERAL TERMS AND CONDITIONS.

(a) NONMONETARY ASSISTANCE.—In addition to the assistance provided under subparts 1 or 2, the Director may direct any Federal agency, with or without reimbursement, to use its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts.

(b) BUREAU REPORTING.—No later than 180 days after the end of each fiscal year for which grants are made under this part, the Director shall submit to the Judiciary Committees of the House and the Senate a report that includes, for each high intensity crime area (as provided in subpart 1) and for each State and for each grantee Indian tribe (as provided in subpart 2)—

(1) the amount of grants made under this part;

(2) a summary of the purposes for which those grants were provided and an evaluation of their progress; and

(3) a copy of each grantee report filed pursuant to sections 1412(g) and 1421(f).

(c) REGULATIONS.—No later than 45 days after the date of enactment of this part, the Director shall publish proposed regulations implementing this part. No later than 120 days after such date, the Director shall publish final regulations implementing this part.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year 1992, 1993, and 1994, $100,000,000 to carry out the purposes of subpart 1, and $190,000,000 to carry out the purposes of subpart 2, and $10,000,000 to carry out the purposes of section 1422 subpart 2.

PART [N] *O*—TRANSITION; EFFECTIVE DATE; REPEALER

SEC. [1401] *1501.* CONTINUATION OF RULES, AUTHORITIES, AND PROCEEDINGS.

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102 Statute 4457

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

(Public Law 93-415)

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SEC. 314. GRANTS FOR TECHNICAL ASSISTANCE AND TRAINING.—The Secretary may make grants to statewide and regional nonprofit organizations (and combinations of such organizations) to provide technical assistance and training to public and private entities (and combinations of such entities) that are eligible to receive grants under section 5711(a) of this title, for the purpose of assisting such entities to establish and operate runaway and homeless youth centers.

GRANTS FOR PREVENTION OF SEXUAL ABUSE AND EXPLOITATION

SEC. 315. (a) IN GENERAL.—The Secretary shall make grants under this section to private, nonprofit agencies for street-based outreach and education, including treatment, counseling, and information and referral, for female runaway, homeless, and street youth who have been subjected to or are at risk of being subjected to sexual abuse.

(b) PRIORITY.—In selecting among applicants for grants under subsection (a), the Secretary shall give priority to agencies that have experience in providing services to female runaway, homeless, and street youth.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years, 1992, 1993, and 1994.

(d) DEFINITIONS.—For the purposes of this section—

(1) the term "street-based outreach and education" includes education and prevention efforts directed at offenses committed by offenders who are not known to the victim as well as offenders who are known to the victim; and

(2) the term "street youth" means a female less than 21 years old who spends a significant amount of time on the street or in other areas of exposure to encounters that may lead to sexual abuse.

SEC. [315] *316.* AUTHORITY TO MAKE GRANTS FOR RESEARCH, DEMONSTRATION, AND SERVICE PROJECTS.—(a) IN GENERAL.—The Secretary may make grants to States, localities, and private entities (and combinations of such entities) to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway and homeless youth.

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SEC. [316] *317.* APPROVAL OF APPLICATION BY SECRETARY; PRIORITY.—An application by a State, locality, or private entity for a grant under section 5711(a) of this title may be approved by the Secretary only if it is consistent with the applicable provisions of section 5711(a) of this title and meets the requirements set forth in section 5712 of this title. Priority shall be given to grants smaller than $150,000. In considering grant applications under section 5711(a) of this title, priority shall be given to organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families.

SEC. [317] *318.* GRANTS TO PRIVATE ENTITIES; STAFFING.—Nothing in this part shall be construed to deny grants to private entities which are fully controlled by private boards or persons but which in other respects meet the requirements of this part and agree to be legally responsible for the operation of the runaway and homeless youth center. Nothing in this part shall give the Federal Government control over the staffing and personnel decisions of facilities receiving Federal funds.

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104. Stat. 2385

STUDENT RIGHT TO KNOW AND CAMPUS SECURITY ACT OF 1990

Public Law 101-542

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SEC. 204. (f) DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME STATISTICS.—(1) Each eligible institution participating in any program under this subchapter shall on September 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal

actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

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(F) Statistics concerning the occurrence on campus, during the most recent school year, and during the 2 preceding school years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies—

(i) murder;
(ii) rape or sexual assault;
(iii) robbery;
(iv) aggravated assault;
(v) burglary; and
(vi) motor vehicle theft.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

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