

HB

267

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 30, 1997

FURTHER REFERRALS:

Date of Committee Action: 5/1/97

The JUDICIARY Committee considered:

HB 267

HOUSE BILL NO. 267

DOMESTIC VIOL. & SEXUAL ASSAULT DISCLOSUR

"An Act relating to domestic violence and sexual assault; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 267 (Jud.) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____
 zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Ann Kelly</i>	✓			
<i>Tom Hoff</i>			✓	
<i>Richard Parks</i>	✓			
<i>Joseph [unclear]</i>	✓			
<i>Chris Bunker</i>	✓			
<i>W. H. [unclear]</i>			✓	

CHAIR'S SIGNATURE *[Signature]*

CS FOR HOUSE BILL NO. 267(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATTIVES KELLY, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the duties of the Council on Domestic Violence and Sexual
2 Assault; allowing domestic violence and sexual assault counselors to reveal to law
3 enforcement officials whether a person is missing or not missing; and providing
4 for an effective date."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. AS 18.66.050 is amended to read:

7 Sec. 18.66.050. Duties of the council. The council shall

- 8 (1) hire an executive director and necessary staff;
- 9 (2) elect one of its members as presiding officer;
- 10 (3) in consultation with authorities in the field, develop, implement,
11 maintain, and monitor domestic violence, sexual assault, and c.isis intervention and
12 prevention programs, including educational programs, films, and school curricula on
13 the cause, prevention, and treatment of domestic violence and sexual assault;
- 14 (4) coordinate services provided by the Department of Law, the

1 Department of Education, the Department of Public Safety, the Department of Health
2 and Social Services, and other state agencies and community groups dealing with
3 domestic violence, sexual assault, and crisis intervention and prevention, and provide
4 technical assistance as requested by those state agencies and community groups;

5 (5) develop and implement a standardized data collection system on
6 domestic violence, sexual assault, and crisis intervention and prevention;

7 (6) conduct public hearings and studies on issues relating to violence,
8 including domestic violence and sexual assault, and on issues relating to the role of
9 crisis intervention and prevention;

10 (7) receive and dispense state and federal money and award grants and
11 contracts from appropriations for the purpose to qualified local community entities for
12 domestic violence, sexual assault, and crisis intervention and prevention programs;

13 (8) oversee and audit domestic violence, sexual assault, and crisis
14 intervention and prevention programs that receive money under this chapter;

15 (9) provide fiscal and technical assistance to plan, organize, implement
16 and administer domestic violence, sexual assault, and crisis intervention and prevention
17 programs;

18 (10) make an annual report to the governor on the activities of the
19 council, plans of the council for new services and programs, and concerns of the
20 council, including recommendations for legislation necessary to carry out the purposes
21 of this chapter; the council shall notify the legislature that the report is available;

22 (11) adopt regulations in accordance with AS 44.62 (Administrative
23 Procedure Act) to carry out the purposes of this chapter and to protect the health,
24 safety, well-being, and privacy of persons receiving services financed with grants or
25 contracts under this chapter; regulations adopted under this paragraph must allow
26 a victim counselor employed by a grantee or contractor under this chapter to
27 divulge information to the extent allowed under AS 18.66.210;

28 (12) consult with the Department of Health and Social Services in the
29 formulation of standards and procedures for the delivery of services to victims of
30 domestic violence by health care facilities and practitioners of healing arts and
31 personnel in those facilities as required in AS 18.66.300;

1 (13) consult with the Alaska Police Standards Council and other police
2 training programs in the state to develop training programs regarding domestic violence
3 for police officers and for correction, probation, and parole officers;

4 (14) consult with public employers, the Alaska Supreme Court, school
5 districts, and prosecuting authorities who are required by AS 18.66.300 - 18.66.310 to
6 provide continuing education courses in domestic violence to employees.

7 * Sec. 2. AS 18.66.210 is amended to read:

8 Sec. 18.66.210. **Exceptions.** The privilege provided under AS 18.66.200 does
9 not apply to

10 (1) reports of suspected child abuse or neglect under AS 47.17;

11 (2) evidence that the victim is about to commit a crime;

12 (3) a proceeding that occurs after the victim's death;

13 (4) a communication relevant to an issue of breach by the victim or
14 victim counselor of a duty arising out of the victim-victim counselor relationship;

15 (5) a communication that is determined to be admissible hearsay as an
16 excited utterance under the Alaska Rules of Evidence;

17 (6) a child-in-need-of-aid proceeding under AS 47.10;

18 (7) a communication made during the victim-victim counselor
19 relationship if the services of the counselor were sought, obtained, or used to enable
20 anyone to commit or plan a crime or to escape detection or apprehension after the
21 commission of a crime; [OR]

22 (8) a criminal proceeding concerning criminal charges against a victim
23 of domestic violence or sexual assault where the victim is charged with a crime

24 (A) under AS 11.41 against a minor; or

25 (B) in which the physical, mental, or emotional condition of the
26 victim is raised in defense of the victim; or

27 (9) a communication by a victim counselor to a law enforcement
28 official who, in the performance of an official duty, is investigating a report of a
29 missing person who may be a victim; under this exception, a victim counselor may
30 communicate to the law enforcement official only whether the victim is missing
31 or not missing, based on the counselor's knowledge and records reasonably

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available to the counselor.

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 10, 1998

SUBJECT: Victim counselors (CSHB 267(JUD))

TO: Representative Joe Green
Attn: Kevin

FROM: Terri Lauterbach *Terri Lauterbach*
Legislative Counsel

Enclosed is the CS you requested.

I want to alert you that there is a discrepancy between the wording of the bill title and the contents of the bill. That is, the bill title uses the term "public safety officers" while the new language on page 3 uses the term "law enforcement official." I cannot tell you the precise difference between the two groups, but, to the extent that they are not the same, the bill title does not accurately describe the contents of the bill. Failure of a bill title to accurately express the subject of the bill is a violation of the state constitution (art. II, sec. 13), so I recommend that this discrepancy be rectified in the next committee or on the House floor.

Please let me know if you want my assistance with an amendment to either the bill title or the language on page 3.

TML:glc:jr
98-071.glc

Enclosure

HOUSE COMMITTEE REPORT

(7)

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FURTHER REFERRALS:

Date of Committee Action: _____

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HB 267

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"An Act relating to domestic violence and sexual assault; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date) [] fiscal note(s) [] fiscal note(s)

[] zero fiscal note(s) [] zero fiscal note(s)

Table with 5 columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Contains handwritten signatures and checkmarks.

CHAIR'S SIGNATURE [Handwritten Signature]

**ALASKA NETWORK ON
DOMESTIC VIOLENCE AND SEXUAL ASSAULT**

130 Seward, Rm 501

Juneau, Alaska 99801

(907) 586-3650 (907) 463-4493 fx

To: House Judiciary Committee Members
From: Lauree Hugonin *LH*
Date: 2/9/98
Re: HB267-VOCA Regulations

In responding to Representatives Porter's question regarding federal funding provisions that would restrict disclosure, I relied on the VOCA statute and not the federal register guidelines. Through researching the federal register, I found the guidelines for VOCA that were published in April of 1997 clarified the confidentiality provisions of VOCA to provide for two exceptions: reporting child abuse, and acknowledging, in response to an inquiry by a law enforcement agency conducting a missing person investigation, that the person is safe in the shelter.

So, with that information, the response to Representative's Porter question is VOCA funding would not be in jeopardy if HB267 were enacted.

However, since VOCA makes an exception for missing persons reports, HB267 is redundant. It provides a clarification that has already been made in federal regulation. We would ask that the committee continue to hold the bill and that the sponsor reconsider the necessity of the changes being proposed.

In response to the new guidelines, the Network's legal advocacy project will be issuing a legal memo within the next two weeks to member programs that receive VOCA funding alerting them to the guideline requirements. We will also make a copy of the memo available to Representative Kelly.

Further, we will bring the issue forward to the law enforcement subcommittee of the state STOP Violence Against Women Planning Committee as an item for inclusion in the model protocols being developed to assist local law enforcement agencies implement their response to domestic violence. The committee is co-chaired by the Deputy Director of the Troopers and by the Soldotna Police Chief who represents the Chiefs of Police Association. A Network representative also sits on the committee.

It continues to be our belief that procedures in responding to domestic violence situations should be worked through at the local community level. First responders in law enforcement and victim services are the most appropriate people to establish ways to work with one another. Keeping victims safe and alive are goals we believe common to both law enforcement and victim service agencies. The state should foster those local relationships whenever possible.

VOCA "Confidentiality" Provision Being Honored by Justice Department, Courts

By John H. Stein
Deputy Director

Giving victim/counselor communications the same confidential status as doctor/patient communications has long been a policy goal of NOVA and many other victim advocacy groups. That goal is now being realized through new, if limited, state laws, and also through an obscure provision in a federal law, the Victims of Crime Act (VOCA).

Regarding state legislation, important support for the concept of victim/counselor confidentiality came from the President's Task Force on Victims of Crime, whose second of 67 recommendations was that "legislation should be proposed and enacted to ensure that designated victim counseling is legally privileged and not subject to defense discovery or subpoena".

In 1982, when the Task Force report was issued, only six states had legislated a confidentiality rule, all of them limited to counseling of sexual assault or domestic violence victims. By 1988, possibly influenced by a "model bill" proposed by the Victim Witness Project of the American Bar Association, 20 states had legislated a confidentiality rule for sexual assault counseling and 24 had done so in respect to counseling domestic violence victims. Five others had covered all victim counseling, as the Task Force had recommended.

It is now becoming clear that, independent of state law, most of the roughly 1,500 victim service programs supported by the federal Victims of Crime Act -- about one-fourth of the service programs nationwide -- may assert that their client communications are legally privileged. The "VOCA privilege" is an interesting and, to victim advocates, a constructive case study of how an innocuous clause in a statute can take on expanded meaning through "legislative intent".

Origins of the "VOCA Privilege"

In drafting its version of what later became the Victims of Crime Act, Justice Department lawyers borrowed a number



House Judiciary Chairman Peter W. Rodino, Jr., who is retiring after 40 years in Congress.

of administrative clauses from the Justice Assistance Act, clauses which in turn had been borrowed from the authorizing legislation of the earlier Law Enforcement Assistance Administration program. The clauses covered such routine matters as audit requirements of grantees, record-keeping, civil rights compliance, and protection of research data.

It was the research-data clause that first caught the attention of legislative advocates at NOVA and the National Coalition Against Sexual Assault while various versions of the bill were being introduced or amended in Congress. The clause -- Section 1407(d) of the final bill -- reads as follows:

Except as otherwise provided by Federal law, no officer or employee of the Federal Government, and no recipient of sums under this chapter [i.e., VOCA], shall use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this chapter. Such information, and any copy of such information, shall be immune from legal process [i.e., discovery or subpoena] and shall not, without the consent of the person furnishing such information, be admitted as evidence in any action, suit, or other judi-

cial, legislative, or administrative proceeding.

What was plain to the victim advocates was that research data was made confidential by the subsection. What was also plain was that there were no research activities specifically authorized by VOCA. The questions they then raised with legislative aides working on the bill were these: could not "research or statistical information" be broadly interpreted to include all information that is subject to the reporting requirements that VOCA's administrators might require of VOCA-supported counselors? And could not such an interpretation cover all the client communications made in the course of crisis intervention and supportive counseling, and thus advance the policy of confidentiality that the President's Task Force and others had been supporting?

When these questions were raised, it was thought to be too late to rewrite the text of the bill itself to more clearly reflect an intention to cover counseling as well as the research activities. Nonetheless, one of the lead sponsors of the bill, House Judiciary Chairman Peter W. Rodino, Jr., thought that such an interpretation could be built into the legislative history of the bill. The vehicle he chose was the "section-by-section analysis", a common explanatory tool offered by floor managers of bills in Congress, that he placed in the Congressional Record when he brought the bill up for its final vote in the House of Representatives.

All American courts are expected to examine the intent of the legislature when deciding on the meaning of a statute. In doing so, judges are expected to give less weight to certain parts of a legislative history than others. For example, what a witness said in a hearing on a particular provision is not as authoritative as a committee report on that section, and that report may be treated as less enlightening than the information one gets from a debate on the provision when it is taken up

(See "Confidentiality," Page 4)

"Confidentiality," from Page 3)

for final passage by the legislators.

Under that hierarchical system of interpreting a "legislative history", the Rodino "section-by-section" was a "fairly authoritative" commentary on the VOCA legislation, as one expert on legislative intent put it. For all practical purposes, it was the final explanation on the version that emerged through a long process of compromise: Mr. Rodino's Senate counterpart, Chairman Strom Thurmond (R-SC), confined his remarks to the notoriety-for-profit section when he brought up the compromise bill in the Senate the next day.

The clarification over the confidentiality provision actually appears in a footnote in the section-by-section, since the text merely paraphrased the statutory language. That footnote reads as follows:

The principle need for such [confidentiality] protection involves crisis counseling, which, to be effective, requires a complete and candid disclosure of information by the victim. To the extent that an audit or examination under section 1407(c) [giving the Justice Department authority to examine a grantee's books and records] involves records pertaining to crisis counseling, it is anticipated that disclosure of the name and address of, or other identifying information about, the victims who have been counseled will not routinely be disclosed.

The Life of a Buried Footnote

Clearly, the footnote is artfully unclear. The first sentence states the need for establishing a broad privilege of confidentiality between client and counselor. But is it also a legislative policy statement -- a barrier to those who want to examine the confidences given to a VOCA-funded counselor -- or is the first sentence merely the rationale for a directive contained in the second sentence?

That second sentence certainly does give a direction, although in tentative terms, to the Justice Department. That said, there remain two ways of treating it: the directive could be read as the operative meaning of the footnote, thereby giving limited protections to the client/counselor relationship only from

the prying eyes of Justice Department monitors and auditors; alternatively, it can be interpreted as an exception to the stronger protections established in the first sentence.

Victim advocates have consistently said that the first interpretation makes more sense, that the statute creates the protection and the footnote describes where it is most needed, to cover crisis counseling. Yet the advocates of the fine print were left waiting a year and a day to see if their view would prevail.

"... to assure the confidentiality of information provided by crime victims to crisis counselors..."

On October 22, 1985, VOCA's administrators at the Justice Department issued VOCA's guidelines. The section on "Confidentiality of Research Information" starts out with a paraphrase of the research-oriented statutory clause. But its last sentence fully incorporated the "Rodino clarification":

This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to crisis intervention counselors working for victim services programs receiving funds provided under the Act. [Federal Register, Vol. 50, No. 205, Oct 23, 1985, page 43019].

Victim advocates were delighted with this clause. For now the courts would not have to sort through an ambiguous legislative history; their more limited task would be to see if the Department had authority to issue such guidelines -- and clearly the Act gave it that authority -- and then see if there was evidence that this guideline was a reasonable application of Congressional intent. If those two tests were met, then it would be treated as having the force of law.

By 1988, those expectations were being fulfilled -- but with an unexpected twist.

Applying the Law

It is difficult for anyone to track how any new statutory policy is being interpreted by the courts. Usually, it is only when a trial court has made a ruling on the issue, and that ruling is then reviewed and decided on by an appeals

court, that the issue and the decision make their way into the law books so that a legal researcher can find that report. Moreover, a trial court's ruling is not binding on anyone except that particular court, so even if those rulings are discovered, they are hardly the "last word" on the subject.

But people interested in a new legal policy can get clues on how the courts will treat the issue from the first rulings at the trial court level. Supporters of a VOCA confidentiality law may therefore be encouraged by the first two cases NOVA

has learned about where the Rodino footnote and its supporting guideline have been interpreted by trial courts.

Both cases were in state courts

where one party had issued a subpoena to a VOCA-funded victim counselor to testify about the counselor's knowledge of the case. Both courts faced an interesting threshold question before ruling on whether to "quash" or nullify the subpoena: if there was a client/counselor privilege created by VOCA, did that Federal law apply to cases brought in state courts? In both instances, the judge ruled that this was a situation where the "supremacy" clause of the U.S. Constitution should be applied, so that the VOCA law was "supreme" to any state law that would have produced a result that was hostile to VOCA's purposes.

The first was a domestic relations case being litigated in Arizona. There, the judge ruled invalid subpoenas served on two battered women's shelter workers who had counseled one of the parties in the case. Absent permission from their client, the counselors at a VOCA-supported facility had to honor the VOCA confidentiality rule.

In the second case, a judge overseeing the work of a grand jury in New York also said that there was a valid Federal confidentiality rule that had to be applied to a VOCA-funded counselor who had been subpoenaed to testify about conversations with a client. However, the judge also ruled that there was state law that overcame the "VOCA privilege" in this case -- the law making certain people mandatory reporters of child abuse cases. Since the teenage client in this case was

(See "Confidentiality," Page 5)

(*"Confidentiality"*, from Page 4)

legally a child, and the case involved allegations of sexual abuse, the subpoena was deemed valid and the counselor had to testify.

The ruling in that case was in conformity with a clarification issued by the Justice Department in 1987. After repeating the text of the earlier guideline, the sections continued:

Whatever the scope of application given this provision, it is clear that there is nothing in the Act or its legislative history to indicate that Congress intended to override of repeal, in effect, a State's existing law governing the disclosure of information which is supportive of the Act's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to mandatory reporting of suspected child abuse. See Pennhust State School and Hospital v. Halderman, et al., 451 U.S. 1 (1981). (Federal Register, Vol. 52, No. 62, April 1, 1987, page 10427).

There are indications that the clients in both the Arizona and New York cases would like to keep their identities private, and in any event, the New York ruling, involving a grand jury proceeding, may be part of a sealed record. Therefore, we have declined to name the cases here.

Possible Limits on the VOCA Confidentiality Rule

As we discussed in the March, 1988, Newsletter, the prevailing view is that victim counselors who work in prosecutor's offices or law enforcement agencies are under the same Constitutional duty to reveal exculpatory information as are their employers. That means that a VOCA-supported counselor in, say, a police department would have a duty to keep confidential all the client's embarrassing, personal communications *except* for "information (which) is favorable to the accused," as the American Bar Association's Victim Witness Project put it.

Plainly, that puts a major limitation on the counselor/client privilege, one that defeats a major purpose of the privilege. One way to restore full confidentiality to such a relationship, it has been suggested, is to somehow place the victim counselor in the prosecutor's or law enforcement agency's office while making the counselor an independent professional with that profession's own ethical and legal restrictions, not those of the criminal justice

In Memory of Dr. William Kosiak

By Fern Sepler-King and Christine Edmunds

Fern Sepler-King is the Executive Director of the Minnesota Crime Victims Reparations Commission. Christine Edmunds is NOVA's Senior Training Specialist and Newsletter Editor.

We are sorry to report that Dr. William Kosiak, 65, a fatherly, persistent, and very effective advocate for the fair and respectful treatment of crime victims, died of heart disease on June 13, 1988, in Minneapolis.

Among his passions were health maintenance organizations (he served on the staff of several during his long medical career) and Minnesota's Democratic

Farmer/Labor Party. Ed! was a natural selection to fill a "physician's seat" on the Minnesota Crime Victims Reparations Board, which he did for many years.

During that tenure, in 1980, two armed men forced their way into his home and demanded that he write a dozen prescriptions for a common street drug. The men did not leave right away, but stayed to terrorize Bill and his wife. Although two men were later arrested, the charges against them were dropped.

This event inspired Bill to broaden his interests in victim rights and services, as he began a tireless

campaign to assure that victims were heard in the criminal justice system. His years as a practical idealist and as well-connected political activist paid off rather quickly for the victims he was determined to help.

Bill was a founder of the Minnesota Association for Crime Victims, and a member of the Governor's Task

Force on Victims of Crime, and in both capacities, helped unify his fellow advocates around common goals. He held the chair of the Reparations Board from 1980 until his death.

He insisted on fair treatment for all victims. While supporting services for victims within the criminal justice system, he was especially protective of those working on the outside, to serve as counselors and inde-

pendent advocates. Bill was himself a role model of what such advocates could do.

In 1984, Dr. Kosiak received an award from President Reagan for his work on behalf of victims of crime. While we will remember Bill for the achievements that won him such honors, we will especially remember him for the sense of dignity he brought to our cause, and his demand that the faceless bureaucracies treat victims with the same sense of dignity.

Bill earned admiration and affection from all who shared his causes. We will all miss him. □



William Kosiak addressing the 1984 NOVA conference in Des Moines

professions.

The issue is important to many. A Justice Department review of the first round of VOCA assistance grants showed that 126 subgrantees, or 9 percent of the total, were prosecutors' offices, and that another 33, or 2 percent, were law enforcement agencies. The numbers are certainly large enough to warrant state-level or even interstate efforts to study

how the VOCA confidentiality rule could or should be applied to such subgrantees.

By the same token, the time may be right for state VOCA administrators, perhaps in collaboration with their Attorneys General and others, to develop a handbook on VOCA's confidentiality rule as a service both to counselors and to their clients. Both should understand and use this major privacy protection. □

★ ★ ★ ★

**UNITED STATES
CODE SERVICE**

★ ★ ★

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42 USCS

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IT-150

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this section shall state the nature of the project to be
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ne Secretary the sum of \$6,000,000 for the purpose of
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ms of paragraph (1) of this subsection, the Secretary
ection if such funds are transferred under the terms of

groundwater supplies;

ational, biological, geographic, ecological, and other

104 Stat. 853.)

LAWS AND DIRECTIVES

contamination," after "depletion"; and in para. (8)

NE PROCESSES RESEARCH

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LAWS AND DIRECTIVES

to in this section, is Act June 30, 1948, ch 758, 62
33 USCS §§ 1151 et seq. For full classification of
ction, is Act Dec. 16, 1974, P. L. 93-523, 88 Stat.
§§ 300f et seq. For full classification of such Act,

provides: "This Act [42 USCS §§ 10341 et seq.]
ct of 1992."

establish a basic research program on membranes
ried out through awarding grants, entering into

ction 3 [42 USCS § 10342] shall be—

- (1) the development of membranes resistant to degradation, bacterial or otherwise, thereby extending the life of such membranes;
 - (2) the development of membranes useful for the efficient and cost effective treatment of contaminated water; and
 - (3) the development of innovative technologies for membrane processes.
- (Oct. 24, 1992, P. L. 102-490, § 4, 106 Stat. 3142.)

§ 10344. Coordination with other research

The research program established under section 3 [42 USCS § 10342] shall be carried out in coordination with any other related Federal research efforts.
(Oct. 24, 1992, P. L. 102-490, § 5, 106 Stat. 3143.)

§ 10345. Authorization of appropriations

There are authorized to be appropriated to the Director of the National Science Foundation, from sums otherwise authorized to be appropriated, \$2,500,000 for fiscal year 1993, for carrying out this Act [42 USCS §§ 10341 et seq.].
(Oct. 24, 1992, P. L. 102-490, § 6, 106 Stat. 3143.)

CHAPTER 110. FAMILY VIOLENCE PREVENTION AND SERVICES

Section

- 10407. Information and technical assistance centers
- 10410. Grants for State domestic violence coalitions
- 10414. Grants for public information campaigns
- 10415. Model State leadership grants for domestic violence intervention
- 10416. National domestic violence hotline grant
- 10417. Youth education and domestic violence
- 10418. Demonstration grants for community initiatives

§ 10401. Declaration of purpose

It is the purpose of this title [42 USCS §§ 10401 et seq.] to—

- (1) assist States in efforts 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, courts, legal, social service, and health care professionals), nonprofit private organizations, and other persons seeking such assistance.
- (As amended May 28, 1992, P. L. 102-295, Title III, § 302, 106 Stat. 201.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1992. Act May 28, 1992, in para. (1), substituted "assist" for "demonstrate the effectiveness of assisting" and substituted "to increase public awareness about and prevent" for "to prevent", and in para. (2), inserted ", courts, legal, social service, and health care professionals".

Other provisions:

Educating youth about domestic violence. Act May 28, 1992, P. L. 102-295, Title III, § 322, 106 Stat. 211, provides:

"(a) General purpose. For purposes of this section, the Secretary of Education, hereinafter referred to as the 'Secretary' shall develop model programs for education of young people about domestic violence and violence among intimate partners.

"(b) Nature of program. The Secretary, in consultation with the Secretary of Health and Human Services, shall through grants or contracts develop three separate programs, one each for primary and middle schools, secondary schools, and institutions of higher education. Such model programs shall be developed with the input of educational experts, law enforcement personnel, legal and psychological experts on battering, and victim advocate organizations such as battered women's shelters. The participation of each such group or individual consultants from such groups is essential to the development of a program that meets both the needs of educational institutions and the needs of the domestic violence problem.

"(c) Review and dissemination. Not later than 9 months after the date of enactment of this Act, the Secretary shall transmit 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, \$200,000 to carry out the purposes of this section."

§ 10402. State demonstration grants authorized

(a) Authority of Secretary; application; requirements; approval. (1) In order to assist in supporting the establishment, maintenance, and expansion of programs and projects to 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 the provisions of this title [42 USCS §§ 10401 et seq.], to make grants to States.

(2) No 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) provide that funds provided under this subsection will be distributed in grants to local public agencies and nonprofit private organizations (including religious and charitable organizations, and voluntary associations) for programs and projects within such State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents;

(B) provide, with respect to funds provided to a State under this subsection for any fiscal year, that—

(i) [Unchanged]

(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, the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, advocacy, and self-help services to victims and their children.[:]

(C) set forth procedures designed to involve State domestic violence coalitions[,] knowledgeable individuals and interested organizations and assure an equitable distribution of grants and grant funds within the State and between urban and rural areas within such State and a plan to address the needs of underserved populations, including populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation;

(D) [Unchanged]

(E) provide documentation that procedures have been developed, and implemented including copies of the policies and procedure, to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this title [42 USCS §§ 10401 et seq.] and provide assurances that the address or location of any shelter-facility assisted under this title [42 USCS §§ 10401 et seq.] will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public;

(F) provide documentation to the Secretary that the State has a law or procedure that has been implemented for the eviction of an abusing spouse from a share household; § and]

(G) [Unchanged]

(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 a 6-month period providing an opportunity for correction of any deficiencies. The Secretary shall provide such notice within 45 days of the date of the application if any of the provisions of paragraph (2) have not been satisfied in such application. If the State has not corrected the deficiencies in such application within the 6-month period following the receipt of the Secretary's notice of intention to disapprove, the Secretary shall withhold payment of any grant funds to such State until the date that is 30 days prior to the end of the fiscal year for which such grant funds are appropriated or until such time as the State provides documentation that the deficiencies have been corrected, whichever occurs first. State Domestic Violence Coalitions shall be permitted to participate in determining whether a grantee is in compliance with paragraph (2), except that no funds made available to State Domestic Violence Coalitions under section 311 [42 USCS § 10410] shall be used to challenge a determination as to whether a grantee is in compliance with, or to seek the enforcement of, the eligibility requirements of such paragraph.

(4) Upon completion of the activities funded by a grant 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. A section of this performance report shall be completed by each grantee or subgrantee that performed the direct services contemplated in the application certifying performance of direct services under the grant. The Director shall suspend funding for an approved application if an applicant fails to submit an annual performance report or if the funds are expended for purposes other than those set forth under this subpart, after following the procedures set forth in paragraph (3). Federal funds may be used only to supplement, not supplant, State funds.

(b) Indian tribes and tribal organizations; application. (1) The Secretary, from amounts appropriated to carry out this section, shall make available not less than 10 percent of such amounts to make grants to Indian tribes, tribal organizations and nonprofit private organizations approved by an Indian Tribe for the operation of a family violence shelter on a Reservation 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 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 [42 USCS §§ 10401 et seq.]. Such application shall comply, as applicable, with the provisions of clauses (C) (with respect only to involving knowledgeable individuals and organizations), (D), (E) and (F) of subsection (a)(2). No entity eligible to submit an application under paragraph (1) shall be prohibited from making an application during any fiscal year for which funds are available because such entity has not previously applied or received funding under this section.

(3) In the case of a project for which the initial application for a demonstration grant under this subsection is made on or after the date of the enactment of the Child Abuse Programs, Adoption Opportunities, and Family Violence Prevention Amendments Act of 1992, the terms "Indian tribe" and "tribal organization", for purposes of this subsection, have the meaning given such terms in section 4 of the Indian Self-Determination and Education Assistance Act [25 USCS § 450b].

(c) Direct payments to victims or dependents. No funds provided through demonstration grants made

ation will be distributed in grants to local public including religious and charitable organizations, and within such State to prevent incidents of family violence and assistance for victims of family violence and incidents;

State under this subsection for any fiscal year.

under this subsection, the State will give special projects of demonstrated effectiveness carried out purpose of which is to operate shelters for victims those which provide counseling, advocacy, and [.]

ite domestic violence coalitions[,] knowledgeable are an equitable distribution of grants and grant areas within such State and a plan to address populations underserved because of ethnic, racial,

een developed, and implemented including confidentiality of records pertaining to any individual services by any program assisted under this title es that the address or location of any shelter- et seq.] will, except with written authorization on of such shelter, not be made public;

the State has a law or procedure that has been from a share household; § and]

meets the requirements of this subsection, and the except after reasonable notice of the Secretary's providing an opportunity for correction of any within 45 days of the date of the application if any ed in such application. If the State has not corse 6-month period following the receipt of the ary shall withhold payment of any grant funds end of the fiscal year for which such grant funds es documentation that the deficiencies have been ence Coalitions shall be permitted to participate with paragraph (2), except that no funds made section 311 [42 USCS § 10410] shall be used to compliance with, or to seek the enforcement of,

ent under this subpart, the State grantee shall file activities carried out together with an assessment the purposes of this subpart. A section of this e or subgrantee that performed the direct services e of direct services under the grant. The Director applicant fails to submit an annual performance than those set forth under this subpart, after fol- eral funds may be used only to supplement, not

(b) The Secretary, from amounts appropriated to an 10 percent of such amounts to make grants to e organizations approved by an Indian Tribe for ervation for projects designed to prevent family assistance for victims of family violence and their

as an application is made to the Secretary at such d by such information as the Secretary deems es- s title [42 USCS §§ 10401 et seq.]. Such applica- of clauses (C) (with respect only to involving E) and (F) of subsection (a)(2). No entity eligible e prohibited from making an application during h such entity has not previously applied or received

ation for a demonstration grant under this subsec- the Child Abuse Programs, Adoption Opportuni- et of 1992, the terms "Indian tribe" and "tribal the meaning given such terms in section 4 of the Act [25 USCS § 450b].

is 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.

(d) Income eligibility standards. 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 [42 USCS §§ 10401 et seq.].

(e) Grants to entities other than States; local share. No grant may be made under this section to any entity other than a State or an Indian Tribe unless the entity provides for the following local share as a proportion of the total amount of funds provided under this title [42 USCS §§ 10401 et seq.] to the project involved: 20 percent in the first year such project receives a grant under this title [42 USCS §§ 10401 et seq.], 35 percent in the second such year, and 50 percent in the third such year and in any such year thereafter. Except in the case of a public entity, not less than 25 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 [42 USCS §§ 10401 et seq.].

(f) Shelter and related assistance. The Secretary shall assure that not less than 70 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 as defined in section 309(4) § 42 USCS § 10408(4)]. Not less than 25 percent of the funds distributed under subsection (a) or (b) shall be distributed for the purpose of providing related assistance as defined under section 309(5)(A) § 42 USCS § 10408(5)(A)].

(g) [Redesignated]

(As amended May 28, 1992, P. L. 102-295, Title III, §§ 303-311(a), 106 Stat. 201-203; Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle B, Ch 7, § 40271, 108 Stat. 1937.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

References in text:

As used in this section, "the date of the enactment of the Child Abuse Programs, Adoption Opportunities, and Family Violence Prevention Amendments Act of 1992" probably refers to May 28, 1992, which is the date of enactment of the Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992, P. L. 102-295, 106 Stat. 187. For full classification of such Act, consult USCS Tables volumes.

"This subpart", referred to in this section, is probably a reference to Title III of Act Oct. 9, 1984, P. L. 98-457, which constitutes this chapter, consisting of 42 USCS §§ 10401 et seq.

Explanatory notes:

The bracketed semicolon has been inserted in subsec. (a)(2), iii subpara. (B)(ii), as the punctuation probably intended by Congress in the amendment made by Act May 28, 1992, P. L. 102-295.

The bracketed comma has been inserted in subsec. (a)(2), in subpara. (C), to indicate the probable intent of Congress to include such punctuation in the amendment made by Act May 28, 1992, P. L. 102-295.

The bracketed word "and" has been inserted in subsec. (a)(2), in subpara. (F), to indicate the probable intent of Congress to include such language in the amendment made by Act May 28, 1992, P. L. 102-295.

Amendments:

1992, Act May 28, 1992, in subsec. (a), in para. (1), deleted "demonstration" preceding "grants", in para. (2), in the introductory matter, deleted "demonstration" preceding "grant may be", in subpara. (B)(ii), substituted "the primary purpose of which is to operate shelters for victims of family violence and their dependents, and those which provide counseling, advocacy, and self-help services to victims and their children," for "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;" (see Explanatory note), in subpara. (C), inserted "State domestic violence coalitions", in subpara. (E), substituted "documentation that procedures have been developed, and implemented including copies of the policies and procedure," for "assurances that procedures will be developed", substituted subpara. (F) for one which read: "(F) provide assurances that, within one year after receipt of funds under this subsection, the State will, provide assurances to the Secretary that the State has or has under consideration a procedure for the eviction of an abusing spouse from a shared residence; and" and, in para. (3), inserted "a 6-month period providing an" and added "The Secretary shall provide such notice within 45 days of the date of the application if any of the provisions of paragraph (2) have not been satisfied in such application. If the State has not corrected the deficiencies in such application within the 6-month period following the receipt of the Secretary's notice of intention to disapprove, the Secretary shall withhold payment of any grant funds to such State until the date that is 30 days prior to the end of the fiscal year for which such grant funds are appropriated or until such time as the State provides documentation that the deficiencies have been corrected, whichever occurs first. State Domestic Violence Coalitions shall be permitted to participate in determining whether a grantee is in compliance with paragraph (2), except that no funds made available to State Domestic Violence Coalitions under section 311 shall be used to challenge a determination as to whether a grantee is in compliance with, or to seek the enforcement of, the eligibility requirements of such paragraph."

Such Act further, in subsec. (a), in para. (2), in subpara. (A), purported to substitute "grant" for "demonstration grant"; however, such amendment was executed by substituting "grants" for "demonstration grants" as the probable intent of Congress.

Such Act further, in subsec. (b), in para. (1), substituted "from amounts appropriated to carry out this section, shall make available not less than 10 percent of such amounts to make grants" for "is authorized to make demonstration grants", substituted "tribal" for "and tribal", and added "and nonprofit private organizations approved by an Indian Tribe for the operation of a family violence shelter on a Reservation", in para. (2), substituted "grant" for "demonstration grant", substituted "(E) and (F)" for "and (E)", added the sentence beginning "No entity eligible . . .", and added para. (3).

Such Act further (effective in the case of amounts appropriated for fiscal year 1992 and subsequent fiscal years, as provided by § 109(b) of such Act), deleted subsec. (c) which read: "(c) Funding limitations. 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."; and redesignated subsecs. (d)-(g) as subsecs. (c)-(f), respectively.

Such Act further, in subsec. (e) as redesignated, substituted "grant" for "demonstration grant", inserted "or an Indian Tribe", substituted "20 percent" for "35 percent", substituted "35 percent" for "55 percent", substituted "and 50 percent in the third such year and in any such year thereafter" for "and 65 percent in the third such year", and substituted "25 percent" for "50 percent"; and, in subsec. (f) as redesignated, substituted "70 percent" for "60 percent", and inserted "as defined in section 309(4). Not less than 25 percent of the funds distributed under subsection (a) or (b) shall be distributed for the purpose of providing related assistance as defined under section 309(5)(A)".

1994. Act Sept. 13, 1994, in subsec. (a), in para. (2)(C), inserted "and a plan to address the needs of underserved populations, including populations underserved because of ethnic, racial, cultural, language diversity or geographic isolation", and added para. (4).

§ 10403. Allotment of funds

(a) Proportionality of allotment; minimum allotment. From the sums appropriated under section 310 [42 USCS § 10409] for grants to States for any fiscal year, each State shall be allotted for payment in a grant authorized under section 303(a) [42 USCS § 10402(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 than 1 percent of the amounts available for grants under section 303(a) [42 USCS § 10402(a)] for the fiscal year for which the allotment is made, or \$200,000, whichever is the lesser amount; and
- (2) [Unchanged]

For the purpose of the exception contained in clause (1) of the preceding sentence only, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(b)-(d) [Unchanged]

(As amended May 28, 1992, P. L. 102-295, Title III, § 312, 106 Stat. 204.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1992. Act May 28, 1992, in subsec. (a)(1), deleted "whichever is the greater of the following amounts: one-half of" following "not less than", and substituted "\$200,000, whichever is the lesser amount" for "\$50,000".

§ 10404. Secretarial responsibilities

(a) [Unchanged]

(b) The Secretary shall—

(1) [Unchanged]

- (2)(A) provide for research into the most effective prevention, identification, and treatment thereof (such as research into (i) the effectiveness of reducing repeated incidents of family violence through a variety of sentencing alternatives, such as incarceration, fines, and counseling programs, individually or in combination, and through the use of civil protection orders removing the abuser from the family household, (ii) the necessity and impact of a mandatory reporting requirement relating to incidents of family violence, particularly abuse of elderly persons(), (iii) the effectiveness of providing safety and support to maternal and child victims of family violence as a way to eliminate the abuse experienced by children in such situations, (iv) identification of intervention approaches to child abuse prevention services which appear to be successful in preventing child abuse where both mother and child are abused, (v) effective and appropriate treatment services for children where both mother and child are abused, and (vi) the individual and situational factors leading to the end of violent and abusive behavior by persons who commit acts of family violence, including such factors as history of previous violence and the legal and service interventions received()), and
- (B) make a complete study and investigation (in consultation with the National Institute on Aging) of the national incidence of abuse, neglect, and exploitation of elderly persons, including a determination of the extent to which incidents of such abuse, neglect, and exploitation are increasing in number or severity; and

(3) [Unchanged]

(As amended May 28, 1992, P. L. 102-295, Title III, § 313, 106 Stat. 204.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

In subsec. (b)(2)(B), the closing parentheses following "elderly persons" and "interventions received" have been enclosed in brackets to indicate the probable intent of Congress to delete that punctuation from the former location and to add it in the latter in the amendment made by Act May 28, 1992, P. L. 102-295.

Amendments:

1992. Act May 28, 1992, in subsec. (b)(2), in subpara. (A), added "most effective", substituted "(ii)" for "and (iii)", and added cls. (iii)-(vi) (see Explanatory note).

Such Act further, in subsec. (b)(2), in subpara. (A), purported to delete "into the causes of family violence" following "provide for research"; however, such amendment was executed by deleting "into the causes of family violence, and" in order to effectuate the probable intent of Congress.

§ 10405. Evaluation

Not later than two years after the date on which funds are obligated under section 303(a) [42 USCS § 10402(a)] for the first time after the date of the enactment of this title [enacted Oct. 9, 1984], and every two years thereafter, the Secretary shall review, evaluate, and report to the appropriate Committees of the Congress, as to the effectiveness of the programs administered and operated pursuant to this title [42 USCS

ted "grant" for "demonstration grant", inserted "35 percent", substituted "35 percent" for "55 percent" and in any such year thereafter" for "and 65 percent" for "50 percent"; and, in subsec. (f) as amended inserted "as defined in section 309(4). Not less than (a) or (b) shall be distributed for the purpose of (A)".

1. inserted "and a plan to address the needs of victims because of ethnic, racial, cultural, language

from the sums appropriated under section 310 [42 USC 310] each State shall be allotted for payment in a grant amount which bears the same ratio to such sums as the corresponding amount for all States, except that—

(1) of the amounts available for grants under section 310 for which the allotment is made, or \$200,000,

of the preceding sentence only, the term "State" includes the Northern Mariana Islands, and the Trust

2. 106 Stat. 204.)

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never is the greater of the following amounts: \$200,000, whichever is the lesser amount" for

prevention, identification, and treatment thereof of repeated incidents of family violence through education, fines, and counseling programs, individual protection orders removing the abuser from the home, a mandatory reporting requirement relating to child abuse (elderly persons)), (iii) the effectiveness of provisions of family violence as a way to eliminate the need for identification of intervention approaches to be successful in preventing child abuse where both appropriate treatment services for children where individual and situational factors leading to the end result acts of family violence, including such factors as the number of service interventions received)), and consultation with the National Institute on Aging on the exploitation of elderly persons, including a history of child abuse, neglect, and exploitation are increased.

106 Stat. 204.)

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of elderly persons" and "interventions received" have been deleted by Congress to delete that punctuation from the text made by Act May 28, 1992, P. L. 102-295.

added "most effective", substituted "(iii)" for

to delete "into the causes of family violence" was executed by deleting "into the causes of family violence" from the text of Congress.

are obligated under section 303(a) [42 USC 303(a)] of this title [enacted Oct. 9, 1984], and every year report to the appropriate Committees of the Senate and operated pursuant to this title [42 USC

§§ 10401 et seq.), particularly in relation to repeated incidents of family violence. Such report shall also include a summary of the documentation provided to the Secretary under section 303(a)(2)(B) through 303(a)(2)(F) [42 USCS § 10402(a)(2)(B)-(F)].

(As amended May 28, 1992, P. L. 102-295, Title III, § 314, 106 Stat. 204.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Amendments:

1992, Act May 28, 1992, inserted "and every two years thereafter," substituted "documentation" for "assurances", and substituted "303(a)(2)(B) through 303(a)(2)(F)" for "303(a)(2)(F)".

§ 10407. Information and technical assistance centers

(a) Purpose and grants. (1) Purpose. It is the purpose of this section to provide resource information, training, and technical assistance to Federal, State, and Indian tribal agencies, as well as to local domestic violence programs and to other professionals who provide services to victims of domestic violence.

(2) Grants. From the amounts appropriated under this title [42 USCS §§ 10401 et seq.], the Secretary shall award grants to private nonprofit organizations for the establishment and maintenance of one national resource center (as provided for in subsection (b)) and not to exceed seven special issue resource centers (as provided for in subsection (c)) focusing on one or more issues of concern to domestic violence victims.

(b) National Resource Center. The national resource center established under subsection (a)(2) shall offer resource, policy and training assistance to Federal, State, and local government agencies, to domestic violence service providers, and to other professionals and interested parties on issues pertaining to domestic violence, and shall maintain a central resource library in order to 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.

(c) Special Issue Resource Centers. The special issue resource centers established under subsection (a)(2) shall provide information, training and technical assistance to State and local domestic violence service providers, and shall specialize in at least 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) Improving the response of Child Protective Service agencies to battered mothers of abused children.
- (3) Child custody issues in domestic violence cases.
- (4) The use of the self-defense plea by domestic violence victims.
- (5) Improving interdisciplinary health care responses and access to health care resources for victims of domestic violence.
- (6) Improving access to and the quality of legal representation for victims of domestic violence in civil litigation, including the issuance and enforcement of protection orders.
- (7) Providing technical assistance and training to State domestic violence coalitions.

(d) Eligibility. To be eligible to receive a grant under this section an entity shall be a private nonprofit organization that—

- (1) focuses primarily on domestic violence;
- (2) provides documentation to the Secretary demonstrating experience working directly on issues of domestic violence, particularly in the specific subject area for which it is applying;
- (3) include on its advisory boards representatives from domestic violence programs in the region who are geographically and culturally diverse; and
- (4) demonstrate the strong support of domestic violence advocates from across the country and the region for their designation as the national or a special issue resource center.

(e) Reporting. Not later than 6 months after receiving a grant under this section, a grantee shall prepare and submit a report to the Secretary that evaluates the effectiveness of the use of amounts received under such grant by such grantee and containing such additional information as the Secretary may prescribe.

(f) Definition. For purposes of this section, the term "Indian tribal agency" means an Indian tribe or tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act [25 USCS § 450b].

(g) Regulations. Not later than 90 days after the date of enactment of this section [enacted May 28, 1992], 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.

(As amended May 28, 1992, P. L. 102-295, Title III, § 315, 106 Stat. 204; Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle B, Ch 7, § 40272(b), 108 Stat. 1937.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Amendments:

1992, Act May 28, 1992, substituted this section and section heading for ones which read:

"§ 10407 National clearinghouse on family violence prevention

"(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."

1994, Act Sept. 13, 1994, in subsec. (a)(2), substituted "seven" for "six"; and, in subsec. (c), in para. (6), substituted "including the issuance and enforcement of protection orders." for the concluding period, and added para. (7).

§ 10408. Definitions

As used in this title [42 USCS §§ 10401 et seq.]:

(1)-(4) [Unchanged]

(5) The term "related assistance" means the provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance shall include—

(A) prevention services such as outreach and prevention services for victims and their children, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(B) counseling with respect to family violence, counseling or other supportive services by peers individually or in groups, and referral to community social services;

(C) transportation, technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

(D) legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(E) children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims.

(6) [Unchanged]

(As amended May 28, 1992, P. L. 102-295, Title III, § 311(b), 106 Stat. 203; Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle B, Ch 7, § 40272(a), 108 Stat. 1937.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Amendments:

1992, Act May 28, 1992, substituted para. (5) for one which read:

"(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."

1994, Act Sept. 13, 1994, in para. (5)(B), inserted "or other supportive services".

§ 10409. Authorization of appropriations

(a) In general. There are authorized to be appropriated to carry out this title [42 USCS §§ 10401 et seq.]—

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

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

(3) \$70,000,000 for fiscal year 1998;

(4) \$72,500,000 for fiscal year 1999; and

(5) \$72,500,000 for fiscal year 2000.

(b) Section 303(a) and (b) [42 USCS § 10402(a), (b)]. Of the amounts appropriated under subsection (a) for each fiscal year, not less than 80 percent shall be used for making grants under subsection 303(a) [42 USCS § 10402(a)], and not less than 10 percent shall be used for the purpose of carrying out section 303(b) [42 USCS § 10402(b)].

(c) Section 308 [42 USCS § 10407]. Of the amounts appropriated under subsection (a) for each fiscal year, 5 percent shall be used by the Secretary for making grants under section 308 [42 USCS § 10407].

(As amended May 28, 1992, P. L. 102-295, Title III, § 316, 106 Stat. 206; Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle B, Ch 4, § 40241, 108 Stat. 1934.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Amendments:

1992, Act May 28, 1992, substituted this section for one which read:

"(a) There are authorized to be appropriated to carry out the provisions of this title \$11,000,000 for fiscal year 1985, \$26,000,000 for each of the fiscal years 1986 and 1987, \$26,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989, 1990, and 1991.

assistance available with respect to the prevention of immediate shelter and related assistance to

national information and research clearinghouse information clearinghouse maintained by the Department of the Child Abuse Prevention and Treat-

ment" for "six"; and, in subsec. (c), in para. (6), "protection orders." for the concluding period.

of direct assistance to victims of family violence further violence, helping such victims to gain access to services, facilitating the efforts of such victims to obtain safety, and assisting such victims in healing. Such services include—

(1) prevention services for victims and their children, including shelter services for victims and their children, and programs (including nutrition, disease prevention, domestic violence prevention programs for school children, and violence prevention counseling

and counseling or other supportive services by peers and other social services;

(2) assistance in obtaining financial assistance under Federal health-care services (including alcohol and drug abuse treatment for any health-care services;

(3) legal representation and assistance through the civil and criminal

justice system; and

(4) child care services for children who are victims of

domestic violence. (b), 106 Stat. 203; Sept. 13, 1994, P. L. 103-

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which read:

(1) abusers, victims, and dependents in family violence cases of all family members to the extent feasible, including alcohol and drug abuse treatment,

(2) transportation, and emergency services (but not including services of family violence and their dependents," and "supportive services".

carry out this title [42 USCS §§ 10401 et seq.]—

(1) the amounts appropriated under subsection (a) for making grants under subsection 303(a) [42 USCS § 10403] for the purpose of carrying out section 303(b)

(2) amounts appropriated under subsection (a) for each fiscal year, under section 308 [42 USCS § 10407].

(3) 106 Stat. 206; Sept. 13, 1994, P. L. 103-322,

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which read:

(1) the provisions of this title \$11,000,000 for fiscal year 1987, \$26,000,000 for fiscal year 1988, and \$26,000,000 for fiscal years 1989, 1990, and 1991.

"(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.

"(c) The Secretary shall ensure that funds appropriated pursuant to authorizations in this Act shall remain available until expended for the purposes for which they were appropriated."

1994, Act Sept. 13, 1994, substituted subsec. (a) for one which read: "In general, There are authorized to be appropriated to carry out the provisions of sections 303 through 309 and section 313, \$60,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995."

§ 10410. Grants for State domestic violence coalitions

(a) In general. The Secretary shall award grants for the funding of State domestic violence coalitions. Such coalitions shall further the purposes of domestic violence intervention and prevention through activities, including—

(1) working with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including—

(A) training and technical assistance for local programs and professionals working with victims of domestic violence;

(B) planning and conducting State needs assessments and planning for comprehensive services;

(C) serving as an information clearinghouse and resource center for the State; and

(D) collaborating with other governmental systems which affect battered women;

(2) working with judicial and law enforcement agencies to encourage appropriate responses to domestic violence cases and examine issues including—

(A) the inappropriateness of mutual protection orders;

(B) the prohibition of mediation when domestic violence is involved;

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

(D) the discouragement 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 consistency of sentencing, including comparisons of domestic violence crimes with other violent crimes;

(J) the restitution of victims;

(K) the use of training and technical assistance to law enforcement, judges, court officers and other criminal justice professionals[.];

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

(M) the use of interstate extradition in cases of domestic violence crimes;

(N) the use of statewide and regional planning; and

(O) any other matters as the Secretary and the State domestic violence coalitions believe merit investigations;

(3) work with family law judges, [.]criminal court 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 domestic violence is involved;

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

(D) the use of training and technical assistance for family law judges, criminal court judges, and court personnel;

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

(F) the use of comprehensive protection orders to grant fullest protections possible to victims of domestic violence, including temporary custody support and maintenance;

(G) the development by Child Protective Service of supportive responses that enable victims to protect their children;

(H) the implementation of supervised visitations or denial of visitation to protect against danger to victims or their children; and

(I) the possibility of permitting domestic violence victims to remove children from the State when the safety of the children or the victim is at risk;

(4) conduct 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, including information aimed at underserved racial, ethnic or language-minority populations; and

(5) participate in planning and monitoring of the distribution of grants and grant funds to their State under section 303(a) [42 USCS § 10402(a)].

(b) Eligibility. To be eligible for a grant under this section, an entity shall be a statewide nonprofit State domestic violence coalition meeting the following conditions:

(1) The membership of the coalition includes representatives from a majority of the programs for victims of domestic violence in the State.

(2) The board membership of the coalition is representative of such programs.

(3) The purpose of the coalition 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.

(4) In the application submitted by the coalition for the grant, the coalition provides assurances satisfactory to the Secretary that the coalition—

(A) has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial entities in the preparation of the application; and

(B) will actively seek and encourage the participation of such entities in the activities carried out with the grant.

(c) Allotment of funds. From amounts appropriated under this section for each fiscal year, the Secretary shall allot to each State, the District of Columbia, the Commonwealth of Puerto Rico, and the combined U.S. Territories an amount equal to $\frac{1}{3}$ of the amount appropriated for such fiscal year. For purposes of this section, the term 'combined U.S. Territories' means Guam, American Samoa, the U.S. Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands and shall not receive less than 1.5 percent of the funds appropriated for each fiscal year.

(d) Prohibition on lobbying. No funds made available to entities under this section shall be used, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by Congress, or by any State or local legislative body, or State proposals by initiative petition, except that the representatives of the entity may testify or make other appropriate communication—

(1) when formally requested to do so by a legislative body, a committee, or a member thereof; or

(2) in connection with legislation or appropriations directly affecting the activities of the entity.

(e) Reporting. Each State domestic violence coalition receiving amounts under this section shall submit a report to the Secretary describing the coordination, training and technical assistance and public education services performed with such amounts and evaluating the effectiveness of those services.

(f) Definition. For purposes of this section, a State domestic violence coalition may include representatives of Indian tribes and tribal organizations, as defined in section 4 of the Indian Self-Determination and Education Assistance Act [25 USCS § 450b].

(g) Authorization of appropriations. There are authorized to be appropriated to be used to award grants under this section \$8,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1995.

(h) Regulations. Not later than 90 days after the date of enactment of this section [enacted May 28, 1992], 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.

(As amended May 28, 1992, P. L. 102-295, Title III, § 317, 106 Stat. 206; Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle B, Ch. 7, § 40272(c), 108 Stat. 1938.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Brackets have been inserted around the commas in subsec. (a), in para. (2)(K), and in the introductory matter of para. (3), to indicate the probable intention of Congress to have omitted such punctuation.

Amendments:

1992, Act May 28, 1992, substituted this section and section heading for ones which read:

"§ 10410. Law enforcement training and technical assistance grants and contracts

"(a) Regionally based programs. From the amount appropriated pursuant to section 310 for any fiscal year, the Secretary shall make grants and enter into contracts for the purpose of providing regionally-based training and technical assistance to provide the personnel of local and State law enforcement agencies with means for responding to incidents of family violence.

"(b) Competitive awards; selection criteria. (1) Grants and contracts under this section shall be awarded competitively on the basis of an application containing such information and assurances as the Secretary may require by regulation. In selecting grant and contract recipients, the Secretary shall select recipients who have demonstrated their effectiveness in preparing the personnel of local and State law enforcement agencies for the handling of incidents of family violence and shall give priority to those applications which propose projects or programs which will develop, demonstrate, or disseminate information with respect to improved techniques for responding to incidents of family violence by law enforcement officers.

"(2)(A) The Secretary shall award grants or contracts to local law enforcement agencies, acting in coordination with domestic violence shelters, social service agencies and hospitals, for the purposes of—

"(i) the development of materials, to be provided to each abused family member at the time such spouse is identified by law enforcement officers, hospital personnel, social services personnel, education counseling personnel, and other appropriate personnel involved in the identification of family violence cases that include—

"(I) an explanation in basic terms of—

"(aa) the rights of the abused family member under the laws of the jurisdiction involved; and

"(bb) the services available to the abused family member, including intervention, treatment, and support services; and

"(II) phone numbers and addresses for the services described in subparagraph (A)(i);

"(ii) the development of procedures whereby domestic violence shelter, hospital, social service, or law enforcement personnel provide to an abused family member a written report, relating to each incidence of physical abuse reported by the family member, that includes a description of physical injuries to the family member observed by such personnel; and

"(iii) the development of systems whereby domestic violence shelter or local social service

community education, and technical assistance and related services for victims of domestic violence

grant, the coalition provides assurances satisfac-

participation of law enforcement agencies and other application; and

ation of such entities in the activities carried out

for this section for each fiscal year, the Secretary Commonwealth of Puerto Rico, and the combined appropriated for such fiscal year. For purposes of Guam, American Samoa, the U.S. Virgin Islands, the Pacific Islands and shall not receive less than

entities under this section shall be used, directly or revocation of any executive order or similar to undertake to influence the passage or defeat of legislative body, or State proposals by initiative petition or make other appropriate communication— body, a committee, or a member thereof; or directly affecting the activities of the entity. Deriving amounts under this section shall submit a plan and technical assistance and public education effectiveness of those services.

domestic violence coalition may include representatives section 4 of the Indian Self-Determination and

to be appropriated to be used to award grants in sums as may be necessary for each of the fiscal

enactment of this section [enacted May 28, 1992], during this section. Not later than 120 days after regulations implementing this section.

17, 106 Stat. 206; Sept. 13, 1994, P. L. 103-322,

AMENDMENTS AND DIRECTIVES

(3), in para. (2)(K), and in the introductory Congress to have omitted such punctuation.

non heading for ones which read: "grants and contracts"

appropriated pursuant to section 310 for any fiscal contracts for the purpose of providing regionally- personnel of local and State law enforcement agen-

contracts under this section shall be awarded using such information and assurances as the grant and contract recipients, the Secretary shall effectiveness in preparing the personnel of local and incidents of family violence and shall give priority programs which will develop, demonstrate, or dis-

to local law enforcement agencies, acting in service agencies and hospitals, for the purposes

vided to each abused family member at the time ent officers, hospital personnel, social services and other appropriate personnel involved in the

by member under the laws of the jurisdiction

abused family member, including intervention,

services described in subparagraph (A)(ii); domestic violence shelter, hospital, social service, abused family member a written report, relating by the family member, that includes a descrip- observed by such personnel; and domestic violence shelter or local social service

personnel, with the consent of the abused family member involved, may obtain from local law enforcement personnel information relating to abuse of such family member, including a report describing the initial contact of such family member and the law enforcement agency.

"(B) The Secretary shall provide assurances that procedures will be developed under this paragraph to guarantee the confidentiality of the records maintained.

"(c) Delegation of authority and transfer of funds to Attorney General. The Secretary shall delegate to the Attorney General of the United States the Secretary's responsibilities for carrying out this section and shall transfer to the Attorney General from funds appropriated under section 310 not in excess of \$2,000,000 for each fiscal year to be used for the purpose of making grants under this section."

1994, Act Sept. 13, 1994, in subsec. (a), redesignated paras. (1)-(4) as paras. (2)-(5), respectively, and added new para. (1), in para. (2) as redesignated, in subpara. (K), substituted "judges, court officers and other criminal justice professionals," for "and court officials and other professionals", in para. (3) as redesignated, in the introductory matter and in subpara. (D), inserted "criminal court judges," in subpara. (F), inserted "custody", in subpara. (H) substituted "supervised visitations or denial of visitation to protect against danger to victims or their children" for "supervised visitations that do not endanger victims and their children", and, in para. (4) as redesignated, inserted "including information aimed at underserved racial, ethnic or language-minority populations".

§ 10412. Authority of Secretary; construction with state and local law

(a) In order to carry out the provisions of this title [42 USCS §§ 10401 et seq.], the Secretary is authorized to—

(1)-(4) [Unchanged]

Not later than 90 days after the date of enactment of this sentence [enacted May 28, 1992], the Secretary shall publish proposed regulations implementing sections 303, 308, and 314 [42 uscs §§ 10402, 10407, and 10414]. Not later than 120 days after such date of enactment, the Secretary shall publish final regulations implementing such sections.

(b) [Unchanged]

(As amended May 28, 1992, P. L. 102-295, Title III, § 318, 106 Stat. 208.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1992, Act May 28, 1992, in subsec. (a), added the concluding matter.

§ 10413. Family member abuse information and documentation project

The Secretary shall, directly or by grant or contract—

(1) develop data on the number of victims of family violence and their dependents who are homeless or institutionalized as a result of the violence and abuse they have experienced;

(2), (3) [Unchanged]

(As amended May 28, 1992, P. L. 102-295, Title III, § 319, 106 Stat. 209.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1992, Act May 28, 1992, in para. (1), purported to substitute "develop data on the number of victims of family violence and their dependents who are homeless or institutionalized as a result of the violence and abuse they have experienced" for "characteristics relating to family violence"; however, the substitution was instead made for "develop data on the individual characteristics relating to family violence" in order to effectuate the probable intent of Congress.

§ 10414. Grants for public information campaigns

(a) In general. 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) Application. 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) Requirements. 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) Use. 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) Criteria. 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.

(f) Definitions. For purposes of this section, the term "public or private nonprofit entity" includes an "Indian tribe" or "tribal organization"; as defined in section 4 of the Indian Self-Determination and Education Assistance Act [25 USCS § 450b].

(Oct. 9, 1984, P. L. 98-457, Title III, § 314, as added May 28, 1992, P. L. 102-295, Title III, § 320, 106 Stat. 209.)

§ 10415. Model State leadership grants for domestic violence intervention

(a) In general. The Secretary, in cooperation with the Attorney General, shall award grants to not more than 10 States to assist such States 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; and

(3) facilitate "arrests and aggressive" prosecution policies.

(b) Designation as model State. 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 guidelines for judges that—

(A) reduce the automatic issuance of mutual restraining or protective orders in cases where only one spouse has sought a restraining or protective order;

(B) 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; and

(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) Authorization of appropriations. (1) In general. In addition to the funds authorized to be appropriated under section 310 [42 USCS § 10409], 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 through 1995.

(2) Limitation. A grant may not be made under this section in an amount less than \$2,000,000.

(3) Delegation and transfer. 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.

(Oct. 9, 1984, P. L. 98-457, Title III, § 315, as added May 28, 1992, P. L. 102-295, Title III, § 321, 106 Stat. 210.)

§ 10416. National domestic violence hotline grant

(a) In general. The Secretary may award a grant to a private, nonprofit entity to provide for the operation of a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence.

(b) Duration. A grant under this section may extend over a period of not more than 5 years.

(c) Annual approval. The provision of payments under a grant under this section shall be subject to annual approval by the Secretary and subject to the availability of appropriations for each fiscal year to make the payments.

(d) Activities. Funds received by an entity under this section shall be used to establish and operate a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence. In establishing and operating the hotline, a private, nonprofit entity shall—

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

may require.

red into under this section shall be used for the may include public service announcements, paid rising, electronic broadcast media, and any other times to be appropriate.

that an applicant—

and groups at greatest risk;

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te the population groups identified as most at risk.

"public or private nonprofit entity" includes an on 4 of the Indian Self-Determination and Educa-

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Attorney General, shall award grants to not more demonstration States and in meeting the costs of

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unt under this section shall be subject to annual ppropriations for each fiscal year to make the

ction shall be used to establish and operate a and assistance to victims of domestic violence. nit entity shall—

phone line;

(2) employ, train, and supervise personnel to answer incoming calls and provide counseling and refer- ral services to callers on a 24-hour-a-day basis;

(3) assemble and maintain a current database of information relating to services for victims of domestic violence to which callers may be referred throughout the United States, including information on the availability of shelters that serve battered women; and

(4) publicize the hotline to potential users throughout the United States.

(e) Application. A grant may not be made under this section unless an application for such grant has been approved by the Secretary. To be approved by the Secretary under this subsection an application shall—

(1) contain 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;

(2) include a complete description of the applicant's plan for the operation of a national domestic violence hotline, including descriptions of—

(A) the training program for hotline personnel;

(B) the hiring criteria for hotline personnel;

(C) the methods for the creation, maintenance and updating of a resource database;

(D) a plan for publicizing the availability of the hotline;

(E) a plan for providing service to non-English speaking callers, including hotline personnel who speak Spanish; and

(F) a plan for facilitating access to the hotline by persons with hearing impairments;

(3) demonstrate that the applicant has nationally recognized expertise in the area of domestic violence and a record of high quality service to victims of domestic violence, including a demonstration of sup- port from advocacy groups, such as domestic violence State coalitions or recognized national domestic violence groups;

(4) demonstrates that the applicant has a commitment to diversity, and to the provision of services to ethnic, racial, and non-English speaking minorities, in addition to older individuals and individuals with disabilities; and

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

(f) Authorization of appropriations. (1) In general. There are authorized to be appropriated to carry out this section—

(A) \$1,000,000 for fiscal year 1995;

(B) \$400,000 for fiscal year 1996;

(C) \$400,000 for fiscal year 1997;

(D) \$400,000 for fiscal year 1998;

(E) \$400,000 for fiscal year 1999; and

(F) \$400,000 for fiscal year 2000.

(2) Availability. Funds authorized to be appropriated under paragraph (1) shall remain available until expended.

(Oct. 9, 1984, P. L. 98-457, Title III, § 316, as added Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle B, Ch 1, § 40211, 108 Stat. 1925.)

§ 10417. Youth education and domestic violence

(a) General purpose. For purposes of this section, the Secretary may, in consultation with the Secretary of Education, select, implement and evaluate 4 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 4 different audiences: primary schools, middle schools, secondary schools, and institutions of higher educa- tion. The model programs shall be selected, implemented, and evaluated in consultation with educational experts, legal and psychological experts on battering, and victim advocate organizations such as battered women's shelters, State coalitions and resource centers.

(c) Review and dissemination. Not later than 2 years after the date of enactment of this section [enacted Sept. 13, 1994], 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 of appropriations. There are authorized to be appropriated to carry out this section \$400,000 for fiscal year 1996.

(Oct. 9, 1984, P. L. 98-457, Title III, § 317, as added Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle B, Ch 5, § 40251, 108 Stat. 1935.)

§ 10418. Demonstration grants for community initiatives

(a) In general. The Secretary shall provide grants to nonprofit private organizations to establish projects in local communities involving many sectors of each community to coordinate intervention and prevention of domestic violence.

(b) Eligibility. To be eligible for a grant under this section, an entity—

(1) shall be a nonprofit organization organized for the purpose of coordinating community projects for the intervention in and prevention of domestic violence; and

(2) shall include representatives of pertinent sectors of the local community, which may include—

(A) health care providers;

(B) the education community;

(C) the religious community;

- (D) the justice system;
 - (E) domestic violence program advocates;
 - (F) human service entities such as State child services divisions;
 - (G) business and civic leaders; and
 - (H) other pertinent sectors.
- (c) Applications. An organization that desires to receive a grant under this section shall submit to the Secretary an application, in such form and in such manner as the Secretary shall prescribe through notice in the Federal Register, that—
- (1) demonstrates that the applicant will serve a community leadership function, bringing together opinion leaders from each sector of the community to develop a coordinated community consensus opposing domestic violence;
 - (2) demonstrates a community action component to improve and expand current intervention and prevention strategies through increased communication and coordination among all affected sectors;
 - (3) includes a complete description of the applicant's plan for the establishment and operation of the community project, including a description of—
 - (A) the method for identification and selection of an administrative committee made up of persons knowledgeable in domestic violence to oversee the project, hire staff, assure compliance with the project outline, and secure annual evaluation of the project;
 - (B) the method for identification and selection of project staff and a project evaluator;
 - (C) the method for identification and selection of a project council consisting of representatives of the community sectors listed in subsection (b)(2);
 - (D) the method for identification and selection of a steering committee consisting of representatives of the various community sectors who will chair subcommittees of the project council focusing on each of the sectors; and
 - (E) a plan for developing outreach and public education campaigns regarding domestic violence; and
 - (4) contains such other information, agreements, and assurances as the Secretary may require.
- (d) Term. A grant provided under this section may extend over a period of not more than 3 fiscal years.
- (e) Conditions on payment. Payments under a grant under this section shall be subject to—
- (1) annual approval by the Secretary; and
 - (2) availability of appropriations.
- (f) Geographical dispersion. The Secretary shall award grants under this section to organizations in communities geographically dispersed throughout the country.
- (g) Use of grant monies. (1) In general. A grant made under subsection (a) shall be used to establish and operate a community project to coordinate intervention and prevention of domestic violence.
- (2) Requirements. In establishing and operating a project, a nonprofit private organization shall—
- (A) establish protocols to improve and expand domestic violence intervention and prevention strategies among all affected sectors;
 - (B) develop action plans to direct responses within each community sector that are in conjunction with development in all other sectors; and
 - (C) provide for periodic evaluation of the project with a written report and analysis to assist application of this concept in other communities.
- (h) Authorization of appropriations. There are authorized to be appropriated to carry out this section—
- (1) \$4,000,000 for fiscal year 1996; and
 - (2) \$6,000,000 for fiscal year 1997.
- (i) Regulations. Not later than 60 days after the date of enactment of this section [enacted Sept. 13, 1994], the Secretary shall publish proposed regulations implementing this section. Not later than 120 days after the date of enactment [enacted Sept. 13, 1994], the Secretary shall publish final regulations implementing this section.
- (Oct. 9, 1984, P. L. 98-457, Title III, § 318, as added Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle B, Ch. 6, § 40261, 108 Stat. 1935.)

CHAPTER 112. VICTIM COMPENSATION AND ASSISTANCE

Section

- 10605. Establishment of Office for Victims of Crime [Caution: For application of section, see 42 USCS § 10601 note]
- 10606. Victims' rights
- 10607. Services to victims

§ 10601. Crime Victims Fund

- (a), (b) [Unchanged]
- (c) Availability of sums for grants. Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection [this section] for grants under this chapter without fiscal year limitation.
- (d) Availability of sums for expenditure. The Fund shall be available as follows:

es divisions:

a grant under this section shall submit to the as the Secretary shall prescribe through notice

munity leadership function, bringing together develop a coordinated community consensus op-

improve and expand current intervention and and coordination among all affected sectors:

plan for the establishment and operation of the

n administrative committee made up of persons project, hire staff, assure compliance with the project;

ect staff and a project evaluator;

project council consisting of representatives of

steering committee consisting of representatives he committees of the project council focusing on

ation campaigns regarding domestic violence;

urances as the Secretary may require.

over a period of not more than 3 fiscal years.

this section shall be subject to—

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er subsection (a) shall be used to establish and and prevention of domestic violence.

ct, a nonprofit private organization shall—

estic violence intervention and prevention strate-

each community sector that are in conjunction

with a written report and analysis to assist ap-

to be appropriated to carry out this section—

actment of this section [enacted Sept. 13, 1994],

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ry shall publish final regulations implementing

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SATION AND ASSISTANCE

ution: For application of section, see

Fund shall remain in the Fund and be available nts under this chapter without fiscal year limita-

be available as follows:

(1) The first \$6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first \$3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

(2) the next \$10,000,000 deposited in the Fund shall be available for grants under section 1404A [42 USCS § 10603a].

(3) Of the remaining amount deposited in the Fund in a particular fiscal year—

(A) 48.5 percent shall be available for grants under section 1403 [42 USCS § 10602];

(B) 48.5 percent shall be available for grants under section 1404A [42 USCS § 10603a]; and

(C) 3 percent shall be available for grants under section 1404(c) [42 USCS § 10603(c)].

(4) The Director may retain any portion of the Fund that was deposited during a fiscal year that is in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as a reserve for use in a year in which the Fund falls below the amount available in the previous year. Such reserve may not exceed \$20,000,000.

(5) [Deleted]

(e), (f) [Unchanged]

(g) Grants for assisting Native American Indian tribes. (1) The Attorney General, acting through the Director, shall use 15 percent of the funds available under subsection (d)(2) to make grants for the purpose of assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve—

(A) the handling of child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child victim; and

(B) the investigation and prosecution of cases of child abuse, particularly child sexual abuse.

(2) As used in this subsection, the term "tribe" has the meaning given that term in section 4(b) of the Indian Self-Determination and Education Assistance Act [25 USCS § 450b(b)].

(As amended Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle D, §§ 7121, 7124, 102 Stat. 4419, 4422; Nov. 29, 1990, P. L. 101-647, Title V, § 504, 104 Stat. 4822; Oct. 29, 1992, P. L. 102-572, Title X, § 1001, 106 Stat. 4520; Oct. 27, 1993, P. L. 103-121, Title I, § 110(a), 107 Stat. 1164; Sept. 13, 1994, P. L. 103-322, Title XXIII, Subtitle B, § 230201, Title XXXIII, § 330025(a), 108 Stat. 2079, 2151.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988, Act Nov. 18, 1988, (applicable as provided by § 7129 of such Act, which appears as a note to this section substituted subsec. (c) for one which read:

"(1) If the total deposited in the Fund during a particular fiscal year reaches the sum of \$110 million, the excess over that sum shall be deposited in the general fund of the Treasury and shall not be a part of the Fund.

"(2) No deposits shall be made in the Fund after September 30, 1988."

Such Act further (applicable as provided above), in subsec. (d)(2), in subpara. (c), inserted ", but not in excess of \$110,000,000.", and added subpara. (D); and added subsec. (g).

1990, Act Nov. 29, 1990, in subsec. (c)(1)(B)(i), substituted "1990" for "1991".

1992, Act Oct. 29, 1992 (effective 1/1/93, as provided by § 1101(a) of such Act, which appears as 2 USCS § 905 note) substituted subsec. (c) for one which read:

"(1)(A) If the total deposited in the Fund during a particular fiscal year reaches the ceiling sum described in subparagraph (B), the excess over the ceiling sum shall not be part of the Fund. The first \$2,200,000 of such excess shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code, and the remaining excess shall be deposited in the general fund of the Treasury.

"(B) The ceiling sum referred to in subparagraph (A) is—

"(i) \$125,000,000 through fiscal year 1990; and

"(ii) \$150,000,000 thereafter through fiscal year 1994.

"(2) No deposits shall be made in the Fund after September 30, 1994."

Such Act further (effective as above) substituted subsec. (d) for one which read:

"(1) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this title without fiscal year limitation.

"(2) The Fund shall be available as follows:

"(A) Of the first \$100,000,000 deposited in the Fund in a particular fiscal year—

"(i) 49.5 percent shall be available for grants under section 1403;

"(ii) 45 percent shall be available for grants under section 1404(a);

"(iii) 1 percent shall be available for grants under section 1404(c); and

"(iv) 4.5 percent shall be available for grants as provided in section 1404A.

"(B) The next \$5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants as provided in section 1404A.

"(C) Any deposits in the Fund in a particular fiscal year in excess of \$105,500,000, but not in excess of \$110,000,000, shall be available for grants under section 1404(a).

"(D) Any deposits in the Fund in a particular fiscal year in excess of \$110,000,000 shall be available as follows:

"(i) 47.5 percent shall be available for grants under section 1403;

"(ii) 47.5 percent shall be available for grants under section 1404(a); and

"(iii) 5 percent shall be available for grants under section 1404(c)(1)(B)."

1993, Act Oct. 27, 1993, in subsec. (d), in para. (2), in subpara. (A), deleted "and" following the concluding semicolon, in subpara. (B), substituted the concluding semicolon for a period, and added subparas. (C) and (D), and in para. (3), substituted "1404A" for "1404(a)"; and, in subsec. (g)(1), substituted "(d)(2)(D)" for "(d)(2)(A)(iv)".

1994, Act Sept. 13, 1994, in subsec. (d), substituted paras. (2), (3), and (4) for ones which read:

"(2) Of the next \$100,000,000 deposited in the Fund in a particular fiscal year—

"(A) 49.5 percent shall be available for grants under section 14043;

"(B) 45 percent shall be available for grants under section 1404(a);

"(C) 1 percent shall be available for grants under section 1404(c); and

"(D) 4.5 percent shall be available for grants as provided in section 1404A.

"(3) The next \$5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404A.

"(4) The next \$4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).";

and deleted para. (5), which read:

"(5) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under paragraphs (1) through (4) shall be available as follows:

"(A) 47.5 percent shall be available for grants under section 1403.

"(B) 47.5 percent shall be available for grants under section 1404(a).

"(C) 5 percent shall be available for grants under section 1404(c).";

and, in subsec. (g)(1), substituted "(d)(2)" for "(d)(2)(D)";

Such Act further, in subsec. (d)(3)(B), substituted "1404A" for "1404(a)";

Short title:

Act Nov. 29, 1990, P. L. 101-647, Title V, § 501, 104 Stat. 4820, provides: "This title may be cited as 'Victims' Rights and Restitution Act of 1990'." For full classification of such Title, consult USCS Tables volumes.

Other provisions:

Applicability of amendments made by Act Nov. 18, 1988, Act Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle D, § 7129, 102 Stat. 4423; Nov. 29, 1990, P. L. 101-647, Title V, § 505, 104 Stat. 4822, provides: "The amendments made by this chapter [subtitle] [amending this section and 42 USCS §§ 10602-10604] shall not apply with respect to a State compensation program that was an eligible State crime victim compensation program on the date of the enactment of this Act until October 1, 1991."

Retroactive transfer to Fund, Act Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle D, § 7130, 102 Stat. 4423, applicable as provided by § 7129 of such Act, which appears as a note to this section, provides: "An amount equivalent to those sums which would have been placed in the Fund under section 1402(b) of the Victims of Crime Act [subsec. (b) of this section], but for the effect of section 1402(c)(2) of such Act [subsec. (c)(2) of this section], is hereby transferred to the Fund from any sums not appropriated from the general treasury."

CODE OF FEDERAL REGULATIONS

Add:

28 CFR Parts 66, 67, 69.

RESEARCH GUIDE

Federal Procedure L. Ed.

9A Fed Proc L Ed, Criminal Procedure § 22:1577.

INTERPRETIVE NOTES AND DECISIONS

Based on restrictions set forth in 42 USCS §§ 1601-1603, Victims of Crime Act and special assessment imposed thereunder were intended to assist and compensate crime victims and not to raise revenue within meaning of Origination Clause of Constitution. *United States v Simpson* (1989, CA3 Pa) 885 F2d 36.

Provision of Victims of Crime Act (18 USCS § 3013), pursuant to which special assessment was imposed on

defendant convicted of unlawful possession of firearm by convicted felon is not bill for raising revenue subject to constraints of Origination Clause of Constitution, since monies collected by way of special assessment are used, pursuant to 42 USCS §§ 10601(b)(2) and 10602, to fund Crime Victims Assistance Fund. *United States v Herrada* (1989, CA5 Tex) 887 F2d 524.

§ 10602. Crime victim compensation

(a) Authority of Director; grants. (1) Except as provided in paragraph (2), the Director shall make an annual grant from the Fund to an eligible crime victim compensation program of 40 percent of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. Except as provided in paragraph (3), a grant under this section shall be used by such program only for awards of compensation.

(2) If the sums available in the Fund for grants under this section are insufficient to provide grants of 40 percent as provided in paragraph (1), the Director shall make, from the sums available, a grant to each eligible crime victim compensation program so that all such programs receive the same percentage of the amounts awarded by such program during the preceding fiscal year other than amounts awarded for property damage.

(3) Not more than 5 percent of a grant made under this section may be used for the administration of the State crime victim compensation program receiving the grant.

(b) Eligible crime victim compensation programs. A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if—

(1) such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for—

(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) funeral expenses attributable to a death resulting from a compensable crime;

(2)-(4) [Unchanged]

(2), (3), and (4) for ones which read:
 in a particular fiscal year—
 under section 1403;
 under section 1404(a);
 under section 1404(c); and
 provided in section 1404A.
 particular fiscal year shall be available for grants
 particular fiscal year shall be available for grants
 year that remain after the funds are distributed
 as follows:
 under section 1403.
 under section 1404(a).
 under section 1404(c).";
 for "1404(a)".

Stat. 4820, provides: "This title may be cited as
 Classification of such Title, consult USCS Tables

Act Nov. 18, 1988, P. L. 100-690, Title VII,
 101-647, Title V, § 505, 104 Stat. 4822, provides:
 using this section and 42 USCS §§ 10602, 10604
 program that was an eligible State crime victim
 Act until October 1, 1991."
 100-690, Title VII, Subtitle D, § 7130, 102 Stat.
 appears as a note to this section, provides: "An
 placed in the Fund under section 1402(b) of the
 for the effect of section 1402(c)(2) of such Act
 the Fund from any sums not appropriated from

REGULATIONS

CODE

NOTES AND DECISIONS

endant convicted of unlawful possession of firearm by
 convicted felon is not bill for raising revenue subject to
 Grants of Origination Clause of Constitution, since
 fees collected by way of special assessment are used,
 pursuant to 42 USCS §§ 10601(b)(2) and 10602, to fund
 the Victims Assistance Fund. United States v Herrada
 (9th, CA5 Tex) 887 F.2d 524.

in paragraph (2), the Director shall make an an-
 nual compensation program of 40 percent of the
 other than amounts awarded for property damage.
 This section shall be used by such program only for

if the sums available in this section are insufficient to provide grants of
 the Director shall make, from the sums available, a grant to
 that all such programs receive the same percent-
 age of the preceding fiscal year other than amounts

if the sums available in this section may be used for the administration of
 the grant.

if the sums available in this section may be used for the administration of
 the grant.

if the sums available in this section may be used for the administration of
 the grant.

if the sums available in this section may be used for the administration of
 the grant.

- (5) such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;
 (6) such program provides compensation to residents of the State who are victims of crimes occurring outside the State if—
 (A) the crimes would be compensable crimes had they occurred inside that State; and
 (B) the places the crimes occurred in are States not having eligible crime victim compensation programs;
 (7) such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender; and
 (8) such program provides such other information and assurances related to the purposes of this section as the Director may reasonably require.

(c) [Deleted]

(d) Definitions. As used in this section—

- (1) the term "property damage" does not include damage to prosthetic devices, eyeglasses or other corrective lenses, or dental devices;
 (2) the term "medical expenses" includes, to the extent provided under the eligible crime victim compensation program, expenses for eyeglasses and other corrective lenses, for dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;
 (3) the term "compensable crime" means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, and includes driving while intoxicated and domestic violence;
 (4) [Unchanged]

(e) Notwithstanding any other law, if the compensation paid by an eligible crime victim compensation program would cover costs that a Federal program, or a federally financed State or local program, would otherwise pay,—

- (1) such crime victim compensation program shall not pay that compensation; and
 (2) the other program shall make its payments without regard to the existence of the crime victim compensation program.

(As amended Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle D, §§ 7123(b)(1)-(3), 7125, 7126, 102 Stat. 4421, 4423; Sept. 13, 1994, P. L. 103-322, Title XXIII, Subtitle B, §§ 230202, 230203, Title XXXIII, § 330025(b), 108 Stat. 2079, 2151.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Brackets have been inserted around the comma in subsec. (e), in the introductory matter, to indicate the probable intention of Congress to have omitted such punctuation.

Amendments:

1988, Act Nov. 18, 1988, § 7123(b)(1)-(3) (applicable as provided by § 7129 of such Act, which appears as 42 USCS § 10601 note), in subsecs. (a)(1) and (2) and (b)(6), substituted "Director" for "Attorney General".

Section 7125 of such Act (applicable as above), in subsec. (a), in paras. (1) and (2), substituted "40 percent" for "35 percent"; in subsec. (b), substituted para. (1) for one which read:

"(1) such program is operated by a State and offers compensation to victims of crime and survivors of victims of crime for—

- "(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;
 "(B) loss of wages attributable to a physical injury resulting from a compensable crime; and
 "(C) funeral expenses attributable to a death resulting from a compensable crime."

Such section 7125 further, in subsec. (b), substituted para. (5) for one which read: "such program provides compensation to victims of crime occurring within such State that would be compensable crimes, but for the fact that such crimes are subject to Federal jurisdiction, on the same basis that such program provides compensation to victims of compensable crimes; and", redesignated former para. (6) as para. (8), and added new paras. (6) and (7); deleted subsec. (c), which read: "A State crime victim compensation program in effect on the date grants may first be made under this section shall be deemed an eligible crime victim compensation program for the purposes of this section until the day after the close of the first regular session of the legislature of that State that begins after such date."; and, in subsec. (d)(3), inserted "and includes driving while intoxicated and domestic violence".

Section 7126 of such Act (applicable as above), in subsec. (d), in para. (1), inserted "eyeglasses or other corrective lenses," and, in para. (2), inserted "eyeglasses and other corrective lenses, for" and inserted a comma after "prosthetic devices".

1994, Act Sept. 13, 1994, in subsec. (a), in para. (1), substituted "Except as provided in paragraph (3), a grant" for "A grant" and added para. (3); in subsec. (b)(1), inserted "for—" and subparas. (A)-(C); and added subsec. (e).

CODE OF FEDERAL REGULATIONS

Add:
 28 CFR Part 69.

INTERPRETIVE NOTES AND DECISIONS

Based on restrictions set forth in 42 USCS §§ 1601-1603, Victims of Crime Act and special assessment imposed thereunder were intended to assist and compensate crime victims and not to raise revenue within meaning of Ori-

gination Clause of Constitution. United States v Simpson (1989, CA3 Pa) 885 F.2d 36.

Provision of Victims of Crime Act (18 USCS § 3013), pursuant to which special assessment was imposed on

defendant convicted of unlawful possession of firearm by convicted felon is not bill for raising revenue subject to constraints of Origination Clause of Constitution, since monies collected by way of special assessment are used.

pursuant to 42 USCS §§ 10601(b)(2) and 10602, to fund Crime Victims Assistance Fund. *United States v Herrada* (1989, CA5 Tex) 887 F2d 524.

§ 10603. Crime victim assistance

- (a) Grant authority of Director; chief executive of States; amount; insufficient funds. (1) Subject to the availability of money in the Fund, the Director shall make an annual grant from any portion of the Fund made available by section 1402(d)(2) [42 USCS § 10601(d)(2)] for the purpose of grants under this subsection, or for the purpose of grants under section 1403 [42 USCS § 10602] but not used for that purpose, to the chief executive of each State for the financial support of eligible crime victim assistance programs.
- (2) [Introductory matter unchanged]
- (A) [Unchanged]
- (B) certify that funds shall be made available for grants to programs which serve previously underserved populations of victims of violent crime. The Director, after consultation with State and local officials and representatives from private organizations, shall issue guidelines to implement this section that provide flexibility to the States in determining the populations of victims of violent crimes that may be underserved in their respective States;
- (C) certify that funds awarded to eligible crime victim assistance programs will not be used to supplant State and local funds otherwise available for crime victim assistance; and
- (D) provide such other information and assurances related to the purposes of this section as the Director may reasonably require.
- (3) [Introductory matter unchanged]
- (A) the base amount to each State; and
- (B) [Unchanged]
- (4) If the amount available for grants under paragraph (1) is insufficient to provide the base amount to each State, the funds available shall be distributed equally among the States.
- (5) As used in this subsection, the term "base amount" means—
- (A) \$150,000 for fiscal years 1989 through 1991; and
- (B) \$200,000 thereafter.
- (b) Eligibility of program; factors; limitation on expending of sums. (1) [Unchanged]
- (2) Except as provided in paragraph (3), an eligible crime victim assistance program shall expend sums received under subsection (a) only for providing services to victims of crime.
- (3) Not more than 5 percent of sums received under subsection (a) may be used for the administration of the State crime victim assistance program receiving such sums.
- (c) Grants; purposes; distribution; duties of Director. (1) The Director [,] shall make grants—
- (A) for demonstration projects and training and technical assistance services to eligible crime victim assistance programs; and
- (B) [Unchanged]
- (2) [Unchanged]
- (3) The Director shall—
- (A)-(C) [Unchanged]
- (D) perform such other functions related to the purposes of this title as the Director deems appropriate.
- (4) The Director may reimburse other instrumentalities of the Federal Government and contract for the performance of functions authorized under this subsection.
- (d) Definitions. As used in this section—
- (1) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and any other territory or possession of the United States; and
- (2)-(5) [Unchanged]
- (As amended Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle D, §§ 7122, 7123(b)(4)-(9), 7127, 7128, Title IX, Subtitle D, § 9306(a), 102 Stat. 4420, 4421, 4423, 4537; Aug. 26, 1994, P. L. 103-317, Title I, § 112, 108 Stat. 1736; Sept. 13, 1994, P. L. 103-322, Title XXIII, Subtitle B, §§ 230204, 230205, 230208, 108 Stat. 2080.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed comma is inserted in the introductory matter of subsec. (c)(1) to denote the probable intent of Congress to delete such punctuation in the 1988 amendment of this provision.

Amendments:

1988, Act Nov. 18, 1988, in subsec. (d)(1), deleted ", except for the purposes of paragraphs (3)(A) and (4) of subsection (a) of this section," preceding "any other territory".

Section 7122 of such Act (applicable as provided by § 7129 of such Act, which appears as 42 USCS § 10601 note), in subsec. (a)(3), redesignated former subparas. (B) and (C) as subparas. (C) and (D) respectively, and added new subpara. (B).

Section 7123(b)(4)-(9) of such Act (applicable as above), in subsec. (a)(1) and (2)(D), as redesignated, substituted "Director" for "Attorney General"; and, in subsec. (c), in para. (1) introductory matter, substituted "Director" for "Attorney General, acting through the Assistant Attorney General for the Office of Justice Programs", in para. (3), in the introductory matter, substituted "Director" for "Assistant Attorney General for the Office of Justice Programs", in subpara. (D), substituted "Director deems ap-

to 42 USCS §§ 10601(b)(2) and 10602, to fund Victims Assistance Fund. United States v Herrada (5 Tex) 887 F2d 524.

amount; insufficient funds. (1) Subject to the like an annual grant from any portion of the 10601(d)(2)) for the purpose of grants under 1403 [42 USCS § 10602] but not used for financial support of eligible crime victim as-

grants to programs which serve previously the Director, after consultation with State and ations, shall issue guidelines to implement this nining the populations of victims of violent ates; assistance programs will not be used to sup- me victim assistance; and related to the purposes of this section as the

is insufficient to provide the base amount to among the States. means—

(f) sums. (1) [Unchanged] victim assistance program shall expend sums to victims of crime. section (a) may be used for the administration ch sums. e Director [,] shall make grants— ecal assistance services to eligible crime victim

poses of this title as the Director deems ap- of the Federal Government and contract for ction.

the Commonwealth of Puerto Rico, the United on of the United States; and

e D, §§ 7122, 7123(b)(4)-(9), 7127, 7128, Title Aug. 26, 1994, P. L. 103-317, Title I, § 112. e title B, §§ 230204, 230205, 230208, 108 Stat.

AND DIRECTIVES

et subsec. (c)(1) to denote the probable intent ent of this provision.

et for the purposes of paragraphs (3)(A) and ertory".

29 of such Act, which appears as 42 USCS 225. (B) and (C) as subparagraphs. (C) and (D)

et subsec. (a)(1) and (2)(D), as redesignated. 29 sec. (c), in para. (1) introductory matter. in the Assistant Attorney General for the Of- matter, substituted "Director" for "Assistant para. (D), substituted "Director deems ap-

ropriate" for "Attorney General may assign", and, in para. (4), substituted "Director" for "Attorney General". Section 7127 of such Act (applicable as above); in subsec. (d)(1), inserted "the United States Virgin Islands,". Section 7128 of such Act (applicable as above), in subsec. (a), in paras. (3) and (4), substituted "the base amount" for "\$100,000", and added para. (5). 1994, Act Aug. 26, 1994, in subsec. (a)(5)(B), substituted "1995" for "1994". Act Sept. 13, 1994, in subsec. (a)(5), substituted subpara. (B) for one which read: "\$200,000 thereafter through fiscal year 1995."; in subsec. (b), in para. (2), substituted "Except as provided in paragraph (3), an eligible" for "An eligible", and added para. (3); and, in subsec. (c)(1)(A), inserted "demonstration projects and".

CODE OF FEDERAL REGULATIONS

Add: 28 CFR Part 69.

INTERPRETIVE NOTES AND DECISIONS

Based on restrictions set forth in 42 USCS §§ 1601-1603, Victims of Crime Act and special assessment imposed thereunder were intended to assist and compensate crime victims and not to raise revenue within meaning of Origination Clause of Constitution. United States v Simpson (1989, CA3 Pa) 885 F2d 36.

§ 10603a. Child abuse prevention and treatment grants

Amounts made available by section 1402(d)(2)(D) and (d)(3) [42 USCS § 10601(d)(2)(D) and (d)(3)] for the purposes of this section shall be obligated and expended by the Secretary of Health and Human Services for grants under section 4(d) of the Child Abuse Prevention and Treatment Act [42 USCS § 5103(d)]. Any portion of an amount which is not obligated by the Secretary by the end of the fiscal year in which funds are made available for allocation, shall be reallocated for award under section 1404(a) [42 USCS § 10603(a)], except that with respect to funds deposited during fiscal year 1986 and made available for obligation during fiscal year 1987, any unobligated portion of such amount shall remain available for obligation until September 30, 1988.

(As amended Oct. 27, 1993, P. L. 103-121, Title I, § 110(b), 107 Stat. 1164.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Amendments:

1993, Act Oct. 27, 1993, substituted "1402(d)(2)(D) and (d)(3)" for "1402(d)(2)".

§ 10604. Administrative provisions

(a) Authority of Director; establishment of rules and regulations; delegation of functions. The Director may establish such rules, regulations, guidelines, and procedures as are necessary to carry out any function of the Director under this chapter.

(b) Recordkeeping. Each recipient of sums under this chapter shall keep such records as the Director shall prescribe, including records that fully disclose the amount and disposition by such recipient of such sums, the total cost of the undertaking for which such sums are used, and that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(c) Attorney General; access; books and records; audits and examinations; expenditure of funds. The Attorney General or any duly authorized representative of the Attorney General shall have access, for purpose of audit and examination, to any books, documents, papers, and records of the recipient of sums under this chapter that, in the opinion of the Director, may be related to the expenditure of funds received under this chapter.

(d). (e) [Unchanged] *opposite page*

(f) Failure to comply with provisions; notice and hearing; power of Director. If, after reasonable notice and opportunity for a hearing on the record, the Director finds that a State has failed to comply substantially with any provision of this chapter or a rule, regulation, guideline, or procedure issued under this chapter, or an application submitted in accordance with this chapter or the provisions of any other applicable law, the Director shall—

(1) [Unchanged]

(2) suspend payments to such State until the Director is satisfied that such noncompliance has ended; or

(3) take such other action as the Director deems appropriate.

(g) Report. The Director shall, on December 31, 1990, and on June 30 every two years thereafter, report to the President and to the Congress on the revenue derived from each source described in section 1402 [42 USCS § 10601] and on the effectiveness of the activities supported under this chapter. The Director may include in such report recommendations for legislation to improve this chapter.

(h) Each entity receiving sums made available under this Act for administrative purposes shall certify that such sums will not be used to supplant State or local funds, but will be used to increase the amount of such funds that would, in the absence of Federal funds, be made available for these purposes.

(As amended Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle D, § 7123(b)(10)-(14), 102 Stat. 4421; Sept. 13, 1994, P. L. 103-322, Title XXIII, Subtitle B, §§ 230206, 230207, 108 Stat. 2080.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988, Act Nov. 18, 1988 (applicable as provided by § 7129 of such Act, which appears as 42 USCS

§ 10601 note), in subsec. (a), substituted "Director" for "Attorney General" in two places and deleted "and may delegate to any officer or employee of the Department of Justice any such function as the Attorney General deems appropriate" following "chapter"; in subsec. (b), substituted "Director" for "Attorney General"; in subsec. (c), substituted "Director" for "Attorney General or any duly authorized representative of the Attorney General"; in subsec. (f), substituted "Director" for "Attorney General" wherever appearing; and, in subsec. (g), substituted "Director" for "Attorney General" in two places and substituted "on December 31, 1990, and on December 31 every 2 years thereafter" for "no later than December 31, 1987".

1994, Act Sept. 13, 1994, in subsec. (g), substituted "and on June 30 every two years thereafter" for "and on December 31 every 2 years thereafter"; and added subsec. (h).

CODE OF FEDERAL REGULATIONS

Add:
28 CFR Part 69.

§ 10605. Establishment of Office for Victims of Crime

(a) There is established within the Department of Justice an Office for Victims of Crime (hereinafter in this chapter referred to as the "Office").

(b) The Office shall be headed by a Director (referred to in this chapter as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report to the Attorney General through the Assistant Attorney General for the Office of Justice Programs and shall have final authority for all grants, cooperative agreements, and contracts awarded by the Office. The Director shall not engage in any employment other than that of serving as the Director, nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under this part.

(c) The Director shall have the following duties:

(1) Administering funds made available by section 1402 [42 USCS § 10601].

(2) Providing funds to eligible States pursuant to sections 1403 and 1404 [42 USCS §§ 10602, 10603].

(3) Establishing programs in accordance with section 1404(c) [42 USCS § 10603(c)] on terms and conditions determined by the Director to be consistent with that subsection.

(4) Cooperating with and providing technical assistance to States, units of local government, and other public and private organizations or international agencies involved in activities related to crime victims.

(5) Such other functions as the Attorney General may delegate.

(Oct. 12, 1984, P. L. 98-473, Title II, Ch XIV, § 1411, as added Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle D, § 7123(a), 102 Stat. 4420.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This chapter", referred to in this section, is Chapter XIV of Title II of Act Oct. 12, 1984, P. L. 98-473, 98 Stat. 2170, which appears generally as 42 USCS §§ 10601 et seq. For full classification of such Chapter, consult USCS Tables volumes.

§ 10606. Victims' rights

(a) Best efforts to accord rights. Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims of crime are accorded the rights described in subsection (b).

(b) Rights of crime victims. A crime victim has the following rights:

(1) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.

(5) The right to confer with attorney for the Government in the case.

(6) The right to restitution.

(7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

(c) No cause of action or defense. This section does not create a cause of action or defense in favor of any person arising out of the failure to accord to a victim the rights enumerated in subsection (b).

(Nov. 29, 1990, P. L. 101-647, Title V, § 502, 104 Stat. 4820.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section was enacted as part of Act Nov. 29, 1990, P. L. 101-647, Title V, 104 Stat. 4820, and not as part of Act Oct. 12, 1984, P. L. 98-473, which generally comprises this chapter.

Other provisions:

Sense of Congress with respect to victims of crime. Act Nov. 29, 1990, P. L. 101-647, Title V, § 506, 104 Stat. 4822, provides:

"It is the sense of Congress that the States should make every effort to adopt the following goals of the Victims of Crime Bill of Rights:

Attorney General" in two places and deleted the word "Department of Justice" in the title of section 10601(b), substituted "Director" for "Attorney General" or any duly authorized person" in two places and substituted "Director" for "Attorney General" or "Attorney General" in two places and every 2 years thereafter" for "no later than June 30 every two years thereafter" for "and section 10601(b)."

REGULATIONS

Office for Victims of Crime (hereinafter in this chapter as the "Director"), who shall be appointed by the Senate. The Director shall report to the Attorney General for the Office of Justice Programs and shall administer and contracts awarded by the Office. The Director shall also serve as the Director of the Office of Justice Programs, or any other office, agency, or institution with which the Office

§ 10601 [42 USCS § 10601].

Sections 1403 and 1404 [42 USCS §§ 10602, 10603]. Section 1404(c) [42 USCS § 10603(c)] on terms and conditions with that subsection.

to States, units of local government, and other agencies involved in activities related to crime victims. The Director shall delegate.

Added Nov. 18, 1988, P. L. 100-690, Title VII.

RULES AND DIRECTIVES

Section 10601 of Title II of Act Oct. 12, 1984, P. L. 98-473, section 10601 et seq. For full classification of such Chapter,

of the Department of Justice and other departments, the rights of detection, investigation, or prosecution of crime are accorded the rights described in subsection

providing rights: respect for the victim's dignity and privacy. of a suspected offender.

proceedings related to the offense, unless the court determines that the victim would be materially affected if the victim heard other testimony

present in the case.

sentencing, imprisonment, and release of the offender.

to create a cause of action or defense in favor of any person whose rights enumerated in subsection (b).

§ 10602.

RULES AND DIRECTIVES

P. L. 101-647, Title V, 104 Stat. 4820, and not as amended, which comprises this chapter.

Nov. 29, 1990, P. L. 101-647, Title V, § 506, 104 Stat.

every effort to adopt the following goals of the

"(1) Victims of crime should be treated with compassion, respect and dignity throughout the criminal justice process.

"(2) Victims of crime should be reasonably protected from the accused throughout the criminal justice process.

"(3) Victims of crime should have a statutorily designated advisory role in decisions involving prosecutorial discretion, such as the decision to plea-bargain.

"(4) Victims of crime should have the right to a reasonable assurance that the accused will be tried in an expeditious manner.

"(5) A victim of crime should have the right to be present at all proceedings related to the offense against him, unless the victim is to testify and the court determines that the victim's testimony would be materially prejudiced by hearing other testimony at the trial.

"(6) Victims of crime should have the right to information about the conviction, sentencing and imprisonment of the person who committed the crime against them.

"(7) Victims of crime should be compensated for the damage resulting from the crime to the fullest extent possible by the person convicted of the crime.

"(8) Victims of crime should have a statutorily designated advisory role in deciding the early release status of the person convicted of the crime against them.

"(9) A victim of crime should never be forced to endure again the emotional and physical consequences of the original crime."

RESEARCH GUIDE

Annotations:

Measure and elements of restitution to which victim is entitled under state criminal statute. 15 ALR5th 391.

§ 10607. Services to victims

(a) Designation of responsible officials. The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) at each stage of a criminal case.

(b) Identification of victims. At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall—

- (1) identify the victim or victims of a crime;
- (2) inform the victims of their right to receive, on request, the services described in subsection (c); and
- (3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c).

(c) Description of services. (1) A responsible official shall—

- (A) inform a victim of the place where the victim may receive emergency medical and social services;
- (B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and manner in which such relief may be obtained;
- (C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and
- (D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

- (A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim; and to the extent that it will not interfere with the investigation;
- (B) the arrest of a suspected offender;
- (C) the filing of charges against a suspected offender;
- (D) the scheduling of each court proceeding that the witness is either required to attend or, under section 1102(b)(4), is entitled to attend;
- (E) the release or detention status of an offender or suspected offender;
- (F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and
- (G) the sentence imposed on an offender including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

(5) After trial, a responsible official shall provide a victim the earliest possible notice of—

- (A) the scheduling of a parole hearing for the offender;
- (B) the escape, work release, furlough, or any other form of release from custody of the offender; and
- (C) the death of the offender, if the offender dies while in custody.

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of

a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) No cause of action or defense. This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c).

(e) Definitions. For the purposes of this section—

(1) the term "responsible official" means a person designated pursuant to subsection (a) to perform the functions of a responsible official under that section; and

(2) the term "victim" means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

(i) a spouse;

(ii) a legal guardian;

(iii) a parent;

(iv) a child;

(v) a sibling;

(vi) another family member; or

(vii) another person designated by the court.

(Nov. 29, 1990, P. L. 101-647, Title V, § 503, 104 Stat. 4820; Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle E, § 40503(a), 108 Stat. 1946.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

References in text:

"Section 1102(b)(4)", referred to in this section, is probably a reference to § 502(b)(4) of Act Nov. 29, 1990, P. L. 101-647, which appears as 42 USCS § 10606(b)(4).

Explanatory notes:

This section was enacted as part of Act Nov. 29, 1990, P. L. 101-647, Title V, 104 Stat. 4821, and not as part of Act Oct. 12, 1984, P. L. 98-473, which generally comprises this chapter.

Amendments:

1994, Act Sept. 13, 1994, in subsec. (c), added the sentence beginning "The Attorney General shall provide . . ."

RESEARCH GUIDE

Annotations:

Measure and elements of restitution to which victim is entitled under state criminal statute. 15 ALR5th 391.

CHAPTER 113. STATE JUSTICE INSTITUTE

§ 10701. Definitions

As used in this title, the term—

(1)–(5) [Unchanged]

(6) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(7) "Supreme Court" means the highest appellate court within a State unless, for the purposes of this title, a constitutionally or legislatively established judicial council acts in place of that court; and

(8) "domestic violence" means—

(A) any action that constitutes —

(i) attempting to cause or intentionally, knowingly, or recklessly causing bodily injury or physical illness;

(ii) rape, sexual assault, or causing involuntary deviate sexual intercourse;

(iii) placing by physical menace another in fear of imminent serious bodily injury; or

(iv) the infliction of false imprisonment;

if such action is taken by one of 2 spouses, former spouses, or sexual or intimate partners against the other spouse, former spouse, or partner and the 2 of whom share biological parenthood of, have adopted, are legal custodians of, or are stepparents of a minor child; or

(B) physically or sexually abusing such minor child if such abuse is inflicted by either of such spouses, former spouses, or partners.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

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House District 31

House Of Representatives

Sponsor Statement

House Bill 267

Police communication with domestic violence shelters

This legislation seeks to assure communication between domestic violence shelter providers and police officials who are conducting a missing persons investigation. It is necessary for a domestic violence shelter to be able to inform the police that a person is not missing.

Communication is needed to prevent unnecessary expenditure of limited resources, the broad publication of the person's name and photograph in local media, and the placement of search and rescue workers at risk. The police are quite capable of withholding information from a spouse, if they know of the possibility of a domestic violence parameter in the incident.

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House District 31

House Of Representatives

January 30, 1998

Memorandum

To: HB 267 file

Re: State and Federal Laws governing confidentiality for DV Shelters.

State Law

"AS 18.66.200. Except as provided in AS 18.66.210 or 18.66.220, A victim or a victim counselor may not be compelled, without appropriate consent, to give testimony or to produce records concerning confidential communications for any purpose in a criminal, civil, legislative, or administrative proceeding."

Federal Law

Demonstration grants authorized . . . each applicant shall . . .

"42 USC 10402(a)(2)(E) . . . assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this title and provide assurance that the address or location of any shelter assisted under this title will . . . not be made public."

"42 USC 10402(d) Revealing research or statistical information; prohibition; immunity from legal proceedings; permission; admission of information as evidence. Except as otherwise provided by Federal law, no officer or employee of the Federal Government, and no recipient of sums under this chapter, shall use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this chapter. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence in any action, suit or other judicial, legislative, or administrative proceeding.

Alaska State Legislature

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House District 31

House Of Representatives

April 4, 1997

Jayne Andreen, Executive Director
Council on Domestic Violence & Sexual Assault
Box 111200
Juneau, Alaska 99811-1200

Ms. Sandy Samaniega
WICCA
717 9th Ave.
Fairbanks, Alaska 99701

Dear Ms. Andreen and Ms. Samaniega,

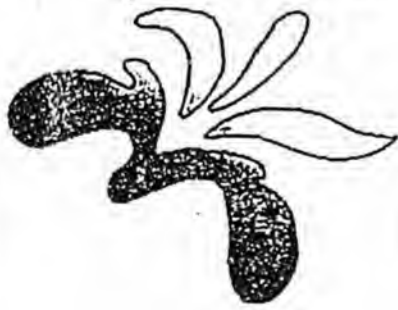
I am sorry to read that your attempts to creatively develop a means of communication between your staff and the Department of Public Safety were not successful.

As you know, I had hoped you would find a means of working this out short of legislation. I will have the bill ready to file early this coming week. Other legislators are asking to co-sponsor the bill, so I am sure it will move quickly.

Thank you for your efforts.

Sincerely Yours,


Representative Pete Kelly



WOMEN IN CRISIS

Counseling and Assistance

717 Ninth Avenue • Fairbanks, Alaska 99701

(907) 452-2293 • Fax: 452-2613 • 1-800-478-7273

April 9, 1997

Captain John Myers, Commander
 "D" Detachment, Alaska State Troopers
 1979 Peger Road
 Fairbanks, AK 99709

Dear Captain Myers:

I received your letter of April 1 today. Thank you.

I think it would be more accurate to state our mutual concern as being "what we should do when you believe or have reason to suspect that a person reported as missing may be or may have been a client of WIC-CA." I agree that we did not come to a simple, definitive solution. However, my sense of our meeting was that you were willing to continue our past procedure of

1. AST calling WIC-CA if AST suspects a reportedly missing person may have been a client of WIC-CA.
2. WIC-CA would attempt to contact the person if she had been or was presently a client of ours. *
3. If we were able to contact the woman, WIC-CA would urge the woman to contact AST.

I fully sympathized with your concern about wasting resources. I realize resources wasted on one case mean less resources available for other valid cases. I hope at our meeting you felt assured when I was able to tell you that to my knowledge AST has never searched for a person who was safely sheltered at WIC-CA. In one case that I know of, we were even able to locate the individual who was reported as missing and ~~the search ended up~~ contacting you. The usual reality, however, is WIC-CA does not know the whereabouts of the missing person.

Finally, I certainly misunderstood what your written letter to me was supposed to be about. I had thought you were going to memorialize our conversation and agreement. I would consider it an insult to you to ask for assurance that you would continue to provide protection to our clients. I apologize for this misunderstanding. (My communication skills must not be as sound as I'd thought!)

So thanks for meeting with me, for taking the time to write, and for assuring me on the phone yesterday that what I thought we'd agreed to (above) was really our agreement. I think we didn't talk enough about the state law and federal regulation mandating the strict confidentiality we uphold and I'd like a chance to discuss it with you whenever you have time. In the meantime, I hope you are able to trust that there are good reasons for these provisions.

Respectfully,

Sandy

Sandy Samaniego
 Executive Director

* knows, but
 silent,

STATE OF ALASKA

April 1, 1997

Ms. Sandy Samanlega
717 9th Ave
Fairbanks, Alaska 99701

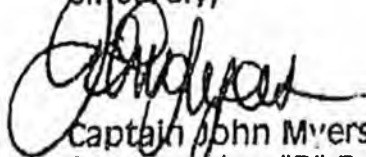
Dear Ms. Samanlega:

Thank you for taking the time to meet with me to discuss options open to us when we believe that one of your clients may be a missing person. It is unfortunate that we could not agree upon a simple definitive solution.

It is a positive step that you promised to encourage your residents and clients to contact the Troopers when you learn that the client is the subject of a search. I have contacted Deputy Commissioner Smith and advised him of your willingness to do this.

I, in turn, had promised to give you written assurance that the Alaska State Troopers will continue to assist you in providing protection to your clients.

Sincerely,



Captain John Myers
Commander, "D" Detachment
Alaska State Troopers

Alaska State Legislature

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House District 31

House Of Representatives

January 27, 1997

Memorandum

To: Anne Carpeneti, AAG
Sandy Perry-Provost, DPS
Jayne Andreen, Exec. Dir. Domestic Violence Council

From: Representative Pete Kelly 

Regarding: Communication between Domestic Violence Shelters and Police Agencies
+++++

I am sorry to learn that my earlier petition, and efforts seeking to increase communication between Domestic Violence Shelters and Police agencies, have not resulted in an improvement in the case of a woman being reported as missing.

I am still concerned about the uncertainty and miss-expenditure of energies and funds that result from this inability to communicate. I had hoped that my petition to the Council on Domestic Violence and Sexual Assault could have allowed the Council to solve this problem by regulation. However, although I have not been formally notified regarding my petition as per AS 44.62.230, the Council informed my staff in a phone conversation that the hurdle is statutory in nature.

I am writing this memo to request your review of the attached draft legislation. Please keep this draft legislation in your confidence, as it is not public, and remember that I am open to solutions that do not require legislation. For example: Legislative Counsel has informed me that they disagree that AS 18.66.200, prohibiting "communication for any purpose in a criminal, civil, legislative or administrative proceeding," prohibits a shelter from informing a police agency that a woman is not a missing person.

The goal of the legislation is to allow a police agency to learn if an individual is not missing, and by this knowledge the police agency will not have to launch a missing persons investigation and search.

The search for a missing person includes broadcasting the individuals photograph, name and particulars throughout the region, via all available media. The media participate with considerable concern.

Domestic Violence Communication
Page 2.

I am particularly concerned if the police get to the point of launching a field search, calling in volunteers. Given the inclement nature of Fairbanks weather, helicopters, etc., this has the potential to place volunteers in harms way. Volunteers willing to volunteer to help their neighbors and community are a precious commodity.

With headlines about missing women frozen under railroad cars indelibly seared into the public consciousness, I want the shelters, at a minimum to notify the police that they are aware that an individual is not missing. I don't care if they invent code language to accomplish this task. Our police officers are professional enough to be sensitive to any need for security - and if this is necessary they also need to be warned to be on the lookout for tell-tale signs of domestic violence.

Please review this draft legislation and let me know if you feel it will achieve this goal, or if there are loopholes. I am also open to suggestions of how we can achieve this goal without legislation.

Alaska State Legislature

REPRESENTATIVE
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House District 31

House Of Representatives

September 11, 1996

Jayne Andreen, Executive Director
Council on Domestic Violence and Sexual Assault
PO Box 111200
Juneau, Alaska 99811-1200

Dear Ms. Andreen:

I am respectfully petitioning the Council, pursuant to AS 44.62. 220 & 230, to adopt regulations that would allow communication between shelters for domestic violence victims and law enforcement agencies under AS 18.66.050(11).

I am very concerned that law enforcement agencies must decide to deploy resources for "missing persons" without the ability to learn if a missing person may be in a domestic shelter regarding. I understand the desire for confidentiality to protect a woman from further harm, but I am also concerned with the time and safety of volunteer rescue workers and search teams. I am hoping that the council will promulgate the regulations necessary to allow confidential information sharing between a shelter and a law enforcement agency prior to the agency's conducting a missing persons ground or air search.

For example, I am informed that in a recent case the individual reported missing had left her husband at a local grocery store. This person had a history of serious depression, spent the prior week in the hospital under treatment for depression, and quit taking her medication in the days prior to her departure. I do not know why Senior Law Enforcement officials suspected that the person was in a shelter, but their inability to ascertain this fact left considerable doubt in their minds as to the probability of finding the person or the possible success should a search be launched.

I am hoping that the issues regarding an abused women's right to confidentiality and Public Safety's ability to respond to a plea for help on behalf of a woman who may be freezing to death is best addressed and balanced by the council. Please keep me informed regarding the outcome of this discussion.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Peter Kelly".

Representative Pete Kelly

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN THE HOUSE

TO HB 267

Page 1, line 1, following "to":

Delete "domestic violence and sexual assault"

Insert "the duties of the Council on Domestic Violence and Sexual
Assault; allowing domestic violence and sexual assault
counselors to reveal to public safety officers whether a client is
missing or not missing "