

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9204 HOUSE JUDICIARY

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Representative Gary Davis
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

February 11, 1998

Dear Representative Davis,

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 261 relating to surcharges imposed for violations of state or municipal law and to the Alaska police training fund.

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse HB 261. We feel that this legislation will further clarify current language currently set out in Alaska statute and will assist in establishing additional surcharge guidelines for felonies, misdemeanors, violations, and infractions. Finally, it will further ensure much-needed funds for the Alaska police training fund for the law enforcement and corrections community.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Once again, thank you for sponsoring this legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Charbonneau".

John Charbonneau
State President
Alaska Peace Officers Association



*Rick Mystrom,
Mayor*

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599

Telephone (907) 786-8500

<http://www.ci.anchorage.ak.us>



Service since 1921

January 29, 1998

Representative Gary Davis
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Davis:

The Anchorage Police Department fully supports House Bill 261, which would provide additional funding for law enforcement training statewide.

A monetary surcharge on all criminal convictions is a creative and painless way of paying for important police training without further burdening taxpayers. In Anchorage, the population has continued to increase, requiring more officers, and thus, more training. The estimated revenue from this proposal would also allow many smaller departments who have even tighter budgets to provide much-needed training to their officers.

On behalf of police officers throughout the state, we appreciate your efforts and support of this bill.

Sincerely,

Duane S. Udland
Chief of Police

DSU/ros



Anchorage Police Department
Service Since 1921

MEMORANDUM

Date: February 4, 1998
To: Chief Udland
From: Lt. Mcchan, Training Section
Subject: Surchargc Benefits through The Alaska Police Standards Council

During the fiscal year 1997, the Alaska Police Standards Council (APSC) provided quality assistance to APD through training and equipment. A few of the courses included a week long Leadership Development course and a Death Investigations course; Lynn Curry was the instructor for the Leadership class. One of the pieces of equipment APSC provided was an expensive projector which is kept here at the Training Center. This projector is one of the new machines that is compatible with the new computer programs being used by an increasing number of instructors.

In addition to the training and equipment, the support they provided was excellent. On a regular basis either one of my staff or I called and received superb assistance from the local APSC staff. Specifically, Billy Andrews and Debbie George have been extremely helpful. On the occasions I have worked with Laddy Shaw, I have found him quite willing to provide support.

Regarding the surcharge distribution program, I believe it has helped unite the law enforcement community throughout the state. As a result of this program, I have had more contact with the different agencies within Alaska. This contact has been very positive. Instead, of each agency fending for themselves, we are able to reach across the state and address training needs and challenges together.

In addition to strengthening relationships within the law enforcement community, the distribution program has increased our working relationship with the Department of Corrections (DOC). This fosters a stronger criminal justice community; instead of the police being polarized from DOC, we now work together as more of a team. This cannot help but strengthen our service to the community.

To be sure, there are times when the different agencies involved in the surcharge distribution do not agree. However, the benefits of being able to resolve our differences among ourselves are paying dividends that are hard to measure in monetary terms. These benefits, though, are very real. Like a family, our ideas or beliefs don't always coincide; however, we are gaining ground on respecting each others opinions. Sometimes we even agree to disagree.

- Chief, I recommend no changes be made to how the surcharge distributions are decided. I believe the program is working to unite the players in the criminal justice system to work as a team. We simply have never had a program that worked in the way the surcharge program has; it has become a catalyst that unites the agencies.



CITY OF
DILLINGHAM
ALASKA

404 "D" Street
P.O. Box 889
Dillingham, Alaska 99576

24 hrs (907) 842-5354
(907) 842-5172
Fax (907) 842-5785

January 28, 1998

Representative Gary L. Davis
Alaska State Legislature
State Capital (MS 3100)
Juneau, Alaska 99801-1182

RE: House Bill # 261 Surcharge on Criminal Cases

Dear Representative Davis,

I want to inform you of my support for HB# 261, this bill if passed will help all law enforcement in Alaska and the funding that will be seen from the surcharges is badly needed.

The Alaska Police Standards Council has used the traffic fine surcharge in a very responsible manner and has funded the training on the southwest coast for all law enforcement, State, Local and City along with VPSO, corrections and probation.

I support this bill, law enforcement in Alaska needs the money, APSC is the perfect state agency to manage the fundings usage, please support this very important bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brent C. Moody', is written over a large, stylized flourish.

Brent C. Moody
Chief of Police



CITY OF HOMER

POLICE DEPARTMENT

4060 HEATH STREET

HOMER, AK 99603-7609

EMERGENCY 911
TELEPHONE (907) 235-3150
TELECOPIER (907) 235-3151

February 19, 1998

Representative Gary L. Davis
Alaska State Legislature
State Capitol (MS3100)
Juneau, Alaska 99801

Dear Representative Davis,

The Homer Police Department supports House Bill 261 which would provide additional funds for training police and correctional officers throughout the State of Alaska.

The majority of communities in Alaska have suffered from reduced revenues coupled with a demand for an increase in services and the quality of those services provided.

This community has implemented the concept of community based policing which has shown to be an effective tool for combating crime all over the nation. This type of policing requires an knowledgeable skilled police officer which can only be retained through quality training. The State of Alaska has set high standards for our police and correctional officers and to ensure we maintain these standards we need to provide them the necessary educational tools to maintain their professionalism.

House Bill 261 shifts the financial burden of training from the taxpayer to the criminal who should be held financially responsible for their misconduct.

Please contact me if you have any questions related to law enforcement issues. Thank you for your support of this important public safety issue.

Sincerely,

Dennis Oakland
Chief of Police

HOONAH POLICE DEPARTMENT

"Serving since 1946"

379 RAVIN DRIVE - PO BOX 460 - HOONAH, ALASKA 99829-0460
BUSINESS (907)-945-3655 FAX (907) 945-3658

February 6, 1998

Senator Jerry Mackie
Alaska State Capitol Building
Juneau, Alaska 99801-1182

Re: House Bill No. 281

Dear Senator Mackie:

Please support the new legislation proposed by Representative Gary Davis that would add a surcharge to Felonies, Misdemeanors and Infractions; which would help the Alaska Police Standards Council (APSC) continue to fulfill their obligations in making available criminal justice training to all municipal and state law enforcement officers, corrections, probation and parole officers, and Village Public Safety Officers.

With APSC's Fiscal Year-98 budget currently dependent primarily on traffic surcharge revenues, I concur wholeheartedly with other Chiefs of Police, in that APSC probably cannot meet the training demands presently, or in the future as well unless this bill passes.

As you are aware, the Alaska Police Standards Council plays a vital role in the quality of training provided for law enforcement officers in this state. Alaska has the finest calibers of individuals in police service in perhaps the world. Much of that recognition is attributed to the training provided for by APSC.

Your support of this newly proposed legislation would be greatly appreciated. Keeping our law enforcement community properly trained improves that quality of safety provided to us all.

Thank you in advance for your consideration. If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Robert L. Beasley,
Chief of Police

cc:

Honorable Albert W. Dick, Mayor of Hoonah
Representative Gary Davis
Ms. Johanna Dybdahl, Tribal Director, HIA
Chief Tom Walker, President, AACOP
Mr. Laddie Shaw, Executive Director, APSC
Mr. Robin Lown, VPSO Program Manager, CCTHTA



KENAI POLICE DEPT.

107 SOUTH WILLOW ST., KENAI, ALASKA 99611
TELEPHONE: (907) 283-7879 • FAX (907) 283-2267

February 6, 1998

Representative Gary L. Davis
Alaska State Legislature
State Capital (MS3100)
Juneau, AK 99801-1182

Dear Representative Davis,

The Kenai Police Department supports House Bill 261, which would increase funding for law enforcement and corrections training statewide.

The additional surcharge for misdemeanor and felony convictions would greatly enhance training for officers statewide. As with many occupations training is critical to providing quality and professional services to our communities. Basic police training provides our officers with the minimum knowledge and skills necessary to perform law enforcement duties. That basic training is currently provided at the academy in Sitka at a cost of \$5,700.00 per student, and is paid by the Alaska Police Standards Council. Further training after the academy is critical in developing and maintaining a professional police department. Advanced training has become even more critical during the past decade as the criminal justice system has become more complex and civil litigation has become more common.

As with the state government our local governments continue to struggle with funding issues at the same time the public expects better and increased services.

House Bill 261 would provide a much-needed increase in revenue for training without an increase in taxes.

Members of the Kenai Police Department recognize and appreciate your efforts in sponsoring this legislation.

Respectfully,

Daniel L. Morris
Chief of Police

SDG

February 12, 1998

FAX (907) 486-8093

State of Alaska
Senator Jerry Mackie
Alaska State Legislature
State Capital Building
Mail Stop 3100
Juneau, Alaska 99801-1182

RE: Proposed new legislation to add surcharge to Felonies, Misdemeanors, Infractions

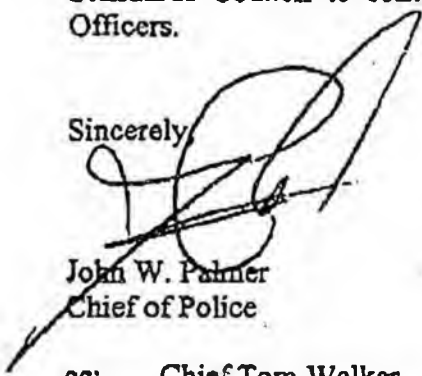
Dear Senator Mackie:

I am asking for your support of the new legislation proposed by Rep. Gary Davis that would add a surcharge to Felonies, Misdemeanors, and Infractions. A few years ago the legislature passed a surcharge to be assessed on traffic violations. This surcharge was to help funding law enforcement training through the Alaska Police Standards Council.

The funding for APSC was cut by 50% for FY96 and all remaining funding except for the traffic surcharge funds were cut for FY98. The traffic surcharge was never meant to be the single funding source for APSC. With the ever increasing training needs of law enforcement throughout the state I am very concerned about the level of funding for APSC. The Alaska Police Standards Council has been tasked with the responsibility of maintaining the professional standards of all police officers throughout the State of Alaska. Decreases in funding which handicap the continued professional development of the police officers in this state will have deleterious consequences for all Alaskans.

I strongly urge your support of this new surcharge legislation which will assist the Alaska Police Standards Council to continue their support and professional development of Alaskan Peace Officers.

Sincerely,



John W. Palmer
Chief of Police

cc: Chief Tom Walker
Mr. Laddie Shaw, APSC
Representative Gary Davis

1998



CITY OF NOME

P.O. BOX 281 · NOME, ALASKA 99762
TELEPHONE (907) 443-5262

February 6, 1998

Representative Gary Davis
State of Alaska Legislature
Juneau, Ak. 99801

Ref: Proposed new legislation to add surcharge to Felonies, Misdemeanors, Infractions

Dear Representative Davis,

Sir, I am the new Chief of Police for the City of Nome. I whole-heartedly support the proposed legislation you have introduced to add a surcharge to Felonies, Misdemeanors and Infractions. When the surcharge for traffic violations was passed several years ago, it was a progressive and pro-active step to help Alaska Police Standards Council fund badly need Alaska Law Enforcement Training. Since the surcharge was passed, L.E. Training in the State has improved dramatically, but we have a long ways to go, as training for us in Alaska is very expensive.

When I took over the Chief's position in November, I found a Police Department of eight (8) sworn Officers, who have been neglected in the area of training. Example: our Officers have not fired, trained, and qualified with their weapons in over three years. I have funding to buy new weapons and ammo, but I'm asking APSC for funding to fly a firearms instructor to Nome to train my Officers. This is just one training need and the easiest to address. At issue with most of the training problems are the costs of travel and per diem to get an Officer to badly need schools. My Department is no different than any other in the State. For obvious civil liability reasons, we cannot afford not to train, yet funding is limited locally and we turn to APSC for help.

When the surcharge was passed a few years ago, it was not the Chiefs of Police's intent to see APSC be completely dependent upon the surcharge for funding. That funding source was to be and is being used for training our Police Officers. The bottom line for me is: I am dependent on APSC for training. APSC has been very responsive and supportive. The current APSC FY 98 funding cuts are a major concern and the effect it will have on the training demands now and future needs.

Thank you for proposing the new surcharge. You have my support.

Respectfully yours,

Milton J. Haken
Chief of Police
NA 181st Session

cc: Chief Tom Walker, President AACOP
Representative Richard Foster
Mike Yanez, City Manager

NORTH SLOPE BOROUGH

POLICE DEPARTMENT

P.O.Box 470
Barrow, Alaska 99723
Phone: 907-852-0311
Fax: 907-852-0318



State of Alaska
Representative Reggie Joule
Alaska State Legislature
State Capitol Building
Mail Stop 3100
Juneau, AK 99801-1182

RE: House Bill 261

Dear Representative Joule,

I am asking for your support of new legislation proposed by Rep. Gary Davis that would add a surcharge to those convicted of a felony, misdemeanor or infraction. Several years ago a surcharge of traffic violations was passed into law by the Legislature. This money was slated to be used strictly for the training of law enforcement/corrections officers throughout the State and to be administered by the Alaska Police Standards Council.

Funding for the APSC has been cut so that the "traffic surcharge" money is now almost totally finding APSC operations. This was never the intent by the Chiefs and cuts into the purpose for which the "surcharge" money was intended, which is training. Adequate training for law enforcement and corrections personnel is essential for this State, particularly because so many officers are in remote locations and must rely upon their own abilities without technical assistance.

I ask you to support this new legislation. As a gubernatorial appointment to the Alaska Police Standards Council I can assure you that additional funding for the training of law enforcement and corrections officers is needed. If you should have any questions about the manner in which the APSC uses the training funds or conducts business, please call on me.

Sincerely,

G. Scott Campbell
Chief of Police

cc: Laddie Shaw, Executive Director, APSC



City and Borough of Sitka

POLICE DEPARTMENT

304 Lake Street, Room 102 • Sitka, Alaska 99835

Lynn F. Lamm
Chief of Police

Business 747-3245
Fax 747-1075

February 10, 1998

Representative Ben Grussendorf
House of Representatives
State Capitol, Room 415
Juneau, AK 99801-1182

Dear Representative Grussendorf:

I am personally asking that you support Legislation that has been introduced by Representative Gary Davis - Kenai, that will place a surcharge on all violations of State or Municipal Law. Law Enforcement at the State level has been gutted in Alaska. Training of course is always the first to receive the Axe. House Bill 261 will provide the necessary funds to perhaps fulfill the training obligations for what few Law Enforcement personnel this State has left. I have been dismayed at the consistent lack of support by our Legislature for funding both Public Safety and Corrections. We had best address the situation soon for Alaska is becoming known for an apathetic approach to Public Safety. Your support on this bill as well as your support for increased Public Safety funding will be recognized & appreciated by those Officers who stand in harms way so that citizens can feel they not only live in a great State, but a safe State.

Respectfully,

Lynn F. Lamm
Chief of Police



SOLDOTNA POLICE DEPARTMENT

44510 Sterling Highway
Soldotna, Alaska 99669



Shirley A. Warner
CHIEF OF POLICE

Tel: (907) 262-4455
Fax: (907) 262-4421

February 17, 1998

Representative Gary Davis
Alaska State Legislature
145 Main St. Loop, Suite 123
Kenai, Alaska 99611

Dear Representative Davis,

Thank you very much for coming to speak to us at the Alaska Police Standards Council meeting in December regarding House Bill No. 261. I understand a surcharge imposed for violations of state or municipal law would be applied to a training fund. I really appreciate your sponsorship of this bill and offer support for its passage.

Providing training for police officers has been a challenge for me for several years. As a commander for the Anchorage Police Department for 9 years, I was consistently looking for creative ways to finance needed training. Now as the Police Chief for the Soldotna Police Department I am finding it even more challenging, with a relatively smaller budget with which to work.

With the new laws regarding the handling of family violence, stricter policies regarding police actions such as pursuits and use of force, as well as higher technology available to law enforcement officers (as well as the criminal element) it is becoming more and more difficult to maintain the training level officers are required in order to perform their jobs. This surcharge will equitably lend itself, Statewide, to this needed training. Thank you.

Sincerely,

Shirley A. Warner
Chief of Police



UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive
Anchorage, Alaska 99508-8310

UNIVERSITY POLICE DEPARTMENT
(907) 786-1120
FAX: (907) 786-6111

February 10, 1998

State of Alaska
Senator Randy Phillips
Alaska State Legislature
State Capitol Building
Juneau, AK 99801-1182



Dear Senator Phillips:

I have just learned that the legislature is once again cutting the funding for the Alaska Police Standards Council. In essence the APSC, after this session, would receive no funding from the State. APSC, without adequate funding, would be incapable of meeting its mission of providing training to the entire law enforcement community throughout the state.

As a chief I am quite concerned as to how they will meet this training mandate without sufficient revenue. In FY96 the legislature cut APSC funding by 50% but did create a traffic offense surcharge to offset this cut.

With further cuts to APSC I am seeking your support of HB 261 as proposed by Representative Gary Davis. This bill would add a surcharge to felonies, misdemeanors and infractions, the proceeds to go to the Alaska Police Standards Council.

Through the years I have been very pleased with the support of the APSC. It is a very professional organization that is quite receptive to our needs. The lack of any state funding greatly concerns me, but this combination of surcharges hopefully will provide them with the financial support necessary.

Sincerely,

Robert E. Bachand
Chief of Police

cc: Laddie Shaw, Executive Director, APSC
Tom Walker, President, AACOP

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DEPARTMENT OF PUBLIC SAFETY
POLICE - FIRE - EMS - COMMUNICATIONS - CORRECTIONS
P.O. BOX 370
UNALASKA, ALASKA 99685
(907) 581-1233
FAX (907) 581-5024



February 6, 1998

Representative Gary Davis
Alaska State Legislature
State Capitol Building
Room 420
Juneau, AK 99801-1182

Dear Representative Davis:

I would like to offer my support for your proposed legislation, House Bill No. 261, which would add a surcharge to felony, misdemeanor and infraction violations. The recently adopted surcharge for traffic citations is a great start, but does not provide an opportunity for rural communities with limited or no road systems to make a meaningful contribution. The newly proposed legislation will provide that opportunity and will generate the much needed training funds for Alaskan law enforcement.

Additionally, may I suggest an amendment for your consideration which would provide for the funds collected to go directly from the State court system to the Alaska Police Standards Council. The current system requires municipalities to receipt funds collected from the State, then transfer them back to the State. This redundancy detracts from the effectiveness of this worthy effort.

Please be assured of my support for your efforts in this proposed legislation.

Sincerely,

Glenn H. Herbst
Director of Public Safety

cc: Mr. Gene Greene, Acting Unalaska City Manager
Representative Carl Moses
Senator Lyman Hoffman
Mr. Laddie Shaw, Director APSC



POLICE DEPARTMENT
February 6, 1998

Representative Gary Davis
Alaska State Legislature
State Capital (MS 3100)
Juneau, AK 99801-1182

Dear Representative Davis:

I would like to add my support to your proposed new legislation that would add a surcharge to Felonies, Misdemeanors and Infractions.

As you know funding for APSC has been cut by 50% for FY 96 and all remaining funding cut for FY 98 except for the traffic surcharge funds. It was never the intention of any of the Chiefs that APSC be completely dependent upon the "Traffic Surcharge" for funding and I am very concerned on how APSC is going to meet the training demands placed on them if the legislature keeps returning to the surcharge training fund each year.

Thank you again for introducing House Bill No. 261. If you have any questions or would like to discuss this issue please feel free to call me at (907)835-4560.

Sincerely,

Joseph K. Michaud
Chief of Police

cc: Laddie Shaw, Executive Director, APSC



WASILLA POLICE DEPARTMENT

250 N. KNIK STREET
WASILLA, ALASKA 99654-7014
(907) 373-9077
Fax: 373-9051



February 3, 1998

Representative Gary Davis
Alaska State Legislator
State Capitol (MS3100)
Juneau, Alaska 99801-1182

RE: HB 261

Dear Representative Davis,

I am very supportive of HB261. I think this type of bill is long overdue. I have spoken with thirty to fifty local residents about this bill and they all like the idea of having the individuals breaking the law paying for police officer's training.

My community is mostly conservative and they see this type of bill as lowering the cost of government.

In Sec. 29.25.070 under "Collection of Penalties", please try to keep the court costs down. I would like to see APSC receive the majority of the funds received from this law.

Sincerely,

A handwritten signature in cursive script that reads "Charlie Fannon".

Charlie Fannon
Chief of Police



BILL ANALYSIS

Department Public Safety	Division Alaska Police Standards Council	Bill Number HB261	Sponsor Representative Gary Davis
Short Title of Bill "An Act relating to a surcharge imposed for violations of state or municipal law and to the Alaska Police Training Fund."			
Department Position Support			
Prepared By Laddie Shaw Executive Director Alaska Police Standards Council		Commissioner's Signature Ronald L. Otte	Date

SUMMARY

Other Agencies Affected by the Bill All municipal and state law enforcement agencies; Village Public Safety Officers; Corrections, probation and parole; Department of Law ; Alaska Court System; Anchorage Police training academy; Department of Public Safety training academy	Constituent Group(s) Affected by Bill All citizens of the state of Alaska
Organizational Support for Bill Supported	Organizational Opposition to Bill
Fiscal Impact <input type="checkbox"/> None	<input checked="" type="checkbox"/> Fiscal Note Attached
Background/Legislative Intent The intent of HB261 is to add a surcharge to fines and penalties assessed as a result of felony judgments, misdemeanors and infractions. It further amends the Alaska Police Training Fund, under AS 18.65, to establish in the general fund appropriations made by the legislature to the fund of the surcharge assessments.	
Analysis of Bill/Program Effects HB 261 establishes an assessment of \$85.00 on all felony's; \$75.00 on violations for driving under the influence and refusal to submit to chemical test; \$45.00 on all misdemeanor's and \$15.00 on all infractions. HB 261 will provide funding to the Alaska Police Standards Council to fulfill their obligation, under AS 18.65.230, by making available criminal justice education and training to all municipal and state law enforcement officers, corrections, probation and parole officers and village public safety officers.	
Amendments Proposed	
PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS	

HB 261 SURCHARGE ESTIMATES

FELONY @ \$85

**Disposition
(pled guilty/nolo)**

@ 100% Compliance	\$188,100	@ 2213
@ 70% Compliance	\$131,670	@ 1549
@ 50% Compliance	\$ 94,050	@ 1107*

DUI, REFUSAL TO SUBMIT @ \$75

@ 100% Compliance	\$408,500	@ 5447
@ 70% Compliance	\$286,000	@ 3810
@ 50% Compliance	\$204,260	@ 2724*

MISDEMEANOR @ \$45

@ 100% Compliance	\$904,680	@ 20,104
@ 70% Compliance	\$633,280	@ 14,073
@ 50% Compliance	\$452,340	@ 10,050*

INFRACTION @ \$15

@ 100% Compliance	\$1,140,000	@ 76,000
@ 70% Compliance	\$ 798,000	@ 53,000
@ 50% Compliance	\$ 570,000	@ 38,000*

TOTAL ESTIMATES FROM HB 261 SURCHARGE COLLECTIONS

@ 100% Compliance	\$2,641,180.00
@ 70% Compliance	\$1,848,950.00
@ 50% Compliance	\$1,290,650.00

* FOR BUDGET PURPOSES

REVENUE ESTIMATES (FY00)

With HB261 (New Program Receipts) Total	1,300.0
Without HB261 (Existing Program Receipts) Estimate	<u><450.0></u>
New Program Receipt Revenue Generated By HB261	850.0

FY 99 1st Year Start Up Estimate 425.0

EXPENDITURE ESTIMATE

FY99 - Total Surcharge Receipts	450.0
Less FY99 Governor Auth. Budget of Surcharge receipts	<u><396.1></u>
FY99 Bal. of Surcharge Receipts Available	53.9

New Surcharge Receipts (HB261)	<u>425.0</u>
Total Surcharge Receipts Available (FY99)	478.9
Additional Surcharge Receipts (Full Program FY00)	<u>425.0</u>
Total Surcharge Receipts Available (FY00)	903.9

Attachment for Fiscal Note (HB261) Analysis:	FY99	FY00
<u>Personal Services (salary & benefits)</u>	<u>240.0</u>	<u>240.0</u>
Administrator	94.2	94.2
Secretary	47.8	47.8
Admin. Clerk	27.0	27.0
Training Coordinator	71.0	71.0
<u>Travel</u>	<u>30.7</u>	<u>30.7</u>
Field Travel (compliance inspections)	10.5	10.5
Admin. Travel (admin. hearings)	3.1	3.1
Convention (Police Standards Conference)	1.0	1.0
Commission (Council meetings/11 members)	5.8	5.8
Non-Employee (hearing officer/witnesses)	3.8	3.8
Other (per diem)	6.5	6.5
<u>Contractual</u>	<u>253.6</u>	<u>1029.3</u>
Basic Police Recruit Training (30 Officers @ \$5700 FY99)	171.0	
Basic Police Recruit Training (60 officers @ \$5700 FY00)		342.0
Basic Municipal Corrections Recruit Training 20 Officers @ \$1750	35.0	35.0
Refresher Academy (officers with out-of-state training) 10 Officers @ \$1320	13.2	13.2
Court Reporting	.6	.6
In-Service and Specialized Training for police and correctional officers (2000 officers with 50 police agencies, 12 correctional institutions and 100 VPSO's)	18.5	623.2
Communications, maintenance advertising, printing, etc.	<u>15.3</u>	<u>15.3</u>
Total (Operating Budget)	<u>524.3</u>	<u>1,300.0</u>

HB261 will generate the funding necessary to provide Alaska law enforcement and corrections officers the level of training they need to adequately perform their roles in an ever-changing contemporary society.

This bill will allow the Alaska Police Standards Council to reemphasize its mission in providing quality service to the public by maximizing the training investment in our law enforcement and corrections personnel.

The goals of the Alaska Police Standards Council is to enhance the ability of its peace officers to provide that level of service desired by the citizens of Alaska through:

- Prescribing essential training requirements and curriculum;
- Promoting advanced and executive level training;
- Implementing and enforcing prerequisite standards for the selection and retention of officers;
- Maximizing the utilization of the training fund.

Civil actions resulting from inadequate training are on the increase. The end costs of providing adequate training is negligible when compared to the cost associated with lawsuits and their resultant judgment.

The surcharge estimates for APSC budgeting purposes are based on a 50% collection rate. If the estimate was based at 100%, the total surcharge collection would be \$2.6 million vs. the \$1.3 million estimated at 50% compliance. We have found after collecting surcharges for one full fiscal year that the compliance rate is approximately 50% on the total number of offenses cited. Considering administrative start up time and collections from HB261 for FY-99, the estimate for revenue collections will be \$425,000.



DILLINGHAM POLICE DEPARTMENT & CORRECTIONAL CENTER

404 D Street
P.O. Box 889
Dillingham, Alaska 99576

24 hrs (907) 842-5354
(907) 842-5172
Fax (907) 842-5785

January 28, 1998

Representative Gary L. Davis
Alaska State Legislature
State Capital (MS 3100)
Juneau, Alaska 99801-1182

RE: House Bill # 261 Surcharge on Criminal Cases

Dear Representative Davis,

I want to inform you of my support for HB# 261, this bill if passed will help all law enforcement in Alaska and the funding that will be seen from the surcharges is badly needed.

The Alaska Police Standards Council has used the traffic fine surcharge in a very responsible manner and has funded the training on the southwest coast for all law enforcement, State, Local and City along with VPSO, corrections and probation.

I support this bill, law enforcement in Alaska needs the money, APSC is the perfect state agency to manage the fundings usage, please support this very important bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brent C. Moody".

Brent C. Moody
Chief of Police

Alaska State Legislature

Interim:

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Kenai, Alaska 99611
(907) 283-7095
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Session:

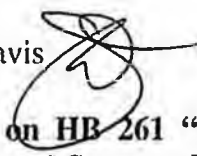
State Capitol
Juneau, Alaska 99801
(907) 465-2693
(fax) (907) 465-3835

Representative Gary L. Davis

MEMORANDUM

DATE: January 22, 1998

TO: Representative Joe Green, Chair
House Judiciary Committee

FROM: Representative Gary Davis 

RE: **Request for Hearing on HB 261 "An Act Relating to a Surcharge Imposed for Violations of State or Municipal Law and to the Alaska Police Training Fund"**

This is to request that a hearing be scheduled on House Bill 261 "An Act Relating to a Surcharge Imposed for Violations of State or Municipal Law and to the Alaska Police Training Fund." Attached are the following items for inclusion in the committee files.

- Sponsor Statement;
- Sectional Analysis; and
- current Alaska Statutes that will be modified by HB 261

We will be forwarding additional information regarding the effects of this bill.

Thank you for considering this request. Please contact Deb Davidson of my staff if you have any questions or would like additional information or assistance.

GLD/dld

Attachments

Representing House District 8
Soldotna, Sterling, Funny River, Cooper Landing, Hope, Moose Pass, Seward

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SPONSOR STATEMENT

HOUSE BILL 261

“An Act relating to a surcharge imposed for violations of state or municipal law and to the Alaska police training fund”

The Alaska Police Training Fund, created in 1994 by the legislature, was established January 1, 1996. The purpose of the fund is to “. . . provide a stable funding source for law enforcement and corrections officer training. . .” To this end, the legislature established a schedule of surcharges to be applied to various offenses and provided that the equivalent of the surcharges collected be deposited in the Police Training Fund. From that fund the legislature may appropriate amounts for the operation of the Public Safety Training Academy and for training programs established by the Alaska Police Standards Council.

House Bill 261 expands the list of offenses on which a surcharge may be imposed and increases existing surcharges. Its purpose is to provide additional funding for public safety training and obtain that funding from the surcharges imposed on individuals who violate the law.

Each year the Alaska Public Safety Training Academy in Sitka requires general fund appropriations in addition to what it receives through the police training fund. This is also true of training programs established by the Alaska Police Standards Council. Hopefully, the additional revenue received from the enactment of HB 261 will stabilize and perhaps reduce the amount of general fund appropriations needed to sufficiently fund our public safety training programs.

HB261/SS/1/21/98

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Representative Gary L. Davis

SECTIONAL ANALYSIS FOR HOUSE BILL 261

“An Act relating to surcharge imposed for violations of state or municipal law and to the Alaska police training fund”

- Section 1: Adds a new subsection to **AS 12.25.195, Disposition of Scheduled Offences**, that requires payment of the surcharge prescribed in AS 12.55.039 before an offence may be disposed. Specifies that the surcharge paid will be deposited into the general fund and accounted for under AS 37.05.142, Accounting for Program Receipts.
- Section 2: Amends **AS 12.25.200, Form for Citations**, subsection (b) to require that the amount of the surcharge applicable to the offense be indicated on the citation issued.
- Section 3: Amends **AS 12.55.039, Surcharge**, subsection (a) by increasing the surcharge assessed and expanding the list of offenses for which surcharges may be charged.
- Section 4: Amends **AS 18.65.226, Alaska Police Training Fund**, to include the surcharges collected under AS 12.25.195(c) and AS 29.25.072 in the amounts that may be appropriated to the fund
- Section 5: Amends **AS 28.05.151, Citations for Scheduled Vehicle and Traffic Offenses**, to require that the surcharge prescribed in 12.55.039 be applied for offenses that do not require a court appearance.
- Section 6: Amends **AS 29.10.200, Limitation of Home Rule Powers**, to include AS 29.25.072 (surcharge) in the list of limitations.

Representing House District 8

Soldotna, Sterling, Funny River, Cooper Landing, Hope, Moose Pass, Seward

Section 7: Adds a new section to **AS 29.25, Municipal Enactments**, that states a municipality, including home rule and general law municipalities, may not enforce an ordinance for which a fine or imprisonment is prescribed unless that municipality authorizes and provides for the collection of the surcharge. It further states that the surcharge will be deposited into the general fund and accounted for under AS 37.05.142, Accounting for Program Receipts.

Section 8: Amends **AS 29.25.075, Collection of Penalties**, to allow courts to collect the surcharge for the municipality.

Sec. 12.25.180. When peace officer may issue citation or take person before the court. (a) When a person is stopped or contacted by a peace officer for the commission of a misdemeanor or the violation of a municipal ordinance, the person may, in the discretion of the contacting peace officer, be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

- (1) the person does not furnish satisfactory evidence of identity;
- (2) the contacting officer has reasonable and probable cause to believe the person is a danger to self or others;
- (3) the crime for which the person is contacted is one involving violence or harm to another person or to property;
- (4) the person asks to be taken before a judge or magistrate under AS 12.25.150; or
- (5) the peace officer has probable cause to believe the person committed a crime involving domestic violence; in this paragraph, "crime involving domestic violence" has the meaning given in AS 18.66.990.

(b) When a person is stopped or contacted by a peace officer for the commission of an infraction or a violation, the person shall be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

- (1) the person does not furnish satisfactory evidence of identity; or
- (2) the person refuses to accept the citation or to give a written promise to appear as provided for under AS 12.25.190(c). (§ 1 ch 31 SLA 1973; am § 19 ch 127 SLA 1974; am § 3 ch 144 SLA 1977; am § 34 ch 102 SLA 1980; am § 9 ch 64 SLA 1996)

Effect of amendments. — The 1996 amendment, effective July 1, 1996, in subsection (a), added paragraph (5) and made related stylistic changes.

Legislative history reports. — For report on ch. 31, SLA 1973 (SB 25), see 1973 Senate Journal Supplement No. 7, p. 2.

NOTES TO DECISIONS

Subsection (a) does not require a citation to be issued. — Subsection (a) authorizes a police officer to issue a citation to a misdemeanor offender in lieu of making an arrest, unless one of the four enumerated exceptions applies. But the statute does not require a

police officer to follow this course. *Jurco v. State*, 825 P.2d 909 (Alaska Ct. App. 1992).

Applied in *Ahmaogak v. State*, 595 P.2d 985 (Alaska 1979).

Sec. 12.25.190. When person to be given five-day notice to appear in court. (a) When a person is contacted by a peace officer and the peace officer exercises the option provided for in AS 12.25.180, the officer shall prepare a written citation and issue it to the person.

(b) The time specified in the notice to appear shall be at least five days after the alleged violation or the issuance of the citation, whichever is later, unless the person cited requests an earlier hearing.

(c) The person cited for the crime shall give a written promise to appear in court by signing at least one copy of the written citation prepared by the peace officer and the officer shall deliver a copy of the citation to the person. The written promise requirement of this subsection does not apply to motor vehicle and traffic citations for which a bail or fine schedule has been established under AS 28.05.151, fish and game citations for which a bail schedule has been established under AS 16.05.165, citations issued under AS 04.21.065, citations issued under AS 18.35.341, citations issued in state park and recreational facilities under AS 41.21.960, or littering citations issued under AS 46.06.080. (§ 1 ch 31 SLA 1973; am § 20 ch 127 SLA 1974; am § 4 ch 144 SLA 1977; am § 20 ch 178 SLA 1978; am § 12 ch 34 SLA 1984; am § 1 ch 102 SLA 1984; am § 1 ch 132 SLA 1984; am § 1 ch 37 SLA 1987; am § 1 ch 76 SLA 1987; am § 3 ch 81 SLA 1989)

NOTES TO DECISIONS

Applied in *Ahmaogak v. State*, 595 P.2d 985 (Alaska 1979).

→ **Sec. 12.25.195. Disposition of scheduled offenses.** (a) A person cited for an offense for which a scheduled amount of bail or a fine has been established may mail or personally deliver to the clerk of the court with appropriate jurisdiction if aailable offense, or to the clerk of the municipality that issued the citation if a scheduled municipal fine, the amount of the bail or fine indicated on the citation for the offense together with a copy of the citation signed by the person indicating the person's waiver of court appearance, entry of plea of no contest, and forfeiture of bail or fine. A motor vehicle or traffic citation may be mailed or personally delivered within five days of the date of the citation. A citation for a scheduled offense other than a motor vehicle or traffic citation may be mailed or personally delivered within 15 days of the date of the citation.

(b) When bail or a fine is forfeited under this section, a judgment of conviction shall be entered. The bail or fine paid is complete satisfaction for the offense. (§ 2 ch 76 SLA 1987)

Sec. 12.25.200. Form for citations. (a) The chief administrative officer of each law enforcement agency in the state is responsible for the issuance of books containing appropriate citations, and shall maintain a record of each book and each citation contained in it and shall require and retain a receipt for every book issued to a peace officer.

- (b) A citation issued under AS 12.25.180 must indicate
- (1) the amount of bail or fine applicable to the offense;
 - (2) the procedure a person must follow in responding to the citation;
 - (3) that if the person fails to pay the bail or fine the person must appear in court;
 - (4) that failure to pay the bail or fine or appear in court for an offense involving a moving motor vehicle may result in
 - (A) suspension of the person's driver's license, privilege to drive, or privilege to obtain a license; or
 - (B) attachment of the person's permanent fund dividend to pay the fine plus court and collection costs under AS 28.05.155; and
 - (5) that the person has a right to
 - (A) a trial;
 - (B) engage counsel;
 - (C) confront and question witnesses;
 - (D) testify; and
 - (E) subpoena witnesses on the person's behalf. (§ 1 ch 31 SLA 1973; am § 3 ch 76 SLA 1987; am § 2 ch 47 SLA 1996)

Effect of amendments. — The 1996 amendment, effective August 27, 1996, rewrote subsection (b).

Sec. 12.25.210. Disposition and records of citations. (a) A peace officer, upon issuing a citation to an alleged violator under AS 12.25.180, shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. If the citation charges an offense under a municipal ordinance for which a scheduled fine has been established, the peace officer shall deposit the original or a copy of the citation with the clerk of the municipality that issued the citation, unless otherwise provided under rule adopted by the supreme court.

(b) Upon the deposit of the original or a copy of the citation with a court having jurisdiction over the alleged offense, the original or copy of the citation may be disposed of only by trial in the court or other official action by a magistrate or judge of the court.

Postponed repeal of subsection (f). — Section 7, ch. 79, SLA 1994 repeals (f) of this section, effective February 2, 2004.

Cross references. — For effect of enactment of this section on Alaska Rule of Criminal Procedure 32, see § 6, ch. 79, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1995 amendment, effective August 8, 1995, in the first sentence of the

introductory language of subsection (f), substituted "prepare a report every two years" for "report every two years to the legislature" and added the second sentence.

Legislative history reports. — For House letter of intent relating to CSHB 119(JUD) am, from which ch. 79, SLA 1994, which enacted this section derived, see 1993 House Journal 1413.

Sec. 12.55.039. Surcharge. (a) In addition to any fine or other penalty prescribed by law, a defendant who pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a violation of a vehicle or traffic offense under AS 29, a regulation adopted under AS 28, or a municipal ordinance under AS 28.01.010 shall be assessed a surcharge of

(1) \$10 if the violation is for other than a violation of AS 28.15.291, AS 28.33.030, 28.33.031, AS 28.25.030, 28.35.032, 28.35.040, 28.35.060, or a comparable municipal ordinance; or

(2) \$25 if the violation is a violation of AS 28.15.291, AS 28.33.030, 28.33.031, AS 28.35.030, 28.35.032, 28.35.040, 28.35.060, or a comparable municipal ordinance.

(b) A court may not fail to impose the surcharge required under this section. The surcharge may not be waived, deferred, or suspended. A court may allow a defendant who is unable to pay the surcharge required to be imposed under this section to perform community work under AS 12.55.055(c) in lieu of the surcharge.

(c) The surcharge shall be paid within 10 days of imposition or such shorter period of time as ordered by the court. Failure to pay the surcharge is punishable as contempt of court. Proceedings to collect the surcharge may be instituted by the state, the municipality, or by the court on its own motion.

(d) Money collected under this section shall be deposited into the general fund and accounted for under AS 37.05.142. (§ 2 ch 119 SLA 1994)

Cross references. — For legislative findings and purpose in connection with the enactment of this section, see § 1, ch. 119, SLA 1994 in the Temporary and Special Acts.

Effective dates. — Section 7, ch. 119, SLA 1994

makes this section effective January 1, 1996.

Editor's notes. — Section 8, ch. 119, SLA 1994 provides that the surcharge under this section "applies only to offenses and violations occurring after December 31, 1995."

Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 12.55.045. Restitution. (a) The court may order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law. In determining the amount and method of payment of restitution, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and

(2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(d) In any case, including a case in which the defendant is convicted of a violation of AS 11.46.120 — 11.46.150 and the property is commercial fishing gear as defined in AS

Sec. 18.65.200. Meetings. The council shall meet at least twice a year. The chairman shall set the time and place of the meeting, either on the chairman's own motion or on written request by any three members of the council. (§ 1 ch 178 SLA 1972)

Sec. 18.65.210. Reports. [Repealed. § 12 ch 19 SLA 1981.]

Sec. 18.65.220. Powers. The council has the power to

- (1) adopt regulations for the administration of AS 18.65.130 — 18.65.290;
- (2) establish minimum standards for employment as a police officer, probation or parole officer, and correctional officer in a permanent or probationary position and certify persons to be qualified as police officers, probation or parole officers, and correctional officers under AS 18.65.130 — 18.65.290;
- (3) establish minimum criminal justice curriculum requirements for basic, specialized, and in-service courses and programs for schools operated by or for the state or a political subdivision of the state for the specific purpose of training police recruits, police officers, probation and parole officers, and correctional officers;
- (4) consult and cooperate with municipalities, agencies of the state, other governmental agencies, universities, colleges, and other institutions concerning the development of police, probation and parole officer, and correctional officer training schools and programs of criminal justice instruction;
- (5) employ an administrator and other persons necessary to carry out its duties under AS 18.65.130 — 18.65.290;
- (6) investigate when there is reason to believe that a police officer, probation or parole officer, or correctional officer does not meet the minimum standards for employment; in connection with the investigation the council may subpoena persons, books, records, or documents related to the investigation and require answers in writing under oath to questions asked by the council or the administrator;
- (7) charge and collect a fee of \$50 for processing applications for certification of police, probation, parole, and correctional officers. (§ 1 ch 178 SLA 1972; am § 4 ch 19 SLA 1981; am § 1 ch 1 SLA 1984; am § 4 ch 112 SLA 1988; am § 50 ch 63 SLA 1993)

Effect of amendments. — The 1993 amendment, effective July 1, 1993, added paragraph (7).
Editor's notes. — Section 87, ch. 63, SLA 1993 provides "[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill."

Sec. 18.65.225. Alaska police training fund. The Alaska police training fund is created in the general fund. The fund consists of appropriations made by the legislature to the fund. The legislature may appropriate to the fund the annual estimated balance in the accounts maintained under AS 37.05.142 for money collected under AS 12.55.039 and AS 28.05.151. The legislature may appropriate equal amounts from the fund to the (1) Department of Public Safety for the Public Safety Training Academy, including Village Public Safety Officers, and (2) Alaska Police Standards Council to provide training for the law enforcement and corrections community of the state under AS 18.65.230. Nothing in this section creates a dedicated fund. (§ 4 ch 119 SLA 1994)

Cross references. — For legislative findings and purpose in connection with the enactment of this section, see § 1, ch. 119, SLA 1994 in the Temporary and Special Acts.
Effective dates. — Section 7, ch. 119, SLA 1994 makes this section effective January 1, 1996.

Sec. 18.65.230. Training programs. The council shall establish and maintain police training programs, probation and parole officer training programs, and correctional training programs through those agencies and institutions that the council considers appropriate. (§ 1 ch 178 SLA 1972; am § 5 ch 112 SLA 1988)

review of the hearing officer's decision. The judicial review shall be on the record. The court may reverse the department's determination if the court finds that the department misinterpreted the law, acted in an arbitrary and capricious manner, or made a determination unsupported by the evidence in the record. The decision of the department suspending, revoking, canceling, limiting, restricting, or denying a license, registration, title, permit, or privilege is stayed and does not take effect during the pendency of an appeal. (§ 6 ch 178 SLA 1978; am § 2 ch 60 SLA 1986; am § 1 ch 158 SLA 1990; am § 2 ch 6 FSSLA 1996)

Cross references. — For rules of court relating to appeals from administrative proceedings, see App. Rules 601-611.

Effect of amendments. — The 1990 amendment rewrote subsection (d).

The 1996 amendment, effective July 4, 1996, in subsection (b), rewrote the first sentence and inserted "attend or" in two places in the last sentence.

NOTES TO DECISIONS

This section does not apply to a revocation of a license under AS 28.35.032, relating to refusal to submit to a chemical test. *Graham v. State*, 633 P.2d 211 (Alaska 1981).

This section is inapplicable to license revocations for refusal to submit to a breathalyzer test. *Borrego v. State*, 816 P.2d 360 (Alaska 1991).

Article 4. Disposition of Certain Vehicle and Traffic Offenses.

Section

151. Citations for scheduled vehicle and traffic offenses

155. Court and collection costs

Sec. 28.05.151. Citations for scheduled vehicle and traffic offenses. (a) The supreme court shall determine by rule or order those motor vehicle and traffic offenses, except for offenses subject to a scheduled municipal fine, that are amenable to disposition without court appearance and shall establish a scheduled amount of bail, not to exceed fines prescribed by law, for each offense. A municipality shall determine by ordinance the municipal motor vehicle and traffic offenses that may be disposed of without court appearance and shall establish a fine schedule for each offense.

(b) The supreme court shall establish a scheduled amount of bail allowing disposition of a citation for a violation of AS 28.05.095 without court appearance.

(c) The supreme court shall require as a condition of the disposition of an offense without appearance that a person charged with any offense for which a bail forfeiture amount has been adopted shall pay a surcharge of \$10 in addition to the bail forfeiture amount established by the supreme court. The surcharge required to be paid under this subsection shall be deposited into the general fund and accounted for under AS 37.05.142. (§ 6 ch 178 SLA 1978; am § 8 ch 76 SLA 1987; am § 4 ch 98 SLA 1990; am § 5 ch 119 SLA 1994)

Cross references. — For legislative findings and purpose in connection with the enactment of this section, see § 1, ch. 119, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1990 amendment added subsection (b).

The 1994 amendment, effective January 1, 1996, added subsection (c).

Editor's notes. — Section 6, ch. 119, SLA 1994 provides that the surcharge under this section "applies only to offenses and violations occurring after December 31, 1995."

Sec. 28.05.155. Court and collection costs. If a person's permanent fund dividend is attached to pay the bail or fine for an offense involving a moving motor vehicle, the court shall increase the bail or fine of that person by at least

- (1) \$25 for court costs; and
- (2) \$10 for collection costs. (§ 4 ch 47 SLA 1996)

been entered by the municipal clerk in a properly indexed book maintained for the purposes of organizing and recording the ordinances; or

(2) the ordinance is a provision that establishes a rule of conduct or behavior and that is included, or to be included, in a code of ordinances or other complete system of law enacted and kept current at reasonable intervals.

(d) This section applies to home rule and general law municipalities. (§ 8 ch 74 SLA 1985)

Opinions of attorney general. — To have met the minimum codification requirements of a former, similar provision municipal ordinances should have been topically arranged under a logical and systematic set of chapters and subchapters. There should have been a table of contents, an index, and a system of cross-referencing. The code, to have been useful, must have

had a current supplement which indicated all additions, amendments, and repeals. Periodically the additions and changes noted in the supplement should have been incorporated into the main body of the code. These were minimum requirements. Nothing prevented a municipality from developing a more elaborate and sophisticated code. 1996 Op. Att'y Gen. No. 6.

Sec. 29.25.060. Resolutions. (a) The governing body shall provide for the maintenance of a permanent file of resolutions that have been adopted.

(b) This section applies to home rule and general law municipalities. (§ 8 ch 74 SLA 1985)

NOTES TO DECISIONS

Cited in *Lazy Mt. Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals*, 904 P.2d 373 (Alaska 1995).

Sec. 29.25.070. Penalties. (a) For the violation of an ordinance, a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000 and imprisonment for 90 days. For a violation that cannot result in incarceration or the loss of a valuable license, a municipality may allow disposition of the violation without court appearance and establish a schedule of fine amounts for each offense.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Each day that a violation of an ordinance continues constitutes a separate violation.

(c) The penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost.

(d) This section does not apply to an ordinance adopted under AS 04.11.501(c). (§ 8 ch 74 SLA 1985; am § 16 ch 80 SLA 1986; am § 11 ch 76 SLA 1987; am § 65 ch 101 SLA 1995)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, made a section reference substitution in subsection (d).

NOTES TO DECISIONS

Punishment for failure to list taxable property authorized. — A city had the power to enact an ordinance requiring a taxpayer to file a statement under oath listing all personal property at its just and fair value, and a former, similar provision provided the authority to prescribe its punishment, including fine and imprisonment. *City of Anchorage v. Campbell*, 105 F. Supp. 607 (D. Alaska 1952).

An act may be made a penal offense under both state statute and municipal ordinance. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

Ordinance may impose penalties on class of persons. — While an ordinance which made an act done by one penal and imposed upon another no penalty for a like act done under like circumstances

→ **Sec. 29.10.200. Limitation of home rule powers.** Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise than as provided. These provisions supersede existing and prohibit future home rule enactments that provide otherwise:

- (1) AS 29.05.140 (transition);
- (2) AS 29.06.010 (change of municipal name);
- (3) AS 29.06.040 — 29.06.060 (annexation and detachment);
- (4) AS 29.06.090 — 29.06.170 (merger and consolidation);
- (5) AS 29.06.190 — 29.06.420 (unification of municipalities);
- (6) AS 29.06.450 — 29.06.530 (dissolution);
- (7) AS 29.10.100 (charter amendment);
- (8) AS 29.20.010 (conflict of interest);
- (9) AS 29.20.020 (meetings public);
- (10) AS 29.20.050 (legislative power);
- (11) AS 29.20.060 — 29.20.120 (assembly composition and apportionment);
- (12) AS 29.20.140 (qualifications of members of governing bodies);
- (13) AS 29.20.150 (term of office);
- (14) AS 29.20.220 (executive power);
- (15) AS 29.20.270(e) (ordinance veto by mayor);
- (16) AS 29.20.630 (prohibited discrimination);
- (17) AS 29.20.640 (reports);
- (18) AS 29.25.010(a)(10) (municipal exemption on contractor bond requirements);
- (19) AS 29.25.050 (codification);
- (20) AS 29.25.060 (resolutions);
- (21) AS 29.26.030 (notice of elections);
- (22) AS 29.26.050 (voter qualification);
- (23) AS 29.26.250 — 29.26.360 (recall);
- (24) AS 29.35.020 (extraterritorial jurisdiction);
- (25) AS 29.35.030 (eminent domain);
- (26) AS 29.35.050 (garbage and solid waste services);
- (27) AS 29.35.055 (local air quality control program);
- (28) AS 29.35.060 (franchises and permits);
- (29) AS 29.35.070 (public utilities);
- (30) AS 29.35.080 (alcoholic beverages);
- (31) AS 29.35.120 (post audit);
- (32) AS 29.35.131 (enhanced 911 system);
- (33) AS 29.35.145 (regulation of firearms);
- (34) AS 29.35.160 (education);
- (35) AS 29.35.170(b) (assessment and collection of taxes);
- (36) AS 29.35.180(b) (land use regulation);
- (37) AS 29.35.250 (cities inside boroughs);
- (38) AS 29.35.260 (cities outside boroughs);
- (39) AS 29.35.340 (acquisition of areawide power);
- (40) AS 29.35.500 — 29.35.590 (hazardous materials and wastes);
- (41) AS 29.40.160(a) — (c) (title to vacated areas);
- (42) AS 29.40.200 (subdivisions of state land);
- (43) AS 29.45.010 — 29.45.570 (property taxes);
- (44) AS 29.45.650(c), (d), (e), and (f) (sales and use tax);
- (45) AS 29.45.700(d) (sales and use tax);
- (46) AS 29.47.200(b) (security for bonds);
- (47) AS 29.47.260 (construction);
- (48) AS 29.47.470 (air carriers);
- (49) AS 29.60.050(a) (limitation on computation and use of payment);

(50) AS 29.60.120(a) and (c) (priority revenue sharing for health facilities and hospitals);

(51) AS 29.65 (general grant land);

(52) AS 29.71.040 (procurement preference for state agricultural and fisheries products);

(53) AS 29.71.050 (procurement preference for recycled Alaska products). (§ 6 ch 74 SLA 1985; am §§ 1, 2 ch 38 SLA 1986; am § 6 ch 70 SLA 1986; am § 12 ch 80 SLA 1986; am § 3 ch 108 SLA 1986; am § 49 ch 14 SLA 1987; am § 1 ch 30 SLA 1988; am § 2 ch 63 SLA 1988; am § 1 ch 64 SLA 1988; am § 3 ch 57 SLA 1993; am § 5 ch 74 SLA 1993; am § 1 ch 29 SLA 1994; am § 1 ch 75 SLA 1997)

Effect of amendments. — The 1997 amendment, effective July 1, 1997, substituted "priority revenue sharing" for "state aid" in paragraph (50).

Chapter 20. Municipal Officers and Employees.

Article

7. Miscellaneous Provisions (§ 29.20.640)

Article 7. Miscellaneous Provisions.

Section

640. Reports

- Sec. 29.20.640. Reports.** (a) A municipality shall file with the department
- (1) maps and descriptions of all annexed or detached territory;
 - (2) a copy of the annual audit, or, for a second class city, an audit or statement of annual income and expenditures;
 - (3) tax assessment and tax levy figures as requested;
 - (4) a copy of the current annual budget of the municipality;
 - (5) a summary of the optional property tax exemptions authorized together with the estimate of the revenues lost to the municipality by operation of each of the exemptions.
- (b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.60.010 — 29.60.080 and priority revenue sharing for municipal services under AS 29.60.100 — 29.60.180. If a municipality does not comply with this section, the department shall withhold the allocations until the required reports are filed.
- (c) This section applies to home rule and general law municipalities. (§ 7 ch 74 SLA 1985; am § 2 ch 75 SLA 1997)

Effect of amendments. — The 1997 amendment, effective July 1, 1997, in subsection (b), substituted "state aid for miscellaneous municipal services" in the first sentence. "priority revenue sharing for municipal services" for

Chapter 35. Municipal Powers and Duties.

Article

1. General Powers (§ 29.35.085)
8. Hazardous Chemicals, Materials, and Wastes (§§ 29.35.500 — 29.35.590)

Article 1. General Powers.

Section

85. Curfew

could not receive judicial sanction for the reason that it was unjust and unreasonable, the same could not be said of discrimination by municipal authority against a whole class of persons who were lawfully regarded

as proper subjects for police regulation, such as persons without occupation or visible means of support. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.



Sec. 29.25.075. Collection of penalties. The court may collect for a municipality any monetary penalty or item to be forfeited as a result of the violation of an ordinance. The supreme court may prescribe by rule the fees to be charged by all courts to municipalities for providing collection services under this section. (§ 47 ch 36 SLA 1990)

Chapter 26. Elections.

Article

1. Regular and Special Elections (§§ 29.26.010 — 29.26.070)
2. Initiative and Referendum (§§ 29.26.100 — 29.26.190)
3. Recall (§§ 29.26.240 — 29.26.360)

Article 1. Regular and Special Elections.

Section

10. Administration
20. Nominations
30. Notice of elections
40. Date of regular election

Section

50. Voter qualification
60. Runoff elections
70. Election contest and appeal

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 147-150.

62 C.J.S., Municipal Corporations, § 390.

Sec. 29.26.010. Administration. The governing body shall prescribe the rules for conducting an election and shall appoint an election board composed of at least three judges for each precinct. A judge shall be a voter of the precinct for which appointed unless no voter is willing to serve. (§ 9 ch 74 SLA 1985)

Collateral references. — 25 Am. Jur. 2d, Elections, § 1 et seq.
29 C.J.S., Elections, § 1 et seq.

Sec. 29.26.020. Nominations. (a) Subject to other provisions of this title, the governing body shall provide by ordinance for nominations of elected officials by providing for declaration of candidacy or for petition requiring the signatures of not more than 10 voters, or for both.

(b) A person may be nominated for and occupy more than one office, but may not serve simultaneously as borough mayor and as a member of the assembly or, in a first class city, as city mayor and as a member of the council. (§ 9 ch 74 SLA 1985)

Sec. 29.26.030. Notice of elections. (a) Subject to other provisions of this title, a municipality shall give at least 20 days notice of an election.

(b) This section applies to home rule and general law municipalities. (§ 9 ch 74 SLA 1985)

Sec. 29.26.040. Date of regular election. The date of a regular election is the first Tuesday of October annually, unless a different date or interval of years is provided by ordinance. (§ 9 ch 74 SLA 1985)

Sec. 29.26.050. Voter qualification. (a) A person may vote in a municipal election only if the person

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

1
2

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)

Date Referred to Committee: April 30, 1997

FURTHER REFERRALS:

Date of Committee Action: _____

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 _____ 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>Norm R. Roberts</i>	✓			
<i>Brian A. Porter</i>	✓			
<i>Suzanne Jones</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE *[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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May, 1996

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By The Publisher's Editorial Staff

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104 Stat. 853.)

LAWS AND DIRECTIVES

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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

tion 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

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

been developed, and implemented including confidentiality of records pertaining to any individual services by any program assisted under this title that the address or location of any shelter- et seq.] will, except with written authorization 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 in such application. If the State has not corrected within 6-month period following the receipt of the Secretary shall withhold payment of any grant funds end of the fiscal year for which such grant funds documentation that the deficiencies have been Domestic Violence 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 or subgrantee that performed the direct services of direct services under the grant. The Director applicant fails to submit an annual performance than those set forth under this subpart, after federal 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 organizations approved by an Indian Tribe for reservation for projects designed to prevent family assistance for victims of family violence and their

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

ation for a demonstration grant under this subsection the Child Abuse Programs, Adoption Opportunities Act 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), in 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

"(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 protection orders, and assisting such victims in healing. Such services include—

(1) counseling services for victims and their children, and other support services for victims and their children; (2) medical services for victims and their children; (3) educational programs (including nutrition, disease prevention, and domestic violence prevention programs for school children); (4) public information campaigns, and violence prevention counseling

or other supportive services by peers; (5) counseling and other supportive services by social workers;

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

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

justice system; (8) child care services for children who are victims of family violence.

(b) 106 Stat. 203; Sept. 13, 1994, P. L. 103-226.

AND DIRECTIVES

which read:

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

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

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

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

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

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

AND DIRECTIVES

which read:

"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 investigation;

(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.

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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;

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over a period of not more than 3 fiscal years.

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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

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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 Cir. CA5 Tex) 887 F.2d 524.

in paragraph (2), the Director shall make an an-
 nual compensation program of 40 percent of the
 amount 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
 40 percent, the Director shall make, from the sums available, a grant to
 ensure that all such programs receive the same percent-
 age of the preceding fiscal year other than amounts

under this section may be used for the administration of
 such program.

Such program is an eligible crime victim compensation program if—

(1) such program provides compensation to victims and survivors of victims of
 crime violence for—

(A) medical expenses attributable to a physical injury resulting from compensable crime, including

expenses resulting from a compensable crime; and
 (B) expenses resulting from a compensable crime;

(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 enrich-
 ment 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 sec-
 tion 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, includ-
 ing 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, 25ec (c), in para. (f) 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:

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

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PETER KELLY

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White in Juneau
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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

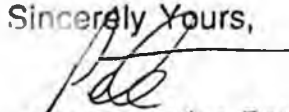
Dear Ms. Andreen and Ms. Samaniega,

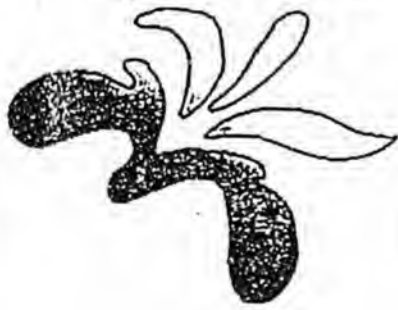
I am sorry to read that your attempts to creatively develop a means of communication between your staff and the Department of Public Safety were not successful.

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

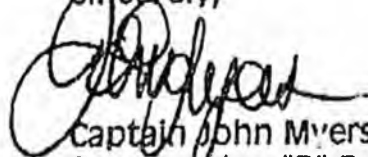
Dear Ms. Samanlega:

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

REPRESENTATIVE
PETER KELLY

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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
PETER KELLY

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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 "