



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OCT 05 2001

The Honorable Joanne M. S. Brown
Legislative Secretary
I Mina'Bente Sais na Liheslaturan Guåhan
Twenty-Sixth Guam Legislature
Suite 200
130 Aspinal Street
Hagåtña, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT
Received By [Signature]
Time 10:30 a.m.
Date 5 Oct 2001

Dear Legislative Secretary Brown:

Enclosed please find Substitute Bill No. 62 (COR) entitled: "AN ACT TO *REPEAL AND REENACT* § 160.50 AND TO *ADD* § 160.45, BOTH OF TITLE 8 OF THE GUAM CODE ANNOTATED, RELATIVE TO INCREASING RIGHTS FOR CRIME VICTIMS" which I have signed into law as **Public Law No. 26-45**.

This legislation makes some changes to already existing law concerning victims' rights. Current law provides the circumstances in which a victim or witness is entitled to notice concerning persons convicted of crimes. The changes in this legislation can generally be summarized as follows:

1. Notices of final disposition of a case, and when a defendant or perpetrator is released from custody should be delivered to victims in an immediate manner.
2. A victim witness counselor and probation officer should promptly inform the victim when the defendant has violated a criminal restraining order, or other order concerning conditions of release.
3. The Parole Board, through Parole Services, shall inform the victim when an offender is seeking early release or parole and be entitled to submit letter, and appear and testify at a release hearing.
4. Parole Services shall inform the victim when the offender has violated parole.
5. A victim shall be afforded the right to testify concerning the actions of a defendant on themselves and their family.
6. The Governor shall notify a victim upon the submission of a request for pardon of a defendant or perpetrator.
7. Witnesses may be afforded the same protections as victims, if they submit a written request.
8. A victim who does not want to be notified of such information may decline to receive these notices.

0907

Legislative Secretary
SB62;PL 26-45
October, 2001
Page 2

The main differences between the current law and the changes are the notices required of parole hearings and pardon requests. While pardon requests are received initially by the Governor, the Governor has no knowledge at that point of the victim. All pardon requests are promptly referred to the Pardon Review Board. The requirement to notify a victim upon request of a pardon shall be delegated to the Pardon Review Board, who will be able to have access to court and parole records to determine who is a victim.

Very truly yours,



Carl T. C. Gutierrez
I Maga'Lahen Guåhan
Governor of Guam

Attachment: copy attached for signed bill or overridden bill
original attached for vetoed bill

cc: The Honorable Antonio R. Unpingco
Speaker

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session


CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 62 (COR), "AN ACT TO REPEAL AND REENACT § 160.50 AND TO ADD § 160.45, BOTH OF TITLE 8 OF THE GUAM CODE ANNOTATED, RELATIVE TO INCREASING RIGHTS FOR CRIME VICTIMS," was on the 25th day of September, 2001, duly and regularly passed.



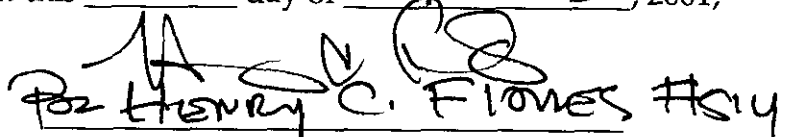
ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guåhan* this 28 day of SEPTEMBER, 2001,
at 8:45 o'clock P.M.



Henry C. FLORES #114
Assistant Staff Officer
Maga'lahaen's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahaen Guåhan

Date: 10-5-01

Public Law No. 26-45

MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

Bill No. 62 (COR)

As substituted by the Committee
on Tourism, Transportation and
Economic Development and
amended on the Floor.

Introduced by:

F. P. Camacho

K. S. Moylan

A. R. Unpingco

J. F. Ada

T. C. Ada

F. B. Aguon, Jr.

J. M.S. Brown

E. B. Calvo

M. C. Charfauros

Mark Forbes

L. F. Kasperbauer

L. A. Leon Guerrero

V. C. Pangelinan

A. L.G. Santos

J. T. Won Pat

**AN ACT TO REPEAL AND REENACT § 160.50 AND TO
ADD § 160.45, BOTH OF TITLE 8 OF THE GUAM CODE
ANNOTATED, RELATIVE TO INCREASING RIGHTS
FOR CRIME VICTIMS.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 *finds that our community, especially our judicial system, must ensure that all*
4 *victims of crime are treated with dignity, respect, courtesy and sensitivity, and*
5 *that rights extended to crime victims be honored and upheld by all*

1 enforcement agencies (prosecutors, judges, probation and parole officers) in a
2 manner no less vigorous than the protections afforded criminal defendants.

3 *I Liheslaturan Guåhan* finds that one (1) of the greatest protections that
4 can be given to victims is that of keeping them informed about the criminal
5 court process; about their role in this process, including acting as a witness
6 and involving them in the decision-making process; and about the status of
7 the offender during the criminal proceedings and thereafter. This would
8 include informing them of any violations by the offender of any stay-away or
9 restraining order imposed by the Court, and terms or conditions of any type
10 of release, *especially* those involving unsupervised release into the community.

11 It is the intent of this legislation to ensure that victims are empowered to
12 protect themselves with timely information by being notified of any potential
13 threats to their safety, and by enabling them to communicate and converse
14 with law enforcement and judicial officials. It is also the intent of *I*
15 *Liheslaturan Guåhan* to foster collaborative efforts among all the justice system
16 components, since any strategy that is to work must have the support and
17 cooperation of all components.

18 **Section 2.** Section 160.50 of Chapter 160 of Title 8 of the Guam Code
19 Annotated is hereby *repealed* and *reenacted* to read as follows:

20 **"Section 160.50. Basic Bill of Rights for Victims.** Victims and
21 surviving immediate family members shall have the following rights:

22 (a) To be *immediately* informed by the police and the
23 prosecuting attorney of the final disposition of the case. *If* the
24 crime charged is a felony, the victim or a surviving immediate

1 family member shall be notified of major developments in the
2 case, whenever appropriate, in order to avoid jeopardizing an
3 investigation. The victim or surviving immediate family member
4 shall be *immediately* notified whenever the defendant or
5 perpetrator is released from custody. The victim or the surviving
6 immediate family member shall also be consulted and advised
7 about plea bargaining.

8 (b) To be notified by the prosecuting attorney *if* a Court
9 proceeding to which they have been subpoenaed will *not* proceed
10 as scheduled in a timely manner.

11 (c) To receive protection from threats or harm in
12 accordance with local witness and victim protection program
13 guidelines.

14 (d) To be *promptly* informed by the victim witness
15 counselor and the probation officer when the defendant has
16 violated a criminal restraining order, a Court-imposed stay-away
17 order, terms or condition of release, terms of probation or terms of
18 a plea agreement.

19 (e) To be informed by the police, victim witness, or other
20 criminal justice personnel of financial assistance and other social
21 services available as a result of being a victim of crime, including
22 information on how to apply for the assistance and services.

23 (f) To be provided by the Court, whenever possible, with
24 a secure waiting area during Court proceedings that does *not*

1 require them to be in close proximity to defendants and families,
2 and friends of defendants.

3 (g) To have any stolen property or other personal
4 property *expeditiously* returned by law enforcement agencies when
5 such property is no longer needed for evidence, and the Court or
6 the Attorney General has approved its release. *If feasible*, all such
7 property, *except* weapons; currency; contraband; property subject
8 to evidentiary analysis; and property, the ownership of which is
9 disputed, shall be returned to the person within ten (10) days of
10 being taken, and the Court or Attorney General has approved its
11 release.

12 (h) To be informed by the Department of Corrections
13 ("DOC") of escapes and changes planned in the custodial status of
14 the offender that allow or result in the release of the offender into
15 the community, including furlough, work release, placement on
16 supervised release, release on parole, and final discharge at the
17 end of a prison term; and to be informed by the Office of the
18 Attorney General of changes in the custodial status of the offender
19 as a result of release on bail bond, or release on appeal bond.

20 (i) To be informed by the Parole Board through the
21 DOC's Parole Services Division when the offender is seeking *early*
22 release and/or parole, and to be afforded a right to submit letters,
23 and to appear and testify at a release hearing.

24 (j) To be *promptly* informed by the DOC's Parole Services
25 Division when the offender has violated that person's parole.

1 (k) In cases charged and pled to as a felony, to be
2 informed by the prosecutor, by telephone, facsimile or mail, of *all*
3 trials, changes of pleas, sentencing and other major developments
4 *at least* three (3) working days in advance.

5 (l) To the absolute right to testify as to the actions of the
6 defendant and their effect upon the victim and the victim's family,
7 to be represented by retained counsel, and to call witnesses at
8 sentencing, reduction of sentence or parole hearing, *subject* to
9 relevance; and at the discretion of the Court, to testify at any
10 change of plea or hearing to consider acceptance of a plea
11 agreement.

12 (m) To be notified by *I Maga'lahañ Guåhan* upon
13 submission of request relative to the pardon of the defendant or
14 the perpetrator.

15 (n) Upon written request, witnesses of crime shall be
16 provided the same protections afforded in this Section."

17 **Section 4.** Section 160.45 is hereby *added* to Chapter 160 of Title 8 of the
18 Guam Code Annotated to read as follows:

19 **"Section 160.45. Victim's Right to Decline Notices.** Victims and
20 surviving immediate family members shall have the right to decline
21 their right to receive notices provided for under this Chapter by
22 providing the prosecuting attorney at any time with a written statement.
23 The prosecuting attorney shall be responsible for informing other
24 departments or agencies of the government *not* to provide further

1 notices as may be provided in this Chapter to the victim and/or
2 surviving immediate family members, as the case may be.”

3 **Section 5. Severability.** *If* any provision of this Law or its
4 application to any person or circumstance is found to be invalid or contrary to
5 law, such invalidity shall *not* affect other provisions or applications of this
6 Law which can be given effect without the invalid provisions or application,
7 and to this end the provisions of this Law are severable.

10

I MINA' BENTE SAIS NA LIHESLATURAN GUAHAN

2001 (FIRST) Regular Session

Date: 9/25/01

VOTING SHEET

S Bill No. 62(COR)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
ADA, Joseph F.	✓				
ADA, Thomas C.	✓				
AGUON, Frank B., Jr.	✓				
BROWN, Joanne M. S.	✓				
CALVO, Eddie B.	✓				
CAMACHO, Felix P.	✓				
CHARFAUROS, Mark C.	✓				
FORBES, Mark	✓				
KASPERBAUER, Lawrence F.	✓				
LEON GUERRERO, Lourdes A.	✓				
MOYLAN, Kaleo S.	✓				
PANGELINAN, Vicente C.	✓				
SANTOS, Angel L.G.	✓				
UNPINGCO, Antonio R.	✓				
WON PAT, Judith T.	✓				

TOTAL

15 _____

CERTIFIED TRUE AND CORRECT:

Clerk of the Legislature

* 3 Passes = No vote
EA = Excused Absence



Chairman:
**Committee on Power,
Public Safety and
the Judiciary**

Suite 5A • Sinajana Shopping Mall II
777 Route 4 • Sinajana, Guam 96926

Phone 1.671 472-3431
Fax 1.671 472-3433

September 17, 2001

The Honorable Antonio R. Unpingco
Speaker
Twenty-sixth Guam Legislature
155 Hesler Street
Hagatna GU 96910

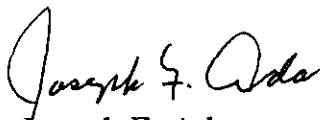
Via: Committee on Rules

The Committee on Power, Public Safety and the Judiciary, to which was referred Bill 62, "An act to repeal and reenact Section 160.50 of Title 8 of the Guam Code Annotated, relative to increasing rights for crime victims," herein reports back with the recommendation TO PASS.

Votes are as follows:

8 To pass
 Not to pass
 To report out only
 To the Inactive File
 Abstained

Sincerely,


Joseph F. Ada
Chairman

enclosures



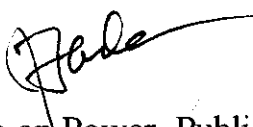
Chairman:
**Committee on Power,
Public Safety and
the Judiciary**

Suite 5A • Sinajana Shopping Mall II
777 Route 4 • Sinajana, Guam 96926

Phone 1.671 472-3431
Fax 1.671 472-3433

Memorandum

September 11, 2001

To: Members 
Committee on Power, Public Safety & the Judiciary

From: Joseph F. Ada
Chairman

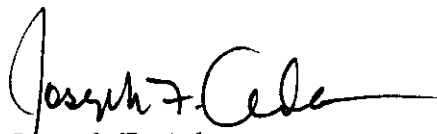
Subject: *Bill Number 62*

Attached please find the voting record and committee report on Bill 62 (as substituted by the committee).

There are minor changes in the substitute bill. They were made in order to incorporate suggestions made by the various agencies that submitted written testimonies.

If you have any questions please call my office.

Thank you.


Joseph F. Ada

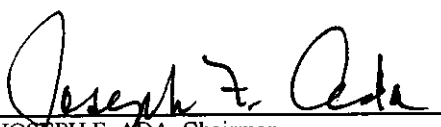
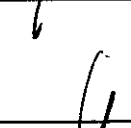
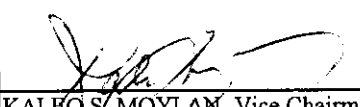



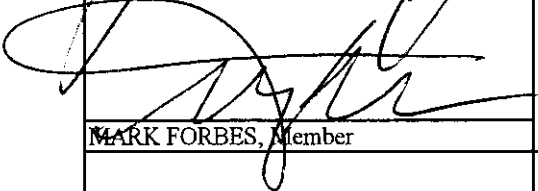

Committee on Power, Public Safety and the Judiciary

Mina' Bente Sais na Liheslaturan Guahan

Voting Record

Bill 62 - An act to repeal and reenact §160.50 of Title 8 of the Guam

Code Annotated, relative to increasing rights for crime victims.

<i>MEMBER NAME/SIGNATURE</i>	<i>TO PASS</i>	<i>NOT TO PASS</i>	<i>TO REPORT OUT ONLY</i>	<i>ABSTAIN</i>	<i>TO PLACE IN INACTIVE FILE</i>
 JOSEPH F. ADA, Chairman	✓	—	—	—	—
 ANTONIO R. UNPINGCO, Ex-Officio	✓	—	—	—	—
LAWRENCE F. KASPERBAUER, Member	—	—	—	—	—
 KALEO S. MOYLAN, Vice Chairman	✓	—	—	—	—
 THOMAS C. ADA, Member	✓	—	—	—	—
EDDIE B. CALVO, Member	—	—	—	—	—
 FELIX P. CAMACHO, Member	✓	—	—	—	—
 MARK C. CHARFAUROS, Member	✓	—	—	—	—
 MARK FORBES, Member	✓	—	—	—	—
 ANGEL L.G. SANTOS, Member	—	—	—	—	—

COMMITTEE REPORT
BILL 62
(August 6, 2001)

BACKGROUND AND PURPOSE

Bill No. 62 (COR), An Act to Repeal and Reenact Section 160.50 of Title 8 of the Guam Code Annotated, Relative to Increasing Rights for Crime Victims, sponsored by Senators F. P. Camacho, K. S. Moylan, and A.R. Unpingco, was referred to the Committee on power, Public Safety and the Judiciary on April 26, 2001 by the Committee on Rules. The Power Committee duly published notice and held a public hearing on Bill No. 62 on May 4, 2001, along with Bill No. 106 and the confirmation hearing on nominee Felix Sablan to the position of Fire Chief of the Guam Fire Department. No witnesses appeared at the public hearing but written testimonies were subsequently submitted by the Guam Police Department, the Public Defender Service Corporation, Department of Corrections and Department of Law.

Bill No. 62 (COR) repeals 8 GCA 160.50, *Basic Bill of Rights for Victims and Witnesses*, and reenacts the version that is contained in Bill 62. The current law, 8 GCA 160.50, is attached to this report at the end. Other attached materials include: (1) Copies of submitted written testimonies; (2) Article by Linda A. McGuire, Esq.; (3) Article, "Violence Against Women Act: Breaking the Cycle of Violence"; and (4) Summary of the ABA Model Code on Domestic and Family Violence."

The purpose of the Bill is contained in Section 1 of the Bill, titled "*Legislative Findings and Intent*". While self-explanatory, the purpose of the bill is to ensure that all participants in the criminal justice system interacting with victims of crimes are not only sensitive to but also act in a coordinated, collaborative, pro-active manner to protect the rights, dignity and physical safety of the victims by providing them with timely information concerning the crime perpetrator and, when possible, to shield them from confrontational meetings with the perpetrator and his family and friends; to inform the victims of all social services available to them; to protect and return personal property of the victims when not needed by prosecution; and to allow the victim the opportunity to give input in court or other proceedings affecting the disposition of the perpetrator.

As stated earlier, legislative intent is found in Section 1 of the bill and is self-explanatory. The text of the bill is found in Section 2 and thereafter. The effect of the changes can only be inferred. To showcase the changes in the actual law, the following conventions are used in the report. Additions to the current law are underscored and in bold and the portions of the original law which have been omitted are placed in brackets. For example, in the title and first sentence of Section 160.50, the phrases in the current law, "Upon written request" and "and witnesses of crime" are omitted in the proposed bill; thus, the phrase is enclosed in brackets and struck through with a line

TEXT OF BILL 62

AN ACT TO REPEAL AND REENACT SECTION 160.50 OF TITLE 8 OF THE GUAM CODE ANNOTATED, RELATIVE TO INCREASINF RIGHTS FOR CRIME VICTIMS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. I Liheslaturan Guahan finds that our community, especially our judicial system, must ensure that all victims of crime are treated with dignity, respect, courtesy, and sensitivity and that rights extended to crime victims be honored and upheld by all enforcement agencies (prosecutors, judges, probation and parole officers) in a manner no less vigorous than the protections afforded criminal defendants.

I Liheslaturan Guahan finds that one of the greatest protections that can be given to victims is that of keeping them informed about the criminal court process; about their role in this process, including acting as a witness and involving them in the decision-making process; and about the status of the offender during the criminal proceedings and after. This would include informing them of any violations by the offender of any stay-away or restraining order imposed by the court, terms or conditions of any type of release, especially those involving unsupervised release into the community.

It is the intent of this legislation to ensure that victims are empowered to protect themselves with timely information by notified of any potential threats to their safety and by enabling them to communicate and converse with law enforcement and judicial officials. It is also the intent of the legislature to foster collaborative efforts among all the justice system components since any strategy that is to work must have the support and cooperation of all components.

Section 2. Section 160.50 of chapter 160 of Title 8 of the Guam Code Annotated is hereby repealed and reenacted to read as follows:

Section 160.50. Basic Bill of Rights for Victims [and Witnesses]. [Upon written request,] Victims [,] and surviving immediate family members [, and witnesses of crime] shall have the following rights:

(1) To be **immediately** informed by the police and the prosecuting attorney of the final disposition of the case. If the crime charged is a felony, the victim [,] or a surviving immediate family member [~~or witness~~] shall be notified of major developments in the case, whenever appropriate, in order to avoid jeopardizing an investigation. The victim [,] **or** surviving immediate family member [~~or witness~~] shall be **immediately** notified whenever the defendant or perpetrator is released from custody. The victim [,] **or the** surviving immediate family member [~~or witness~~] shall also be consulted and advised about plea bargaining by the prosecuting attorney **prior to an offer being made.**

(12) (9) To be heard by the court as to the actions of the defendant and their effect on the victim and the victim's family; to the absolute right to testify, to be represented by retained counsel and to call witnesses at sentencing, reduction of sentence, or parole hearing subject to relevance; and at the discretion of the court, to testify at any change of plea or hearing to consider acceptance of a plea agreement.

(13) (10) To be notified by [the Governor] **I Mags'lahen Guahan** prior to the pardon of the defendant or the perpetrator.

(14) Upon written request, witnesses of crime shall be provided the same protections afforded in this Section;

Section 3. Severability. If any provision of this Law or its application to any person or circumstances is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.

SECTION DISCUSSION

It is assumed that the intended effect of omitting the phrase "Upon written request" is that the author wanted to make the enumerated rights automatic rather than making them conditional on the victim or survivor performing affirmative act of submitting a written request. This issue was raised in one of the testimonies and that is the one by Beverly Lotz of the Department of Corrections who states that some victims do not wish to be notified of the offender's status. This is consistent with the fact that some victims/battered spouses refuse to testify or be witnesses against their husbands for fear of retaliation and further beatings. The attached article, "Criminal Prosecution of Domestic Violence" by Linda A. McGuire, Esq., indicates that some battered spouses are re-victimized by the judicial system when the court holds them in contempt for refusing to answer a subpoena or to testify. The ultimate irony is when the victim-spouse is put in jail for contempt while the batterer is out scot-free.

It is not clear why "and witnesses of crime" was omitted in the proposed bill. The author might have assumed that witnesses are outside parties or perhaps children or people unrelated to the victim. But, as mentioned above, battered spouses are not only victims but also potential witnesses, as are children in the household. The reason or need for this omission is not easily discernible because the way the current law reads is that a battered spouse/victim, surviving immediate family member or witness must perform an affirmative act, i.e., submit a written request to inform the authorities that she/he wishes to exercise their rights under this law. If the person does not wish to invoke or exercise his/her rights, he doesn't have to.

Subsection (1) retains much of the wording of the current law but makes the following changes:

(a) It adds the word "immediately" to require instant action by the police and prosecutor

(2) To be notified by the prosecuting attorney if a court proceeding to which they have been subpoenaed will not proceed as scheduled in a timely manner.

To receive protection from threats or harm in accordance with local witness and victim protection program guidelines.

New subsec. **(4) To be promptly informed by the prosecutor, or victim witness counselor, and the probation officer when the defendant has violated a restraining order, a court-imposed stay-away order, terms or condition of release, terms of probation or terms of a plea agreement.**

(5) (4) To be informed by the police, victim witness counselor, or other criminal justice personnel, of financial assistance and other social services available as a result of being a victim of crime, including information on how to apply for the assistance and services.

(6) (5) To be provided by the court, whenever possible, with a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants.

(7) (6) To have any stolen property or other personal property expeditiously returned by law enforcement agencies when such property is no longer needed for evidence and the court or the Attorney General has approved its release. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property, the ownership of which is disputed, shall be returned to the person within ten (10) days of being taken, and the court or the Attorney General has approved its release.

(8) (7) To be informed by the [~~Guam Police Department and~~] Department of Corrections **and the Attorney General's Office** of changes planned in the custodial status of the offender[s] that allows or results in the release of the offender into the community, including furlough, work release, placement on supervised release, release on parole, release on bail bond, release on appeal bond and final discharge at the end of the prison term.

(9) To be informed by the Department of Correction's Parole Services Division when the offender is seeking early release and/or parole, and to be afforded a right to submit letters and to appear and testify at a release hearing.

(10) To be promptly informed by the Department of Correction's Parole Services Division when the offender has violated his parole.

(11) (8) In cases charged and pled to as a felony, to be informed by the prosecutor (by telephone, [~~tele~~facsimile] facsimile or mail of all trial, changes of pleas, sentencing and other major developments at least three (3) working days in advance.

in informing the victim or survivor.

(b) Wherever the word “witness” appears in the current law, it is eliminated.

© It requires the prosecution to consult and advise the victim or survivor of a proposed plea bargain before the offer is made to the offender.

Again, the omission of “witness” makes sense if the witness is an unrelated, independent third party and not the spouse or immediate family member. The immediate notification is not a problem. Consulting and advising the victim of a proposed plea agreement before an offer is made goes a step further than what is listed in the summary by the ABA of the Model Code on domestic and Family Violence. The terms of a plea agreement are within the prosecutor’s discretion and they are negotiated with the offender. There is nothing to prevent the prosecution from sharing information with the victim, but the “shall” language encroaches on this prosecutorial discretion. Also, a plea agreement is only a proposal until a court approves and accepts it. The opportunity to address the court at this point or at sentencing is at the discretion of the court. The victim’s voice may always be heard if they wish to testify as victims or spousal-witness. This provision will allow them to have an input onto the punishment imposed on the offender without actually testifying in court against him.

Subsection (2) of the bill is the same as the current law but it has the phrase “in a timely manner” added at the end.

Subsection (3) is the same as in the current law.

Subsection (4) in the current law is pushed forward to become Subsection (5) in the proposed bill. Subsection (4) in the bill is new. The proposed Subsection (4) puts the responsibility of informing the victim or immediate family member when the offender has violated a stay-away or restraining order, terms or condition of a release, probation, or a plea agreement upon the prosecution or victim-witness counselor and the probation officer.

Subsection (5) of the bill is the same as Subsection (4) of the current law. Therefore, the content of that law remains unchanged.

Subsections (6) and (7) of the proposed bill are the former Subsections (5) and (6), respectively, of the current law.

Subsection (8) of the bill eliminated the Guam Police Department and added the Attorney General’s Office as one of the agencies charged with the duty of notifying the victim of changes in the custodial status of the offender.

Subsection (9) of the bill is new and it places the duty upon the Parole Services Division of the Department of Corrections to inform the victim or immediate family member when the offender is seeking early release or parole and it grants these parties the right to submit letters and to appear in person and testify at the offender’s parole request hearing.

Subsection (10) of the bill places the responsibility of informing the victim or immediate family upon the Parole Services Division of the Department of Corrections and to do this with dispatch.

Subsection (11) of the bill is almost the same as subsection (8) of the current law except that it changes the word “telefacsimile” to “facsimile” within parentheses.

Subsection (12) of the bill is the same as Subsection (9) of the current law. Thus, the content of the current law remains unchanged.

Subsection (13) of the bill is almost the same as Subsection (10) of the current law, except that it changed the words “the Governor” to “I Maga’lahen Guahan”.

Subsection (14) of the bill is new. The effect of this change is to grant the same rights to witnesses as those given to victims and immediate family members, except that the grant of this right is conditioned upon the witnesses performing an affirmative act of submitting a written request. This subsection restores all the rights given to witnesses in the current law along with the proviso of submitting a written request before exercising the right. With this bill, victims and immediate family members are granted these rights automatically and removes the proviso of having to submit a written request before exercising the right. In other words, the right became activated when the victim gave written notice that she intended to exercise. Now the right is automatically granted; there is no affirmative action required of the victim.

Section 3. Severability of the bill is the standard savings clause.

WITNESS TESTIMONIES

All testimonies were submitted in writing. No witnesses appeared at the hearing. The following government agencies submitted testimonies.

GUAM POLICE DEPARTMENT testified in favor of both bills heard (Bill 62 and 106). It agreed with:

- (1) timely notification of victims;
- (2) immediate return of evidence when no longer needed;
- (3) informing victims of social services available to them; states department already does this.

PUBLIC DEFENDER SERVICE CORPORATION did not see a need to take a position on this bill. The office made two points:

- (1) They would take a position if the bill infringed on the constitutional rights of other persons. This bill did not appear to do so.
- (2) The requirement of contacting victims on certain issues may cause delay in proceedings since this bill adds more duties to the Attorney General’s and Probation

Offices. This bill will also encumber the Attorney General's efforts in entering plea agreements with a defendant that's an informant or government witness, "since there is no mechanism to maintain security and confidentiality in those situations."

The **DEPARTMENT OF CORRECTIONS** states that in the interest of maintaining safety and secrecy concerning the victim's location, they recommend that victims wishing to be notified of changes in the offenders' custodial status, especially where they would be released to the community, that the victim notify the Attorney General's Office in writing of this desire. In the department's experience some victims do not wish to be informed. When there is a change in custodial status, DOC would notify the Attorney General's Office which in turn would notify the victim.

Another recommendation made was that a data bank of victims' mailing addresses, phone numbers, or other means of contact be maintained and kept up to date.

The **DEPARTMENT OF LAW** supported the idea of informing victims of different stages of a criminal proceeding but opposed passage of the bill unless it was modified to conform with its recommendations. Specific points raised were as follows:

- (1) It stressed that the Attorney General's Office was the moving party in a criminal case, not the victim and therefore had to retain ultimate control of the case.
- (2) The Attorney General's Office objected to the overbreadth of subsection (4) of the bill, a new provision which imposes the duty on the prosecutor or victim witness counselor and the probation office to inform the victim when the offender has violated a stay-away or restraining order, terms or conditions of release, probation or a plea agreement. The AG states that their office would not be cognizant of a civil restraining order
- (3) The A.G.'s Office objected to "Item 6" but it probably meant subsection (8) of the proposed bill which imposes the notification duty upon DOC and the AG's office whenever the offender is to be released to the community. The AG states that changes in the custodial status of the offender while at DOC is not a matter with which his office usually deals. However, the bill does mention release on bail bond and release on appeal bond, information to which the AG's office is privy. Since the bill is not specific as to which functions fall within which department's jurisdiction, this determination would be left to the individual departments to make, unless the bill is amended to make the duties clear.
- (4) The AG's office objected to subsection 12 because it is excessive. This subsection grants victims the right to testify and be represented by counsel; to call witnesses at sentencing and parole hearings; and subject to the court's discretion, to testify at any proceeding involving pleas or changes of plea by the offender. The A.G. states that calling a victim to the stand is a prosecutorial decision and victim's wishes should not be injected into the entire process.
- (5) The AG states that the legislature cannot limit the governor's Organic Act powers to grants pardons or commutations. Victim notification is subject to the governor's

discretion.

- (6) Finally, the AG's office objects to subsection (14) or the granting to witnesses of any interest or ability to affect the progress of a case.

COMMITTEE FINDINGS

Based on the submitted testimonies, it appears that the desired collaboration, coordination and sharing of common objectives among the components or participants in the criminal justice system is lacking. The individual agencies do not have a common objective with regard to crime victims, e.g. a spousal victim of domestic violence, or a common understanding of what their roles are in relation to each other. In fact, it does not appear that the agencies have even agreed to the responsibilities that have been imposed or are being imposed upon them by this proposed legislation.

For instance, the Attorney General's Office has been substituted in place of the Guam Police Department or has been made jointly responsible along with the Probation and Parole offices in informing the crime victims of changes in the custodial status of the offender. To begin with, the Attorney General's Office, especially the Prosecution Division, has stated in all budget hearings that they are short-staffed. This proposed legislation adds to the responsibilities of an office that is already unable to cope with its previous workload and thus has to prioritize.

The national trend in law enforcement is to provide more timely information to the victims and to have all the agencies working collaboratively. However, in places where this plan is effective, a plan exists. That plan has been put together by the agencies working together and all understanding what their roles will be. The trend is to make especially domestic violence not just a family problem but a community problem and to involve the community in problem-solving. An important part of the plan is that the agency which is given additional duties accepts those duties and agrees to carry them out. Some jurisdictions have found that an independent organization, working in concert with the law enforcement agencies, is better at working with victims. But the basic plan requires that the actors/components come together and work out a plan together and each understands their own roles and the roles of others and they accept the plan as theirs.

Another need that has been pointed out by Ms. Lotz of the Department of Corrections is that of establishing a database of victims with current addresses and contact numbers. In addition to this, a database of offenders and of current protection orders, both civil and criminal, would also be useful for involved agencies. While it would be useful to tie-in with any database maintained by federal agencies or national organizations. The local government has to develop a local registry.

COMMITTEE RECOMMENDATIONS

Those portions of the bill to which the Attorney General's Office objects should be revised to the extent possible to incorporate their suggested improvement. For example, reference to stay-away or restraining orders should be made specific by adding the word "criminal". Another example would be making any affirmative duty of victim notification specific and tailored to match those duties or knowledge that fall within the jurisdiction of the respective agencies. For example, since the Probation or Parole Services Division of the Department of Corrections would be more informed as to violations of terms or conditions of release, then that office should be charged with the duty of victim notification of violations to those terms and conditions. Also, there should be a predetermined method established about which all agencies involved are cognizant of and agree to before affirmative duties are imposed by law.

The Department of Law or the Department of Corrections or the Guam Police Department should make all efforts to tie in with the databank on National Crime Information Center protection Order file, which the FBI has been working to link with the national Instant Criminal Background Check System to identify persons prohibited from purchasing firearms.

Encourage collaboration between and among all types of persons and professions—judges, lawyers, police chiefs, physicians, concerned citizens, formerly battered women, and professionals from all walks of life.

TRANSCRIPT
OF
HEARING

CURRENT LAW

§160.30. Definitions. As used in this Chapter:

Crime means an act or omission committed by an adult or juvenile that would constitute an offense against the person under all existing territorial statutes.

Homicide victim means a person whose death was caused by another person under the provisions of Chapter 16 of Title 9, Guam Code Annotated.

Surviving immediate family members means surviving grandparents, parents, siblings, spouse, children, and any legal guardian of the homicide victim.

Victim means a person against whom a crime has been committed by either an adult or a juvenile.

Witness means a person whose testimony or knowledge is desired in any proceeding or investigation by a grand jury or in a criminal investigation, action, prosecution or proceeding.

§160.40. Eligibility of Victims. A victim has the rights afforded by this Chapter and is eligible for the services provided under this Chapter.

§160.50. Basic Bill of Rights for Victims and Witnesses. Upon written request, victims, surviving immediate family members, and witnesses of crime shall have the following rights:

(1) To be informed by the police and the prosecuting attorney of the final disposition of the case. If the crime charged is a felony, the victim, a surviving immediate family member, or witness shall be notified of major developments in the case, whenever appropriate, in order to avoid jeopardizing an investigation. The victim, surviving immediate family member, or witness shall be notified whenever the defendant or perpetrator is released from custody. The victim,

surviving immediate family member, or witness shall also be consulted and advised about plea bargaining by the prosecuting attorney.

(2) To be notified by the prosecuting attorney if a court proceeding to which they have been subpoenaed will not proceed as scheduled.

(3) To receive protection from threats or harm in accordance with local witness and victim protection program guidelines.

(4) To be informed by the police, victim witness counselor, or other criminal justice personnel, of financial assistance and other social services available as a result of being a witness or a victim of crime, including information on how to apply for the assistance and services.

(5) To be provided by the court, whenever possible, with a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants.

(6) To have any stolen or other personal property expeditiously returned by law enforcement agencies when such property is no longer needed for evidence and the court or the Attorney General has approved its release. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property, the ownership of which is disputed, shall be returned to the person within ten (10) days of being taken, and the court or the Attorney General has approved its release.

(7) To be informed by the Guam Police Department and Department of Corrections of changes planned in the custodial status of the offenders that

allow or result in the release of the offender into the community, including furlough, work release, placement on supervised release, release on parole, release on bail bond, release on appeal bond, and final discharge at the end of the prison term.

(8) In cases charged and pled to as a felony, to be informed by the prosecutor (by telephone, telefacsimile, or mail) of all trials, changes of pleas, sentencing, and other major developments at least three (3) working days in advance.

(9) To be heard by the court as to the actions of the defendant and their effect on the victim and the victim's family; to the absolute right to testify, to be represented by retained counsel, and to call witnesses at sentencing, reduction of sentence, or parole hearing *subject to relevance; and at the discretion of the court, to testify at any change of plea or hearing to consider acceptance of a plea agreement.*

(10) To be informed by the Governor prior to the *pardon of the defendant or the perpetrator.*

§160.60. Responsibility for Rights and Services. (a) The courts shall fashion all decisions and orders to enhance the recognition of the rights and the provision of the services set out in this Chapter, to the extent that they will not conflict with the constitutional rights of the defendant.

(b) Neither the failure of any government employee to carry out the requirements of this section nor compliance with it shall subject any territorial officer or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed by appropriate authority.

160.70. Intergovernmental Cooperation. The office of the prosecutor, the police, local social service agencies, the

courts, and all other agencies involved in the criminal justice system shall all cooperate with each other to ensure that victims and witnesses of crime receive the rights and services to which they are entitled under this Chapter.

§160.80. Chapter to Benefit Victim not Offenders. The rights set out in this Chapter are strictly for the benefit of victims and witnesses and not defendants or perpetrators. A defendant shall have no standing to raise any objections to the applicability of the provisions of this Chapter other than to request a continuance at hearing or trial; provided, however, that the violation of any provision of this Chapter or the failure of the court or a prosecutor to comply with such provisions shall not be grounds for appeal or for reconsideration by the court.

160.90. Conversion of Community Service to Fines. The Legislature finds that community service is often a better punishment and deterrent to crime than fines or prison sentences, and that it is counterproductive and unfair to allow wealthy defendants or other relatives to simply pay off community service with cash. Sentences for community service may be converted to fines or cash payment only after an evidentiary hearing at which the court finds, independent of any stipulation, that extreme hardship will result from the imposition of community service, that such community service would place a significantly greater burden and unusual hardship on the particular defendant than on the usual defendants, and that justice would be served by such exceptional treatment. Mere inconvenience or economic hardship shall not justify the conversion.

§160.100. Severability. If any of the provisions of this Chapter, or the application thereof to any person or circumstance, are held invalid, such invalidity shall not affect any other provision or application of this Chapter

WITNESS TESTIMONIES



GOVERNMENT OF GUAM
AGANA, GUAM 96910

July 9, 2001

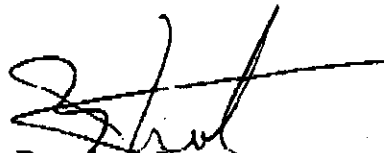
Ms. Sylvia Stake
Legal Representative to the Honorable Joseph F. Ada
Senator The Twenty-Sixth Guam Legislature
Chairman, Committee on Power, Public Safety and the Judiciary

Dear Ms. Stake,

I have been asked by Department of Correction Director, Mr. Angel Sablan, to provide the Committee written testimony concerning **Bill No. 62, An Act to Repeal and Reenact Section 160.50 of Title 8 of the Guam Code Annotated, Relative to Increasing Rights for Crime Victims**. Thank you for this opportunity to offer the following comments on this important legislation. My comments address those sections of the Bill which directly concern the operations of the Department of Corrections.

To further protect the safety, anonymity, and current whereabouts of the victim(s), we would recommend that victim(s) who wishes to be notified of the status of the offender while at the Department of Corrections notify the Attorney General's Office in writing of the desire to exercise this right. It has been our experience that some do not. The Attorney General's Office then would notify the Department of Corrections of those inmates whose victims wish to be notified of any changes in their custodial status that would allow them unsupervised access to the community. (This would include but not be limited to work release, education release, furloughs, parole, escape, and full-time-release) It would thereafter be DOC's responsibility to notify the AG's Office whenever such a change is imminent and the AG's Office to notify the victim(s). Further, a mechanism would need to be established by which a victim would update any changes in mailing address, telephone number, or other means of contact with the Attorney General's Office.

Again, thank you for this opportunity to offer comments on the Rights for Crime Victims legislation. If I can be of any further assistance, please feel free to contact me at the Department of Corrections.


Beverly A. Lotz
Corrections Social/Worker Administrator
Acting

646-2856

Commonwealth Now!

FOR
F. Parker



ADMINISTRATIVE DIRECTOR
Bernadette S.N. Chargualaf

PUBLIC DEFENDER SERVICE CORPORATION
(Kotperasion Setbision Defensot Pubbleku)

GOVERNMENT OF GUAM
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Hagåtña, Guam 96910
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July 10, 2001

Via Facsimile No. 671-472-3433

The Hon. Joseph F. Ada, Chairman
Committee on Power, Public Safety & the Judiciary
The Twenty-Sixth Guam Legislature
Suite 5A, Sinajana Shopping Mall II
777 Route 4
Sinajana, Guam 96926

Re: Bills No. 62 and 106

Dear Senator Ada:

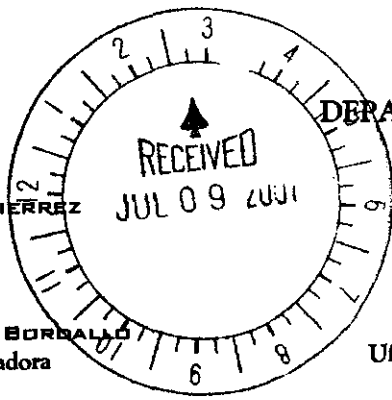
Your office has called and asked if we had any comments as to these two bills. I have reviewed them, and I do not see that there is anything on which it would be appropriate for the Public Defender Service Corporation to take a position with regard to these bills. As to Bill No. 106, this only seems reasonable and it would not affect any clients of this office directly.

As to Bill No. 62, the issue of the rights of the victim is not an area where this office would take a position unless they infringe on the Constitutional rights of other persons. This bill would not seem to do so in its present form. It may cause delay in proceedings as the prosecutor will have to contact victims on certain issues, and it will add to the already heavy burdens of the prosecutors and the probation office. It will also, of course, make it very difficult for the Attorney General to enter into a plea agreement that envisions the defendant being an informant or government witness as there is no mechanism to maintain security and confidentiality in those situations. But these are decisions for the Legislature to make in its own sound judgment.

Thank you for the opportunity to comment.

Sincerely,

HAROLD F. PARKER
Director



DEPARTMENT OF LAW



CARL T. C. GUTIERREZ
Maga'låhi
Governor

ROBERT H. KONO
Hiniråt Abugao
Attorney General (Acting)

MADELEINE Z. BORBALLO
Tinñente Gubetnadora
Lieutenant Governor

Ufisinan Hiniråt Abugao
Tiritorian Guåhan

Atkådi, Segundo Hiniråt Abugao
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL
Territory of Guam

July 9, 2001

Honorable Joseph F. Ada,
Chairman,
Committee on Power, Public Safety & Judiciary
26th Guam Legislature
Hagåtña, Guam

Dear Mr. Chairman,

Regarding Bill No. 62, while the Attorney General supports the idea of keeping victims informed of criminal proceedings involving them as victims, we believe that this Bill goes too far. We must remember that in criminal prosecution, the victim is not the moving party – the government, the Territory is the party against whom the crime (as opposed to the act which constitutes a public offense, or crime) was committed. Therefore, ultimate control of a criminal case must remain with the Prosecutor (Attorney General).

Some items are simply too broad. For instance, in item 4, the offices listed would know of a case only when it is a criminal case. A civil restraining order may never come to the attention of the Attorney General or probation officer.

Again, in Item 6, the Attorney General is usually unaware of the progress of any given prisoner unless there is some court action involved. The various forms of release are solely the function of the Department of Corrections, so the Attorney General should not have to find out and notify victims of matters he or she usually does not deal with.

Item 12 is excessive. Victims should not have rights to testify, and affect changes of pleas. This is a prosecutorial decision and the addition of victims wishes into the process will definitely complicate the process and could easily lead to worse results where, for instance, a judge were to deny a change of plea and force a case to trial with a resulting acquittal when there was enough evidence for something to which the defendant could and would have pled.

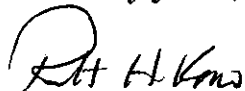
Under the Organic Act, the legislature cannot limit the discretion of the governor with

respect to the granting of pardons or commutations. While notification of victims may be a good idea, it is up to any governor to institute it, as Governor Gutierrez has instituted his Pardon Review Board.

Finally, witnesses should not be given any interest in affecting the progress of a case, such as influencing plea agreements, as would be given them under Item 14.

Bill No. 62 should not be passed and the present law modified, if necessary to agree with this testimony.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Rt H Kono".

ROBERT H. KONO

ARTICLE BY LINDA MCGUIRE



Criminal Prosecution of Domestic Violence

Linda A. McGuire, Esq.

The justice system's traditional view of woman battering

Historically, police and prosecutors have viewed battering as a family problem. The criminal justice system created a figurative "curtain of privacy" to shield husbands who beat their wives from public view, in the belief that the parties should be left to work out their "differences" privately. If outside intervention was appropriate, counseling was preferred over prosecution. It was only in the 1970's that the criminal justice system -- at the prodding of battered women and their advocates -- began to treat domestic violence like other assaults. By the 1980's, prosecutors in some jurisdictions had initiated special programs for domestic violence cases.

Why prosecute woman battering?

Even though every state now defines domestic assault as a crime, each chief prosecutor has virtually absolute discretion in setting prosecution priorities and policies for his or her office. Furthermore, each prosecution staff member exercises discretion in the handling of individual cases. Prosecutors are motivated to prosecute woman battering for different reasons.

1. Domestic violence is a crime and prosecutors can take effective steps to end it.

The criminal behavior at the heart of most abusive relationships is not unlike the criminal behavior which generates most of a prosecutor's case load. Domestic abuse takes many forms, but only behavior which is defined as criminal under state law can trigger prosecution. For example, when the batterer uses physical force or threatens to use such force, and it is clear that he can carry out the threats, the abuse is an assault. On the other hand, the emotional or financial abuse frequent in most battering relationships will not be prosecuted because it usually does not rise to the level of an otherwise defined crime. By focusing on assaultive behavior -- the most dangerous type of abuse -- prosecutors can create a safer community for women and save women's lives. It is not possible to guarantee the safety of any one victim, because it may still be necessary for her to maintain contact with her abuser during (and after) the prosecution. But the proper prosecution strategy can have a measurable effect on the community as a whole. Sophisticated approaches by prosecutors and law enforcement have reduced homicide rates in their communities. For example, the domestic homicide rate in San Diego was reduced by 59% from 1991 to 1993. (For an excellent discussion of these approaches, see the Gwinn and O'Dell article included with this packet.)

2. Prosecutors take public sentiment into account when they set priorities.

Prosecutors are either elected or appointed to office. As public officials, many are responsive to the increasing public awareness of domestic violence and its terrible effects on its victims, including children. Other prosecutors, however, may reflect the negative attitudes about battering that some community members hold, such as blaming the victim for remaining in the abusive relationship. Public education programs which work to change these attitudes can have a positive impact on prosecution policies.

Principles or goals for prosecuting woman battering

A *pro-active prosecution policy* can make an important contribution to a community's efforts to end domestic violence. Aggressive and consistent prosecution of domestic violence:

1. shifts the burden of ending the violence from the victims to the community. It can serve to protect individual battered women and children who are the victims in specific cases.
2. makes batterers accountable to the community for their actions, not just to their partners or families. Requiring batterers to face consequences for their criminal acts forces them to be accountable. If the consequence is prosecution, the abuser is more likely to perceive the act as a crime against the community than as a "family matter." Batterers must learn that their efforts to pressure or force their victims to drop charges or testify in their favor are useless. This message is communicated only when all parts of the criminal justice system communicate it consistently and persistently.
3. can help restore the power and respect that the victim lost as a result of the battering. Because battered women face different problems from those of other victims of violent crimes, prosecutors must develop a certain sophistication in dealing with these cases. An effective approach ensures early contact with the victim, avoids blaming her for the violence, gives her information about the criminal court process and her role as a witness, and involves her in case decision-making. These actions break the isolation the victim feels and communicate to her that prosecution can help to end the violence in her life.

In sharp contrast, some prosecutor's actions can re-victimize the battered woman. One example is a *blanket policy to hold battered women in contempt of court for failing to obey subpoenas to testify against their abusers*. A battered woman's non-compliance with a subpoena is likely the product of her judgment that it is better not to aggravate the batterer by testifying. When she is punished for protecting herself, criminal prosecution of the batterer is not a future option for her.

4. sends a clear message to all members of the community that intimate violence is unacceptable. By taking an active interest in the response to these cases, and furthering that concern by allocating resources, the public acknowledges that this is no longer a private family problem.

While the goals achieved by aggressive prosecution are having positive results in many communities, it is equally important to recognize the limitations of this approach. Sometimes, creating this community ethic against domestic violence puts an individual battered woman in

more danger despite the system's best efforts to protect her. This typically occurs because the batterer blames her for the prosecution. Therefore, prosecutors must maintain a balance between creating an intolerance for domestic violence in the community and doing what best protects an individual battered woman. Examples of ways in which prosecutors can protect individual victims include:

2. issuing subpoenas to all victims so that it is clear that they or their batterers cannot control the case;
3. imposing "no contact" orders when victims want them;
4. putting the defendant on supervision while the case is pending; and,
5. proving the case by using evidence other than the victim's testimony when she decides it is in her best interests not to participate in the prosecution.

Laws, policies or practices for domestic violence cases

Special laws and policies have been developed throughout the country in an attempt to effectively respond to criminal domestic assaults, including:

Prosecution. Victim/witness support and information services, whether provided by an outside agency or within the prosecutor's office or police department; "no drop" policies; prosecution by an experienced and specialized staff who handles a case from beginning to end; training for [police on how to investigate cases so they can be proven without the victim's testimony. (The Mickish and Schoen article contained in the packet, is an excellent resource for developing a comprehensive domestic violence prosecution unit.)

Police. Mandatory or pro-arrest laws or policies; a protocol which requires that police call an outreach worker from a battered women's program, or make some other referral to services for the victim immediately after arrest; investigative and report-writing protocols which streamline evidence collection and make convictions more probable even when the victim is unavailable to testify. (For further information about police response, see BWJP's packet by Jane Sandusky.)

Judges. Use of sentencing options which include educational programming for batterers; probation with conditions, including alcohol treatment, no further violence, or other protective conditions; enhanced penalties for repeat domestic violence offenses; and, jail time.

However, there are concerns about enhanced penalties and jail time. While appropriate in some cases, "more punishment equals more justice" is not necessarily true, either. Some battered women's advocates believe that laws which mandate jail time are problematic because batterers are less likely to plead guilty and because some battered women do not want their abusers to go to jail and are less likely to participate in the prosecution if a conviction means the batterer must go to jail.

Probation. Post-arrest interviews with the victim and others in order to gather information which the judge can use to issue no-contact orders or otherwise protect the victim during pendency of the case; various forms of diversion programs, whereby a batterer can avoid conviction if he successfully completes a batterers program and complies with conditions for the woman's safety, such as no further threats or violence.

However, some advocates oppose any form of diversion, and most advocates and prosecutors believe that diverting batterers before they enter guilty pleas is not advisable. Some are willing to consider post-plea diversion where the batterer's progress while on probation is closely monitored, and where the plea alone is sufficient to convict and sentence the batterer if he does not follow the conditions of the diversion program. The Family Violence Project (California) prosecution manual, "Domestic Violence: The Law and Criminal Prosecution," 2d ed, is particularly helpful in its analysis of diversion programs.)

What criminal justice reform is helpful?

In the past fifteen or twenty years battered women and their advocates have generated unprecedented reform of the justice system's *treatment of domestic violence*. During this period some important lessons have been learned about justice system reform and advocacy.

1. New laws and policies are not always the best or only solution to problems with the justice system.

Many battered women's advocates are disappointed when police or prosecutors disregard laws requiring mandatory arrests or trainings which advocates believe would improve battered women's experience with the justice system. Two warnings are in order about legislative or public policy initiatives such as these.

First, for laws or public policies to have their intended effect, important groundwork must be completed. A good example of this is the experience with mandatory arrest policies. In Duluth, Minnesota, a mandatory arrest policy was implemented by the Duluth Police Department after careful planning and training. Before implementation, a coordinating group of police, prosecutors, the court, probation, and advocates determined how, under the new approach, each would respond in a manner that held batterers accountable and protected battered women. By contrast, in some states, a mandatory arrest policy was adopted as law before such a coordinated approach was developed. The criminal justice system was unprepared for it and the response to the new law was counterproductive. For example, the implementation of a mandatory arrest law, without the simultaneous requirement and funding of police training, resulted in arrests being made without adequate investigation by officers, creating cases that prosecutors could not take to trial. In other jurisdictions, mandatory arrest laws have resulted in an unwarranted number of dual arrests, that is, arrest of both parties without regard for whether one party acted in self-defense. The lesson from this experience is to make sure that, whenever possible, the implementation of laws and policies is a part of the strategy for criminal justice system reform.

Secondly, the passage of laws does not guarantee their active application or enforcement. Doing the groundwork discussed above helps to avoid this problem, but advocates must still remember that the legislative victory is not the final step. All prosecutors must be informed about the law, and some may have to be convinced that the new approach is necessary and that the changes it imposes are worth the investment of limited staff and resources. They may be unaware of the policies and practices of other prosecutors' offices which would assist them in developing their own response to domestic assaults. (The resource list which comes with this packet identifies successful programs and approaches.) Advocates can be an important source for such information. They can also insist that monitoring and evaluation of the reforms occur.

In conclusion, advocates must use their system advocacy skills in three ways so that law reform will be implemented:

- a. educating public officials about the new laws and their usefulness,
 - b. providing training, background information and resources which can ease the transition, and
 - c. following up to see if the new policy or law is achieving its desired effect, and particularly if it is serving the goal of protecting battered women and their children. (*Seeking Justice: Legal Advocacy Principles and Practice*, a publication by the Pennsylvania Coalition Against Domestic Violence, is an excellent resource for advocates who want to do legal system reform work.)
2. For a domestic violence prosecution program to succeed, all participants in the system --police, judges, victim advocacy services, and probation -- must play a role.

A prosecutor with the most aggressive domestic violence policy will not succeed without the support of the other justice system components. Each participant must understand their role and its importance. When police make good arrests and conduct good investigations, prosecutors are more likely to win a case. When a victim advocate provides a battered woman with information about prosecution and her role, the victim is more likely to participate as a witness. When judges give strong messages that domestic violence is unacceptable, both by their sentences and by their words from the bench, they reinforce the efforts of police and prosecutors. By contrast, when batterers "slip through the cracks" created by lack of follow-through or consistency by each component of the system, they become emboldened; they may now have reason to believe that even the vast power of the criminal justice system cannot stop them.

3. Each justice system component must work cooperatively with, not in isolation from, the others.

When legislation or policy has changed the criminal justice system response, innovations have occurred independently of one another. Changing one part of the system in this manner will not work. For example:

Mandatory arrest results in more cases on the prosecutor's desk, but does not affect what the prosecutor will do with the cases.

Police become frustrated when prosecutors dismiss their cases for lack of evidence, yet could be very receptive to suggestions from prosecutors on how to do a better investigation.

Judges or prosecutors may not act on notices from probation officers or batterers program administrators that batterers are not attending groups, because they many not understand the importance of imposing sanctions for even "minor" violations of protective orders or batterer group rules. Professionals who work with batterers and battered women can provide these important insights.

The most effective way to address this lack of communication and consistency is through a

coordinated community effort in which all aspects of the criminal justice system agree to be accountable to carry out their agreed-upon roles. (The prosecution manual from Iowa, Domestic Abuse in Iowa, A Prosecution Manual, chapter 3, discusses ways in which this coordinated effort might be started. The article in this packet by Asmus, et al, contains an excellent overview of their community's approach, including prosecution and police guidelines. For further information, see the resource list at the end of this packet.)

4. The coordinated criminal justice system needs leadership.

Experience has demonstrated that the coordinated community approach does not happen on its own, and that some leadership must be provided. As the lead law enforcement officer in the jurisdiction, prosecutors can provide the impetus to get such a coordinating effort started. The involvement of prosecutors and judges in the coordinating effort helps to legitimize it. Ideally, however, an agency which is not directly part of, or invested in, the criminal justice system should play the administrative leadership role. This is important for several reasons. Regardless of everyone's good will, it is difficult for court personnel who are subordinate to other personnel to address existing problems directly. How direct can a prosecutor be in identifying problems with a specific judge's rulings when s/he must appear before that judge repeatedly? Having an outside agency to serve as an intermediary in negotiating policy changes can often solve these problems more effectively. An outside agency which has as its mission the protection of victims can be the key to keeping the court system's focus on victim safety, a critical issue in domestic cases. Advocates have found that in coordinating efforts that lack this leadership, attention subtly shifts to the court system's needs or priorities, which may not always coincide with those of victims. The Domestic Abuse Intervention Program in Duluth, Minnesota, uses this model with great success. (The Asmus, et al., article in this packet describes how this model works.) Members of a coordinating group led by such an agency might include representatives of probation/pretrial release programs, battered women's service agencies, criminal court judges, public defenders, law enforcement, and batterers' program administrators.

Why is domestic abuse prosecution so challenging?

While domestic abuse is similar to other violent crimes, prosecutors find that these cases differ in a number of respects which make them especially challenging. Anticipating the difficulties can reduce the frustration of handling this case load.

1. Battered women may not behave like victims of other violent crimes.

Many attorneys are drawn to prosecution as a "helping profession." Vigorously prosecuting violent crime usually coincides with what the victims want -- justice, vindication, and restitution. While some battered women will also want prosecution to the fullest extent of the law, many do not. Because of the existing or past relationship, the victim knows that the batterer will see the prosecution as a hostile act by the victim; he will retaliate against her in some fashion. And despite the best intentions of police and prosecutors, in the battered woman's eyes, the system will not be able to protect her from this retaliation. Prosecution may also threaten the battered woman's financial security if she is dependent on the batterer. Therefore, many battered women are unwilling to participate in the prosecution, and may even take steps to obstruct it.

Various steps in the criminal process can generate victim hostility. Arrest of a batterer is not necessarily what the victim wants; she may simply want the police to remove her batterer from the home for the night. Mandatory arrest is the appropriate societal response, but it may create a class of unwilling or absent victim/witnesses. This is why knowing how to successfully prosecute a case without the victim's testimony is so important.

The slow pace of the criminal process exacerbates the problem. By the time the case gets to pre-trial conference, usually months after the arrest, the battered woman likely has put the arrest behind her and has gone on with her life. A trial and possible imprisonment of the batterer seems to the battered woman to risk her personal resolution of the incident, however fragile or temporary.

The differences between a criminal domestic violence prosecution and the process of obtaining a protection order in civil court further illustrates how the justice system itself can affect a victim's attitude toward the case. Victims often have less trouble testifying about an abusive incident in civil court than in criminal court for two reasons. First, the victim, not the state, decides whether or not to file for a civil protection order and the best time to do so. Second, her testimony about the abuse is heard within days of her filing for the civil protection order, while in criminal court it may be months later.

The different purposes of criminal prosecution and civil protection orders can cause battered women to view each very differently. Criminal court looks to punish for a prior incident, but civil protection orders, by contrast, focus more on preventing further abuse, with jail only if the batterer abuses again. The victim most likely does not want the abuser to be punished; she just wants the abuse to stop. The civil protection order warns him that there will be consequences if he does not end the abuse.

2. Prosecutors often feel thwarted in their goal to hold the batterer accountable for his actions when the battered woman is unavailable as a witness.

One goal of prosecution is to make the defendant accountable to the community for his crime; getting a conviction and administering punishment accomplish this goal. Most violent crime victims are eager to cooperate with the prosecution of the case, and prosecutors come to expect the same of battered women. A battered woman's reluctance is often misunderstood by prosecutors, judges, and juries who come to believe that the victim doesn't care and that they shouldn't bother to proceed or convict. (Ironically, battered women who are eager witnesses are sometimes disbelieved and suspected of being vindictive or of seeking an edge in a divorce or custody battle.) When a battered woman does not want the case to go forward, for reasons discussed above, the prosecutor feels that the main (or sole) proof of the case is lost. No prosecutor likes to dismiss cases, yet they may feel that is their only option.

Three measures can be taken to avoid problems related to victim unavailability. First, although prosecutors must always anticipate that a victim will become unavailable, some victims will cooperate with prosecution, and prosecutors should try to gain victim's support of the process. One key to battered women's participation is early contact with victim advocates who provide her with information and support about domestic abuse, the criminal court process, and her role in it.

Battered women's advocates and prosecutors are relatively new colleagues. What has brought them together are their shared beliefs that battering must be treated as a serious crime and that the appropriate response by the criminal justice system can make an effective contribution to its eradication. Any new association, however, has its potential pitfalls. Learning about and respecting each other and seeing the world from each other's viewpoint are keys to developing a productive working relationship. Developing an understanding of each other's views on the following points may assist in accomplishing this goal:

1. Motivation

While many battered women's advocates have professional training, the work that the advocates do arises from a grassroots movement that has effectively led the social effort to confront violence against women. Holding a degree is less important than peer training and a philosophy of empowerment. Individual advocates may be motivated by their feminism or by their own experiences with violence. On the other hand, prosecutors are lawyers who may or may not view prosecution as a "helping profession." As long as prosecutors take domestic abuse seriously, getting agreement on the reason to do so is not critical.

2. Respect for each other's distinct role

Advocates and prosecutors, eager to capitalize on their commonalities, may try to get each other to do the other's job. Prosecutors may want advocates to act like paralegals in domestic violence cases, by doing factual investigations or communicating with the victims. On the other hand, battered women's advocates may expect prosecutors to be advocates for battered women. Expecting that each will adopt the other's role can be self-defeating. For one thing, it is unlikely to occur, but more importantly, it should **not** occur. While they may share goals, the two groups of professionals have very different purposes and duties, which they must come to understand and respect. In addition to protecting crime victims, prosecutors must also protect the constitutional rights of those accused of crime. Prosecutors cannot go forward with a case which lacks sufficient evidence to prove that the defendant is guilty; belief in the case or cause, or a desire to help, is not enough.

Since advocates may not understand legal concepts like "exculpatory evidence" or "due process," it is important for prosecutors to explain them. Informed advocates are much more effective in their roles. Advocates who do criminal justice work should become familiar with how the system works. They can ride with police or watch dispatchers at work to observe their jobs and learn the language. Prosecutors must remember that victim advocates have confidentiality obligations and are not free to share information about victims with prosecutors without the permission of the victims. They must come to respect the complexity of advocacy for battered women: on the same day, a victim advocate may aggressively urge the criminal justice system to be more responsive to a battered woman, while on the very next case, work with and support a battered woman who does not want her case to be prosecuted.

3. Priorities

Advocates are specialists who focus on one area of crime. Prosecutors, by contrast, are usually generalists and are under public pressure to deal with other important crime problems -- drugs, sexual assault, child abuse, guns, gangs. Prosecutors who do not place domestic abuse at the

top of their priority list can still accomplish much to make battered women in the community safer.

4. Measurements of success

Consistent with their philosophy of empowering battered women, advocates want the criminal justice system to be part of the entire community's response to domestic abuse, available to battered women as one means of making her safe. Furthermore, advocates want the system not to further punish a battered woman, even if she does not want to participate in the criminal process. For advocates, the outcome of the case is not always as important as how the battered woman experienced the process. Prosecutors, on the other hand, look to traditional outcomes to measure success -- victims who help get convictions, batterers who stop using violence. Prosecutors and advocates should be open to discovering new success measures in this special class of cases.

5. Approach to a "case" and management of case loads

For advocates, helping battered women to be self-determining and to engage in critical decision making is more important than agreeing with the decision the woman makes. While an advocate may not agree that a battered woman should return to an abuser, that decision is not viewed as a "failure". The advocate may feel heartened that the woman is stronger and more clear about what to do if battering occurs again. Because of the nature of their work, prosecutors have a more narrow focus -- for instance, they look at incidents, not relationships. Going back to an abuser may mean the prosecutor cannot "win" the case and feels disheartened knowing that the deterrent possibility of prosecution may be lost. Holding a woman in contempt for not testifying against her batterer is consistent with what the prosecutor may believe must be done -- prove the case. For advocates, this action closes prosecution as a future option for the woman.

6. Loyalties

Prosecutors take an oath to uphold the laws of the state, and represent the "people" of the state in court, not individual victims. Prosecutors are not the individual attorneys for battered women and do not necessarily follow the victim's wishes in deciding how to handle the case. On the surface, advocates' loyalties can appear divided. On one hand, as part of a "system's advocacy" initiative, they may urge the prosecutor to adopt an aggressive domestic abuse prosecution policy. However, consistent with that position and with their philosophy that battered women must be self-determining, in doing "individual advocacy" on a particular case, they may forcefully represent the interests of a woman who does not want her case to proceed.

7. Language/vocabulary

The feminist vocabulary of advocates, such as "empowerment," "power and control," "male privilege," may alienate some prosecutors. Advocates need not give up the concepts behind these words, but might consider using vocabulary which will not create automatic barriers to meaningful dialogue. Prosecutors, police and judges may not be aware of their own use of jargon ("vertical prosecution," "allocution") or they may make fun of therapist or social worker language -- "sharing feelings," for example. Prosecutors should be sensitive to using a language which carries meaning both for victims and advocates, and which demonstrates respect for

their positions.

8. Approaches to the work.

In their work with battered women, advocates use conversation, images, and groups. Prosecutors are not necessarily trained in active listening or counseling skills, and rarely have time (or the need) to develop that kind of relationship with victims. Prosecutors are much more concrete -- their need to focus on "proof" means that they will work primarily with written reports or witness statements, pictures, or other documents.

What have we learned from research about criminal justice system responses to battering?

Prosecutorial and law enforcement policies are often influenced by social science research. Yet, efforts to evaluate police or prosecutor response to domestic violence have not always reflected how battered women experience the criminal justice system. Furthermore, the research may have contributed to a fragmented response by the system.

A good example is the Minneapolis study conducted by the Police Foundation which focused on arrest as a preferred response to domestic abuse. The study found a lower recidivism rate when police arrested the batterer compared to when they mediated or ordered a cooling off period, which led many legislators and other policy makers to adopt mandatory or pro-arrest practices. When the same researchers replicated the study in Milwaukee 8 years later, they found a recidivist rate of up to 44% among those batterers who were arrested, which led them to urge repeal of mandatory arrest policies.

Such research provides unsuitable guidance to policy decisions because it fails to evaluate the whole system response. Isolating one intervention and attempting to link it to future battering fails to take into account that the observed results may have been caused, not by the studied intervention, but by the rest of the system's actions or lack of actions. For example, the Minneapolis research focused solely on arrest as a deterrent without considering whether the prosecutor's or judge's subsequent handling of the case had any impact on the batterer's behavior. Similarly, in the Milwaukee study, only 37 of the 807 men arrested were even charged with assault. Contrary to the Milwaukee researchers' conclusion that arrest encouraged assault, perhaps the prosecutor's and court's failure to follow through on the arrests contributed to the recidivism rate because batterers felt that they had "beat the system."

Perhaps the greatest shortfall of this research is its reliance on a numerical counting of certain observable and quantifiable factors to explain the complex and diverse dynamics of battering, to the exclusion of battered women's lived experiences. To be most useful to the development of public policy, research design and interpretation should involve significant numbers of battered women. Neither the Minneapolis nor the Milwaukee study did so. (For an excellent discussion of the public policy implications of domestic violence criminology research, see the Lisa Lerman article, "The Decontextualization of Domestic Violence," from the Journal of Criminal Law and Criminology, included with this packet.)

This site is a cooperative project of *VAWO - the Violence Against Women Office*, Office of Justice Programs, U.S. Department of Justice and *MINCAVA - the Minnesota Center Against Violence & Abuse* at the University of Minnesota.

Additional information about this site can be obtained by contacting: info@vaw.umn.edu

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ARTICLE:

**THE VIOLENCE AGAINST WOMEN ACT:
BREAKING THE CYCLE OF VIOLENCE**

offenders and domestic abusers -- doubling the maximum term of imprisonment for repeat sex offenders and authorizing severe federal sentences for abusers who travel interstate with the intent to injure, harass or intimidate a domestic partner or violate a protection order. Initial guidance has been issued to U.S. Attorneys about these new provisions. In May, the Department won its first conviction under the Violence Against Women Act's new interstate domestic violence offense. Christopher Bailey was sentenced to life in prison for kidnapping and interstate domestic violence after his conviction by the US Attorney in the Southern District of West Virginia. Federal prosecutors are also using changes in the Federal Rules of Evidence that broaden the admissibility of evidence that the defendant has committed other similar offenses in federal sexual assault and child molestation cases.

Federal Resources

Over the next five years, a total of \$800 million in federal funds is authorized to assist states in restructuring law enforcement's response to crimes of violence against women. All 50 states and eligible territories have received the first installment of funds under the Office of Justice Programs-administered

Violence Against
Women grant program, the only Department Of Justice Violence
Against Women grant program funded in Fiscal Year 1995. In
keeping with the Act's emphasis on collaboration, the S.T.O.P
grants require states to develop a joint strategy among law
enforcement, prosecutors and victim service providers.
Collaboration is also the focus of a new initiative funded by the
Department's Community Oriented Policing Services ()
Office. The COPS

is open to police departments and sheriffs
offices interested in applying community policing techniques to
fight domestic violence. If appropriated, additional funds will be
made for grants to encourage and help reduce
domestic violence and child abuse in areas.

The President announced the opening of the
, a nationwide, 24-hour, toll-free hotline providing
crisis intervention for those in need. Callers can receive counseling
and be referred to emergency services and shelters in their
communities. The number is **1-800-799-SAFE**, and there is a
TDD number for the hearing impaired, 1-800-787-3224.
Assistance is also available in many languages other than English.
The Department of Health and Human Services awarded \$1 million
to the Texas Council on Family Violence to set the hotline for
victims of domestic violence.

Peace of Mind

The Department is successfully implementing a number of
provisions designed to stop sex offenders before they strike.
Guidelines are being finalized by the Department implementing
the . This Violent Crime Control and Law
Enforcement Act provision provides states with a financial

incentive to adopt effective registration systems for convicted child molesters and other persons convicted of sexually violent crimes. The Violence Against Women Act also requires the Attorney General to insure that relevant sex offender treatment information is provided to sex offenders prior to release from prison. The (BOP) has coordinated its efforts with two offender treatment program information clearinghouses in the United States. BOP, together with the U.S. Probation Office, is also ensuring that released sex offenders follow-up with community-based treatment.

Under other Violent Crime Control and Law Enforcement Act provisions, the FBI issued guidelines implementing the , which establishes a national for child care providers to determine whether employees and prospective employees have criminal records involving child abuse offenses. Grants recently awarded by the Department of Justice under the National Criminal History Improvement Program (NCHIP) will also assist states in improving the accessibility and completeness of records that may be relevant in background checks under the National Child Protection Act and other laws.

The 1994 Violent Crime Control Act also increases protection to victims of domestic violence. The Act included a provision that makes it unlawful for persons subject to certain restraining orders to possess firearms. The first prosecution under this new provision occurred in South Dakota. The Department is also working with state and local law enforcement groups and United States Attorneys on effective implementation of this law. On a related front, the FBI is creating a national database concerning persons subject to protection orders, which will be available for criminal justice purposes, and to civil courts in domestic violence cases. This database will serve to increase the ability of states to verify the existence of restraining orders throughout the United States and will facilitate implementation of the " " provision, as well.

Victims' Rights and Other Safeguards

The revised Attorney General Guidelines for Victim and Witness Assistance, signed in May, 1995, provide initial guidance on a variety of reforms that enhance the rights of victims of crime in Federal court. These measures include provisions strengthening restitution for victims of domestic violence and sexual assault crimes, payment for sexually transmitted disease testing for victims of sexual assault offenses, and a provision affording victims of violent and sexual abuse crimes the right to address the court at the sentencing of the offender.

The Violence Against Women Act contains other important safeguards that the Department is working to enforce. The Act's " " provision requires states to honor protection orders issued by other jurisdictions. The Department is devising an aggressive strategy for implementation of this protection for battered women who hold protection orders and move to another

state, only to have their abusers follow them there. In addition, the Immigration and Naturalization Service has finalized regulations to implement the new federal statute, thus establishing the procedures for self-petitioning by the abused spouse.

In the Violence Against Women Act, the civil rights remedy was designed to complement existing federal civil rights laws which do not protect women from gender-motivated violence. Now, for the first time, victims of gender-motivated violent crimes, e.g. rape and domestic violence, have the right to sue their attackers for damages. We are aware of two cases that have been filed under this provision and are closely monitoring the outcome.

Understanding the Problem

A number of studies authorized under the Act are being finalized -- including evaluation of needed improvements in incidence reporting, a report on the problem of sexual assault on college campuses, a study of the use of battered women's syndrome evidence at trial, and an assessment of ways to protect the confidentiality of address information for victims of domestic violence. The Department of Justice has completed assessments of what states are doing to collect data on these crimes and to protect the confidentiality of communications between sexual assault and domestic violence victims and their counselors. A first annual report focussing on state stalking laws is also imminent. Through grants provided under the Act in the 1996 fiscal year, greater knowledge will also be obtained about the benefits of pro arrest policies. Once completed, all of these Violence Against Women Act studies will provide a more complete and accurate picture of the nature and extent of violence against women and improve our ability to track and respond to these crimes.

Also under the Violence Against Women Act, a panel of the National Academy of Sciences is developing a research agenda to increase the understanding and control of violence against women, including rape and domestic violence. And finally, research evaluation related to violence against women programs will provide important information on the implementation and the impact of the programs for refining and improving various programs designed to address violence against women.

Collaboration

The Department's Violence Against Women Office is headed by . Ms. Campbell is responsible for the overall coordination and focus of Department of Justice efforts to combat violence against women. She serves as the Department's primary point of contact for other federal agencies, state and local governments, outside organizations, and Congress. Within the Department of Justice, Ms. Campbell works closely with the COPS Director, , and with community police officers to help reduce domestic violence and other crimes against women in America's neighborhoods. She also works extensively with the

The Department also has awarded approximately \$1 million to tribal governments through the Violence Against Indian Women Discretionary Grant Program, with the goal of strengthening the response of tribal court systems to violent crimes against women.

The Future

Over the next five years, a total of \$800 million in grant funds is authorized. The formula grants to states will be allocated according to population, with each state guaranteed a base amount.

In November of 1994, Christopher Bailey of St. Albans, West Virginia beat his wife Sonya until she collapsed. Then he put her in the trunk of their compact car and drove for five days through West Virginia and Kentucky before taking her to an emergency room. Along the way he withdrew over \$2400 in cash from their bank accounts, and purchased various supplies, including sweat pants and adult diapers for Sonya. Sonya Bailey suffered irreversible brain damage and remains in a permanent vegetative state.

The Provisions

The Violence Against Women Act establishes new in cases like this one where an abuser crosses state lines to violate a protection order or injure, harass or intimidate a spouse or intimate partner. These new federal remedies are important tools in cases where movement across state lines makes state prosecution difficult and where state law penalties may not be tough enough. They also offer important benefits for victims, including strengthened restitution provisions and an opportunity to address the court concerning the danger posed by a defendant prior to any pre-trial release.

The Impact

Victims of domestic violence often seek safety and shelter with friends and relatives living elsewhere. The Violence Against Women Act insures that the law follows an abuser who crosses state lines and will provide victims with protection throughout the United States.

The Success

On May 23, 1995 the United States Attorney for the Southern District of West Virginia won the nation's first conviction under the Violence Against Women Act. And on September 1, Christopher Bailey was sentenced to life in prison for the abuse and kidnapping of his wife Sonya.

This case illustrates the value of federal action against interstate domestic violence. Bailey was arrested in Kentucky, but local police dropped the charges because they were unable to document what had occurred in their jurisdiction. Under West Virginia law, he might have received less than a two-year sentence for his brutal assault.

The United States Attorney for the Eastern District of California won the nation's second conviction under the Violence Against Women Act in December 1995. Ricky Steele beat his domestic partner in Oregon, and then forced her to drive with him to California. On December 11, 1995 Steele was sentenced to 87 months in prison and was ordered to pay restitution of \$1,018 for interstate domestic violence.

The Future

Federal prosecutors have initiated other cases under the Violence Against Women Act. In the third reported case brought under the interstate domestic violence provision, on November 8, 1995, prosecutors in the Southern District of Ohio charged Derek Page with beating his girlfriend in Ohio and then kidnapping and transporting her to Pennsylvania.

Most recently, on December 19, 1995, Wayne Hayes was indicted in the Eastern District of New York on charges of traveling interstate with the intention of violating court orders that prohibited repeated harassment of his ex-wife, and repeatedly mailing threatening communications to her. The indictment marks the first use of the Violence Against Women Act provision that prohibits traveling across a state line in order to violate certain protection orders.

The Department of Justice continues to work with state and local law enforcement to combat and identify cases where use of these new federal remedies is the most appropriate response.

Similar Crimes Evidence in Sex Offense Cases

Joey Sanza raped and murdered Theresa Cha when she came to meet her husband in the building where Sanza worked. There was extensive physical and circumstantial evidence of Sanza's commission of the crime, and the jury was informed about three other rapes that he had committed in another state. Sanza's other offenses were relevant to help confirm his identity as Theresa Cha's attacker by showing his propensity and capacity to commit sexually violent crimes. Nevertheless, Sanza's conviction for raping and murdering Theresa Cha was reversed on appeal because the jury was told of his other crimes. People v. Sanza, 509 N.Y.S.2d 311 (App. Div. 1986).

The Provision

The Impact

Most states have some form of sex offender registration but few regularly verify an offender's address. The

will provide minimum national standards and will help state law enforcement agencies communicate with each other regarding sex offenders who cross state lines.

In general, registration systems help the investigation of sex crimes by informing the authorities of the identities and whereabouts of convicted sex offenders. These systems may also inhibit offenders -- who know that the authorities know who they are and where they are -- from committing additional crimes. Community notification enables communities to take common sense measures to protect themselves and their families, such as ensuring that their children do not associate or visit with known child molesters.

The Success

The Department of Justice published proposed guidelines for state registration systems in April 1995. Following one extension of time, the comment period closed on October 30, 1995. The final guidelines are under expedited review by the Department and will be issued in the very near future.

The Department of Justice has also participated in state and federal litigation defending the validity of "Megan's Law," the New Jersey sex offender registration and notification system. The Department has participated in several legal challenges to Megan's Law, seeking to protect the federal interest in promoting state sex offender registration laws.

On July 25, 1995, the New Jersey Supreme Court upheld Megan's Law, adopting the position advocated by the state and the federal government that Megan's Law is constitutional. The U.S. Court of Appeals for the Third Circuit Court heard oral arguments on Megan's Law in October, and the Department of Justice is awaiting the court's decision.

The Department also has participated in litigation defending the validating of sex offender registration and notification systems in New York and Connecticut.

The Future

The Department of Justice will work to encourage and assist the states to adopt effective sex offender registration systems. The Department will also continue to participate in litigation defending the constitutionality of state registration systems.

Cecilia, from South America, has been married to Jose, a lawful permanent resident, for 18 years. Together they have eight children born in the United States, ranging in age from one to 18. While Jose once began the process of obtaining lawful permanent resident status for Cecilia, he later withdrew the petition. Throughout their relationship, Jose has been physically violent to Cecilia. His abuse of her was both physical and mental. He hit her in the abdomen when she was pregnant, and at other times bruised and beat her. Jose also restrained her physical freedom and access to financial assets. He threatened to kill her if she ever left him. Jose was physically abusive to the children also, and is believed to have sexually abused at least two of them. Nevertheless, Cecilia was afraid to leave because of her dependence on her husband to obtain lawful permanent resident status for her.

Cecilia and the children did finally leave Jose. She currently lives in fear of both her husband and the INS. She is having a difficult time finding housing and a means of supporting herself.

The Provision

The _____ establishes new federal remedies for abused immigrant spouses and children. Specifically, battered women are now eligible to apply for permanent resident status for themselves and their children and are no longer forced to rely on their abusive husbands to apply for such status.

The Impact

Immigrant women and children who are battered face unique obstacles. In addition to the physical violence, the threat of deportation or release of information about legal status has been used as a control mechanism to instill fear and dependency and to lock the abused person into the relationship. Prior to the new federal statute, immigrant spouses were dependent on their citizen or permanent resident spouses to petition on their behalf for permanent resident status. Spouses could withdraw the request at any time.

The Success

The Immigration and Naturalization Service has finalized _____ to implement the new federal statute, thus establishing the procedures for self-petitioning by the abused spouse.

The Future

Under the new law, women like Cecilia will be able to file their own petitions for lawful permanent resident status for themselves

When the Metropolis Domestic Violence Center questioned the Paducah Police as to why the woman's Illinois protection order had not been upheld under the Full Faith and Credit provision of the Violence Against Women Act, they responded that they had never heard of such a provision. As a result, the Illinois Attorney General issued a two page fact sheet describing the major provisions of the Violence Against Women Act, including Full Faith and Credit. The sheet has since been posted on the bulletin boards of local police stations. The woman has relocated again but continues to live in fear for her safety although the police are aware of her situation.

The Provision

The Violence Against Women Act provides that a civil protection order issued by the court of one state or tribe shall be accorded by the court of another state or Indian Tribe, and shall be enforced as if it were the order of the court of the second state or tribe. Failure by the issuing state to satisfy due process requirements will not entitle a protection order to full faith and credit. Mutual protection orders are not entitled to full faith and credit if a cross or counter petition, complaint or other written pleading has not been filed seeking such a protection order or if a cross or counter petition has been filed and the order was issued upon a showing of mutual abuse. The issuing court must have had both personal and subject matter jurisdiction and the respondent must have received reasonable notice and an opportunity to be heard for the provision to be in effect.

The Impact

Prior to the enactment of the Violence Against Women Act, a victim with a protection order often could not use that order as the basis for protection if the victim went to work, traveled or moved to most other states. Under this provision, the second state must afford full faith and credit to an order issued by another jurisdiction, even if the victim otherwise would be ineligible for protection in the new state. A victim does not have to wait for abuse to occur in the new state nor does a victim need to be concerned if he or she cannot meet its jurisdictional requirements. Furthermore, a victim does not have to register a protection order in the new state -- the protection order of the issuing state should provide continuous protection to the victim.

The Success

The Department has made the implementation of full faith and credit a top priority. An internal working group has been established and guidance on the full faith and credit provision of Violence Against Women Act has been distributed to all U.S. Attorneys' offices.

The Department has awarded funding to the Battered Women's

can now rest assured that their abusers can be arrested if they attempt to purchase or possess firearms during the period of the restraining order.

The Success

On January 22, 1995, Mr. Goben was sentenced to twelve months in prison followed by two years of supervised release during which time he is to have no contact with his now former wife. Following the Goben case, federal prosecutors in the Northern District of Iowa brought another case under the new federal law. On October 24, 1995, Shawn A. Hungate, 25, of Fort Dodge, Iowa, was charged with illegally possessing a firearm while subject to a restraining order. According to the complaint, while subject to a "no contact order," Hungate purchased a firearm at a Wal-Mart in Fort Dodge. When purchasing the firearm, Hungate allegedly answered "No" to a question on a government form regarding whether he was subject to a restraining order. The complaint also alleges that Hungate shot himself in the shoulder with the firearm and proceeded to his wife's place of employment and began yelling for her. If convicted on the firearms charge, Mr. Hungate faces up to ten years in prison and a \$250,000 fine or both.

The Future

The Department of Justice is working with state and local law enforcement groups to implement the spirit as well as the letter of the firearms disability provision without hampering law enforcement. In that regard, the Department of Justice is developing guidelines for application of the provision to Department of Justice law enforcement officers, which might serve as a model to local law enforcement.

Police officers traditionally have been reluctant to become involved in domestic violence disputes, largely because such calls for police assistance are among the most complex and sensitive -- and potentially dangerous -- situations police must respond to. Law enforcement officers may not take affirmative steps on behalf of the victim because they have not been trained to identify patterns of abuse or to provide immediate support and protections a victim requires (e.g., short and long-term medical care, safe shelter, counseling, safety planning, legal advocacy, and long-term treatment for the batterer).

Additionally, officers who are the "first responders" are often without the benefit of the clarity and authority that a departmental protocol for responding to such incidents offers. A clear policy on arrest can mitigate this problem, which often puts police officers in difficult situations.

However, the arrest of a perpetrator at the scene will not necessarily stop the violence, nor guarantee the safety of

the victim. A strong pro or mandatory arrest policy must be accompanied by a community and criminal justice system which also takes a strong stand against domestic violence and makes every attempt to provide safety for the victim.

The Provision

The Department's _____, a new program funded in Fiscal Year 1996, helps states, localities and tribal governments treat domestic violence as a serious criminal offense. This program recognizes that for mandatory arrest to be a fully effective intervention, it must be part of a coordinated, integrated criminal justice response to domestic violence with consistent follow-through by victim service providers, prosecutors, and judges.

The Impact

Mandatory arrest and pro arrest policies are critical elements of an overall community strategy to address domestic violence. A mandatory arrest policy requires that police must arrest a domestic assault offender whenever the officer determines that a crime has been committed and probable cause for arrest exists. The primary goal of these policies and the immediate and primary responsibility of the arresting officer must be to ensure the safety of the victim.

Currently, 27 states and the District of Columbia have adopted laws requiring the arrest of a person when there is probable cause that he or she has assaulted a family member or has violated a domestic violence protection order. Pro arrest or mandatory arrest policies convey a message to the victim, the family, and the community that domestic violence is a serious crime that will not be tolerated.

If a domestic violence victim in rural areas of Western Massachusetts decides she wants to obtain assistance, she may face many obstacles. With very few patrol police officers in small rural communities, it may be too late once a call for assistance is answered. And if a victim were to report domestic violence, she would live with the fear that an entire tight-knit community will know about the abuse. Lastly, staff at the local domestic violence shelter and sexual assault program, New England Learning Center for Women in Transition, in Greenfield, Massachusetts, speaks of problems maintaining the confidentiality of their shelter within this small community.

The Provision

This Fiscal Year 1996 grant program addresses the issues of domestic violence and child abuse in _____ states. These grants will encourage development of collaborative efforts, creation of

training programs for "front-line" agencies and personnel (such as law enforcement, shelter workers, health care providers, and clergy), creation of public awareness and community education campaigns, and expansion of direct services for rural and Native American victims and their children. A variety of entities, including states, tribal and local governments, and public and private organizations in rural states, are eligible to receive funding.

The Impact

Few statistics exist on the extent of domestic violence and child abuse in rural communities. The limited statistics available reflect only the women and children who have succeeded in accessing services, but there is no reason to assume that these problems are less common in rural areas. Instead, it is more likely that the isolation and culture of rural communities discourage victims from reporting abuse.

Geographic isolation, culturally close communities, and lack of domestic violence information and services (including availability of civil and criminal remedies) are among the problems unique to rural areas. Victims in rural areas also may not trust an "outside" system to protect them from their abusers and may continue to live in emotional isolation rather than seeking help. Rural areas in the United States also are experiencing growth in immigrant communities, which may be further isolated as a result of language and cultural barriers.

When Jackie, a 39-year-old assistant in an Alexandria, Virginia consulting firm, went to the hospital with a black eye and cuts needing stitches in 1992, she told the nurse that her husband had caused her injuries. Jackie asked the nurse not to call the police because she feared retaliation from her husband. But once the police came, she said, they made it easy for her to get help. They charged her husband with abuse and later escorted her back home and to the city's shelter for battered women. With counseling from the shelter, Jackie was able to get a protective order from the court and return to her apartment without her husband being there. The court ordered him into an anger management program, and she and her three children continued to receive free counseling from the shelter. "Had I not known about the shelter, I would probably be in a violent relationship today," Jackie said. Washington Post, Sept. 9, at B4 (1995).

The Provision

To fulfill part of the Violent Crime Control and Law Enforcement Act of 1994, the (Community Oriented Policing Services) Office works to place an additional 100,000 law enforcement officers on the street and promote community policing. The

Community Policing to Combat Domestic Violence Program, initiated as part of the Office, provides law enforcement agencies with a unique opportunity to execute well-planned, innovative strategies employing community policing to combat domestic violence. To be eligible for this funding, police departments and sheriffs offices must partner with non-profit, non-governmental victim service programs, domestic violence shelters, or community service groups to coordinate efforts to fight domestic abuse. Twenty million dollars is available through this grant program to all state, local, Indian Tribal, and other public and private law enforcement agencies which are committed to using community policing to address domestic violence.

The Impact

Domestic violence was the second highest reported crime for FAST grant applicants, second only to property crimes. As a few jurisdictions have already learned, community policing, a strategy which emphasizes problem solving and community partnership, can be an effective weapon in the fight against domestic violence.

The Success

Less than 12 months after its inception, the office authorized funds to add more than 25,000 community law enforcement officers on the street - a quarter of the goal after just one year of the six-year program. As of March of 1996, funds for more than 33,000 officers had been authorized. Flexible and innovative grants have helped fiscally-strained departments pay for new technology and equipment, as well as administrative staff and officer overtime to free up more rank and file officers to walk the beat. The program customer response center has cut red tape, simplified procedures, and delivered funds directly to police departments with no middleman.

The latest innovative initiative, the Community Oriented Policing to Combat Domestic Violence Program, has generated tremendous interest. In response to thousands of inquiries from law enforcement agencies nationwide, the Department doubled the amount of funds available under this program from \$10 million to \$20 million.

**- Call the
at 1-800-799-SAFE or 1-800-787-3224 (TDD).**

SUMMARY PROVISIONS:

MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE



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Model Code On Domestic and Family Violence

The Model Code on Domestic and Family Violence was completed in 1994 and represents the art in domestic violence legislation and policy in the United States. It is not a uniform code rather it is designed to be adapted to individual states.

In 1991, the Conrad N. Hilton Foundation awarded a grant to the Family Violence Project National Council of Juvenile and Family Court Judges for a three-year project to analyze legislation on family violence and develop a model code on domestic and family violence. An Advisory Committee of 23 extraordinarily qualified persons worked diligently on drafting the Model Code on Domestic and Family Violence. The Committee included judges, attorneys, academics, legislators, police chiefs, physicians, concerned citizens, formerly battered women, and professionals from across the United States.

The Model Code:

- Treats domestic and family violence as a crime requiring aggressive and thorough intervention;
- Emphasizes safety of the victim and children, and accountability of the batterer;
- Offers procedures for comprehensive protection orders for victims; and
- Sets forth ways for states and communities to coordinate efforts to identify, interdict, and prevent domestic and family violence.

The chapters of the Model Code include:

- General provisions;
- Criminal penalties and procedures;
- Civil protection orders;
- Family and children; and
- Prevention and treatment.

Chapter 1, GENERAL PROVISIONS

- Domestic or family violence defined broadly
- Family or household members defined broadly

Chapter 2, CRIMINAL PENALTIES AND PROCEDURES

- Detailed list of crimes committed against another family or household member
- Violations of certain conditions of protection order are misdemeanors
- Penalties enhanced for subsequent offenses within 5 years
- Law enforcement officers required to provide written notice to victims
- Two sections provide alternative arrest provisions—presumptive, warrantless arrest

- probable cause and mandatory arrest with probable cause
- Arrest mandatory for certain violations of protection orders or release conditions
- Protocols and procedures for law enforcement and prosecutors
- Prosecutors prohibited from seeking diversion; deferred sentencing with entry of authorized
- Spousal privileges inapplicable
- Victim-advocate privilege provided
- Probation, corrections, and parole section provides conditions to protect victim

Chapter 3, CIVIL ORDERS FOR PROTECTION

- Eligibility broad, includes children
- Uniform forms statewide
- Courts required to provide clerical assistance to petitioners
- Emergency orders available 24-hours a day, may be issued by a judge after per telephone contact by law enforcement officer, and expire after a specified time
- Ex parte orders remain in effect indefinitely, until modification by court, and provide relief including temporary custody of children
- Ex parte orders require hearing upon request of either party, or if child custody is sought
- Order After Hearing also remains in effect indefinitely unless the court orders a hearing, and provides broadest relief including supervised visitation, child support, court costs, housing costs
- Mutual orders for protection prohibited
- Mediation of petition prohibited
- Enforcement of orders from other states
- Statewide registry of protection orders

Chapter 4, FAMILY AND CHILDREN

- Rebuttable presumption that it is detrimental to the child and not in the best interest to be placed in the custody of a perpetrator when finding of family violence
- Safety and history as factors in custody and visitation
- Rebuttable presumption that it is in the best interest of a child to reside with the perpetrating parent in the location of that parent's choice when finding of family violence
- Finding of family violence since last custody determination constitutes a change of circumstances
- Factors and conditions for visitation to promote safety of children and parent
- Specialized visitation centers to provide a secure setting, specialized procedure for visitation, and a trained supervisor
- Alternative sections concerning mediation for custody cases if an order for protection is in effect
- Children's Protective Services to provide written procedures for screening, to provide support to victimized parent, and to promote removal of perpetrator

Chapter 5, PREVENTION AND TREATMENT

- Advisory Council, state and local
- State Public Health Plan
- Standards required for health care facilities, practitioners, and personnel
- Regulation of programs for perpetrators
- Continuing education for law enforcement, judges, court personnel, government attorneys, and educational personnel

Commentary follows each section of the Model Code, which is available alone or with a comprehensive set of appendices. The appendix section includes overviews of each chapter, statistics, summaries of research, sample forms and protocols, references and resource material that would be helpful for those working on legislative advocacy in family violence.

In addition to the Model Code, the following publication resulted from the efforts of staff Committee and consultants to the Conrad N. Hilton Model Code Project:

- State Codes on Domestic Violence: Analysis, Commentary and Recommendation
The Juvenile and Family Court JOURNAL, 1992, Vol. 43, No. 4, by Barbara J. F.

For more information or to obtain the Model Code or other documents listed, please contact the Family Violence Department, National Council of Juvenile and Family Court Judges, University of Nevada, Reno, P.O. Box 8970, Reno, Nevada 89507, (775) 784-6012 or (800) 527-3232.

For more information about the Commission and its activities, contact the Commission

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MINA'BENTE SAIS NA LIHESLATURAN GUÅHAN
2001 (FIRST) Regular Session

Bill No. 62 (COR)

Introduced by:

F. P. Camacho
K. S. Moylan
A. R. Unpingco

**AN ACT TO REPEAL AND REENACT §160.50 OF
TITLE 8 OF THE GUAM CODE ANNOTATED,
RELATIVE TO INCREASING RIGHTS FOR CRIME
VICTIMS.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan*
3 finds that our community, especially our judicial system, must ensure that all
4 victims of crime are treated with dignity, respect, courtesy and sensitivity,
5 and that the rights extended in crime victims be honored and upheld by
6 enforcement agencies, prosecutors, judges, probation officers and the
7 corrections system in a manner no less vigorous than the protections afforded
8 criminal defendants.

9 *I Liheslaturan Guåhan* finds that one of the greatest protections that can
10 be given to victims is keeping them informed of the process that the
11 defendant, or perpetrator, is undergoing. Including, informing them of any
12 violations of conditions set by the court or corrections system, including, but

1 *not* limited to, violations of restraining orders and stay-away orders imposed
2 by the court.

3 It is the intent of this legislation to ensure that victims are able to protect
4 themselves with timely information by being informed of any potential
5 threats to their safety, and the ability to communicate and converse with law
6 enforcement and judicial officials.

7 **Section 2.** Section 160.50 of Chapter 160 of Title 8 of the Guam Code
8 Annotated is hereby *repealed and reenacted* to read as follows:

9 **"Section 160.50. Basic Bill of Rights for Victims.** Victims and
10 surviving immediate family members shall have the following rights:

11 (1) To be *immediately* informed by the police and the
12 prosecuting attorney of the final disposition of the case. *If* the
13 crime charged is a felony, the victim or a surviving immediate
14 family member shall be notified of major developments in the
15 case, whenever appropriate, in order to avoid jeopardizing an
16 investigation. The victim or surviving immediate family member
17 shall be *immediately* notified whenever the defendant or
18 perpetrator is released from custody. The victim or the surviving
19 immediate family member shall also be consulted and advised
20 about plea bargaining by the prosecuting attorney *prior to* an offer
21 being made.

22 (2) To be notified by the prosecuting attorney if a court
23 proceeding to which they have been subpoenaed will *not* proceed
24 as scheduled in a timely manner.

1 (3) To receive protection from threats or harm in
2 accordance with local witness and victim protection program
3 guidelines.

4 (4) To be promptly informed by the prosecutor, or victim
5 witness counselor, *and* the probation officer when the defendant
6 has violated a restraining order, a court-imposed stay-away order,
7 terms or condition of release, terms of probation or terms of a plea
8 agreement.

9 (5) To be informed by the police, victim witness
10 counselor, or other criminal justice personnel, of financial
11 assistance and other social services available as a result of being a
12 victim of crime, including information on how to apply for the
13 assistance and services.

14 (6) To be provided by the court, whenever possible, with
15 a secure waiting area during court proceedings that does *not*
16 require them to be in close proximity to defendants and families
17 and friends of defendants.

18 (7) To have any stolen property or other personal
19 property expeditiously returned by law enforcement agencies
20 when such property is no longer needed for evidence and the
21 court or the Attorney General has approved its release. If feasible,
22 all such property, *except* weapons, currency, contraband, property
23 subject to evidentiary analysis, and property, the ownership of
24 which is disputed, shall be returned to the person within ten (10)

1 days of being taken, and the court or the Attorney General has
2 approved its release.

3 (8) To be informed by the Department of Corrections and
4 the Attorney General's Office of changes planned in the custodial
5 status of the offender that allows or results in the release of the
6 offender into the community, including furlough, work release,
7 placement on supervised release, release on parole, release on bail
8 bond, release on appeal bond and final discharge at the end of the
9 prison term.

10 (9) To be informed by the Department of Correction's
11 Parole Services Division when the offender is seeking early release
12 and/or parole, and to be afforded a right to submit letters and to
13 appear and testify at a release hearing.

14 (10) To be promptly informed by the Department of
15 Correction's Parole Services Division when the offender has
16 violated his parole.

17 (11) In cases charged and pled to as a felony, to be
18 informed by the prosecutor (by telephone, facsimile or mail) of all
19 trials, changes of pleas, sentencing and other major developments
20 at least three (3) working days in advance.

21 (12) To be heard by the court as to the actions of the
22 defendant and their effect on the victim and the victim's family; to
23 the absolute right to testify, to be represented by retained counsel
24 and to call witnesses at sentencing, reduction of sentence, or

1 parole hearing subject to relevance; and at the discretion of the
2 court, to testify at any change of plea or hearing to consider
3 acceptance of a plea agreement.

4 (13) To be notified by I *Maga'lahaen Guåhan* prior to the pardon
5 of the defendant or the perpetrator.

6 (14) Upon written request, witnesses of crime shall be
7 provided the same protections afforded in this Section."

8 **Section 3. Severability.** *If* any provision of this Law or its
9 application to any person or circumstance is found to be invalid or contrary to
10 law, such invalidity shall *not* affect other provisions or applications of this
11 Law which can be given effect without the invalid provisions or application,
12 and to this end the provisions of this Law are severable.