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# Legislative Responses to Violence Against Women in New Jersey

A Report of the Commission to Study Sex Discrimination in the  
Statutes

January 6, 1995

Senator Wynona Lipman, Chairwoman

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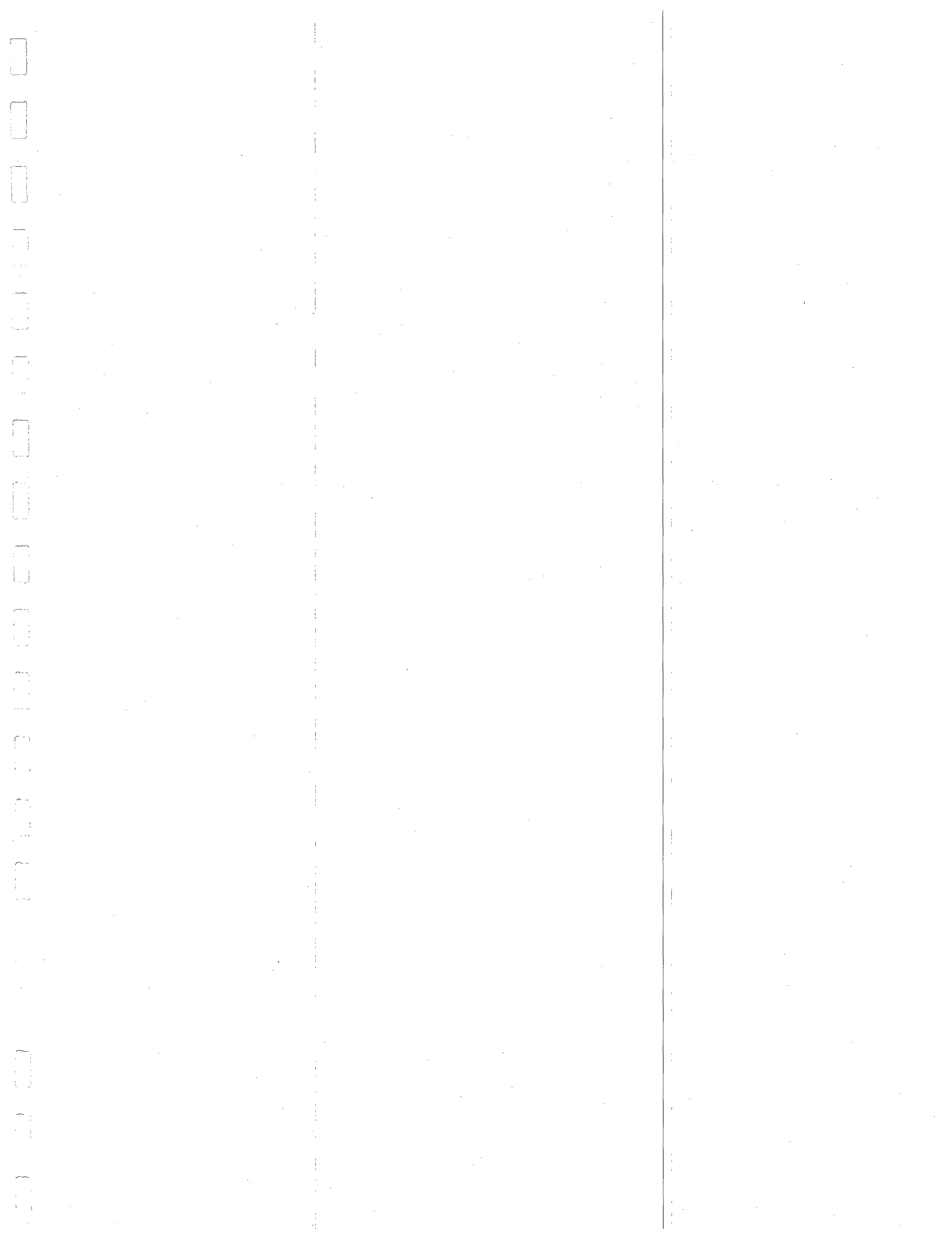
*Legislative Responses  
to Violence Against Women  
in New Jersey*

*Report and Recommendations  
of the Commission to Study Sex Discrimination in the Statutes*

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# **INTRODUCTION**

On March 20 and 27, 1992 the New Jersey Commission on Sex Discrimination in the Statutes held public hearings to study whether State legislation can intervene to stop the occurrence of or the harm done by violence directed primarily toward women, which it has found to be a major impediment to the legal equality of the sexes.

As the Commission defines it, violence includes but is not limited to: domestic violence, dating violence, sexual assault, date rape, incest, sexual harassment in employment, housing, and public accommodations, prostitution, violent pornography, the systematic impoverishment of women, inappropriate medical treatment, and bias crimes based on gender. This report examines in depth the four major areas of domestic violence, sexual assault, sexual harassment and prostitution.

Senator Wynona M. Lipman, Commission Chair, in her opening remarks at the public hearings, focused attention on the combination of events that may have affected the nature and frequency of violent incidents in general and violence against women in particular in New Jersey in the early 1990's:

- increased public sensitivity to violence against women;
- significantly clarified and strengthened State statutes and case law in the areas of domestic violence, sexual assault, and gender discrimination, leading to more complaints and arrests; and
- difficult economic conditions for most citizens, resulting in more frequent and more extreme violence against women.

In addition, she noted the tendency toward reduced State and local resources because of a shrinking tax base, high unemployment, and the lack of growth in the amount of federal aid to the states. Consequently, just when the public and law enforcement system are most supportive of women's efforts to confront those who are abusing them, and just when victims of violence are turning to the courts in the greatest numbers, there is a need to cut public services. As one result, there are powerful economic arguments to add to the usual moral and psychological attractions of blaming the victims. Victim-blaming, in the case of violence which usually has as its victims women and children, has taken the form of legislative and social attempts to limit their legal right to seek redress, and measures that enhance the punishment of perpetrators, but ignore the drain increased incarceration costs will have on any interventions that would protect likely or current victims or that might change the conditions that allow or encourage victimization to become a norm. As Senator Lipman pointed out:

Our new domestic violence law is encouraging this horrible crime's victims to come forward, and the courts are becoming more crowded. There are actually rumblings in the Legislature that the solution to this sad state of affairs is to change the law to withhold relief from the victims. We are here to look for more creative ways to solve problems, not to ignore them.

Economic violence, domestic violence, sexual violence are all phenomena that could have as their victims both men and women. But the people who overwhelmingly bear the burdens of these injustices are women. We are here to talk about why that happens and what this government can do about it.<sup>1</sup>

Roberta W. Francis, the Director of the New Jersey Division on Women, identified the societal and cultural foundation of violence against women in remarks she delivered at the New Jersey Department of Education's hearings on Violence in the Schools. She pointed out that sexual harassment, teen dating violence, and domestic violence are all part of a cycle of violence perpetrated by and on both adolescents and adults.

The exercise of power and control is the driving force for the cycle. The traditional socialization of males to believe that they should be in control of females, and the socialization of females toward acquiescence if not passivity in the face of this control, is the ground out of which the dynamic arises. Despite the movement toward social and legal equality of women, the conscious and unconscious biases of these gender stereotypes still exert a powerful force in our society. Schools must examine very closely the ways in which they contribute to the socialization of children to meet stereotypical expectations which promote gender inequality and male dominance, since the ultimate enforcement of this dominance is through violence.<sup>2</sup>

Gloria Steinem had underscored this basic tenet of inequality more than a decade earlier, at a 1981 Drew University symposium, pointing to the power differential between male and female sex roles as a basic source of violence. "If you tell half the human race they are supportive and inferior and the other half they are dominant and superior, you must enforce that through violence. The most dangerous place for a woman statistically speaking is not in the street, it's in her home."<sup>3</sup>

Senator Bill Bradley, at a May 16, 1994 news conference in Newark, spoke of violence in America as the destroyer of individual liberty, of trust, of ideals, of the world of love — particularly in the homes of battered women and abused children. "Domestic violence is America's dark little secret," Bradley stated. "Sudden, stark, incomprehensible, family violence doesn't just happen. It builds in a cycle of aggression and seeking forgiveness and blaming the victim until it explodes. And the battered spouse is almost never a man."<sup>4</sup>

Assemblywoman Rose Marie Heck, in preparation for a hearing in the Assembly Judiciary, Law, and Public Safety Committee on a group of bills designed to strengthen the Prevention of Domestic Violence Act, spoke of the personal tragedy experienced by the victims and families of abuse victims and enumerated some of the statistics on violence against women.

Half of all women who are murdered in America are killed by their male partners. Three fourths of all assaults happen in the family. Thirty percent of all women admitted to emergency rooms of hospitals are there because of family violence. Violence against women in the home causes more total injuries in America than rapes, muggings, and car accidents combined.<sup>5</sup>

Jackie Marich, Chairwoman of the New Jersey Advisory Council on Domestic Violence, put this particular kind of violence into a broader context.

Domestic violence is simply a symptom of a far deeper problem in this society in which women are devalued and cut out of the loop of power. Recent events, made apparent to us all through extensive media coverage, underscore the very shaky infrastructure on which equality for women is built in this society. The Federal gag rule on abortion counseling; the Anita Hill/Clarence Thomas hearings; the William Kennedy Smith/Patricia Bowman trial; the St. John's University rape trial; and the proliferation of assaults on our own State University campus, make clear to us that women are not safe to pursue their interests, their careers, their education, or even their personal decisions without oppression. The Advisory Council on Domestic Violence submits to this hearing panel that domestic violence and woman abuse, in all its varied forms, is a gender-biased crime...<sup>6</sup>

Finally, violence against women is not just a women's safety issue. Nor is it just an issue of power politics between men and women. It is an issue that permeates and imposes its costs and demands on every sector of our society. And caring for the victims alone will not stop the cycle that each violent act reveals. Senator Bradley said, "We need to give women who are victims of domestic violence a place to go. But we have to do more. We have to prevent the violence in the first place."<sup>7</sup>

# SEXUAL ASSAULT

Sexual violence is not a women's issue. Sexual violence is a cultural issue and needs to be addressed in that context. No longer can we focus our attention on telling women how to feel safe, warning women to stay inside and providing self-defense courses. Timothy Beneke, in his book, states, 'It is men who rape and men who collectively have the power to end rape,' I believe that you and I have the power to make them listen and respond.<sup>1</sup>

## **Definition of the Crime**

The laws governing sexual assault in New Jersey have changed radically over the last 30 to 40 years. Prior to the changes in the law in 1978, "sexual assault" crimes were embodied in the crimes of rape, sodomy, incest, indecency and obscenity. These crimes were very narrowly defined.

Throughout most of English and American history the crime of rape was defined as the act of unlawful sexual intercourse between persons not married to each other accomplished through the use of force or fear of force by the man and requiring lack of consent and resistance by the woman. An essential element of the common law offense of rape was penetration, however slight. In the absence of penetration, only an attempt could be established.<sup>2</sup> The law considered rape to be a high misdemeanor (the old term for a felony) and differentiated the crime according to the age of the victim.

The laws defining sodomy, indecency, obscenity, and incest also differentiated according to the age of the victim and the degree of consanguinity and made other distinctions which affected the prescribed fines and terms of imprisonment.

The current law in New Jersey has embraced a broader definition, under the terms "sexual assault" and "aggravated sexual assault," which better reflects current political and social thought. For the purposes of this report the Commission on Sex Discrimination in the Statutes will use the term sexual assault and recommends that this term be used in all legal and governmental documents. Sexual assault as defined in the law includes, in addition to rape, involuntary acts between persons of the same sex and between persons married to one another, and also includes some sexual acts with consenting children and other persons who are legally incapable of giving or unlikely to have given consent, an expansion on the common law crime of statutory rape.<sup>3</sup> Sexual assault also includes crimes involving sexual contact that do not include vaginal penetration with a penis. The law includes definitions of penetration, intimate body parts, sexual contact, severe personal injury, physical and mental capacity and coercion.<sup>4</sup> Defining the crime more broadly, but more specifically, means that the law applies to acts which in the past were not considered crimes of sexual assault. The essence of sexual assault is the nonconsensual nature of the contact.

A recent case in New Jersey finally settled a historic controversy over the requirement that the touching of the victim be nonconsensual. Under traditional rape law, in order to prove that a rape had occurred the State relied on the degree of resistance of the victim to assess the amount of force used by the defendant. Critics of this traditional view felt the the focus of the crime should be shifted from the victim's behavior to the defendant's conduct and

sought to avoid a definition of force that depended on the victim's reaction, or that required the victim to prove non-consent. The 1978 amendment to the sexual assault statutes removed the requirement that the victim resist, but left in a requirement that physical force be shown. In many courts, this requirement had been used to explore the victim's actual resistance and operated as a bar to prosecution. In *State in the Interest of M.T.S.*<sup>5</sup> a significant step in the definition of "physical force" was made. The Court held that any act of sexual penetration engaged in by the accused without the affirmative and freely given permission of the victim to the specific act of penetration constitutes the offense of sexual assault. In other words, the element of physical force is met simply by an act of nonconsensual penetration involving no more force than is necessary to accomplish the act of penetration.

### **Reported and Actual Incidence of Sexual Assault in New Jersey**

According to recent testimony before the U.S. Senate Committee on the Judiciary, the national rate of reported sexual assaults is now increasing four times faster than the overall crime rate.<sup>6</sup> It is estimated that 15% to 40% of women are victims of sexual assault or attempted sexual assault at some time during their lives.<sup>7</sup> In New Jersey, according to police reports, a woman is sexually assaulted about every four hours, or an average of six women sexually assaulted every day. In 1993, there were a total of 2,214 reported sexual assaults, a decrease of 8 percent compared to the 2,399 in 1992.<sup>8</sup> The actual number of sexual assaults is no doubt much higher. It has been estimated that only 7% of victims report the crime to the police.<sup>9</sup> On college campuses, studies show that fewer than 5 percent of victims report sexual assault to the police.<sup>10</sup>

The low rates of reported sexual assaults and the even lower numbers of convictions enable institutions and the public to deny the magnitude of the problem. Researchers estimate that only one to two per cent of sexual assaults result in conviction and incarceration.<sup>11</sup> Courtney Esposito stated at the public hearings before the Commission: "By denying that violence against women exists and minimizing the extent to which it occurs, avoiding the real fact that it can and has happened to any one of us who is female, we might be able to feel untouched, safe and healthy for a short period of time. This self-protective technique, which plays itself out on both individual and institutional levels, initiates and perpetuates a dynamic which increases the isolation of every single victim and ultimately and inevitably leads to her entrapment — whether that entrapment be physical, social, legal or financial."<sup>12</sup>

### **Why Sexual Assaults are Underreported**

Stranger rape, acquaintance rape, date rape, "simple" rape, marital rape — all terms commonly applied to the nonconsensual sexual contact of one person with another — and all go substantially unreported. Why?

The reasons women do not report sexual assaults to authorities are as numerous and complex as the reasons for society's denial of the validity of the assaults. Historically, sexual assault survivors were subjected to intense scrutiny about their private lives. Prior to changes in the evidence laws, the sexual history, mode of dress, and social interactions of the victim were examined to ascertain whether the victim's behavior invited or contributed to the sexual assault. This process exposed the victim to the community, thereby exacerbating the trauma of the sexual assault by blaming the victim rather than condemning the perpetrator. Although

the laws have changed and are changing,<sup>13</sup> juries, judges, and society still often blame sexual assault victims for the assaults, at least in part. The conviction rate is low.<sup>14</sup> Consequently, many survivors choose to remain silent rather than risk the public scrutiny and personal hardship associated with a prosecution. As long as the defendant can threaten the victim with public humiliation and retaliation, victims will remain silent.

As Ms. Esposito stated:

"We're told not to wear attractive clothing, not to be friendly on the street or to make eye contact ever with any stranger. The underlying assumption is that what we do is decisive — our demeanor, our wardrobe, our carelessness, the visibility of our curves or the mere existence of our body parts — these invite violence and allow it to happen. From the flawed premise that being a woman must necessarily equal being victimized comes the conclusion that it is up to us, by changing our behavior, to prevent our own victimization. Truth be told, what we do does not decrease the incidence of men's attempt at violent acts against women. . . Men must stop committing violence against women, take away permission from each other to commit it, stop condoning it in others and stop blaming women for it. . . The process of change can only begin if we recognize violence against women as pervasive, and redefine it as illegitimate and intolerable and then provide safety and support for the victims." <sup>14</sup>

**The Commission therefore recommends that the rape shield protections of NJSA 2C:14 be strengthened and endorsed the passage of Assembly Bill 677, sponsored by Assemblywoman Gregory-Scocchi and Assemblyman Warsh, which was signed into law on August 11, 1994. It further recommends enactment of S-1362, sponsored by Senator McGreevey, and A-2047, sponsored by Assemblyman Lance and Assemblywoman Gregory-Schocchi, which would limit admission of testimony about a sexual crime victim's clothing. The law and the bills are reproduced at Appendix A.**

Another reason for low reporting rates is reflected in the experience of Rape Crisis Centers and Counseling Centers. Many of the calls that are made to their hot-lines and clients of the centers are not victims of recent sexual assaults, but survivors of sexual assaults that happened many years before. These people wait a long time before speaking to someone or seeking help after being sexually assaulted because they do not recognize that they were crime victims, or they were too ashamed to tell anyone what had happened.<sup>15</sup> Society's and women's concept of what constitutes sexual assault has been shaped by earlier definitions of rape, which can in turn be traced to the status of women as the property of their husbands and fathers. Marital exemptions for sexual assault still exist in some states, and it is only recently that sexual assault by someone known to a victim or previously intimate with the victim has been part of public discussion. The fact that the new term of "acquaintance rape" has been coined is evidence of a societal belief that a sexual assault by a person known to the victim is in some way different from a "real" sexual assault. This distinction is related to the common myth that unless there is incontrovertible evidence to the contrary, the victim is partially if not totally responsible for the assault. Women sexually assaulted by boyfriends, husbands, or acquaintances may believe these myths, and therefore may not immediately identify the events as sexual assaults even if they have been brutally beaten in the process.<sup>16</sup>

Studies both at colleges and in the general population have found that 70 to 80 percent of all sexual assaults are committed by acquaintances of the victims, not strangers.<sup>17</sup> This relationship can be a major factor in all subsequent decisions by the victim, the police and the legal system.

Counselors report that women who have gone for counselling or other services are not always also ready to file a police report and press criminal charges. Some women who are interested in pursuing legal action are pressured into not filing police charges by the perpetrators. Women victimized by men with whom they have a relationship may fear retaliation and thus are not likely to report the crime, particularly when they are threatened. Women who do press charges against a known assailant often withdraw the charges because they are intimidated by the defendant and fear that neither probation nor imprisonment will protect them or their children. Alternatively, they may privately resolve the issue after filing or, if they are financially dependent upon the attacker, fear that a term of probation or imprisonment will impoverish them and any children they have. Many women who *do* want to press charges do not do so because they feel that they will not be believed by police, especially if they know the assailant.<sup>18</sup>

### **Will the Legal System Prosecute?**

The perpetrators in "date," "acquaintance," or "marital" situations are those who are least likely to be arrested, prosecuted and convicted. When a victim does file criminal charges, it is the prosecutor who will decide whether the victim's complaint is founded or unfounded. Only the founded complaints are forwarded to a grand jury and by then, if police have prejudged the case to be one without merit, they may have lost the opportunity to gather or preserve evidence in the case, thus affecting the quality of the prosecutor's case. A study in New York found that fewer than 5% of complaints in stranger sexual assault cases were judged by police to be without merit, while 24% of non-stranger sexual assault cases were similarly judged.<sup>19</sup>

On what basis do the police make these judgments? The three factors that are most influential in the disposition of sexual assault cases are: the victim's prior relationship with the defendant; the amount of force and resistance; and the availability of evidence.<sup>20</sup>

- With the exception of murder cases, crimes involving people who have a prior relationship are not seen to be serious and therefore do not receive legal attention. An attack by an acquaintance is believed to be less terrifying, but in fact such betrayal can be more frightening.<sup>21</sup> The closer the relationship is between the victim and the defendant, the less likely the case will result in a conviction.<sup>22</sup>

- The greater the use of force and the greater the amount of resistance offered by the victim, the more likely the case will receive legal attention.<sup>23</sup> Unfortunately, although the statutes in many jurisdictions no longer require utmost resistance from the victim, police officers expect women who are sexually assaulted to resist and believe that if a woman did not physically resist an attack, it must be a consensual act.<sup>24</sup> Without resistance, or "proof" of lack of consent, many police officers will screen out a case and many prosecutors will not take a case to court. If a victim resists, she will be believed but her resistance may lead to serious bodily injury, even death.<sup>25</sup> Non-resistance, therefore, is sometimes not consent, but a survival tactic.<sup>26</sup> A recent Pennsylvania case which has incensed the advocacy community.

concerned an East Stroudsburg University student who was sexually assaulted by a fellow student, during which she repeatedly said "No, no, no." Because she did not physically resist her assailant, the defendant was found not guilty on the charge of sexual assault and was convicted of the lesser charge of indecent conduct, which is not barred by the consent of the victim.<sup>27</sup>

● The collection of evidence is possible if there is a prompt and appropriate response by police and medical personnel. However, the evidence can be destroyed if the victim showers or douches, which is an especially common reaction in acquaintance sexual assaults. A study conducted in Texas found that medical corroboration has the most influence on prosecutors' decisions as to whether to pursue a case or not. In addition, jurors are more willing to find a defendant guilty when there is objective evidence to support the accusation.<sup>28</sup>

Ironically, each of the three factors that determines how the police and prosecutors will deal with a rape case is likely to be stronger in a stranger rape than the much more common acquaintance rape.<sup>29</sup>

The rate and effectiveness of prosecutions of sexual assault offenders could be greatly increased if there were uniform statewide protocols for law enforcement personnel dealing with sexual assaults and mandated training for both police and prosecutorial personnel. Without these, there is not only no uniformity, but frequently there are failures to correctly interpret criminal actions, failures to perform necessary procedures, failures to collect vital evidence, and failures to alert crime victims to essential support services and sources of compensation for medical services and lost wages. One county in New Jersey does not even have a dedicated Sex Crimes Unit, but relies on officers who have not been specifically trained in the issues of sexual assault. Local training on the stalking law, which passed in January of 1993, has still never been done.

**Therefore, the Commission recommends that uniform, statewide protocols for dealing with incidents of sexual assault be developed and promulgated. It also recommends the training of police and prosecutorial personnel regarding acquaintance rape, sexual assault and aggravated sexual assault.**

**The Commission also recommends the inclusion of sexual assault information in family life education materials and the encouragement of local school boards to support the inclusion of information about violence against women in board initiated programs as well as curricula.**

**See Appendix B for proposed legislation.**

The federal Hate Crimes Statistics Act, signed by President Bush, directs the U.S. Department of Justice to collect statistics on crimes motivated by a victim's race, religion, ethnicity, or sexual orientation. The Act purposely ignored gender-biased crimes. Courtney Esposito, testifying before the Commission, said, "Women as lightning rods for male abuse were once again officially rendered invisible."<sup>31</sup> In the current session, a bill is moving through the New Jersey legislature with a provision that is another example of how difficult it is to face the reality of gender crimes. The bill would add crimes motivated by the gender or disability of the victim to the current enhanced penalty provisions of the criminal statutes. (Gender was one obvious class left out of the original "hate crimes" law.) However, the bill specifically

makes one exception to the definition of hate crimes — it does not allow an enhancement of sentence on the basis of gender when the crime is a sexual assault. It is certainly arguable that the enhancement provision will not prevent sexual assault, as it is arguable that hate crime statutes do not stop hate or hate crimes in general, but the specific exemption is troubling. Sexual assault is already the crime category with the lowest conviction rate in the criminal justice system. The removal of sexual assault from even the possibility of being a gender-based hate crime will only support the persistent but discredited perceptions that rapists are motivated by lust, and encourage the belief that rape is not a "real assault."

**The Commission recommends that S402 and A942 be amended to delete the exemption for sexual crimes.**

Readily accessible hotlines and counselling services for survivors of sexual assault are an essential component in supporting and educating women who have been sexually assaulted or who may be assaulted in the future. By receiving immediate support in a stressful situation and by understanding what constitutes sexual assault, how to maintain essential evidence, what they can and should expect from police and prosecutors, and who will advocate for them, survivors of sexual assault are more likely to successfully press charges against their attackers.

State funding for such services has in recent years, however, been increasingly uncertain. One huge gap in the funding of sexual assault services was finally closed in 1993 when the New Jersey Coalition Against Sexual Assault (NJCASA) finally opened an office with one staff member. The grant from the Office on the Prevention of Violence Against Women in the Division on Women was given with the understanding that the Department of Health, which funds sexual assault services in much the same way that the Department of Human Services funds domestic violence shelter programs, would formalize its relationship with NJCASA and fund its operation. Not only has the DOH failed to date to formalize this relationship or to fund NJCASA, but it has announced possible future cuts to the rape crisis programs they fund to make up for the deficit in funds that will result from shortfalls in other programs.

In addition, the 1995 grants from the Victim Witness Advocacy Fund, which was set up by the Legislature as a stable source of funding, were suddenly cut off in August, 1994. This still unexplained defunding affected not only money that was vital to the operation of the sexual assault treatment system, but also funds that were uniquely available to the domestic violence service system and for innovative grant-funded programs like the National Center for Protective Parents. Although 60 percent of these funds for sexual assault services, after substantial advocacy, are reportedly being replaced through a variety of sources, NJCASA's office will have to close in 1995 if no funding is found. The county sexual assault programs are not eligible for most of the "replacement" money announced by the State, and because of the tentative and last-minute nature of the cutoff, the programs have been shut out of the application cycles for other sources of support.

Another source of funding for programs that address violence against women is the Federal Victims of Crime Act (VOCA), money from which is distributed through the prosecutor's offices and is supposed to fund victim services. Several counties do not give any of their

federal VOCA money to rape crisis programs and the few innovative hospital/prosecutor cooperative programs that existed in the early 1980s have been abandoned because they required training and coordination that could not be funded with restrictive block grants.

The impermanence of funding for these services leaves them in jeopardy and diverts the energies of system personnel away from providing essential services.

**Therefore, the Commission recommends that it be made a priority to find a permanent source of funding for the sexual assault system in New Jersey.**

### **Evidence Collection and Medical Treatment of Victims**

In 1982, a Presidential task force recommended that "Legislation should be proposed and enacted to ensure that sexual assault victims are not required to assume the cost of physical examinations and materials used to obtain evidence."<sup>32</sup> The task force, after conducting national hearings, said that because victims of other crimes are not financially responsible for the collection of evidence, it was not right that sexual assault victims be charged for this service. A study conducted in Texas found that medical corroboration has the most influence on prosecutors' decisions as to whether to pursue a case or not. In addition, jurors are more willing to find a defendant guilty when there is objective evidence to support the accusation.<sup>33</sup>

Because of the nature of the crime, sexual assault victims face a variety of threats not experienced by other violent crime victims. Sexual assault victims face the possibility of contracting sexually transmitted diseases and becoming pregnant in addition to physical injury and psychological trauma. Sexual assault victims have a suicide rate eight times higher than that of non-sexual assault victims, with one in five victims reporting an attempted suicide. Victims experience lowered self-esteem and changes in life patterns and relationships. Victims often exhibit more dependent behavior and assume a more helpless affect. There is also an economic impact caused by a sexual assault. Medical and legal costs as well as lost work-time or loss of employment are very real hardships experienced by many women.<sup>34</sup>

Many states have recognized that medical treatment is necessary and costly, and have made provisions in the law to provide for medical treatment. Florida, Minnesota, Nevada and Ohio have laws that mandate emergency room treatment, and forbid hospitals from turning away victims of sexual assault. Minnesota assumes the cost for examination and the treatment of the victims.<sup>35</sup> Nevada assumes the financial responsibility of medical treatment for the victim as well as for emotional injuries to the victim and her spouse. Ohio also pays for medical treatment of the victim. Other states pay for medical treatment but their concerns with cost containment have generated limitations on public expenditures. Florida and New Mexico have set a limit of \$150 per exam. North Carolina has a limit of \$500 to cover medical examinations and treatment costs, as well as psychological counselling. Maryland requires that hospitals bill at rates set by the Maryland Health Services and Cost Review Commission.<sup>36</sup>

New Jersey, like these other states, has accepted in part the responsibility of paying

for medical treatment, while at the same time attempting to contain costs. Through the Violent Crimes Compensation Board, a sexual assault victim can file for medical expense compensation. The victim must first submit the bills to her health insurance company for payment. The VCCB currently pays 100 percent of medical expenses not covered by other sources, although for a period in late 1991 and early 1992 the Board was experiencing budget difficulties and reimbursed victims for only 75 percent of what the insurance company would not cover. The VCCB, when it has the money, reimburses for the expenses of the medical examination and treatment and for the collection of forensic evidence, for lost earnings and other expenses related to the crime. It also covers the cost of aborting pregnancies that occur because of sexual assaults. Followup visits related to the sexual assault may or may not be covered. Any of this reimbursement, however, is contingent upon the victim pressing charges against the offender, unless the victim can demonstrate a compelling health or safety reason for not cooperating with law enforcement.

As of 1988, of the 1875 claims filed by females with the VCCB for medical expenses related to sexual assault and child sexual assault, 830 claims were denied, 501 were paid and 544 cases are still open. Many of these cases are still pending after four, five and even six years.<sup>37</sup>

Of equal concern are the many claims which never enter the VCCB system because they do not meet the preconditions that the application for reimbursement be made "within two years after the date of the personal injury or death" and that the personal injury or death have "been reported to the police within three months after its occurrence."<sup>38</sup> Such preconditions exclude victims of sexual assault disproportionately, since they are more likely than any other class of victims of violent crimes not to report the crime to police in a timely manner for any of the many reasons previously discussed.

**The Commission therefore recommends the enactment of A1629, sponsored by Assemblyman Lustbader, and S718, sponsored by Senators LaRossa and Inverso, as amended in committee in both houses. See Appendix C for copies of the bills.**

### **Maintaining Sexual Offense Evidence Collection Kits**

In New Jersey there are no consistent protocols for the collection and maintenance of medical evidence when sexual assault is alleged. As a result, prosecutors too often decline to pursue a complaint of sexual assault or fail to get a conviction for lack of adequate evidence.

The U.S. Department of Justice recommends that hospitals and law enforcement cooperate to preserve and secure forensic medical evidence through the use of medical protocols designed to ensure the proper collection and storage of all forensic medical evidence of sexual assault and the physician's unambiguous recording of the patient's medical examination.<sup>39</sup> In some states, such as Pennsylvania, physicians and other health care workers are required to report any injury that is the result of a crime to the local law enforcement agency, though strict confidentiality is maintained regarding all other patient information. A clear, specific and detailed medical record including objective measurements, photographs of injuries, details of the victim's emotional state and other physical manifestations of trauma can

often be entered into evidence by stipulation of the parties, reducing the need for the physician to testify in court. A standardized, easy-to-use kit for collecting forensic evidence improves the chances that all the relevant evidence will be collected and properly preserved. Forms specifically designed for collecting the medical history relevant to sexual assault and for collecting the evidence necessary for a criminal investigation, including minor injuries that might not require medical attention, should be used to supplement the physical examination forms regularly used in the emergency room.

Since July 1991 in Tulsa, Oklahoma, the Sexual Assault Nurse Examiners Program (SANE), provides a central city-wide hospital location where all victims of sexual assault are provided with an extensive, three-hour exam to gather evidence used to prosecute accused rapists.<sup>40</sup> The exams are provided by nurses specially trained in forensics in a compassionate and non-emergency setting, with rape crisis counselling available at the center.<sup>68e</sup> This effective and humane treatment contrasts with the experience of too many victims of sexual assault who wait for long periods in noisy hospital emergency departments and are then treated by overworked health care providers who are trained in neither the requirements of forensic examination and evidence collection nor the treatment of victims of sexual assault. This not only weakens the evidence a prosecutor needs to convict a rapist, but it compounds the trauma of the sexual assault victim.

**The Commission therefore recommends that Title 26 be supplemented to create standards for the care of sexual assault victims and that hospitals and prosecutors be encouraged to coordinate their evidence collection efforts to maximize convictions of sexual offenders. It further recommends that the SANE model be considered for inclusion in the continuum of care, and endorses A2423, sponsored by Assemblyman Azzolina. See Appendix D for proposed legislation and a copy of A2423.**

#### **Administrative dismissals and plea bargains in sexual assault cases**

Because fewer than 7 percent of sexual assaults are reported and, of those, only a minority are deemed worthy of prosecution, fully 98 percent of sexual assault victims never see their attackers caught or tried. More than half of sexual assault prosecutions that proceed to trial are either dismissed or result in an acquittal.<sup>41</sup>

In addition to the many factors that discourage the reporting of sexual assault incidents, most criminal cases found worthy of prosecution never go to trial because of the prevalent practice of plea bargaining. Many victims of sexual assault who press charges are never informed of the results of the plea bargain. In Indiana the law requires a prosecutor to inform any victim of a crime of the terms of the plea bargain, allow her to object to the plea bargain, allow her to testify at the judicial hearing on the plea at sentencing, and allow her to be present at plea negotiations.<sup>42</sup> Further, all courts are required to inquire of the prosecutor if the victim was informed of her rights regarding the plea bargain, to ascertain what the victim's position is regarding the plea bargain, and to determine if the victim was invited to come to the court and express those feelings. The Indiana crime victim statutes have provided a means for the victim to gain a degree of control. According to the prosecutor's office in Indianapolis, the law helps the prosecutors to involve victims in making decisions in cases and obliges prosecutors to take the victim's feelings into account.<sup>43</sup> Giving a victim the oppor-

tunity to say what she thinks and to express her feelings on the case has helped victims feel less helpless, as well as increasing the involvement of the victim and her level of interest in the case. With cases that take longer, the involvement helps with the victim's mental attitude and decreases her sense of feeling further victimized by the state.<sup>44</sup>

Although New Jersey's sexual assault statutes do not contain such a provision specific to victims of sexual assault, a 1991 amendment to the Crime Victim's Bill of Rights does provide for victim input.<sup>45</sup> At the time of sentencing, whether after a trial or sentencing at a plea bargain, a victim has the right to speak and/or to submit a written statement to the judge expressing her feelings which may include objecting to the sentence the prosecutor is suggesting.<sup>46</sup> It remains to be seen if this generic criminal remedy will be used by victims of sexual assault. The tendency of sexual assault crisis counselors, concerned with the welfare of the victim, to counsel the victim not to testify or appear in court any more than is necessary for a conviction, may reduce the numbers of victims who will make a statement. Statistics have not been kept in Indiana to determine if the victim's right to speak at sentencing has had an effect on victims' decisions to prosecute; however, the law has already provided a very therapeutic experience for many women.<sup>47</sup> Perhaps a more formalized relationship between the police departments and the sexual assault crisis centers could help to create an atmosphere in which the victim is willing to pursue legal action.

**The Commission endorses the passage of Assembly Bill 1574, sponsored by Assemblyman Zisa, which would require that crime victims and complainants be notified in advance of pending plea bargains and dismissal of charges.**

### **Victim Impact Statements in Criminal Sentencing**

In cases where there has been either a conviction by trial or plea bargain agreement, victims are now allowed to write an impact statement to be sent to the judge. It was brought to the attention of the Commission by Carole Loscalzo of the New Jersey chapter of the National Association of Social Workers<sup>48</sup> that these statements are shared with the defense attorney, thus giving the offender access to the statements of the victim. In one instance in a Northern county, the defense attorney, at a sentencing, used a victim's statement to minimize the offenses for which his client had been convicted. Use of victim impact statements by the defense may severely increase a victim's feeling of betrayal by the system. In addition, victims of sexual assault have often been threatened by the offenders. The sharing of the written statements seriously compromises the ability of the victims to use this vehicle to express their feelings about the crime and the sentence. Confidentiality of the written statement would assure that the victim had a platform to share her thoughts and feelings, free of fear of reprisal.

**The Commission therefore recommends that victim impact statements be required to be kept confidential - to be seen only by the prosecutor before trial or the judge at the time of sentencing, by amending N.J.S.A. 52A: 4B-36. See Appendix E for proposed amendment.**

## Civil Suits as an Alternative to Criminal Charges

Victims who report sexual assaults are usually told their only recourse is to bring criminal charges against the accused attacker, leaving the legal system in control of whether or not the case will proceed, whether or not the case will be plea bargained and what the terms of the plea bargain will be. For university students, the additional option of allowing the university's internal disciplinary procedures to handle the matter usually exists. Again, this leaves control of the procedure with others — in this case with university authorities. If the victim believes the authorities have not fairly treated the admission of evidence, allowed equitable representation for both parties in the complaint, or meted out a just punishment, she usually has nowhere to appeal.

Increasingly, victims of sexual assault who know their attackers are filing civil suits against their alleged attackers and seeking tort damages.<sup>49</sup> This increase is due in part to the growing tendency of sexual assault victims to react with anger rather than shame. It is also due to their increasing frustration with the criminal system's response or lack of response to their violation. Some adults who were victims of child sexual assault are also filing suit against their abusers, sometimes after years of psychological turmoil resulting from the sexual assault or repression of the events.

Under common law, date rape falls within the category called "intentional torts." These are compensable injuries, which include, for example, assault, battery, false imprisonment, and intentional infliction of emotional distress.<sup>50</sup> The option of using a civil suit to get justice for date rape has several advantages. First, victims of intentional torts sue for monetary damages. Second, the victim is in control when pursuing a civil suit. She decides if the case will go to trial, when the case will be settled, and for how much. Third, the victim can count on established rules of evidence, which internal university proceedings may not guarantee. Fourth, a verdict in favor of the plaintiff may be easier to obtain in a civil suit because the standard of proof in civil courts is lower than that for criminal cases. In a criminal action the prosecution is required to prove beyond a reasonable doubt that the defendant assaulted the complainant, whereas in civil cases the plaintiff need only prove her case by a preponderance of the evidence.<sup>51</sup>

In the civil context, the essential complaint may be the plaintiff's emotional or psychological injury. Especially in cases of attempted sexual assault, where the legal system is unlikely to pursue charges, a civil suit for intentional infliction of emotional distress may provide the most successful alternative for redress.<sup>52</sup> A successful plaintiff can also collect damages from the perpetrator's future earnings, making it a viable option in both university and non-university settings. However, bringing a civil suit in cases of sexual assault shares the same detriments as all civil suits -- they can take years to come to trial and legal costs for the plaintiff must be paid by the plaintiff.

One of the major barriers to filing a civil suit for sexual assault is the fear that the defense will violate the privacy of the plaintiff by making public information about her past alleged sexual history.<sup>53</sup> The power of this threat has been largely reduced in criminal cases through rape shield laws. In New Jersey, a rape shield law in criminal cases was passed in 1976<sup>54</sup> and updated in 1978.<sup>55</sup> It was found necessary to again strengthen the rape shield in

criminal cases in 1994.<sup>56</sup> However, these rules of evidence protecting the victim's privacy do not apply in civil suits. California has extended rape shield protections not only to civil complainants for sexual assault, but for other sexual torts as well. Its civil discovery rules provide: "In any civil action alleging conduct that constitutes sexual harassment, sexual assault, or sexual battery, any party seeking discovery concerning the plaintiff's sexual conduct with individuals other than the alleged perpetrator is required to establish specific facts showing good cause for that discovery, and that the matter sought to be discovered is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence."<sup>57</sup> Its civil evidence code further provides that "opinion evidence, reputation evidence, and evidence of specific instances of plaintiff's sexual conduct, or any of such evidence is not admissible by the defendant in order to prove consent by the plaintiff or the absence of injury to the plaintiff."<sup>58</sup> Iowa also has a civil shield rule that applies to sexual abuse, sexual assault, and sexual harassment.<sup>59</sup> The California code also details the procedure to be followed if the defense seeks to offer evidence of sexual conduct of the plaintiff to attack the credibility of the plaintiff.<sup>60</sup>

**The Commission therefore recommends that the Legislature enact a civil rape shield protection to guard the privacy of alleged victims in the same way that the New Jersey rape shield laws now protect them in criminal actions. See Appendix F for proposed legislation.**

### **Statutes of Limitations**

The Commission has repeatedly encountered plaintiffs closed out of civil remedies for sexual assault or sexual abuse because they failed to file cases within the two-year time limitation after the attack. The legislature has been responsive to the plight of children who do not realize that a remedy exists or cannot legally sue until adulthood, and have provided for the extension of the limitations period by statute, most recently with the passage of Public Law 1992, chapter 109, which allows for such a case to be brought within two years of the discovery of the injury by the plaintiff after the plaintiff reaches her or his majority. Unfortunately, this law does not revive suits dismissed before 1992, and does not protect plaintiffs who are adults at the time of the assault or abuse. Many of the same factors that the legislature found persuasive as to children apply to adults who are victimized. The trauma of the attack, coercion not to file by the assailant, fear of the reaction of society and the legal system, repression of details or even the entire event, and misunderstanding of the nature of the event may all contribute to a victim's inability to report or sue within two years.

**The Commission therefore recommends that P.L. 1992, c. 109 be amended to apply to adult victims of sexual assault and sexual abuse.**

### **The Threat of Counter-Suit for Libel, Slander, or Defamation**

Attorneys representing defendants in civil suits and criminal prosecutions for sexual assault in some states have developed a new tactic. The defendant may sue the plaintiff for defamation, libel or slander. When such suits are allowed to proceed or even to be filed while a legal action is proceeding in the sexual assault case, they can intimidate and threaten the alleged victim of sexual assault, pressuring her to drop pending criminal charges, and

forcing her to hire a lawyer if only to file a motion to dismiss the suit.<sup>61</sup>

Existing New Jersey Rules of Court give the court authority to dismiss any pleading that would be "abusive of the court or another person"<sup>62</sup> and further provide in rules governing pretrial discovery that "the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."<sup>63</sup> However, none of these rules specifically bars the defendant in a criminal case involving rape from filing a civil suit against the complainant. Current court practice would require the assailant to disclose any civil litigation between the parties, but not criminal matters pending on the same facts. Therefore, a civil court might not be aware until trial that a criminal case was proceeding.

**The Commission therefore recommends that the Supreme Court require by rule that plaintiffs in civil actions disclose any criminal actions pending against them in which they are defendants and in which the defendant in the civil action is a witness.**

### **Acquaintance Rape on College Campuses**

Victims of acquaintance rape may be adults, young adults, adolescents, or children. It is the college age population of women, however -- many of whom are living away from their families for the first time -- who have received the most attention with regard to acquaintance rape. Students are the fastest growing population of rape victims. Twenty-two percent of all rape victims are between the ages of 18 and 24 years, or college-age.<sup>64</sup>

Rape on college campuses is not a new problem but is an issue that is gaining public recognition. It is a widespread problem, and one that colleges are not always eager to respond to. Four sexual assaults or attempted sexual assaults during one 1992 weekend at Rutgers, the State University of New Jersey, brought national attention to this fact. On college campuses in America a woman is raped every twenty-one hours.<sup>65</sup> Mary Koss found in her national study that more than one-in-four college women were victims of acquaintance sexual assault or attempted sexual assault in the year preceding the study. Of these, 17 percent were the victims of intercourse or attempted intercourse by force, threat, or by alcohol or drugs. An additional 12 percent were the victim of intercourse by verbal coercion or misuse of authority.<sup>66</sup> A 1984 study by Rappaport and Burkhart found that more than 22 percent of all freshman and sophomore women in their study had been forced to have sex against their will.<sup>67</sup> More than half of college sexual assault victims were attacked by dates, and more than four out of five victims knew their attackers.<sup>68</sup> A 1988 study conducted at Rutgers, the State University, showed results consistent with the national figures. Twenty-two percent of female students reported having been raped by an acquaintance. Fifty-one percent of female students reported having successfully avoided an acquaintance rape, 29 percent reported having been forced to have intercourse against their will and 43 percent reported being pressed to have sexual contact when they did not want to. The study also indicated that first year students are particularly vulnerable to sexual assaults, and that men are also victims of sexual assault, but not nearly to the degree that women are.<sup>69</sup>

Few campus rapists are ever punished; fewer than 5 percent of college women report sexual assault to the police<sup>70</sup> and only 1 to 2% of all campus sexual assaults are ever pros-

ecuted.<sup>71</sup> Ruth Ann Koenick, Director of Sexual Assault Services at Rutgers University explained at the Commission hearings: "Although the surveys consistently support the numbers, there is a large discrepancy between the incidence of the crime, the reporting to the police, administrators, and health or counseling center clinicians. The Koss research suggests that a full 42 percent of the victims told no one, ever, and only 5 percent reported the crime to the police. Another 5 percent sought assistance from a rape crisis center. What happened to the other 50 percent? This is the epitome of a safe victim, for who is safer to be terrorized than the person who tells no one? There are many reasons why women choose not to report a crime of sexual violence. Some aren't sure how to define the act, knowing something awful happened to them, knowing that they feel different, that they hurt both inside and outside, but not quite sure of its legality or illegality. Or, perhaps they aren't aware of how to report. Perhaps they have a belief system that is self-blaming and often project that belief onto others. Perhaps they have an intense sense of fear, the sense of shame and humiliation prohibits seeking help. Or as with many colleges and universities who emulate our society as a whole, women are discouraged, whether overtly or covertly, from reporting this crime."<sup>72</sup>

Critics contend that schools are not eager to pursue investigations of alleged sexual assaults because they are more concerned for the school's reputation than they are for their students' safety. Elizabeth Graham, President of the Student Movement Against Harassment at Carleton College, a group formed in 1986 to increase awareness of sexual assaults, described the Carleton administration in the following terms: "they don't think there are criminals on campus," and they also think that, "...date rape is sex gone bad."<sup>73</sup> The result is that many colleges "downplay the allegations and discourage victims from contacting law enforcement authorities." Such actions result in rapists remaining on campus, free to victimize more women. A survey conducted among 3,300 members of the National Association of Student Personnel Administration at 1,100 colleges and universities (with 49% of the schools responding) revealed that 45% stated their college took no action in responding to sexual assault incidents, but 60% stated that action was taken in the majority of physical assault cases. Of incidents reported on campus, 58% of physical assaults resulted in punishment by the institution, and only 39% of sexual assaults led to punishment.<sup>74</sup>

Gail Abarbanel, Director of the Rape Treatment Center at Santa Monica Hospital in Santa Monica, California, feels that not only are colleges dealing with sexual assault victims ineffectively, but that school policies and procedures revictimize women.<sup>75</sup> Frank Carrington, a victim's rights lawyer, has talked to hundreds of campus sexual assault victims. He says, "...almost without exception they're saying the stonewalling and brutal treatment they get from college officials is worse than the original crime. It demeans the crime to say this, in effect, isn't a crime."<sup>76</sup> Some of the few policies in place are outright discriminatory. For example: at Bucknell, victims cannot bring advisors to hearings, only the accused can; only after four students sued Carleton did that college change its policy which prohibited women from filing sexual assault charges more than six months after the alleged crime; only in 1989 did Northwestern change its policy to give women victims the right to file an appeal. Previously, only the accused could appeal the disciplinary board's decision.<sup>77</sup>

The larger problem seems to be the lack of policies regarding colleges' stand on sexual assault, and procedures for dealing with the problem. In addition to fear, and the lack of knowledge that a criminal act has occurred, Koss found in her study that the lack of a

reporting system, and lack of facilities for prosecuting cases were some of the reasons that women were not reporting sexual assaults to campus authorities.<sup>78</sup> Not many colleges have a rape crisis center, or offices specifically to deal with sexual assaults, not to mention advocates to help victims prosecute. Services that are available generally center on the victim, and deal with the psychological recovery. As a result, women are receiving treatment (in some cases) but the men are not being brought into the system and being dealt with.<sup>79</sup>

Finally, there is the issue of internal disciplinary proceedings in the case of sexual assaults. A spokesperson from Carleton College in Minnesota reported that internal proceedings were developed when women complained that "the criminal justice system was too cold, too slow and too uncaring."<sup>80</sup> Although all colleges should be offering victims the choice between pursuing an internal disciplinary proceeding or a criminal investigation, many schools pressure students to keep the matter within the school, thereby saving the school's reputation. Colleges may be sheltering victims from the harshness of the criminal justice system at the cost to society of repeated offenses elsewhere by the same assailants.

In a 1990 USA Today study, 546 of the largest colleges and universities in the country were given a safety survey in which they were graded on, among other things, sexual assault response.<sup>81</sup> The survey measured eight areas where the school could provide services such as counseling, financial aid for counseling, housing assistance, and availability of a 24-hour rape crisis center. Of New Jersey's nine state colleges, five were not able to be scored because of either incomplete information, or the school's refusal to respond to the survey. On a scale of 1 to 4 (with 4 being the highest) three of the schools received below a 2, and one, Jersey City State College, received the highest score of 4. Rutgers received 3.3 for one campus and 4 for the other two campuses. Private institutions ranged from a high of 4 (Princeton University) to a low of .4 (Monmouth College).

The first step in dealing with the problem on an institutional level is to recognize that sexual assault exists and is a fact of life.<sup>82</sup> Since 1966, with the passage of P.L. 1966, c.37,<sup>83</sup> the fourteen public institutions of higher education in New Jersey having full-time, certified police departments have been required to supply to the Division of State Police statistics on crimes occurring on campus. These statistics appear annually in the Uniform Crime Report. However, when one looks at the New Jersey Uniform Crime Report for 1989, four of these institutions accounted for all six reported rapes on college campuses.<sup>84</sup> (The Uniform Crime Report reports "rapes", rather than the more inclusive category of "sexual assaults" because of mandated federal reporting categories.) It seems hard to believe that ten New Jersey higher educational institutions had not a single rape reported the entire year, given the incidence and prevalence rates found in studies by Koss, Rappoport and Burkhart, and Aizenman and Kelley.<sup>85</sup> In 1992, the fourteen state colleges and universities with full-time police forces reported a total of 19 rapes. Five of the fourteen colleges in 1992 reported that there were no reported rapes on campus.<sup>86</sup>

A federal law now requires most colleges to make certain crime statistics public. The federal Student Right-To-Know and Crime Awareness and Campus Security Act of 1990, effective in 1991, requires all institutions of higher education receiving federal funding to make campus crime statistics available to current and potential students, faculty and staff.<sup>87</sup> These reporting and program requirements were expanded with the passage of the Campus

Sexual Assault Victim's Bill of Rights Amendment to the federal Higher Education Act of 1992.<sup>88</sup> As a result, for 1992, 28 of New Jersey's 60 public and independent college and university campuses reported a total of 16 forcible sex offenses, 3 nonforcible sex offenses, and 8 rapes. Of the 28 institutions whose data was published, fully 20 reported not a single sexual assault in 1991 and 17 reported no sexual assaults in 1992.<sup>89</sup>

Actual incidence of sexual assault on New Jersey's campuses is significantly higher than that reported to the Division of State Police or collected pursuant to the federal amendment to the Higher Education Act of 1992, according to complaints made by victims to campus women's centers, rape crisis centers, counselling centers, rape hotlines,<sup>90</sup> and through student self-reports in campus studies. In addition, campus women's centers and directors of student affairs in New Jersey are reporting a marked increase in physical assaults that are not sexual assaults against women by their boyfriends, husbands or mates. The 1988 Rutgers study found that one in four female students was a victim of dating violence. Rather than promoting the reporting of statistics, state and federal legislation has, contrary to the intent of its sponsors, too often resulted in maneuvering about how incidents get reported and obfuscation of the magnitude of the problems on campus.

In order to calculate a range of probable incidence of sexual assault or rape on New Jersey college and university campuses, one can apply the rates derived from a number of national and state studies:

- Mary Koss found that one in four female college students reports having been the victim of sexual assault or attempted sexual assault in the preceding year.<sup>91</sup>

- The Aizenman and Kelley study at Rutgers found that 22 percent of female freshman and sophomores reported being raped by an acquaintance and 29 percent reported having been coerced into having intercourse.

- A national study conducted by the Center for the Study and Prevention of Campus Violence at Towson State University found that 7 percent of 6,195 female students responding reported in 1990 having been raped or date raped while a college student.<sup>92</sup> This figure did not include incidents of sexual assault or sexual harassment other than "rape" or "date rape," which may account for the lower incidence rate. Of these reported incidents, 73.9 percent of the sexually related crimes were committed by fellow students, over 30 percent of these sexual crimes were committed by fraternity members and 67.4 percent of the perpetrators of sexual related crimes were reported by the victims to be using drugs and/or alcohol at the time of the crime.

- A 1990 study of campus violence at William Paterson College, directed by Dr. Carole Sheffield, found that 4 percent of women students reported having been sexually assaulted on campus.<sup>93</sup> This relatively low number is due in large part to the fact that it is derived from only one question in a study devoted to campus violence and to the fact that the one question asked only if the student had been "sexually assaulted." In the same year (1990) that William Paterson College reported to the Division of State Police that one rape had occurred on campus, fully 89 students (88 of whom were women) reported having been sexually assaulted in the campus violence survey. An additional 4 percent of responding women faculty and staff members reported being sexually assaulted on the William Paterson campus in 1990.

If one applies the 25 percent national sexual assault prevalence rate (Koss, 1987) to

New Jersey's 190,627 undergraduate and post-baccalaureate women students in public and independent colleges and universities,<sup>94</sup> then up to 47,657 New Jersey college women students have been the victims of sexual assault or attempted sexual assault during any one year on campus. The 22 percent figure for women forced to have sex against their will, from the Rappoport and Burkhart study, yields up to 41,938 female students when applied to New Jersey's college population. The 1988 Rutgers study by Aizenman and Kelley found that 22 percent of women students surveyed reported being raped by an acquaintance and 29 percent of women students reported being forced to have sex against their will — or 41,938 women students and 55,282 women students respectively, when applied to the total female student body in New Jersey's institutions of higher education. The more conservative 7 percent figure for only "rape/date rape" of female college students from the Towson State University linkage study would yield a total of 13,344 rape/date rapes when applied to the total female college population in New Jersey. The 4 percent figure for campus sexual assaults on women students derived from the William Paterson College study would yield a total of 7,625 sexual assaults of women students during their campus experience. These latter figures are not as reliable as those larger figures which are based on studies which questioned respondents in detail about the full range of behaviors they experienced. None of these figures include sexual assaults perpetrated against women faculty and staff on college and university campuses. And any of these estimates yield an incidence of assault considerably higher than the 19 rapes reported to the State Police or the 16 forcible sex offenses, 3 nonforcible sex offenses, and 8 rapes collected pursuant to the federal mandate for 28 of New Jersey's colleges in 1992.

Clearly, violence against women on college and university campuses nationally and in New Jersey is a common occurrence. Yet the reporting system currently in force does not capture the magnitude of the problem and consequently underestimates the institutional efforts and resources needed to deal with and prevent the problem.

The New Jersey Department of Higher Education never consistently collected information from the state institutions of higher education regarding the policies, reporting procedures, or resources available to women students, faculty and staff who are victims of sexual assault or sexual harassment. Nor did the Department collect any statistics from colleges and universities which would have helped it to determine the extent of the problem of sexual assault on campuses statewide.<sup>95</sup> The demise of the Department makes it less likely that colleges and universities will voluntarily seek out and publicize statistics about their own campuses.

The Center for the Study and Prevention of Campus Violence at Towson State University (Maryland), a nationally recognized center for the collection of sexual assault data on college campuses, strongly urges all campuses to conduct in-house research in order to develop meaningful programs and policies on campus violence. Surveys give victims an opportunity to safely and anonymously report their experiences and provide a relatively low-cost mechanism for education, for expressing concerns, and for validating the victims' experience. Publication of survey results also can encourage better media coverage of the issue. The studies that have been conducted on campuses in the past serve as a useful model. They indicate that the most effective survey program will provide the opportunity for longitudinal analysis through periodic implementation and will include specific questions related to

behaviors which describe varying levels of sexual assault and dating violence, as in the college-level National Survey of Inter-Gender Relationships, designed by Koss and Oros.<sup>96</sup> Such a survey instrument could be administered once every three years, to enable both students and administrators to assess progress. The instrument could have one form for males and another for females, as in the Koss study. Further, it could have a core of questions common to all institutions with the remaining questions developed by and pertinent to the individual institution.

**The Commission therefore recommends that every public and private degree-granting institution of higher education in New Jersey be required to administer to their students, faculty and staff once every three years an anonymous survey on sexual harassment, sexual assault and violence against women on their campuses, and that the results be made available to all current students, faculty and staff and, further, that the results be reported to the Commission on Higher Education and to the Office on the Prevention of Violence Against Women, New Jersey Division on Women. See Appendix G for proposed legislation.**

In addition to a lack of data regarding the magnitude of campus violence against women, institutions of higher education and the governmental bodies which oversee them lack accurate data on the true costs of harassment and violence in terms of legal fees, time invested to counter civil suits, monetary damages, settlements, and damage to institutional image. Numerous colleges and universities have been sued successfully following the sexual harassment, sexual assault or death of a student.<sup>97</sup> Even the costs of defending an unsuccessful suit can be substantial.

Currently there is no requirement that institutions of higher education inform the Department of Higher Education if they are involved in litigation or if they have settled a suit which has arisen from an incident of sexual harassment, sexual assault or dating violence. Consequently, the DHE has no data on the existence or outcome of such suits, in spite of its overall mandate to ensure quality at higher education institutions in the State. More information about the nature and number of such suits, the types of schools involved, the costs of defending the cases and the disposition of the cases would help colleges and governmental overseers to understand the costs of these cases to society. Such a reporting requirement may also help educational administrators to become more aware of the need to provide the basic components of policy, procedure, programs and services which will help to reduce the incidence of sexual assault on their campuses and render them less vulnerable to a civil suit.

**The Commission recommends that every public and private degree-granting institution of higher education in New Jersey be required to provide to the Commission on Higher Education on an annual basis a report detailing the civil suits or settlements arising from any incidents of campus sexual harassment, sexual assault or dating/ domestic violence during the reporting period. The report would list the number of such cases or settlements, the status of each case, the nature of the incident and basis for the suit, the form and substance of the resolution, the legal costs incurred by the institution, and the amount of any damage award or settlement. See Appendix H for proposed legislation.**

Although much of the structure to deal with sexual harassment, sexual assault and dating violence on college campuses is already mandated by the federal Campus Sexual Assault Victim's Bill of Rights Amendment to the Higher Education Act of 1992, the actual institutional support and implementation of effective prevention efforts and programs to deal with victims vary greatly from college to college. To remedy these discrepancies, in 1994 college administrators and providers of sexual assault services on campus formed an interdisciplinary task force on sexual harassment and violence against women — to plan, coordinate and evaluate the effectiveness of a program of primary, secondary, and tertiary prevention of sexual assault for the student body, faculty, and staff.<sup>98</sup> By pulling together representatives from the numerous departments and bodies concerned with sexual harassment and violence against women on campus, communication has been facilitated, uniform and consistent policies and procedures can be developed, and the active support of the administration can be demonstrated. One of the components which is strongly recommended is an in-depth analysis of the institutional climate enabling or serving to reduce sexual harassment and assault on campus.

**The Commission recommends that every public and private degree-granting institution of higher education in New Jersey be required to create within the institution an interdisciplinary task force on campus violence against women to plan, coordinate and evaluate a program of primary, secondary and tertiary prevention of campus sexual harassment, sexual assault, and dating/domestic violence. This task force might include the dean of students and representatives of residence life staff, campus security, campus counseling services, fraternity/sorority affairs, intercollegiate athletics, health services, campus ministry, the campus women's center, the campus sexual assault services, students, faculty, staff and the college disciplinary system.**

In June 1991, U.S. Representative Jim Ramstad (R-Minn.) introduced a bill regarding the rights of campus victims of sexual assault, (HR2363), and in the 1992/1993 and 1994/1995 New Jersey legislative sessions, Senator Wynona Lipman introduced a similar state measure, S-463 (1994). The federal bill was incorporated in a funding package signed in July 1992 by President Bush. The New Jersey measure was passed, and signed into law by Governor Whitman at a public ceremony on December 13, 1994.

Though similar to the federal mandates detailed in the Campus Sexual Assault Victim's Bill of Rights Amendment to the Higher Education Act of 1992, the New Jersey bill was needed for the following reasons:

- 1) the federal requirements were not well publicized and many colleges may not yet be fully aware of their obligations to campus victims of sexual violence;
- 2) not all New Jersey institutions of higher education fall under the jurisdiction of the federal bill;
- 3) the federal bill does not include any agency which would help colleges to comply, whereas the Commission on Higher Education is mandated to support institutions of higher education;
- 4) there are no substantive consequences for non-compliance to the federal bill.

**The Commission supported passage of Senate Bill 463, the Campus Sexual Assault Victim's Bill of Rights, as a means to help ensure that victims of sexual assault**

**in New Jersey's institutions of higher education receive the services, procedural justice, and all other rights due them. A copy of the new law is reproduced in Appendix I.**

### **Consent of Sexually Assaulted Minors to Medical Treatment**

Aside from the financial considerations of medical treatment, there is an additional problem facing minors when they are the victims of sexual assault. In 21 states, minors may consent to receiving general nonemergency medical care, although this consent power is in some states limited to minors who are 14 or 16 years old, or who are high school graduates, married, pregnant or a parent, or whose parents cannot be immediately reached. In 29 states and the District of Columbia, no law addresses the power of a minor to consent to nonemergency medical care.<sup>99</sup> Where the state has no law, relevant federal or state court decisions (or opinions of state attorneys general) may affect whether or not a minor can make medical decisions without consulting or gaining permission from his or her parents. For example, under Supreme Court rulings recognizing that minors have a fundamental constitutional right to privacy,<sup>100</sup> there is a presumption that a minor may make her own decision about abortion unless the state has enacted a law that specifically requires parental consent or notification. States commonly permit a doctor to treat a minor in an emergency without obtaining parental consent.<sup>101</sup>

In Arizona,<sup>102</sup> California,<sup>103</sup> Kentucky,<sup>104</sup> Maryland,<sup>105</sup> Missouri,<sup>106</sup> and Colorado,<sup>107</sup> minors who have been sexually assaulted may legally consent to be medically examined. This provision only holds true for Arizona if the victim's parent or guardian cannot be located by the medical facility providing the treatment. However, most states do require that the victim's parent or guardian be informed by the medical facility that the exam has taken place.<sup>108</sup> In Missouri, the State Department of Health assumes payment for the full cost of this examination.

In New Jersey, the law permits unmarried, unemancipated minors to consent to receiving medical care following a sexual assault, for sexually transmitted disease and venereal disease services, and for treatment for drug and alcohol abuse.<sup>109</sup> Minors in New Jersey also have the power by law to give consent for prenatal care and delivery services, medical care for a child, and the placing of a child for adoption.<sup>110</sup> There is no law in New Jersey prohibiting a minor from making a decision about contraceptive services, HIV testing and treatment, mental health services, general nonemergency medical care, or abortion services.<sup>111</sup> The New Jersey statutes specifically state that in the case of a minor who appears to have been sexually assaulted, the minor's parents or guardian shall be notified immediately, unless the attending physician believes that it is in the best interests of the patient not to do so. However, no consent from any party other than the minor is required and the inability of the treating physician or institution to locate or notify the parents or guardian are not to preclude the provision of necessary emergency or surgical care to the minor.<sup>112</sup>

In spite of these statutes, legal decisions and opinions, a physician or hospital may or may not in practice provide medical treatment to a minor without the consent of her parent or guardian. When a sexual assault victim who is a minor goes to a hospital for medical treatment, she may not necessarily receive any treatment because hospitals are concerned about

their legal liability. Some young women may receive medical treatment if the hospital decides to treat them as emancipated minors. That protocol, however, is the exception and not the rule. A recent study by the New Jersey Coalition Against Sexual Assault (NJCASA) in six New Jersey counties involving 27 hospitals documents a pattern of denial of medical services to minors who are victims of sexual assault when parental notification or consent is lacking.<sup>112</sup> In the study, 26 of 27 hospitals called said that their hospital policies precluded treating a minor victim of sexual assault without the consent of the minor's parents. Many minors cannot talk to their parents about being sexually assaulted and, without parental notification or consent, they do not receive any treatment. As a result, these victims may be infected with sexually transmitted diseases, may have been injured, or may be pregnant and not even be aware of it.

Because of the nature of the crime, the timely, expert medical care of victims of sexual assault -- regardless of their age or ability to pay for these services -- promotes both public health and criminal justice agendas.

**The Commission therefore recommends an amendment that would require that the provisions of New Jersey law allowing the treatment of minors who say they have been sexually assaulted, N.J.S. 9:17A-4, to be posted in all hospital and clinic emergency sites. A bill implementing this recommendation is located at Appendix J.**

#### **Coordination of Services for Victims of Sexual Assault**

A victim's first contact with the "system" often begins at the hospital with the medical exam and collection of evidence. At this point a variety of medical as well as police personnel can all become involved. In addition to the trauma the victim has just experienced, it is a very difficult and confusing time with all the various people requiring information from her. If the victim is to receive the proper information and services she needs, the efforts of these people must be properly integrated and coordinated.<sup>113</sup> But while many sexual assault victims first go to hospitals, some initially go to the police. Without a formalized coordination of efforts, either of these parties may assume that the other has provided information to the victim regarding her rights and the resources available to her. There needs to be a true coordination among police departments, hospitals, prosecutors, and rape crisis centers. To have effective prosecution and create a system that will be most conducive to the reporting of sexual assault, victims must be made aware of various procedures, what their rights are and what resources are available. Standardized procedures for the collection, preservation and transmission of forensic evidence, necessary for the prosecution of the case, can also best be achieved in a system which has well-defined, statewide guidelines and coordination.<sup>114</sup>

**The Commission therefore recommends that the NJ Department of Health, the NJ State Police in the Department of Law and Public Safety, the Attorney General, and the sexual assault provider network establish common guidelines and protocols for the provision of information and services to victims of sexual assault. A bill implementing this recommendation is located at Appendix K.**

# **DOMESTIC VIOLENCE**

In this country, a woman is more likely to be assaulted, injured, raped, or killed by a male companion than by any other type of assailant.<sup>1</sup> The National Coalition Against Domestic Violence in Washington, D.C. reports that over 50 percent of all women — of all religious, ethnic, racial, economic, educational backgrounds, of varying ages, physical abilities, and lifestyles — will experience physical violence in an intimate relationship, and for 24-30 percent of those women the battering will be regular and ongoing.<sup>2</sup> A 1994 U.S. Justice Department study found that two-thirds of violent attacks against women in the U.S. were committed by someone the victim knew, substantially higher than the rate experienced by men. Further, the study found that injuries to women were nearly twice as likely to occur if the offender was a husband or boyfriend than if the attacker was a stranger.<sup>3</sup>

There are no accurate prevalence figures on domestic violence, but domestic violence is possibly the most common crime in the nation. In a typical year, about 2.5 million of the nation's 107 million women 12 years old and older are raped, robbed or assaulted, or suffer a threat or an attempt to commit such crimes.<sup>4</sup> A 1985 national survey found that 1.8 million women in the nation living in a couple relationship, or about 3.4 percent, were the victims of attacks by their mate likely to cause injury such as kicking, biting, punching, hitting with an object, beating up, threatening with or using a weapon. If domestic violence is defined to include slapping, grabbing, pushing, shoving and other attacks less likely to cause injury, the percent of women subjected to attacks rises to 11.6 percent, or 6.1 million women.<sup>5</sup> These are conservative incidence figures, because the study only questioned couples who were married or living together and asked only about violent episodes during the current year. Both the National Crime Victims Survey (NCVS) conducted by the U.S. Department of Justice and an NIMH study conducted by Stark and Flitcraft found that approximately 75 percent of domestic violence occurs to women who are single, separated or divorced and that a woman who has not been physically beaten in the current year may still be threatened because of a violent episode in a previous year.<sup>6</sup> It is clear that many women are currently in battering relationships. State polls indicate that 21 percent of the women report being in abusive relationships in Kentucky and North Carolina, 29 percent in Texas and 26 percent in Pennsylvania.<sup>7</sup>

It is commonly believed that the overwhelming proportion of victims of recurring or severe domestic violence are women. This view is consistent with the accepted etiology of family abuse and the inferior status assigned to women in this culture. The 1985 National Crime Victim Survey (NCVS) reported annual spousal assault by men was 13 times more common than spousal assault by women — 3.9 percent compared to 0.3 percent.<sup>8</sup> The data in this study may be corrupted, both with respect to the relatively low incidence rates reported and the proportion assigned to women and men, however, because the NCVS used an interview format in which both partners were present. Other studies have found roughly equivalent rates of violence by both male and female spouses, but the studies themselves and recent clarifying statements by the researchers stress that the level of violence, the severity of injury, the dynamics which caused the violence, and the disparity of incidence rates depend on the sex of the victim and whether the female or the male is the source of information.<sup>9</sup> A 1992 analysis of NCVS data concluded that 43 percent of female murders were by the spouse of the victim or an intimate acquaintance, a marked contrast to the 7.5 percent of murders of males committed by a partner.<sup>10</sup>

Violence occurs in many types of intimate relationships between men and women. In surveys of American college students, 21 to 30 percent report at least one occurrence of physical assault with a dating partner.<sup>11</sup> Among the many studies about violence among unmarried persons, two using random samples found that 19 percent and 31.5 percent of unmarried persons respectively were victims of physical aggression; the preponderance of victims were female.<sup>12</sup> Studies that examined the incidence of violence in dating and courtship found that between 10 and 67 percent of dating relationships involve violence.<sup>13</sup> According to the Justice Department study, the number of women attacked by spouses, ex-spouses, boyfriends, parents or their children was more than 10 times the rate for men.<sup>14</sup> The physical assault of women and adolescent females is probably the most severely underreported crime, behind even sexual assault and sexual harassment.<sup>15</sup> The last U.S. Attorney General identified domestic violence as a major public health problem,<sup>16</sup> and Surgeons General and the AMA have called for massive training in the identification of the victims of this crime by doctors and nurses.<sup>17</sup>

Jackie Marich of the New Jersey Advisory Council on Domestic Violence testified before the Commission that in one study, 21 percent of pregnant women using a hospital emergency room had been battered, resulting in double the number of miscarriages as for nonbattered women. She reported that an estimated 30 percent of all sexual assault victims are battered women and that FBI data indicated that 30 percent of female homicide victims are killed by their husbands or boyfriends. This statistic translates into the death of four women per day in this country at the hands of their male partners.<sup>18</sup>

In New Jersey in 1993, there were 66,248 reported incidents of domestic violence, a 27 percent increase from the 53,321 reported offenses in 1992 and women were the victims in 83 percent of these cases.<sup>19</sup> Reported incidents are estimated to be less than 10 percent of actual incidence of domestic violence.<sup>20</sup> Other studies calculate the rate of reporting of domestic violence to be as low as one in twenty-five<sup>21</sup> and one in 270.<sup>22</sup> Assaults accounted for 57 percent of reported offenses in 1993. The number of reported domestic violence complaints that had prior court orders issued against the offender increased from 12,051 in 1992 to 15,631 in 1993, a 30 percent increase.<sup>23</sup> The frequency of domestic violence is therefore more than one act of domestic violence in New Jersey every eight minutes.<sup>24</sup>

Domestic violence results in more injuries that require medical treatment than rape, auto accidents, and muggings combined,<sup>25</sup> and yet the diagnosis of domestic violence is almost unseen in emergency room charts.<sup>26</sup> Each year more than 2,000 American women are killed by intimate partners who are men; another several thousand children and other relatives of battered women are killed by the women's abusers, either with the women or in an attempt to control the victim. The latest estimates say that domestic violence may be the "number one draw on the domestic economy";<sup>27</sup> in addition to direct medical costs, domestic violence is a major direct cause of or contributor to disability, long-term welfare dependence, child neglect, homelessness, depression and other mental illness, chemical dependence, criminal behavior by battered women and their children, truancy, and loss of employment and productivity among women in the workforce. The cost to the nation for simply the medical, child protection, criminal justice and employment productivity losses resulting from domestic violence range from \$5 to \$10 billion a year. Foster care costs attributable to family violence cost an additional \$10 billion annually.<sup>28</sup>

One societal attitude that reinforces the beating of women in their homes is the notion that women deserve, solicit, or expect such beatings. Battered women are the victims of violence for reasons that have to do with the perpetrator's need to control another person; no provocation is necessary. Typically, abusers blame their victims for provoking abuse with verbal taunts.<sup>29</sup> The acceptance of this explanation requires the hearer to also accept that violence is a proper response to interpersonal problems.<sup>30</sup> A basic concept of American jurisprudence, often abandoned in the public perception of these cases, is that only a person who does an act can be responsible for that act. Typically, abusers tell judges that they have lost control of themselves because of something their victim did or did not do. In any other context that argument would be dismissed as absurd, but because of stereotypical thinking about the proper roles of women and men, it is instead viewed as not only possible but likely by many people. (Common stereotypes include the "nag" who finally got hers; the golddigger who needs a spanking to behave; characterization of wife-battering or even spousal murder in the newspapers as "marital disputes", "stormy relationships", or "family arguments.") Victim-blaming puts countless more women at risk for abuse, and its wide-spread acceptance contributes to victims' reluctance to leave or to report abuse, and to their tendency to accept blame for the abuse themselves. Unfortunately for them, they do not have the power to stop the abuse by changing their behavior. The experience of generations of abused women suggests that no behavior in which they may engage to accommodate an abuser will be sufficient to make it stop.

Despite the public perception that domestic violence occurs with greater frequency among minorities and the poor, it actually occurs in all sectors of society with the same frequency.<sup>31</sup> Low-income battered women are more likely to seek public help (welfare rather than jobs, shelters rather than the homes of friends and relatives, and emergency rooms rather than private physicians' offices)<sup>32</sup> and to be charged with crimes when they fight their abusers,<sup>33</sup> but these factors make poor women more visible, not more vulnerable. The crime of domestic violence is a crime motivated by a need for power and control, not by economics or lack of opportunity. The motivation of power and control, expressed in a crime in which the overwhelming number of victims are women and the overwhelming number of perpetrators are men is a natural extension of our society's sex role stereotypes. Men are supposed to be powerful, "in control"; women are expected to be passive and hysterical.<sup>34</sup> Two prominent researchers, after exhaustive study, concluded that men beat women "because they can."<sup>35</sup> There is a societal consequence for assaulting a stranger, but there is less of a consequence for assaulting a "loved one" if you are male and she is female.<sup>36</sup> The reverse is not true.<sup>37</sup> In fact, it is only a recent development in the law that such crimes against women were punishable at all. There were, under statutes and common law, specific exemptions for intramarital crimes.<sup>38</sup> A husband, for example, was permitted both by English common law and U.S. court decisions to chastise his wife by beating her with a stick, so long as the stick was no larger than the thickness of his thumb, hence the phrase "rule of thumb."<sup>39</sup> A man was also permitted to rape his wife with impunity, since the law exempted marital rape from prosecution.<sup>40</sup> The exemptions have been repealed in most jurisdictions, but training of law enforcement personnel in family violence law lags behind training in other areas, enforcement is not vigorous, and societal change has not kept pace with legal mandates. Although over 33 percent of non-stranger assaults nationally involved the use of guns, knives, bludgeons, or other weapons, and over 80 percent of the victims wanted the police to make an arrest, the assailant was arrested in only 41 percent of the cases. Most of the cases were prosecuted as

misdemeanors rather than felonies.<sup>41</sup>

When prosecutors and victims of domestic violence seek to use the criminal statutes to punish perpetrators, the structure of the assault laws in New Jersey creates a problem pointed out to the Commission by Deputy First Assistant Prosecutor John Redden of Essex County. There is a huge gap in procedure and punishment between simple assault and aggravated assault, which are distinguished essentially by the nature of the injury intended. If the perpetrator causes or intends serious bodily injury, the charge is aggravated assault. The offense is indictable, is tried in Superior Court, and can lead to incarceration for 10 years and a fine of \$100,000. If the perpetrator causes or intends only bodily injury, the matter is a non-indictable disorderly persons offense, not a crime, is heard in municipal court, and the penalties are limited to 6 months in jail and a \$1000 fine. Serious bodily injury requires the risk of death, serious permanent disfigurement, or a protracted loss from impairment of a bodily member or organ.<sup>42</sup>

Obviously, the sensitivity of the police officer who responds to a domestic violence incident is critical when the officer is the person making the first determination of what crime will be charged. The documentation of the injuries, attitude, and history of the violence are essential to an acknowledgment of just how dangerous domestic violence is to its victims. A blow or kick to the abdomen may be a simple assault. If, however, the victim is pregnant, her assailant may intend to cause the miscarriage of the pregnancy, which in reality would be a serious bodily injury to the woman, but this is a situation virtually ignored in the law. The first reason it is not acknowledged is the reticence of the charging officers to recognize the fetus as a part of the woman. The second is that the criminal laws are written to adjudicate crimes between strangers, and the intent to harm a woman by threatening her pregnancy, especially an early, non-visible pregnancy, is common in domestic violence assaults but would never arise in a stranger assault. A third reason, which applies to pregnant women and any other victim of domestic violence, is the lingering attitude of police and others that a fight within a family is less serious than any other assault, so that the danger is denied and minimized.

In other instances in which the gap between a simple assault and an aggravated assault was too great for society to tolerate, the Legislature has enacted special categories of victims that it wishes to protect, and has enhanced simple assaults based on the circumstances regardless of the injury. A person assaulted with a weapon can charge the perpetrator with a third degree crime. A person who subjects a police officer or emergency medical worker to a simple assault is charged with aggravated assault. Other categories of victims raise the simple assault to a third or fourth degree crime, which carry penalties of 18 months to 3-5 years and \$7500.

**The Commission therefore endorses fully the provision of Senate Bill No. 402 (Sinagra/Kyrillos) and Assembly Bill No. 942 (Gregory-Schocchi) which would amend N.J.S.A. 2C:12-2e. to include "gender" in the categories of bias crime triggers, although it recommends amendment of other provisions of the bill (see Sexual Assault chapter at page 11. Further, the Commission would add a new section (N.J.S.A. 2C:12-2f.) that would upgrade to a fourth degree crime any simple assault committed on a person protected from the assailant under the Prevention of Domestic Violence Act. A draft of legislation to accomplish this recommendation is at Appendix L.**

Many activists in the field of family violence believe that the true "cure" for woman abuse is the promotion of political, economic, and social equity for women.<sup>43</sup> However, police intervention, shelters, and adequate medical care are necessary until equity is realized, and those systems and training for the persons who work in them must be adequately funded to assure protection. Research over the last ten years indicates that women who attempt to leave their batterers are at an elevated risk of battery or homicide from the moment the batterer perceives the woman intends to leave the relationship until the abuser no longer wants the woman. In a 1992 Ontario study, women were found to be at five times greater risk of being killed during the period of separation than prior to separation or after divorce.<sup>44</sup> Two other studies found that as many as 50 percent of women killed by partners or husbands are murdered at or after separation.<sup>45</sup> In another study, as many as 73 percent of women identified as battered who underwent treatment in hospital emergency departments had left or were in the process of leaving their batterer.<sup>46</sup> The social service and law enforcement systems must therefore work collaboratively to help ensure the safety of those women who try to escape their abusers. Reacting to reports that many victims believe crimes involving domestic violence are not treated the same way as crimes in which the complaining party and the defendant do not know each other, a Maryland study asked judges and attorneys to respond to the statement that courts do not treat domestic violence as a crime. Nearly one quarter of judges surveyed agreed that this was always or often true and over half of both male and female attorneys with substantial domestic relations practices thought the statement was always, often or sometimes true.<sup>47</sup> The rate of prosecution and conviction drops sharply when there is a current or prior relationship between the victim and assailant.<sup>48</sup> In another study, only 4 percent of reported assaults between partners resulted in court action even though the attacks tended to be more serious than attacks by strangers.<sup>49</sup>

**The Commission has been involved in the creation and improvement of legislation that provides protection and enforcement of criminal and civil remedies for victims of domestic violence, most recently by assisting in the drafting of the Prevention of Domestic Violence Act of 1990<sup>50</sup> and the 1994 amendments to the Prevention of Domestic Violence Act.<sup>51</sup> (See Appendix M for a chronology of domestic violence laws in New Jersey)**

**The Commission recommends passage of Assembly Bill 1367 (Heck/Weinberg)/S1515 (Lipman) which would establish a central registry of domestic violence orders for use in evaluating firearm permit applications, and Assembly Bill 1368 (Heck/Weinberg)/S472 (Ewing/Palaia) which would restrict the purchase of firearms by anyone who has been the subject of a domestic violence restraining order. Copies of these bills are found at Appendix N .**

## **UNIFORM STATEWIDE PROTOCOLS AND REQUIRED TRAINING IN VIOLENCE AGAINST WOMEN FOR ALL POLICE AND PROSECUTORS**

As counselors of victims of domestic violence and sexual assault have learned, women who are abused do not act as others who are not subjected to long-term physical and emotional abuse might act in a given situation or in response to a given provocation. There is reason to their decisions, but it is the reason of the survivor, not that of the "reasonable person" that police and prosecutors envision when they make their decisions about whether

to believe a woman who says she is abused, about whether she needs protection, or about whether the evidence in her case merits sending the case to a grand jury or letting it drop. For instance, the pattern of repeatedly seeking temporary restraining orders only to drop them is likely to indicate a situation of intense abuse and fear rather than the fickle and superficial marital discord which police officers, the media, the courts, and the general public usually infer from these actions.

How an incident will be defined, what evidence will or will not be collected, whether a victim will receive needed medical and counselling services — each of these critical issues depends on whether or not the law enforcement personnel who respond to a call have been trained in the dynamics and issues of violence against women. Although there are many promising developments in the prosecution of domestic violence offenses — a decision which lies within the purview of the county prosecutor — there remains a general lack of accountability of batterers by the criminal justice system in most counties. Failure to aggressively prosecute, convict and jail for contempt of civil restraining orders and continued abusive acts thwarts the effectiveness of mandatory arrest and other deterrence measures. It therefore leaves many victims living in terror, unable to secure immediate, effective sanctions for continued abuse.

When ill-informed stereotypes of victims of domestic violence and other crimes of violence against women form the basis for decisions, perpetrators of violence against women are not prosecuted, victims of domestic violence do not receive needed services, and women victims of violence are generally afraid to call on law enforcement personnel for help — all because too few New Jersey police officers and prosecutorial staff have received sufficient, if any, training. All police, sheriffs, juvenile detention and adult correctional officers, probation officers and prosecutors need to receive training in domestic violence and sexual assault from experts in the field as part of their basic training and as required in-service training if they are to effectively address the needs of abused women and bring abusers to court.

Too often police departments believe that officers can learn what they need to know about violence against women “on the job” or “from their fellow officers.” In this way, the victim-blaming, gender discriminatory stereotypes about women victims of crime and their assailants are perpetuated instead of being corrected. There are periodic movements to provide specialized training for law enforcement personnel in recent years, but it is often seen as being too costly in police overtime. The resulting costs to the State and to society in medical bills, lost productivity and social service costs far outweigh the cost of training law enforcement and prosecutorial personnel.<sup>52</sup>

Under the Prevention of Domestic Violence Act of 1991, as amended in 1994, all law enforcement officers are required to receive training in the handling, investigation and response procedures concerning reports of domestic violence and abuse within 90 days of appointment and biannually thereafter.<sup>53</sup> The Division of Criminal Justice is responsible for providing this training. However, no appropriations have ever been made to carry out this mandate and the intent of the law has not been carried out.

**The Commission therefore recommends that the subjects of domestic violence, sexual assault, and sexual harassment training be added to the list of training subjects**

enumerated in the law that created the Police Training Commission, and that the director of the Division on Women be added as an *ex officio* member of the Police Training Commission. A bill draft may be found at Appendix O.

A common experience of battered women is that for years after they end an abusive relationship they must avoid their abusers or be in danger. Many of them assume new names, move far away, and take other steps to keep their location a secret from the former husband or lover. Abusers are so persistent that in some cases it has been dangerous for women to make their address public for even the most important reasons. When the danger threatened their right to vote (because registration requires a complete and verified address, and the registration lists are public), New Jersey courts found that the state had to accommodate the victims.<sup>54</sup> The legislature recently codified the procedure for allowing victims of domestic violence to vote without compromising their safety.

**The Commission endorsed Senate Bill 716, signed as P. L. 1994, c. 148. A copy of the new law is found in Appendix P.**

**The Commission further recommends that the Legislature adopt a system similar to that available in Washington, in which victims of domestic violence can substitute an address provided by the Secretary of State for a street location and use that address for official correspondence. The files connecting the victim's actual location and the public address would be held in confidence by the Secretary of State and would be available only when requested by a law enforcement agency or ordered released by a court. A bill implementing this recommendation is located at Appendix Q.**

## **COUNSELLING SERVICES FOR VICTIMS OF VIOLENCE AGAINST WOMEN**

Recently, the State began its process to license social workers. While the bill that created this licensure procedure had the laudable goal of making social workers eligible for third-party payment, thereby expanding their ability to offer services, the regulatory process created what the Commission believes is an unintentional hardship for those who seek help from crisis counselors. Under the regulations, every paid or volunteer crisis counselor must be supervised by a social worker, even where the service is free to the consumer and even if the counselor is not providing what could only be provided by social workers. The potential negative impact on domestic violence shelters, hotlines, and rape crisis centers, and therefore on victims who are primarily women, is immense. The law and regulations exempt many professionals from the prohibition on practice without supervision by a social worker; ministers, lawyers, doctors, and others who are licensed by the state to provide social services are not required to be supervised by a social worker before they can provide counseling in life options or exploration of alternative courses of action, for example. The fields that deal with women in crisis, however, have never created licenses to do so. The fields are so new and so underfunded that there is currently only a private certification process, less than a year old, in the domestic violence field, and no license for rape crisis counselors at all.

**The Commission therefore endorses Assembly Bill No. 2334(Cohen/Lance) and its companion, Senate Bill No. 1557 (DiFrancisco/Kyrillos) which would exempt, among others, victim counselors as defined in N.J.S.A. 2A:84A-22.13 et seq. from N.J.S.A.45:15BB-5's requirement that they be supervised by licensed social workers**

or prohibited from offering services. Copies of the bills are at Appendix R.

## **INSURANCE DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE**

The New Jersey statutes regarding unfair discrimination in the issuance of insurance permit discrimination against anyone who does not have an "equal expectation of life" or does not face "essentially the same hazard,"<sup>55</sup> thus severely impacting the ability of victims of domestic violence to obtain insurance for the medical and other health related services they need and, further, forcing many victims of abuse and their children to return to the perpetrator of the abuse in order to obtain insurance coverage.

Recent news coverage has drawn attention to the fact that some insurance companies will not provide coverage for victims of domestic violence. This includes medical, life and mortgage disability insurance. Of sixteen companies surveyed by the House Judiciary Subcommittee on Crime and Criminal Justice, eight said they would not insure battered women.<sup>56</sup> Their reasons ranged from comparing battered women to diabetics who will not take their insulin, to refusing coverage in order to protect the victims from being murdered by abusers intent upon receiving insurance benefits.

According to the Department of Insurance, nothing prevents the majority of New Jersey insurers from discriminating on the basis of a person being a domestic violence victim or a potential domestic violence victim. New Jersey's new standardized health insurance packages disallow discrimination in coverage and premiums through the policy of community rating, and other insurance packages — like policies issued by self-insuring employers of more than 49 employees or policies which have been grandparented under the new legislation — still allow "fair" discrimination on the basis of increased risk. Some health care plans explicitly list "expenses of a dependent arising from or related to a domestic dispute" as an exclusion.

State Farm, which used to offer coverage to a victim after there had been no domestic violence incidents for a year, has recently announced it will now insure battered women. However, there have been no statements by the other seven companies of a similar nature. Companies trading in New Jersey that have indicated they would not issue policies if they were aware of domestic violence include Metropolitan Life, Prudential and Nationwide

In addition, according to the Department of Insurance, companies in New Jersey are only prohibited from discriminating in issuing policies based on race, color, creed and national origin. Gender is not included in this list. Since the majority of victims of domestic violence are women, many of whom are dependent on their batterers for health insurance, denial of coverage certainly has a discriminatory effect.

**Therefore the Commission recommends the enactment with amendments of Assembly Bill 1969 (Gregory-Scocchi), an act concerning the provision of health benefits to victims of domestic violence. A copy of the bill is provided in Appendix S.**

**Further, the Commission recommends the amendment of N.J.S.A. 17B:30-12 to include sex as a characteristic on the basis of which discrimination in the issuance of policies is deemed to be discriminatory. A bill accomplishing this purpose is located**

in Appendix T.

## COMPENSATION TO VICTIMS OF DOMESTIC VIOLENCE

Victims of violent crime are entitled by law to be reimbursed for medical and counseling expenses and lost wages which result from the crime. The Violent Crimes Compensation Board (VCCB) reimburses victims of crime for out-of-pocket expenses over \$100 which are not compensable from insurance or other sources. However, in spite of an annual reported incidence of some 50,000 to 60,000 cases of domestic violence in New Jersey and an estimated actual incidence of at least 500,000, the VCCB has since 1988 received a total of only 279 applications for compensation for domestic violence.<sup>57</sup> While many of the 500,000 or more victims of domestic violence in New Jersey every year choose for a variety of reasons not to report the incident to the police, more than 50,000 women each year do make their victimization a matter of public record. Why then have only 279 of these women in seven years sought reimbursement for the medical services and counseling needed by most victims of abuse?

It has only been since 1991 that victims of domestic violence who do not leave the household of their attacker could even be considered for this form of compensation. Until then, the statutes specifically stated that "No compensation shall be awarded if the victim: a. Is a relative of the offender and the victim and offender presently live in the same household or the victim did not cooperate in the prosecution of the offender, b. Was at the time of the personal injury of the victim living with the offender as a member of his family relationship group and the victim and offender presently live in the same household or the victim did not cooperate in the prosecution of the offender."<sup>58</sup> This law was completely insensitive to the realities of victims of both domestic violence and child sexual assault, disregarding the financial and psychological dependency of such victims on their abusers and disregarding the significantly increased risk of death or severe injury which results from the victim's efforts to leave the abuser. Both government and independent academic studies have found that abuse of battered women and children sharply escalates at the time the parents separate, as the father attempts to reclaim the family or retaliate. A 1992 Ontario study found that during separation abused women are five times more likely to be killed by their husbands than prior to separation or after divorce.<sup>59</sup> Two other studies have found that as many as 50 percent of women killed by partners or husbands are murdered at or after separation.<sup>60</sup>

In 1990, amendments were made to the Criminal Injuries Compensation Act of 1971 such that compensation — as it affects victims of domestic violence, child sexual assault, and sexual assault — would no longer be denied on the grounds that the victim was still living with the offender, but would instead not be awarded if "compensation to the victim proves to be substantial unjust enrichment to the offender or if the victim did not cooperate with the reasonable requests of law enforcement authorities unless the victim demonstrates a compelling health or safety reason for not cooperating."<sup>61</sup>

Many women do not even know that a state board exists that can compensate them for expenses resulting from a violent crime. In addition, many other victims of abuse do not want anyone to know of their situation. The greatest bar, however, for the large numbers of abused women needing compensation from the VCCB is the requirement that they file criminal charges

against the offender. Only if criminal, rather than civil, charges are filed can the case fall under the purview of the compensation board created to reimburse victims of violent crimes. Of the women who call in the police to deal with an incident of abuse, many have not been willing or felt safe enough to file any charge, either civil or criminal, against their abuser. Of those who file charges, the majority will only file civil charges.<sup>62</sup> Since the passage of the Prevention of Domestic Violence Act of 1991, requiring responding police officers to arrest offenders on criminal charges if they see evidence of or probable cause to believe an act of domestic violence has been committed, the number of criminal charges for domestic violence has risen. Often, the criminal charges are filed against the wishes of the abused woman, who rightly fears the retaliation of the abuser.

And the prospects for compensation are so dim that applying may be more trouble than it is worth for this particular class of victims. The statutory preconditions for application work a particular hardship on victims of crimes whose attackers are cohabitants or coparents with the victim:

- the compensation must not unjustly enrich the offender,
- the victim cooperate with the reasonable requests of law enforcement authorities,
- the victim must apply for reimbursement within two years after the date of the personal injury,
- the victim must have filed charges with the police against the perpetrator within three months of the incident.

All of these conditions must be met before the victim can be considered for a compensatory award.

Although the statutes do allow the victim, at a hearing, to demonstrate a compelling health or safety reason for not fulfilling the first three preconditions for compensation, the process is sufficiently public and sufficiently daunting that few battered women choose to subject themselves to it. In all cases, the victim must report the incident to the police within three months and in all cases the victim must file criminal charges against the offender. Any amendments to these preconditions which would help insulate the victim — in time or through other means — from possible retaliation from the abuser would lessen the barriers to women receiving needed compensation for medical and other expenses related to the abuse. Instead, legislation was recently introduced which would reduce the allowable time period for reporting a crime to 72 hours. Such a time limitation would not realistically allow a woman traumatized or brutalized by domestic violence or sexual assault sufficient time to recover physically or psychologically to feel able to report her abuser or attacker to the police. Even if the current Board interprets this time limitation flexibly in cases of domestic violence, child sexual assault and sexual assault, the flexibility should be written into the statutes. Fortunately, the bill was amended in committee to delete the most draconian effects on women.

Many victims of repeated brutal abuse and beatings have injuries and other medical expenses resulting from the battering for which they cannot pay unless they are reimbursed in a timely manner by the VCCB or given restitution by the judge. An examination of claims settlements by the VCCB in cases of sexual assault and domestic violence shows time lags of two, three, four and even six years before payment is finalized. Victims should not be denied essential medical services, counseling or reimbursement for lost wages — and providers of these services should not be denied payment — because the victims, knowing the

threshold of anger, violence, and retaliation of the person they live with, determine that their physical safety and that of their children may require that they not try to leave the household at that time or not press criminal charges right away. Further, many victims of abuse who do manage to leave their abuser are forced to return to the abusive situation to get the medical coverage which is in the control of the abuser because their VCCB claim has been denied or taken years for the claim to be paid.

**The Commission therefore endorses S 871 (La Rossa/Inverso) and A1629 (Lustbader/Lance) as amended. See Appendix C.**

**Further, the Commission urges that in cases of domestic violence — civil or criminal — judges in every possible instance award direct restitution to the abused victim from the abuser to cover the cost of medical, psychological, and other services required by the victim and her children as a result of the abuse. In the event that the case is dealt with through a plea bargain, the defendant should be required to provide direct compensation to his victims.**

## **DATING VIOLENCE**

Abuse of an intimate does not require cohabitation. People who date can become involved in a power relationship that is physically or psychologically abusive. There is an alarmingly high incidence of violence and abuse in the dating relationships of high school and college students. Studies of high school students have found from 9 percent<sup>63</sup> to 41 percent<sup>64</sup> of students having at least one experience with dating violence. Among college students, frequencies appear even higher, with a range of from 16 percent<sup>65</sup> to 36 percent<sup>66</sup> of students surveyed experiencing some form of courtship violence. Dating violence is not an isolated act committed by a deranged individual, but a tragically common occurrence between young men and women who have grown up in a culture where men are expected to control women, and particularly those who have been raised in households in which men exert that control by the use of physical threats and abuse.

Regina Braham, Community Education Coordinator of the Jersey Battered Women's Services, testified before the Commission that adolescents are subject to many of the same sexual expectations that perpetuate violence against women in adult, intimate relationships. These teenage dating relationships mirror those of adult relationships with the male using physical, emotional, verbal, and psychological abuse to gain power and control over his female partner. The more involved, intimate and long-standing the dating relationship, the more likely that it will contain violence. According to Braham, the highest risk factor for becoming a victim of dating violence is being female. Dating violence is a potentially life-threatening problem. In the U.S., 600 teens die each year as a result of dating violence. The main difference between domestic violence and dating violence is that the vast majority of people in violent dating relationships have no civil remedy to help protect them from their abuser.<sup>67</sup>

Paul Hart, retired detective and juvenile officer, testified at the Commission hearings about the high level of violence against female adolescents. "If you don't believe me, if you don't think that what I am saying is true, read your local newspapers for 30 days. Let's start counting the bodies of the girls....One of the big problems we see with dating — abusive

relationships — is that very often they are seen and observed in the schools on a daily basis, and teachers don't take it for what it is. They don't see the potential. They don't see the danger, and they don't understand it. We have viewed teenage relationships as transient in nature and it will all be over and done with. Unfortunately, we are losing a lot of young girls to this phenomenon." <sup>68</sup>

In New Jersey, the Prevention of Domestic Violence Act is the civil remedy which provides protection to victims. It was recently amended to include dating couples.

**The Commission therefore supported the passage of P.L. 1994, chapter 93, which is reproduced at Appendix U.**

## **THE NEXT GENERATION**

In homes where domestic violence occurs, children are at high risk of suffering physical abuse themselves,<sup>69</sup> and boys in violent families have a higher incidence of violent behavior toward partners as adults.<sup>70</sup> The impact of domestic violence on children was discussed by Jackie Marich of the Advisory Council on Domestic Violence at the Commission hearings.<sup>71</sup> Regardless of whether children are also physically abused, the emotional effects of witnessing domestic violence are very similar to the psychological trauma associated with being a victim of child abuse. The Division of Youth and Family Services (DYFS) reported that of the 50,823 domestic violence offences reported by local police agencies in New Jersey in 1990, children were involved or present in 53 percent of the reported offences. The New Jersey State Police reported that children were involved or present during 50 percent of all domestic violence offenses in 1993; children were involved in 9 percent (5,736) and were present at 42 percent (27,505) domestic violence offenses in 1993. DYFS receives some 2,600 referrals on children each year who were living in a home where domestic violence was identified at the time of the referral.<sup>72</sup> Research suggests that battering is the single most common factor among mothers of abused children,<sup>73</sup> thus making child battering a very good predictor of woman abuse. Many experts ask why investigations into child abuse are not triggers for the woman abuse system of states or police departments, and vice versa. In fact, in 1984, only 15 states participating in the American Humane Association's National Study of Child Abuse and Neglect collected data on the mother's abuse.<sup>74</sup> In 1985, this number dropped to 6 states collecting these data.<sup>75</sup> In New Jersey, DYFS investigators are instructed to perform a complete family assessment, and one of the tools they use for this lists "marital violence" as one of the factors to check off. However, protocols do not specifically instruct caseworkers to look for woman abuse when child abuse is alleged or suspected. <sup>76</sup>

**The Commission therefore recommends that the Department of Human Services be required to notify every parent involved in a child abuse or neglect investigation of the services offered by local and state domestic violence programs, and that the courts be required to notify each parent of minor children who files a domestic violence complaint of any local and state public or nonprofit services available that offer child counselling or assistance or support for parenting. See similar suggestion from the Advisory Council on Domestic Violence in its 1990 Annual Report, reproduced at Appendix V, and bill draft at Appendix W.**

Nationally, children are present in about half the homes where police intervene;<sup>77</sup> these children are at greater than normal risk to experience cognitive or language problems, are at a greater risk for delinquency and substance abuse, have a higher rate of stress-related physical ailments, and suffer much more frequently from developmental delays, hearing, and speech problems than children from non-violent homes.<sup>78</sup> They are often injured when they try to intervene in the violence.<sup>79</sup> Fully 63 percent of youngsters aged eleven to twenty years old imprisoned for murder in this country are there because they killed their mother's batterer.<sup>80</sup>

**The Commission therefore recommends that the definition of child abuse be expanded to include the witnessing of family violence, and that the restraints available to victims of domestic violence be made available to victims of child abuse; that is, that abusive parents can be removed from the household. See bill drafts at Appendix W. The Commission also recommends the enactment of an amended version of Assembly Bill 191 (Lustbader) which would allow children who commit crimes against persons who have engaged in a pattern of abusing them or their parents to present evidence of the abuse and its effects at trial. A proposed substitute for A 191 appears at Appendix X.**

## **PROTECTION OF CHILDREN OF DIVORCED AND SEPARATED PARENTS FROM ABUSERS**

Many victims of domestic violence and their children remain in abusive situations or, in seeking relief from the legal system, find themselves at a disadvantage because they do not have the financial means to pay for competent legal representation or expert witnesses.

In New Jersey, as mandated by the 1994 amendments to the Prevention of Domestic Violence Act, all judges and judicial personnel must receive training in the area of domestic violence and abuse within 90 days of appointment or transfer and every two years thereafter.<sup>23a</sup> The training course and curriculum were mandated to be developed by the Prevention of Domestic Violence Act of 1991. No appropriation, however, has ever been made to cover the cost of this training.

Many of the unwise decisions, dangerous decisions, tragic decisions and injustices reported to the Commission in cases relating to domestic violence, sexual assault, divorce and custody and the many other marriage and family law issues that come before the Family Court are the result of judges' lack of education about the dynamics of violence against women and the ways in which those who commit violence against women use societally accepted gender stereotypes to escape punishment and keep control over women. The liberal use of qualified experts in these cases could accomplish the education the judges need to appropriately apply the law.

Divorce, custody, property settlement and other dissolution actions are an effective vehicle for abuse through, for example, prolonged custody battles, the withholding of critical financial resources and the filing of unnecessary or frivolous pending settlement actions. Failure to require batterers to obey court orders regarding such issues as child support, evaluations, counseling and specified visitation times also contribute to the continuation of abuse and in some cases a return of the victim and children to the batterer. The fact of

domestic violence is often eliminated as a relevant consideration in dissolution proceedings subsequent to a final domestic violence hearing, and restraints are often dismissed as part of divorce settlements, despite continued abuse by the batterer.

When mothers of children who have been sexually abused by the batterer attempt to introduce these issues into custody hearings, witnesses told the Commission that judges frequently belittle, insult and humiliate women in court, make decisions which are punitive to the mother and the children and award custody of the sexually abused children to the alleged abuser. Commander Anita W. Batman, M.D., Regional Clinical Coordinator, U.S. Public Health Service, Region III, described the court process of seeking help for abused mothers of sexually abused children as "hitting the wall."<sup>81</sup> She cited an Orange County, North Carolina study, in which it was found that when children alleged that their father had abused them, the courts awarded sole custody of the children to the father if he sought custody in 100 percent of the cases.<sup>82</sup>

Courts do not want to hear about child sexual abuse. I was actually informed by a lawyer in Mississippi, where I used to practice family medicine, that judges did not want to be told about child sexual abuse, so doctors had better not tell them about it. He also told me that mothers who discover that their children have been molested by fathers should shut up about it for fear of losing their children, because the judges would take the children from the mothers to prevent further disclosures...[In New Jersey] these courts are so unwilling to protect women and children that the child's health is in more danger IF THE ALLEGATION IS MADE than if the abuse is accepted and limited to visitation periods, so the child may receive treatment and comfort during the rest of the week.

Sir, I can't tell you how horrible it is to have patient after patient come before me. I am at the point where I am afraid to tell them to come to the system. . . You go to court after court, and no amount of evidence is enough. Enough doesn't exist in some courts. I am not tarring everyone with the same brush. I don't even mean to say that there are not good judges. But there are courts [in New Jersey] where no evidence is enough; where they are going to attack the victim time after time.<sup>83</sup>

Witnesses before the Commission testified that children who had been subjected to "physical, emotional and unspeakable sexual abuse" by their father were awarded in joint custody to both parents, forced to spend half of their lives in the unsupervised control of the parent who was abusing them. When DYFS caseworkers, psychologists, social workers and "physician after physician after physician gave the evidence that these children were abused" the court's solution was to order the mother not to take the children to any more physicians under penalty of jailing for contempt of court.

Louisiana's Post-Separation Family Relief Act<sup>84</sup> seeks to protect children, after divorce or separation, from parents with a history of abusing family members. It states, in pertinent part::

"...the problems of family violence do not necessarily cease when the victimized family is legally separated or divorced. In fact, the violence often

escalates, and child custody and visitation become the new forum for the continuation of the abuse. Because current laws relative to child custody and visitation are based on an assumption that even divorcing parents are in relatively equal positions of power, and that such parents act in the children's best interest, these laws often work against the protection of the children, and the abused spouse in families with a history of family violence. Consequently, laws designed to act in the children's best interest may actually effect a contrary result due to the unique dynamics of family violence."<sup>85</sup>

New Jersey law already contains many of the components of the Louisiana act. One section not yet enacted in New Jersey requires that all court costs, attorneys fees, evaluation fees and expert witness fees incurred in furtherance of the Act shall be paid by the perpetrator, including all costs of medical and psychological care for the abused spouse and the children made necessary by the family violence.<sup>86</sup> The Louisiana Supreme Court considered a constitutional challenge to this section and held that it was constitutional as long as the statute retained its limitation that any costs automatically assessed to the perpetrator were "necessitated by" the violence.<sup>87</sup>

One common problem created by requiring the parties to fund their own experts is the inability of the mother to afford such costs associated with a custody action in the situation when the child reports abuse during visitation. Too often, the economic inequity between the custodial and non-custodial parents results in the court awarding custody to the abusing parent, who is in a financial position to obtain the services of a high-powered attorney and experts. In at least one New Jersey case recently reported to the Commission, a woman whose child reported being sexually abused by his father during visitation could not afford the \$3,000 for her own expert. The father hired a nationally recognized expert who consistently testifies that children who report sexual abuse by their fathers are coached by mothers who are trying to alienate them from their fathers. The father was awarded custody of one of the two children, and although the judge in the case indicated that she did not base her decision on the expert's opinion, the mother was ordered to pay half of the father's expert's fee of \$23,000.

The Louisiana Act also prohibits public funds allocated to programs which provide services to victims of domestic violence from being used to provide services to perpetrators of family violence.<sup>88</sup> This issue is particularly germane in New Jersey, where service dollars have been rare and are constantly threatened. The Prevention of Domestic Violence Act allows but does not require the judge to order that the defendant pay emergent and ongoing expenses of the victim and any dependents.

**The Commission therefore recommends that the Act be amended to require that the costs of any medical treatment, therapy, experts and attorneys, including evaluators doing risk assessments pursuant to the request of a plaintiff, investigators' fees, and interpretive services, be paid for by the defendant if the costs were necessitated by the violence and if the plaintiff meets an indigence standard set by the Administrative Office of the Courts (which already does such evaluations for criminal defendants), and that it be further amended to provide the protections for abused children of the Louisiana Post Separation Family Relief Act. Assembly Bill 2443, sponsored by As-**

semblyman Dalton and Assemblywoman Weinberg, would accomplish this result and is reproduced in Appendix Y.

The Commission further recommends that the Legislature consider authorizing the Victim's Criminal Compensation Board to use lapsed lottery prizes and unclaimed child support to finance a revolving fund for complainants to pay for expert witnesses, attorney fees and court fees. The experts could be paid from this fund and, if the defendant were found to have abused the child or the spouse and was not indigent, the fund could collect the money from the guilty party as a fine.

### **TRAINING REQUIREMENTS FOR EXPERTS**

Too often, abusers who bring or defend actions to gain sole or joint custody of their children have the financial power to hire expert witnesses who will support their claims of innocence or their adequacy as parents even if they have been abusive toward the mother or child. This inequity is enhanced in courts where the judge accepts expert testimony for the defense in spite of the fact that the expert has no credentials in domestic violence, battered women's syndrome or child abuse. Consequently, the more abusive and controlling the other parent is, the more likely is the abused spouse to lose sole custody or have to bargain away child support to keep sole custody.

The Commission therefore requests that the Supreme Court amend Rule 5:8B to require that in every custody matter, if only one party has engaged an expert witness, the court shall appoint, at the request of the other party, a Guardian Ad Litem for any minor whose custody arrangement is at issue, and that any such GAL shall have undergone specific training, approved by the Court, in the dynamics of family violence, including child abuse, child sexual abuse, and domestic violence. The current rule is reproduced at Appendix Z.

### **CIVIL SUITS AGAINST PROFESSIONALS AIDING VICTIMS OF VIOLENCE AGAINST WOMEN**

As more and more therapists and counsellors are helping victims of abuse retrieve the memories of past abuse or gain sufficient strength to bring suit against their abusers, and as more and more courts are accepting expert testimony regarding the battered women's syndrome and violence against women and children, the number of abusers who are brought into court, even years after abuse, to face civil penalties as well as criminal charges has increased. In response there has recently been a move by defendants in abuse cases to file civil suits against therapists in an effort to discredit both their testimony and the victim's suit and in an effort to reduce the pool of professionals who are willing to testify for abused women and children in criminal and civil suits.

In New Jersey, there has been a definite dampening effect as a result of such suits. One expert witnesses for abused women who testified before the Commission has become the target of so many suits that she has ceased appearing as a witnesses except in cases where the abuser is deceased, to the detriment of the cases against abusers who might be able to help with the payment of therapy for recovery of the victim as well as criminal cases

that might be able to imprison dangerous pedophiles and perpetrators of family violence.

**The Commission acknowledges that prohibiting malpractice or slander actions against all medical professionals or therapists who discover sexual abuse could have the unintended effect of protecting unethical therapists; it therefore recommends only the prohibition of any hearing or motion in a slander or libel suit against a medical or counselling professional if the suit is brought by someone who is a defendant in any other action in which the professional is a witness or a potential witness until the case in the underlying suit has been decided.**

## **CUSTODY AND VISITATION**

N.J.S.A. 2C:13-4, which criminalizes interference with custody, was amended in 1991 to increase the penalties, purportedly so that noncustodial parents who kidnapped children could be extradited from another state or country. Prior to the amendment, interference was only a disorderly persons offense, so that other jurisdictions would not detain the offender. The law was also amended, however, over the objections of advocates for custodians, to essentially equate visitation with custody. There was a defense added for an absconder who is fearful of abuse, but it only operates if the location of the child and the reason for the interference is communicated to the police or DYFS. The law has, as was predicted at hearings on the bill, been abused by batterers who wish to control their ex-spouses. Anecdotes from around the state recount stories of mothers unaware of the law who try to hide from stalking ex-husbands and are ferreted out by the police or the FBI on a 4th degree charge of interference because they take the children with them and don't know they have to report; a father who verbally asked to switch visitation weekends and then swore out a complaint because the custodian took the children to the zoo on "his" time; a woman jailed for 10 months because she didn't have bail, who then lost her job, her home, and custody of the children.

The equation of visitation with custody also creates a problem when a custodial parent seeks to move out of state with her children. Currently, because such a move would force a change in the visitation schedule, a custodial parent is either held virtually a prisoner by the threat of criminal prosecution or must gain the "permission" of the non-custodial parent or a court through a costly court procedure, no matter how easy it would be for the non-custodian to adapt to the move nor how beneficial the move would be for the custodian and the child. Of course, there is no penalty for the noncustodial parent who moves out of state to avoid payment of child support, or who fails to exercise visitation rights—the state will not even charge such a parent with neglect.

**The Commission therefore recommends the amendment of N.J.S.A. 2C:13-4 by removing the words "and visitation" wherever the phrase "custody and visitation" appear in the Act. See appendix AA.**

This amendment will work toward actually giving the custodial parent full custodial powers, instead of having to come under the control of the non-custodial parent, which is always undesirable<sup>89</sup> and often dangerous if the the non-custodial parent is violent toward the custodian or the child. If visitation is removed from the interference statute, a custodial

parent could thus make an independent decision to move out of state and remove the children, unless restrained by a court from doing so. The burden of showing that the best interests of the child are served if the child is not relocated would then be on the non-custodial parent, and could be litigated in the Family Part of the Chancery Division, Superior Court, which already would have a record of and familiarity with the case, and would base its decision on the interests of the child, not on the basis of whether the parent committed a criminal act.

## **SUPERVISED VISITATION WITH ABUSING PARENTS**

When a victim of domestic violence is awarded custody of her children and the court feels that supervised visitation with the abusing parent is appropriate but neither the abusing parent nor the State is able to pay for or provide an appropriate neutral supervised visitation site with the abusing parent, there is a risk that the children will either be sent for unsupervised visitation with the abusive parent or with the family of the abusive parent, or that the court will dismiss the allegations of violence to avoid the presumption of supervision, leaving the door open for the abuser to later be given custody of the children.

In Connecticut, when an alleged or adjudicated abusive parent is unable to pay for supervised visitation, the Family Services unit of the Family Court will attempt to find some third party which can fulfill the supervision function. This may be a private agency provider, for instance a counselling service, which uses a sliding fee scale of reimbursement or which may be reimbursed through community funding such as United Way. It may be a disinterested third party, such as a minister, who accepts the function for no payment, or a family member. If the court finds that supervision is appropriate, and no appropriate supervisor can be found, unsupervised visitation is not permitted.

**The Commission therefore recommends that every child care center and every school in the state that receives 10 per cent or more of its income from public funds be required to agree, in its contract with the public entity, to donate the use of its facilities for one weekend day per month for the purpose of providing in at least one designated site in each county supervised visitation in a group setting appropriate for children of the age that attend the center or school. The child care center or school would be responsible for providing professional staff to maintain the premises and serve as consultant on parenting issues, and the court system would provide security. The costs for this service could be charged on a sliding fee scale.**

## **COLLECTION OF CHILD SUPPORT**

In families that experience violence, financial abuse in the form of failure to pay child support or spousal support can be a major incentive in the return of an abused spouse to the abusive relationship. The Probation Division of the Administrative Office of the Courts contracts with the Department of Human Services to collect child support payments from noncustodial parents. Thus the efficiency of the AOC is of major importance in the prevention of violence against women. Toward this end, there are several established and recently enacted means by which this office can collect support payments or motivate non-custodial parents to meet their payment obligations. These include:

- a) Income withholding, a direct procedure which is set up for approximately half of all child support awards. This is the primary source of support collections.
- b) State and Federal offset tax intercept, a relatively established procedure whereby the AOC can register with state and federal tax authorities the name of any person whose child support payments are in arrears. Any refunds due to that person must first be subject to the collection of arrearages. This is the second largest source of support collections.
- c) Recently, the State has also been able to report arrearages to credit reporting agencies. This practice has resulted in significant numbers of individuals paying their arrearages to avoid being reported to the credit agencies, since their livelihood may depend on their ability to obtain ready credit. This strategy is particularly effective with individuals who are self-employed and who therefore cannot be reached through income withholding.
- d) The State can also put a lien on the house of the non-custodial parent, thus making it impossible to sell the house until the arrearages are settled.

In addition, the AOC would like to be able to gain access to motor vehicle records to get address information, enabling them to track down more quickly individuals who fail to pay child support. Other tools for enforcement need to be identified and put in place as they are found by other jurisdictions to be useful in enforcing support obligations.

**The Commission endorses Senate Bill 924 (Codey / Lipman) and Assembly Bill 454 (Augustine) which would deny or suspend the driver's license or professional license of any individual who meets the criteria for being in arrears in the payment of child support. This bill will affect not only medical, legal and other white collar professionals, but also electricians, plumbers and other blue-collar workers whose livelihood depends on the status of their professional license.**

**The Commission also endorses Assembly Bill 772 (Catania) which would suspend or revoke the obligor's driver's license for failure to pay child support.**

**The Commission further recommends passage of legislation to accomplish the principal recommendation of the New Jersey Commission on Child Support almost 10 years ago; that is, "[If the ASCES computer system does not improve collection performance], the Commission recommends an additional study of structure to determine if locating the Child Support Program into one state level agency would yield beneficial results."<sup>90</sup>**

**Copies of the endorsed legislation are located in Appendix BB.**

## **DAMAGES FOR THE INJURED SPOUSE**

In the context of a divorce involving battering, the courts have long recognized that mental and physical cruelty should be a basis for dissolving a marriage. *Tevis v. Tevis*<sup>91</sup> created a remedy for spouses who suffered damages in such marriages. Unfortunately, the claim must be brought with the divorce (thereby eliminating the right to a jury trial that would belong to any other victim of a tort), and compensation is only available for acts of violence that occurred within the two years before the filing of the complaint.

**For reasons eloquently expressed by Justice Pashman in his dissent in *Tevis*,**

**the Commission recommends that the tort action generated in an abusive marriage be redefined as a continuing tort so that the entirety of the injuries can be compensated at the time of trial. The proposed legislation is located in Appendix CC.**

## **LEGAL STANDARDS IN CRIMINAL TRIALS OF BATTERED WOMEN**

New Jersey has led the movement to protect battered women from conviction for self-defense murders and assaults. In 1984, the Supreme Court of New Jersey decided *State v. Kelly*,<sup>92</sup> a criminal case in which Gladys Kelly had been charged with the murder of a man who had abused her. Kelly was convicted of reckless manslaughter, and appealed to the Supreme Court on the grounds that no evidence of battered woman's syndrome had been allowed to get to the jury. Kelly's theory was that the jury could not, without that expert testimony, judge whether the murder was justified by self-defense. The typical woman battering pattern includes systematic, repeated intimidation of a person who is smaller than the attacker. Because of this disparity in physical power, victims of battering are more likely than usual self-defenders to strike back when the perpetrator is asleep or otherwise incapacitated. Because of the repetitive nature of the crime, they are also more likely to reasonably expect that they will be attacked again than other victims of violent crime. They are not responding to an immediate threat, but to the certainty of future violence.

Historically, an offer of self-defense as a justification requires an immediate threat, so that a self-defense justification never seemed to fit the facts of the case where a battered woman fought back. Kelly argued that without an understanding of the dynamics of battering, the jury could not possibly find her to have had a legal justification for killing her abuser. The Supreme Court agreed. At the time, Washington, Maine, and Georgia were the only other states to have recognized the need for a special rule, so that New Jersey was in the forefront of what was to be a national trend. Congress has also taken up the issue with respect to federal crimes<sup>93</sup> and with respect to its ability to recommend uniformity to the states in matters of national importance.

The Commission's hearings on these issues brought forth testimony from Evelyn Ortner, Founder and Executive Director, Unity Group, Inc., that the battered women's defense is not as much of a refuge as it was meant to be, as interpreted recently in the Appellate Division and trial courts.

...battering seems to be perceived as a public outrage only when it is the victim who kills the abuser. No one is outraged when and if a private citizen, threatened with his life by a stranger, kills in self-defense. Of the incarcerated women, 30 percent have been incest victims, and 70 percent have been abused physically, sexually, and emotionally. Women do not ask for special treatment. Quite the opposite, they are simply asking for the right of self-defense, which men enjoy. Since society neglects to provide these victims with protection, it is society which is responsible when the victims see that there is no way out; that they must take it upon themselves to end the violence perpetrated against them. They try to leave and are tracked down like animals and brutally killed, or they stay and they are killed, or lead a kind of living death.<sup>94</sup>

When battered women kill their abusers, they tend to be charged with murder. Many women are living out long sentences in jail because they killed the men who were battering them in the belief that they would otherwise be killed. Jackie Marich testified before the Commission that a California study of state prisons found that 93 percent of women who had killed their mates had been battered by them. Sixty-seven percent of those women indicated that homicide resulted from an attempt to protect themselves or their children.<sup>95</sup>

There is a common thread running through society's treatment of violence against women — the historic failure of the law to acknowledge that the kinds of violence to which women are subjected by "loved ones" is fundamentally different from the threat one feels on the street. This has come out in discussions of the standards for self-defense of battered women to murder or assault; changes in the standards for prosecuting and defining sexual harassment; and the attention paid to the standards for consent in "date rape" and other sexual assaults. The law has ignored the complexities of women's responses to crimes that with consent would be flirting or acts of love. It has likewise ignored the fact that a victim's response to violence that threatens herself and her family is fundamentally different from the response of victims of crimes committed by strangers. To the extent that the law acknowledged those differences it has called the victims abnormal or sick.

The same rules apply to the recent history of the application of the passion/provocation defense when it is raised to mitigate the murder of an abuser by his victim. Currently New Jersey law, under N.J.S.A. 2C:11-4b, downgrades what would otherwise be a murder to manslaughter if the crime is "committed in the heat of passion resulting from a reasonable provocation." The passion/provocation downgrade requires four elements which rest upon the determination of whether the defendant acted as a reasonable person would have. When a battered woman seeks to introduce expert evidence that she suffers from the battered women's syndrome, it can be applied to justify self-defense or to bolster a down-grade through passion/provocation. *State v. Kelly* allowed the evidence to support self-defense.

Unfortunately, *State v. McClain*<sup>96</sup>, a 1991 case in the Appellate Division, narrowed battered women's opportunities to admit evidence of battering when the defense was passion/provocation. In that case, the defendant killed a man with whom she had been in a long-term relationship which had included two serious incidents in which he assaulted her, several years apart and not immediately preceding the homicide. This pattern of battering, although atypical, is not unique, and can result in the same fear and certainty of danger generated by constant assaults.<sup>97</sup> The *McClain* court reinterpreted the standard set forth in *Kelly* to say that a battered woman raising the passion/provocation defense could not use it to show that her response was reasonable because of her history of battering, even if it would not have been a reasonable response for an unbattered defendant. Instead, the court said that such evidence cannot show reasonableness, because battered women who suffer from battered women's syndrome are *prima facie* irrational.

Lawrence S. Lustberg, Esq., a witness before the Commission in 1992 explained:

"In *Kelly*, the Supreme Court of New Jersey held that battered women's syndrome evidence was admissible to show both that a defendant actually believed that her life was in danger, and that her belief was reasonable. In *McClain*,

however, the Appellate Division ruled that evidence of battered women's syndrome was not admissible to show that the defendant was reasonably provoked. The Court found that evidence of battered women's syndrome was irrelevant on the question of whether the victim's conduct was adequately provocative, because that inquiry requires application of the objective reasonable person test. Characterizing battered women's syndrome as some peculiar mental or physical characteristic not possessed by the ordinary person, the Court held that evidence of battered women's syndrome did not go to the reasonableness of the defendant's actions. . . . Essentially, it stands for the proposition that battered women are unreasonable people, rather than reasonable people subjected to abnormal circumstances. Based upon this conclusion, it prevents battered women from showing why, based upon expert evidence, they behaved as they did, instead of as a person who had not been subjected to such beatings would have behaved."<sup>98</sup>

Thus, N.J.S.A. 2C:11-4b is being interpreted in a way that makes it unavailable to battered women.

The reasoning used by the court to dismiss the defense of passion/provocation in Ms. McClain's case is as disturbing as the actual result. The court tried to fit the testimony about battered woman's syndrome into what it assumed was the defense: that a battered woman is not responsible for herself because she suffers from a diminished mental capacity or a mental illness as a result of the beatings. The point of *Kelly* was not that the battered woman is less capable of thought or reason than a non-abused person, but that the beatings and subjugation have taught her to be afraid of being killed in situations that would not frighten someone who had not been so conditioned. The common and statutory law before *Kelly*, developed over centuries on a masculine model of interpersonal disputes, excused because of self-defense a man involved in a deadly bar fight between two physical equals, but not a woman faced with intermittent and continuing abuse by a physically intimidating person from whom she cannot escape; the law failed to account for victims who were legally bound to their abusers or financially dependent upon them because when the defenses were developed, the law did not acknowledge that wives were even separate legal persons from their husbands, let alone possible victims of those husbands.

The same reasoning that led the New Jersey Supreme Court to make special evidence rules in an attempt to equalize the invocation of self-defense for men and women should apply to the passion/provocation defense, but because of the court's misinterpretation of the use of battered woman evidence, the *McClain* case came out with an inconsistent twist. The passion/provocation defense has a strict four-pronged test for application.<sup>99</sup> The provocation must be adequate; the defendant must not have had time to cool off between the provocation and the slaying; the provocation must have actually impassioned the defendant; and the defendant must not have actually cooled off before slaying. If a slaying does not include all of those elements, the offense of passion/provocation manslaughter cannot be demonstrated. Several of those prongs are based on the male model, and the Commission believes that the court should have modified the test in *McClain* to allow for evidence to show the different circumstances in which battered women reasonably believe that deadly force is necessary to meet the provocation of the abuser.

The Commission therefore recommends that the Governor solicit information about, and individually review, each case of homicide or assault that has resulted in the current incarceration of a woman or child in this State to examine whether clemency is appropriate, particularly for those who were not allowed to present evidence of abuse at trial.

The Commission endorses Assembly Bill 191 (Lustbader), which would require the courts to accept battered women's syndrome expert evidence where it is relevant to the reasonableness of a defendant's beliefs and actions, thus codifying *Kelly*, and makes a further recommendation that Assembly Bill 191 be amended to address the issues in *McClain*.

A suggested substitute for Assembly Bill 191 is located at Appendix X.

## STATE FUNDING OF SERVICES TO VICTIMS OF DOMESTIC VIOLENCE

State funding of services to programs which serve survivors of domestic violence and other crimes of violence against women has in recent years been increasingly uncertain. The Domestic Violence service delivery system began to be funded by a combination of state, local, and private sources in the mid-1970s, following the realization that traditional therapies, which centered on fixing the victim, were not effective in stopping domestic abuse. Shelters were established in every county in New Jersey, with the last county shelter facility being opened in the 1990s. In the 1980s, programs expanded to offer outclient counseling, legal clinics, court advocacy, peer groups, workshops for displaced homemakers, parenting classes, and other nonresidential services. Grant funding allowed programs to provide hotlines, services for physically and developmentally disabled victims, batterer treatment programs, educational programs, clergy and volunteer training, and other experimental ways of disclosing and addressing violence in the home. By the late 1980s, those services had become increasingly underfunded because of state and federal fiscal situations, as well as a decrease in corporate philanthropy and a general underfunding of women's services by philanthropic organizations.<sup>100</sup>

In 1990, Assemblyman Roma sponsored a bill that created the Victim Witness Advocacy Fund, which dedicated part of the Violent Crime Compensation penalties assessed by the courts to a fund for victims of domestic violence and sexual assault. The grants from the fund were to be distributed among domestic violence and rape crisis programs. That funding disappeared in August 1994. Innovative programs, such as the two year pilot project initiated by the National Center For Protective Parents, were placed in jeopardy as the State failed to commit dedicated Victim Witness Advocacy moneys to programs for victims of violence against women.

Another source of funding for programs which address violence against women are Federal Victim of Crime Act (VOCA) Funds which are distributed through the County Prosecutor's Office. Some domestic violence programs receive these funds from their county prosecutor, others do not. The underlying philosophy which prevents victims of domestic violence from receiving services funded through crime legislation is that some prosecutors, law enforcement personnel and judicial personnel still consider domestic violence to be a family matter and not a crime. When such lack of education results in the denial of funding

for domestic violence programs, it puts at jeopardy the lives of women and children.

When VOCA funds have not been expended by the end of the fiscal year, the State Office of Victim Witness Advocacy may offer the funds to domestic violence shelters for capital needs. Some of the restrictions placed on the use of these funds — which emanate not from the federal government but from State policy decisions — are not consistent from county to county and appear arbitrary. Putting such restrictions on the use of these funds is yet another indication of the lack of sensitivity to the needs of domestic violence victims and the lack of respect for providers of domestic violence services.

One more source of funding for domestic violence programs is the federal McKinney Act funding for the homeless. In New Jersey presently, the great gap in the domestic violence service network is not so much emergency shelter space, but transitional housing which would enable an abused woman and her children to begin to put together a life independent of the abusing spouse. According to the Ford Foundation, half of all clients in American shelters on an average night have been involved in domestic violence and 50 percent of all homeless women and children in the nation are fleeing from domestic violence.<sup>101</sup> Equally disturbing, but less quantifiable, are the numbers of women and children who return to their abusers because of lack of money and housing.

Transitional housing offers these individuals the space and time to find a job, go to court, apply for other services for which they are eligible, and locate permanent housing and a support network in the community. The current and past denials of funding for subsidizing transitional housing for victims of domestic violence by the Department of Community Affairs have resulted in a significant service gap for the growing population of women and children who are fleeing abusive relationships. The administrators of housing funds at DCA have indicated that battered women are not homeless because they have a home to go to. Funding preference has gone, when it reaches victims of domestic violence, to programs where victims of domestic violence and homeless women are housed together. Such programs fail to provide the specialized services necessary to such victims and their children. One county recently was awarded \$900,000 in McKinney Act funding directly from the federal government.<sup>102</sup> The awarding of monies directly to state domestic violence coalitions and providers, a model used in other states, may be appropriate for New Jersey as well.

**A stable source of funding for programs which serve victims of violence against women must be found and, once dedicated, be legislatively protected from use for other purposes. Funds that are legislatively mandated to be used for specific purposes need to be monitored carefully. Dedicated and restricted funds should be carried over to the same fund in the next fiscal year and not absorbed into the general fund. The reporting requirements established by legislation and regulation should be strictly adhered to, and the same strict accounting standards which apply to State contracts with non-profits should apply to the State in monitoring these funds.**

#### **IMPACT OF FEDERAL VIOLENT CRIME CONTROL ACT OF 1994**

The Federal Violence Against Women Act (S.11, Biden) was combined with other anti-crime provisions and signed into law by President Clinton as Title IV of the Violent Crime

Control and Law Enforcement Act of 1994. Perhaps the most significant provision of the bill is that it conceptualizes battering, sexual assault and other forms of violence against women as a violation of civil rights, sending a powerful message to prosecutors, judges and law enforcement personnel at the state level that most violence against women is not gender-neutral, that it is indeed motivated by gender animus and that it is therefore a proper subject for a civil rights action. The civil rights component allows victims to sue their attackers in federal court for compensatory and punitive damages for a crime of violence motivated at least in part by animus toward the victim's gender. This provision empowers a woman to sue on her own behalf without having to convince the government to prosecute as she must do in a criminal case.

The Crime Bill also has some substantive provisions that will improve the lot of, for example, immigrant battered women and women sexually assaulted on federal property, or who are victims of interstate stalking or spouse abuse (those violent crimes against women which fall under federal jurisdiction) but mostly its effect will be to fund state-based services to prevent and intervene in violence against women, including education, rape crisis hotlines, training of justice personnel, victim services, and special units of police and prosecutors to deal with crimes against women. New Jersey is in a good position to receive significant moneys from this bill, particularly in the first year, because its domestic violence and sexual assault laws already meet protective levels required to qualify for funding. In addition, the Office on the Prevention of Violence Against Women in the Department of Community Affairs, Division on Women, can act as a conduit for the moneys from this act, and should be ready to help distribute funding to community programs to do training and prevention programs.

**In an effort to provide guidance for the use of these funds, the Commission recommends that the Legislature and the Governor take note of the following suggestions for priorities for the dispersal of these monies, culled from the hearings before the Commission:**

- 1. Design and implement a multi-media, multi-language public education campaign to increase public awareness of and public support for action to prevent sexual harassment, sexual assault and violence against women — and particularly to emphasize the role which schools and colleges must play in preventing and addressing such behaviors. Such a program would increase public understanding of what constitutes sexual harassment, sexual assault and violence against women, identify the myths and stereotypes that surround these behaviors, and provide information about strategies for prevention and remedies when sexual harassment, sexual assault and violence against women occur.**
- 2. Establish a fund for battered women to help defray the legal and medical costs in matrimonial and custody matters;**
- 3. Establish a program to address interstate orders for child support ;**
- 4. Provide more bilingual, culturally-sensitive information and services to address violence against women — domestic violence, sexual assault, and sexual harassment;**
- 5. Establish a fund for medical and psychological professionals — both to help pay the costs of expert witnesses for abused women and to help expert wit-**

nesses pay legal costs when they are sued either for testifying or for providing therapy to abused women and children;

6. Increase funding to the Division on Civil Rights to enable that office to once again fulfill its function as a source of training and education;

7. Design and implement a statewide system of supervised visitation for abusing parents who are unable to pay for supervision or who cannot locate an appropriate site for supervised visitation.



# SEXUAL HARASSMENT

Although sexual behaviors designed to exclude, intimidate and control others who were "different" in the workplace, schools, housing and other public places have existed for centuries, it is only within the last decade that these behaviors were named and outlawed. This prohibition was first instituted as to sexual harassment in the workplace and it is, therefore, in the context of employment that the statutory and caselaw definition of sexual harassment evolved.

Sexual harassment in employment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual or gender-biased nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.<sup>1</sup>

After Anita Hill's 1991 accusation of Supreme Court nominee Clarence Thomas,<sup>2</sup> almost everyone should know that sexual harassment is prohibited by federal law. In 1972, Title VII of the Federal Civil Rights Act of 1964 was amended to outlaw sex discrimination.<sup>3</sup> The prohibition on sexual harassment in the workplace is contained in guidelines issued by the federal Equal Employment Opportunity Commission<sup>4</sup> in 1980 pursuant to Title VII.

Three court cases have been particularly significant in the definition of sexual harassment, the circumstances in which relief for sexual harassment can be sought, and the nature of that relief. The first definitive case in the United States Supreme Court was *Meritor Savings Bank v. Vinson*,<sup>5</sup> which allowed for damages even if the plaintiff experienced no direct economic loss, but was subjected to a hostile working environment or conduct which unreasonably interfered with a person's work performance. Amendments to the Civil Rights Act in 1991 allow for monetary damages for gender discrimination but cap those damages at \$50,000 to \$300,000, depending on the size of the employer.<sup>6</sup> No limitations for damages exist for other forms of discrimination under the Civil Rights Act. The Supreme Court also ruled in *Meritor* that employers may be liable even if they claim they did not know about the harassment and even if they had a grievance procedure and policy against discrimination, unused by the plaintiff, in place.<sup>7</sup> In 1992 the U.S. Supreme Court, in *Franklin v. Gwinnett County Public Schools*,<sup>8</sup> also found a cause of action for sexual harassment under Title IX<sup>9</sup>, which prohibits sex discrimination in educational institutions that receive federal funds. In the most recent case from the U.S. Supreme Court, *Harris v. Forklift Systems, Inc.*,<sup>10</sup> the Court held that a defendant need not suffer psychological injury in order to prove sexual harassment.

In August 1993, the EEOC issued new draft regulations regarding sexual harassment in the workplace, integrating previous anti-discrimination law, agency rulings, and previous EEOC publications.<sup>11</sup> These regulations have not yet been adopted. Among the key points of the regulations are:

1. Employers have a duty to maintain a working environment free of harassment based on race, color, religion, sex, national origin, age or disability.
2. Conduct is harassment if it creates a hostile, intimidating or offensive work environment, unreasonably interferes with the individual's work or adversely affects the employee's

employment opportunities.

3. The standard for evaluating harassment is whether a reasonable person in the same or similar circumstances would find the conduct intimidating, hostile or abusive.

4. Unwanted sexual conduct is not the only form of sexual harassment. Gender-based animus is also harassment.

5. Employers are liable for the acts of those who work for them if they knew or should have known about the conduct and took no immediate, appropriate corrective action.<sup>11</sup>

Social scientists see sexual harassment as a tactic for asserting power over people in a vulnerable position.<sup>12</sup> Those in American society who are most vulnerable — economically and physically — or those who most directly challenge the status quo are therefore most likely to be harassed. Statistics show that young, single women, women of color, and women who enter non-traditional occupations or high-status professional positions are more often targets of harassment.<sup>13</sup>

### **Incidence in New Jersey**

In a 1991 New Jersey Star-Ledger/Eagleton Institute poll, 25 percent of women surveyed reported that they had been harassed on the job and more than six-in-ten residents said that sexual harassment is a serious problem in the workplace.<sup>14</sup> Sexual harassment charges filed in New Jersey have risen from 32 in FY 1987 (1.8 percent of total state discrimination complaints) to 148 in FY 1993 (7 percent), showing a faster rise than any other category of complaints to the NJ Division on Civil Rights.<sup>15</sup> It is commonly believed that fewer than 10 percent of incidents are reported for fear of retaliation or invasion of privacy.<sup>16</sup> The New Jersey Division on Civil Rights estimates that fewer than 2 percent of those experiencing sexual harassment will file a complaint.<sup>17</sup>

In April 1993, the New Jersey Review Committee on Sexual Harassment was established by Executive Order No. 88<sup>18</sup> and conducted a study of sexual harassment policies in the State executive branch and State colleges. It determined that approximately 70 percent of female New Jersey employees have been subjected to harassment.<sup>19</sup> Peterson and Messengill report incidence of unwanted sexual attention at work to be as high as 90 percent.<sup>20</sup> Research on sexual harassment incidence among college students varied from 20 percent<sup>21</sup> to 40 percent.<sup>22</sup>

### **The Law in New Jersey**

The New Jersey Law Against Discrimination (LAD),<sup>23</sup> as interpreted by the New Jersey courts, makes sexual harassment in employment an unlawful discrimination on the basis of sex.<sup>24</sup> In addition, there are remedies against employers that are more expansive under the LAD. Therefore, a victim of sexual harassment in employment has a number of remedies from which to choose. Because the structure of remedies for discrimination in education, housing, and public accommodations is different under federal law than under the state LAD, and because there is no statutory language in either jurisdiction setting out the exact boundaries of the sexual harassment prohibition, it is difficult to know how the federal case law will be followed in interpreting sexual harassment remedies in categories of activity other than employment protected under the New Jersey Law Against Discrimination.<sup>25</sup> Therefore, the

availability of a state cause of action taken directly to state court is less clear,<sup>26</sup> but the New Jersey Division on Civil Rights has made it clear that administrative remedies available through the Division are applicable to sexual harassment in employment, housing, and public accommodations, including educational settings.<sup>27</sup>

There are also, theoretically, common law tort remedies available for particular kinds of injuries that would come under the definition of sexual harassment,<sup>28</sup> although they are seldom used. The torts of assault, battery, and intentional infliction of emotional distress can be pursued in Superior Court; because there is a contract, express or implied, in many situations involving harassment that states that the employer will not discriminate on the basis of sex, there may be a breach of contract theory on which one can sue. In addition, many schools, landlords, and other providers of public accommodations have policies that declare an opposition to sex discrimination. If so, there may be a contract formed with those who use the services provided or live in the buildings that is breached if sexual harassment occurs. The remedies under these causes of action, unfortunately, are normally limited to small fines, money damages, or incarceration of the offender, and so do not usually get the successful complainant the equitable relief that is most effective in maintaining productive scholastic environments and workplaces and efficient markets in housing and public accommodations; that is, the creation of harassment-free environments.

Causes of action are relatively simple to find for most common incarnations of sexual harassment; what is difficult is taking the risks a plaintiff must take to, first, confront the harasser (the best way to stop harassment in many cases and almost a requirement for any manager or court to believe the events occurred) and then to publicly pursue remedies or risk firing for insubordination, non-compliance with conditions of employment, or for no reason,<sup>28</sup> in the case of employment at will. As in other offenses involving gender violence, the harasser (usually a man) often wages a campaign to convince the victim (usually a woman) that she is a willing participant or is somehow to blame for his behavior. And as with other offenses, the real issue is not sex or even gender, but power.<sup>29</sup> The acceptance of male privilege as a social good explains the otherwise incomprehensible imbalance in the numbers of women and men who report having been victims of sexual harassment. So by the time harassment gets bad enough to sue, quit, or move, the victim feels hopeless, powerless, or guilty. Because of the limitations of judicial and administrative relief, avoidance of the behavior is the best possible outcome, and the best possible way to diminish the behavior is through education of possible victims and perpetrators. As in so many cases, the dual remedies of strong legal enforcement and extensive public education are equally important. Witnesses who testified before the Commission suggested many ways to strengthen both legal and educational remedies through legislation and administrative action.

### **Sexual Harassment in Education**

School boards, administration, faculty and staff at educational institutions have for so long accepted sexual harassment and lack of gender equity as the norm that few adults and even fewer children schooled in this environment recognize incidents of sexual harassment or know how to respond to them. Most adults have simply defined the continual verbal and behavioral degradation of female students as a part of growing up, a reflection of the wider societal devaluation of females. There are many factors, in addition to the long-standing

tradition of "boys will be boys," which lead the institution, student body, and staff to minimize the problem of sexual harassment and the investments needed to address the problem. Many do not recognize the short- and long-term harm which such behavior inflicts on female students — on their self-image, on their ability and desire to take advantage of educational opportunities, on their willingness to risk speaking up, taking public positions, even walk in certain places and take certain classes. Many see the problem as inevitable and insoluble, because they cannot imagine a society in which men do not dominate women. Many, in an era of diminishing resources and expanding charters, do not feel they have the expertise, the time or the funding to provide adequate redress for incidents of sexual harassment or to undertake the education of students, faculty and staff needed to prevent future incidents. Many do not perceive any overriding harm to the school from *not* addressing sexual harassment.

Children learn what they are taught. When teachers condone the sexual harassment of female students, whether by lewd or demeaning language, gestures or actions, boys and girls learn the lesson that it is acceptable to victimize girls and women and that no one will intervene to help a girl or woman who is being victimized. By not recognizing the sexual harassment of students and by not taking active steps to address and prevent the sexual harassment of students, educational institutions perpetuate the dominance of males over females and serve as training grounds for the perpetrators of gender discrimination and violence against women. Violence against females in schools takes place within a societal context which not only tolerates the dominance of men, but which actively supports through its religious, political, military and media institutions the traditional socialization of males to exercise power and control over women, while enforcing a gender stereotype of acquiescence, passivity or subservience for women. Despite the movement toward the economic and legal equality of women, the conscious and unconscious biases of these gender stereotypes still exert a powerful force in our society, enabling generation after generation of males to see dominance over women as their right and to engage in a continuum of violence against women including sexual harassment, domestic violence, sexual assault and murder.

The unfair treatment of women in our society is taught in our schools, not only in the form of gender inequity in curriculum, but in pervasive patterns of bias in teacher-student interactions and expectations. These patterns and practices are well documented in, among other studies, *Shortchanging Girls, Shortchanging America*, a 1991 nationwide poll, and the 1992 *AAUW Report: How Schools Shortchange Girls*. The 1993 nationwide study by Louis Harris and Associates for the American Association of University Women, entitled *Hostile Hallways*, surveyed 1,632 public school students regarding the prevalence of sexual harassment in America's schools. They found that 85 percent of girls in grades 8 through 11 reported being subjected to unwelcome sexual behavior at least once in their school lives. Fully two-thirds of the girls said they were harassed "often" or "occasionally." One-in-three girls reported being sexually harassed "often," compared to fewer than one-in-five boys. Girls were significantly more likely than boys to have experienced almost every type of sexual harassment examined in the study. Of those girls harassed in school, one-in-four was targeted by a school employee. In a 1992 survey of more than 4,000 readers of *Seventeen* magazine, 89 percent of girls in grades 2 through 12 said they had been targets of unwanted sexual comments, gestures or looks and 97 percent of the harassers were peer males. Nearly 40 per cent of those responding said the harassment took place on a daily basis. Harass-

ment is a form of physical and emotional intimidation, and the negative impacts of harassment on girls are severe and in every case were significantly greater for girls than for boys. In the 1993 AAUW study, a third of the girls did not participate as much in class discussions after they had been harassed, and another third did not want to go to school afterwards.

A 1994 study of sexual harassment in New Jersey's public schools, undertaken by the Women's Studies program at Rutgers University, has gathered convincing data on the prevalence of sexually harassing behaviors in our state's educational system. Some of the remarks respondents made regarding their experience of sexual harassment included:

- "I was very upset and I never told anyone about it because it's too embarrassing. For a while, I couldn't think of anything else." (11th grader)
- "I felt slutty and that it was my fault. That you were supposed to let guys get their way. If I didn't, they'd never pay any attention to me." (11th grader)
- "Depending on who you are being harassed by, you sort of feel like you did something wrong and you feel like you were used." (9th grader)
- "I felt used. Like no one respected me or my body. I was afraid of what they would try next." (9th grader)

School employees often ignore or trivialize sexual harassment. When boys taunt girls with sexually demeaning slurs, teachers turn a deaf ear. When boys rub up against girls and grab their breasts, teachers and administrators pretend not to see. In some schools boys pull down girls' shorts, lift up their skirts, or thrust hands inside blouses and up skirts, in what has been termed "gender terrorism." When girls go to teachers and administrators with complaints of sexual harassment, the majority of schools have no official response, according to the nationwide *Seventeen* survey. Girls are either not believed or they are simply told that "boys will be boys." By supporting a societal system of gender dominance of males over females, instead of demanding gender equity, the educational community in New Jersey is condoning the violence which must ultimately enforce that dominance. The acceptance of such abusive behaviors by adults and the fear of retaliation are only two of the deterrents to reporting the many incidents of harassment which occur every day in every school in New Jersey.

Physical violence against female students is on the rise at all grade levels and into the college years. A 1992 study by a Commission intern found that 70 percent of school administrators and family life instructors in a random sample of New Jersey high schools indicated some awareness of violence between boy and girlfriends in their schools and a general belief that such incidents are underreported. Reports or observations of dating violence ranged from grabbing, pushing, hair pulling to slapping, punching, kicking and rapes. Responding school personnel indicated that most girls accept the abusive behavior and feel responsible for the abuse, and that many students see this type of abusive behavior at home, implying that they accept it as normal for this reason. The study further found a reluctance on the part of school officials to intervene in incidents of dating violence among their students or to educate students about the problem due to negative responses from students and parents. The majority of schools surveyed did not deal with issues of sexual assault prevention in health or family life classes and, of those which did, the information was usually offered late in the high school years. When boyfriends or former boyfriends stalk, bruise and batter fe-

male students, whether in the school or outside, school officials too often view this as a private problem which the girl must deal with herself, thus supporting these "batterers in training." This violence, the natural consequence of a school environment which condones sexual harassment, is viewed as somehow less violent or less damaging simply because the female knows the attacker.

If school administrators were able to understand the magnitude of the problem, they could better marshal the resources needed to deal with it. Such statistical data, however, is lacking. In the public K-12 school system, there are currently no reporting mandates to the New Jersey Department of Education (NJDOE) regarding incidents of harassment, sexual assault or dating violence. There is no data base at the NJDOE to help either state policy makers or individual schools to understand the level of violence against females occurring in New Jersey's school systems. Through an indirect, DYFS-driven system, the Commissioner of Education receives a copy of DYFS investigation reports when there is an allegation of adult-to-child abuse or neglect within a K-12 educational institution. These reports do not cover student-to-student incidents — the majority of incidents — and the data does not flow directly from the school systems to the DOE. The Office of Equal Educational Opportunity of the DOE has expressed a need for data on the number of incidents of sexual harassment and sexual assault and how these incidents were settled.<sup>30</sup>

Another barrier to effectively addressing sexual harassment is that school boards and administrators have not seen harassment as a phenomenon which is sufficiently costly or detrimental to the institution to warrant an investment of time, effort and money. In recent years, students subjected to sexual harassment have been able to seek redress from unresponsive schools by bringing suit against boards of education for their failure to provide an educational environment conducive to learning, as well as suing the harasser. This right was established in 1992 by the U.S. Supreme Court in *Franklin v. Gwinnett County Public Schools* under Title IX, for all educational institutions receiving federal funds. Nationally, the number of sex discrimination suits against schools is rising quickly.<sup>31</sup> Increasingly, as schools are held liable for the sexual harassment of students, failure to take appropriate actions to address or prevent sexual harassment will lead to complaints to the State Department of Education and to costly legal actions.

Currently, there is no requirement that public K-12 schools in New Jersey inform the Department of Education or that institutions of higher education inform the Department of Higher Education if they are in litigation or if they have settled a suit alleging failure to provide equal access to the educational facilities or failure to protect in instances of sexual harassment, sexual assault, or dating violence. Consequently, the DOE has no data on the existence or outcome of such suits, in spite of their overall mandate to ensure the quality of education to students in the K-12 public education institutions in the state.

More information about the nature and number of such suits, the types of schools involved, the costs of defending the cases, and the disposition of the case, including the amount of the damage award or the settlement conditions would help both schools and the public to understand the cost of these cases to society. This might be accomplished through the mandated annual submission by each K-12 public school district and each public or private institution/campus of higher education of a one-page compliance report to the De-

partment of Education and other appropriate government agencies. A reporting requirement may also help to make educational administrators more aware of the need to provide the accepted components which will reduce the incidence of sexual assault in their schools and on their campus and make them less liable to suit.

**The Commission therefore recommends that every K-12 public school district in New Jersey be required to provide to the State Department of Education on an annual basis a one-page compliance report detailing the civil suits or settlements to which the school district is a party when such incidents arise from an allegation of gender inequity, sexual harassment, sexual assault, or dating violence during the reporting period. The report would list the number of such cases or settlements, the status of each case, the nature of the incident and the basis for the suit, the form and substance of the resolution, the legal costs incurred by the institution, and the amount of any damage award or settlement.**

Attorneys for public school districts can also help by educating their clients about the liability and costs involved in failing to address and prevent school-based violence against women. The NOW Legal Defense and Education Fund is currently producing a package of information for both prosecuting and defending attorneys in the area of civil suits brought against schools and colleges in the instance of alleged sexual harassment. This information will specify in legal detail the potential liability of the institution and what steps the institution should take to reduce liability.

In New Jersey, while concurrent jurisdiction over sex discrimination in education lies with both the Commissioner of Education through Title 18A and the Division on Civil Rights through Title 10, the Law Against Discrimination, the ability of an individual to seek equitable relief or civil damages for sexual harassment or any other lack of sex equity in public school education is severely limited by a series of opinions in which the courts have determined that the Commissioner of Education should have the sole responsibility for all complaints that have as their subject matter education curriculum or accommodations, whether the plaintiff chooses to file initially in Superior Court, with the Division on Civil Rights, or with the Department of Education. These opinions rely on the concept of superior administrative expertise to justify this special treatment. The exceptional power to decide all disputes in New Jersey in the area of sex equity in education is therefore vested in one person, the Commissioner of Education. Only after all administrative remedies have been exhausted, a process which typically drags on for years, can a plaintiff seek redress through the court system. (A full analysis of the legal issues and case law history in this area may be found in *Sex Discrimination in Education: A Report from the Commission on Sex Discrimination in the Statutes of the New Jersey Legislature* (July 1991)).

Legal experts have found that a private right of action is one of the major elements necessary to achieve effective regulation.<sup>32</sup> This is especially true in New Jersey, where the sanction provided to the Department of Education through the administrative code (N.J.A.C. 6:4-1.7(g)), notably the ability to suspend, terminate or refuse to award continued Federal or State financial assistance, is ineffective because it is never used. Plaintiffs in other states are empowered not only to seek an administrative remedy from the Department of Education, but can choose to pursue an administrative complaint with the Division on Civil Rights or

initiate suit in Superior Court.<sup>33</sup> The New Jersey Legislature clearly intended that educational settings be included in the category of public accommodations under the Law Against Discrimination and clearly intended to provide a choice of remedies for plaintiffs. The line of court decisions, in this area only, deprives plaintiffs of such remedies. Not only does forbidding a private right of action to victims of discrimination in education complaints give the appearance of paternalism, but it encourages the continuation of existing sexist and racist patterns.

**The Commission therefore recommends that Title 18A and Title 10, the Law Against Discrimination, be amended to explicitly create a private right of action for plaintiffs injured by a lack of equity in public school education, while preserving the right to an administrative action as an alternative for those who feel their complaints can be more satisfactorily resolved in that manner. In the latter case, attorney's fees should be available from the Commissioner of Education for successful plaintiffs. Draft legislation can be found in the Commission's 1991 report.**

Legal action, however, should be a last resort, not the only recourse for victims of harassment. Sexual harassment in schools is explicitly prohibited as a form of discrimination under federal Title IX. New Jersey should have equally explicit prohibitions against sexual harassment in the educational setting and avenues of redress should be expanded to encompass individual rights of action, rather than having to wait for adjudication by the Commissioner of Education and the Administrative Law system before seeking remedy in the courts. But, in an effort to prevent sexual harassment, all New Jersey schools should be required to have written, age-appropriate sexual harassment policies which are actively communicated to students, faculty and staff, as well as defined, effective and speedy grievance procedures, strong procedural protections for complainants, peer support groups and counsellors trained to help victims of harassment, and required training for teachers, administrators, staff and students on how to recognize, deal with and prevent sexual harassment in the school setting. Further, all schools should have easily accessible information and resources for children who may be living in violent homes and acting out because of that influence. Targetted funding to provide videos, workshops and speakers for student programs dealing with dating violence and sexual harassment in the schools has been shown to be effective.

At the K-12 public school level, the NJDOE Office of Equal Educational Opportunity is charged with ensuring equity throughout the schools and classrooms in New Jersey. This office bases its enforcement powers on N.J.A.C. 6:4-1.1 et seq. (Equality in Educational Programs).

There are no enacted directives for the schools that contain specific mandates for public K-12 schools to have in place policies, procedures or programs to address sexual harassment or sexual assault, such as are found in the amendments to the federal Higher Education Act of 1992 or such as some states have passed. A number of states have enacted laws that require schools to have policies and procedures on sexual harassment. In 1992, California enacted a law that requires every educational institution in the state, from pre-kindergarten through post-graduate programs, to have a written policy on sexual harassment which includes information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies. The law re-

quires institutions to post the policy prominently in the institution, and to provide it to students as a part of every orientation program, and to faculty and staff on an annual basis. In addition, a copy of the written policy must appear in every publication that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.<sup>34</sup>

Instead of having specific statutes mandating schools to have sexual harassment and assault policies and procedures, New Jersey relies on affirmative action guidelines issued by the Office of Equal Educational Opportunity, NJDOE. Even within these guidelines there are no specific requirements regarding sexual harassment and sexual violence; rather, these policy requirements are inferred from the affirmative action requirements, which also cover discrimination based on race, national origin, disability, language, and ethnic background. Thus no specific policies regarding sexual harassment or sexual violence in New Jersey's schools are even mentioned by the NJDOE either in regulatory code or in guidelines.

The OEEO relies on districts' self-report on the Annual Review of Progress survey to identify schools which may not have all the Affirmative Action components in place. This is a multi-question, "yes"/"no" format questionnaire. Only one question on the Progress self-report deals with sexual harassment and schools know that by checking off the "no" box, they are inviting a state monitoring.

The OEEO is not a monitoring agency, relying rather on the provision of information and training to accomplish its mission. The OEEO staff is not sufficient to adequately monitor compliance to their guidelines. The OEEO is only able to monitor a small percent of districts in any one year. The office is not able to monitor the effectiveness of the policies, procedures and programs which schools say they have in place. Nor does the OEEO have sufficient staff or funding to provide every district with educational programs and in-service training to prevent and address sexual harassment, sexual assault and dating violence.

The Affirmative Action officer, required for each school district, is a part-time professional who is given these responsibilities on top of another full-time job and other school responsibilities. The AA officer may not necessarily have the relevant education or experience to handle the sensitive and proactive role needed to effectively address the variety of discrimination covered by the Educational Equity mandate. This person is responsible not only for sex and gender-related issues, but for the full range of racial, ethnic, disability, religious and other forms of discrimination which may occur. New Affirmative Action officers receive two days of training from the OEEO which includes among other topics an introduction to the issues and procedures regarding sexual harassment. They receive sample policy statements on sexual harassment at that time. There is currently no uniformity or quality control on sexual harassment policies in school systems.

The OEEO in Fall 1993 sent to all New Jersey school districts its Guidelines for Education That is Multicultural (G.E.M.), which provides guidance to schools in meeting the requirements of Equality in Educational Programs. The G.E.M. program provides school districts with comprehensive procedures to assist in planning and implementing education that is multicultural. The OEEO envisions these guidelines as providing a sufficient procedure to all forms of discrimination including sexual harassment, sexual assault and dating violence. However, the document deals almost exclusively with issues of race, ethnicity, language and

cultural sensitivity.

The current lack of defined standards of policy and procedure to address sexual harassment and sexual violence in the public schools has resulted in an extremely uneven response to incidents and a low priority for the issue in too many school districts.

### **Sexual Harassment of Tenants in Rental Properties**

Under current federal law, specifically the Fair Housing Act, the landlord's requirements regarding sexual harassment and the tenant's legal options in the event of sexual harassment apply only to rental properties larger than four-family houses where the landlord is not in residence. Should a woman live in a two-, three-, or four-family house where the landlord resides, the tenant has no protection from sexual harassment and no legal recourse in the event of discrimination on the basis of familial status. Her only option if she is harassed is to move, which harassing landlords know is not a reasonable choice in the current rental housing market.

As brought out in testimony from Lillian Maurice of the Irvington Tenant Organization, Patricia Morin, private citizen, and Sharon Eure and Alisa Grossman of the Women's Rights Litigation Clinic, Rutgers Law School, there are numerous instances documented by the Women's Rights Litigation Clinic of landlords using passkeys to obtain entrance into a tenant's apartment and subsequently sexually harassing the tenant, surprising her while naked in the shower or attempting to coerce her to have sexual relations with the landlord or the superintendent.<sup>35</sup> The legal right of a resident landlord in a small-unit rental complex to refuse to rent to a particular person should not give the landlord or his agents blanket permission to sexually harass tenants.

Under N.J.S.A. 46:8-45, the Office of Landlord-Tenant Relations of the Department of Community Affairs is required to produce and landlords are required to give to each tenant a brochure entitled "Truth in Renting." This brochure details the legal rights and responsibilities of tenants and landlords and is available in either an English or Spanish language version. This brochure contains only those items which are legislatively required or which have been required through case law. The legal opinions of the Attorney General, for instance, are not included in this brochure. Currently there is no mention of sexual harassment in this brochure, either in terms of a tenant's right to be free of sexual harassment initiated by a landlord or landlord's employee, or the landlord's responsibility to take steps to prevent sexual harassment of tenants. Likewise, there is no mention in the brochure of the fact that it is illegal for a landlord to require a tenant to provide him or her with a key to the tenant's apartment, though there is a separate pamphlet to this effect which the landlord is not required to give to the tenant. The "Truth in Renting" brochure is updated at the end of each legislative session as needed, to incorporate any new statutory amendments.

**The Commission recommends the passage of legislation to amend N.J.S.A. 46:8-45 to mandate the inclusion of information regarding sexual harassment in the rental situation. This amended Statement of Legal Rights and Responsibilities should be required to be given to each tenant by the landlord and the landlord should be required to provide the brochure to Spanish-speaking tenants in the Spanish language version.**

**A bill draft appears at Appendix DD.**

### **Window Peering**

Currently, there is no New Jersey statute under which a person engaging in Peeping Tom activity can be charged. While there used to be such a statute, it was lost in the reorganization of the statutes from 2A to 2C. An attempt to prosecute such activity under the harassment statutes failed because harassment requires that the victim be aware of the harassing conduct and an intention by the defendant that the victim be aware. Attempts to prosecute under the trespass statute have also failed, since the defendant is not usually on the victim's property, or even on private property, when the activity takes place. (See committee statement to A-790 for the applicable case law history.)

### **The Commission therefore endorses A-790 (Oros, Farragher, Amone).**

The added attention of the public to sexual harassment has improved some workplaces, and has certainly raised awareness of and sensitivity to the issue. The increase in complaints from victims has sharpened the other edge of the sword, however. State agencies that deal with the issues of training and enforcement are overwhelmed<sup>36</sup>, and a serious backlash against victims has created new hostilities.<sup>37</sup> In addition, there are fears that the most serious forms of sexual harassment may increase in violence to further deter victims from reporting, and that the recessionary economy is keeping some employees in situations they would not tolerate if jobs were easier to replace.<sup>38</sup>

Susan Denning, a consultant on sexual harassment, commented on the need for statutorily mandated policies and procedures regarding sexual harassment.

By using the word 'should,' the EEOC has left informing employees, sensitization, establishing a policy and procedure, up to the whim of the employers. By extending these same guidelines to schools under Title 9, the EEOC and the Department of Education, Office of Civil Rights, leave these responsibilities to the whim of the academic institution. With the decision in the Vincent case, the Supreme Court also stopped short of mandating policies and procedures, and never addressed informing students or employees about their rights. I am here today to suggest that the State of New Jersey could improve sexual harassment legislation by mandating employers and schools to issue a specific sexual harassment policy and procedures to enforce these policies and procedures fairly, equitably, and expeditiously, and to sensitize employees and students to the issue of sexual harassment, and inform them about the specific policy and procedures. Ideally, this should be mandated to every employer in the State of New Jersey. . . I have found that many companies and schools have just tacked sexual harassment on to their EEO policy and procedure. This does not bring attention to the real problem. It treats sexual harassment simply as another form of sexual discrimination. Sexual harassment is unwelcome sexual behavior. It is an abuse of power; it is a subtle rape, and it has to be treated as such."<sup>39</sup>

The New Jersey Law Against Discrimination, while prohibiting "discrimination because of sex" does not specifically include sexual harassment as a form of sex-related discrimination. State legislation which, by amending the existing Law Against Discrimination, clearly prohibited sexual harassment in schools, workplaces, housing, and public accommodations would send a forceful message to administrators and employers that such behaviors are illegal and that they themselves are liable for such behaviors. Mandating sexual harassment policies and procedures by statute will make it harder for employers to retaliate and easier for victims to report sexual harassment and get resolution at the lowest possible level.

**The Commission therefore recommends amending the Law Against Discrimination, C. 10:5-5, to include a definition of sexual harassment as a prohibited behavior under the law, and to include standards of liability and voluntary behavior necessary to protect employees, public school students and renters. The legislation should codify existing guidelines and case law regarding sexual harassment, mandating employers, schools, landlords, and owners of public accommodations to have specific, age-appropriate sexual harassment policies and procedures for implementing this policy, mandating the wide publication of these policies and procedures, mandating education and training programs to prevent and address sexual harassment, hearing and redress procedures, and steps to preclude retaliation against the plaintiff.**

#### **Increased Funding and Status for the Division on Civil Rights**

The Division on Civil Rights (DCR) lacks sufficient status and funding to carry out the mission entrusted to it. This Division is mandated not only to provide technical assistance regarding discrimination under the Civil Rights statutes, but also to investigate and pursue cases and provide education regarding discrimination to the public. It has been mandated in the past few years, without new money, to implement and resolve complaints under the New Jersey Family Leave Act, the federal Family and Medical Leave Act, and the Federal Fair Housing Act. While complaints of discrimination are continually rising, especially following the Anita Hill-Clarence Thomas hearings, the budget of the Division on Civil Rights has been cut in recent years. The staff of the DCR has been severely cut, from 119 attorneys in 1988 to 88 attorneys in 1993, who that year had a caseload of 919 gender and sexual harassment cases pending in addition to the many more cases involving discrimination based on other categories of complaints. And even though the Division reports to the Attorney General, none of the attorneys working in the DCR are afforded the status of being sworn as deputy attorneys general. This lack of status within its own department has resulted in inadequate funding, in increased caseloads, and in the consequent need to turn away complaints which appear to have merit. A lack of funding and layoffs have also resulted in the cessation of the Division's educational function.

Currently, fines levied by the DCR are so minimal as to represent only a minor cost of doing business for most enterprises, as brought out in testimony of Patricia Leuzzi, Esq.<sup>40</sup> These fines should be substantially increased so that businesses will be more likely to take their liability seriously and, thus, be more prone to take preventive actions to reduce the likelihood of sexual harassment and other forms of discrimination from occurring.

**The Commission therefore recommends legislation that would increase fines for violations of the Law Against Discrimination from the current \$2,000 (first offense) to \$5,000 (second and subsequent) range to \$25,000-50,000 range to comport with the federal fine structure and dedicate some portion of the fines to the work of the Division so that it is independent of the Attorney General for funding priorities and does not have to negotiate from a position of weakness for its share of the budget of the Department of Law and Public Safety. A bill implementing this recommendation is located in Appendix EE.**

# PROSTITUTION

Prostitution is usually defined as the exchange of sexual activity for money or other commodities on a regular basis. Studies estimate that there are currently between 450,0900 and one million adult women prostitutes and another one million adolescents used in prostitution in this country.<sup>1</sup> Under the New Jersey criminal code, prostitution is a disorderly persons offense that carries a penalty of up to a \$1000 fine and up to 6 months in prison. The offense of patronizing a prostitute carries the same penalty, with harsher penalties for promoting prostitution of adults or forcing people into prostitution, and even harsher penalties for engaging in prostitution with children and for promoting the prostitution of children, spouses, wards, or dependents.<sup>2</sup>

Although prostitution is a two-person crime, and involves more males as customers than women as prostitutes, women are much more frequently arrested in New Jersey than men,<sup>3</sup> and patrons are rarely punished.<sup>4</sup> Gender percentages vary slightly from year to year, but women are consistently arrested more often than men. Female prostitutes are also more visible than male patrons or male prostitutes, resulting in enforcement that has a greater impact on women. A few cities have conducted occasional well-publicized sweeps or operations to arrest patrons, but these efforts are isolated incidents, in contrast to the continuous arrests of women.

Prostitutes typically have turbulent family backgrounds. Family histories of physical, sexual, and emotional abuse, as well as drug and alcohol addiction, play important roles in many children's and women's entrance into prostitution. According to a study by Mimi Silbert,<sup>5</sup> only 40% of prostitutes were raised by both parents. Fifty-eight percent had parents involved in excessive drinking, and 28% had parents who abused drugs. The study also found that 62% of prostitutes had a parent or stepparent who was convicted of a crime at least once.<sup>6</sup> Family poverty is also characteristic, as approximately two thirds of prostitutes come from families with low or marginal incomes.<sup>7</sup>

Family violence is also rampant in prostitutes' backgrounds. Sixty-two percent of prostitutes in one study were beaten regularly while growing up, and 70% of prostitutes were emotionally abused.<sup>8</sup> Prostitutes studied for the National Institute of Mental Health in 1980 reported running away or leaving home at an average age of 14.3 years, becoming easy targets for prostitution because of limited resources.<sup>9</sup> Women and children used in prostitution are physically abused while working and during personal interactions with boyfriends or husbands (who may also be their pimps). Sixty-five percent of prostitutes are beaten by customers regularly, while 66% are regularly abused or beaten by pimps.<sup>10</sup> Some studies indicate that customers inflict the most serious beatings. Men may hate themselves for patronizing prostitutes, and turn this hate and guilt against the women by beating or abusing them.<sup>11</sup> The illegality of prostitution encourages men to view prostitutes as "easy targets about whom society is unconcerned."<sup>12</sup> This idea is reinforced by the inability and unlikelihood of prostitutes to report such beatings to police, who are naturally viewed as adversaries. Prostitutes are frequently the targets of serial murderers.<sup>13</sup> The societal view of prostitutes as degraded women who can be bought for abusive purposes downplays the significance of such violence, and popular myths that they freely choose to be prostitutes make it easy to blame them for it. Prostitutes are trapped by cycles of victimization, starting in their early family lives, from which they do not envision any escape. After extended periods of abuse they cannot perceive any other options, but develop the "learned helplessness" described by experimen-

tal researcher Martin Seligman.<sup>14</sup> Eighty-three percent of the women in one study cited physical abuse as one of the dangers or disadvantages of prostitution, yet 78% felt that they could do nothing about the abuse.<sup>15</sup> This sense of helplessness paralyzes prostitutes within their lifestyles. Psychological and physical abuse by pimps and customers reinforce the helplessness learned during early life.

The psychological and physical experience of prostitutes is almost identical to that of the traditional battered woman, yet domestic violence shelters are not equipped to, and often do not, provide services to prostitutes.<sup>16</sup> An intern with the Commission in 1991 called 16 domestic violence shelters and centers in New Jersey. Directors and staff members at each of these shelters had little or no information regarding the battering sustained by prostitutes, and only a few shelters had provided services over the past few years to "one or two" women who identified themselves as prostitutes. The shelters that had treated prostitutes only provided services for the battering issues, but did not deal with the unique combination and nature of abuses suffered by prostitutes. Many shelters even had policies that listed prostitution, along with alcohol and drug use, as behaviors in which women could not engage while receiving services.

Sexual abuse by family members during childhood, as well as sexual exploitation experienced while juveniles, is directly correlated with involvement in prostitution.<sup>17</sup> Although this statistical correlation has been documented only through recent studies, the relationship between child sexual abuse and prostitution has been assumed for some time. Susan Brownmiller, in 1975, noted that: "Psychiatric case studies of prostitutes unearth accounts of childhood rape or molestation by relatives with stunning regularity."<sup>18</sup>

Studies indicate that more than 75% of women in the sex industry were sexually abused as children.<sup>19</sup> Sixty-seven percent of the subjects in one study were sexually abused by father figures, including natural fathers, stepfathers, and foster fathers.<sup>20</sup> Seventy percent of Silbert's subjects said that sexual exploitation affected their decisions to become prostitutes, lending support to the hypothesis that child sexual abuse is a causal factor in prostitution.<sup>21</sup>

A commonly held societal myth denies the possibility that prostitutes can be raped, and another common myth assumes that prostitutes are only physically abused by their pimps, not by customers. These myths embody and reinforce the idea that rape and abuse are "part of the job," allowing police officers, court systems, and other members of society to dismiss prostitutes' rape reports and requests for assistance. In situations totally unrelated to their work, like while they are walking to the grocery store, speaking on public telephones, or in social settings, 73% of prostitutes reported being sexually assaulted, with 84% of the rapes committed by strangers.<sup>22</sup> Only 1% reported the incident to a sexual assault center, although 50% sought medical care for the injuries they sustained.<sup>23</sup> Thirty-five percent of the women who did not report the assault said that the police "wouldn't take it seriously."<sup>24</sup> Job related sexual abuse was also reported with great frequency. The exchange of money for sex allows the customer to justify sexual abuses of the women they pay for in ways that would not be tolerated under any other circumstance, while the woman's acceptance of money is construed as consent to the abuse. A Nevada brothel prostitute reported being chained, whipped, and penetrated with various objects. Rapes and brutal beatings by customers were unreported as long as the house was paid.<sup>25</sup>

Social and physical isolation, combined with constant abuse, is perhaps one of the most significant reasons that women experience extreme difficulty in leaving prostitution, and also may be a motivating factor in entrance into prostitution.<sup>26</sup> Isolation also prevents prostitutes from pursuing the limited amount of counseling or services available to them,<sup>27</sup> and almost certainly, coupled with a lifetime of abuse and unresolved childhood trauma, encourages them to develop substance abuse habits to numb the pain. Whether some prostitutes also begin prostituting themselves to support habits is a matter of timing rather than causation, because the same psychological aura surrounds the development of substance abuse and the ability to see prostitution as a viable lifestyle, so that whatever comes first, it is clear that many prostitutes are also addicts. At least one researcher<sup>28</sup> has come to believe, however, that intravenous drug use by prostitutes is not very common, and others have reported that those prostitutes who sell sex to support drug habits are seen by traditional street prostitutes as not "real professionals."<sup>29</sup>

A disturbing trend, because of its high possible mortality for the girls and women involved, is the increasing numbers of crack addicted prostitutes. "Crack girls" are at a higher risk of physical violence because of their lack of control over their habits and inability, because of the effects of the drug, to assess or refuse potentially dangerous clients.<sup>30</sup> They may also have a higher risk of contracting HIV because their mental states and desperation often inhibit their ability to require patrons to use condoms.

A new mythology has grown up around the relationship between prostitutes and AIDS. Most of the concern about HIV and prostitution revolves around the fear that female prostitutes are spreading AIDS to the heterosexual population. In fact, six years into the AIDS epidemic, there was no reliably reported case of a customer contracting HIV from a female prostitute, and not one single case of AIDS in the United States had been definitively traced to a prostitute.<sup>31</sup> There is, however, a greater chance that customers may transmit HIV to prostitutes. A few AIDS education programs for prostitutes, including the California Prostitutes' Education Project, have developed to address this concern. In 1986, the New Jersey Department of Health, in cooperation with the National Centers for Disease Control, conducted a study to determine the HIV seral prevalence in New Jersey prostitutes. The study consisted of interviews with 200 street prostitutes in Newark, Jersey City, Atlantic City, and Trenton. Approximately half of the prostitutes were HIV seral positive. Sixty percent of intravenous drug users and only 10% to 13% of non-intravenous drug users were HIV seral positive in this sample.<sup>32</sup>

Some service providers, seeking to deliver drug rehabilitation to prostitutes, have recognized that the problems of drug addiction and prostitution are similar. A California-based organization called Prostitutes Anonymous has attempted to apply the abstinence model of Alcoholics Anonymous and Narcotics Anonymous to the problem of leaving prostitution. The many social forces that in these programs are recognized and dealt with have, unfortunately, been ignored in the statutory law. The New Jersey Criminal Law Revision Commission, in recommending the 1978 recodification of the criminal code, said, "Although prostitution appears to respond to a widespread demand, and despite indications that a substantial proportion of prostitutes are victims of social and psychic conditions beyond their control, most students of the problem favor penal repression of commercialized sex."<sup>33</sup> They went on to

recommend continued criminalization.<sup>34</sup> "Students of the problem" may have favored penal repression in the 70's, but more recent scholars and studies indicate that penal repression is not the best option. The penal repression that currently exists only serves to punish victims, the women used in prostitution, and is not enforced against the pimps and patrons who abuse these women. "Prohibitionism" describes the current New Jersey system in which prostitution is illegal and penalized by criminal law, whereas "regulation" is the system used, for example, in Nevada, where prostitution is limited but allowed.<sup>35</sup> "Abolitionism" is defined as a regime which "mandates the abolition of all regulation and recognizes the prostitute's right to choose the work she does."<sup>36</sup> Under an abolitionist law, prostitution itself is legal, but pimping and the coercion of persons into prostitution are illegal. The Commission voted to endorse this scheme, but it recognized that such a system would never be adopted by the legislature.<sup>37</sup> The result was Senate Bill 2706, which was sponsored by Senators Lipman and DiFrancesco and was enacted in 1991.<sup>38</sup>

Prostitutes are not the only victims of prostitution. In 1985, there were 15,000 violent crimes reported in Dallas, Texas, and only 2665 arrests were made in those cases. By contrast, Dallas police that same year arrested 7280 people involved in prostitution, a misdemeanor, costing the taxpayers over 2000 person hours of police time each week that could have been dedicated to finding and arresting violent criminals.<sup>39</sup> In the 90's, with violent crime on the rise and budgets under microscopes, New Jersey may wish to reprioritize its use of police time, jail capacity, court personnel, and other assets in the war on criminal activities.

**The Commission therefore recommends that the Division on Women in the Department of Community Affairs design a curriculum for training programs for police and domestic violence shelters that will make those services more familiar with the dynamics of prostitution and possible interventions. It further recommends that the Department of Health fund the distribution of literature about Prostitutes Anonymous to battered women's shelters, rape crisis programs, drug and alcohol abuse programs, acute care hospitals, and police stations.**

**The Commission recommends requiring that all school districts be required to provide information to students information about the physical and emotional dangers of prostitution. A bill draft appears at Appendix B.**

**It further recommends that local police be encouraged through state challenge grants to divert some enforcement funding to prevention and intervention activities in cooperation with local women's shelters, churches, and other charitable organizations.**



**NOTES**



## NOTES TO INTRODUCTION

1. COMMISSION ON SEX DISCRIMINATION IN THE STATUTES, TRANSCRIPT OF MARCH 20, 1992 PUBLIC HEARING BEFORE THE COMMISSION ON SEX DISCRIMINATION IN THE STATUTES 1 (1992) [hereinafter TRANSCRIPT].
2. R. Francis, Testimony before the N.J. Dept. of Educ., Trenton State College (unpublished, 1993).
3. R. Francis, *Steinem Details Themes of Struggle for Equality of Sexes*, Chatham Courier, Feb. 19, 1981.
4. B. Bradley, *Violence in America, Leadership New Jersey* (unpublished speech, 1994).
5. R.M. Heck, *Heck introduces domestic violence measures* (press release, May 19, 1994).
6. TRANSCRIPT at 21.
7. Bradley, *supra* n. 4.

## NOTES TO SEXUAL ASSAULT CHAPTER

1. COMMISSION ON SEX DISCRIMINATION IN THE STATUTES, TRANSCRIPT OF MARCH 20, 1992 PUBLIC HEARING BEFORE THE COMMISSION ON SEX DISCRIMINATION IN THE STATUTES 9, 10 (1992) [hereinafter TRANSCRIPT]. Ruth Ann Koenick, citing BENEKE, MEN ON RAPE: WHAT THEY HAVE TO SAY ABOUT SEXUAL VIOLENCE (1982).
2. S. GIFIS, LAW DICTIONARY 169 (1975).
3. N.J. STAT. ANN. 2C:14-1 *et seq.* (West 1982).
4. N.J. STAT. ANN. 2C:14-2 *et seq.* (West 1982).
5. 129 N.J. 422 , 609 A.2d 1266 (1991).
6. Leslie Wolfe, Testimony before the U.S. Senate Committee on the Judiciary 8 (April 5, 1991) [hereinafter cited as Wolfe].
7. U.S. HOUSE OF REPRESENTATIVES, SELECT COMMITTEE ON CHILDREN, YOUTH AND FAMILIES, Victims of Rape Fact Sheet, (June 28, 1990).
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9. FEDERAL BUREAU OF INVESTIGATION, REPORT ON SEXUAL ASSAULT, presented before the U.S. Senate Committee on the Judiciary (April 5, 1991); Wolfe at 11; J. Ramstad, Ramstad Report (1991).
10. Wolfe at 11-12.
11. CLARK & LEWIS, RAPE: THE PRICE OF COERCIVE SEXUALITY (1977).
12. TRANSCRIPT at 86-87.
13. N.J. STAT. ANN. 2C:14-7 (West 1982); P.L. 1994, c. 95 (Aug. 11, 1994).
14. CLARK & LEWIS.
15. TRANSCRIPT at 85.
16. S. ESTRICH, REAL RAPE 4 (1987) [hereinafter ESTRICH].
17. M.P. Koss, C.A. Gidycz, N. Wisniewski, *The scope of rape: Incidence and prevalence of sexual aggression and victimization in a national sample of higher education students*, 55 J. CONSULT. CLIN. PSYCHOL. 162-170 (1987) [hereinafter Koss, *Scope of rape*]; CENTER FOR THE STUDY AND PREVENTION OF CAMPUS VIOLENCE, TOWSON STATE UNIVERSITY, THE LINKS AMONG ALCOHOL, DRUGS AND CRIME ON AMERICAN COLLEGE CAMPUSES: A NATIONAL FOLLOWUP STUDY (1991).

18. J. Greenbaum, New Jersey Coalition Against Sexual Assault (unpublished letter, September 26, 1994)
19. ESTRICH at 15-16.
20. *Id.* at 17-18.
21. *Id.* at 25.
22. *Id.* at 15.
23. *Id.* at 19.
24. WEISHEIT & MAHAN, WOMEN, CRIME AND CRIMINAL JUSTICE 98 (1988); FLOWERS, WOMEN AND CRIMINALITY: THE WOMAN AS VICTIM, OFFENDER AND PRACTITIONER 33 (1987).
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26. Bienen, *Rape III*, 6 WOMEN'S RTS. L. REP. 180-184 (Spring 1980) [hereinafter *Rape III*].
27. Commonwealth v. Robert A. Berkowitz, May 27, 1994, 415 Pa. Super. Ct. 505, 609 A. 2d 1338 (1992).
28. Largen, *Payment for Sexual Assault Victim Medical Examination: A Model Statute*, 9 RESPONSE TO THE VICTIMIZATION OF WOMEN AND CHILDREN 4, 14-20 (1984) at 15 [hereinafter Largen].
29. ESTRICH at 21.
30. N.J.S. 2C:12-10 (1984 & 1994 Supp.)
31. TRANSCRIPT at 88.
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40. TRANSCRIPT II at 34-35.

## NOTES TO PROSTITUTION CHAPTER

1. EVELINA KANE, SUPPORT FOR WOMEN LEAVING PROSTITUTION, PROJECT SUMMARY AND RECOMMENDATIONS, (1987); ARLENE CARMEN & HOWARD MOODY, WORKING WOMEN: THE SUBTERRANEAN WORLD OF STREET PROSTITUTION (1985) [hereinafter cited as CARMEN & MOODY, WORKING WOMEN].

2. N.J.STAT. ANN. §2C: 34-1; N.J.STAT. ANN. §2C: 43-3; N.J.STAT. ANN. §2C: 43-8 (Supp. 1993).

3. STATE OF NEW JERSEY, UNIFORM CRIME REPORTS (*Arrests for Prostitution in New Jersey, 1985 -1992*).

	1985	1986	1987	1988	1989	1990	1991	1992
total	2,515	2,385	1,775	1,881	1954	2768	2381	2537
females	66%	76%	62%	69%	72%	55%	61%	61%
males	34%	24%	38%	31%	27%	44%	38%	38%
juveniles	2%	3%	2%	1%	2%	1.8%	1.6%	0.8%

The reason for the sharp decrease in prostitution arrests between 1986 and 1987 is unknown. There is no indication from other sources that prostitution in New Jersey actually decreased during those years, although enforcement probably varied. Vice department budget cuts or an increased focus on drug enforcement may account for this sudden change. The upward trend in prostitution arrests since 1987, with a slight decline in 1991, still indicates that prostitution has not actually decreased. The trend toward a more even split in the sexes in 1990 may indicate a growing societal change in attitude about who should bear the blame for the crime; it may also reflect a concern for the consequences on the wives of patrons in the age of AIDS. *But see text surrounding notes 31- 32 , infra.*

4. NEW JERSEY CRIMINAL LAW REVISION COMMISSION, NEW JERSEY PENAL CODE VOLUME II: COMMENTARY, FINAL REPORT OF THE NEW JERSEY CRIMINAL LAW REVISION COMMISSION 305 (1971).

5. M. SILBERT, SEXUAL ASSAULT OF PROSTITUTES: FINAL REPORT TO THE NATIONAL CENTER FOR THE PREVENTION AND CONTROL OF RAPE, NATIONAL INSTITUTE OF MENTAL HEALTH (November 1980). [hereinafter cited as SILBERT, SEXUAL ASSAULT]

6. *Id.*

7. L. DIANA, THE PROSTITUTE AND HER CLIENTS: YOUR PLEASURE IS HER BUSINESS (1985).

8. SILBERT, SEXUAL ASSAULT.

9. *Id.*
10. Telephone conversation with Gayle Woodsum, Director of Looking Up, July 18, 1989.
11. J. BROTHERS, "Self hatred, inhibitions contribute to violence against prostitutes," *The Star Ledger*, (Newark, N.J. August 8, 1989).
12. CARMEN & MOODY, *WORKING WOMEN* at 43.
13. See, e.g., M. KORNA, "New Bedford Serial Murderer Targets Women Used in Prostitution," III/2 *WHISPER* 4 (1989).
14. M. SELIGMAN, *HELPLESSNESS: ON DEPRESSION, DEVELOPMENT, AND DEATH* (1979).
15. M. Silbert & A. Pines, *Victimization of Street Prostitutes*, 7 *VICTIMOLOGY* 122 (1982).
16. S. Wynter, *Empowering Women to Escape Prostitution*, III/2 *WHISPER* (1989).
17. SILBERT, *SEXUAL ASSAULT*.
18. S. BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* 279 (1975).
19. S. WYNTER, *WHISPER: WOMEN HURT IN SYSTEMS OF PROSTITUTION ENGAGED IN REVOLT* (1986).
20. M. Silbert & A. Pines, *Sexual Child Abuse as an Antecedent to Prostitution*, 5 *CHILD ABUSE AND NEGLECT* 407,409 (1981).
21. *Id.* at 410.
22. SILBERT, *SEXUAL ASSAULT*.
23. *Id.*
24. *Id.*
25. J. Ryan, *Legalized Prostitution in Nevada*, III/2 *WHISPER* (1989).
26. SILBERT, *SEXUAL ASSAULT*.
27. See, e.g., M. Harrigan, *A Portrait of Two Women*, III/2 *WHISPER* (1989).
28. After working with New York City prostitutes for 12 years, Arlene Carmen's "...expectation of heavy drug usage was not borne out." Meeting with Arlene Carmen, Program Director of Judson Memorial Church, June 20, 1989.
29. R. Campbell, "On the street, drug abuse divides prostitutes," *The Philadelphia Inquirer*

(August 15, 1989).

30. G. Kolata, "In Cities, Poor Families Are Dying of Crack," *The New York Times*, (August 11, 1989).

31. AMERICAN CIVIL LIBERTIES UNION FOUNDATION, MANDATORY HIV TESTING OF FEMALE PROSTITUTES, citing DECKER, *Prostitution as a Public Health Issue*, in AIDS AND THE LAW (1987).

32. Phone conversation with John French, New Jersey Department of Health, August 4, 1989.

33. NEW JERSEY CRIMINAL LAW REVISION COMMISSION, STUDY DRAFT — PART II: DEFINITION OF SPECIFIC CRIMES §251.2 (*Commentary at 11*) (1970).

34. P.L. 1978, c. 95, §2C:34-1, *eff.* Sept. 1, 1979.

35. P. SCIBELLI, Note: *Empowering Prostitutes*, 10 HARV. WOMEN'S L. J. 117 (1987).

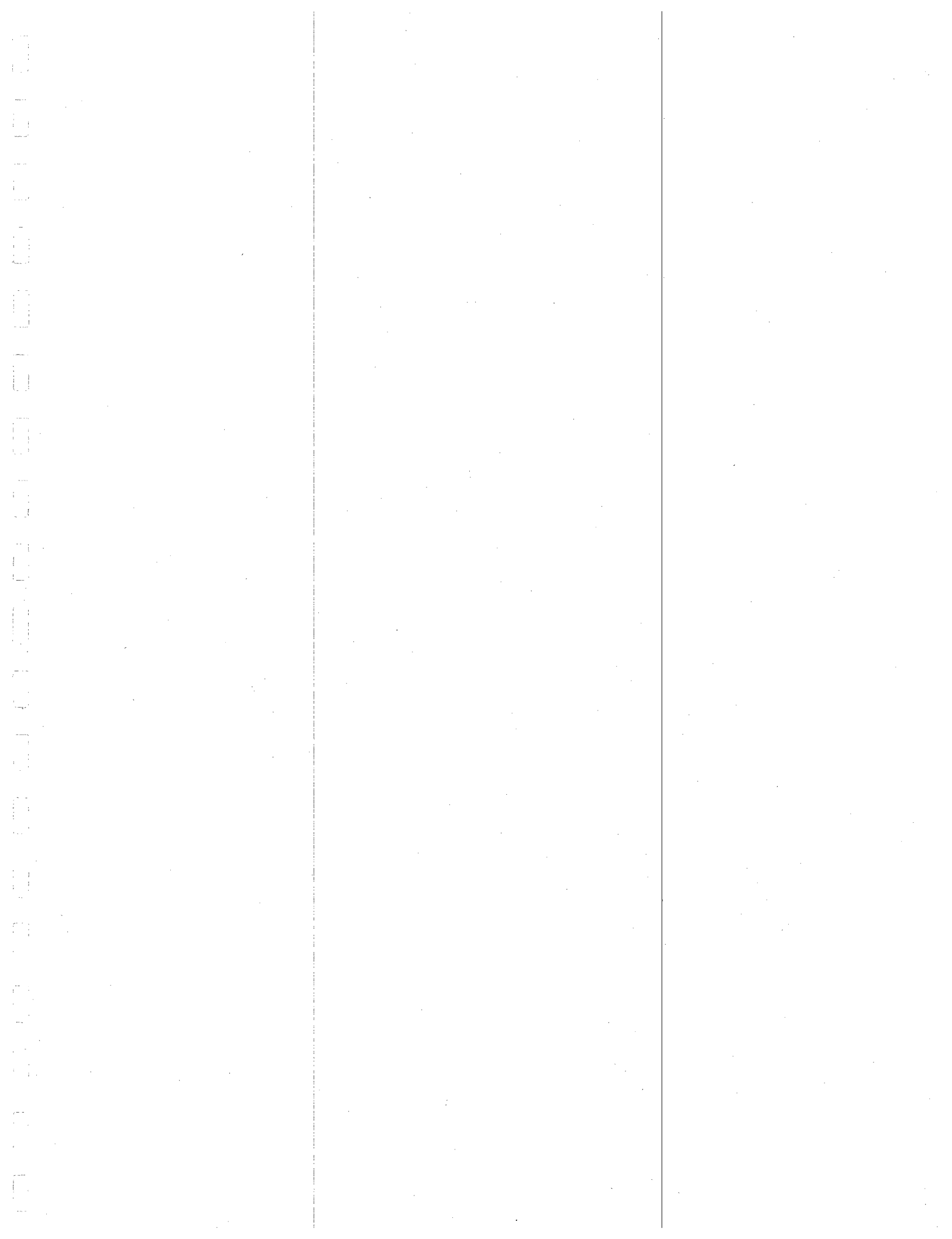
36. *Id.* at 118.

37. Commission on Sex Discrimination in the Statutes, Minutes of October 25, 1989 meeting (1989).

38. P.L. 1991, c. 211, *eff.* Sept. 21, 1991.

39. Note, *The Highest Paying Customers: America's Cities and the Costs of Prostitution Control*, 38 HASTINGS L.J. 769 (1987).

# APPENDICES



Chapter 95 Laws of N.J. 1994  
Approved 8-11-94

[SECOND REPRINT]

ASSEMBLY, No. 677

APPENDIX A

STATE OF NEW JERSEY

By Assemblywoman DERMAN,  
Assemblyman WARSH, Assemblywoman Gill,  
Assemblyman Jones, Assemblywomen Quigley,  
Turner and Weinberg

1 AN ACT concerning the admissibility of certain evidence in  
2 prosecutions for sex crimes and amending N.J.S.2C:14-7.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. N.J.S.2C:14-7 is amended to read as follows:

7 2C:14-7. a. In prosecutions for aggravated sexual assault,  
8 sexual assault, aggravated criminal sexual contact, criminal  
9 sexual contact, [or] endangering the welfare of a child in  
10 violation of N.J.S.2C:24-4 or the fourth degree crime of lewdness  
11 in violation of subsection b. of N.J.S.2C:14-4, evidence of the  
12 victim's previous sexual conduct shall not be admitted nor  
13 reference made to it in the presence of the jury except as  
14 provided in this section. When the defendant seeks to admit such  
15 evidence for any purpose, [he] the defendant must apply for an  
16 order of the court before the trial or preliminary hearing, except  
17 that the court may allow the motion to be made during trial if  
18 the court determines that the evidence is newly discovered and  
19 could not have been obtained earlier through the exercise of due  
20 diligence. After the application is made, the court shall conduct  
21 a hearing in camera to determine the admissibility of the  
22 evidence. If the court finds that evidence offered by the  
23 defendant regarding the sexual conduct of the victim is relevant  
24 and highly material and meets the requirements of subsections c.  
25 and d. of this section and that the probative value of the evidence  
26 offered [is not outweighed by] substantially outweighs its  
27 collateral nature or [by] the probability that its admission will  
28 create undue prejudice, confusion of the issues, or unwarranted  
29 invasion of the privacy of the victim, the court shall enter an  
30 order setting forth with specificity what evidence may be  
31 introduced and the nature of the questions which shall be  
32 permitted, and the reasons why the court finds that such evidence  
33 satisfies the standards contained in this section. The defendant  
34 may then offer evidence under the order of the court.

35 b. In the absence of clear and convincing proof to the  
36 contrary, evidence of the victim's sexual conduct occurring more  
37 than one year before the date of the offense charged is presumed  
38 to be inadmissible under this section.

39 c. Evidence of previous sexual conduct with persons other than  
40 the defendant which is offered by any lay or expert witness shall  
41 not be considered relevant unless it is material to [negating the  
42 element of force or coercion or to] proving [that] the source of  
43 semen, pregnancy or disease [is a person other than the  
44 defendant].

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

1 Assembly AJL committee amendments adopted January 20, 1994.

2 Senate SJU committee amendments adopted June 2, 1994.

1 d. <sup>2</sup>[Evidence of the defendant's previous sexual conduct with  
2 the victim shall be relevant only if the previous sexual conduct  
3 with the victim could lead the defendant to reasonably believe  
4 that the sexual conduct complained of occurred with what a  
5 reasonable person would believe to be affirmative and freely  
6 given permission] Evidence of the victim's previous sexual  
7 conduct with the defendant shall be considered relevant if it is  
8 probative of whether a reasonable person, knowing what the  
9 defendant knew at the time of the alleged offense, would have  
10 believed that the alleged victim freely and affirmatively  
11 permitted the sexual behavior complained of<sup>2</sup>.

12 e. For the purposes of this section, "sexual conduct" shall  
13 mean any conduct or behavior relating to sexual activities of the  
14 victim, including but not limited to previous or subsequent  
15 experience of sexual penetration or sexual contact, use of  
16 contraceptives, <sup>1</sup>sexual activities reflected in<sup>1</sup> gynecological  
17 records, living arrangement and life style.

18 (cf: P.L.1988, c.69, s.1)

19 2. This act shall take effect immediately.

20

21

22

23

24 Amends the "Rape Shield Law" to exclude certain evidence  
25 concerning the victim's past sexual conduct.

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1994

By Senator MCGREEVEY

1 AN ACT concerning the admission of evidence relating to a  
2 victim's manner of dress in sexual assault cases and amending  
3 N.J.S.2C:14-7.

4

5 BE IT ENACTED *by the Senate and General Assembly of the*  
6 *State of New Jersey:*

7 1. N.J.S.2C:14-7 is amended to read as follows:

8 2C:14-7. a. In prosecutions for aggravated sexual assault,  
9 sexual assault, aggravated criminal sexual contact, criminal  
10 sexual contact, endangering the welfare of a child in violation of  
11 N.J.S.2C:24-4 or the fourth degree crime of lewdness in violation  
12 of subsection b. of N.J.S.2C:14-4, evidence of the victim's  
13 previous sexual conduct shall not be admitted nor reference made  
14 to it in the presence of the jury except as provided in this  
15 section. When the defendant seeks to admit such evidence for  
16 any purpose, the defendant must apply for an order of the court  
17 before the trial or preliminary hearing, except that the court may  
18 allow the motion to be made during trial if the court determines  
19 that the evidence is newly discovered and could not have been  
20 obtained earlier through the exercise of due diligence. After the  
21 application is made, the court shall conduct a hearing in camera  
22 to determine the admissibility of the evidence. If the court finds  
23 that evidence offered by the defendant regarding the sexual  
24 conduct of the victim is relevant and highly material and meets  
25 the requirements of subsections c. and d. of this section and that  
26 the probative value of the evidence offered substantially  
27 outweighs its collateral nature or the probability that its  
28 admission will create undue prejudice, confusion of the issues, or  
29 unwarranted invasion of the privacy of the victim, the court shall  
30 enter an order setting forth with specificity what evidence may  
31 be introduced and the nature of the questions which shall be  
32 permitted, and the reasons why the court finds that such evidence  
33 satisfies the standards contained in this section. The defendant  
34 may then offer evidence under the order of the court.

35 b. In the absence of clear and convincing proof to the  
36 contrary, evidence of the victim's sexual conduct occurring more  
37 than one year before the date of the offense charged is presumed  
38 to be inadmissible under this section.

39 c. Evidence of previous sexual conduct with persons other than  
40 the defendant which is offered by any lay or expert witness shall  
41 not be considered relevant unless it is material to proving the  
42 source of semen, pregnancy or disease.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 d. Evidence of the victim's previous sexual conduct with the  
2 defendant shall be considered relevant if it is probative of  
3 whether a reasonable person, knowing what the defendant knew  
4 at the time of the alleged offense, would have believed that the  
5 alleged victim freely and affirmatively permitted the sexual  
6 behavior complained of.

7 e. (1) Except as provided in paragraph (2) of this subsection,  
8 evidence of the manner in which the victim was dressed at the  
9 time of an offense prosecuted under this section shall not be  
10 admitted.

11 (2) When the defendant seeks to admit evidence of the manner  
12 in which the victim was dressed at the time of an offense which  
13 is the subject of prosecution under this section, the defendant  
14 shall apply for an order of the court. The court shall conduct a  
15 hearing out of the presence of the jury to determine the  
16 admissibility of the evidence. If the court finds that the evidence  
17 is relevant and that the probative value of the evidence is not  
18 outweighed by the probability that the evidence will create undue  
19 prejudice or confusion, the court shall make an order stating what  
20 evidence may be introduced.

21 [e.] f. For the purposes of this section, "sexual conduct" shall  
22 mean any conduct or behavior relating to sexual activities of the  
23 victim, including but not limited to previous or subsequent  
24 experience of sexual penetration or sexual contact, use of  
25 contraceptives, sexual activities reflected in gynecological  
26 records, living arrangement and life style.  
27 (cf: P.L.1994, c.95)

28 2. This act shall take effect immediately.  
29  
30

### 31 STATEMENT

32  
33 This bill would prohibit the introduction of evidence of the  
34 manner in which a victim was dressed at the time of the  
35 commission of a sexual offense unless it is determined by the  
36 court to be relevant and that its probative value is not  
37 outweighed by the probability that it will create undue prejudice  
38 or confusion.  
39  
40

41 \_\_\_\_\_  
42  
43 Excludes certain evidence concerning the type of clothing worn  
44 by victim at time of sexual assault.

ASSEMBLY, No. 2047

STATE OF NEW JERSEY

INTRODUCED AUGUST 29, 1994

By Assemblyman LANCE and  
Assemblywoman GREGORY-SCOCCHI

1 AN ACT concerning the admission of evidence relating to a  
2 victim's manner of dress in sexual assault cases and amending  
3 N.J.S.2C:14-7.  
4

5 BE IT ENACTED by the Senate and General Assembly of the  
6 State of New Jersey:

7 1. N.J.S.2C:14-7 is amended to read as follows:

8 2C:14-7. a. In prosecutions for aggravated sexual assault,  
9 sexual assault, aggravated criminal sexual contact, criminal  
10 sexual contact, endangering the welfare of a child in violation of  
11 N.J.S.2C:24-4 or the fourth degree crime of lewdness in violation  
12 of subsection b. of N.J.S.2C:14-4, evidence of the victim's  
13 previous sexual conduct shall not be admitted nor reference made  
14 to it in the presence of the jury except as provided in this  
15 section. When the defendant seeks to admit such evidence for  
16 any purpose, the defendant must apply for an order of the court  
17 before the trial or preliminary hearing, except that the court may  
18 allow the motion to be made during trial if the court determines  
19 that the evidence is newly discovered and could not have been  
20 obtained earlier through the exercise of due diligence. After the  
21 application is made, the court shall conduct a hearing in camera  
22 to determine the admissibility of the evidence. If the court finds  
23 that evidence offered by the defendant regarding the sexual  
24 conduct of the victim is relevant and highly material and meets  
25 the requirements of subsections c. and d. of this section and that  
26 the probative value of the evidence offered substantially  
27 outweighs its collateral nature or the probability that its  
28 admission will create undue prejudice, confusion of the issues, or  
29 unwarranted invasion of the privacy of the victim, the court shall  
30 enter an order setting forth with specificity what evidence may  
31 be introduced and the nature of the questions which shall be  
32 permitted, and the reasons why the court finds that such evidence  
33 satisfies the standards contained in this section. The defendant  
34 may then offer evidence under the order of the court.

35 b. In the absence of clear and convincing proof to the  
36 contrary, evidence of the victim's sexual conduct occurring more  
37 than one year before the date of the offense charged is presumed  
38 to be inadmissible under this section.

39 c. Evidence of previous sexual conduct with persons other than  
40 the defendant which is offered by any lay or expert witness shall  
41 not be considered relevant unless it is material to proving the  
42 source of semen, pregnancy or disease.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 d. Evidence of the victim's previous sexual conduct with the  
2 defendant shall be considered relevant if it is probative of  
3 whether a reasonable person, knowing what the defendant knew  
4 at the time of the alleged offense, would have believed that the  
5 alleged victim freely and affirmatively permitted the sexual  
6 behavior complained of.

7 e. Evidence of the manner in which the victim was dressed at  
8 the time an offense was committed shall not be admitted unless  
9 such evidence is determined by the court to be relevant and  
10 admissible in the interest of justice, after an offer of proof by  
11 the proponent of such evidence outside the hearing of the jury or  
12 at such hearing as the court may require, and a statement by the  
13 court of its findings of fact essential to its determination. A  
14 statement by the court of its findings shall also be included in the  
15 record.

16 [e.] f. For the purposes of this section, "sexual conduct" shall  
17 mean any conduct or behavior relating to sexual activities of the  
18 victim, including but not limited to previous or subsequent  
19 experience of sexual penetration or sexual contact, use of  
20 contraceptives, sexual activities reflected in gynecological  
21 records, living arrangement and life style.  
22 (cf: P.L.1994, c.95, s.1)

23 2. This act shall take effect immediately.

24

25

26

STATEMENT

27

28 This bill would prohibit the introduction of evidence of the  
29 manner in which a victim was dressed at the time of the  
30 commission of a sexual offense unless it is determined by the  
31 court to be relevant and admissible in the interest of justice.

32

33

34

35

36

37

Excludes certain evidence concerning the type of clothing worn  
by victim at time of assault.

SENATE, No.  
ASSEMBLY, No.

## STATE OF NEW JERSEY

INTRODUCED , 1994

AN ACT concerning education about violence and amending P.L.1979, c. 42.(c. 18A:35-4 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. 18A:35-4.3 is amended to read as follows:

**Sexual assault prevention education program**

The Department of Education in consultation with the advisory committee provided for in section 2 of this act, shall develop and establish guidelines [for the teaching of sexual assault prevention techniques] and resources for information about the incidence, prevention, and treatment of sexual assault, sexual abuse, dating violence, and sexual harassment and about the entry of teenagers, particularly runaways, into prostitution. These materials shall be made available for [utilization by] the use of local school districts in the establishment of a sexual assault, sexual abuse, sexual harassment, dating violence, and teen prostitution prevention education program. Such program shall be adapted to the age and understanding of the pupils and shall be emphasized in appropriate places of the curriculum sufficiently for a full and adequate treatment of the subject.

2. 18A:35-4.4 is amended to read as follows:

**Advisory council**

The Commissioner of Education, in consultation with the Department of Community Affairs, Division on Women, shall appoint an advisory council to assist and advise the State Board of Education in the development and implementation of educational programs for the prevention of sexual assault, sexual abuse, dating violence, sexual harassment, and prostitution.

The advisory council shall consist of 15 members chosen from among the legal, law enforcement, medical and educational communities, and shall also include representatives of community-based groups providing services and assistance to victims of sexual assault.

Each shall be appointed for a 2-year term and shall serve without compensation.

3. 18A:35-4.5 is amended to read as follows:

**Establishment of program; voluntary participation.**

One year after the effective date of this act each board of education [may] shall establish a sexual assault, sexual abuse, dating violence, sexual harassment, and prostitution prevention education program in accordance with the guidelines developed by the department; provided, however, that no child shall be compelled to participate in said program upon written objection on religious or moral grounds by the parent or guardian of said child.

4. This act shall take effect immediately.

[SECOND REPRINT]  
ASSEMBLY, No. 1629

APPENDIX C

STATE OF NEW JERSEY

INTRODUCED APRIL 25, 1994

By Assemblymen LUSTBADER, LANCE  
and Assemblywoman Crecco

[FIRST REPRINT]  
SENATE, No. 871

STATE OF NEW JERSEY

INTRODUCED MARCH 21, 1994

By Senators LaROSSA and INVERSO

1 AN ACT concerning compensation for certain crime victims,  
2 amending and supplementing various sections of the statutory  
3 law.

4  
5 BE IT ENACTED by the Senate and General Assembly of the  
6 State of New Jersey:

7 1. Section 2 of P.L.1979, c.396 (C.2C:43-3.1) is amended to  
8 read as follows:

9 2. a. (1) In addition to any disposition made pursuant to the  
10 provisions of N.J.S.2C:43-2, any person convicted of a crime of  
11 violence<sup>1</sup>; <sup>1</sup> theft of an automobile pursuant to  
12 N.J.S.2C:20-2<sup>1</sup>; <sup>1</sup> eluding a law enforcement officer pursuant to  
13 subsection b. of N.J.S.2C:29-2 or unlawful taking of a motor  
14 vehicle pursuant to subsections b., c. or d. of N.J.S.2C:20-10<sup>1</sup>;  
15 resulting in the injury or death of another person,<sup>1</sup> shall be  
16 assessed at least \$100.00, but not to exceed \$10,000.00 for each  
17 such crime for which he was convicted <sup>1</sup> which resulted in the  
18 injury or death of another person<sup>1</sup>. In imposing this assessment,  
19 the court shall consider factors such as the severity of the crime,  
20 the defendant's criminal record, defendant's ability to pay and  
21 the economic impact of the assessment on the defendant's  
22 dependents.

23 (2) (a) In addition to any other disposition made pursuant to  
24 the provisions of N.J.S.2C:43-2 or any other statute imposing  
25 sentences for crimes, any person convicted of any disorderly  
26 persons offense, any petty disorderly persons offense, or any  
27 crime not resulting in the injury or death of any other person  
28 shall be assessed \$50.00 for each such offense or crime for which  
29 he was convicted.

30 (b) In addition to any other disposition made pursuant to the  
31 provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43) or any  
32 other statute indicating the dispositions that can be ordered for  
33 adjudications of delinquency, any juvenile adjudicated delinquent,  
34 according to the definition of "delinquency" established in  
35 section 4 of P.L.1982, c.77 (C.2A:4A-23), shall be assessed at  
36 least \$30.00 for each such adjudication, but not to exceed the  
37 amount which could be assessed pursuant to paragraph (1) or  
38 paragraph (2) (a) of subsection a. of this section if the offense  
39 was committed by an adult.

40 (c) In addition to any other assessment imposed pursuant to the  
41 provisions of R.S.39:4-50, the provisions of section 12 of  
42 P.L.1990, c.103 (C.39:3-10.20) relating to a violation of section 5

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.  
Matter enclosed in superscript numerals has been adopted as follows:

1 of P.L.1990, c.103 (C.39:3-10.13), the provisions of section 19 of  
2 P.L.1954, c.236 (C.12:7-34.19) or the provisions of <sup>1</sup>[R.S.12:7-46,]  
3 section 3 of P.L.1952, c.157 (C.12:7-46)<sup>1</sup>, any person convicted of  
4 operating a motor vehicle, commercial motor vehicle or vessel  
5 while under the influence of liquor or drugs shall be assessed  
6 \$50.00.

7 (d) In addition to any term or condition that may be included in  
8 an agreement for supervisory treatment pursuant to  
9 N.J.S.2C:43-13 or imposed as a term or condition of conditional  
10 discharge pursuant to N.J.S.2C:36A-1, a participant in either  
11 program shall be required to pay an assessment of \$50.00.

12 (3) All assessments provided for in this section shall be  
13 collected as provided in section 3 of P.L.1979, c.396 (C.2C:46-4)  
14 and the court shall so order at the time of sentencing. When a  
15 defendant who is sentenced to incarceration in a State  
16 correctional facility has not, at the time of sentencing, paid an  
17 assessment for the crime for which he is being sentenced or an  
18 assessment imposed for a previous crime, the court shall  
19 specifically order the Department of Corrections to collect the  
20 assessment during the period of incarceration and to deduct the  
21 assessment from any income the inmate receives as a result of  
22 labor performed at the institution or on any work release program  
23 or from any personal account established in the institution for the  
24 benefit of the inmate. [all] All moneys collected, whether in part  
25 or in full payment of any assessment imposed pursuant to this  
26 section, shall be forwarded monthly by the parties responsible for  
27 collection, together with a monthly accounting on forms  
28 prescribed by the [Violent] Victims of <sup>1</sup>[Crimes] Crime<sup>1</sup>  
29 Compensation Board pursuant to section 19 of P.L.1991, c.329  
30 (C.52:4B-8.1), to the [Violent] Victims of <sup>1</sup>[Crimes] Crime<sup>1</sup>  
31 Compensation Board.

32 (4) The [Violent] Victims of <sup>1</sup>[Crimes] Crime<sup>1</sup> Compensation  
33 Board shall forward monthly all moneys received from  
34 assessments collected pursuant to this section to the State  
35 Treasury for deposit as follows:

36 (a) Of moneys collected on assessments imposed pursuant to  
37 paragraph a. (1):

38 (i) the first \$72.00 collected for deposit in the [Violent]  
39 Victims of <sup>1</sup>[Crimes] Crime<sup>1</sup> Compensation Board Account,

40 (ii) the next \$3.00 collected for deposit in the Criminal  
41 Disposition and Revenue Collection Fund,

42 (iii) the next \$25.00 collected for deposit in the Victim  
43 Witness Advocacy Fund, and

44 (iv) moneys collected in excess of \$100.00 for deposit in the  
45 [Violent] Victims of <sup>1</sup>[Crimes] Crime<sup>1</sup> Compensation Board  
46 Account;

47 (b) Of moneys collected on assessments imposed pursuant to  
48 paragraph a. (2) (a), (c) or (d):

49 (i) the first \$39.00 collected for deposit in the [Violent]  
50 Victims of <sup>1</sup>[Crimes] Crime<sup>1</sup> Compensation Board Account,

51 (ii) the next \$3.00 collected for deposit in the Criminal  
52 Disposition and Revenue Collection Fund, and

53 (iii) the next \$8.00 collected for deposit in the Victim and  
54 Witness Advocacy Fund;

1 (c) Of moneys collected on assessments imposed pursuant to  
2 paragraph a. (2) (b):

3 (i) the first \$17.00 for deposit in the [Violent] Victims of  
4 1[Crimes] Crime<sup>1</sup> Compensation Board Account and

5 (ii) the next \$3.00 collected for deposit in the Criminal  
6 Disposition and Revenue Collection Fund, and

7 (iii) the next \$10.00 for deposit in the Victim and Witness  
8 Advocacy Fund, and

9 (iv) moneys collected in excess of \$30.00 for deposit in the  
10 [Violent] Victims of 1[Crimes] Crime<sup>1</sup> Compensation Board  
11 Account.

12 (5) The [Violent] Victims of 1[Crimes] Crime<sup>1</sup> Compensation  
13 Board shall provide the Attorney General with a monthly  
14 accounting of moneys received, deposited and identified as  
15 receivable, on forms prescribed pursuant to section 19 of  
16 P.L.1991, c.329 (C.52:4B-8.1).

17 (6) (a) The [Violent] Victims of 1[Crimes] Crime<sup>1</sup>  
18 Compensation Board Account shall be a separate, nonlapsing,  
19 revolving account that shall be administered by the [Violent]  
20 Victims of 1[Crimes] Crime<sup>1</sup> Compensation Board. All moneys  
21 deposited in that Account shall be used in satisfying claims  
22 pursuant to the provisions of the "Criminal Injuries Compensation  
23 Act of 1971," P.L.1971, c.317 (C.52:4B-1 et seq.) and for related  
24 administrative costs.

25 (b) The Criminal Disposition and Revenue Collection Fund  
26 shall be a separate, nonlapsing, revolving account that shall be  
27 administered by the [Violent] Victims of 1[Crimes] Crime<sup>1</sup>  
28 Compensation Board. All moneys deposited in that Fund shall be  
29 used as provided in section 19 of P.L.1991, c.329 (C.52:4B-8.1).

30 (c) The Victim and Witness Advocacy Fund shall be a separate,  
31 nonlapsing, revolving fund and shall be administered by the  
32 Division of Criminal Justice, Department of Law and Public  
33 Safety and all moneys deposited in that Fund pursuant to this  
34 section shall be used for the benefit of victims and witnesses of  
35 crime as provided in section 20 of P.L.1991, c.329 (C.52:4B-43.1)  
36 and for related administrative costs.

37 b. (Deleted by amendment, P.L.1991, c.329).

38 c. (Deleted by amendment, P.L.1991, c.329).

39 d. (Deleted by amendment, P.L.1991, c.329).

40 (cf: P.L.1991,c.329,s.3)

41 2. Section 1 of P.L.1981, c.258 (C.52:4B-10.1) is amended to  
42 read as follows:

43 1. a. The [Violent] Victims of 1[Crimes] Crime<sup>1</sup>  
44 Compensation Board may make one or more emergency awards to  
45 any applicant for compensation pending final determination of a  
46 case, when it determines that compensation is likely to be  
47 provided and that the applicant will suffer undue hardship if funds  
48 are not made immediately available. The amount of any one  
49 emergency award shall not exceed \$500.00 with the total amount  
50 of each such award made to an individual applicant not to exceed  
51 \$1,500.00. Any emergency awards made to an applicant shall be  
52 deducted from the final amount of compensation provided to an  
53 applicant by the board. If the amount of compensation made by  
54 the board to an applicant is less than the sum provided

1 to the applicant through emergency grants, the applicant shall  
2 pay to the board an amount of money equal to the difference. If  
3 the board determines that an applicant who has received  
4 emergency awards shall receive no compensation, the applicant  
5 shall repay to the board the total amount of all emergency  
6 awards which he received.

7 b. In addition to any emergency award made pursuant to the  
8 provisions of subsection a. of this section, the Victims of  
9 <sup>1</sup>[Crimes] Crime<sup>1</sup> Compensation Board may make an emergency  
10 award in an amount not to exceed \$200.00 for compensation for  
11 funds stolen from a victim in connection with any of the incidents  
12 specified in section 11 of P.L.1971, c.317 (C.52:4B-11) <sup>1</sup>except  
13 paragraph 11 of subsection b. of section 11 of P.L.1971, c.317  
14 (C.52:4B-11b.(11)), burglary<sup>1</sup>, whether or not the victim suffered  
15 personal injury, under the following circumstances:

16 (1) The victim is 60 years of age or older or is disabled as  
17 defined pursuant to the federal Social Security Act, 42 U.S.C.  
18 416(i);

19 (2) The victim's income does not exceed the limits adopted by  
20 the state Department of Human Services as the standard of need  
21 for the General Assistance Program;

22 (3) The funds stolen exceed \$50.00;

23 (4) The victim establishes:

24 (a) that <sup>1</sup>[he] the victim<sup>1</sup> has filed a police report indicating,  
25 among other things, the amount stolen;

26 (b) that <sup>1</sup>[he] the victim<sup>1</sup> has cooperated with investigative and  
27 prosecuting authorities; and

28 (c) the source of the funds stolen; and

29 (5) The board is satisfied that there are no other sources  
30 available to provide the victim with funds necessary to cover  
31 immediate costs of essential shelter, food or medical expenses,  
32 and that, but for the victim's loss, the victim would otherwise  
33 have had the funds to pay such costs.

34 c. The board shall direct that any funds awarded pursuant to  
35 this act be expended solely to cover the costs established  
36 pursuant to paragraph (5) of subsection b. of this section.

37 d. A person shall not receive an emergency award pursuant to  
38 this act on more than two occasions, or receive more than one  
39 such award within a period of 36 consecutive months.

40 (cf: P.L.1981, c.258, s.1)

41 3. (New section) In addition to ordering the payment of  
42 compensation for personal injury or death which resulted from  
43 the incidents specified in section 11 of P.L.1971, c.317  
44 (C.52:4B-11), the Victims of <sup>1</sup>[Crimes] Crime<sup>1</sup> Compensation  
45 Board may order the payment of compensation for funds in  
46 connection with those incidents to compensate certain victims,  
47 whether or not those victims suffered personal injury, as  
48 specified in paragraphs (1) through (5) of subsection b. of section  
49 1 of P.L.1981, c.258 (C.52:4B-10.1), in an amount not to exceed  
50 \$200.00.

51 4. Section 11 of P.L.1971, c.317 (C.52:4B-11) is amended to  
52 read as follows:

53 11. The board may order the payment of compensation in  
54 accordance with the provisions of this act for personal injury or  
55 death which resulted from:

- 1 1[(a)] a.<sup>1</sup> an attempt to prevent the commission of crime or to  
 2 arrest a suspected criminal or in aiding or attempting to aid a  
 3 police officer so to do, or  
 4 1[(b)] b.<sup>1</sup> the commission or attempt to commit any of the  
 5 following offenses:  
 6 1[1.](1)<sup>1</sup> aggravated assault;  
 7 1[2.](2)<sup>1</sup> [mayhem;] (Deleted by amendment, P.L. , c. )(now  
 8 pending before the Legislature as this bill).  
 9 1[3.](3)<sup>1</sup> threats to do bodily harm;  
 10 1[4.](4)<sup>1</sup> lewd, indecent, or obscene acts;  
 11 1[5.](5)<sup>1</sup> indecent acts with children;  
 12 1[6.](6)<sup>1</sup> kidnapping;  
 13 1[7.](7)<sup>1</sup> murder;  
 14 1[8.](8)<sup>1</sup> manslaughter;  
 15 1[9.](9)<sup>1</sup> [rape] aggravated sexual assault, sexual assault,  
 16 aggravated criminal sexual contact, criminal sexual contact;  
 17 1[10.](10)<sup>1</sup> any other crime involving violence including  
 18 domestic violence as defined by section 3 of P.L.1981, c.426  
 19 (C.2C:25-3) <sup>1</sup>or section 3 of P.L.1991, c.261 (C.2C:25-19)<sup>1</sup>;  
 20 1[11.](11)<sup>1</sup> burglary;  
 21 1[12.](12)<sup>1</sup> tampering with a cosmetic, drug or food product; or  
 22 1[(c)] c.<sup>1</sup> the commission of a violation of R.S.39:4-50,  
 23 section 5 of P.L.1990, c.103 (C.39:3-10.13), section 19 of  
 24 P.L.1954, c.236 (C.12:7-34.19) or <sup>1</sup>[R.S.12:7-46] section 3 of  
 25 P.L.1952, c.157 (C.12:7-46)<sup>1</sup>; or  
 26 1[(d)] d.<sup>1</sup> theft of an automobile pursuant to N.J.S.2C:20-2,  
 27 eluding a law enforcement officer pursuant to subsection b. of  
 28 N.J.S.2C:29-2 or unlawful taking of a motor vehicle pursuant to  
 29 subsections b., c. or d. of N.J.S.2C:20-10 where injuries to the  
 30 victim occur in the course of operating an automobile in  
 31 furtherance of the offense.  
 32 5. Section 12 of P.L.1971, c.317 (C.52:4B-12) is amended to  
 33 read as follows:  
 34 12. The board may order the payment of compensation under  
 35 this act for:  
 36 a. expenses actually and reasonably incurred as a result of the  
 37 personal injury or death of the victim, including out-of-pocket  
 38 losses which shall mean unreimbursed and unreimbursable  
 39 expenses or indebtedness reasonably incurred for medical care or  
 40 other services necessary as a result of the injury upon which such  
 41 application is based,  
 42 b. loss of earning power as a result of total or partial  
 43 incapacity of such victim,  
 44 c. pecuniary loss to the dependents of the deceased victim, and  
 45 d. any other pecuniary loss resulting from the personal injury  
 46 or death of the victim which the board determines to be  
 47 reasonable.  
 48 (cf: P.L.1971, c.317, s.12)  
 49 6. Section 18 of P.L.1971, c.317 (C.52:4B-18) is amended to  
 50 read as follows:  
 51 18. No order for the payment of compensation shall be made  
 52 under section 10 of [this act] P.L.1971, c.317 (C.52:4B-10) unless  
 53 the application has been made within two years after the date of  
 54 the personal injury or death or after that date upon determination

1 by the board that good cause exists for the delayed filing, and the  
2 personal injury or death was the result of an offense listed in  
3 section 11 of [this act] P.L.1971, c.371 (C.52:4B-10) which had  
4 been reported to the police or other appropriate law enforcement  
5 agency within [three months] 72 hours after its occurrence or  
6 reasonable discovery. <sup>1</sup>Compensation shall not be barred for a  
7 failure to report the offense within 72 hours if the victim  
8 demonstrates a compelling health or safety reason for such  
9 failure.<sup>1</sup> The board will make its determination regarding the  
10 application within six months of acknowledgment by the board of  
11 receipt of the completed application and any and all necessary  
12 supplemental information.

13 In determining the amount of an award, the board shall  
14 determine whether, because of his conduct, the victim of such  
15 crime contributed to the infliction of his injury, and the board  
16 shall reduce the amount of the award or reject the application  
17 altogether, in accordance with such determination; provided,  
18 however, that the board shall not consider any conduct of the  
19 victim contributory toward his injury, if the record indicates such  
20 conduct occurred during efforts by the victim to prevent a crime  
21 or apprehend a person who had committed a crime in his presence  
22 or had in fact committed a crime.

23 The board may deny or reduce an award where the victim has  
24 not paid in full any payments owed on assessments imposed  
25 pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or  
26 restitution ordered following conviction for a crime.

27 No compensation shall be awarded if:

28 a. Compensation to the victim proves to be substantial unjust  
29 enrichment to the offender or if the victim did not cooperate  
30 with the reasonable requests of law enforcement authorities  
31 unless the victim demonstrates a compelling health or safety  
32 reason for not cooperating; or

33 b. (Deleted by amendment, P.L.1990, c.64.)

34 c. The victim was guilty of a violation of subtitle 10 or 12 of  
35 Title 2A or subtitle 2 of Title 2C of the New Jersey Statutes,  
36 which caused or contributed to his injuries; or

37 d. The victim was injured as a result of the operation of a  
38 motor vehicle, except as provided in [subsection] subsections (c)  
39 or (d) of section 11 of P.L.1971, c.317 (C.52:4B-11), boat or  
40 airplane unless the same was used as a weapon in a deliberate  
41 attempt to run the victim down; or

42 e. The victim suffered personal injury or death while an  
43 occupant of a motor vehicle or vessel where the victim knew or  
44 reasonably should have known that the driver was operating the  
45 vehicle or vessel in violation of R.S.39:4-50, section 5 of  
46 P.L.1990, c.103 (C.39:3-10.13), section 19 of P.L.1954, c.236  
47 (C.12:7-34.19) <sup>1</sup>[or R.S.12:7-46], section 3 of P.L.1952, c.157  
48 (C.12:7-46), subparagraph (b) of paragraph (2) of section b. of  
49 N.J.S.2C:20-2, subsection b. of N.J.S.2C:29-2 or subsections b.,  
50 c. or d. of N.J.S.2C:20-10<sup>1</sup>; or

51 f. The victim has been convicted of a crime and is still  
52 incarcerated; or

53 g. The victim sustained the injury during the period of  
54 incarceration immediately following conviction for a crime.

1 [No award shall be made on an application unless the applicant  
2 has incurred a minimum out-of-pocket loss of \$100.00 or has lost  
3 at least two continuous weeks' earnings or support; except that  
4 the requirement of a minimum out-of-pocket loss shall not apply  
5 to any applicant 60 years of age or older or any applicant who is  
6 disabled as defined pursuant to the federal Social Security Act  
7 (42 U.S.C. §416(i)). Out-of-pocket loss shall mean unreimbursed  
8 and unreimbursable expenses or indebtedness reasonably incurred  
9 for medical care or other services necessary as a result of the  
10 injury upon which such application is based.]

11 No compensation shall be awarded under this act in an amount  
12 in excess of \$25,000.00, and all payments shall be made in a lump  
13 sum, except that in the case of death or protracted disability the  
14 award may provide for periodic payments to compensate for loss  
15 of earnings or support. 1[Three] Five<sup>1</sup> years after the entry of an  
16 initial determination order, a claim for 1[benefits] compensation<sup>1</sup>  
17 expires and no further order is to be entered with regard to the  
18 claim except for requests for payment of specific 1[out of  
19 pocket] out-of-pocket<sup>1</sup> expenses received by the Victims of  
20 1[Crimes] Crime<sup>1</sup> Compensation Board prior to the expiration of  
21 the 1[three year] five-year<sup>1</sup> period. No award made pursuant to  
22 this act shall be subject to execution or attachment other than  
23 for expenses resulting from the injury which is the basis of the  
24 claim.

25 (cf: P.L.1991,c.329,s.18)

26 7. Section 23 of P.L.1982, c.77 (C.2A:4A-42) is amended to  
27 read as follows:

28 23. Predispositional evaluation. a. Before making a  
29 disposition, the court may refer the juvenile to an appropriate  
30 individual, agency or institution for examination and evaluation.

31 b. In arriving at a disposition, the court may also consult with  
32 such individuals and agencies as may be appropriate to the  
33 juvenile's situation, including the county probation department,  
34 the Division of Youth and Family Services, school personnel,  
35 clergy, law enforcement authorities, family members and other  
36 interested and knowledgeable parties. In so doing, the court may  
37 convene a predispositional conference to discuss and recommend  
38 disposition.

39 c. The predisposition report ordered pursuant to the Rules of  
40 Court may include a statement by the victim of the offense for  
41 which the juvenile has been adjudicated delinquent or by the  
42 nearest relative of a homicide victim. The statement may include  
43 the nature and extent of any physical harm or psychological or  
44 emotional harm or trauma suffered by the victim, the extent of  
45 any loss to include loss of earnings or ability to work suffered by  
46 the victim and the effect of the crime upon the victim's family.  
47 The probation department shall notify the victim or nearest  
48 relative of a homicide victim of his right to make a statement for  
49 inclusion in the predisposition report if the victim or relative so  
50 desires. Any statement shall be made within 20 days of  
51 notification by the probation department. The report shall  
52 further include information on the financial resources of the  
53 juvenile. This information shall be made available on request to  
54 the Victims of 1[Crimes] Crime<sup>1</sup> Compensation Board established

1 pursuant to section 3 of P.L.1971, c.317 <sup>1</sup>[(C.52:52:4B-3)]  
2 (C.52:4B-3)<sup>1</sup> or to any officer authorized under N.J.S.2C:46-4 to  
3 collect payment of an assessment, restitution or fine.  
4 (cf: P.L.1986, c.85, s.2)

5 8. Section 1 of P.L.1982, c.77 (C.2A:4A-60) is amended to read  
6 as follows:

7 1. Disclosure of juvenile information; penalties for disclosure.  
8 a. Social, medical, psychological, legal and other records of the  
9 court and probation department, and records of law enforcement  
10 agencies, pertaining to juveniles charged as a delinquent or found  
11 to be part of a juvenile-family crisis, shall be strictly  
12 safeguarded from public inspection. Such records shall be made  
13 available only to:

- 14 (1) Any court or probation department;
- 15 (2) The Attorney General or county prosecutor;
- 16 (3) The parents or guardian and to the attorney of the juvenile;
- 17 (4) The Division of Youth and Family Services, if providing care  
18 or custody of the juvenile;
- 19 (5) Any institution to which the juvenile is currently  
20 committed; and
- 21 (6) Any person or agency interested in a case or in the work of  
22 the agency keeping the records, by order of the court for good  
23 cause shown, except that information concerning adjudications of  
24 delinquency, records of custodial confinement, payments owed on  
25 assessments imposed pursuant to section 2 of P.L.1979, c.396  
26 (C.2C:43-3.1) or restitution ordered following conviction of a  
27 crime or adjudication of delinquency, and the juvenile's financial  
28 resources, shall be made available upon request to the Victims of  
29 <sup>1</sup>[Crimes] Crime<sup>1</sup> Compensation Board established pursuant to  
30 section 3 of P.L.1971, c.317 (C.52:4B-3), which shall keep such  
31 information and records confidential.

32 b. Records of law enforcement agencies may be disclosed for  
33 law enforcement purposes to any law enforcement agency of this  
34 State.

35 c. Information as to the identity of a juvenile, the offense  
36 charged, the adjudication and disposition shall be disclosed to:

- 37 (1) The victim or a member of the victim's immediate family;
- 38 (2) Any law enforcement agency which investigated the  
39 offense, the person or agency which filed the complaint, and any  
40 law enforcement agency in the municipality where the juvenile  
41 resides; and
- 42 (3) On a confidential basis, the principal of the school where  
43 the juvenile is enrolled for use by the principal or his designee in  
44 planning programs relevant to the juvenile's educational and  
45 social development, which information shall not become part of  
46 the juvenile's permanent school records;

47 (4) A party in a subsequent legal proceeding involving the  
48 juvenile, but only upon approval by the court and for the sole  
49 purpose of impeaching the juvenile as a witness.

50 d. There shall be a presumption that information as to the  
51 identity of a juvenile adjudicated delinquent, the offense, the  
52 adjudication and the disposition shall be disclosed to the public  
53 where the offense for which the juvenile has been adjudicated  
54 delinquent if committed by an adult, would constitute a crime of

1 the first, second or third degree, or aggravated assault,  
2 destruction or damage to property to an extent of more than  
3 \$500.00 or the manufacture or distribution of a narcotic drug,  
4 unless upon application at the time of disposition the juvenile can  
5 demonstrate a substantial likelihood that specific harm would  
6 result from such disclosure. Where the court finds that disclosure  
7 would be harmful to the juvenile, the reasons therefor shall be  
8 stated on the record.

9 e. Nothing in this section shall prohibit the establishment and  
10 maintaining of a central registry of the records of law  
11 enforcement agencies relating to juveniles for the purpose of  
12 exchange between State or local law enforcement agencies of  
13 this State.

14 f. Whoever, except as provided by law, knowingly discloses,  
15 publishes, receives, or makes use of or knowingly permits the  
16 unauthorized use of information concerning a particular juvenile  
17 derived from records listed in subsection a. or acquired in the  
18 course of court proceedings, probation, or police duties,  
19 shall, upon conviction thereof, be guilty of a disorderly persons  
20 offense.

21 g. The court may, upon application by the juvenile or his  
22 parent or guardian, the prosecutor or any other interested party,  
23 including the victim or complainant or members of the news  
24 media, permit public attendance during any court proceeding at a  
25 delinquency case, where it determines that a substantial  
26 likelihood that specific harm to the juvenile would not result.

27 The court shall have the authority to limit and control the  
28 attendance in any manner and to the extent it deems appropriate.  
29 (cf: P.L.1982, c.79, s.1)

30 9. Section 1 of P.L.1977, c.102 (C.9:6-8.10a) is amended to  
31 read as follows:

32 1. a. All records of child abuse reports made pursuant to  
33 section 3 of P.L.1971, c.437 (C.9:6-8.10), all information obtained  
34 by the Division of Youth and Family Services in investigating  
35 such reports including reports received pursuant to section 20 of  
36 P.L.1974, c.119 (C.9:6-8.40), and all reports of findings forwarded  
37 to the central registry pursuant to section 4 of P.L.1971, c.437  
38 (C.9:6-8.11) shall be kept confidential and may be disclosed only  
39 under the circumstances expressly authorized under subsection b.  
40 herein.

41 b. The division may release the records and reports referred to  
42 in subsection a., or parts thereof, to:

43 (1) A public or private child protective agency authorized to  
44 investigate a report of child abuse or neglect;

45 (2) A police or other law enforcement agency investigating a  
46 report of child abuse or neglect;

47 (3) A physician who has before him a child whom he reasonably  
48 suspects may be abused or neglected;

49 (4) A physician, a hospital director or his designate, a police  
50 officer or other person authorized to place a child in protective  
51 custody when such person has before him a child whom he  
52 reasonably suspects may be abused or neglected and requires the  
53 information in order to determine whether to place the child in  
54 protective custody;

1 (5) An agency authorized to care for, treat, or supervise a child  
2 who is the subject of a child abuse report, or a parent, guardian  
3 or other person who is responsible for the child's welfare, or  
4 both, when the information is needed in connection with the  
5 provision of care, treatment, or supervision to such child or such  
6 parent, guardian or other person;

7 (6) A court, upon its finding that access to such records may be  
8 necessary for determination of an issue before the court, and  
9 such records may be disclosed by the court in whole or in part to  
10 the law guardian, attorney or other appropriate person upon a  
11 finding that such further disclosure is necessary for  
12 determination of an issue before the court;

13 (7) A grand jury upon its determination that access to such  
14 records is necessary in the conduct of its official business;

15 (8) Any appropriate State legislative committee acting in the  
16 course of its official functions, provided, however, that no names  
17 or other information identifying persons named in the report shall  
18 be made available to the legislative committee unless it is  
19 absolutely essential to the legislative purpose;

20 (9) Any person engaged in a bona fide research purpose,  
21 provided, however, that no names or other information  
22 identifying persons named in the report shall be made available to  
23 the researcher unless it is absolutely essential to the research  
24 purpose and provided further that the approval of the director of  
25 the Division of Youth and Family Services shall first have been  
26 obtained;

27 (10) A family day care sponsoring organization for the purpose  
28 of providing information on child abuse or neglect allegations  
29 involving prospective or current providers or household members  
30 pursuant to P.L.1993, c.350 (C.30:58-25.1 et al) and as necessary,  
31 for use in administrative appeals related to information obtained  
32 through a central registry search;

33 (11) The Victims of <sup>1</sup>[Crimes] Crime<sup>1</sup> Compensation Board, for  
34 the purpose of providing services available pursuant to the  
35 "Criminal Injuries Compensation Act of 1971," P.L.1971, c.317  
36 (C.52:4B-1 et seq.) to a child victim who is the subject of such  
37 report.

38 Any individual, agency, board, court, grand jury or legislative  
39 committee which receives from the division the records and  
40 reports referred to in subsection a., shall keep such records and  
41 reports, or parts thereof, confidential.

42 (cf: P.L.1993, c.350, s.5)

43 10. N.J.S.22A:2-7 is amended to read as follows:

44 22A:2-7. a. Upon the filing, entering, docketing or recording  
45 of the following papers, documents or proceedings by either party  
46 to any action or proceeding in the Law Division of the Superior  
47 Court, the party or parties filing, entering, docketing or  
48 recording the same shall pay to the clerk of said court the  
49 following fees:

50 Filing of the first paper in any motion, petition or application,  
51 if not in a pending action or proceeding under section 22A:2-6 of  
52 this Title, or if made after dismissal or judgment entered other  
53 than withdrawal of money deposited in court, the moving party  
54 shall pay \$15.00 which shall cover all fees payable on such

1 motion, petition or application down to and including filing and  
2 entering of order therein and taxation of costs.

3 For withdrawal of money deposited in court where the sum to  
4 be withdrawn is less than \$100.00, no fee; where the sum is  
5 \$100.00 or more but less than \$1,000.00, a fee of \$5.00; where  
6 such sum is \$1,000.00 or more, a fee of \$10.00.

7 Entering judgment on bond and warrant by attorney and  
8 issuance of one final process, \$15.00 in lieu of the fee required by  
9 section 22A:2-6 of this Title.

10 Recording of judgment in the civil judgment and order docket,  
11 \$25.00 shall be paid to the clerk for use by the State, except as  
12 provided in subsection b. of this section.

13 Docketing judgments or orders from other courts or divisions,  
14 including Chancery Division judgments, \$25.00 shall be paid to  
15 the clerk for use by the State, except as provided in subsection b.  
16 of this section and except that no fee shall be paid by any  
17 municipal court to docket a judgment of conviction and amount  
18 of assessment, restitution, fine, penalty or fee pursuant to  
19 section a. of N.J.S.2C:46-1.

20 Satisfaction of judgment or other lien, \$5.00.

21 Recording assignment of judgment or release, \$5.00.

22 Issuing of executions and recording same, except as otherwise  
23 provided in this article, \$5.00.

24 Recording of instruments not otherwise provided for in this  
25 article, \$5.00.

26 Filing and entering recognizance of civil bail, \$5.00.

27 Signing and issuing subpoena, \$5.00.

28 b. Moneys collected under the provisions of subsection a. of  
29 this section for the recording and docketing of judgments shall be  
30 deposited in the temporary reserve fund created by section 25 of  
31 P.L.1993, c.275. After December 31, 1994, the moneys collected  
32 under the provisions of subsection a. shall be for use by the State.  
33 (cf: P.L.1993, c.275, s.11)

34 11. (New section) The Victims of <sup>1</sup>[Crimes] Crime<sup>1</sup>  
35 Compensation Board is authorized to obtain direct access to  
36 criminal history records maintained by the State Bureau of  
37 Identification in the Division of the State Police and is hereby  
38 designated a criminal justice agency for that purpose.

39 12. (New section) The <sup>1</sup>[Victims of]<sup>1</sup> Violent Crimes  
40 Compensation Board shall hereinafter be known and referred to  
41 as the Victims of <sup>1</sup>[Crimes] Crime<sup>1</sup> Compensation Board. All  
42 the functions, powers and duties of the Violent Crimes  
43 Compensation Board are continued in the Victims of <sup>1</sup>[Crimes]  
44 Crime<sup>1</sup> Compensation Board. Whenever in any law, rule,  
45 regulation, judicial or administrative proceeding or otherwise,  
46 reference is made to the Violent Crimes Compensation Board,  
47 the same shall mean and refer to the Victims of <sup>1</sup>[Crimes]  
48 Crime<sup>1</sup> Compensation Board.

49 13. This act shall take effect immediately but shall apply only  
50 to offenses which were committed on or after the effective date  
51 and to claims arising from offenses which were committed on or  
52 after the effective date.

- 1
- 2
- 3 Increases services to crime victims by the Violent Crimes
- 4 Compensation Board; changes name to Victims of <sup>1</sup>Crime<sup>1</sup>
- 5 Compensation Board.

SENATE, No.  
ASSEMBLY, No.

## STATE OF NEW JERSEY

INTRODUCED , 1994

AN ACT concerning sexual assault treatment and supplementing Title 26.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Hospitals licensed to operate in this State shall:

a. Provide treatment to persons who allege that the cause of their injuries was a sexual assault without requiring that they file formal charges and without interfering with their ability to file formal charges.

b. Maintain sexual offense evidence and safeguard the chain of custody of that evidence. Upon admission or commencement of treatment of the alleged sexual offense victim, the sexual offense evidence shall be collected and kept in a locked secure area. Each item of evidence shall be marked and logged with a code number corresponding to the patient's medical record. Evidence shall be refrigerated, dried, or otherwise stored as is appropriate to preserve its evidential value and labeled with the time of collection and source. No evidence collected and kept shall be moved, disposed of, or opened for inspection unless the movement, disposal, or inspection is documented in writing and authorized by a hospital employee or licensed physician with privileges at the health care facility and

(1) It is surrendered to a law enforcement agency at the request of the patient or the patient's legal guardian, or pursuant to a subpoena or court order ; or

(2) It is surrendered to the patient upon written request of the patient or a legal guardian of the patient; or

(3) Thirty days have elapsed from the time of collection and no request for surrender under this subsection has been made for the evidence.

"Sexual offense evidence" shall include, but not be limited to, slides and cotton swabs used to obtain fluid, fingernail scrapings, saliva, blood and hair samples or other samples from the patient; clothing; weapons; photographs of the patient or the patient's injuries; and any other items required to be kept under any protocol promulgated by the health care facility or any order of a court with jurisdiction over the allegation of assault.

c. Notify all patients who allege sexual assault of the provisions of this act at the time of the initial examination.

2. This act shall take effect 90 days from the date of enactment.

STATE OF NEW JERSEY

INTRODUCED DECEMBER 15, 1994

By Assemblyman AZZOLINA

1 AN ACT establishing a Sexual Assault Nurse Examiner Pilot  
2 Program.

3

4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. The Legislature finds and declares that sexual assault  
7 victims require sensitive and prompt treatment when they arrive  
8 at a hospital emergency room and that, oftentimes, victims wait  
9 indefinitely while other emergencies are given priority. In order  
10 to ensure more timely and accurate collection of forensic  
11 evidence for use in prosecuting suspected rapists and to create a  
12 compassionate way to treat sexual assault victims, there is a  
13 need to create a pilot program in which specially trained nurse  
14 examiners collect forensic evidence and restore the victim's  
15 dignity in a specially designated area used solely for rape  
16 examinations.

17 2. a. The Chief of the Office of Victim-Witness Advocacy in  
18 the Division of Criminal Justice in the Department of Law and  
19 Public Safety shall establish a Sexual Assault Nurse Examiner  
20 Pilot Program in Monmouth county. The chief may contract with  
21 any agency, organization or other entity as appropriate to  
22 effectuate the purposes of this act.

23 b. The pilot program shall be designed to use registered  
24 professional nurses licensed in this State and trained in forensic  
25 science to perform rape examinations in an area of the hospital  
26 designated solely for rape examinations. A representative of the  
27 county prosecutor's office or the Office of Victim-Witness  
28 Advocacy shall meet with each victim, and counseling and other  
29 appropriate services pursuant to subsection c. of section 6 of  
30 P.L.1985, c.404 (C.52:4B-44c) shall be provided to each victim.  
31 The program shall provide the victim with the opportunity to tend  
32 to personal hygiene needs and to obtain fresh clothing, as  
33 appropriate.

34 3. The Chief of the Office of Victim-Witness Advocacy shall  
35 report to the Governor and the Legislature no later than one year  
36 after the effective date of this act on the success of the program  
37 in meeting its objectives and the feasibility of expanding the  
38 program Statewide.

39 4. This act shall take effect immediately and shall expire one  
40 year after the effective date.

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STATEMENT

45 This bill requires the Chief of the Office of Victim-Witness  
46 Advocacy in the Division of Criminal Justice in the Department

1 of Law and Public Safety to establish a one-year Sexual Assault  
2 Nurse Examiner Pilot Program in Monmouth county. The  
3 program is designed to use registered professional nurses who are  
4 trained in forensic science to perform rape examinations. Instead  
5 of using hospital emergency rooms, the program requires that  
6 there be a specially designated area in the hospital used solely for  
7 rape examinations.

8 It is expected that this program will provide more timely and  
9 accurate collection of forensic evidence for use in prosecuting  
10 suspected rapists and will create a compassionate approach to  
11 treating rape victims, who oftentimes wait indefinitely in  
12 hospital emergency rooms and are finally examined by a physician  
13 who is inexperienced in performing rape examinations.

14 The program will provide each rape victim with counseling  
15 pursuant to subsection c. of section 6 of P.L.1985, c.404  
16 (C.52:4B-44c), and the opportunity to tend to personal hygiene  
17 needs as well as obtain fresh clothing.

18 This program is similar to the S.A.N.E. (Sexual Assault Nurse  
19 Examiner) program established in Tulsa, Oklahoma, which won  
20 the 1994 Innovations in State and Local Government Award from  
21 the Ford Foundation and the John F. Kennedy School of  
22 Government at Harvard University.

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Creates a Sexual Assault Nurse Examiner Pilot Program.

SENATE, No.  
ASSEMBLY, No.

STATE OF NEW JERSEY

INTRODUCED , 1994

AN ACT concerning the confidentiality of crime victim impact statements and amending Title 52A(C. 52A:4B-36).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.A. 52A: 4B-36 is amended to read:

m. To submit a written statement about the impact of the crime to a representative of the county prosecutor's office which shall be considered prior to the prosecutor's final decision concerning whether formal criminal charges will be filed; and

n. To make, prior to sentencing, an in-person statement directly to the sentencing court concerning the impact of the crime.

This statement is to be made in addition to the statement permitted for inclusion in the presentence report by N.J.S. 2C:44-6. Any such statement, if made in writing to a representative of the county prosecutor, shall be privileged as a communication between an attorney and client. Any statement made in person to the sentencing court may be made out of the presence of the defendant, and the court shall not disclose the contents of the victim's statement to the defendant without the express consent of the victim. The victim of a crime shall be notified by the prosecutor of the right to make confidential statements under this section.

SENATE, No.  
ASSEMBLY, No.

STATE OF NEW JERSEY

INTRODUCED , 1994

AN ACT concerning evidence in civil matters alleging sexual abuse, sexual assault, and sexual harassment and supplementing Title 2A.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. In a civil action alleging conduct which would constitute under any of this State's laws sexual abuse of a minor, sexual assault, or sexual harassment, a party seeking discovery of information concerning the plaintiff's sexual conduct with persons other than the person who committed the alleged act of sexual abuse, sexual assault, or sexual harassment, must establish specific facts showing good cause for that discovery, and that the information sought is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence.
2. In an action against a person accused of sexual abuse, sexual assault, or sexual harassment, by an alleged victim of the alleged conduct, evidence concerning the past sexual conduct of the alleged victim is not admissible.
3. For purposes of this section, "sexual conduct" means any conduct or behavior relating to sexual activities, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, sexual activities reflected in or inferable from gynecological records, living arrangement, or life style.

SENATE, No. 797  
STATE OF NEW JERSEY

APPENDIX G

INTRODUCED MARCH 10, 1994

By Senator ZANE

1 AN ACT requiring public and private institutions of higher  
2 education to compile and report information regarding campus  
3 crime and security, supplementing Title 18A of the New Jersey  
4 Statutes and amending the title and body of P.L.1966, c.37.

5  
6 BE IT ENACTED by the Senate and General Assembly of the  
7 State of New Jersey:

8 1. (New section) As used in this act:  
9 a. "Branch campus" means a physical facility located at a  
10 place other than the institution's principal campus offering one  
11 or more complete programs leading to a credit bearing  
12 certificate, degree or diploma, without regard to the number of  
13 courses and course enrollments per academic year.

14 b. "Private institutions of higher education" means  
15 independent colleges or universities incorporated and located in  
16 New Jersey, which by virtue of law or character or license, are  
17 nonprofit educational institutions authorized to grant academic  
18 degrees and which provide a level of education which is  
19 equivalent to the education provided by the State's public  
20 institutions of higher education as attested by the receipt of and  
21 continuation of regional accreditation by the Middle States  
22 Association of Colleges and Schools, and which are eligible to  
23 receive State aid under the provisions of the Constitution of the  
24 United States of America and the Constitution of the State of  
25 New Jersey, but does not include any educational institution  
26 dedicated primarily to the education or training of ministers,  
27 priests, rabbis or other professional persons in the field of  
28 religion.

29 c. "Public institutions of higher education" means Rutgers,  
30 The State University, the State colleges, the New Jersey Institute  
31 of Technology, the University of Medicine and Dentistry of New  
32 Jersey, the county colleges and any other public university or  
33 college now or hereinafter established or authorized by law.

34 d. "Student housing" means dormitories, student apartments,  
35 residence halls, and fraternity and sorority residences owned or  
36 under the control of the institution of higher education.

37 2. (New section) Each public and private institution of higher  
38 education within the State shall annually report to the Division of  
39 State Police in the Department of Law and Public Safety for  
40 inclusion in the division's uniform crime reporting system the  
41 number and types of crimes which have occurred during the year  
42 on the institution's main and branch campuses. The institution

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 shall make the report in such form as is required by the division.

2 3. (New section) Each public and private institution of higher  
3 education within the State shall prepare and annually update a  
4 report on the institution's crime statistics for its main and  
5 branch campuses as reported to the Division of State Police for  
6 the most recent three year period. The report shall include the  
7 number and types of crimes as reported for each campus to the  
8 Division of State Police.

9 The institution shall notify each applicant for admission to the  
10 institution and each applicant for employment at the time of  
11 initial application, and every student and employee annually of  
12 the availability of the report, and shall upon request provide the  
13 report to the requesting party at no cost.

14 4. (New section) Each public and private institution of higher  
15 education within the State, upon request, shall provide to each  
16 applicant for admission to the institution, to each new employee  
17 at the time of initial employment, and annually to all students  
18 and employees, information regarding the institution's security  
19 policies and procedures. An institution with a main campus and  
20 one or more branch campuses shall provide the information on a  
21 campus-by-campus basis. Institutions without campus housing  
22 shall not be required to comply with the provisions in this section  
23 requiring information on student housing. The information shall  
24 include, but not be limited to, the following:

- 25 a. the number of undergraduate and graduate students enrolled  
26 at that campus;
- 27 b. the number of undergraduate and graduate students living in  
28 student housing;
- 29 c. the total number of full-time and part-time nonstudent  
30 employees working on the campus;
- 31 d. the average daily number of visitors to the campus;
- 32 e. the administrative office responsible for campus security;
- 33 f. whether the security personnel is sworn and trained, trained  
34 or untrained, proprietary or non-proprietary and whether or not  
35 the security personnel meet the minimum training requirements  
36 of the Police Training Commission;
- 37 g. the enforcement authority of campus security personnel,  
38 including information on their working relationship with State and  
39 local police agencies;
- 40 h. the institution's policy on reporting criminal incidents to  
41 State and local police agencies;
- 42 i. the institution's policy regarding access to institutional  
43 facilities and programs by students, employees, guests and other  
44 persons;
- 45 j. procedures for students and other persons to report  
46 criminal activities or other emergencies occurring on campus and  
47 the institution's policies concerning the institution's response to  
48 these reports;
- 49 k. a statement of the institution's policy regarding the  
50 possession, use and sale of alcoholic beverages and illegal drugs;
- 51 l. a statement of the institution's policy regarding the  
52 possession and use of weapons by security personnel or any other  
53 person;
- 54 m. the institution's policy regarding students or employees

1 with criminal records; and  
2 n. information on the communication methods used to inform  
3 the campus community about security matters and the frequency  
4 with which the information is provided.

5 5. (New section) An institution of higher education which  
6 maintains student housing shall include in the information  
7 required pursuant to section 4 of this act the following additional  
8 information:

9 a. the types of student housing available on and off campus;

10 b. the institution's policies on housing assignment and requests  
11 by students for assignment changes;

12 c. the institution's policies concerning the identification and  
13 admission of visitors to student housing facilities;

14 d. the methods used to secure the entrances to student housing  
15 facilities;

16 e. the security measures used to secure doors and windows in  
17 student rooms

18 f. a summary of the type and number of employees, including  
19 security personnel, assigned to student housing facilities and  
20 information on the security training of the employees; however,  
21 upon admission a student or parent may request specific  
22 information regarding security personnel at the dormitory to  
23 which the student has been assigned;

24 g. the type and frequency of programs available to inform  
25 student housing residents about housing security and enforcement  
26 procedures;

27 h. the institution's policies and special security procedures for  
28 housing students during low-occupancy periods such as holidays  
29 and vacation periods; and

30 i. the institution's policy on the housing of guests of students,  
31 if any.

32 6. (New section) An institution violating any provision of this  
33 act shall be liable to a civil penalty of not more than \$5,000 for  
34 the first offense. Each institution shall be notified and given a  
35 period of 60 days to correct the violation of any provisions of this  
36 act and if corrections are made within this time period the  
37 penalty shall be abated. Each additional day that a violation  
38 remains uncorrected after notification shall constitute a separate  
39 offense. These same provisions shall apply to any  
40 subsequent violation of the provisions of this act. The Attorney  
41 General may bring an action for the collection of civil penalties  
42 pursuant to the "penalty enforcement act," N.J.S.2A:58-1 et seq.

43 7. (New section) The State Board of Higher Education shall  
44 adopt rules and regulations pursuant to the "Administrative  
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary  
46 to effectuate the purposes of this act.

47 8. The title of P.L.1966, c.37 is amended to read as follows:

48 **AN ACT** establishing a uniform crime reporting system; requiring  
49 local and county police officers and institutions of higher  
50 education to submit certain information concerning the nature  
51 and volume of crime occurring within their respective  
52 jurisdictions to the Attorney General in the Department of Law  
53 and Public Safety; empowering the Attorney General to collect  
54 and gather such information and make statistics thereon, to  
55 make rules and regulations to accomplish the institution and

1 operation of such a uniform system, to designate the Division  
2 of State Police in the Department of Law and Public Safety as  
3 the agency which shall receive such information; requiring the  
4 Attorney General to make an annual report of the results of  
5 such information to the Governor and the Legislature; and  
6 providing an appropriation therefor.  
7 (cf: P.L.1966, c.37, title)

8  
9 9. Section 1 of P.L.1966, c.37 (C.52:17B-5.1) is amended to read  
10 as follows:

11 1. A uniform crime reporting system shall be established under  
12 the direction, control and supervision of the Attorney General in  
13 the Department of Law and Public Safety. The Attorney General  
14 shall have the power and duty, by such rules and regulations as he  
15 may deem necessary, to collect and gather such information from  
16 such local and county police authorities and institutions of higher  
17 education as may be and is hereinafter prescribed in this act and  
18 in section 2 of P.L. , c. (C. ) (now pending before the  
19 Legislature as Senate Bill No. of 1994).

20 (cf: P.L.1966, c.37, s.1)

21 10. Section 3 of P.L.1966, c.37 (C.52:17B-5.3) is amended to  
22 read as follows:

23 3. All local and county police authorities and institutions of  
24 higher education shall submit a quarterly report to the Attorney  
25 General, on forms prescribed by the Attorney General, which  
26 report shall contain number and nature of offenses committed  
27 within their respective jurisdictions, the disposition of such  
28 matters, and such other information as the Attorney General may  
29 require, respecting information relating to the cause and  
30 prevention of crime, recidivism, the rehabilitation of criminals  
31 and the proper administration of criminal justice.

32 (cf: P.L.1966, c.37, s.3)

33 11. This act shall take effect 180 days following enactment,  
34 except that the State Board of Higher Education may  
35 immediately take such administrative action as may be necessary  
36 to implement the provisions of this act.

#### 37 38 39 STATEMENT

40  
41 This bill requires each public and private institution of higher  
42 education within the State to annually report to the Division of  
43 State Police for inclusion in the division's uniform crime  
44 reporting system, the number and types of crimes which have  
45 occurred during the year on the institution's main and branch  
46 campuses. The report is to be made in such form as the division  
47 requires.

48 The bill also requires each institution to prepare and annually  
49 update a report on the institution's crime statistics as reported  
50 to the Division of State Police for the most recent three year  
51 period. This report is to include the number and types of crimes  
52 as reported for each campus. The institution is to notify each  
53 applicant for admission to the institution, each applicant for  
54 employment at the institution and, annually, each student and

1 employee of the availability of the report and to provide the  
2 report to the applicant upon request.

3 The bill further requires each institution to provide each  
4 applicant for admission to the institution, each new employee at  
5 the time of initial employment, and, on an annual basis, all  
6 students and employees of the institution, detailed information  
7 regarding the institution's security policies and procedures if  
8 that information is requested by the individual. An institution  
9 which has a main campus and one or more branch campuses is to  
10 provide the information on a campus-by-campus basis. Also, an  
11 institution which maintains student housing is to include  
12 information on the types of housing available and the security  
13 measures taken in regard to that housing.

14 The bill provides that any institution which violates the act  
15 shall be liable to a civil penalty of not more than \$5,000 for the  
16 first offense. However, each institution is given a 60 day period  
17 to fulfill the provisions violated. If this is done, the penalty  
18 would be abated. The bill authorizes the Attorney General to  
19 bring an action for the collection of civil penalties pursuant to  
20 the "penalty enforcement act." N.J.S.2A:58-1 et seq.

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Requires institutions of higher education to compile and report  
information regarding campus crime and security.

Assembly No.  
Senate No.  
Introduced \_\_\_\_\_

AN ACT concerning the reporting of judgments and settlements of sexual harassment, sexual assault, and domestic violence claims by institutions in this State, and amending N.J.S. 18A:6-4.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S. 18A:6-4 is amended to read as follows:

18A:6-4. The board, body or person in charge of each educational institution, except an institution of higher education, receiving support or aid from the State and of each private school shall report, annually on or before August 1, to the commissioner, in the manner and form required by him, and the board, body or person in charge of each educational institution of higher learning receiving support or aid from the State shall report in like manner to the Commission on Higher Education, such statistics relating to the conduct of such institution or school as he may require, which shall include a description of and total costs of any judgments or settlements paid out of any funds of the institution during the reporting period that arose from any incidents of sexual harassment, sexual assault, or domestic violence, but no private school shall be required to report concerning its expenses or finances nor shall any such report made by it be published or made public.

P.L.1994, CHAPTER 160, approved December 13, 1994  
1994 Senate No. 463 (First Reprint)

1 AN ACT creating the "Campus Sexual Assault Victim's Bill of  
2 Rights" and supplementing Title 18A of the New Jersey  
3 Statutes.

4  
5 BE IT ENACTED by the Senate and General Assembly of the  
6 State of New Jersey:

7 1. This act shall be known and may be cited as the "New  
8 Jersey Campus Sexual Assault Victim's Bill of Rights Act."

9 2. The <sup>1</sup>[Chancellor of] Commission on<sup>1</sup> Higher Education shall  
10 appoint an advisory committee of experts which shall<sup>1</sup> develop a  
11 "Campus Sexual Assault Victim's Bill of Rights" which affirms  
12 support for campus organizations which assist sexual assault  
13 victims and provides that the following rights shall be accorded  
14 to victims of sexual assaults that occur on the campus of any  
15 public or independent institution of higher education in the State  
16 <sup>1</sup>[or] and<sup>1</sup> where the victim or alleged perpetrator is a student at  
17 the institution <sup>1</sup>or when the victim is a student involved in an  
18 off-campus sexual assault<sup>1</sup>.

19 a. The right to have any allegation of sexual assault treated  
20 seriously; the right to be treated with dignity; and the right to  
21 <sup>1</sup>[medical and counseling services] be notified of existing  
22 medical, counseling, mental health or student services for victims  
23 of sexual assault, both on campus and in the community<sup>1</sup> whether  
24 or not the crime is reported to campus or civil authorities.

25 <sup>1</sup>"Campus authorities" as used in this act shall mean any  
26 individuals or organizations specified in an institutions's  
27 statement of campus security policy as the individuals or  
28 organizations to whom students and employees should report  
29 criminal offenses.<sup>1</sup>

30 b. The right to have any allegation of sexual assault  
31 investigated and adjudicated by the appropriate criminal and civil  
32 authorities of the jurisdiction in which the crime occurred, and the  
33 right to the full and prompt cooperation and assistance of campus  
34 personnel in notifying the proper authorities. The provisions of  
35 this subsection shall be in addition to any campus disciplinary  
36 proceedings which may take place.

37 c. The right to be free from pressure from campus personnel to  
38 refrain from reporting crimes, or to report crimes as lesser  
39 offenses than the victims perceive the crimes to be, or to report  
40 crimes if the victim does not wish to do so.

41 d. The right to be free from any suggestion that victims are  
42 responsible for the commission of crimes against them; to be free

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> Assembly AJL committee amendments adopted October 6, 1994.

1 from any suggestion that victims were contributorily negligent or  
2 assumed the risk of being assaulted; to be free from any  
3 suggestion that victims must report the crimes to be assured of  
4 any other right guaranteed under this policy; and to be free from  
5 any suggestion that victims should refrain from reporting crimes  
6 in order to avoid unwanted personal publicity.

7 e. The same right to legal assistance, and the right to have  
8 others present, in any campus disciplinary proceeding, that the  
9 institution permits to the accused; and the right to be notified of  
10 the outcome of any disciplinary proceeding against the accused.

11 f. The right to full, prompt, and victim-sensitive cooperation  
12 of campus personnel in obtaining, securing, and maintaining  
13 evidence, including a medical examination if it is necessary to  
14 preserve evidence of the assault.

15 g. The right to be informed of, and assisted in exercising, any  
16 rights to be confidentially or anonymously tested for sexually  
17 transmitted diseases or human immunodeficiency virus; the right  
18 to be informed of, and assisted in exercising, any rights that may  
19 be provided by law to compel and disclose the results of testing  
20 of sexual assault suspects for communicable diseases.

21 h. The right to <sup>1</sup>[receive] have access to<sup>1</sup> counseling <sup>1</sup>under the  
22 same terms and conditions as apply to other students seeking such  
23 counseling<sup>1</sup> from <sup>1</sup>appropriate<sup>1</sup> campus <sup>1</sup>[mental health service  
24 entities, or by other victims, at the election of the victim]  
25 counseling services<sup>1</sup>.

26 i. The right to require campus personnel to take reasonable and  
27 necessary action to prevent further unwanted contact of victims  
28 with their alleged assailants, including but not limited to, <sup>1</sup>[the  
29 immediate relocation of the victim to safe and rescue alternative  
30 housing, and transfer of classes] notifying the victim of options  
31 for and available assistance in changing academic and living  
32 situations after an alleged sexual assault incident if so requested  
33 by the victim and if such changes are reasonably available<sup>1</sup>.

34 3. In developing the "Campus Sexual Assault Victim's Bill of  
35 Rights," established by P.L. , c. (C. ) (now pending before the  
36 Legislature as this bill), the <sup>1</sup>[chancellor] committee created  
37 pursuant to section 2 of P.L. , c. (C. )(now pending before  
38 the Legislature as this bill)<sup>1</sup> shall review existing policies and  
39 procedures of public and independent institutions of higher  
40 education within the State and shall, as appropriate, incorporate  
41 those policies into <sup>1</sup>[the] a proposed<sup>1</sup> the bill of rights. <sup>1</sup>The  
42 committee shall make a recommendation to the commission  
43 which incorporates a proposed "Campus Sexual Assault Victim's  
44 Bill of Rights." The commission following consultation with the  
45 New Jersey Presidents' Council, established pursuant to section 7  
46 of P.L.1994, c.48 (C.18A:3B-7), shall adopt a "Campus Sexual  
47 Assault Victim's Bill of Rights." The commission shall make the  
48 "Campus Sexual Assault Victim's Bill of Rights " available to  
49 each institution of higher education within the State.<sup>1</sup> The  
50 <sup>1</sup>[chancellor] governing boards of the institutions<sup>1</sup> shall examine  
51 the resources dedicated to services required on each campus to  
52 guarantee that this bill of rights is implemented, and shall make  
53 appropriate requests to increase or reallocate resources where  
54 necessary to ensure implementation. <sup>1</sup>[The chancellor shall make

1 the "Campus Sexual Assault Victim's Bill of Rights" available to  
2 each institution of higher education within the State.]<sup>1</sup>

3 4. Every public and independent institution of higher education  
4 within the State shall make every reasonable effort to<sup>1</sup> ensure  
5 that every student at that institution receives a copy of the  
6 "Campus Sexual Assault Victim's Bill of Rights."

7 15. Nothing in this act or in any "Campus Assault Victim's  
8 Bill of Rights" developed in accordance with the provisions of  
9 this act, shall be construed to preclude or in any way to restrict  
10 any public or independent institution of higher education in the  
11 State from reporting any suspected crime or offense to the  
12 appropriate law enforcement authorities.<sup>1</sup>

13 16. Notwithstanding any other provision of law to the  
14 contrary, no public or independent institution of higher education  
15 or its employees shall be liable for damages resulting from any  
16 exercise of judgment or discretion in connection with the  
17 performance of their duties unless the actions evidence a reckless  
18 disregard for the duties imposed by this act. Nothing in this  
19 section shall be deemed to grant immunity to any person causing  
20 damage by his wilful, wanton or grossly negligence act of  
21 commission or omission.<sup>1</sup>

22 1[5] 7<sup>1</sup>. This act shall take effect 1[immediately] on September  
23 1, 1995<sup>1</sup>.

24  
25  
26  
27  
28 Establishes the "Campus Sexual Assault Victim's Bill of Rights."

Assembly No.  
Senate No.  
Introduced \_\_\_\_\_

AN ACT concerning the public notification of the standards for treating minors on their own consent in certain circumstances in this State, and amending N.J.S. 9:17A-4 .

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S. 9:17A-4 is amended to read as follows:  
9:17A-4. Consent by minor to treatment

The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician, licensed to practice medicine, when executed by a minor who is or professes to be afflicted with a venereal disease, or by a minor who, in the judgment of a treating physician, appears to have been sexually assaulted, shall be valid and binding as if the minor had achieved his or her majority, as the case may be. Any such consent shall not be subject to later disaffirmance by reason of minority. In the case of a minor who appears to have been sexually assaulted, the minor's parents or guardian shall be notified immediately, unless the attending physician believes that it is in the best interests of the patient not to do so; however, inability of the treating physician, hospital or clinic to locate or notify the parents or guardian shall not preclude the provision of any necessary emergency medical or surgical care to the minor.

When a minor believes that he is suffering from the use of drugs or is a drug dependent person as defined in section 2 of P.L.1970, c.226 (C.24:21-2) or is suffering from alcohol dependency or is an alcoholic as defined in section 2 of P.L.1975, c.305 (C.26:2B-8), his consent to treatment under the supervision of a physician licensed to practice medicine, or an individual licensed or certified to provide treatment for alcoholism or in a facility licensed by the State to provide for the treatment of alcoholism shall be valid and binding as if the minor had achieved his or her majority, as the case may be. Any such consent shall not be subject to later disaffirmance by reason of minority. Treatment for drug use, drug abuse, alcohol use or alcohol abuse that is consented to by a minor shall be considered confidential information between the physician, the treatment provider or the treatment facility, as

appropriate, and his patient, and neither the minor nor his physician, treatment provider or treatment facility, as appropriate, shall be required to report such treatment when it is the result of voluntary consent, except as may otherwise be required by law.

The consent of no other person or persons, including but not limited to a spouse, parent, custodian or guardian, shall be necessary in order to authorize such hospital, facility or clinical care or services or medical or surgical care or services to be provided by a physician licensed to practice medicine or by an individual licensed or certified to provide treatment for alcoholism to such a minor.

The provisions of this act shall be posted prominently in all hospital emergency departments and all other emergency facilities in this State.

2. This act shall take effect 90 days after the day of enactment.

SENATE, No.  
ASSEMBLY, No.  
STATE OF NEW JERSEY

INTRODUCED , 1994

AN ACT concerning the coordination of services to sexual assault victims and amending Title 52 (C. 52:4B-44)

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 6 of P.L.1985, c.404 (N.J.S. 52:4B-44) is amended to read as follows:

6. a. The Attorney General shall, through the Office of Victim-Witness Advocacy in the Division of Criminal Justice in the Department of Law and Public Safety and in consultation with the county prosecutors, promulgate standards for law enforcement agencies to ensure that the rights of crime victims are enforced.

b. The standards shall require that the Office of Victim-Witness Advocacy in the Division of Criminal Justice and each county prosecutor's office provide the following services upon request for victims and witnesses involved in the prosecution of a case:

- (1) Orientation information about the criminal justice system and the victim's and witness's role in the criminal justice process;
- (2) Notification of any change in the case status and of final disposition;
- (3) Information on crime prevention and on available responses to witness intimidation;
- (4) Information about available services to meet needs resulting from the crime and referrals to service agencies, where appropriate;
- (5) Advance notice of the date, time and place of the defendant's initial appearance before a judicial officer, submission to the court of any plea agreement, the trial and sentencing;
- (6) Advance notice of when presence in court is not needed;
- (7) Advice about available compensation, restitution and other forms of recovery and assistance in applying for government compensation;
- (8) A waiting or reception area separate from the defendant for use during court proceedings;
- (9) An escort or accompaniment for intimidated victims or witnesses during court appearances;
- (10) Information about directions, parking, courthouse and courtroom locations, transportation services and witness fees, in advance of court appearances;
- (11) Assistance for victims and witnesses in meeting special needs when required to make court appearances, such as transportation and child car arrangements;
- (12) Assistance in making travel and lodging arrangements for out-of-State witnesses;
- (13) Notification to employers of victims and witnesses, if cooperation in the investigation or prosecution causes absence from work;
- (14) Notification of the case disposition, including the trial and sentencing;
- (15) Assistance to victims in submitting a written statement to a representative of the

county prosecutor's office about the impact of the crime prior to the prosecutor's final decision concerning whether formal charges will be filed;

(16) Advice to victims about their right to make a statement about the impact of the crime for inclusion in the presentence report or at time of parole consideration, if applicable;

(17) Notification to victims of the right to make an in-person statement, prior to sentencing, directly to the sentencing court concerning the impact of the crime;

(18) Expediting the return of property when no longer needed as evidence;

(19) Advise and counsel, or refer for advice or counseling, victims of sexual assault, or other criminal acts involving a risk of transmission of disease, concerning available medical testing and assist such victims, or refer such victims for assistance, in obtaining appropriate testing, counseling and medical care and in making application to the Violent Crimes Compensation Board for compensation for the costs of such testing, counseling and care;

(20) Assistance to victims in submitting a written impact statement to a representative of the county prosecutor's office concerning the impact of the crime which shall be considered prior to the prosecutor's accepting a negotiated plea agreement containing recommendations as to sentence and assistance to victims in securing an explanation of the terms of any such agreement and the reasons for the agreement; and

(21) Notification to the victim of the defendant's release from custody which shall include:

(a) notice of the defendant's escape from custody and return to custody following escape;

(b) notice of any other release from custody, including placement in an Intensive Supervision Program or other alternative disposition, and any associated conditions of release;

(c) notice of the filing by an inmate of an application for commutation of sentence pursuant to N.J.S.2A:167-4 and its disposition;

(d) notice of parole consideration pursuant to provisions of P.L.1979, c.441 (C.30:4-123.45 et seq.); and (e) notice of the pending release of an inmate due to expiration of sentence.

c. In a case involving a victim of aggravated sexual assault or sexual assault as defined in subsection a. or c. of N.J.S.2C:14-2, the Office of Victim-Witness Advocacy or the county prosecutor's office involved in the case shall:

(1) Notify the victim of the victim's right to obtain an approved serological test for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS, and assist the victim, or refer the victim for assistance, in obtaining a test and appropriate counseling and medical care;

(2) Notify the victim of the victim's right to obtain a court order pursuant to subsection a. of section 4 of P.L.1993, c.364 (C.2C:43-2.2) requiring the offender to submit to an approved serological test for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS in the event that the offender is indicted, formally charged, convicted or adjudicated delinquent;

(3) Communicate the request of a victim who agrees to seek an order pursuant to subsection a. of section 4 of P.L.1993, c.364 (C.2C:43-2.2) to the prosecutor handling the case and notify the victim or arrange for the victim to be notified of the test result; and

(4) Assist the victim in applying to the Violent Crimes Compensation Board for compensation for the costs of testing, counseling and medical care.

d. The Office of Victim-Witness Advocacy shall coordinate the establishment by and with the cooperation of the Commissioner of Health or a designee, the Director of the State

Police or a designee, the Attorney General or a designee, and a representative of a provider of sexual assault services, standard protocols that will coordinate services to victims of sexual assaults, and will make such protocols available to victims upon request.

SENATE, No.  
ASSEMBLY, No.

## STATE OF NEW JERSEY

INTRODUCED , 1994

AN ACT concerning assaults on victims of domestic violence, especially pregnant women, and amending Title 2C (C. 2C: 12-1).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S. 2C:12-1 is amended to read as follows:

a. Simple assault. A person is guilty of assault if he:

- (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
- (2) Negligently causes bodily injury to another with a deadly weapon; or
- (3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

b. Aggravated assault. A person is guilty of aggravated assault if he:

- (1) Attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury; or
- (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or
- (3) Recklessly causes bodily injury to another with a deadly weapon; or
- (4) Knowingly under circumstances manifesting extreme indifference to the value of human life points a firearm, as defined in section 2C:39-1f., at or in the direction of another, whether or not the actor believes it to be loaded; or
- (5) Commits a simple assault as defined in subsection a. (1) and (2) of this section upon:

(a) Any law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority; or

(b) Any paid or volunteer fireman acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman; or

(c) Any person engaged in emergency first-aid or medical services acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of emergency first-aid or medical services; or

(d) Any school board member or school administrator, teacher or other employee of a school board while clearly identifiable as being engaged in the performance of his duties or because of his status as a member or employee of a school board; or

(6) Causes bodily injury to another person while fleeing or attempting to elude a law enforcement officer in violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10. Notwithstanding any other provision of law to the contrary, a person shall be strictly liable for a violation of this subsection upon proof of a violation of subsection b. of N.J.S.2C:29-2 or while operating a motor vehicle in violation of subsection c. of N.J.S.2C:20-10 which resulted in bodily injury to another person.

Aggravated assault under subsections b. (1) and b. (6) is a crime of the second degree; under subsection b. (2) is a crime of the third degree; under subsections b. (3) and b. (4) is a crime of the fourth degree; and under subsection b. (5) is a crime of the third degree if the victim suffers bodily injury, otherwise it is a crime of the fourth degree.

c. A person is guilty of assault by auto or vessel when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto or vessel is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results.

As used in this section, "vessel" means a means of conveyance for travel on water and propelled otherwise than by muscular power.

d. A person who is employed by a facility as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault as defined in paragraph (1) or (2) of subsection a. of this section upon an institutionalized elderly person as defined in section 2 of P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth degree.

e. A person who commits a simple assault as defined in subsection a. of this section is guilty of a crime of the fourth degree if the person acted, at least in part, with ill will, hatred or bias toward, and with a purpose to intimidate, an individual or group of individuals because of race, gender, handicap, color, religion, sexual orientation, or ethnicity.

f. A person who commits a simple assault as defined in subsection a. of this section is

from contact with the victim under an order entered pursuant to The Prevention of Domestic Violence Act of 1991 (C. 2C:25-17 et seq.). If, in addition, the victim is known or believed by the person to be pregnant, the crime is a crime of the third degree.

*A CHRONOLOGY OF DOMESTIC VIOLENCE LAWS IN NEW JERSEY  
1980-1991*

**March 13, 1980** Assembly Bill No. 1330 introduced by Assemblymen Bassano, Herman, Franks, Maguire, Snedeker, Bennett, Cardinale, Orechio, Rocco, and Assemblywoman Burgio. The bill would have allowed a municipal court judge to restrain a spouse from the marital home for 72 hours if there was probable cause to believe that the spouse committed an act of assault and battery or atrocious assault and battery against the complainant and if the spouse's presence would have presented clear and immediate harm to any member of the family.

**November 6, 1980** Letter sent by Donna Hildreth, Legal Services of New Jersey, to Senator Wynona M. Lipman explaining the need for sweeping legislation. The Commission on Sex Discrimination in the Statutes, of which Senator Lipman was chair, and Legal Services acting on behalf of its client, the New Jersey Coalition for Battered Women, worked on the original Prevention of Domestic Violence Act.

**February 23, 1981** Assembly Bill No. 3183, sponsored by Assemblywomen McConnell, Kalik, and Gluck and Assemblyman Schwartz; and Senate Bill No. 3127, sponsored by Senators Lipman and Merlino, introduced in the Legislature.

**July 9, 1981** A. 1330 signed into law as Chapter 200 of Laws of 1981.

**November 19, 1981** Supreme Court Committee on Battered Women writes to Senator Lipman with suggestions about how the court system can be helped by the passage of S. 3127.

**January 9, 1982** Prevention of Domestic Violence Act signed as P.L. 1981, c. 426. Codified at New Jersey Statutes Annotated 2C:25-1 et seq. Provided 72 hour restraints that could be expanded to 7 days where any one of nine crimes was found to have been committed by a cohabitant of the opposite sex from petitioner.

**June 10, 1982** Senate Bill No. 1515 introduced by Senators Lipman and DiFrancesco to expand PDVA. Added harassment to list of crimes; police officer definition was expanded; immunity extended to community crisis teams; duty of police to inform victims of rights created; standards set out for proof and culpability; disallowed court refusal to grant sole possession of marital home to victim if house in name of defendant; defendant to pay for counseling; provided for ex parte orders, final hearing to make relief permanent; and removed requirement of opposite sex as to cohabiting blood relatives.

**July 23, 1982** S. 1515 signed into law as L. 1982, c. 82.

**June 1984** New Jersey Supreme Court Task Force on Women in the Courts releases its first report: recommends mandatory arrest, mandatory and adequate

training for judicial and law enforcement personnel, procedural uniformity in municipal courts, special contempt provisions, and better enforcement of existing orders.

**February 13, 1986** Assembly Bill No. 1968, sponsored by Assemblywoman Donovan, introduced. Essentially proposed enactment of Task Force recommendations and changed references to Juvenile and Domestic Relations Courts to Family Part of Chancery Division of Superior Court.

**January 5, 1987** A. 1968 signed into law as L. 1987, c. 356. Merged with S. 1892 (Lipman), A. 1785 (McEnroe, Thompson), A. 1389 (Doyle), and A. 1969 (Thompson, R. Smith) to add required uniform reporting from the Administrative Office of the Courts, new transportation provisions for the defendant and victim, and gives Family Part jurisdiction over criminal contempts.

**February 9, 1988** Senate Bill No. 2011, sponsored by Senator Lipman, introduced. Refines contempt procedures and improves notice to victims about the availability of both civil and criminal remedies.

**February 29, 1988** Senate Bill No. 2159 introduced by Senators Brown, Pallone, Bubba, and Cowan; adds language about elder abuse to the legislative findings and training sections of PDVA.

**March 14, 1988** Assembly Bill No. 2717, identical to S. 2011, introduced by Assemblymen Schuber and Roma.

**June 6, 1988** S. 2011/ A. 2717 signed into law as P.L. 1988, c. 28.

**August 18, 1988** Advisory Council on Domestic Violence holds open meeting to discuss effects of piecemeal amendment of PDVA, decides to work on comprehensive revision. Hearings held September and October 1988, summary of findings issued November 1988.

**February 6, 1989** S. 2159 merged with Assembly Bill No. 2788 (Bush) and signed into law as P.L. 1989, c. 23. Governor Kean vetoes \$90,000 appropriation.

**June 30, 1989** Senate Bill No. 3758 introduced by Senators Lipman and DiFrancesco proposing comprehensive amendments recommended at Advisory Council hearings. Bill dies at end of session.

**January 1990** Senate Bill No. 2230 prefiled for new legislative session by Senator Lipman; Senate Judiciary Committee amends to eliminate protection for same-sex couples and adds perjury warning for victims. Senate passes with committee amendments.

**November 1990** Companion bills filed in Assembly (A. 3205 and A. 4208 by Assemblymen Schuber, Roma, and Cohen and Assemblywomen Ford, Mullen,

Bush, and Kalik) restoring original language. Bills merged in Assembly Judiciary, Law and Public Safety Committee with Attorney General amendments proposing restriction on gun ownership and possession by abusers.

**February 1991** Merged bill passes in Assembly.

**March 1991** Senate votes on and adopts Assembly version. Senator Rice offers amendments about guns, which are adopted but repealed on next vote, which adopts amendments offered by Senator Laskin that return bill to Senate Judiciary version.

**June 20, 1991** Motion to reconsider S. 2330 passes Senate; bill amended to conform with Assembly version and passed as amended.

**June 27, 1991** Assembly concurs with Senate amendments.

**August 14, 1991** S.2330 signed into law as P.L. 1991, c. 261, effective November 12, 1991.

SENATE, No. 1515

STATE OF NEW JERSEY

APPENDIX N

INTRODUCED OCTOBER 13, 1994

By Senators LIPMAN and MacInnes

ASSEMBLY, No. 1367

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 17, 1994

By Assemblywomen WEINBERG and HECK

1 AN ACT concerning firearms permits, amending N.J.S.2C:58-3  
2 and supplementing Title 2C of the New Jersey Statutes.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. N.J.S. 2C:58-3 is amended to read as follows:

7 2C:58-3. Purchase of Firearms.

8 a. Permit to purchase a handgun. No person shall sell, give,  
9 transfer, assign or otherwise dispose of, nor receive, purchase, or  
10 otherwise acquire a handgun unless the purchaser, assignee,  
11 donee, receiver or holder is licensed as a dealer under this  
12 chapter or has first secured a permit to purchase a handgun as  
13 provided by this section.

14 b. Firearms purchaser identification card. No person shall  
15 sell, give, transfer, assign or otherwise dispose of nor receive,  
16 purchase or otherwise acquire an antique cannon or a rifle or  
17 shotgun, other than an antique rifle or shotgun, unless the  
18 purchaser, assignee, donee, receiver or holder is licensed as a  
19 dealer under this chapter or possesses a valid firearms purchaser  
20 identification card, and first exhibits said card to the seller,  
21 donor, transferor or assignor, and unless the purchaser, assignee,  
22 donee, receiver or holder signs a written certification, on a form  
23 prescribed by the superintendent, which shall indicate that he  
24 presently complies with the requirements of subsection c. of this  
25 section and shall contain his name, address and firearms  
26 purchaser identification card number or dealer's registration  
27 number. The said certification shall be retained by the seller, as  
28 provided in section 2C:58-2a., or, in the case of a person who is  
29 not a dealer, it may be filed with the chief of police of the  
30 municipality in which he resides or with the superintendent.

31 c. Who may obtain. No person of good character and good  
32 repute in the community in which he lives, and who is not subject  
33 to any of the disabilities set forth in this section or other sections  
34 of this chapter, shall be denied a permit to purchase a handgun or  
35 a firearms purchaser identification card, except as hereinafter  
36 set forth. No handgun purchase permit or firearms purchaser  
37 identification card shall be issued:

38 (1) To any person who has been convicted of a crime, whether  
39 or not armed with or possessing a weapon at the time of such  
40 offense;

41 (2) To any drug dependent person as defined in section 2 of  
42 P.L.1970, c.226 (C.24:21-2), to any person who is confined for a

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 mental disorder to a hospital, mental institution or sanitarium, or  
2 to any person who is presently an habitual drunkard;

3 (3) To any person who suffers from a physical defect or disease  
4 which would make it unsafe for him to handle firearms, to any  
5 person who has ever been confined for a mental disorder, or to  
6 any alcoholic unless any of the foregoing persons produces a  
7 certificate of a medical doctor or psychiatrist licensed in New  
8 Jersey, or other satisfactory proof, that he is no longer suffering  
9 from that particular disability in such a manner that would  
10 interfere with or handicap him in the handling of firearms; to any  
11 person who knowingly falsifies any information on the application  
12 form for a handgun purchase permit or firearms purchaser  
13 identification card;

14 (4) To any person under the age of 18 years;

15 (5) To any person where the issuance would not be in the  
16 interest of the public health, safety or welfare; or

17 (6) To any person who is subject to a court order issued  
18 pursuant to section 13 of P.L.1991, c.261 (C.2C:25-29) prohibiting  
19 the person from possessing any firearm. To ascertain whether  
20 the applicant is subject to such an order, the chief of police of an  
21 organized full-time police department of the municipality where  
22 the applicant resides or the superintendent, in all other cases,  
23 shall conduct a search of the domestic violence registry  
24 established pursuant to section 2 of P.L. , c. (C. ) (now pending  
25 before the Legislature as this bill).

26 d. Issuance. The chief of police of an organized full-time  
27 police department of the municipality where the applicant resides  
28 or the superintendent, in all other cases, shall upon application,  
29 issue to any person qualified under the provisions of subsection c.  
30 of this section a permit to purchase a handgun or a firearms  
31 purchaser identification card.

32 Any person aggrieved by the denial of a permit or  
33 identification card may request a hearing in the Superior Court of  
34 the county in which he resides if he is a resident of New Jersey or  
35 in the Superior Court of the county in which his application was  
36 filed if he is a nonresident. The request for a hearing shall be  
37 made in writing within 30 days of the denial of the application for  
38 a permit or identification card. The applicant shall serve a copy  
39 of his request for a hearing upon the chief of police of the  
40 municipality in which he resides, if he is a resident of New  
41 Jersey, and upon the superintendent in all cases. The hearing  
42 shall be held and a record made thereof within 30 days of the  
43 receipt of the application for such hearing by the judge of the  
44 Superior Court. No formal pleading and no filing fee shall be  
45 required as a preliminary to such hearing. Appeals from the  
46 results of such hearing shall be in accordance with law.

47 e. Applications. Applications for permits to purchase a  
48 handgun and for firearms purchaser identification cards shall be  
49 in the form prescribed by the superintendent and shall set forth  
50 the name, residence, place of business, age, date of birth,  
51 occupation, sex and physical description, including distinguishing  
52 physical characteristics, if any, of the applicant, and shall state  
53 whether the applicant is a citizen, whether he is an alcoholic,  
54 habitual drunkard, drug dependent person as defined in section 2

1 of P.L.1970, c.226 (C.24:21-2), whether he has ever been confined  
2 or committed to a mental institution or hospital for treatment or  
3 observation of a mental or psychiatric condition on a temporary,  
4 interim or permanent basis, giving the name and location of the  
5 institution or hospital and the dates of such confinement or  
6 commitment, whether he has been attended, treated or observed  
7 by any doctor or psychiatrist or at any hospital or mental  
8 institution on an inpatient or outpatient basis for any mental or  
9 psychiatric condition, giving the name and location of the doctor,  
10 psychiatrist, hospital or institution and the dates of such  
11 occurrence, whether he presently or ever has been a member of  
12 any organization which advocates or approves the commission of  
13 acts of force and violence to overthrow the Government of the  
14 United States or of this State, or which seeks to deny others their  
15 rights under the Constitution of either the United States or the  
16 State of New Jersey, whether he has ever been convicted of a  
17 crime or disorderly persons offense, whether the person is subject  
18 to a court order issued pursuant to section 13 of P.L.1991, c.261  
19 (C.2C:25-29) prohibiting the person from possessing any firearm,  
20 and such other information as the superintendent shall deem  
21 necessary for the proper enforcement of this chapter. For the  
22 purpose of complying with this subsection, the applicant shall  
23 waive any statutory or other right of confidentiality relating to  
24 institutional confinement. The application shall be signed by the  
25 applicant and shall contain as references the names and addresses  
26 of two reputable citizens personally acquainted with him.

27 Application blanks shall be obtainable from the superintendent,  
28 from any other officer authorized to grant such permit or  
29 identification card, and from licensed retail dealers.

30 The chief police officer or the superintendent shall obtain the  
31 fingerprints of the applicant and shall have them compared with  
32 any and all records of fingerprints in the municipality and county  
33 in which the applicant resides and also the records of the State  
34 Bureau of Identification and the Federal Bureau of Investigation,  
35 provided that an applicant for a handgun purchase permit who  
36 possesses a valid firearms purchaser identification card, or who  
37 has previously obtained a handgun purchase permit from the same  
38 licensing authority for which he was previously fingerprinted, and  
39 who provides other reasonably satisfactory proof of his identity,  
40 need not be fingerprinted again; however, the chief police officer  
41 or the superintendent shall proceed to investigate the application  
42 to determine whether or not the applicant has become subject to  
43 any of the disabilities set forth in this chapter.

44 f. Granting of permit or identification card; fee; term;  
45 renewal; revocation. The application for the permit to purchase  
46 a handgun together with a fee of \$2.00, or the application for the  
47 firearms purchaser identification card together with a fee of  
48 \$5.00, shall be delivered or forwarded to the licensing authority  
49 who shall investigate the same and, unless good cause for the  
50 denial thereof appears, shall grant the permit or the  
51 identification card, or both, if application has been made  
52 therefor, within 30 days from the date of receipt of the  
53 application for residents of this State and within 45 days for  
54 nonresident applicants. A permit to purchase a handgun shall be

1 valid for a period of 90 days from the date of issuance and may  
2 be renewed by the issuing authority for good cause for an  
3 additional 90 days. A firearms purchaser identification card shall  
4 be valid until such time as the holder becomes subject to any of  
5 the disabilities set forth in subsection c. of this section,  
6 whereupon the card shall be void and shall be returned within five  
7 days by the holder to the superintendent, who shall then advise  
8 the licensing authority. Failure of the holder to return the  
9 firearms purchaser identification card to the superintendent  
10 within the said five days shall be an offense under section  
11 2C:39-10a. Any firearms purchaser identification card may be  
12 revoked by the Superior Court of the county wherein the card was  
13 issued, after hearing upon notice, upon a finding that the holder  
14 thereof no longer qualifies for the issuance of such permit. The  
15 county prosecutor of any county, the chief police officer of any  
16 municipality or any citizen may apply to such court at any time  
17 for the revocation of such card.

18 There shall be no conditions or requirements added to the form  
19 or content of the application, or required by the licensing  
20 authority for the issuance of a permit or identification card,  
21 other than those that are specifically set forth in this chapter.

22 g. Disposition of fees. All fees for permits shall be paid to the  
23 State Treasury if the permit is issued by the superintendent, to  
24 the municipality if issued by the chief of police, and to the  
25 county treasurer if issued by the judge of the Superior Court.

26 h. Form of permit; quadruplicate; disposition of copies. The  
27 permit shall be in the form prescribed by the superintendent and  
28 shall be issued to the applicant in quadruplicate. Prior to the  
29 time he receives the handgun from the seller, the applicant shall  
30 deliver to the seller the permit in quadruplicate and the seller  
31 shall complete all of the information required on the form.  
32 Within five days of the date of the sale, the seller shall forward  
33 the original copy to the superintendent and the second copy to  
34 the chief of police of the municipality in which the purchaser  
35 resides, except that in a municipality having no chief of police,  
36 such copy shall be forwarded to the superintendent. The third  
37 copy shall then be returned to the purchaser with the pistol or  
38 revolver and the fourth copy shall be kept by the seller as a  
39 permanent record.

40 i. Restriction on number of firearms person may purchase.  
41 Only one handgun shall be purchased or delivered on each permit,  
42 but a person shall not be restricted as to the number of rifles or  
43 shotguns he may purchase, provided he possesses a valid firearms  
44 purchaser identification card and provided further that he signs  
45 the certification required in subsection b. of this section for each  
46 transaction.

47 j. Firearms passing to heirs or legatees. Notwithstanding any  
48 other provision of this section concerning the transfer, receipt or  
49 acquisition of a firearm, a permit to purchase or a firearms  
50 purchaser identification card shall not be required for the passing  
51 of a firearm upon the death of an owner thereof to his heir or  
52 legatee, whether the same be by testamentary bequest or by the  
53 laws of intestacy. The person who shall so receive, or acquire  
54 said firearm shall, however, be subject to all other provisions of

1 this chapter. If the heir or legatee of such firearm does not  
2 qualify to possess or carry it, he may retain ownership of the  
3 firearm for the purpose of sale for a period not exceeding 180  
4 days, or for such further limited period as may be approved by  
5 the chief law enforcement officer of the municipality in which  
6 the heir or legatee resides or the superintendent, provided that  
7 such firearm is in the custody of the chief law enforcement  
8 officer of the municipality or the superintendent during such  
9 period.

10 k. Sawed-off shotguns. Nothing in this section shall be  
11 construed to authorize the purchase or possession of any  
12 sawed-off shotgun.

13 l. Nothing in this section and in N.J.S.2C:58-2 shall apply to  
14 the sale or purchase of a visual distress signalling device  
15 approved by the United States Coast Guard, solely for possession  
16 on a private or commercial aircraft or any boat; provided,  
17 however, that no person under the age of 18 years shall purchase  
18 nor shall any person sell to a person under the age of 18 years  
19 such a visual distress signalling device.

20 (cf: P.L.1991, c.261, s.19)

21 2. (New section) A domestic violence order registry shall be  
22 established and maintained by the Administrative Office of the  
23 Courts. The registry shall contain identifying information  
24 concerning all persons who are subject to court orders issued  
25 pursuant to section 13 of P.L.1991, c.261 prohibiting them from  
26 possessing firearms. The registry shall be accessed by the  
27 appropriate officials pursuant to N.J.S.2C:58-2 in connection  
28 with every application for a firearms purchaser identification  
29 card or permit to purchase a handgun. The registry shall be  
30 funded by the surcharge on firearm purchases collected pursuant  
31 to section 3 of P.L. , c. (C. )(now pending before the  
32 Legislature as this bill).

33 3. (New section) A Domestic Violence Registry Fund is hereby  
34 created. The fund shall be a dedicated fund within the General  
35 Fund and administered by the Administrative Office of the  
36 Courts, and shall be the depository of moneys realized from the  
37 firearms surcharge imposed pursuant to section 4 of P.L. , c.  
38 (C. )(now pending before the Legislature as this bill).

39 4. (New section) A surcharge of \$10.00 shall be imposed on  
40 every retail purchase of a firearm in this State, except where the  
41 purchaser is licensed as a dealer pursuant to chapter 58 of Title  
42 2C of the New Jersey Statutes. The surcharge shall be collected  
43 by the seller of the firearm and forwarded to the Administrative  
44 Office of the Courts, which shall deposit the monies into the  
45 Domestic Violence Registry Fund established pursuant to section  
46 3 of P.L. , c. (C. )(now pending before the Legislature as  
47 this bill).

48 5. (New section) The Administrative Office of the Courts  
49 shall promulgate administrative procedures necessary to  
50 accomplish the purposes of this act.

51 6. This act shall take effect immediately.

STATEMENT

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This bill would establish a central registry of domestic violence orders. The registry would contain identifying information concerning all persons who are subject to domestic violence orders which bar them from purchasing a weapon. The police would access the registry when evaluating applications for firearms purchaser identification cards and permits to carry handguns. The registry would be funded by a \$10.00 surcharge imposed on firearms purchases.

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Establishes central registry of domestic violence orders for use in evaluating firearm permit applications.

SENATE, No. 472

STATE OF NEW JERSEY

ASSEMBLY, No. 1368

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 17, 1994

By Assemblywomen WEINBERG and HECK

1 AN ACT concerning firearms and amending P.L.1991, c.261 and  
2 N.J.S.2C:58-3.

3

4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. Section 5 of P.L.1991, c.261 (C.2C:25-21) is amended to  
7 read as follows

8 5. a. When a person claims to be a victim of domestic  
9 violence, and where a law enforcement officer responding to the  
10 incident finds probable cause to believe that domestic violence  
11 has occurred, the law enforcement officer shall arrest the person  
12 who is alleged to be the person who subjected the victim to  
13 domestic violence and shall sign a criminal complaint if:

14 (1) The victim exhibits signs of injury caused by an act of  
15 domestic violence;

16 (2) A warrant is in effect;

17 (3) There is probable cause to believe that the person has  
18 violated N.J.S.2C:29-9, and there is probable cause to believe  
19 that the person has been served with the order alleged to have  
20 been violated. If the victim does not have a copy of a purported  
21 order, the officer may verify the existence of an order with the  
22 appropriate law enforcement agency; or

23 (4) There is probable cause to believe that a weapon as defined  
24 in N.J.S.2C:39-1 has been involved in the commission of an act of  
25 domestic violence.

26 b. A law enforcement officer may arrest a person; or may sign  
27 a criminal complaint against that person, or may do both, where  
28 there is probable cause to believe that an act of domestic  
29 violence has been committed, but where none of the conditions in  
30 subsection a. of this section applies.

31 c. (1) As used in this section, the word "exhibits" is to be  
32 liberally construed to mean any indication that a victim has  
33 suffered bodily injury, which shall include physical pain or any  
34 impairment of physical condition. Where the victim exhibits no  
35 visible sign of injury, but states that an injury has occurred, the  
36 officer should consider other relevant factors in determining  
37 whether there is probable cause to make an arrest.

38 (2) In determining which party in a domestic violence incident  
39 is the victim where both parties exhibit signs of injury, the  
40 officer should consider the comparative extent of the injuries,  
41 the history of domestic violence between the parties, if any, and  
42 any other relevant factors.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (3) No victim shall be denied relief or arrested or charged  
2 under this act with an offense because the victim used reasonable  
3 force in self defense against domestic violence by an attacker.

4 d. (1) In addition to a law enforcement officer's authority to  
5 seize any weapon that is contraband, evidence or an  
6 instrumentality of crime, a law enforcement officer who has  
7 probable cause to believe that an act of domestic violence has  
8 been committed [may] shall:

9 (a) question persons present to determine whether there are  
10 weapons on the premises; and

11 (b) upon observing or learning that a weapon is present on the  
12 premises, seize any weapon that the officer reasonably believes  
13 would expose the victim to a risk of serious bodily injury.

14 (2) A law enforcement officer shall deliver all weapons seized  
15 pursuant to this section to the county prosecutor and shall append  
16 an inventory of all seized weapons to the domestic violence  
17 report.

18 (3) [Weapons] No weapons seized in accordance with the above  
19 shall be returned to the owner except upon order of the Superior  
20 Court. The owner may, upon notice to the prosecutor who has  
21 possession of the seized weapons [may, upon notice to the owner],  
22 petition a judge of the Family Part of the Superior Court,  
23 Chancery Division to order the return of the weapons. The  
24 prosecutor, upon notice to the owner, may apply to the court  
25 [, within 45 days of seizure,] to obtain title to the seized  
26 weapons, or to revoke any and all permits, licenses and other  
27 authorizations for the use, possession, or ownership of such  
28 weapons pursuant to the law governing such use, possession, or  
29 ownership, or may object to the return of the weapons on such  
30 grounds as are provided for the initial rejection or later  
31 revocation of the authorizations, or on the grounds that the  
32 owner is unfit or that the owner poses a threat to the public in  
33 general or a person or persons in particular.

34 A hearing shall be held and a record made thereof within [15]  
35 45 days of the notice provided above. No formal pleading and no  
36 filing fee shall be required as a preliminary to such hearing. The  
37 hearing shall be summary in nature. Appeals from the results of  
38 the hearing shall be to the Superior Court, Appellate Division, in  
39 accordance with the law.

40 [If the prosecutor does not institute an action within 45 days of  
41 seizure, the seized weapons shall be returned to the owner.]

42 After the hearing the court shall order the return of the  
43 firearms, weapons and any authorization papers relating to the  
44 seized weapons to the owner if the complaint has been dismissed  
45 at the request of the complainant and the prosecutor determines  
46 that there is insufficient probable cause to indict; or if the  
47 defendant is found not guilty of the charges; or if the court  
48 determines that the domestic violence situation no longer exists.

49 Nothing in this act shall impair the right of the State to retain  
50 evidence pending a criminal prosecution. Nor shall any provision  
51 of this act be construed to limit the authority of the State or a  
52 law enforcement officer to seize, retain or forfeit property  
53 pursuant to chapter 64 of Title 2C of the New Jersey Statutes.

54 If, after the hearing, the court determines that the weapons

1 are not to be returned to the owner, the court may:

2 (a) With respect to weapons other than firearms, order the  
3 prosecutor to dispose of the weapons if the owner does not  
4 arrange for the transfer or sale of the weapons to an appropriate  
5 person within 60 days; or

6 (b) Order the revocation of the owner's firearms purchaser  
7 identification card or any permit, license or authorization, in  
8 which case the court shall order the owner to surrender any  
9 firearm seized and all other firearms possessed to the prosecutor  
10 and shall order the prosecutor to dispose of the firearms if the  
11 owner does not arrange for the sale of the firearms to a  
12 registered dealer of the firearms within 60 days; or

13 (c) Order such other relief as it may deem appropriate. When  
14 the court orders the weapons forfeited to the State or the  
15 prosecutor is required to dispose of the weapons, the prosecutor  
16 shall dispose of the property as provided in N.J.S.2C:64-6.

17 [(4) A civil suit may be brought to enjoin a wrongful failure to  
18 return a seized firearm where the prosecutor refuses to return  
19 the weapon after receiving a written request to do so and notice  
20 of the owner's intent to bring a civil action pursuant to this  
21 section. Failure of the prosecutor to comply with the provisions  
22 of this act shall entitle the prevailing party in the civil suit to  
23 reasonable costs, including attorney's fees, provided that the  
24 court finds that the prosecutor failed to act in good faith in  
25 retaining the seized weapon.] (Deleted by amendment, P.L. . . .  
26 c. . .)(now pending before the Legislature as this bill)

27 [(5) No law enforcement officer or agency shall be held liable  
28 in any civil action brought by any person for failing to learn of,  
29 locate or seize a weapon pursuant to this act, or for returning a  
30 seized weapon to its owner.] (Deleted by amendment, P.L. . . .  
31 c. . .)(now pending before the Legislature as this bill)

32 (cf: P.L.1991, c.261, s.5)

33 2. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to  
34 read as follows:

35 13. a. A hearing shall be held in the Family Part of the  
36 Chancery Division of the Superior Court within 10 days of the  
37 filing of a complaint pursuant to section 12 of this act. A copy of  
38 the complaint shall be served on the defendant in conformity with  
39 the rules of court. If a criminal complaint arising out of the same  
40 incident which is the subject matter of a complaint brought under  
41 P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 has been  
42 filed, testimony given by the plaintiff or defendant in the  
43 domestic violence matter shall not be used in the simultaneous or  
44 subsequent criminal proceeding against the defendant, other than  
45 domestic violence contempt matters and where it would  
46 otherwise be admissible hearsay under the rules of evidence that  
47 govern where a party is unavailable. At the hearing the standard  
48 for proving the allegations in the complaint shall be by a  
49 preponderance of the evidence. The court shall consider but not  
50 be limited to the following factors:

51 (1) The previous history of domestic violence between the  
52 plaintiff and defendant, including threats, harassment and  
53 physical abuse;

54 (2) The existence of immediate danger to person or property;

1 (3) The financial circumstances of the plaintiff and defendant;

2 (4) The best interests of the victim and any child;

3 (5) In determining custody and visitation the protection of the  
4 victim's safety; and

5 (6) The existence of a verifiable order of protection from  
6 another jurisdiction.

7 b. In proceedings in which complaints for restraining orders  
8 have been filed, the court shall grant any relief necessary to  
9 prevent further abuse. In addition to any other provisions, any  
10 restraining order issued by the court shall bar the defendant from  
11 receiving a firearms purchaser identification card or a permit to  
12 purchase a handgun pursuant to N.J.S.2C:58-3 for a period of at  
13 least two years. At the hearing the judge of the Family Part of  
14 the Chancery Division of the Superior Court may issue an order  
15 granting any or all of the following relief:

16 (1) An order restraining the defendant from subjecting the  
17 victim to domestic violence, as defined in this act.

18 (2) An order granting exclusive possession to the plaintiff of  
19 the residence or household regardless of whether the residence or  
20 household is jointly or solely owned by the parties or jointly or  
21 solely leased by the parties. This order shall not in any manner  
22 affect title or interest to any real property held by either party  
23 or both jointly. If it is not possible for the victim to remain in  
24 the residence, the court may order the defendant to pay the  
25 victim's rent at a residence other than the one previously shared  
26 by the parties if the defendant is found to have a duty to support  
27 the victim and the victim requires alternative housing.

28 (3) An order providing for visitation. The order shall protect  
29 the safety and well-being of the plaintiff and minor children and  
30 shall specify the place and frequency of visitation. Visitation  
31 arrangements shall not compromise any other remedy provided by  
32 the court by requiring or encouraging contact between the  
33 plaintiff and defendant. Orders for visitation may include a  
34 designation of a place of visitation away from the plaintiff, the  
35 participation of a third party, or supervised visitation.

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37 the safety and well-being of the plaintiff and minor children and  
38 shall specify the place and frequency of visitation. Visitation  
39 arrangements shall not compromise any other remedy provided by  
40 the court by requiring or encouraging contact between the  
41 plaintiff and defendant. Orders for visitation may include a  
42 designation of a place of visitation away from the plaintiff, the  
43 participation of a third party, or supervised visitation.

44 (a) The court shall consider a request by the plaintiff for an  
45 investigation or evaluation by the appropriate agency to assess  
46 the risk of harm to the child prior to the entry of a visitation  
47 order. Any denial of such a request must be on the record and  
48 shall only be made if the judge finds the request to be arbitrary  
49 or capricious.

50 (b) The court shall consider suspension of the visitation order  
51 and hold an emergent hearing upon an application made by the  
52 plaintiff certifying under oath that the defendant's access to the  
53 child pursuant to the visitation order has threatened the safety  
54 and well-being of the child.

1 (4) An order requiring the defendant to pay to the victim  
2 monetary compensation for losses suffered as a direct result of  
3 the act of domestic violence. The order may require the  
4 defendant to pay the victim directly, to reimburse the Violent  
5 Crimes Compensation Board for any and all compensation paid by  
6 the Violent Crimes Compensation Board directly to or on behalf  
7 of the victim, and may require that the defendant reimburse any  
8 parties that may have compensated the victim, as the court may  
9 determine. Compensatory losses shall include, but not be limited  
10 to, loss of earnings or other support, out-of-pocket losses for  
11 injuries sustained, cost of repair or replacement of real or  
12 personal property damaged or destroyed or taken, cost of  
13 counseling for the victim, moving or other travel expenses,  
14 reasonable attorney's fees, court costs, and compensation for  
15 pain and suffering. Where appropriate, punitive damages may be  
16 awarded in addition to compensatory damages.

17 (5) An order requiring the defendant to receive professional  
18 domestic violence counseling from either a private source or a  
19 source appointed by the court and, in that event, at the court's  
20 discretion requiring the defendant to provide the court at  
21 specified intervals with documentation of attendance at the  
22 professional counseling. The court may order the defendant to  
23 pay for the professional counseling.

24 (6) An order restraining the defendant from entering the  
25 residence, property, school, or place of employment of the victim  
26 or of other family or household members of the victim and  
27 requiring the defendant to stay away from any specified place  
28 that is named in the order and is frequented regularly by the  
29 victim or other family or household members.

30 (7) An order restraining the defendant from making any  
31 communication likely to cause annoyance or alarm including, but  
32 not limited to, personal, written, or telephone contact with the  
33 victim or other family members, or their employers, employees,  
34 or fellow workers, or others with whom communication would be  
35 likely to cause annoyance or alarm to the victim.

36 (8) An order requiring that the defendant make or continue to  
37 make rent or mortgage payments on the residence occupied by  
38 the victim if the defendant is found to have a duty to support the  
39 victim or other dependent household members; provided that this  
40 issue has not been resolved or is not being litigated between the  
41 parties in another action.

42 (9) An order granting either party temporary possession of  
43 specified personal property, such as an automobile, checkbook,  
44 documentation of health insurance, an identification document, a  
45 key, and other personal effects.

46 (10) An order awarding emergent monetary relief to the victim  
47 and other dependents, if any. An ongoing obligation of support  
48 shall be determined at a later date pursuant to applicable law.

49 (11) An order awarding temporary custody of a minor child.  
50 The court shall presume that the best interests of the child are  
51 served by an award of custody to the non-abusive parent.

52 (12) An order requiring that a law enforcement officer  
53 accompany either party to the residence to supervise the removal  
54 of personal belongings in order to ensure the personal safety of

1 the plaintiff when a restraining order has been issued. This order  
2 shall be restricted in duration.

3 (13) An order which permits the victim and the defendant to  
4 occupy the same premises but limits the defendant's use of that  
5 premises, but only if it is documented by the judge granting the  
6 order that:

7 (a) The plaintiff specifically and voluntarily requests such an  
8 order; and

9 (b) The judge determines that the request is made voluntarily  
10 and with the plaintiff's knowledge that the order may not provide  
11 the same protection as an order excluding the defendant from the  
12 premises and with the plaintiff's knowledge that the order may  
13 be difficult to enforce; and

14 (c) Any conditions placed upon the defendant in connection  
15 with the continued access to the premises and any penalties for  
16 noncompliance with those conditions shall be explicitly set out in  
17 the order and shall be in addition to any other remedies for  
18 noncompliance available to the victim.

19 (14) An order granting any other appropriate relief for the  
20 plaintiff and dependent children, provided that the plaintiff  
21 consents to such relief, including relief requested by the plaintiff  
22 at the final hearing, whether or not the plaintiff requested such  
23 relief at the time of the granting of the initial emergency order.

24 (15) An order that requires that the defendant report to the  
25 intake unit of the Family Part of the Chancery Division of the  
26 Superior Court for monitoring of any other provision of the order.

27 (16) An order prohibiting the defendant from possessing any  
28 firearm or other weapon enumerated in subsection r. of  
29 N.J.S.2C:39-1.

30 c. Notice of orders issued pursuant to this section shall be sent  
31 by the clerk of the Family Part of the Chancery Division of the  
32 Superior Court or other person designated by the court to the  
33 appropriate chiefs of police, members of the State Police and any  
34 other appropriate law enforcement agency.

35 d. Upon good cause shown, any final order may be dissolved or  
36 modified upon application to the Family Part of the Chancery  
37 Division of the Superior Court, but only if the judge who dissolves  
38 or modifies the order has available a complete record of the  
39 hearing or hearings on which the order was based.

40 (cf: P.L.1991,c.261,s.13)

41 3. N.J.S.2C:58-3 is amended to read as follows:

42 2C:58-3. Purchase of Firearms.

43 a. Permit to purchase a handgun. No person shall sell, give,  
44 transfer, assign or otherwise dispose of, nor receive, purchase, or  
45 otherwise acquire a handgun unless the purchaser, assignee,  
46 donee, receiver or holder is licensed as a dealer under this  
47 chapter or has first secured a permit to purchase a handgun as  
48 provided by this section.

49 b. Firearms purchaser identification card. No person shall  
50 sell, give, transfer, assign or otherwise dispose of nor receive,  
51 purchase or otherwise acquire an antique cannon or a rifle or  
52 shotgun, other than an antique rifle or shotgun, unless the  
53 purchaser, assignee, donee, receiver or holder is licensed as a  
54 dealer under this chapter or possesses a valid firearms purchaser

1 identification card, and first exhibits said card to the seller,  
2 donor, transferor or assignor, and unless the purchaser, assignee,  
3 donee, receiver or holder signs a written certification, on a form  
4 prescribed by the superintendent, which shall indicate that he  
5 presently complies with the requirements of subsection c. of this  
6 section and shall contain his name, address and firearms  
7 purchaser identification card number or dealer's registration  
8 number. The said certification shall be retained by the seller, as  
9 provided in section 2C:58-2a., or, in the case of a person who is  
10 not a dealer, it may be filed with the chief of police of the  
11 municipality in which he resides or with the superintendent.

12 c. Who may obtain. No person of good character and good  
13 repute in the community in which he lives, and who is not subject  
14 to any of the disabilities set forth in this section or other sections  
15 of this chapter, shall be denied a permit to purchase a handgun or  
16 a firearms purchaser identification card, except as hereinafter  
17 set forth. No handgun purchase permit or firearms purchaser  
18 identification card shall be issued:

19 (1) To any person who has been convicted of a crime, whether  
20 or not armed with or possessing a weapon at the time of such  
21 offense;

22 (2) To any drug dependent person as defined in section 2 of  
23 P.L.1970, c.226 (C.24:21-2), to any person who is confined for a  
24 mental disorder to a hospital, mental institution or sanitarium, or  
25 to any person who is presently an habitual drunkard;

26 (3) To any person who suffers from a physical defect or disease  
27 which would make it unsafe for him to handle firearms, to any  
28 person who has ever been confined for a mental disorder, or to  
29 any alcoholic unless any of the foregoing persons produces a  
30 certificate of a medical doctor or psychiatrist licensed in New  
31 Jersey, or other satisfactory proof, that he is no longer suffering  
32 from that particular disability in such a manner that would  
33 interfere with or handicap him in the handling of firearms; to any  
34 person who knowingly falsifies any information on the application  
35 form for a handgun purchase permit or firearms purchaser  
36 identification card;

37 (4) To any person under the age of 18 years;

38 (5) To any person where the issuance would not be in the  
39 interest of the public health, safety or welfare; or

40 (6) To any person who [is] has been the subject [to] of a [court]  
41 restraining order issued pursuant to section 13 of P.L.1991, c.261  
42 (C.2C:25-29) [prohibiting the person from possessing any  
43 firearm]. A person who has been the subject of a restraining  
44 order issued pursuant to section 13 of P.L.1991, c.261  
45 (C.2C:25-29) shall be barred from receiving a handgun purchase  
46 permit or firearms purchaser identification card for a period of  
47 at least two years, as ordered by the court that issued the  
48 restraining order. At the conclusion of that period, the defendant  
49 may request a hearing in the Superior Court, conducted pursuant  
50 to the provisions of this section, to determine whether the bar  
51 shall be lifted or continued for another two-year period. If the  
52 bar is continued, the defendant may request a hearing at  
53 subsequent two-year intervals.

54 d. Issuance. The chief of police of an organized full-time

1 police department of the municipality where the applicant resides  
2 or the superintendent, in all other cases, shall upon application,  
3 issue to any person qualified under the provisions of subsection c.  
4 of this section a permit to purchase a handgun or a firearms  
5 purchaser identification card.

6 Any person aggrieved by the denial of a permit or  
7 identification card may request a hearing in the Superior Court of  
8 the county in which he resides if he is a resident of New Jersey or  
9 in the Superior Court of the county in which his application was  
10 filed if he is a nonresident. The request for a hearing shall be  
11 made in writing within 30 days of the denial of the application for  
12 a permit or identification card. The applicant shall serve a copy  
13 of his request for a hearing upon the chief of police of the  
14 municipality in which he resides, if he is a resident of New  
15 Jersey, and upon the superintendent in all cases. The hearing  
16 shall be held and a record made thereof within 30 days of the  
17 receipt of the application for such hearing by the judge of the  
18 Superior Court. No formal pleading and no filing fee shall be  
19 required as a preliminary to such hearing. Appeals from the  
20 results of such hearing shall be in accordance with law.

21 e. Applications. Applications for permits to purchase a  
22 handgun and for firearms purchaser identification cards shall be  
23 in the form prescribed by the superintendent and shall set forth  
24 the name, residence, place of business, age, date of birth,  
25 occupation, sex and physical description, including distinguishing  
26 physical characteristics, if any, of the applicant, and shall state  
27 whether the applicant is a citizen, whether he is an alcoholic,  
28 habitual drunkard, drug dependent person as defined in section 2  
29 of P.L.1970, c.226 (C.24:21-2), whether he has ever been confined  
30 or committed to a mental institution or hospital for treatment or  
31 observation of a mental or psychiatric condition on a temporary,  
32 interim or permanent basis, giving the name and location of the  
33 institution or hospital and the dates of such confinement or  
34 commitment, whether he has been attended, treated or observed  
35 by any doctor or psychiatrist or at any hospital or mental  
36 institution on an inpatient or outpatient basis for any mental or  
37 psychiatric condition, giving the name and location of the doctor,  
38 psychiatrist, hospital or institution and the dates of such  
39 occurrence, whether he presently or ever has been a member of  
40 any organization which advocates or approves the commission of  
41 acts of force and violence to overthrow the Government of the  
42 United States or of this State, or which seeks to deny others their  
43 rights under the Constitution of either the United States or the  
44 State of New Jersey, whether he has ever been convicted of a  
45 crime or disorderly persons offense, whether the person [is] has  
46 been subject to a court order issued pursuant to section 13 of  
47 P.L.1991, c.261 (C.2C:25-29) [prohibiting the person from  
48 possessing any firearm], and such other information as the  
49 superintendent shall deem necessary for the proper enforcement  
50 of this chapter. For the purpose of complying with this  
51 subsection, the applicant shall waive any statutory or other right  
52 of confidentiality relating to institutional confinement. The  
53 application shall be signed by the applicant and shall contain as  
54 references the names and addresses of two reputable citizens  
55 personally acquainted with him.

1 Application blanks shall be obtainable from the superintendent,  
2 from any other officer authorized to grant such permit or  
3 identification card, and from licensed retail dealers.

4 The chief police officer or the superintendent shall obtain the  
5 fingerprints of the applicant and shall have them compared with  
6 any and all records of fingerprints in the municipality and county  
7 in which the applicant resides and also the records of the State  
8 Bureau of Identification and the Federal Bureau of Investigation,  
9 provided that an applicant for a handgun purchase permit who  
10 possesses a valid firearms purchaser identification card, or who  
11 has previously obtained a handgun purchase permit from the same  
12 licensing authority for which he was previously fingerprinted, and  
13 who provides other reasonably satisfactory proof of his identity,  
14 need not be fingerprinted again; however, the chief police officer  
15 or the superintendent shall proceed to investigate the application  
16 to determine whether or not the applicant has become subject to  
17 any of the disabilities set forth in this chapter.

18 f. Granting of permit or identification card; fee; term;  
19 renewal; revocation. The application for the permit to purchase  
20 a handgun together with a fee of \$2.00, or the application for the  
21 firearms purchaser identification card together with a fee of  
22 \$5.00, shall be delivered or forwarded to the licensing authority  
23 who shall investigate the same and, unless good cause for the  
24 denial thereof appears, shall grant the permit or the  
25 identification card, or both, if application has been made  
26 therefor, within 30 days from the date of receipt of the  
27 application for residents of this State and within 45 days for  
28 nonresident applicants. A permit to purchase a handgun shall be  
29 valid for a period of 90 days from the date of issuance and may  
30 be renewed by the issuing authority for good cause for an  
31 additional 90 days. A firearms purchaser identification card shall  
32 be valid until such time as the holder becomes subject to any of  
33 the disabilities set forth in subsection c. of this section,  
34 whereupon the card shall be void and shall be returned within five  
35 days by the holder to the superintendent, who shall then advise  
36 the licensing authority. Failure of the holder to return the  
37 firearms purchaser identification card to the superintendent  
38 within the said five days shall be an offense under section  
39 2C:39-10a. Any firearms purchaser identification card may be  
40 revoked by the Superior Court of the county wherein the card was  
41 issued, after hearing upon notice, upon a finding that the holder  
42 thereof no longer qualifies for the issuance of such permit. The  
43 county prosecutor of any county, the chief police officer of any  
44 municipality or any citizen may apply to such court at any time  
45 for the revocation of such card.

46 There shall be no conditions or requirements added to the form  
47 or content of the application, or required by the licensing  
48 authority for the issuance of a permit or identification card,  
49 other than those that are specifically set forth in this chapter.

50 g. Disposition of fees. All fees for permits shall be paid to the  
51 State Treasury if the permit is issued by the superintendent, to  
52 the municipality if issued by the chief of police, and to the  
53 county treasurer if issued by the judge of the Superior Court.

54 h. Form of permit; quadruplicate; disposition of copies. The

1 permit shall be in the form prescribed by the superintendent and  
2 shall be issued to the applicant in quadruplicate. Prior to the  
3 time he receives the handgun from the seller, the applicant shall  
4 deliver to the seller the permit in quadruplicate and the seller  
5 shall complete all of the information required on the form.  
6 Within five days of the date of the sale, the seller shall forward  
7 the original copy to the superintendent and the second copy to  
8 the chief of police of the municipality in which the purchaser  
9 resides, except that in a municipality having no chief of police,  
10 such copy shall be forwarded to the superintendent. The third  
11 copy shall then be returned to the purchaser with the pistol or  
12 revolver and the fourth copy shall be kept by the seller as a  
13 permanent record.

14 i. Restriction on number of firearms person may purchase.  
15 Only one handgun shall be purchased or delivered on each permit,  
16 but a person shall not be restricted as to the number of rifles or  
17 shotguns he may purchase, provided he possesses a valid firearms  
18 purchaser identification card and provided further that he signs  
19 the certification required in subsection b. of this section for each  
20 transaction.

21 j. Firearms passing to heirs or legatees. Notwithstanding any  
22 other provision of this section concerning the transfer, receipt or  
23 acquisition of a firearm, a permit to purchase or a firearms  
24 purchaser identification card shall not be required for the passing  
25 of a firearm upon the death of an owner thereof to his heir or  
26 legatee, whether the same be by testamentary bequest or by the  
27 laws of intestacy. The person who shall so receive, or acquire  
28 said firearm shall, however, be subject to all other provisions of  
29 this chapter. If the heir or legatee of such firearm does not  
30 qualify to possess or carry it, he may retain ownership of the  
31 firearm for the purpose of sale for a period not exceeding 180  
32 days, or for such further limited period as may be approved by  
33 the chief law enforcement officer of the municipality in which  
34 the heir or legatee resides or the superintendent, provided that  
35 such firearm is in the custody of the chief law enforcement  
36 officer of the municipality or the superintendent during such  
37 period.

38 k. Sawed-off shotguns. Nothing in this section shall be  
39 construed to authorize the purchase or possession of any  
40 sawed-off shotgun.

41 l. Nothing in this section and in N.J.S.2C:58-2 shall apply to  
42 the sale or purchase of a visual distress signalling device  
43 approved by the United States Coast Guard, solely for possession  
44 on a private or commercial aircraft or any boat; provided,  
45 however, that no person under the age of 18 years shall purchase  
46 nor shall any person sell to a person under the age of 18 years  
47 such a visual distress signalling device.

48 (cf: P.L.1991, c.261, s.19)

49 4. This act shall take effect immediately.

50  
51  
52 STATEMENT

53  
54 This bill would prohibit a person who is or has been the subject  
55 of a restraining order issued pursuant to the "Prevention of

1 Domestic Violence Act of 1991" (N.J.S.A.2C:25-17 et seq.) from  
2 purchasing a firearm for a period of at least two years. In order  
3 to be able to purchase a firearm after that period, the person  
4 would have to undergo a court hearing.

5 In addition, the bill provides that police who respond to calls  
6 alleging domestic violence and find probable cause to believe that  
7 an act of domestic violence occurred must question the persons  
8 present to determine whether there are weapons on the premises  
9 and, if so, must seize the weapons. Currently, the police are  
10 permitted to seize weapons at the scene of domestic violence  
11 incidents, but are not required to do so.

12 The bill also provides that no weapons seized under these  
13 circumstances may be returned to the owner except upon order of  
14 the court.

15  
16  
17  
18  
19 Restricts purchase of firearms by anyone who has been the  
20 subject of a domestic violence restraining order; requires police  
21 to seize weapons at the scene of domestic violence incidents.

SENATE, No.  
Assembly No.  
STATE OF NEW JERSEY

INTRODUCED , 1994

AN ACT concerning the training of police officers of this state to deal with situations involving the crimes which may constitute domestic violence, stalking, sexual harassment, or sexual assault and amending P.L.1961, c.56, 6 and P.L.1985, c.1, 2.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 6 of P.L. 1961, c. 56 (C. 52:17B-71) is amended to read as follows:
  6. The commission is vested with the power, responsibility and duty:
    - a. To prescribe standards for the approval and continuation of approval of schools at which police training courses authorized by this act and in-service police training courses shall be conducted, including but not limited to presently existing regional, county, municipal and police chief association police training schools or at which basic training courses and in-service training courses shall be conducted for State and county juvenile and adult corrections officers and juvenile detention officers;
    - b. To approve and issue certificates of approval to such schools, to inspect such schools from time to time, and to revoke any approval or certificate issued to such schools;
    - c. To prescribe the curriculum, the minimum courses of study, attendance requirements, equipment and facilities, and standards of operation for such schools. Courses of study in crime prevention may be recommended to the Police Training Commission by the Crime Prevention Advisory Committee, established by section 2 of P.L. 1985, c. 1 (C. 52:17B-77.1). The Police Training Commission may prescribe psychological and psychiatric examinations for police recruits while in such schools;
    - d. To prescribe minimum qualifications for instructors at such schools and to certify, as qualified, instructors for approved police training schools and to issue appropriate certificates to such instructors;
    - e. To certify police officers, corrections officers and juvenile detention officers who have satisfactorily completed training programs and to issue appropriate certificates to such police officers, corrections officers and juvenile detention officers;

f. To advise and consent in the appointment of an administrator of police services by the Attorney General pursuant to section 8 of P.L. 1961, c. 56 (C. 52:17B-73);

g. (Deleted by amendment, P.L. 1985, c. 491.)

h. To make such rules and regulations as may be reasonably necessary or appropriate to accomplish the purposes and objectives of this act;

i. To make a continuous study of police training methods and training methods for corrections officers and juvenile detention officers and to consult and accept the cooperation of any recognized federal or State law enforcement agency, any victim service provider that receives State funding, or educational institution;

j. To consult and cooperate with universities, colleges and institutes in the State for the development of specialized courses of study for police officers in police science and police administration;

k. To consult and cooperate with other departments and agencies of the State concerned with police training or the training of corrections officers and juvenile detention officers;

l. To participate in unified programs and projects relating to police training and the training of corrections officers and juvenile detention officers sponsored by any federal, State, or other public or private agency;

m. To perform such other acts as may be necessary or appropriate to carry out its functions and duties as set forth in this act;

n. To extend the time limit for satisfactory completion of police training programs or programs for the training of corrections officers and juvenile detention officers upon a finding that health, extraordinary workload or other factors have, singly or in combination, effected a delay in the satisfactory completion of such training program;

o. To furnish approved schools, for inclusion in their regular police training courses and curriculum, with information concerning the advisability of high speed chases, the risk caused thereby, and the benefits resulting therefrom;

p. To review and approve new standards and course curricula developed by the Department of Corrections for both basic and in-service training of State and county corrections officers and juvenile detention officers. These courses for the State corrections officers and juvenile detention officers shall be centrally provided at the Corrections Officers' Training Academy of the Department of Corrections. Courses for the county corrections officers and juvenile detention officers shall also be centrally provided at the Corrections Officers' Training Academy unless an off-grounds training program is established by the county. A county may elect to establish and conduct a basic training program for corrections officers and juvenile detention officers seeking permanent appointment in that county. The Corrections Officers' Training Academy shall develop the curriculum of the basic

training program to be conducted by a county.

q. To furnish approved schools and local police departments upon request, for inclusion in their regular police training courses and curriculum, information concerning the handling of domestic violence, sexual harassment, stalking, and sexual assaults, which shall include: the impact of domestic violence on society, the dynamics of domestic violence, evidence collection and preservation, the statutory and case law, the necessary elements of a protection order, policy and procedures as promulgated or ordered by the Attorney General, and the use of available community resources, support services, available sanctions, and treatment options for victims and perpetrators.

cf. L. 1961, c. 56, § 6; amended 1967, c. 252, § 2; 1971, c. 321, § 3; 1974, c. 186, § 2; 1979, c. 102; 1985, c. 1, § 1; 1985, c. 491, § 3; 1988, c. 176, §§ 4, 7.

2. P. L. 1985, c. 1, § 2. (C. 52:17B-77.1) is amended to read as follows:

2. There is created in the Police Training Commission in the Department of Law and Public Safety a Crime Prevention Advisory Committee comprised of [14] 15 members. The committee shall consist of: the Attorney General, who shall be chairman of the committee, or his designee; the Commissioner of the Department of Community Affairs or his designee; the Commissioner of the Department of Commerce and Economic Development or his designee; the Commissioner of Education or his designee; the Director of the Division of Criminal Justice in the Department of Law and Public Safety; the Director of the Division on Women; the Superintendent of State Police; a representative of the Police Training Commission; a representative of the New Jersey Crime Prevention Officers' Association; a representative of the New Jersey State Association of Chiefs of Police; a representative of the National Crime Prevention Council; and four citizens of the State to be appointed by the Governor with the advice and consent of the Senate, one of whom shall represent a public utility company, one of whom shall represent the insurance industry, and one of whom shall represent the banking industry. The four members appointed by the Governor shall serve for terms of three years, except that of the four members initially appointed by the Governor, one shall be appointed for a term of one year, one shall be appointed for a term of two years, and two shall be appointed for terms of three years.

Members shall be eligible for reappointment to the council, and vacancies in the committee shall be filled in the same manner as the original appointments but for the unexpired terms only. The statutory members of the Crime Prevention Advisory Committee who are also statutory voting members of the Police Training Commission shall be nonvoting members of the Crime Prevention Advisory Committee.

The members of the committee shall serve without compensation but shall be reimbursed for necessary expenses actually incurred in the performance of their duties as required by this act.

cf. L. 1985, c. 1, § 2.

3. This act shall take effect 90 days after enactment.

P.L.1994, CHAPTER 148, approved December 2, 1994  
1994 Senate No. 716 (First Reprint)

1 AN ACT allowing certain victims of domestic violence to register  
2 to vote without disclosing a street address and supplementing  
3 chapter 31 of Title 19 of the Revised Statutes.

4  
5 BE IT ENACTED by the Senate and General Assembly of the  
6 State of New Jersey:

7 1. <sup>1a</sup> A person who is a victim of domestic violence who has  
8 obtained a permanent restraining order against a defendant  
9 pursuant to section 13 of the "Prevention of Domestic Violence  
10 Act of 1991," P.L.1991, c.261 (C.2C:25-29) and fears further  
11 violent acts by the defendant shall be allowed to register to vote  
12 without disclosing the person's street address. Such a person  
13 shall leave the space for a street address on the <sup>1</sup>original  
14 permanent registration form blank and shall, instead, attach to  
15 the form a copy of the permanent restraining order and a note  
16 which indicates that the person fears further violent acts by the  
17 defendant and which contains a mailing address, post office box  
18 or other contact point where mail can be received by the person.  
19 Upon receipt of the person's voter registration form, the  
20 commissioner of registration in all counties having a  
21 superintendent of elections, and the county board of elections in  
22 all other counties, shall provide the person with a map of the  
23 municipality in which the person resides which shows the various  
24 voting districts. The person shall indicate to the commissioner or  
25 board, as appropriate, the voting district in which the person  
26 resides and shall be permitted to vote at the polling place for  
27 that district. If such a person thereafter changes residences, the  
28 person shall so inform the commissioner or board by completing a  
29 new permanent registration form in the manner described above.

30 1b. Any person who makes public any information which has  
31 been provided by a victim of domestic violence pursuant to  
32 subsection a. of this section concerning the mailing address, post  
33 office box or other contact point of the victim or the election  
34 district in which the victim resides is guilty of a crime of the  
35 fourth degree.<sup>1</sup>

36 2. This act shall take effect immediately.  
37  
38  
39  
40

41 Allows certain victims of domestic violence to register to vote  
42 without disclosing a street address.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> Senate SSG committee amendments adopted June 6, 1994.

SENATE, No.  
Assembly No.  
STATE OF NEW JERSEY

INTRODUCED , 1994

AN ACT relating to the protection of persons seriously threatened by domestic violence by restricting disclosure of their names or addresses; supplementing Title 47 and chapter 31 of Title 19 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as "The Address Confidentiality Program Act."

2. The Legislature finds that persons attempting to escape from actual or threatened domestic violence frequently establish new addresses to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable public agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of domestic violence, and to enable public agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address.

2. Definitions:

a. "Address" means a residential street address, school address, or work address of an individual, as specified on the individual's application to be a program participant under this chapter.

b. "Program participant" means a person certified by the secretary of state as eligible to participate in the Address Confidentiality Program established by this act.

c. "Domestic violence" means an act defined in Section 3 of P.L. 1991, c 261 (C. 2A:25-19), an offense committed by a juvenile actor that otherwise meets the definition of "domestic violence" under that section, or stalking as defined in Section 1 of P.L. 1992, c. 209 (C.2C:12-10), whether or not any of these acts have been reported to a law enforcement agency or court.

3. An adult person, a parent or guardian acting on behalf of a minor or a guardian acting on behalf of an incapacitated person may apply to the secretary of state to have an address designated by the secretary of state as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in that manner and on the form prescribed by the secretary of state and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe

(i) that the person seeking a confidential address is a victim of domestic violence as defined in this act; and (ii) that the applicant fears for his or her safety or the safety of his or her children, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(c) The mailing address where the applicant can be contacted by the secretary of state, and the telephone number or numbers where the applicant can be called by the secretary of state;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence;

(e) The signature of the applicant and of any individual or representative of any office designated in writing under section 9 of this act who assisted in the preparation of the application, and the date on which the applicant signed the application.

(2) Applications shall be filed with the office of the secretary of state.

(3) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule establish a renewal procedure.

4. a. A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made shall be subject to penalties for perjury. The existence of a restraining order issued by a New Jersey court or valid in any other jurisdiction protecting the applicant or person on whose behalf the applicant has applied shall create a rebuttable presumption that the application is made in good faith.

b. A person who knowingly provides a false or incorrect name, address, or telephone number in an application shall be subject to penalties for perjury and shall immediately lose certification as a program participant.

c. The secretary of state may cancel a program participant's certification if (i) the program participant obtains a name change through an order of a court;

(ii) the program participant changes residential address and does not provide seven days' advance notice of the change of address;

(iii) mail forwarded by the secretary of state to the program participant's address is returned as undeliverable; or

(iv) any information on the application is false.

The application form shall notify each applicant of the contents of this section.

5. A program participant may request that state and local agencies use the address designated by the secretary of state as his or her address. When creating a new public record, state and local agencies shall accept the address designated by the secretary of state as a program participant's address, unless the agency has demonstrated to the satisfaction of the secretary of state that:

a. The agency has a bona fide statutory basis for requiring the program participant to disclose to it the actual location of the participant; and

b. The disclosed confidential address of the participant will be used only for that statutory purpose and will not be disclosed or made available in any way to any other person or agency.

A program participant may use the address designated by the secretary of state as his

or her work address.

Upon receipt of first class mail addressed to a program participant at the secretary of state's office, a designee of the secretary shall forward the mail to the participant at his or her actual address. The secretary may arrange to receive and forward other kinds and classes of mail for any program participant at the participant's expense. The actual addresses of program participants shall be available only to the secretary of state and the secretary's employees who are essential to the program's operation.

6. Title 19 is supplemented to read as follows:

a. A person who is a victim of domestic violence who has obtained a permanent restraining order against a defendant pursuant to section 13 of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-29) and fears further violent acts by the defendant shall be allowed to register to vote without disclosing the person's street address. Such a person shall leave the space for a street address on the original permanent registration form blank and shall, instead, attach to the form a copy of the permanent restraining order and a note which indicates that the person fears further violent acts by the defendant and which contains a mailing address, post office box or other contact point where mail can be received by the person, including an address assigned by the Secretary of State pursuant to P.L. 199\_\_, c. \_\_ (now pending as this Act).

Upon receipt of the person's voter registration form, the commissioner of registration in all counties having a superintendent of elections, and the county board of elections in all other counties, shall provide the person with a map of the municipality in which the person resides which shows the various voting districts. The person shall indicate to the commissioner or board, as appropriate, the voting district in which the person resides and shall be permitted to vote at the polling place for that district.

If such a person thereafter changes residences, the person shall so inform the commissioner or board by completing a new permanent registration form in the manner described above.

b. Any person who makes public any information which has been provided by a victim of domestic violence pursuant to subsection a. of this section concerning the mailing address, post office box or other contact point of the victim or the election district in which the victim resides is guilty of a crime of the fourth degree.

7. This act shall take effect immediately.

{FIRST REPRINT}

SENATE, No. 1557

STATE OF NEW JERSEY

INTRODUCED OCTOBER 27, 1994

By Senators DiFRANCESCO and KYRILLOS

APPENDIX R

{FIRST REPRINT}

ASSEMBLY, No. 2334

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 21, 1994

By Assemblymen COHEN and LANCE

- 1 AN ACT concerning social work and amending P.L.1991, c.134.  
2  
3 BE IT ENACTED by the Senate and General Assembly of the  
4 State of New Jersey:  
5 1. Section 3 of P.L.1991, c.134 (C.45:15BB-3) is amended to  
6 read as follows:  
7 3. As used in this act:  
8 "Board" means the State Board of Social Work Examiners,  
9 established in section 10 of this act.  
10 "Certified social worker" means a person who holds a current,  
11 valid certificate issued pursuant to subsection c. of section 6 or  
12 subsection c. of section 8 of this act.  
13 "Clinical social work" means the professional application of  
14 social work methods and values in the assessment and  
15 psychotherapeutic counseling of individuals, families, or groups.  
16 Clinical social work services shall include, but shall not be  
17 limited to: assessment; psychotherapy; client-centered advocacy;  
18 and consultation.  
19 "Director" means the Director of the Division of Consumer  
20 Affairs.  
21 "Licensed clinical social worker" means a person who holds a  
22 current, valid license issued pursuant to subsection a. of section 6  
23 or subsection a. or d. of section 8 of this act.  
24 "Licensed social worker" means a person who holds a current,  
25 valid license issued pursuant to subsection b. of section 6 or  
26 subsection b. of section 8 of this act.  
27 "Psychotherapeutic counseling" means the ongoing interaction  
28 between a social worker and an individual, family or group for the  
29 purpose of helping to resolve symptoms of mental disorder,  
30 psychosocial stress, relationship problems or difficulties in coping  
31 with the social environment, through the practice of  
32 psychotherapy.  
33 "Social work" means the activity directed at enhancing,  
34 protecting or restoring a person's capacity for social functioning,  
35 whether impaired by physical, environmental, or emotional  
36 factors. The practice of social work shall include, but shall not be  
37 limited to: policy and administration; clinical social work; social  
38 work counseling; planning and community organization; social  
39 work education; and research.  
40 "Social work counseling" means the professional application of  
41 social work methods and values in advising and providing guidance  
42 to individuals, families or groups for the purpose of enhancing,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
1 Assembly ACP committee amendments adopted December 12, 1994.

1 protecting or restoring the capacity for coping with the social  
2 environment, exclusive of the practice of psychotherapy.

3 "Supervision" means the direct review of a supervisee for the  
4 purpose of teaching, training, administration, accountability or  
5 clinical review by a supervisor in the same area of specialized  
6 practice.

7 (cf: P.L.1991, c.134, s.3)

8 2. Section 5 of P.L.1991, c.134 (C.45:15BB-5) is amended to  
9 read as follows:

10 5. The provisions of this act shall not apply to the following  
11 persons:

12 a. A person authorized by the laws of this State to practice  
13 medicine and surgery, psychology, marriage counselling,  
14 chiropractic, acupuncture, physical therapy, occupational  
15 therapy, speech pathology and audiology, nursing or any other  
16 profession licensed by the State, when acting within the scope of  
17 the person's profession or occupation and doing work of a nature  
18 consistent with the person's training, if the person does not hold  
19 himself out to the public as possessing a license or certificate  
20 issued pursuant to this act;

21 b. A student enrolled in an educational program accredited, or  
22 in candidacy for accreditation, by the Council on Social Work  
23 Education, if the student is practicing as part of a supervised  
24 course of study and is clearly designated by the title "social work  
25 intern;"

26 c. A primary, middle or secondary school social worker  
27 certified as a school social worker by the State Department of  
28 Education, but only in the course of this employment and only  
29 when designated by the title "school social worker;"

30 d. A rabbi, priest, minister, Christian Science practitioner or  
31 clergyman of any religious denomination or sect, when engaging  
32 in activities, which are within the scope of the performance of  
33 the person's regular or specialized ministerial duties and for  
34 which no separate charge is made, or when these activities are  
35 performed, with or without charge, for or under the auspices or  
36 sponsorship, individually or in conjunction with others, of an  
37 established and legally cognizable church, denomination, or sect,  
38 and when the person rendering services remains accountable to  
39 the established authority thereof;

40 e. A person engaged in the practice of alcohol or drug abuse  
41 intervention, prevention, or treatment if the person does not  
42 advertise or use any title, name, or description, the use of which  
43 is restricted by section 4 of this act; [and]

44 f. An employee of the State or a political subdivision thereof  
45 which is subject to the provisions of Title 11A, Civil Service, of  
46 the New Jersey Statutes, but only in the course of this  
47 employment;

48 g. An employee of a non-profit organization with a master's  
49 degree in a mental health discipline other than social work, who  
50 performs psychotherapeutic counseling under the supervision of a  
51 licensed clinical social worker or other State-licensed mental  
52 health professional; and

53 h. An employee or volunteer of a non-profit organization who  
54 performs any social work service other than psychotherapeutic

1 counseling, but only in the course of this employment or  
2 volunteer activity, and if the person does not advertise or use any  
3 title or name the use of which is restricted by section 4 of  
4 P.L.1991, c.134 (C.45:15BB-4).

5 (cf: P.L.1991, c.134, s.5)

6 13. Section 6 of P.L.1991, c.134 (C.45:15BB-6) is amended to  
7 read as follows:

8 6. a. The board shall issue a license as a "licensed clinical  
9 social worker" to an applicant who has:

10 (1) Received a master's degree in social work from an  
11 educational program accredited, or in candidacy for  
12 accreditation, by the Council on Social Work Education, or a  
13 doctorate in social work from an accredited institution of higher  
14 education;

15 (2) Had at least two years of full-time experience in the  
16 practice of clinical social work under the supervision of a clinical  
17 social worker licensed by this State or who, by virtue of the  
18 supervisor's education and experience, is eligible for licensure in  
19 this State as a licensed clinical social worker, or any other  
20 supervisor who may be deemed acceptable to the board;

21 (3) Satisfactorily completed minimum course requirements  
22 established by the board to ensure adequate training in methods  
23 of clinical social work practice; and

24 (4) Passed an appropriate examination provided by the board  
25 for this purpose.

26 b. The board shall issue a license as a "licensed social worker"  
27 to an applicant who has:

28 (1) Received a master's degree in social work from an  
29 educational program accredited, or in candidacy for  
30 accreditation, by the Council on Social Work Education or a  
31 doctorate in social work from an accredited institution of higher  
32 education; and

33 (2) Passed an appropriate examination provided by the board  
34 for this purpose.

35 c. The board shall certify an applicant who has :

36 (1) received a baccalaureate degree in social work from an  
37 educational program accredited, or in candidacy for  
38 accreditation, by the Council on Social Work Education ; or

39 (2) majored in a field related to human services and acquired a  
40 baccalaureate degree from an accredited institution of higher  
41 education and has engaged in full-time social work for at least  
42 one year prior to the effective date of P.L. , c. (pending  
43 before the Legislature as this bill).<sup>1</sup>

44 (cf: P.L.1991, c.134, s.6)

45 <sup>1</sup>[3.]<sup>4.</sup><sup>1</sup> This act shall take effect immediately.

46  
47  
48  
49  
50 Exempts certain employees and volunteers of non-profit  
51 organizations from provisions of the "Social Workers' Licensing  
52 Act."

## STATE OF NEW JERSEY

INTRODUCED JUNE 29, 1994

By Assemblyman ROMA and  
Assemblywoman GREGORY-SCOCCHI

APPENDIX S

1 AN ACT concerning the provision of health benefits to victims of  
2 domestic violence and supplementing P.L.1938, c.366  
3 (C.17:48-1 et seq.), P.L.1940, c.74 (C.17:48A-1 et seq.),  
4 P.L.1985, c.236 (C.17:48E-1 et seq.), Chapters 26 and 27 of  
5 Title 17B of the New Jersey Statutes, and P.L.1973, c.337  
6 (C.26:2J-1 et seq.).

7  
8 BE IT ENACTED by the Senate and General Assembly of the  
9 State of New Jersey:

10 1. Except as otherwise provided in P.L.1992, c.161  
11 (C.17B:27A-2 et seq.) and P.L.1992, c.162 (C.17B:27A-17 et seq.),  
12 no group or individual hospital service corporation contract  
13 providing hospital or medical expense benefits shall contain any  
14 provision which denies benefits for expenses incurred in the  
15 treatment of an injury or injuries sustained as the result of  
16 domestic violence as defined in section 3 of P.L.1991, c.261  
17 (C.2C:25-19), to a subscriber or other person covered  
18 thereunder. Benefits shall be provided to the same extent as for  
19 any other treatment under the contract. The provisions of this  
20 section shall apply to all contracts in which the hospital service  
21 corporation has reserved the right to change the premium.

22 2. Except as otherwise provided in P.L.1992, c.161  
23 (C.17B:27A-2 et seq.) and P.L.1992, c.162 (C.17B:27A-17 et seq.),  
24 no group or individual medical service corporation contract  
25 providing hospital or medical expense benefits shall contain any  
26 provision which denies benefits for expenses incurred in the  
27 treatment of an injury or injuries sustained as the result of  
28 domestic violence as defined in section 3 of P.L.1991, c.261  
29 (C.2C:25-19), to a subscriber or other person covered  
30 thereunder. Benefits shall be provided to the same extent as for  
31 any other treatment under the contract. The provisions of this  
32 section shall apply to all contracts in which the medical service  
33 corporation has reserved the right to change the premium.

34 3. Except as otherwise provided in P.L.1992, c.161  
35 (C.17B:27A-2 et seq.) and P.L.1992, c.162 (C.17B:27A-17 et seq.),  
36 no group or individual health service corporation contract  
37 providing hospital or medical expense benefits shall contain any  
38 provision which denies benefits for expenses incurred in the  
39 treatment of an injury or injuries sustained as the result of  
40 domestic violence as defined in section 3 of P.L.1991, c.261  
41 (C.2C:25-19), to a subscriber or other person covered  
42 thereunder. Benefits shall be provided to the same extent as for  
43 any other treatment under the contract. The provisions of this  
44 section shall apply to all contracts in which the health service  
45 corporation has reserved the right to change the premium.

1 4. Except as otherwise provided in P.L.1992, c.161  
2 (C.17B:27A-2 et seq.), no individual health insurance policy  
3 providing hospital or medical expense benefits shall contain any  
4 provision which denies benefits for expenses incurred in the  
5 treatment of an injury or injuries sustained as the result of  
6 domestic violence as defined in section 3 of P.L.1991, c.261  
7 (C.2C:25-19), to a named insured or other person covered  
8 thereunder. Benefits shall be provided to the same extent as for  
9 any other treatment under the policy. The provisions of this  
10 section shall apply to all policies in which the insurer has  
11 reserved the right to change the premium.

12 5. Except as otherwise provided in P.L.1992, c.162  
13 (C.17B:27A-17 et seq.), no group health insurance policy  
14 providing hospital or medical expense benefits shall contain any  
15 provision which denies benefits for expenses incurred in the  
16 treatment of an injury or injuries sustained as the result of  
17 domestic violence as defined in section 3 of P.L.1991, c.261  
18 (C.2C:25-19), to a named insured or other person covered  
19 thereunder. Benefits shall be provided to the same extent as for  
20 any other treatment under the policy. The provisions of this  
21 section shall apply to all policies in which the insurer has  
22 reserved the right to change the premium.

23 6. Except as otherwise provided in P.L.1992, c.161  
24 (C.17B:27A-2 et seq.) and P.L.1992, c.162 (C.17B:27A-17 et seq.),  
25 no health maintenance organization shall deny health care  
26 services for the treatment of an injury or injuries sustained as the  
27 result of domestic violence as defined in section 3 of P.L.1991,  
28 c.261 (C.2C:25-19), to its enrollees. Services shall be provided to  
29 the same extent as for any other treatment. The provisions of  
30 this section shall apply to all certificates of authority in which  
31 the health maintenance organization has reserved the right to  
32 change the schedule of charges for enrollee coverage.

33 7. This act shall take effect on the 90th day after enactment.  
34  
35

#### 36 STATEMENT 37

38 This bill would prohibit commercial individual and group health  
39 insurers, hospital service corporations, medical service  
40 corporations, health service corporations and health maintenance  
41 organizations (HMOs) from denying benefits, otherwise available  
42 under the terms of a person's health insurance coverage, to a  
43 covered person for expenses incurred in the treatment of an  
44 injury or injuries sustained as the result of domestic violence.

45 It is the sponsor's sense that, just as the health care  
46 community, and the community at large, is beginning to  
47 recognize and understand domestic violence, health insurers may  
48 be denying coverage for treatment of the injuries that result.  
49 More women are seeking help and health care professionals are  
50 doing more to identify and help victims.

51 Doctors are being trained to document incidents of abuse in  
52 medical records so women have evidence to take to court; but in  
53 some instances, this information may be used by a health insurer  
54 to deny coverage, treating the situation as a "pre-existing

1 condition" or specifically excluding domestic violence injuries  
2 from coverage. It is the sponsor's intent to prevent an inequity  
3 such as this, whereby the victim is in essence penalized under her  
4 own health insurance coverage for coming forward about the  
5 nature of her injuries.

6

7

8

9

10 Prohibits insurers from denying health benefits to victims of  
11 domestic violence.

SENATE, No.  
ASSEMBLY, No.

STATE OF NEW JERSEY

INTRODUCED , 1994

AN ACT concerning sex discrimination in insurance and amending Title 17B (C. 17B:30-12).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S. 17B:30-12 is amended to read as follows:

a. No person shall discriminate against any person or group of persons because of race, sex, creed, color, national origin or ancestry of such person or group of persons in the issuance, withholding, extension or renewal of any policy of life or health insurance or annuity or in the fixing of the rates, terms or conditions therefor, or in the issuance or acceptance of any application therefor.

b. No person shall use any form of policy of life or health insurance or contract of annuity which expresses, directly or indirectly, any limitation, or discrimination as to race, sex, creed, color, national origin or ancestry or any intent to make any such limitation or discrimination.

c. No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any policy of life insurance or contract of annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such policy of life insurance or contract of annuity.

d. No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such policy or contract, or in any other manner whatever.

e. Nothing contained in this section shall be construed to require any agent or company to take or receive the application for insurance or annuity of any person or to issue a policy of insurance or contract of annuity to any person

2. This act shall take effect on the 90th day after enactment.

Chapter ~~93~~ Laws of N.J. 19<sup>94</sup>  
Approved 8-11-94

[FIRST REPRINT]  
ASSEMBLY, No. 286

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION APPENDIX U

By Assemblywomen HECK, WEINBERG,  
Assemblyman Bateman, Assemblywomen Crecco,  
Gregory-Scocchi, Assemblyman Garrett,  
Assemblywoman Turner, Assemblymen Warsh  
and Roma

1 AN ACT concerning domestic violence and amending P.L.1991,  
2 c.261.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. Section 3 of P.L.1991, c.261 (C.2C:25-19) is amended to read  
7 as follows:

8 3. As used in this act:

9 a. "Domestic violence" means the occurrence of one or more  
10 of the following acts inflicted upon a person protected under this  
11 act by an adult or an emancipated minor:

- 12 (1) Homicide N.J.S.2C:11-1 et seq.
- 13 (2) Assault N.J.S.2C:12-1
- 14 (3) Terroristic threats N.J.S.2C:12-3
- 15 (4) Kidnapping N.J.S.2C:13-1
- 16 (5) Criminal restraint N.J.S.2C:13-2
- 17 (6) False imprisonment N.J.S.2C:13-3
- 18 (7) Sexual assault N.J.S.2C:14-2
- 19 (8) Criminal sexual contact N.J.S.2C:14-3
- 20 (9) Lewdness N.J.S.2C:14-4
- 21 (10) Criminal mischief N.J.S.2C:17-3
- 22 (11) Burglary N.J.S.2C:18-2
- 23 (12) Criminal trespass N.J.S.2C:18-3
- 24 (13) Harassment N.J.S.2C:33-4

25 When one or more of these acts is inflicted by an  
26 unemancipated minor upon a person protected under this act, the  
27 occurrence shall not constitute "domestic violence," but may be  
28 the basis for the filing of a petition or complaint pursuant to the  
29 provisions of section 11 of P.L.1982, c.77 (C.2A:4A-30).

30 b. "Law enforcement agency" means a department, division,  
31 bureau, commission, board or other authority of the State or of  
32 any political subdivision thereof which employs law enforcement  
33 officers.

34 c. "Law enforcement officer" means a person whose public  
35 duties include the power to act as an officer for the detection,  
36 apprehension, arrest and conviction of offenders against the laws  
37 of this State.

38 d. "Victim of domestic violence" means a person protected  
39 under this act and shall include any person who is 18 years of age  
40 or older or who is an emancipated minor and who has been  
41 subjected to domestic violence by a spouse, former spouse, or any  
42 other person who is a present or former household member, or a

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

1 person with whom the victim has a child in common. "Victim of  
2 domestic violence" also includes any person <sup>1</sup>[who is under 18  
3 years of age and]<sup>1</sup> who has been subjected to domestic violence  
4 by a person <sup>1</sup>with<sup>1</sup> whom the victim <sup>1</sup>[dated] has had a dating  
5 relationship<sup>1</sup> .

6 <sup>1</sup>e. "Emancipated minor" means a person who is under 18  
7 years of age but who has been married, has entered military  
8 service, has a child or is pregnant or has been previously declared  
9 by a court or an administrative agency to be emancipated.<sup>1</sup>

10 (cf: P.L.1991, c.261, s.3)

11 2. Section 4 of P.L.1991, c.261 (C.2C:25-20) is amended to  
12 read as follows:

13 4. The Division of Criminal Justice shall develop and approve a  
14 training course and curriculum on the handling, investigation and  
15 response procedures concerning reports of domestic violence and  
16 abuse and neglect of the elderly and disabled. This training  
17 course and curriculum shall be reviewed at least every two years  
18 and modified by the Division of Criminal Justice from time to  
19 time as need may require<sup>1</sup>, and shall be made available to all law  
20 enforcement personnel who are likely to encounter situations of  
21 domestic violence]<sup>1</sup>. The Division of Criminal Justice shall  
22 distribute the curriculum to all local police agencies. The  
23 Attorney General shall be responsible for ensuring that <sup>1</sup>all<sup>1</sup> law  
24 enforcement officers <sup>1</sup>[throughout the State receive] attend  
25 initial training within 90 days of appointment or transfer and  
26 biannual inservice<sup>1</sup> training <sup>1</sup>[concerning domestic violence] as  
27 described in this section<sup>1</sup>.

28 The Administrative Office of the Courts shall develop and  
29 approve a training course and a curriculum on the handling,  
30 investigation and response procedures concerning allegations of  
31 domestic violence. This training course shall <sup>1</sup>[consist of a 40  
32 hour training program similar to the training required for a  
33 victim counselor pursuant to section 3 of P.L.1987, c.169  
34 (C.2A:84A-22.14) and shall]<sup>1</sup> be reviewed at least every two  
35 years and modified by the Administrative Office of the Courts  
36 from time to time as need may require<sup>1</sup>, and shall be [made  
37 available to] mandatory training for all judges and judicial  
38 personnel of the Family Part of the Chancery Division of the  
39 Superior Court and for all other judges and judicial personnel who  
40 are likely to encounter situations of domestic violence]<sup>1</sup>. The  
41 Administrative Director of the Courts shall be responsible for  
42 ensuring that <sup>1</sup>all<sup>1</sup> judges and judicial personnel <sup>1</sup>[throughout the  
43 State receive] attend initial training within 90 days of  
44 appointment or transfer and biannual inservice<sup>1</sup> training  
45 <sup>1</sup>[concerning domestic violence] as described in this section<sup>1</sup>.

46 The Division of Criminal Justice and the Administrative Office  
47 of the Courts shall provide that all training on the handling of  
48 domestic violence <sup>1</sup>[complaints] matters<sup>1</sup> shall <sup>1</sup>[stress the  
49 enforcement of criminal laws in domestic situations, the  
50 protection of the victim.] include information concerning the  
51 impact of domestic violence on society, the dynamics of domestic  
52 violence, the statutory and case law concerning domestic  
53 violence, the necessary elements of a protection

1 order, policies and procedures as promulgated or ordered by the  
2 Attorney General or the Supreme Court,<sup>1</sup> and the use of available  
3 community resources<sup>1</sup>, support services, available sanctions and  
4 treatment options<sup>1</sup>. Law enforcement agencies <sup>1</sup>[may] shall  
5 either<sup>1</sup> establish domestic crisis teams or <sup>1</sup>train<sup>1</sup> individual  
6 officers<sup>1</sup> <sup>1</sup>[may be trained]<sup>1</sup> in methods of dealing with domestic  
7 violence and neglect and abuse of the elderly and disabled. The  
8 teams may include social workers, clergy or other persons trained  
9 in counseling, crisis intervention or in the treatment of domestic  
10 violence and neglect and abuse of the elderly and disabled victims.  
11 (cf: P.L.1991, c.261, s.4)

12 3. Section 14 of P.L. 1991, c.261 (C.2C:25-30) is amended to  
13 read as follows:

14 14. Except as provided below, a violation by the defendant of  
15 an order issued pursuant to this act shall constitute an offense  
16 under subsection b. of N.J.S.2C:29-9 and each order shall so  
17 state. All contempt proceedings conducted pursuant to  
18 N.J.S.2C:29-9 involving domestic violence orders, other than  
19 those constituting indictable offenses, shall be heard by the  
20 Family Part of the Chancery Division of the Superior Court  
21 <sup>1</sup>[within 90 days]<sup>1</sup>. <sup>1</sup>All contempt proceedings brought pursuant  
22 to P.L. 1991, c. 261 (C. 2C:25-17 et seq.) shall be subject to any  
23 rules or guidelines established by the Supreme Court to guarantee  
24 the prompt disposition of criminal matters.<sup>1</sup> Additionally, and  
25 notwithstanding the term of imprisonment provided in  
26 N.J.S.2C:43-8, any person convicted of a second or subsequent  
27 nonindictable domestic violence contempt offense shall serve a  
28 minimum term of not less than 30 days. Orders entered pursuant  
29 to paragraphs (3), (4), (8) and (9) of subsection b. of section 13 of  
30 this act shall be excluded from enforcement under subsection b.  
31 of N.J.S.2C:29-9; however, violations of these orders may be  
32 enforced in a civil or criminal action initiated by the plaintiff or  
33 by the court, on its own motion, pursuant to applicable court  
34 rules.

35 (cf: P.L.1991, c.261, s.14)

36 4. This act shall take effect immediately.

37

38

39

40

41 Revises the statute concerning domestic violence.

STATE OF NEW JERSEY

ADOPTED MAY 19, 1994

Sponsored by Assemblywoman HECK, Assemblymen HAYTAIAN,  
AZZOLINA, Assemblywoman GILL and Assemblyman JONES

1 AN ACT concerning domestic violence and amending P.L.1991,  
2 c.261.

3

4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. Section 3 of P.L.1991, c.261 (C.2C:25-19) is amended to  
7 read as follows:

8 3. As used in this act:

9 a. "Domestic violence" means the occurrence of one or more  
10 of the following acts inflicted upon a person protected under this  
11 act by an adult or an emancipated minor:

12 (1) Homicide N.J.S.2C:11-1 et seq.

13 (2) Assault N.J.S.2C:12-1

14 (3) Terroristic threats N.J.S.2C:12-3

15 (4) Kidnapping N.J.S.2C:13-1

16 (5) Criminal restraint N.J.S.2C:13-2

17 (6) False imprisonment N.J.S.2C:13-3

18 (7) Sexual assault N.J.S.2C:14-2

19 (8) Criminal sexual contact N.J.S.2C:14-3

20 (9) Lewdness N.J.S.2C:14-4

21 (10) Criminal mischief N.J.S.2C:17-3

22 (11) Burglary N.J.S.2C:18-2

23 (12) Criminal trespass N.J.S.2C:18-3

24 (13) Harassment N.J.S.2C:33-4

25 (14) Stalking P.L.1992, c.209 (C.2C:12-10)

26 When one or more of these acts is inflicted by an  
27 unemancipated minor upon a person protected under this act, the  
28 occurrence shall not constitute "domestic violence," but may be  
29 the basis for the filing of a petition or complaint pursuant to the  
30 provisions of section 11 of P.L.1982, c.77 (C.2A:4A-30).

31 b. "Law enforcement agency" means a department, division,  
32 bureau, commission, board or other authority of the State or of  
33 any political subdivision thereof which employs law enforcement  
34 officers.

35 c. "Law enforcement officer" means a person whose public  
36 duties include the power to act as an officer for the detection,  
37 apprehension, arrest and conviction of offenders against the laws  
38 of this State.

39 d. "Victim of domestic violence" means a person protected  
40 under this act and shall include any person who is 18 years of age  
41 or older or who is an emancipated minor and who has been  
42 subjected to domestic violence by a spouse, former spouse, or any  
43 other person who is a present or former household member [or].  
44 "Victim of domestic violence" also includes any person.

1 regardless of age, who has been subjected to domestic violence by  
2 a person with whom the victim has a child in common, or with  
3 whom the victim anticipates having a child in common, if one of  
4 the parties is pregnant.

5 (cf: P.L.1991, c.261, s.3)

6 2. Section 6 of P.L.1991, c.261 (C.2C:25-22) is amended to  
7 read as follows:

8 6. A law enforcement officer or a member of a domestic crisis  
9 team of any person who, in good faith, reports a possible incident  
10 of domestic violence to the police shall not be held liable in any  
11 civil action brought by any party for an arrest based on probable  
12 cause, enforcement in good faith of a court order, or any other  
13 act or omission in good faith under this act.

14 (cf: P.L.1991, c.261, s.6)

15 3. Section 10 of P.L.1991, c.261 (C.2C:25-26) is amended to  
16 read as follows:

17 10. a. When a defendant charged with a crime or offense  
18 involving domestic violence is released from custody before trial  
19 on bail or personal recognizance, the court authorizing the  
20 release may as a condition of release issue an order prohibiting  
21 the defendant from having any contact with the victim including,  
22 but not limited to, restraining the defendant from entering the  
23 victim's residence, place of employment or business, or school,  
24 and from harassing or stalking the victim or victim's relatives in  
25 any way. The court may enter an order prohibiting the defendant  
26 from possessing any firearm or other weapon enumerated in  
27 subsection r. of N.J.S.2C:39-1 and ordering the search for and  
28 seizure of any such weapon at any location where the judge has  
29 reasonable cause to believe the weapon is located. The judge  
30 shall state with specificity the reasons for and scope of the  
31 search and seizure authorized by the order.

32 b. The written court order releasing the defendant shall  
33 contain the court's directives specifically restricting the  
34 defendant's ability to have contact with the victim or the  
35 victim's friends, co-workers or relatives. The clerk of the court  
36 or other person designated by the court shall provide a copy of  
37 this order to the victim forthwith.

38 c. The victim's location shall remain confidential and shall not  
39 appear on any documents or records to which the defendant has  
40 access.

41 d. Before bail is set, the defendant's prior record shall be  
42 considered by the court. Bail shall be set as soon as is feasible,  
43 but in all cases within 24 hours of arrest.

44 e. Once bail is set it shall not be reduced without prior notice  
45 to the county prosecutor and the victim. Bail shall not be  
46 reduced by a judge other than the judge who originally ordered  
47 bail, unless the reasons for the amount of the original bail are  
48 available to the judge who reduces the bail and are set forth in  
49 the record.

50 f. A victim shall not be prohibited from applying for, and a  
51 court shall not be prohibited from issuing, temporary restraints  
52 pursuant to this act because the victim has charged any person  
53 with commission of a criminal act.

54 (cf: P.L.1991, c.261, s.10)

1 4. Section 12 of P.L.1991, c.261 (C.2C:25-28) is amended to  
2 read as follows:

3 12. a. A victim may file a complaint alleging the commission  
4 of an act of domestic violence with the Family Part of the  
5 Chancery Division of the Superior Court in conformity with the  
6 rules of court. The court shall not dismiss any complaint or delay  
7 disposition of a case because the victim has left the residence to  
8 avoid further incidents of domestic violence. Filing a complaint  
9 pursuant to this section shall not prevent the filing of a criminal  
10 complaint for the same act.

11 On weekends, holidays and other times when the court is  
12 closed, a victim may file a complaint before a judge of the  
13 Family Part of the Chancery Division of the Superior Court or a  
14 municipal court judge who shall be assigned to accept complaints  
15 and issue emergency, ex parte relief in the form of temporary  
16 restraining orders pursuant to this act.

17 A plaintiff may apply for relief under this section in a court  
18 having jurisdiction over the place where the alleged act of  
19 domestic violence occurred, where the defendant resides, or  
20 where the plaintiff resides or is sheltered, and the court shall  
21 follow the same procedures applicable to other [emergent]  
22 emergency applications. Criminal complaints filed pursuant to  
23 this act shall be investigated and prosecuted in the jurisdiction  
24 where the offense is alleged to have occurred. Contempt  
25 complaints filed pursuant to N.J.S.2C:29-9 shall be prosecuted in  
26 the county where the contempt is alleged to have been  
27 committed and a copy of the contempt complaint shall be  
28 forwarded to the court that issued the order alleged to have been  
29 violated.

30 b. The court shall waive any requirement that the petitioner's  
31 place of residence appear on the complaint.

32 c. The clerk of the court, or other person designated by the  
33 court, shall assist the parties in completing any forms necessary  
34 for the filing of a summons, complaint, answer or other pleading.

35 d. Summons and complaint forms shall be readily available at  
36 the clerk's office, at the municipal courts and at municipal and  
37 State police stations.

38 e. As soon as the domestic violence complaint is filed, both  
39 the victim and the abuser shall be advised of any programs or  
40 services available for advice and counseling.

41 f. A plaintiff may seek emergency, ex parte relief in the  
42 nature of a temporary restraining order. [The] A municipal court  
43 judge or a judge of the Family Part of the Chancery Division of  
44 the Superior Court may enter an ex parte [orders] order when  
45 necessary to protect the life, health or well-being of a victim on  
46 whose behalf the relief is sought.

47 g. If it appears that the plaintiff is in danger of domestic  
48 violence, the judge shall, upon consideration of the plaintiff's  
49 domestic violence complaint, order emergency [relief, including]  
50 ex parte relief, in the nature of a temporary restraining order. A  
51 decision shall be made by the judge regarding the emergency  
52 relief forthwith. [An order granting emergency relief, together  
53 with all pleadings, process and other orders, shall immediately be  
54 forwarded to the sheriff for immediate service of the order for

1 emergency relief upon the defendant.]

2 h. A judge may issue a temporary restraining order upon sworn  
3 testimony or complaint of an applicant who is not physically  
4 present, pursuant to court rules, or by a person who represents a  
5 person who is physically or mentally incapable of filing  
6 personally. A temporary restraining order may be issued if the  
7 judge is satisfied that exigent circumstances exist sufficient to  
8 excuse the failure of the applicant to appear personally and that  
9 sufficient grounds for granting the application have been shown.

10 i. An order for emergency, ex parte relief shall be granted  
11 upon good cause shown and shall remain in effect until a judge of  
12 the Family Part issues a further order. [The Family Part of the  
13 Chancery Division of the Superior Court shall hold a hearing on  
14 an emergency order within 10 days.] Any temporary order  
15 hereunder [may be dissolved or modified on 24 hours' notice or] is  
16 immediately appealable for a plenary hearing de novo not on the  
17 record [before the judge who issued the temporary order, or]  
18 before any judge of the Family Part of the county in which the  
19 plaintiff resides or is sheltered if that judge issued the temporary  
20 order or has access to the reasons for the issuance of the  
21 temporary order and sets forth in the record the reasons for the  
22 modification or dissolution. The denial of a temporary  
23 restraining order by a municipal court judge and subsequent  
24 administrative dismissal of the complaint shall not bar the victim  
25 from refiling a complaint in the Family Part based on the same  
26 incident and receiving an emergency, ex parte hearing de novo  
27 not on the record before a Family Part judge, and every denial of  
28 relief by a municipal court judge shall so state.

29 j. Emergency relief may include forbidding the defendant from  
30 returning to the scene of the domestic violence, forbidding the  
31 defendant to possess any firearm or other weapon enumerated in  
32 subsection r. of N.J.S.2C:39-1, ordering the search for and  
33 seizure of any such weapon at any location where the judge has  
34 reasonable cause to believe the weapon is located and any other  
35 appropriate relief. The judge shall state with specificity the  
36 reasons for and scope of the search and seizure authorized by the  
37 order.

38 k. The judge may permit the defendant to return to the scene  
39 of the domestic violence to pick up personal belongings and  
40 effects but shall [by] , in the order granting relief, restrict the  
41 time and duration of such permission and provide for police  
42 supervision of such visit.

43 l. An order granting emergency relief, together with the  
44 complaint or complaints, shall immediately be forwarded to the  
45 appropriate law enforcement agency for service on the  
46 defendant, and to the police of the municipality in which the  
47 plaintiff resides or is sheltered, and shall immediately be served  
48 upon the defendant by the police, except that an order issued  
49 during regular court hours may be forwarded to the sheriff for  
50 immediate service upon the defendant in accordance with the  
51 rules of court. If personal service cannot be effected upon the  
52 defendant, the court may order other appropriate substituted  
53 service. At no time shall the plaintiff be asked or required to  
54 serve any order on the defendant.

1 m. [A temporary restraining order shall remain in effect until  
2 further action by the court] (Deleted by amendment, P.L. , c.  
3 .) (now pending before the Legislature as this bill)

4 n. Notice of temporary restraining orders issued pursuant to  
5 this section shall be sent by the clerk of the court or other person  
6 designated by the court to the appropriate chiefs of police,  
7 members of the State Police and any other appropriate law  
8 enforcement agency or court.

9 o. [All pleadings, process, and other orders filed pursuant to  
10 this act shall be served upon the defendant in accordance with  
11 the rules of court. If personal service cannot be effected upon  
12 the defendant, the court may order other appropriate substituted  
13 service. At no time shall the plaintiff be asked or required to  
14 serve any order on the defendant.] (Deleted by amendment,  
15 P.L. , c. .)(now pending before the Legislature as this bill)

16 p. Any temporary or permanent restraining order issued  
17 pursuant to this act shall be in effect throughout the State, and  
18 shall be enforced by all law enforcement officers.  
19 (cf: P.L.1991, c.261, s.12)

20 5. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to  
21 read as follows:

22 13. a. A hearing shall be held in the Family Part of the  
23 Chancery Division of the Superior Court within 10 days of the  
24 filing of a complaint pursuant to section 12 of this act in the  
25 county where the ex parte restraints were ordered, unless good  
26 cause is shown for the hearing to be held elsewhere. A copy of  
27 the complaint shall be served on the defendant in conformity with  
28 the rules of court. If a criminal complaint arising out of the same  
29 incident which is the subject matter of a complaint brought under  
30 P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261  
31 (C.2C:25-17 et seq.) has been filed, testimony given by the  
32 plaintiff or defendant in the domestic violence matter shall not  
33 be used in the simultaneous or subsequent criminal proceeding  
34 against the defendant, other than domestic violence contempt  
35 matters and where it would  
36 otherwise be admissible hearsay under the rules of evidence that  
37 govern where a party is unavailable. At the hearing the standard  
38 for proving the allegations in the complaint shall be by a  
39 preponderance of the evidence. The court shall consider but not  
40 be limited to the following factors:

41 (1) The previous history of domestic violence between the  
42 plaintiff and defendant, including threats, harassment and  
43 physical abuse;

44 (2) The existence of immediate danger to person or property;

45 (3) The financial circumstances of the plaintiff and defendant;

46 (4) The best interests of the victim and any child;

47 (5) In determining custody and visitation the protection of the  
48 victim's safety; and

49 (6) The existence of a verifiable order of protection from  
50 another jurisdiction.

51 An order issued under this act shall only restrain or provide  
52 damages payable from a person against whom a complaint has  
53 been filed under this act and only after a finding or an admission  
54 is made that an act of domestic violence was committed by that

1 person. The issue of whether or not a violation of this act  
2 occurred, including an act of contempt under this act, shall not  
3 be subject to mediation or negotiation in any form. In addition,  
4 where a temporary or final order has been issued pursuant to this  
5 act, no party shall be ordered to participate in mediation on the  
6 issue of custody or visitation.

7 b. In proceedings in which complaints for restraining orders  
8 have been filed, the court shall grant any relief necessary to  
9 prevent further abuse. At the hearing the judge of the Family  
10 Part of the Chancery Division of the Superior Court may issue an  
11 order granting any or all of the following relief:

12 (1) An order restraining the defendant from subjecting the  
13 victim to domestic violence, as defined in this act.

14 (2) An order granting exclusive possession to the plaintiff of  
15 the residence or household regardless of whether the residence or  
16 household is jointly or solely owned by the parties or jointly or  
17 solely leased by the parties. This order shall not in any manner  
18 affect title or interest to any real property held by either party  
19 or both jointly. If it is not possible for the victim to remain in  
20 the residence, the court may order the defendant to pay the  
21 victim's rent at a residence other than the one previously shared  
22 by the parties if the defendant is found to have a duty to support  
23 the victim and the victim requires alternative housing.

24 (3) An order providing for visitation. The order shall protect  
25 the safety and well-being of the plaintiff and minor children and  
26 shall specify the place and frequency of visitation. Visitation  
27 arrangements shall not compromise any other remedy provided by  
28 the court by requiring or encouraging contact between the  
29 plaintiff and defendant. Orders for visitation may include a  
30 designation of a place of visitation away from the plaintiff, the  
31 participation of a third party, or supervised visitation.

32 (a) The court shall consider a request by [the plaintiff] a  
33 custodial parent who has been subjected to domestic violence by  
34 a person with visitation rights to a child in the parent's custody  
35 for an investigation or evaluation by the appropriate agency to  
36 assess the risk of harm to the child prior to the entry of a  
37 visitation order. Any denial of such a request must be on the  
38 record and shall only be made if the judge finds the request to be  
39 arbitrary or capricious.

40 (b) The court shall consider suspension of the visitation order  
41 and hold an [emergent] emergency hearing upon an application  
42 made by the plaintiff certifying under oath that the defendant's  
43 access to the child pursuant to the visitation order has threatened  
44 the safety and well-being of the child.

45 (4) An order requiring the defendant to pay to the victim  
46 monetary compensation for losses suffered as a direct result of  
47 the act of domestic violence. The order may require the  
48 defendant to pay the victim directly, to reimburse the Violent  
49 Crimes Compensation Board for any and all compensation paid by  
50 the Violent Crimes Compensation Board directly to or on behalf  
51 of the victim, and may require that the defendant reimburse any  
52 parties that may have compensated the victim, as the court may  
53 determine. Compensatory losses shall include, but not be limited  
54 to, loss of earnings or other support, including child or spousal

1 support, out-of-pocket losses for injuries sustained, cost of repair  
2 or replacement of real or personal property damaged or destroyed  
3 or taken by the defendant, cost of counseling for the victim,  
4 moving or other travel expenses, reasonable attorney's fees,  
5 court costs, and compensation for pain and suffering. Where  
6 appropriate, punitive damages may be awarded in addition to  
7 compensatory damages.

8 (5) An order requiring the defendant to receive professional  
9 domestic violence counseling from either a private source or a  
10 source appointed by the court and, in that event, at the court's  
11 discretion requiring the defendant to provide the court at  
12 specified intervals with documentation of attendance at the  
13 professional counseling. The court may order the defendant to  
14 pay for the professional counseling.

15 (6) An order restraining the defendant from entering the  
16 residence, property, school, or place of employment of the victim  
17 or of other family or household members of the victim and  
18 requiring the defendant to stay away from any specified place  
19 that is named in the order and is frequented regularly by the  
20 victim or other family or household members.

21 (7) An order restraining the defendant from making contact  
22 with the plaintiff or others, including an order forbidding the  
23 defendant from personally or through an agent initiating any  
24 communication likely to cause annoyance or alarm including, but  
25 not limited to, personal, written, or telephone contact with the  
26 victim or other family members, or their employers, employees,  
27 or fellow workers, or others with whom communication would be  
28 likely to cause annoyance or alarm to the victim.

29 (8) An order requiring that the defendant make or continue to  
30 make rent or mortgage payments on the residence occupied by  
31 the victim if the defendant is found to have a duty to support the  
32 victim or other dependent household members; provided that this  
33 issue has not been resolved or is not being litigated between the  
34 parties in another action.

35 (9) An order granting either party temporary possession of  
36 specified personal property, such as an automobile, checkbook,  
37 documentation of health insurance, an identification document, a  
38 key, and other personal effects.

39 (10) An order awarding [emergent] emergency monetary relief,  
40 including emergency support for minor children, to the victim and  
41 other dependents, if any. An ongoing obligation of support shall  
42 be determined at a later date pursuant to applicable law.

43 (11) An order awarding temporary custody of a minor child.  
44 The court shall presume that the best interests of the child are  
45 served by an award of custody to the non-abusive parent.

46 (12) An order requiring that a law enforcement officer  
47 accompany either party to the residence or any shared business  
48 premises to supervise the removal of personal belongings in order  
49 to ensure the personal safety of the plaintiff when a restraining  
50 order has been issued. This order shall be restricted in duration.

51 (13) An order which permits the victim and the defendant to  
52 occupy the same premises but limits the defendant's use of that  
53 premises, but only if it is documented by the judge granting the  
54 order that:

1 (a) The plaintiff specifically and voluntarily requests such an  
2 order; and

3 (b) The judge determines that the request is made voluntarily  
4 and with the plaintiff's knowledge that the order may not provide  
5 the same protection as an order excluding the defendant from the  
6 premises and with the plaintiff's knowledge that the order may  
7 be difficult to enforce; and

8 (c) Any conditions placed upon the defendant in connection  
9 with the continued access to the premises and any penalties for  
10 noncompliance with those conditions shall be explicitly set out in  
11 the order and shall be in addition to any other remedies for  
12 noncompliance available to the victim.

13 (14) An order granting any other appropriate relief for the  
14 plaintiff and dependent children, provided that the plaintiff  
15 consents to such relief, including relief requested by the plaintiff  
16 at the final hearing, whether or not the plaintiff requested such  
17 relief at the time of the granting of the initial emergency order.

18 (15) An order that requires that the defendant report to the  
19 intake unit of the Family Part of the Chancery Division of the  
20 Superior Court for monitoring of any other provision of the order.

21 (16) An order prohibiting the defendant from possessing any  
22 firearm or other weapon enumerated in subsection r. of  
23 N.J.S.2C:39-1 and ordering the search for and seizure of any such  
24 weapon at any location where the judge has reasonable cause to  
25 believe the weapon is located. The judge shall state with  
26 specificity the reasons for and scope of the search and seizure  
27 authorized by the order.

28 (17) An order prohibiting the defendant from stalking or  
29 following, or threatening to harm, to stalk or to follow, the  
30 complainant or any other person named in the order in a manner  
31 that, taken in the context of past actions of the defendant, would  
32 put the complainant in reasonable fear that the defendant would  
33 cause the death or injury of the complainant or any other person.  
34 Behavior prohibited under this act includes, but is not limited to,  
35 behavior prohibited under the provisions of P.L.1992, c.209  
36 (C.2C:12-10).

37 c. Notice of orders issued pursuant to this section shall be sent  
38 by the clerk of the Family Part of the Chancery Division of the  
39 Superior Court or other person designated by the court to the  
40 appropriate chiefs of police, members of the State Police and any  
41 other appropriate law enforcement agency.

42 d. Upon good cause shown, any final order may be dissolved or  
43 modified upon application to the Family Part of the Chancery  
44 Division of the Superior Court, but only if the judge who dissolves  
45 or modifies the order is the same judge who entered the order, or  
46 has available a complete record of the hearing or hearings on  
47 which the order was based.

48 (cf: P.L.1991, c.261, s.13)

49 6. Section 14 of P.L.1991, c.261 (C.2C:25-30) is amended to  
50 read as follows:

51 14. Except as provided below, a violation by the defendant of  
52 an order issued pursuant to this act shall constitute an offense  
53 under subsection b. of N.J.S.2C:29-9 and each order shall so  
54 state. All contempt proceedings conducted pursuant to

1 N.J.S.2C:29-9 involving domestic violence orders, other than  
2 those constituting indictable offenses, shall be heard by the  
3 Family Part of the Chancery Division of the Superior Court.  
4 Additionally, and notwithstanding the term of imprisonment  
5 provided in N.J.S.2C:43-8, any person convicted of a second or  
6 subsequent nonindictable domestic violence contempt offense  
7 shall serve a minimum term of not less than 30 days. Orders  
8 entered pursuant to paragraphs (3), (4), (5), (8) and (9) of  
9 subsection b. of section 13 of this act shall be excluded from  
10 enforcement under subsection b. of N.J.S.2C:29-9; however,  
11 violations of these orders may be enforced in a civil or criminal  
12 action initiated by the plaintiff or by the court, on its own  
13 motion, pursuant to applicable court rules.

14 (cf: P.L.1991, c.261, s.14)

15 7. Section 15 of P.L.1991, c.261 (C.2C:25-31) is amended to  
16 read as follows:

17 15. Where a law enforcement officer finds that there is  
18 probable cause that a defendant has committed contempt of an  
19 order entered pursuant to the provisions of P.L.1981, c.426  
20 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.), the  
21 defendant shall be arrested and taken into custody by a law  
22 enforcement officer. The law enforcement officer shall follow  
23 these procedures:

24 [a. On weekends, holidays and other times when the court is  
25 closed, the] The law enforcement officer shall transport the  
26 defendant to [either] the police station [or the municipal court] or  
27 such other place as the law enforcement officer shall determine  
28 is proper. The law enforcement officer shall:

29 [(1)]a. Sign a complaint concerning the incident which gave  
30 rise to the contempt charge;

31 [(2)]b. Telephone or communicate in person or by facsimile  
32 with the appropriate judge assigned pursuant to this act and  
33 request bail be set on the contempt charge;

34 [(3)]c. If the defendant is unable to meet the bail set, take the  
35 necessary steps to insure that the defendant shall be incarcerated  
36 at police headquarters or at the county jail; and

37 [(4)]d. [On the next working day notify] During regular court  
38 hours, the defendant shall have bail set by a Superior Court judge  
39 that day. On weekends, holidays and other times when the court  
40 is closed, the officer shall arrange to have the clerk of the  
41 Family Part notified on the next working day of the new  
42 complaint, the amount of bail, the defendant's whereabouts and  
43 all other necessary details. In addition, if a municipal court judge  
44 set the bail, the arresting officer shall notify the clerk of that  
45 municipal court of this information.

46 [b. During regular court hours, the law enforcement officer  
47 shall transport the defendant to the Family Part of the Chancery  
48 Division of the Superior Court or to such other place as the law  
49 enforcement officer shall determine is proper. The law  
50 enforcement officer shall complete and sign a complaint  
51 concerning the incident which gave rise to the contempt charge,  
52 and the defendant shall have bail set by a judge that day.]  
53 Deleted by amendment, P.L. .c. (C. ) (now pending

54 before the Legislature as this bill)

55 (cf: P.L.1991, c.261, s.15)

1 8. Section 17 of P.L.1991, c.261 (C.2C:25-33) is amended to  
2 read as follows:

3 17. The Administrative Office of the Courts shall, with the  
4 assistance of the Attorney General and the county prosecutors,  
5 maintain a uniform record of all [requests for orders issued]  
6 applications for relief pursuant to sections 9, 10, 12, and 13 of  
7 [this act] P.L.1991, c. 261 (C.2C:25-25, C.2C:25-26, C.2C:25-28,  
8 and C.2C:25-29). The record shall include the following  
9 information:

10 a. The number of criminal and civil complaints filed in all  
11 municipal courts and the Superior Court;

12 b. The sex of the parties;

13 c. The relationship of the parties;

14 d. The relief sought or the offense charged, or both;

15 e. The nature of the relief granted or penalty imposed, or  
16 both, including, but not limited to, custody and child support; [and]

17 f. The effective date of each order issued; and

18 g. In the case of a civil action in which no permanent  
19 restraints are entered, or in the case of a criminal matter that  
20 does not proceed to trial, the reason or reasons for the disposition.

21 It shall be the duty of the Director of the Administrative  
22 Office of the Courts to compile and report annually to the  
23 Governor, the Legislature and the Advisory Council on Domestic  
24 Violence on the data tabulated from the records of these orders.

25 All records maintained pursuant to this act shall be  
26 confidential and shall not be made available to any individual or  
27 institution except as otherwise provided by law.

28 (cf: P.L.1991, c.261, s.17)

29 9. This act shall take effect immediately.  
30  
31

32  
33  
34 Clarifies and broadens several provisions of the "Prevention of  
35 Domestic Violence Act of 1990."

STATE OF NEW JERSEY



ADVISORY COUNCIL

ON

DOMESTIC VIOLENCE

*FIRST ANNUAL REPORT*

July, 1990

**ADVISORY COUNCIL ON DOMESTIC VIOLENCE  
FIRST ANNUAL REPORT**

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## THE ADVISORY COUNCIL ON DOMESTIC VIOLENCE

The Advisory Council on Domestic Violence was reactivated in 1987 to bring coordination and coherence to New Jersey's efforts to address the issue of domestic violence from a statewide perspective.

### **BACKGROUND**

The original Advisory Council on Shelters for Victims of Domestic Violence was established in 1980 under the authority of N.J.S.A. 30:14 et seq. (the Shelters for Victims of Domestic Violence Act). Created to assist the Department of Human Services in the development of domestic violence programs and services, the 10 member Council included representatives from: the Division On Women; the Division of Youth and Family Services; the Division of Public Welfare (now known as the Division of Economic Assistance); the State Law Enforcement and Planning Agency; the Department of Education; Legal Services of New Jersey; provider agencies; and consumers of services. From an historical perspective and in partial fulfillment of its legislative mandate, the Council's most significant contribution was the development of service standards for shelters for victims of domestic violence (N.J.A.C. 10:130 et. seq.; 1982). At that time, the movement was still in the "grassroots" stages and most programs were operating with insufficient resources, ever-increasing caseloads and no prospects for additional funding or support. The Council recognized these limitations and sought to balance the need for comprehensive, quality services with practical realities. As a result, the original standards have provided us with a solid base for defining service expectations and domestic violence program goals.

With the passage of S-1318 (Lipman), the Legislature reactivated and expanded the membership and duties of the Advisory Council on Shelters for Victims of Domestic Violence and changed its name to the Advisory Council on Domestic Violence. The bill was signed by Governor Kean and has been in effect since July 1987.

The 19 member Council includes: the Directors of the Division On Women; the Division of Youth and Family Services; the Division of Economic Assistance; the Commissioner of the Department of Education; the Attorney General; and representatives from Legal Services of New Jersey; the Police Chiefs Association; the Prosecutors Association; the Nurses Association; the Mental Health Association; the Crime Prevention Officers Association; the Hospital Association; the Violent Crimes Compensation Board; former shelter residents and the New Jersey Coalition for Battered Women.

ADVISORY COUNCIL ON DOMESTIC VIOLENCE

**MISSION**

As outlined in the legislation, the new Council is charged with the following responsibilities:

- to monitor the effectiveness of laws concerning domestic violence and make recommendations for their improvement;
- to review proposed legislation and make recommendations to the Governor and Legislature;
- to study needs, priorities, programs and policies throughout the State;
- to ensure that providers and the community are aware of needs and services; and
- to make recommendations for community education and training programs.

As an additional legislative mandate, the Council is required to periodically advise the Directors of both the Division of Youth and Family Services and the Division On Women regarding its activities, findings and recommendations.

**SUBCOMMITTEES**

The Advisory Council Subcommittees address specific areas of concern. Each subcommittee is chaired by a member of the Council and includes community representatives and staff from various State agencies.

- *The Public Awareness, Education and Training Subcommittee* is chaired by Courtney Esposito. This subcommittee seeks to promote public awareness regarding the problem of domestic violence and the various ways advocates, communities, families, the private sector, government and the public can work together to improve New Jersey's response to the issue of family violence.
- *The Legislative Subcommittee* is chaired by Susan Fleisch, Vice President of the NJ Coalition for Battered Women. The efforts of this subcommittee are focused on the review and analysis of proposed legislation to determine its impact on victims, the service delivery system and the domestic violence process in general. The subcommittee is also responsible for making recommendations and developing new amendatory legislation where needed.
- *The Program Services Subcommittee* is chaired by Beverly Gilbert, Executive Director of Atlantic County Women's Center. This subcommittee identifies and

studies the various needs, priorities and problems within the existing network of domestic violence services and makes recommendations for their improvement.

### 1988 -1990 ACTIVITIES

Council activities during this time period centered on the development of a legislative package containing recommendations and proposed amendments to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25 et seq.).

In September 1988, the Council sponsored four public hearings throughout the State to determine how law enforcement, the courts and the legal community could improve and better enforce the Prevention of Domestic Violence Act.

The hearings were held in Bloomfield on September 8, 1988; in Somerville on September 15, 1988; in Atlantic City on September 27, 1988; and in Trenton on October 13, 1988.

Approximately 150 attorneys, client advocates, battered women, medical professionals, police, prosecutors and other concerned individuals presented testimony and recommendations to the Council based on their experiences with the implementation of the existing law. The following highlights and testimonial excerpts provide a brief summary of the hearings:

As stated in the Council's summary report on the public hearings, one of the most problem-ridden areas in the administration of the Act is the police response to domestic violence complaints. Although a number of individual officers and police departments were praised for their efforts, hearing participants repeatedly expressed their frustration in dealing with this aspect of the system and described an alarming number of instances where law enforcement officers may have acted inappropriately. Witnesses were particularly concerned with widespread inconsistencies among State, county and municipal police in handling domestic violence situations. Some of the most frequently cited complaints included: failure to notify victims of their rights and available relief, including the right to sign a complaint and request a restraining order; reluctance to arrest or remove batterers from the residence; substituting a "cooling off" period for the abuser in lieu of formal intervention; and the employment of a dual arrest strategy whereby both parties are taken into custody.

DOMESTIC  
VIOLENCE  
PUBLIC  
HEARINGS

ADVISORY COUNCIL ON DOMESTIC VIOLENCE

In spite of the mandatory arrest requirements of the current statute, many witnesses testified that police are nonetheless reluctant to arrest the perpetrator even when the victim exhibits clear signs of injury. Perhaps even more disturbing is the fact that many witnesses related instances where police officers were found to have minimized the situation, openly sympathized with the perpetrator and denied victims access to local domestic violence program staff.

Other problems most frequently mentioned at all four hearings concern the judiciary and an apparent lack of uniformity around the interpretation, implementation and enforcement of the Prevention of Domestic Violence Act. Witnesses voiced their concerns and cited problems in such areas as: the court's reluctance to issue child custody, visitation and support orders as part of the final restraining order; the use of in-house and mutual restraints; the use of mediation or consent process orders; the lack of court-mandated counseling for batterers; the inconsistent duration of restraining orders; the reluctance to consider the existence of a defendant's prior record; the inconsistent availability of municipal court judges on a 24 hour basis; and most importantly, the perceived insensitivity on the part of various judges and court personnel toward the plight of victims.

While it was generally agreed that we have made great strides in improving New Jersey's response to the problem of domestic violence, witnesses poignantly testified to the need for additional improvement. Hearing participants repeatedly called for the development and implementation of a standardized system for education and training in the area of domestic violence. The underlying premise is that law enforcement and the judiciary must share one set of standard operating procedures throughout the state if victims are to be afforded the protection to which they are entitled.

Witnesses also identified problems in other areas of the law, including: confidentiality; case conferencing, consent orders and mediation; child custody and visitation; counselling for batterers; enforcement of restraining orders; and the need to amend some of the legislative language contained in the current legislation. The overwhelming sentiment was that there are no easy solutions to the problem of domestic violence and the needs of victims - that it requires additional resources and our continued hard work and rededication to the fundamental principles of advocacy and the law. In response to the testimony presented at hearings, the Council developed and proposed comprehensive amendments to the Prevention of Domestic Violence Act.

ADVISORY COUNCIL ON DOMESTIC VIOLENCE

*INTRODUCTION*  
*OFS-2230*

Through the public hearing process, the Council gained valuable insight into how law enforcement, social service agencies and the courts can improve the current system. The recommendations which emerged from the hearings assisted the Council in its efforts to amend the law and rewrite the Prevention of Domestic Violence Act .

The Advisory Council submitted the first draft version of the proposed amendments to Senator Lipman for her preliminary review and approval in May 1989. Senator Lipman approved the suggested amendments and, together with Senator DiFrancesco, first introduced S-3758 to the Senate Judiciary Committee in June 1989.

With additional comments and recommendations still coming in from various groups and related agencies, the Legislative Subcommittee continued to work on the proposed bill throughout the Fall. Additional modifications were incorporated into the draft by November 1989 and the final version of the bill was introduced as S-2230 (The Prevention of Domestic Violence Act of 1990). S-2230 is currently pending before the Senate. A summary of the proposed amendments follows:

*PROPOSED*  
*AMENDMENTS*

- The Legislative Findings and Declarations includes a new section that stresses the responsibility of the courts to protect victims through the provision of civil and criminal court access, and by ordering remedies and sanctions to assure their safety. It calls for the implementation of a uniform training program for all law enforcement and judicial personnel and encourages a broad application of the Act.
- The proposed amendments require that the Police Training Commission develop a domestic violence training course and curriculum for law enforcement officers. Under the new law, the Attorney General would be responsible for ensuring that all officers in New Jersey receive appropriate training. In addition, the Administrative Office of the Courts (AOC) is charged with the task of developing a similar course and curriculum for judges and judicial personnel.
- The definition of "domestic violence" has been expanded to include homicide, terroristic threats and criminal trespass. The term "cohabitant" has been deleted from the Act and replaced by the term "victim of domestic violence". A "victim" remains a person 18 years of age or older or an emancipated minor.
- Mandatory arrest has been broadened to include violations of restraining orders, situations where a warrant is in effect, or where there is probable cause to believe that a weapon was involved, in addition to situations where signs of injury are

ADVISORY COUNCIL ON DOMESTIC VIOLENCE

present. Police are clearly required not only to effect an arrest but also sign a criminal complaint whenever an arrest is made. Much of the Attorney General's Standard Operating Procedure for mandatory arrest has been incorporated into the new law. It provides for a liberal interpretation of the phrase "exhibits signs of injury" and a clarification of who constitutes a "victim". It also assures the victim's right to relief when the victim uses reasonable force in acts of self defense.

- The "victim bill of rights" has been expanded and rewritten in simpler language to better inform victims of the provisions available to them under the law and the procedures for obtaining relief from the abuse.
- The amendments also seek to ensure the confidentiality of the victim's location, strengthen bail procedures, lend greater protection to victims, and restate the victim's right to apply for civil remedies when criminal charges have been filed.
- To present the provisions of the Act in a better sequential order, Sections 12 and 14 of the existent law have been merged into Section 12. This section covers complaints by victims, jurisdiction, filing of complaints, emergency orders and the duration of restraining orders. In addition to the current content of Sections 12 and 14, this section clarifies that a victim may file where he/she currently resides or is sheltered. Criminal contempt complaints, however, must be prosecuted in the county where the contempt is committed.
- As amended, the law would allow a judge to issue a temporary restraining order, under certain circumstances, to a victim who is not physically present in the courtroom. A judge could also issue an order upon a sworn complaint by a person representing a victim who is physically or mentally incapable of filing for themselves. Police or the sheriff must immediately serve notice of the order upon the defendant. In addition, all temporary and final orders will be effective throughout the State and enforced accordingly.
- The new law would also give testimonial immunity to parties in a civil action so that criminal proceedings are not delayed when simultaneous criminal charges are pending. The law deletes "whether the application was made in a reasonable time after the alleged act of domestic violence occurred" as a consideration for granting temporary restraining orders, and adds "the existence of a verifiable order of protection from another jurisdiction" as a consideration.
- Under the proposed amendments, visitation arrangements are to specify place and

frequency and are to protect the safety of the victim and children. Further, the court must consider a plaintiff's request that a risk assessment be performed to determine the impact such arrangements would have on the child(ren) prior to issuing a visitation order. The court's ability to deny such a request is limited. The court must also consider a plaintiff's request for suspension of visitation because of risk to children. When awarding custody the court would have to "presume that the best interests of the child are served by an award of custody to the non-abusive parent".

- Available relief also includes emergency monetary relief to the victim and any dependants, an order requiring monitoring of the defendant by court personnel on any provision(s) of the order, and an order granting either party temporary possession of specified personal property. The relief section also restricts the issuance of in-house restraining orders to exceptional cases.
- The amendments clarify the contempt process and establish a minimum 30-day term of imprisonment for a person convicted of a second or subsequent non-indictable contempt offense. By making arrest mandatory in contempt cases, the amendments eliminate the need for police to transport the victim, along with the defendant, to an appropriate site following the defendant's arrest for violating a restraining order. The new law requires that police sign the complaints, or where there is insufficient probable cause to arrest the defendant for violating an order, that the police or court clerk assist the victim in signing a contempt complaint.

The Advisory Council remains confident that the Legislature will support its efforts to improve the system and offer victims even higher levels of protection with the passage of S-2230.

**PUBLIC  
AWARENESS,  
EDUCATION  
AND  
TRAINING**

The Public Awareness, Education and Training Subcommittee convened an average of once each month over the past fifteen months to review training information and materials presented by individuals engaged in educating their colleagues on domestic violence issues. The recommendations presented in this section are the result of the subcommittee's research into and analysis of current training materials and activities from a variety of sources and professional communities including law enforcement, clergy, health care, education and the judiciary. The following recommendations highlight the subcommittee's report:

- Three one-day regional training events should be planned for a combined audience

## ADVISORY COUNCIL ON DOMESTIC VIOLENCE

of women's shelter staff, counselors and administrators of batterers' programs and regional drug and alcoholism agency staff. Courses should address the following areas: the Prevention of Domestic Violence Act, family systems, dynamics of addiction, intervention, treatment issues and description of the treatment system.

- Expanded orientation sessions for newly appointed Superior and Municipal Court judges should be conducted more frequently than the current practice of once a year. A videotape summarizing the domestic violence court rules and procedures as well as the dynamics of abuse should be compiled and shown to Family Division Judges, Municipal Court Judges and Family Division personnel handling domestic violence matters before or very shortly after their assignment begins.

County level training should be offered to newly hired court support personnel handling domestic violence cases very shortly after the inception of their employment. The basic skills course for new juvenile and adult supervision Probation Officers should include a section concerning domestic violence or, alternatively, the attendees of the basic skills course could attend the Basic Domestic Violence Workshop offered by the Administrative Office of the Courts. Domestic violence training should also be given to Municipal Court Clerks before completing their first year of employment.

In addition, specific guidelines and training programs should be developed and included in the domestic violence procedures manual for the Family Division. This would help to ensure the sensitive treatment of domestic violence victims.

- All police academies should conduct semi-annual trainings regarding the particular needs of their jurisdiction. The format may follow what is reflected in the recruit course but should be expanded to include victim/witness-related topics, violent crime issues and effective system referral. The resources of the county working groups should be used to address local training issues.
- County Prosecutors should provide executive forums or workshops for police chiefs regarding domestic violence and the specific needs of each county. The Assignment Judge (if possible), the Trial Court Administrator, the County Sheriff, domestic violence program personnel and shelter directors should be included in this forum. In addition, police agencies, police academies, domestic violence programs, shelters and other related groups should work cooperatively to develop training resources or training aids that would help to emphasize the vital importance of an appropriate police response in domestic violence situations.

ADVISORY COUNCIL ON DOMESTIC VIOLENCE

- Training and technical assistance in domestic violence intervention should be offered to health care facilities and major health care organizations and associations on a regular basis. Nursing, medical and dental schools, as well as other health care training academies and institutions, should be encouraged to offer domestic violence awareness and intervention as part of their curricula. Mental health practitioners should be offered regular training opportunities in domestic violence intervention. The phenomenon of elder abuse should be specially investigated, researched and addressed, and the direct link between child abuse and adult domestic violence should be highlighted. A model statewide program of domestic violence training and technical assistance for members of the health care community, such as the one described here, should be maintained and subsequently publicized as a model for other states and regions.
- Funds should be made available to continue the public awareness/public education program currently conducted by the New Jersey Division on Women. The statewide domestic violence hotline should continue to be advertised, using radio and television PSAs, billboards, bus cards, flyers, corporate stuffers, posters and brochures. All advertising should be translated into Spanish and disseminated appropriately.
- A practical handbook regarding domestic violence information and procedures for Spanish speaking victims should be printed and disseminated throughout the State. A strong outreach effort should also be targeted to such insular groups as the blind and deaf communities.

The subcommittee will continue to meet and discuss pending areas of training, including Assistant Prosecutors/Deputy Attorneys General; Child Support Hearing Officers; probation officers handling child support cases; child protective services and domestic violence workers; New Jersey State Police, campus police and special police; parole officers/parole hearing officers; private attorneys and Sheriffs officers. Further recommendations will be submitted to the Advisory Council as they are formulated.

The subcommittee is hopeful that the next stage of its work, dealing with the implementation of training and public awareness recommendations on domestic violence issues, will be helpful to the new administration and result in increased safety for those who suffer the isolation and entrapment caused by violence in the home.

**PENDING LEGISLATION AND RELATED ISSUES**

- *S-1405 (Bassano)* prohibits the use of in-house restraining orders in domestic violence cases under any circumstances.
- *S-2079 (Lipman)/A-1181* amends and repeals portions of the law governing child custody and visitation; requires the court to consider the "history of domestic violence, if any" and the "safety of the child and the safety of either parent from physical abuse by the other parent" when determining the best interest of the child in a custody decision.
- *S-2206 (Dalton)/A-2946* increases the additional fee charged for marriage licenses from \$5 to \$25 and provides for certain organizations to be eligible for grants from the trust fund in which the fees are deposited.
- *S-2230 (Lipman)/A-3205* amends the "Prevention of Domestic Violence Act" and proposes the "Prevention of Domestic Violence Act of 1990"
- *A-186 (Penn)* requires domestic violence victims rights statements and complaint forms to carry warnings concerning false complaints as acts of perjury, a crime of the third degree.
- *A-797 (Roma)* increases from \$30 to \$100 certain crime-related penalties dedicated for use by the Violent Crimes Compensation Board with additional revenues targeted for a new Rape and Domestic Violence Victim Assistance Fund.
- *A-1558 (Girgenti)* requires a criminal record check prior to setting bail when a person is arrested for domestic violence; requires stricter procedures for setting and changing bail.
- *A-2576 (Hardwick)* prohibits the use of in-house restraining orders except in limited circumstances where the plaintiff voluntarily requests such an order.

The Advisory Council has also followed recent changes taking place at the Violent Crimes Compensation Board (VCCB) with great interest. At the present time, victims of domestic violence appear to be eligible for VCCB funds if the underlying act of violence is an enumerated offense under N.J.S.A. 52:4B-11, and if the victim and the defendant are no longer residing together. However, recent changes in applicable federal funding criteria require that this type of cohabitation exclusion only be

## ADVISORY COUNCIL ON DOMESTIC VIOLENCE

continued in those cases where the defendant would be enriched by the award, so that all victims of family violence will be treated in the same manner as other victims of violent crimes. The Council looks forward to this expansion of VCCB eligibility in New Jersey, and will work with VCCB representatives to publicize this information among victims of domestic violence.

During the coming year, the Legislative Subcommittee will contact the Governor's Task Force on Child Abuse and Neglect to discuss the possible joint development of amendments to Title 9. The amendments would give minor victims of or witnesses to family violence access to protective orders that would exclude the abusive parent from the home. At the present time, the only recourse available to these children or their victimized parents is to pursue protection from the abuser through the removal of the child(ren) from the home.

In 1990, the Program Services Subcommittee will work on the development of implementation strategies for the following projects:

- an analysis of existing support services for domestic violence victims, family members and batterers;
- the development of minimum standards of service;
- an accompanying analysis for achieving and maintaining minimum levels of service delivery.

### FUTURE DIRECTION

The State of New Jersey has the opportunity to be in the national vanguard in the areas of domestic violence prevention and protection. Our statutory protection scheme, particularly as strengthened by the proposed amendments, is the broadest and most ambitious in the country. Our protective services network is constantly expanding, and the New Jersey Coalition for Battered Women, the Division On Women and the Advisory Council on Domestic Violence provide a strong advocacy and monitoring component on behalf of victims and their families. The courts and law enforcement have designed and offered basic and advanced training programs in the area of domestic violence, as have other service providers.

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Despite these improvements, however, 49 individuals were killed in New Jersey in 1989 at the hands of their abusers. These growing numbers reflect the fact that our past efforts notwithstanding, New Jersey's protective process is not equal to the sum of its parts: abused women and children in desperate need of support are constantly being turned away from our system, and ultimately, falling between its cracks. Moreover, our preventive efforts have also been less than effective: during the 1989 court year, almost 33,000 domestic violence complaints were entered by victims (85% were female) who sought court intervention and protection based on violence that had already occurred.

Prior administrations have indicated their commitment to improving the plight of victims by establishing the Advisory Council on Domestic Violence and the Division On Women's Domestic Violence Prevention Program, and by supporting the recent amendments to the Prevention of Domestic Violence Act. We strongly urge that the new administration assume a leadership role in strengthening our laws, expanding our network of protective services, and bringing the battle against domestic violence to the forefront as a major public issue. The Council respectfully submits the following recommendations in this regard:

- We ask that the Governor establish a clear policy condemning all forms of family violence, and that each affected Cabinet member submit a plan for prioritizing the development and delivery of protective services to victims and families experiencing violence in the home. This initiative could be timed to coincide with the kick-off of Domestic Violence awareness Month (October), and a public awareness campaign could occur simultaneously.
- To maximize the coordination of state-level efforts regarding the issue of domestic violence, it is essential that the Council receive staff support through an allocation for a Director and clerical position, to be housed within the Governor's Office of Policy and Planning. At the present time, the burgeoning support functions that are critical to the Council's pursuit of its mission are performed by its members or their designees, all of whom have full time jobs which require their constant attention. We strongly urge the Governor's Office to assume leadership in this area. The campaign to prevent family violence requires a strong Advisory Council with adequate staff support that can advocate in the domestic violence area as effectively as the Governor's Task Force on Child Abuse and Neglect, which is staffed pursuant to a legislative mandate. The original legislation should be amended to provide for staff support. The proposed amendments should be accompanied by

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a \$150,000 appropriation to cover staff and administrative costs.

- Further, all statewide appropriations for domestic violence should secure a line item position in the budget to help facilitate priority status for domestic violence program spending.
- The Council recognizes the critical need for the continued development and expansion of local domestic violence preventive and protective services and strongly recommends that an additional legislative appropriation be made to the Division of Youth and Family Services to support this effort.
- The Council also recognizes the critical importance of the Division On Women's Domestic Violence Prevention Program and the value of their training efforts. We strongly urge that funding for these efforts be maintained and that expansion of their training budget be afforded priority status.
- Furthermore, the Council urges an increase in funding to agencies that provide legal representation and assistance to victims of domestic violence. At the present time, far too many victims are unable to either find or afford counsel to represent them, and often find themselves in situations where their abusers have been able to retain an attorney for the final hearing. A pool of additional, affordable attorneys must be developed to rectify this inequity.
- Finally, the Advisory Council recommends that its membership be expanded to include a representative from the Commission On Sex Discrimination in the Statutes.

**CONCLUSION**

In the coming years, the Council will continue developing strategies to protect victims, support families and prevent the occurrence of domestic violence in the State of New Jersey. We look forward to establishing a strong partnership with the Governor as we continue to lead the struggle against violence in the home.

N.J.S. 2C:25-23 is amended to read:

A law enforcement officer shall disseminate and explain to the victim the following notice, which shall be written in both English and Spanish: "You have the right to go to court to get an order called a temporary restraining order, also called a TRO, which may protect you from more abuse by your attacker. The officer who handed you this card can tell you how to get a TRO. The kinds of things a judge can order in a TRO may include:

- (1) That your attacker is temporarily forbidden from entering the home you live in;
- (2) That your attacker is temporarily forbidden from having contact with you or your relatives;
- (3) That your attacker is temporarily forbidden from bothering you at work;
- (4) That your attacker has to pay temporary child support or support for you;
- (5) That you be given temporary custody of your children;
- (6) That your attacker pay you back any money you have to spend for medical treatment or repairs because of the violence. There are other things the court can order, and the court clerk will explain the procedure to you and will help you fill out the papers for a TRO. You also have the right to file a criminal complaint against your attacker. The police officer who gave you this paper will tell you how to file a criminal complaint.

On weekends, holidays and other times when the courts are closed, you still have a right to get a TRO. The police officer who gave you this paper can help you get in touch with a judge who can give you a TRO."

If minor children live with the complainant and defendant, the officer will also advise the complainant of any public or nonprofit services that offer child counseling or support for parenting in the community.

2. N.J.S. 9:6-8.19 is amended to read:

- a. The Bureau of Children's Services or its successor, the Division of Youth and Family Services, shall immediately after the receipt of such report, and after making a determination to take the child into protective custody, shall serve or attempt to serve, written notice upon the parents or guardian that the said child has been taken into protective custody. The notice shall contain a statement of the maximum duration of the protective custody and the location of the child during protective custody. The notice will include information about the rights of the parents, if any, to legal representation, the telephone numbers of the local legal services program and the county bar association, and the telephone numbers of local or state agencies that provide counseling for child abuse, family issues, and domestic violence.
- b. The parents or guardian of a child in protective custody may, upon request and in the reasonable discretion of the physician, director, or his designate, or appropriate official of the Bureau of Children's Services, or its successor, the Division of Youth and Family Services, visit the said child, provided that the life or health of the child will not be endangered by such visit.
- c. The entire period of protective custody shall not exceed 3 court days. The protective custody may be terminated earlier at the discretion of the reporting physician, director or

appropriate official of the Bureau of Children's Services or its successor, the Division of Youth and Family Services, or upon order of the court.

3. N.J.S. 9:6-8.27 is amended to read:

a. A police officer or an agency or institution or individual may temporarily remove a child from the place where he is residing with the consent of his parent or other person legally responsible for his care, if, there is reasonable cause to suspect that the child's life or health is in imminent danger. If the child is not returned within 3 working days from the date of removal, the procedure required pursuant to this act shall be applied immediately.

b. However, if the Division of Youth and Family Services removes a child with the written consent of the parent or guardian, the proceedings under this act shall not apply, unless the division files a complaint to commence proceedings under this act.

c. The officer or agency or institution or individual who removes a child pursuant to this section shall notify the parent or other person responsible for the child's care, including information about the rights of the parents, if any, to legal representation, the telephone numbers of the local legal services program and the county bar association, and the telephone numbers of local or state agencies that provide counseling for child abuse, family issues, and domestic violence.

3. This act shall take effect on the 90th day following enactment.

Proposed Substitute for  
ASSEMBLY NO. 191

1. In a prosecution for criminal homicide or assault in which the defendant raises a defense the use of force in self-protection as provided for in N.J.S. 2C:3-4, or in a prosecution for criminal homicide in which the defendant asserts that the homicide was committed in the heat of passion resulting from a reasonable provocation as provided for in N.J.S. 2C:11-4, or in the prosecution of a defendant who claims to have been coerced into committing an offense of any kind as provided for in N.J.S. 2C:2-9, the defendant is entitled to offer:

a. Evidence that the defendant was the victim of child abuse, abandonment, cruelty, or neglect, as defined in R.S. 9:6-1, R.S. 9:6-3 or section 1 of P.L. 1974, c. 119 (C. 9:6-8.21), endangering the welfare of a child, as provided by N.J.S. 2C:24-4, or domestic violence, as defined in P.L. 1991, c. 261 (C. 2C:25-17 et seq.) by the victim of the crime with which the defendant is charged or by a person alleged by the defendant to have coerced the defendant; and

b. Expert testimony regarding the relevance of such evidence to the reasonableness of the defendant's belief that the use of force, or the commission of an offense, was immediately necessary; and

c. Relevant evidence of the facts and circumstances relating to the alleged abuse upon which the expert's opinion is based.

2. This act shall take effect immediately.

ASSEMBLY, No. 191

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel  
PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblyman LUSTBADER and Assemblywoman OGDEN

1 AN ACT concerning the use of certain evidence by a defendant to  
2 support a claim of self-defense and supplementing chapter 3 of  
3 Title 2C of the New Jersey Statutes.

4  
5 BE IT ENACTED by the Senate and General Assembly of the  
6 State of New Jersey:

7 1. In a prosecution for criminal homicide or assault, a  
8 defendant who raises as a defense the use of force in  
9 self-protection as provided by N.J.S.2C:3-4 is entitled to offer,  
10 in order to establish the defendant's reasonable belief that the  
11 use of force was immediately necessary:

12 a. Relevant evidence that the defendant was the victim of  
13 child abuse, abandonment, cruelty or neglect, as defined in  
14 R.S.9:6-1, R.S.9:6-3 or section 1 of P.L.1974, c.119 (C.9:6-8.21),  
15 endangering the welfare of a child, as provided by N.J.S.2C:24-4,  
16 or domestic violence, as provided by P.L.1991, c.261 (C.2C:25-17  
17 et seq.) or P.L.1981, c.426 (C.2C:25-1 et seq.) which had been  
18 committed upon the defendant by the victim of the crime with  
19 which the defendant is charged; and

20 b. Relevant expert testimony regarding the condition of the  
21 defendant's mind at the time of the offense, including those  
22 relevant facts and circumstances relating to child abuse,  
23 abandonment, cruelty, neglect or domestic violence that are the  
24 basis of the expert's opinion.

25 2. This act shall take effect immediately.

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STATEMENT

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30 This bill would clarify that a person who claims self-defense to  
31 a charge of criminal homicide or assault is entitled to offer  
32 evidence that the victim of the crime committed child abuse or  
33 domestic violence upon the person charged with the crime in the  
34 past.

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39 Clarifies that defendant who claims self-defense in prosecution  
40 for homicide or assault shall be entitled to introduce evidence of  
41 past child abuse or domestic violence committed by the victim.

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Public Copy

For Official House Use

\*\*\*\*\*  
 \* BILL NO. A-2443 \*  
 \* Date of Intro. \_\_\_\_\_ \*  
 \* Ref. \_\_\_\_\_ \*  
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\*\*\*\*\*  
 \* NOTE TO \* Notify OLS if you require changes in this document. \*  
 \* \* A revised copy for introduction will be prepared on \*  
 \* the legislative computer system. \*  
 \* SPONSOR \* Hand-written changes will not appear in the printed \*  
 \* bill. \*  
 \*\*\*\*\*

AN ACT concerning family violence and supplementing P.L. 1991, c. 261 (C. 2C:25-17 et seq.).

Designated the "Post-Separation Family Violence Relief Act."

PRIME Sponsor *57 Paltrow*

CO-Sponsors  
*Acute Training*  
*Colleen Zisa*  
*John M. Quigley*

Same as \_\_\_\_\_ 92/93  
\_\_\_\_\_ 94/95

Suggested allocation: Sections 1-8: C. 2C:25-34 et seq.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AN ACT concerning family violence and supplementing P.L. 1991,  
c. 261 (C. 2C:25-17 et seq.).

BE IT ENACTED by the Senate and General Assembly of the  
State of New Jersey:

1. This act shall be known and may be cited as the  
"Post-Separation Family Violence Relief Act."

2. The Legislature finds and declares that: the problems  
associated with family violence do not cease when the parties  
involved are legally separated, divorced or no longer live  
together. In fact, the violence often escalates and child custody  
and visitation rights become the forum for the continuation of  
abuse. Current laws relative to custody and visitation issues are  
based on the assumption that divorcing parents or parents who no  
longer live together are in relatively equal positions to provide  
for the care of their children and to act in their best interest.  
These laws are also based on the assumption that children have a  
right to frequent and continuing contact with both parents after  
the parents are separated or divorced. However, family violence  
can make this principle unworkable and damaging to the children  
whose rights the laws are trying to protect. Custody and  
visitation rights are often granted without adequate evaluation or  
supervision to parents who have committed acts of physical or  
sexual abuse or who have killed a child's other parent or siblings.  
Additionally, parents who have been abused and suffer the effects  
of that abuse often are denied custody. As a result, these laws  
often work against families with a history of violence, where the  
protection of the children and the abused parent is of the utmost  
importance.

Therefore, it is in the best interest of the State to develop  
standards for child custody and visitation issues that take into  
account the unique dynamics of a family victimized by family  
violence.

3. As used in this act:

"Abused parent" means a parent who is or has been subjected  
to domestic violence as defined in section 3 of P.L. 1991, c. 261  
(C. 2C:25-19 et seq.).

"Abusive parent" means a child's natural, adoptive or  
step-parent who has a history of committing acts of family  
violence.

"Court" means the Family Part of the Chancery Division of the  
Superior Court.

"Family violence" means an occurrence of one or more acts, as  
defined in section 3 of P.L. 1991, c. 261 (C. 2C:25-19), upon a  
person protected under that act or the occurrence of one or more  
substantiated acts of child abuse as defined in subsections a., b.  
or c. of section 2 of P.L. 1971, c. 437 (C. 9:6-8.9) upon a child  
protected under that act. Family violence shall not include  
reasonable acts committed by a parent in self-defense or to  
protect a child, from the violence of another person.

"Supervised visitation" means court-ordered contact between an abusive parent and a child, which occurs in the presence of a qualified person appointed by the court to monitor the contact for any sign of physical abuse, sexual abuse, threats or intimidation, or to prevent the abduction of either the abused parent or the child.

"Treatment program" means a course of evaluation and psychiatric and psychological services provided by a community-based agency for individuals who have committed an act of family violence as defined by this act. At least one full-time staff member of the program shall be licensed by the State in the practice of psychiatry, psychology or social work. The staff of the treatment program shall also have current and demonstrable training and experience working with perpetrators and victims of family violence.

4. a. The court shall not award sole or joint custody of a child to an abusive parent as defined in this act, unless it can be shown by clear and convincing evidence that:

- (1) the parent has been evaluated by a treatment program for danger to the child or abused parent;
- (2) the parent is not abusing alcohol or other drugs; and
- (3) the best interest of the child requires the participation of the abusive parent as a custodial parent.

b. If both parents are each seeking sole custody of the child and the court finds that both parents have committed acts of family violence, the court should consider the comparative extent of the injuries inflicted by each party, the history of family violence involving the parties and any other relevant factors, including any steps taken by each parent to correct or minimize the use of violence. The court may award sole custody to the parent who is less likely to continue to engage in acts of family violence and has been evaluated by a treatment program, except that the court may award sole custody of the child to a suitable third person, who shall serve as the child's guardian, if the court finds that the parents are likely to continue to engage in acts of family violence and it is in the best interest of the child.

c. The court shall not award sole or joint custody to an abusive parent who has committed or has been indicted for an act of sexual assault against his child as defined by the provisions of N.J.S. 2C:14-2 et seq. or any other crime which results in the death or permanent physical or mental disability of a family member.

d. The court shall not award sole or joint custody to an abusive parent who has committed or has been indicted for an act of sexual assault against a child as defined by the provisions of N.J.S. 2C:14-2 et seq. or any other crime which results in the death or permanent physical or mental disability of a victim.

e. The court shall not condition the awarding of sole or joint custody on the grounds that an abused parent suffers from the effects of family violence.

5. a. The court shall not grant supervised visitation between a child and the abusive parent, unless it can be shown by clear and convincing evidence that:

- (1) the parent has been evaluated by a treatment program for danger to the child or the abused parent;
- (2) the parent is not abusing alcohol or any other drugs; and

(3) supervised visitation is in the best interest of the child.

b. At the request of the abused parent, the monitor appointed by the court to supervise visitation between the abusive parent and the child shall be a family member or friend, a law enforcement official, a therapist or other competent professional. The court-appointed monitor shall not be a relative, friend, therapist or associate of the abusive parent.

c. Supervised visitation shall not be conducted overnight or in the home of the abusive parent.

6. a. The court shall not grant unsupervised visitation to an abusive parent, unless it can be shown by clear and convincing evidence that:

(1) the parent has been evaluated by a treatment program for danger to the child or the abused parent;

(2) the parent is not abusing alcohol or any other drugs; and

(3) such visitation is in the best interest of the child.

b. At the request of the abused parent, the court shall suspend unsupervised visitation between the child and the abusive parent, upon an application not found by the court to be arbitrary and capricious.

c. If a parent has been indicted for an act of sexual assault against a child as defined by the provisions of N.J.S. 2C:14-2 et seq. or any other crime which results in the death or permanent physical or mental disability of a family member, the court shall prohibit visitation between the parent and that child until the resolution of the indictment.

d. A court appointed guardian who has been granted sole custody of a child pursuant to the provisions of subsection b. of section 4 of this act shall not allow the parents to visit the child, except as ordered by the court.

7. If the court finds that a parent has committed an act of family violence, the abused parent shall not be ordered to participate in mediation on the issues of child custody or visitation.

8. Notwithstanding any law to the contrary, the court shall order the parent who has committed an act of family violence to pay all court costs, expert's fees and reasonable attorney fees incurred as a result of the act of family violence. The court shall also order the parent to pay the costs for any evaluation and the medical and psychological care of the abused parent and the child incurred as a result of the act of family violence.

9. This act shall take effect immediately.

#### STATEMENT

This bill establishes standards to be used by the court when dealing with the questions of child custody and visitation for families with a history of family violence. For the purposes of this bill, family violence is defined as the occurrence of one or more acts defined under the State's domestic violence law, P.L. 1991, c. 261 (C. 2C:25-19 et seq.) or the occurrence of one or more acts of child abuse as defined by subsections a., b. or c. of section 2 of the State's child abuse statute, P.L. 1971, c. 437 (C. 9:6-8.9). Under the provisions of the bill,

the court would not award joint or sole custody to an abusive parent, unless it can be shown by clear and convincing evidence that:

1. the parent has been evaluated by a treatment program for danger to the child or abused parent;
2. the parent is not abusing alcohol or any other drugs; and
3. the best interest of the child requires that the abusive parent participate as a custodial parent.

If both parents have been accused of committing acts of family violence, custody may be awarded to the parent who is less likely to continue to engage in acts of family violence and has been evaluated by a treatment program, except that the court may also grant custody to a third party. A parent who has committed or has been indicted for sexually assaulting a child under the provisions of N.J.S. 2C:14-2 et seq. or any other crime which results in the death or permanent physical or mental disability of a family member or any other individual would be prohibited from obtaining custody. Under another provision of the bill, the awarding of sole or joint custody could not be conditioned on the fact that an abused parent suffers from the effects of family violence.

The court may grant supervised or unsupervised visitation if:

1. the parent has been evaluated by a treatment program for danger to the child or abused parent;
2. the parent is not abusing alcohol or any other drugs; and
3. it is in the best interest of the child that the abusive parent be awarded visitation rights.

If a parent has been indicted for sexually assaulting a child or any other crime which results in the death or disability of a family member, the parent would be prohibited from visiting the child until the resolution of the indictment.

The bill would also require that if a parent has committed an act of family violence, the abused parent could not be ordered to participate in mediation on the issues of child custody or visitation.

Finally, the bill would also require that the court order the parent who has committed an act of family violence to pay for all court, medical and evaluation costs of the abused parent and the child incurred as a result of the act of family violence.

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Designated the "Post-Separation Family Violence Relief Act."

#### **RULE 5:8A. APPOINTMENT OF COUNSEL FOR CHILD**

In all cases where custody or visitation is an issue, the court may, on the application of either party or the child or children in a custody or visitation dispute, or on its own motion, appoint counsel on behalf of the child or children. Counsel shall be an attorney licensed to practice in the courts of the State of New Jersey and shall serve as the child's lawyer. The appointment of counsel should occur when the trial court concludes that a child's best interest is not being sufficiently protected by the attorneys for the parties. Counsel may, on an interim basis or at the conclusion of the litigation, apply for an award of fees and costs with an appropriate affidavit of services, and the trial court shall award fees and costs, assessing same against either or both of the parties.

Note: Adopted November 6, 1989 to be effective January 2, 1990.

#### **RULE 5:8B. APPOINTMENT OF GUARDIAN AD LITEM**

(a) Appointment. In all cases in which custody or visitation is an issue, a guardian ad litem may be appointed by court order to represent the best interests of the child or children if the circumstances warrant such an appointment. The services rendered by a guardian ad litem shall be to the court on behalf of the child. A guardian ad litem may be appointed by the court on its own motion or on application of either or both of the parents. The guardian ad litem shall file a written report with the court setting forth findings and recommendations and the basis thereof, and shall be available to testify and shall be subject to cross-examination thereon. In addition to the preparation of a written report and the obligation to testify and be cross-examined thereon, the duties of a guardian may include, but need not be limited to, the following:

1. Interviewing the children and parties.
2. Interviewing other persons possessing relevant information.
3. Obtaining relevant documentary evidence.
4. Conferring with counsel for the parties.
5. Conferring with the court, on notice to counsel.
6. Obtaining the assistance of independent experts, on leave of court.
7. Obtaining the assistance of a lawyer for the child (Rule 5:8A) on leave of court.
8. Such other matters as the guardian ad litem may request, on leave of court.

(b) Objection or Refusal of Appointment. A proposed guardian ad litem shall have the right to consent or to decline to serve as such, notice of such decision to be in writing to the court with copies to counsel. The parties shall have the right to object to the person appointed as guardian ad litem on good cause shown.

(c) Term. The term of the guardian ad litem shall be coextensive with the application pending before the court and shall end on the entry of a Judgment of Divorce or an Order terminating the application for which the appointment was made, unless continued by the court. The guardian ad litem shall have no obligation to file a notice of appeal from a Judgment or Order nor to participate in an appeal filed by a party.

(d) Fee. The hourly rate to be charged by the guardian ad litem shall be fixed in the initial appointing order and the guardian ad litem shall submit informational monthly statements to the parties. The court shall have the power and discretion to fix a retainer in the appointing order and to allocate final payment of the guardian ad litem fee between the parties. The guardian ad litem shall submit a certification of services at the conclusion of the matter, on notice to the parties, who will thereafter be afforded the right to respond prior to the court fixing the final fee.

Note: Adopted November 6, 1989, to be effective January 2, 1990.

APPENDIX Z

SENATE, No.  
ASSEMBLY, No.

STATE OF NEW JERSEY

INTRODUCED , 1994

AN ACT concerning child custody and amending Title 2C (C.2C:13-4).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J. S.2C:13-4 is amended to read as follows.

2C:13-4. Interference with custody.

a. Custody of children. A person, including a parent, guardian or other lawful custodian, is guilty of interference with custody if he:

- (1) Takes or detains a minor child with the purpose of concealing the minor child and thereby depriving the child's other parent of custody [or visitation] of the minor child; or
- (2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and visitation rights to a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of depriving the child's other parent of custody [or visitation], or to evade the jurisdiction of the courts of this State;
- (3) After being served with process or having actual knowledge of an action affecting the protective services needs of a child pursuant to Title 9 of the Revised Statutes in an action affecting custody, but prior to the issuance of a temporary or final order determining custody rights of a minor child, takes, detains, entices or conceals the child within or outside the State for the purpose of evading the jurisdiction of the courts of this State; or
- (4) After the issuance of a temporary or final order specifying custody, visitation or joint custody rights, takes, detains, entices or conceals a minor child from the other parent in violation of the custody [or visitation] order.

Interference with custody is a crime of the third degree but the presumption of non-imprisonment set forth in subsection e. of N.J.S.2C:44-1 for a first offense of a crime of the third degree shall not apply. However, if the child is taken, detained, enticed or concealed outside the United States, interference with custody is a crime of the second degree.

b. Custody of committed persons. A person is guilty of a crime of the fourth degree if he knowingly takes or entices any committed person away from lawful custody when he is not privileged to do so. "Committed person" means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

c. It is an affirmative defense to a prosecution under subsection a. of this section, which must be proved by clear and convincing evidence, that:

- (1) The actor reasonably believed that the action was necessary to preserve the child from imminent danger to his welfare. However, no defense shall be available pursuant to this

subsection if the actor does not, as soon as reasonably practicable but in no event more than 24 hours after taking a child under his protection, give notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, [or] the Division of Youth and Family Services in the Department of Human Services, or an agency that contracts with the Department of Human Services to provide family crisis services;

(2) The actor reasonably believed that the taking or detaining of the minor child was consented to by the other parent, or by an authorized State agency; or

(3) The child, being at the time of the taking or concealment not less than 14 years old, was taken away at his own volition and without purpose to commit a criminal offense with or against the child.

d. It is an affirmative defense to a prosecution under subsection a. of this section that a parent [having the right of custody] reasonably believed he was fleeing from imminent physical danger from the other parent, provided that the parent having custody, as soon as reasonably practicable:

(1) Gives notice of the child's location to the police department of the municipality where the child resided, the office of the county prosecutor in the county where the child resided, or the Division of Youth and Family Services in the Department of Human Services, or an agency that contracts with the Department of Human Services to provide family crisis services; or

(2) Commences an action affecting custody in an appropriate court.

e. The offenses enumerated in this section are continuous in nature and continue for so long as the child is concealed or detained.

f. (1) In addition to any other disposition provided by law, a person convicted under subsection a. of this section shall make restitution of all reasonable expenses and costs, including reasonable counsel fees, incurred by the other parent in securing the child's return.

(2) In imposing sentence under subsection a. of this section the court shall consider, in addition to the factors enumerated in chapter 44 of Title 2C of the New Jersey Statutes:

(a) Whether the person returned the child voluntarily; and

(b) The length of time the child was concealed or detained.

g. As used in this section, "parent" means a parent, guardian or other lawful custodian of a minor child.

2. This act shall take effect immediately.

SENATE, No. 924  
STATE OF NEW JERSEY

APPENDIX BB

INTRODUCED MAY 5, 1994

By Senators CODEY and LIPMAN

1 AN ACT concerning child support enforcement and supplementing  
2 chapter 17 of Title 2A of the New Jersey Statutes.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. a. Notwithstanding any provision of law to the contrary, an  
7 obligor's driver's license may be suspended or revoked and the  
8 obligor may be prohibited from obtaining a driver's license if the  
9 obligor has failed to make a required, current obligation child  
10 support payment for six months, after due notice in writing of the  
11 proposed action and the grounds thereof, pursuant to the  
12 provisions of R.S.39:5-30.

13 b. The State IV-D agency shall notify the obligor whose  
14 license is subject to denial, suspension or revocation by regular  
15 mail to the last known address. The notice shall be postmarked  
16 no later than 10 days after the date on which the decision was  
17 made to deny, suspend or revoke the driver's license, and shall  
18 inform the obligor that the decision shall take effect 30 days  
19 after the postmark date of the notice unless the obligor contests  
20 the denial, suspension or revocation. An obligor may contest a  
21 denial, suspension or revocation of the license only on the basis of  
22 mistake of fact. The notice to the obligor shall include but not  
23 be limited to: the date on which the last child support payment  
24 was made; the amount of the arrearage; the methods available  
25 for contesting the denial, suspension or revocation on the grounds  
26 that the action taken is not proper because of mistake of fact;  
27 the period within which the obligor shall contact the State IV-D  
28 agency to arrange for satisfaction of the judgment; the period  
29 within which the State IV-D agency shall be contacted in order to  
30 contest the denial, suspension or revocation and that failure to do  
31 so will result in denial, suspension or revocation; and the actions  
32 the State IV-D agency will take if the obligor contests the denial,  
33 suspension or revocation.

34 c. If the obligor contests the proposed denial, suspension or  
35 revocation, the State IV-D agency shall schedule an  
36 administrative hearing within 30 days after receiving notice of  
37 contest of denial, suspension or revocation of the license. If it is  
38 determined that the denial, suspension or revocation is to occur,  
39 the State IV-D agency shall provide notice to the obligor. Notice  
40 to the obligor shall include the time within which the denial,  
41 suspension or revocation shall occur. The obligor shall be notified  
42 by the State IV-D agency within 10 days of the determination  
43 made at the hearing.

44 d. A license that has been denied, suspended or revoked due to  
45 the failure to make child support payments shall be issued or  
46 restored once the obligor becomes current on his child support  
47 payments or has established a regular payment schedule for

1 12 months.

2 e. The State IV-D agency shall establish a procedure to  
3 provide for the notification of the Division of Motor Vehicles in  
4 the Department of Law and Public Safety when an obligor has  
5 failed to make child support payments. The State IV-D agency  
6 shall also notify the division when the obligor has become current  
7 on his child support payments or has established a regular  
8 payment schedule through the use of an electronic transfer of  
9 information, if available.

10 2. a. As used in this section, "professional or occupational  
11 license" means any certificate, registration or license issued by a  
12 professional or occupational board designated in section 2 of  
13 P.L.1978, c.2 (C.45:1-15).

14 b. Notwithstanding any provision of law to the contrary, an  
15 obligor's professional or occupational license may be suspended  
16 or revoked and an obligor may be prohibited from obtaining a  
17 professional or occupational license, if the obligor has failed to  
18 make a required, current obligation child support payment for six  
19 months, after due notice in writing of the proposed action and the  
20 grounds thereof, in the manner provided for in section 8 of  
21 P.L.1978, c.73 (C.45:1-21).

22 c. The State IV-D agency shall notify the obligor whose  
23 license is subject to denial, suspension or revocation by regular  
24 mail to the last known address. The notice shall be postmarked  
25 no later than 10 days after the date on which the decision was  
26 made to deny, suspend or revoke the professional or occupational  
27 license, and shall inform the obligor that the decision shall take  
28 effect 30 days after the postmark date of the notice unless the  
29 obligor contests the denial, suspension or revocation. An obligor  
30 may contest a denial, suspension or revocation of the license only  
31 on the basis of mistake of fact. The notice to the obligor shall  
32 include but not be limited to: the date on which the last child  
33 support payment was made; the amount of the arrearage; the  
34 methods available for contesting the denial, suspension or  
35 revocation on the grounds that the action taken is not proper  
36 because of mistake of fact; the period within which the obligor  
37 shall contact the State IV-D agency to arrange for satisfaction of  
38 the judgment; the period within which the State IV-D agency  
39 shall be contacted in order to contest the denial, suspension or  
40 revocation and that failure to do so will result in denial,  
41 suspension or revocation; and the actions the State IV-D agency  
42 will take if the obligor contests the denial, suspension or  
43 revocation.

44 d. If the obligor contests the proposed denial, suspension or  
45 revocation, the State IV-D agency shall schedule an  
46 administrative hearing within 30 days after receiving notice of  
47 contest of denial, suspension or revocation of the license. If it is  
48 determined that the denial, suspension or revocation is to occur,  
49 the State IV-D agency shall provide notice to the obligor. Notice  
50 to the obligor shall include the time within which the denial,  
51 suspension or revocation shall occur. The obligor shall be notified  
52 by the State IV-D agency within 10 days of the determination  
53 made at the hearing.

54 e. A license that has been denied, suspended or revoked due to

1 the failure to make child support payments shall be issued or  
2 restored once the obligor becomes current on his child support  
3 payments or has established a regular payment schedule for  
4 12 months.

5 f. The State IV-D agency shall develop a procedure to provide  
6 for the notification of the appropriate professional or  
7 occupational board when an obligor has failed to make child  
8 support payments. The State IV-D agency shall also notify the  
9 board when the obligor has become current on his child support  
10 payments or has established a regular payment schedule through  
11 the use of an electronic transfer of information, if available.

12 3. a. Notwithstanding any provision of law to the contrary, an  
13 obligor's license to practice law may be suspended or revoked  
14 and an obligor may be prohibited from obtaining a license to  
15 practice law, if the obligor has failed to make a required, current  
16 obligation child support payment for six months, after due notice  
17 in writing of the proposed action and the grounds thereof, in a  
18 manner provided for by the New Jersey Supreme Court.

19 b. The State IV-D agency shall notify the obligor whose  
20 license is subject to denial, suspension or revocation by regular  
21 mail to the last known address. The notice shall be postmarked  
22 no later than 10 days after the date on which the decision was  
23 made to deny, suspend or revoke the license to practice law, and  
24 shall inform the obligor that the decision shall take effect  
25 30 days after the postmark date of the notice unless the obligor  
26 contests the denial, suspension or revocation. An obligor may  
27 contest a denial, suspension or revocation of the license only on  
28 the basis of mistake of fact. The notice to the obligor shall  
29 include but not be limited to: the date on which the last child  
30 support payment was made; the amount of the arrearage; the  
31 methods available for contesting the denial, suspension or  
32 revocation on the grounds that the action taken is not proper  
33 because of mistake of fact; the period within which the obligor  
34 shall contact the State IV-D agency to arrange for satisfaction of  
35 the judgment; the period within which the State IV-D agency  
36 shall be contacted in order to contest the denial, suspension or  
37 revocation and that failure to do so will result in denial,  
38 suspension or revocation; and the actions the State IV-D agency  
39 will take if the obligor contests the denial, suspension or  
40 revocation.

41 c. If the obligor contests the proposed denial, suspension or  
42 revocation, the State IV-D agency shall schedule an  
43 administrative hearing within 30 days after receiving notice of  
44 contest of denial, suspension or revocation of the license. If it is  
45 determined that the denial, suspension or revocation is to occur,  
46 the State IV-D agency shall provide notice to the obligor. Notice  
47 to the obligor shall include the time within which the denial,  
48 suspension or revocation shall occur. The obligor shall be notified  
49 by the State IV-D agency within 10 days of the determination  
50 made at the hearing.

51 d. A license that has been denied, suspended or revoked due to  
52 the failure to make child support payments shall be issued or  
53 restored once the obligor becomes current on his child support  
54 payments or has established a regular payment schedule for

1 12 months.

2 e. The State IV-D agency shall develop a procedure to provide  
3 for the notification of the New Jersey Supreme Court when an  
4 obligor has failed to make child support payments. The State  
5 IV-D agency shall also notify the court when the obligor has  
6 become current on his child support payments or has established a  
7 regular payment schedule through the use of an electronic  
8 transfer of information, if available.

9 4. The State IV-D agency shall adopt rules and regulations  
10 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
11 (C.52:14B-1 et seq.), necessary to carry out the provisions of this  
12 act.

13 5. This act shall take effect six months following enactment.  
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16 STATEMENT  
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18 This bill allows for the denial, suspension or revocation of the  
19 driver's, professional or occupational license of an individual who  
20 has failed to make child support payments for six months. The  
21 individual's license would be issued or restored once he becomes  
22 current on the payments or a regular payment schedule has been  
23 established for 12 months.

24 The bill also requires the State IV-D agency to develop  
25 procedures concerning the notification of the Division of Motor  
26 Vehicles, the New Jersey Supreme Court (in the case of  
27 attorneys) or the appropriate professional or occupational  
28 licensing board when an obligor fails to make child support  
29 payments, when that obligor becomes current on his delinquent  
30 child support payments or has established a regular payment  
31 schedule through the use of an electronic transfer of information,  
32 if it is available. The IV-D agency would also be required to hold  
33 all administrative hearings.  
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39 Allows for the denial, suspension or revocation of driver's or  
professional license for nonpayment of child support.

ASSEMBLY, No. 454

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblyman AUGUSTINE

1 AN ACT concerning child support enforcement and supplementing  
2 chapter 17 of Title 2A of the New Jersey Statutes.

3  
4 BE IT ENACTED *by the Senate and General Assembly of the*  
5 *State of New Jersey:*

6 1. As used in this section, "professional or occupational  
7 license" means any certificate, registration or license issued by a  
8 State department, board, commission or authority or by the New  
9 Jersey Supreme Court to practice a profession or occupation.

10 a. Every order of a court for child support payments shall  
11 include a written notice to the obligor that a professional or  
12 occupational license applied for or held by the obligor may be  
13 denied or suspended if the obligor has accumulated arrearages in  
14 an amount equal to the amount of support payable for 14 days.

15 b. The court or probation department having jurisdiction over  
16 the obligor who applies for or holds a professional or occupational  
17 license shall notify the appropriate professional board when the  
18 obligor has accumulated child support payment arrearages in an  
19 amount equal to the amount of support payable for 14 days.

20 c. The professional or occupational board which receives  
21 notice of an obligor's child support payment arrearages pursuant  
22 to subsection b. of this section, shall notify the obligor that his  
23 application for a professional or occupational license may be  
24 denied or his existing professional or occupational license may be  
25 suspended for nonpayment of child support. The denial or  
26 suspension shall be carried out in full compliance with all  
27 procedural due process requirements.

28 d. An application for a professional or occupational license  
29 which has been denied for failure to make child support payments  
30 shall be processed upon proof from the court or probation  
31 department having jurisdiction that the obligor is not in arrears  
32 for child support. A professional or occupational license which  
33 has been suspended for failure to make child support payments  
34 shall be reinstated upon proof from the court or probation  
35 department having jurisdiction that the obligor is not in arrears  
36 for child support.

37 2. a. Every order of a court for child support payments shall  
38 include a written notice to the obligor that a driver's license  
39 applied for or held by the obligor may be denied or suspended if  
40 the obligor has accumulated arrearages in an amount equal to the  
41 amount of support payable for 14 days.

42 b. The court or probation department having jurisdiction over  
43 the obligor who applies for or holds a driver's license shall notify  
44 the Division of Motor Vehicles in the Department of Law and  
45 Public Safety when the obligor has accumulated child support

1 payment arrearages in an amount equal to the amount of support  
2 payable for 14 days.

3 c. The Division of Motor Vehicles which receives notice of an  
4 obligor's child support payment arrearages pursuant to subsection  
5 b. of this section, shall notify the obligor that his driver's license  
6 application may be denied or his existing driver's license  
7 suspended for nonpayment of child support. The denial or  
8 suspension shall be carried out in full compliance with procedural  
9 due process requirements and in accordance with the provisions  
10 of R.S.39:5-30.

11 d. An application for a driver's license which has been denied  
12 for failure to make child support payments shall be processed  
13 upon proof from the court or probation department having  
14 jurisdiction that the obligor is not in arrears for child support. A  
15 driver's license which has been suspended for failure to make  
16 child support payments shall be reinstated upon proof from the  
17 court or probation department having jurisdiction that the obligor  
18 is not in arrears for child support.

19 3. This act shall take effect on the 60th day following  
20 enactment.

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#### STATEMENT

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25 This bill provides for the denial of an application for, or the  
26 suspension of, a driver's license or professional license when a  
27 child support obligor accumulates arrearages in payment equal to  
28 the amount of support payable for 14 days. The bill provides that  
29 every court order for child support shall contain written notice to  
30 the obligor regarding denial of applications or suspension of these  
31 licenses. The bill also provides that the court or probation office  
32 having jurisdiction over the obligor shall notify the appropriate  
33 professional board or the Division of Motor Vehicles, as  
34 appropriate, when the obligor has accumulated arrearages. The  
35 bill provides that the professional board or the Division of Motor  
36 Vehicles, as appropriate, shall notify the obligor that his  
37 professional license or driver's license may be denied or  
38 suspended and requires that all procedural due process  
39 requirements are met. The bill provides for a previously denied  
40 application to be processed or the license reinstated upon proof  
41 from the court or probation office having jurisdiction that the  
42 obligor is not in arrears for child support.

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47 Provides for denial of application for, or suspension of, driver's  
48 license or professional license for nonpayment of child support.

**ASSEMBLY, No. 772**  
**STATE OF NEW JERSEY**

Introduced Pending Technical Review by Legislative Counsel  
PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblymen CATANIA and PASCRELL

1 AN ACT concerning child support enforcement and supplementing  
2 chapter 17 of Title 2A of the New Jersey Statutes.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. a. Notwithstanding any provision of law to the contrary, a  
7 person's driver's license, may be suspended or revoked, and a  
8 person may be prohibited from obtaining a driver's license for  
9 nonpayment of child support after due notice in writing of the  
10 proposed action and the grounds thereof, pursuant to the  
11 provisions of R.S.39:5-30.

12 b. A license that has been suspended or revoked due to  
13 nonpayment of child support shall be restored once the obligor  
14 parent becomes current on his child support payments and has  
15 established a regular payment schedule.

16 c. The Administrative Office of the Courts shall establish a  
17 procedure to provide for the notification of the Division of Motor  
18 Vehicles in the Department of Law and Public Safety when an  
19 obligor parent has failed to make child support payments. The  
20 Administrative Office of the Courts shall also notify the division  
21 when that parent has become current on his child support  
22 payments and has established a regular payment schedule.

23 2. This act shall take effect immediately.

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**STATEMENT**

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28 This bill allows for the suspension or revocation of an  
29 individual's driver's license for nonpayment of child support.  
30 The individual's license would be restored once he becomes  
31 current on child support payments and a regular payment  
32 schedule has been established.

33 The bill also requires the Administrative Office of the Courts  
34 to develop procedures concerning the notification of the Division  
35 of Motor Vehicles when an obligor parent fails to make child  
36 support payments and when that parent becomes current on his  
37 delinquent child support payments and establishes a regular  
38 payment schedule.

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Allows for the suspension or revocation of driver's license for  
nonpayment of child support.

1. The Legislature finds and declares that the system of compensation for persons abused during marriage by their spouses has worked to deprive those abused spouses of the rights granted to any other person to be compensated for injuries. Such spouses are limited by the single controversy doctrine and an inflexible statute of limitations to recovery for damages that occurred in the two years immediately preceding the suit for divorce. The Legislature further finds and declares that abuse in families is a major expense in the State's economy, and that those responsible for that economic strain, not its victims, should bear the cost of family violence.

a. A person who commits an act of spousal abuse shall be liable to that spouse for damages arising as a result of that abuse. "Spousal abuse" as used in this act shall mean domestic violence as defined in N.J.S. 2C:25-19 when committed against a person who is or was legally married to the actor, and it shall also include intentional acts that cause a spouse emotional, psychological, or physical harm that would be compensable if the parties were not related by marriage. In any cause of action based on an allegation of sexual assault, contact, abuse or lewdness, the shield provisions of NJS 2C:14-2 shall govern the introduction of evidence of past sexual conduct of the alleged victim.

b. (1) This cause of action shall be considered a continuing tort that includes every act of spousal abuse and, once one act of spousal abuse is proven, shall also include acts of similar abuse that occur before or after the legal marriage of the parties.

(2) The statute of limitations set forth in N.J.S. 2A:14-2 shall not begin to run until two years after the latest of the following events occurs, and every new event or occurrence shall mark the beginning of a new two-year period of limitation:

- (a) The parties cease to cohabit, or
- (b) The marriage is dissolved by a court of competent jurisdiction, or
- (c) The plaintiff is emotionally capable of pursuing the cause of action, as shown by a preponderance of the evidence, or
- (d) Any act of abuse that occurs during the marriage, or
- (e) The reasonable discovery of any injury attributable to the abuse alleged or its causal relationship to an act of domestic violence or other abuse.

(3) Nothing in this section is intended to preclude a court from finding that the statute of limitations was tolled because of duress by the defendant or upon any other equitable grounds, or to preclude recovery of damages for acts of abuse that occur after the dissolution of the marriage.

c. If an action for spousal abuse is filed prior to the granting of a divorce between the parties, at the plaintiff's option, the claim of spousal abuse may be heard by a jury, or may be heard by the court hearing the marital dissolution.

d. (1) If a plaintiff prevails in an action for spousal abuse, the following damages may be awarded:

(a) Actual damages, including but not limited to pain and suffering, medical expenses, emotional trauma, diminished enjoyment of life, costs of counseling, and loss of wages; and

(b) Punitive damages, costs of suit, and reasonable attorney fees.

These damages are separate from any claims the plaintiff may have with regard to support, alimony, and equitable distribution, or for damages awarded pursuant to

NJ.S.2C:25-29.

(2) The trier of facts shall make findings on the following issues when considering the amount of damages to be awarded to a successful plaintiff:

- (a) The frequency and severity of the abuse,
- (b) The effect of the particular abuse on the particular plaintiff injured,
- (c) Duration of any physical or emotional trauma resulting from the abuse, and
- (d) Actual and estimated costs of rehabilitation of the plaintiff.

(3) If a plaintiff requests punitive damages, the court will grant the plaintiff's timely request for pretrial discovery regarding the assets of the defendant.

e. Notwithstanding any law to the contrary, a judge or jury may award damages to a plaintiff that exceed the total value of the marital assets. The court may also order the transfer of any of the defendant's assets, whether they are marital property or nonmarital property, vested, contingent, or inchoate, and may order an investigation of the transfer of any assets by the defendant without full compensation at any time after the spousal abuse suit was filed.

f. If a minor child testifies about the conduct of the parties, the court may allow or order such testimony to be made in camera.

g. The court, upon application by the plaintiff, may grant a writ of attachment on the assets of the defendant prior to a judgment of liability if the plaintiff gives credible evidence that:

(1) The defendant is likely to dissipate the assets in anticipation of the outcome of the litigation; and

(2) There is a reasonable prospect of the plaintiff proving the cause of action.

h. In the event that the plaintiff obtains a money judgment, the court may execute against the defendant's assets as provided by law for the collection of other debts.

i. In cases in which the alleged abuse included physical abuse, the defendant shall be precluded from presenting any evidence that the plaintiff provoked the abuse, unless the provocation alleged is shown by credible evidence, out of the presence of any jury, to constitute a criminal assault.

j. The plaintiff may name as a defendant any insurance company that may have insured the defendant at the time of the alleged abusive incidents. If any insurer claims not to have insured the defendant at any relevant time, this issue shall be determined by the trier of fact.

k. If the abused spouse files an action requesting both a judgment of divorce and damages under this act, the plaintiff shall have the option to either have all issues decided at the same time or be allowed to bifurcate the matrimonial action from the damages action. If the plaintiff requests bifurcation, the plaintiff shall be entitled to a jury trial on the issue of damages, and the court shall honor any reasonable request as to which matter shall be tried first. If the plaintiff files suit under this act during the pendency of a divorce action, whether initiated by the plaintiff or the defendant, the court shall take appropriate steps to protect the assets of the marriage from misuse, waste, or sale without the authorization of both parties. Final distribution of assets shall be abated until such time as a final judgment is entered in both actions.

l. The filing of a complaint under this act shall not preclude any party from obtaining a final judgment of divorce, alimony, or child support.

2. This act shall take effect immediately and shall apply to any cause of action for divorce pending at the time of enactment and any cause of action for divorce filed on or after the effective date of this act.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S. 46:8-45 is amended to read as follow.

a. The department shall, as soon as practicable and annually thereafter, after public hearing, prepare and make available at cost to the public a statement, in a form and size suitable for posting and distributing pursuant to the provisions of this act, of the primary clearly established legal rights and responsibilities of tenants and landlords of rental dwelling units. The statement shall include a summary of relevant current law regarding the rights of tenants not to be subjected to discrimination by the landlord or the landlord's agents, including harassment, because of their membership in a protected class. This statement shall be printed in both the English and Spanish languages. The statement shall serve as an informational document, and nothing therein shall be construed as binding on or affecting a judicial determination under section 6 of this act of what constitutes a lease provision which violates clearly established legal rights of tenants or responsibilities of landlords.

b. Where practical considerations make it necessary for the department to limit the extent of the statement, items to be included shall be selected on the basis of the importance of their inclusion in protecting the rights of the public, except that in no case shall the notification of civil rights required pursuant to this section be omitted.

2. This act shall be effective on July 1 of the year following enactment.

1. N.J.S.10:5-14.1a is amended to read as follows:

Any person who violates any of the provisions of the "Law Against Discrimination," P.L.1945, c. 169 (C. 10:5-1 et seq.), shall, in addition to any other relief or affirmative action provided by law, be liable to a penalty of not more than [\$2,000.00] \$25,000 for the first offense and not more than [\$5,000.00] \$50,000 for the second and each subsequent offense. The penalties shall be determined by the director in such amounts as he deems proper under the circumstances and included in his order following his finding of an unlawful discrimination or an unlawful employment practice pursuant to section 16 of P.L.1945, c. 169 (C. 10:5-17). Any such amounts collected by the director shall be paid forthwith into the State Treasury for the general purposes of the State, except that at least 50 per cent of each penalty, upon collection, shall be dedicated to the operational expenses of the division.

2. This act shall take effect immediately and shall apply to all cases filed with the division after its enactment.



