

104TH CONGRESS
1ST SESSION

S. 1483

To control crime, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 1995

Mr. KYL (for himself, Mrs. FEINSTEIN, and Mr. DEWINE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To control crime, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Victim Rights and Domestic Violence Prevention Act of
6 1995”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EQUAL PROTECTION FOR VICTIMS

Sec. 101. Right of the victim to an impartial jury.

Sec. 102. Rebuttal of attacks on the victim’s character.

Sec. 103. Victim’s right of allocution in sentencing.

- Sec. 104. Right of the victim to fair treatment in legal proceedings.
 Sec. 105. Use of notice concerning release of offender.
 Sec. 106. Balance in the composition of rules committees.

TITLE II—DOMESTIC VIOLENCE

- Sec. 201. Death penalty for fatal domestic violence offenses.
 Sec. 202. Evidence of defendant's disposition toward victim in domestic violence cases and other cases.
 Sec. 203. Battered women's syndrome evidence.
 Sec. 204. HIV testing of defendants in sexual assault cases.

1 **TITLE I—EQUAL PROTECTION** 2 **FOR VICTIMS**

3 **SEC. 101. RIGHT OF THE VICTIM TO AN IMPARTIAL JURY.**

4 Rule 24(b) of the Federal Rules of Criminal Proce-
 5 dure is amended by striking “the government is entitled
 6 to 6 peremptory challenges and the defendant or defend-
 7 ants jointly to 10 peremptory challenges” and inserting
 8 “each side is entitled to 6 peremptory challenges”.

9 **SEC. 102. REBUTTAL OF ATTACKS ON THE VICTIM'S CHAR-** 10 **ACTER.**

11 Rule 404(a)(1) of the Federal Rules of Evidence is
 12 amended by inserting before the semicolon the following:
 13 “, or, if an accused offers evidence of a pertinent trait
 14 of character of the victim of the crime, evidence of a perti-
 15 nent trait of character of the accused offered by the pros-
 16 ecution”.

17 **SEC. 103. VICTIM'S RIGHT OF ALLOCUTION IN SENTENCING.**

18 Rule 32 of the Federal Rules of Criminal Procedure
 19 is amended—

1 (1) in subdivision (c)(3)(E), by striking “if sen-
 2 tence is to be imposed for a crime of violence or sex-
 3 ual abuse,”; and

4 (2) by amending subdivision (f) to read as fol-
 5 lows:

6 “(f) DEFINITION.—For purposes of this rule, ‘victim’
 7 means any individual against whom an offense has been
 8 committed for which a sentence is to be imposed, but the
 9 right of allocution under subdivision (c)(3)(E) may be ex-
 10 ercised instead by—

11 “(1) a parent or legal guardian if the victim is
 12 below the age of 18 years or is incompetent; or

13 “(2) one or more family members or relatives
 14 designated by the court if the victim is deceased or
 15 incapacitated,

16 if such person or persons are present at the sentencing
 17 hearing, regardless of whether the victim is present.”.

18 **SEC. 104. RIGHT OF THE VICTIM TO FAIR TREATMENT IN**
 19 **LEGAL PROCEEDINGS.**

20 The following rules, to be known as the Rules of Pro-
 21 fessional Conduct for Lawyers in Federal Practice, are en-
 22 acted as an appendix to title 28, United States Code:

23 **“RULES OF PROFESSIONAL CONDUCT FOR**
 24 **LAWYERS IN FEDERAL PRACTICE**

“Rule 1. Scope.

“Rule 2. Abuse of Victims and Others Prohibited.

“Rule 3. Duty of Enquiry in Relation to Client.

“Rule 4. Duty To Expedite Litigation.

“Rule 5. Duty To Prevent Commission of Crime.

1 **“Rule 1. Scope**

2 “(a) These rules apply to the conduct of lawyers in
3 their representation of clients in relation to proceedings
4 and potential proceedings before Federal tribunals.

5 “(b) For purposes of these rules, ‘Federal tribunal’
6 and ‘tribunal’ mean a court of the United States or an
7 agency of the Federal Government that carries out adju-
8 dicatory or quasi-adjudicatory functions.

9 **“Rule 2. Abuse of Victims and Others Prohibited**

10 “(a) A lawyer shall not engage in any action or course
11 of conduct for the purpose of increasing the expense of
12 litigation for any person, other than a liability under an
13 order or judgment of a tribunal.

14 “(b) A lawyer shall not engage in any action or course
15 of conduct that has no substantial purpose other than to
16 distress, harass, embarrass, burden, or inconvenience an-
17 other person.

18 “(c) A lawyer shall not offer evidence that the lawyer
19 knows to be false or attempt to discredit evidence that the
20 lawyer knows to be true.

21 **“Rule 3. Duty of Enquiry in Relation to Client**

22 “A lawyer shall attempt to elicit from the client a
23 truthful account of the material facts concerning the mat-
24 ters in issue. In representing a client charged with a crime

1 or civil wrong, the duty of enquiry under this rule in-
2 cludes—

3 “(1) attempting to elicit from the client a mate-
4 rially complete account of the alleged criminal activ-
5 ity or civil wrong if the client acknowledges involve-
6 ment in the alleged criminal activity or civil wrong;
7 and

8 “(2) attempting to elicit from the client the ma-
9 terial facts relevant to a defense of alibi if the client
10 denies such involvement.

11 **“Rule 4. Duty To Expedite Litigation**

12 “(a) A lawyer shall seek to bring about the expedi-
13 tious conduct and conclusion of litigation.

14 “(b) A lawyer shall not seek a continuance or other-
15 wise attempt to delay or prolong proceedings in the hope
16 or expectation that—

17 “(1) evidence will become unavailable;

18 “(2) evidence will become more subject to im-
19 peachment or otherwise less useful to another party
20 because of the passage of time; or

21 “(3) an advantage will be obtained in relation
22 to another party because of the expense, frustration,
23 distress, or other hardship resulting from prolonged
24 or delayed proceedings.

1 **“Rule 5. Duty To Prevent Commission of Crime**

2 “(a) A lawyer may disclose information relating to
3 the representation of a client, including information ob-
4 tained from the client, to the extent necessary to prevent
5 the commission of a crime or other unlawful act.

6 “(b) A lawyer shall disclose information relating to
7 the representation of a client, including information ob-
8 tained from the client, when disclosure is required by law.

9 “(c) A lawyer shall disclose information relating to
10 the representation of a client, including information ob-
11 tained from the client, to the extent necessary to pre-
12 vent—

13 “(1) the commission of a crime involving the
14 use or threatened use of force against a person, or
15 a substantial risk of death or serious bodily injury
16 to a person; or

17 “(2) the commission of a crime of sexual as-
18 sault or child molestation.

19 “(d) For purposes of this rule, ‘crime’ means a crime
20 under the law of the United States or the law of a State,
21 and ‘unlawful act’ means an act in violation of the law
22 of the United States or the law of a State.”.

23 **SEC. 105. USE OF NOTICE CONCERNING RELEASE OF OF-**
24 **FENDER.**

25 Section 4042(b) of title 18, United States Code, is
26 amended by striking paragraph (4).

1 **SEC. 106. BALANCE IN THE COMPOSITION OF RULES COM-**
2 **MITTEES.**

3 Section 2073 of title 28, United States Code, is
4 amended—

5 (1) in subsection (a)(2), by adding at the end
6 the following: “On each such committee that makes
7 recommendations concerning rules that affect crimi-
8 nal cases, including the Federal Rules of Criminal
9 Procedure, the Federal Rules of Evidence, the Fed-
10 eral Rules of Appellate Procedure, the Rules Govern-
11 ing Section 2254 Cases, and the Rules Governing
12 Section 2255 Cases, the number of members who
13 represent or supervise the representation of defend-
14 ants in the trial, direct review, or collateral review
15 of criminal cases shall not exceed the number of
16 members who represent or supervise the representa-
17 tion of the Government or a State in the trial, direct
18 review, or collateral review of criminal cases.”; and

19 (2) in subsection (b), by adding at the end the
20 following: “The number of members of the standing
21 committee who represent or supervise the represen-
22 tation of defendants in the trial, direct review, or
23 collateral review of criminal cases shall not exceed
24 the number of members who represent or supervise
25 the representation of the Government or a State in

1 the trial, direct review, or collateral review of crimi-
2 nal cases.”.

3 **TITLE II—DOMESTIC VIOLENCE**

4 **SEC. 201. DEATH PENALTY FOR FATAL DOMESTIC VIO-** 5 **LENCE OFFENSES.**

6 Sections 2261(b)(1) and 2262(b)(1) of title 18, Unit-
7 ed States Code, are each amended by inserting “or may
8 be sentenced to death” after “years,”.

9 **SEC. 202. EVIDENCE OF DEFENDANT’S DISPOSITION TO-** 10 **WARD VICTIM IN DOMESTIC VIOLENCE CASES** 11 **AND OTHER CASES.**

12 Rule 404(b) of the Federal Rules of Evidence is
13 amended by striking “or absence of mistake or accident”
14 and inserting “absence of mistake or accident, or a dis-
15 position toward a particular individual”.

16 **SEC. 203. BATTERED WOMEN’S SYNDROME EVIDENCE.**

17 Rule 702 of the Federal Rules of Evidence is amend-
18 ed by adding at the end the following: “Testimony that
19 may be admitted pursuant to this rule includes testimony
20 concerning the behavior, and mental or emotional condi-
21 tions of victims to explain a victim’s failure to report or
22 delay in reporting an offense, recantation of an accusation,
23 or failure to cooperate in the investigation or prosecu-
24 tion.”.

1 **SEC. 204. HIV TESTING OF DEFENDANTS IN SEXUAL AS-**
 2 **SAULT CASES.**

3 (a) IN GENERAL.—Chapter 109A of title 18, United
 4 States Code, is amended by adding at the end the follow-
 5 ing new section:

6 **“§2249. Testing for human immunodeficiency virus;**
 7 **disclosure of test results to victim; effect**
 8 **on penalty**

9 “(a) TESTING AT TIME OF PRETRIAL RELEASE DE-
 10 TERMINATION.—In a case in which a person is charged
 11 with an offense under this chapter, upon request of the
 12 victim, a judicial officer issuing an order pursuant to sec-
 13 tion 3142(a) shall include in the order a requirement that
 14 a test for the human immunodeficiency virus be performed
 15 upon the person, and that followup tests for the virus be
 16 performed 6 months and 12 months following the date of
 17 the initial test, unless the judicial officer determines that
 18 the conduct of the person created no risk of transmission
 19 of the virus to the victim, and so states in the order. The
 20 order shall direct that the initial test be performed within
 21 24 hours, or as soon thereafter as feasible. The person
 22 shall not be released from custody until the test is per-
 23 formed.

24 “(b) TESTING AT LATER TIME.—If a person charged
 25 with an offense under this chapter was not tested for the
 26 human immunodeficiency virus pursuant to subsection (a),

1 the court may at a later time direct that such a test be
2 performed upon the person, and that followup tests be per-
3 formed 6 months and 12 months following the date of the
4 initial test, if it appears to the court that the conduct of
5 the person may have risked transmission of the virus to
6 the victim. A testing requirement under this subsection
7 may be imposed at any time while the charge is pending,
8 or following conviction at any time prior to the person's
9 completion of service of the sentence.

10 “(c) TERMINATION OF TESTING REQUIREMENT.—A
11 requirement of followup testing imposed under this section
12 shall be canceled if any test is positive for the virus or
13 the person obtains an acquittal on, or dismissal of, all
14 charges under this chapter.

15 “(d) DISCLOSURE OF TEST RESULTS.—The results
16 of any test for the human immunodeficiency virus per-
17 formed pursuant to an order under this section shall be
18 provided to the judicial officer or court. The judicial offi-
19 cer or court shall ensure that the results are disclosed to
20 the victim (or to the victim's parent or legal guardian, as
21 appropriate), the attorney for the Government, and the
22 person tested. Test results disclosed pursuant to this sub-
23 section shall be subject to section 40503(b) (5) through
24 (7) of the Violent Crime Control Act of 1994 (42 U.S.C.
25 14011(b)). Any test result of the defendant given to the

1 victim or the defendant must be accompanied by appro-
 2 priate counseling, unless the recipient does not wish to re-
 3 ceive such counseling.

4 “(e) EFFECT ON PENALTY.—The United States Sen-
 5 tencing Commission shall amend existing guidelines for
 6 sentences for offenses under this chapter to enhance the
 7 sentence if the offender knew or had reason to know that
 8 the offender was infected with the human
 9 immunodeficiency virus, except where the offender did not
 10 engage or attempt to engage in conduct creating a risk
 11 of transmission of the virus to the victim.”.

12 (b) TECHNICAL AMENDMENT.—The analysis for
 13 chapter 109A of title 18, United States Code, is amended
 14 by inserting at the end the following new item:

“2249. Testing for human immunodeficiency virus; disclosure of test results
 to victim; effect on penalty.”.

15 (c) AMENDMENTS TO TESTING PROVISIONS.—Sec-
 16 tion 40503(b) of the Violent Crime Control and Law En-
 17 forcement Act of 1994 (42 U.S.C. 14011(b)) is amend-
 18 ed—

19 (1) by amending the heading to read as follows:

20 “(b) TESTING OF DEFENDANTS.—”;

21 (2) in paragraph (1)—

22 (A) by inserting “, or the Government in
 23 such a case,” after “subsection (a)”;

1 (B) by inserting “(or to the victim’s parent
2 or legal guardian, as appropriate)” after “com-
3 municated to the victim”; and

4 (C) by inserting “, unless the recipient
5 does not wish to receive such counseling” after
6 “counseling”; and

7 (3) in paragraph (2)—

8 (A) by striking “To obtain an order under
9 paragraph (1), the victim must demonstrate
10 that” and inserting “The victim or the Govern-
11 ment may obtain an order under paragraph (1)
12 by showing that”;

13 (B) in subparagraph (A)—

14 (i) by striking “the offense” and in-
15 sserting “a sexual assault involving alleged
16 conduct that poses a risk of transmission
17 of the etiologic agent for acquired immune
18 deficiency syndrome”; and

19 (ii) by inserting “and” after the semi-
20 colon;

21 (C) in subparagraph (B), by striking
22 “after appropriate counseling; and” and insert-
23 ing a period; and

24 (D) by striking subparagraph (C).

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