

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on February 21, 2006 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department
Norm Furse, Office of Revisor of Statutes
Renaë Jefferies, Office of Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee:

Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence
Lisa Hecht, YWCA Battered Women Task Force

Others attending:

See attached list.

The Chairman stated today's meeting would commence with a continuation of the hearing on **HB 2928 - Leave from employment for victims of domestic violence or sexual crimes.**

Sandy Barnett, Executive Director, Kansas Coalition Against Sexual and Domestic Violence (KCSDV), testified as a proponent to **HB 2928**. Maintaining employment is of the utmost importance for victims. The lack of financial stability is one of the greatest barriers to leaving an abusive partner for victims of domestic violence, second only to safety concerns. Victims of sexual assault and rape must participate with law enforcement for evidence collection and investigation of these crimes. Evidence must be collected within a few hours after an assault.

HB 2928 seeks to remedy employment related barriers for victims by prohibiting the firing or punishment of victims when they must tend to victim-related issues requiring them to miss work. **HB 2928** does require employees provide verification for the reason why an absence from work is necessary.

Although **HB 2928** does not specifically address it, KCSDV assumes it is a defense against criminal or civil sanctions if the employees absence from work could have been avoided because the service or activity could be accomplished other than during work hours (Attachment 1).

Lisa Hecht, YWCA Battered Women Task Force, testified as a proponent to **HB 2928**. This bill allows for victims to seek medical, legal or advocacy services without fear of the loss of confidentiality or fear of retaliation including demotion or loss of employment. This also gives victims of domestic violence and sexual assault additional tools that increase their safety and sense of empowerment as well as the ability to work and earn a living to support themselves and, very often, their minor children (Attachment 2).

There was no opposition to **HB 2928**.

The Chairman closed the hearing on **HB 2928**.

The Chairman said the committee would move to final action. The first bill up for final action was **HB 2772 - Employment relationship between owner-operators and licensed motor carrier operators for employment security law purposes.**

Staff briefed the committee on the bill and a balloon amendment was distributed that on page 1, line 24, deleted "49 U.S.C. Section 11506" and replaced it with "49 U.S.C. Section 14504".

Representative Roth moved and Representative Grant seconded to adopt the amendment. The motion carried.

The Chairman stated the Advisory Committee met February 20 and took no action on **HB 2772**.

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 21, 2006 in Room 241-N of the Capitol.

Representative Roth moved and Representative Grant seconded to move **HB 2772** out favorably as amended. The motion carried.

The Chairman said **HB 2788 - Concerning expiration, suspension or revocation of real estate brokers and salespersons licenses** had a hearing earlier and Ms. Diel and Mr. Yanek were in the audience to answer any questions. The Chairman asked if there were any amendments to **HB 2788**.

Representative Huntington stated **HB 2865 - Contracts for the sale of residential real estate to include a provision concerning the residence of persons convicted of sexually violent crimes** did not have a hearing due to time restraints and requested amending **HB 2865** into **HB 2788**. The Chairman asked the revisor if he saw any problems with combining the two bills. He replied "NO".

Representative Huntington moved and Representative Ruff seconded to amend **HB 2865** into **HB 2788**. The motion carried.

Representative Grant moved and Representative Roth seconded to move **HB 2788** out favorably as amended. The motion carried.

The Chairman said **HB 2821 - Establishing the regulatory flexibility act, relating to small business** had a hearing on February 15 and asked what the committee's pleasure was on that bill.

There was discussion and Representative Roth and Representative Grange said the bill was not necessary.

Representative Ruff moved and Representative Roth seconded to Table **HB 2821**. The motion carried.

The meeting adjourned at 10:55 a.m. The next meeting is scheduled for February 22, 2006.

634 SW Harrison Topeka, Kansas 66603
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

HB 2928
Proponent
February 20, 2006

Chairman Dahl and Members of the House Commerce and Labor Committee;

The Kansas Coalition Against Sexual and Domestic Violence is a membership organization representing the 31 domestic violence and sexual assault programs and the victims they serve.

HB 2928 will help victims of both domestic violence and sexual assault/rape by ensuring protections from employers who terminate, discipline, or otherwise punish victims when they must tend to the critical safety needs of themselves and their children.

"I had one client who took 4 hours of jail time for rescinding her statement because she had been to court three times and was afraid if she took off one more time she would lose her job at this was just two weeks ago." Advocate at the YWCA, Wichita

"Two children were victimized by a stranger who broke into the home at night. The family is Hispanic and the parents do not speak English. Several law enforcement interviews with the parents and children were conducted throughout the investigation. Initially the mother's employer was supportive and understood the need for her to miss work or leave early to meet these obligations.

The father notified the mother at work of another interview that would take place the next day. The mother notified her shift manager of her need to miss work the following day and due to the language barrier, the mother had the daughter call the shift manager to verify that she would not be at work the next day. The shift manager took the day off and forgot to tell the supervisor that the mother would be absent. The supervisor called the mother the next day and fired her. The daughter called the supervisor to explain why mom missed work and to verify that they had spoken with the shift manager. The supervisor indicated that the mother should have spoken to him since the shift manager was not there and the termination stands." Advocate, Wichita Area Sexual Assault Center

These are just two examples of how employer practices put victims into impossible situations or result in unfair terminations or punishments.

Maintaining employment is of the utmost importance for victims. The lack of financial stability is one of the greatest barriers to leaving an abusive partner for victims of domestic violence, second only

to safety concerns. Victims of sexual assault and rape must participate with law enforcement for evidence collection and investigation of these crimes. Evidence must be collected within a few hours after an assault.

Victims who believe their employment is threatened if they must be absent from work to seek medical treatment, or for forensic evidence collection, or to meet with law enforcement may discontinue their participation with the criminal justice system, risking other kinds of punishment. In either case, justice will not be served.

Victims often need to undertake activities that may only be done during regular business hours, such as:

- Filing a protection from abuse or protection from stalking order
- Meeting with investigators from law enforcement or prosecutors offices
- Seeking emergency medical treatments for evidence collection or an injury as a result of an assault
- Seeking safe shelter. Shelter may only be available more than an hour or two away from their home community and employment. Victims may not seek safe shelter if it means the loss of their employment too
- Attending court hearings
- Attending parole hearings
- Attending an appointment to verify compensation claims or to attend a compensation claim appeal
- Attending counseling and support services, which are often, but not always available after regular work hours.

HB 2928 seeks to remedy employment related barriers for victims by prohibiting the firing or punishment of victims when they must tend to victim-related issues requiring them to miss work. HB 2928 does require employees provide verification for the reason why an absence from work is necessary.

Although HB 2928 does not specifically address it, KCSDV assumes it is a defense against criminal or civil sanctions if the employees absence from work could have been avoided because the service or activity could be accomplished other than during work hours.

KCSDV fully supports HB 2928 and urges the House Commerce and Labor Committee to pass it favorably out of committee.

Respectfully Submitted,

Sandy Barnett
Executive Director

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February 20, 2006

YWCA Topeka
225 SW 12th Street
Topeka, KS 66612

T: 785-233-1750
F: 785-233-4867
www.ywcatopeka.org

RE: HB 2928

Chairman Dahl and Committee Members:

Thank you for your time this morning. My name is Lisa Hecht. I am proud to be the director of the YWCA Battered Women Task Force. We are the local agency charged with advocacy and counseling for victims of domestic and sexual violence. As a point of reference, we provided counseling and support to 105 victims of sexual assault in 2005. Statistics released by our police department indicate they responded to 50 sexual assault calls during this same period. We provided counseling to over 1,400 domestic violence victims and our 16-bed confidential shelter provided a safe haven to nearly 200 women and their children during 2005. We assisted 980 victims in the filling out and filing of protection from abuse orders. All of these numbers are unduplicated. I share them with the committee in order to better illustrate the large numbers of victims we are working with in the Capitol City. And, we know that the majority of victims do not seek services or assistance of any kind.

Given this backdrop we are in support of HB 2928 for the additional protections around leave time that it provides to victims of domestic violence or sexual assault. From our perspective, these provisions allow for victims to seek medical, legal or advocacy services without fear of the loss of confidentiality or fear of retaliation including demotion or loss of employment.

I can recount multiple examples of women who were seeking services with my organization who lost their jobs due to absences related to victimization from the criminal act of domestic violence or sexual assault. It is important to note that batterers often participate in behaviors designed to interfere with the victim's ability to work including disabling her car, battering her and leaving bruises, burns or cuts that could be seen by employees/employers, harassing repeated telephone calls at work, and, many other behaviors that increase absences for victims of domestic and sexual violence. Our experiences include victims whose perpetrators are incarcerated needing to take time off for multiple court appearances and victims who need ongoing medical treatment due to significant injuries.

Many women contact us in hopes of getting assistance in the filling out and filing of a protection order. They articulate their fear of not only being harmed by the batterer but of getting in trouble at work if they ask for the 2 hours needed to fill out such an order and the hours needed for the PFA trial that allows the order to become a permanent one year

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order. Or, the time off needed if the Judge involved in the review of the temporary order states he/she wants to meet with the victim in chambers. These become barriers to victims utilizing services designed to keep women and children safer from violence.

Not that long ago victims of domestic or sexual violence had very little support or advocacy available to them. It is measures like HB 2928 that give victims of domestic violence and sexual assault additional tools that increase their safety and sense of empowerment as well as the ability to work and earn a living to support themselves and, very often, their minor children.

Thank you.



Lisa F. Hecht
Director, YWCA Battered Women Task Force



State Law Guide

TIME OFF FROM WORK FOR VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

395 Hudson Street New York, NY 10014-3684 t: 212.925.6635 f: 212.226.1066 www.legalmomentum.org

In recent years, several states have enacted laws that provide domestic violence victims (and in some states, victims of sexual assault and stalking) time off from work to address the violence in their lives. *The details of each state's laws vary significantly.* In most cases leave is unpaid. Some laws provide leave only for court appearances; others provide leave to obtain support services, medical or legal assistance, or safe housing as well. Some states that have not passed domestic violence leave laws have victim protection laws that prohibit an employer from firing crime victims who take time off from work to appear in criminal court. Additionally, in certain circumstances, victims of domestic violence, stalking, or sexual assault may be able to take leave under the federal Family and Medical Leave Act (FMLA) or under comparable state or local laws. For more on FMLA protections, see Legal Momentum's Know Your Rights Sheet, "Medical Leave for Survivors and Family Members."

This sheet is divided into two main sections. The first section outlines existing state and county laws. The second section outlines proposed state legislation on this topic. Each of these sections is further divided into those laws or bills specific to domestic (and, where applicable, sexual) violence and those laws or bills that relate to crime victims more generally.

STATE AND COUNTY LAWS

Domestic and Sexual Violence Employment Leave Laws

CALIFORNIA: Cal. Lab. Code §§ 230 & 230.1.

An employer may not discharge or discriminate or retaliate against an employee who is a victim of domestic violence or sexual assault for taking time off to obtain or attempt to obtain a restraining order or any other judicial relief to help ensure his or her health, safety, or welfare or that of his or her child. The employee must give the employer reasonable notice unless advance notice is not feasible. The employer may require that the employee provide documents or other certification verifying that the employee was a victim of domestic violence or sexual assault. The employer is also required, to the extent allowed by law, to maintain the confidentiality of an employee requesting such leave. In addition, employers with 25 or more employees may not discharge or discriminate or retaliate against an employee who is a victim of domestic violence or sexual assault for taking time off to seek medical attention, obtain services from a domestic violence shelter or program or rape crisis center, obtain psychological counseling, participate in safety planning, or relocate. An employee who is discriminated against or discharged for exercising his or her rights under this law may be entitled to reinstatement and reimbursement for lost wages and benefits. The provisions applying to larger employers do not create a right for employees to take unpaid leave that exceeds the amount of leave allowed under, or is in addition to leave permitted by, the federal FMLA (which permits up to 12 weeks of leave).

COLORADO: Colo. Rev. Stat. § 24-34-402.7 [click on "Colorado Statutes," Title 24, and scroll down the page, click on Article 34, and scroll down to Part 4, "Unfair Employment Practices."]

Employers who employ 50 or more employees must permit an employee of twelve months or more who is a victim of domestic abuse, sexual assault, stalking, or other domestic violence-related crimes to take up to three days of leave to seek a restraining order, obtain medical care or counseling, locate safe housing or make her home secure, or seek legal assistance and prepare for or attend court-related proceedings. Prior to taking this leave, the employee must exhaust annual, vacation, personal leave, and sick leave, unless the employer

waives this requirement. The employee shall provide appropriate advance notice “except in cases of imminent danger to the health or safety of the employee” and may be required to provide documentation.

FLORIDA, Miami-Dade County: Miami-Dade Cty., Fla. Code. § 11A-61 [scroll down to Chapter 11A on the left-hand side, click the box to the left of the title to expand the menu, and click Article VIII].

This county law entitles domestic violence victims to up to 30 days of unpaid leave for medical or dental care, legal assistance, court appearances, counseling or supportive services, or any other arrangements needed because of domestic violence. This law includes leave to obtain orders of protection and for divorce, child custody and child support proceedings. The employee is required to exhaust all paid vacation and personal leave prior to taking leave under this provision. The employer may request certification from a health care provider, attorney of record, counselor, law enforcement agency, clergy, or domestic violence service provider that “the employee is being subjected to domestic or repeat violence and needs time off” for one of the permitted reasons.

HAWAII: Haw. Rev. Stat. § 378-72.

An employee may take unpaid leave for a “reasonable period of time”—up to 30 days per calendar year if the employer has 50 or more employees, and up to 5 days for smaller employers—if the employee or the employee’s minor child is a victim of domestic abuse, sexual assault, or stalking, provided the leave is to seek medical attention, obtain victim services, obtain counseling, temporarily or permanently relocate, or take legal action. When the leave is sought for medical attention, the employer may request a doctor’s certificate (including an estimate of the number of days of leave needed). When the leave is for non-medical reasons and is not more than five days, the employer may require a signed statement from the employee regarding the violence and establishing that the leave is for one of the enumerated purposes. If non-medical leave exceeds five days, the employer may require (1) a signed written statement from “a victim services organization, from the employee’s attorney or advocate, from a minor child’s attorney or advocate, or a medical or other professional from whom the employee or the employee’s minor child has sought assistance related to the domestic or sexual violence; or (2) a police or court record related to the domestic or sexual violence.” The employee shall provide reasonable notice of intention to take leave unless “not practicable due to imminent danger.” The employee must exhaust all other paid and unpaid leave before these provisions apply. All information provided to the employer is confidential unless the employee consents or disclosure is required by law.

ILLINOIS: 820 Ill. Comp. Stat. 180/1-180/45.

An employee who is a victim of domestic or sexual violence or has a family or household member who is a victim of such violence and is employed by a private employer with over 50 employees—or by a state or local government or school district—may take up to 12 weeks unpaid leave during any 12 month period to address the violence. This leave may be used to seek medical attention or counseling, obtain services from a victim services organization, participate in safety planning or relocation, or seek legal assistance. An employee may use paid leave that is otherwise available for time taken off pursuant to this provision. Unless impracticable, the employee shall provide 48-hour notice of the leave. The employer may require the employee to provide certification of the violence and that the leave is for an enumerated purpose. The certification requirement may be satisfied by the employee’s sworn statement and by documentation from a service provider who has assisted the employee or his or her family member in addressing the violence, by police or court records, or by other corroborating evidence. Upon return from leave, the employee shall be entitled to restoration to the original job or to an equivalent position. Employers cannot discriminate or retaliate against persons who exercise their rights under this law. Additionally, a covered employer must make “reasonable accommodation to the known limitations” resulting from the violence. Absent written consent by the employee or statutory requirements, all information provided to the employer pursuant to this Section shall be held in the strictest confidence by the employer. An employee whose rights have been violated may bring an administrative complaint in the state Department of Labor.

MAINE: 26 Me. Rev. Stat. § 850.

Employers must grant “reasonable and necessary” leave when an employee, or a child, parent or spouse of the employee, is a victim of domestic violence, stalking, sexual assault, violence, or assault. The leave may be

used to: prepare for and attend court proceedings, receive medical treatment, or obtain other necessary services to remedy a crisis caused by the violence. Employers are prohibited from sanctioning employees for exercising their rights under this section. There is a \$200 civil penalty for violation. The employer is not required to grant leave if the employer would sustain "undue hardship," if the leave request was not made "within a reasonable time under the circumstances," or if the "requested leave is impractical, unreasonable or unnecessary based on the facts then made known to the employer."

NEW YORK:

Employers may not discharge or penalize a victim of a crime who takes time off to appear in court as a witness, to consult with a district attorney, or to obtain an order of protection. The employee must give prior-day notice and the employer may withhold wages and require verification.

NEW YORK CITY: N.Y.C. Admin. Code § 8-107.1 [select "Laws of New York, scroll to the bottom of the page that pops, click "ADC," and then, under "Title 8," click "Chapter 1"]].

This New York City law requires employers to provide "reasonable accommodations" to victims of domestic violence, sex offenses, and stalking to permit them to perform the "essential requisites" of their job, unless providing such an accommodation would be an "undue hardship" on the employer. The legislative history of the law makes clear that the Council intended that reasonable accommodations under this provision could include providing victims with time off or a modified schedule.

NORTH CAROLINA: N.C. Gen. Stat. § 50-B-5.5 & N.C. Gen. Stat. § 95-270a.

An employer is prohibited from discharging, demoting, disciplining, or denying a promotion to an employee who takes "reasonable time off" from work to obtain or attempt to obtain a protective order or other relief under the state's domestic violence law. An employee who is absent to such seek relief must follow the employer's usual time off policy or practices; if the employer generally requires advance notice of absences, an employee must provide advance notice "unless an emergency prevents the employee from doing so." An employer may require the employee to provide documentation showing the reason for the employee's absence.

Crime Victim Job Protection Laws

Many states have laws that prohibit employers from punishing an employee who is a victim of a crime for taking time off to attend court, at least under certain circumstances, such as responding to a subpoena, responding to a request from the prosecutor, or serving as a witness. In many states, the time off is either unpaid or the employer can require the employee to use accrued sick time, vacation time, or personal time. Some additional states have laws that specifically provide that the victim may ask for assistance in explaining to her employer that she needs to attend court ("employer intercession services"). Below is a list of the states that have such laws and some important features of the laws.

ALABAMA: Ala. Code § 15-23-81 [scroll down to Title 15 on the left-hand side, then select Chapter 23](allows victim to respond to subpoena to testify in criminal proceeding or participate in reasonable preparation for a criminal proceeding).

ALASKA: Alaska Stat. § 12.61-017 (allows victim to respond to subpoena and to attend court proceedings to give testimony; leave is unpaid).

ARIZONA: Ariz. Rev. Stat. § 13-4439 (for criminal offenses) & Ariz. Rev. Stat. § 8-420 (2004) (specifically for juvenile offenses) (applies only to employers with more than 50 employees; leave may be unpaid or employer may require victim to use accrued paid leave; exception for undue hardship to employer).

ARKANSAS: Ark. Code Ann. § 16-90-1105 [click the box on the left-hand side of the phrase "Arkansas Code" to expand the menu, click on Title 16, then subtitle 6, then chapter 90] (prohibits employers from discharging an employee who is absent from work because of attendance at a criminal justice proceeding, if it

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is reasonably necessary to protect the victim's interests, or because of participation in preparation for a prosecution, at the prosecutor's request).

COLORADO: Colo. Rev. Stat. § 24-4.1-303(8) [click on "Colorado Statutes," Title 24, Article 4.1] (allows victim to respond to a subpoena or participate in trial preparation).

CONNECTICUT: Conn. Gen. Stat. § 54-85b [enter section number 54 and search, click "Title 54.htm," then on Ch. 961] (allows employee to attend court or participate in police investigation for crime against employee or employee's minor child) (§54-85d gives a similar protection to a family member or designee of a homicide victim).

DELAWARE: Del. Code Ann. tit. 11 § 9409 (allows victim to respond to a subpoena, participate in trial preparation, or attend trial proceedings as reasonably necessary to protect the victim's interests).

FLORIDA: Fla. Stat. § 92.57 (2005) (allows victim to respond to a subpoena only).

GEORGIA: Ga. Code Ann. § 34-1-3 (allows victim to respond to court order such as a subpoena or jury duty; employer may require "reasonable notification" by the employee).

HAWAII: Haw. Rev. Stat. § 621.10.5 (allows victim to respond to subpoena, testify, attend court as a prospective witness; allows reasonable attorneys fees if an employee sues for violation of this law and prevails)

INDIANA: Ind. Code 35-44-3-11.1 (allows victim to respond to a subpoena only).

IOWA: Iowa Code § 915.23 (allows victim to serve as witness in criminal case; allows reasonable attorneys fees and court costs if an employee sues for violation of this law and prevails).

MARYLAND: Md. Code Ann. Crim. Proc. § 11-102 [For the "Enter Article" box, select "Criminal Procedure"; then enter "11-102" in the "Enter Section" box] or Md. Code Ann. Cts. & Jud. Proc. § 9-205 [For the "Enter Article" box, select "Courts and Judicial Procedure"; then enter "9-205" in the "Enter Section" box] (allows victim to respond to a subpoena or attend proceedings the employee has a right to attend, as defined by Maryland law).

MASSACHUSETTS: Mass Gen. Laws Ch. 258B, § 3(l) and Mass Gen. Laws § 268-14(b) (allows time off to respond to subpoena).

MICHIGAN: Mich. Comp. Laws § 780.762 and Mich Comp. Laws § 780.790 (allows victim time off to give testimony in court in response to a subpoena or request from the prosecuting attorney).

MINNESOTA: Minn. Stat. Ann. § 611A.036 (allows employee to give testimony in court as victim or witness in response to a subpoena or prosecutor's request).

MISSISSIPPI: Miss. Code Ann. § 99-43-45 [on the left-hand side, click the (+) to expand the menu, then select Title 99, then Chapter 43] (allows victim to respond to subpoena or participate in reasonable preparation for court proceedings).

MISSOURI: Mo. Rev. Stat. § 595.209(1)(14) (allows a witness, victim, or victim's immediate family to respond to a subpoena or to participate in preparation for a criminal proceeding).

MONTANA: Mont. Code Ann., § 46-24-205(3) (2005) (allows victim or a member of the victim's family to participate in preparation for or attendance at a criminal justice proceeding; also provides for employer intercession services).

NEVADA: Nev. Rev. Stat. § 50.070 (2003) (allows witness or person summoned to appear as a witness to testify; allows reasonable attorneys fees if an employee sues for violation of this law and prevails).

NEW HAMPSHIRE: N.H. Rev. Stat. Ann. § 275.61 (effective Jan. 1, 2006) (entitles employees to leave work to attend court, legal, or investigative proceedings associated with the prosecution of the crime).

NEW YORK: N.Y. Penal Law § 215.14 [scroll down and click "Penal," then scroll down to § 215.14]. (allows time off on prior-day notice for a victim to appear in court as a witness, to consult with a district attorney, or to obtain an order of protection).

NORTH DAKOTA: N.D. Cent. Code § 27-09.1-17 (makes it a misdemeanor offense for employers to penalize employees who serve as a witness or a juror, and provides a civil remedy for employees who are wrongfully terminated for serving as a witness or juror, including up to six weeks of lost wages and attorney's fees).

OHIO: Ohio Rev. Code Ann. § 2930.18 [On left of screen, click on Title XXIX Crimes-Procedure and scroll down to Chapter 2930] (allows victim, victim's family, and/or victim's representative to respond to a subpoena or prosecutor's request, but does not obligate an employer to pay wages for this leave) & Ohio Rev. Code Ann. § 2151.121.1 [On left of screen, click on XXI Courts-Probate-Juvenile, and scroll down to Chapter 2151] (extends protection to juvenile court and delinquency hearings).

PENNSYLVANIA: 18 Pa. Code § 4957 (allows employee to testify as witness or victim of a crime; such leave is unpaid).

RHODE ISLAND: R.I. Gen. Laws § 12-28-10 (specific to employment protection for victims who seek protective orders) & R.I. Gen. Laws § 12-28-13 (employment protection for victims of crimes to attend court proceedings)

SOUTH CAROLINA: S.C. Code Ann. § 16-3-1550 [click on HTML Offenses Against the Person] (protects a victim or a witness from adverse job consequences for lawfully responding to subpoena).

TENNESSEE: Tenn. Code Ann. § 4-4-122 [on the left of the screen, click to expand "Tennessee Code," then click on Title 4, Ch. 4] (only applies to state agencies as employers; employers are barred from taking any adverse employment action against an employee who takes any lawful action to cause or assist in causing the arrest, prosecution and conviction of the perpetrator of an offense against that employee).

UTAH: Utah Code § 78-11-26 (allows employee to respond to a subpoena; creates a civil remedy to include up to six weeks of lost wages and reasonable attorney's fees).

VERMONT: 13 Vt. Stat. Ann. § 5313 (allows victim, victim's family member, or victim's representative to respond to a subpoena without job consequences).

VIRGIN ISLANDS: 34 V.I.C. § 203(e) [click on Title 34, Ch.8] (allows victim or witness to respond to subpoena without fear of retaliation or loss of wages from employer).

VIRGINIA: Va. Code Ann. § 18.2-465.1 (allows employee to respond to summons or subpoena and attend future proceedings as required by court in writing; allows employee to serve on a jury).

WYOMING: Wyo. Stat. Ann. § 1-40-209(a) (allows victim or witness to respond to a subpoena; allows employee to request employer intercession services from law enforcement agencies).

WISCONSIN: Wis. Stat. § 103.87 (prevents an employer from discharging or docking the pay of any employee who misses work to respond to a subpoena; employee must notify employer of need to miss work to testify on or before the first business day after receipt of the subpoena).

Additional states have laws that encourage employers not to take adverse actions against victims for missing work to testify or provide that the victim may ask for assistance in explaining to her employer that she needs to attend court (“employer intercession services”). These laws are suggestive, rather than mandatory.

COLORADO: [Colo. Rev. Stat. 24-4.1-302.5\(n\)](#) [click on “Colorado Statutes,” Title 24, Article 4.1]
FLORIDA: [Fla. Stat. Ann. § 960.001\(i\)](#)
ILLINOIS: [725 Ill. Comp. Stat. 120/5\(a\)\(2\)](#)
KENTUCKY: [Ky. Rev. Stat. Ann. § 421.500\(8\)](#)
LOUISIANA: [La. Rev. Stat. Ann. § 46:1844\(E\)](#)
NEBRASKA: [Neb. Rev. Stat. § 81-1848\(2\)\(h\)](#)
NEVADA: [Nev. Rev. Stat. § 178.5694\(1\)\(2004\)](#)
NEW JERSEY: [N.J. Stat. Ann. § 52:4B-44\(b\)\(13\)](#)
NEW MEXICO: [N.M. Stat. Ann. § 31-26-4\(f\)](#) [click on New Mexico Statutes, Statutory Chapter, Ch. 31, Article 26]] & [N.M. Const. Art. II, Sec. 24\(A\)\(1\)](#) (for victims of specific crimes only)
NORTH CAROLINA: [N.C. Gen. Stat. § 15A-825\(4\)](#)
NORTH DAKOTA: [N.D. Cent. Code § 12.1-34-02\(6\)](#)
OKLAHOMA: [19 Okla. Stat. § 215.33\(8\)](#)
RHODE ISLAND: [R.I. Gen. Laws § 12-28-3\(a\)\(7\)](#)
TEXAS: [Tex. Code Crim. Proc. Art. 56.02\(a\)\(10\)](#)
UTAH: [Utah Code Ann. § 77-37-3\(1\)\(g\)](#)
VIRGINIA: [Va. Code Ann. § 19.2-11.01\(A\)\(3\)\(a\)](#)
WASHINGTON: [Wash. Rev. Code § 7.69.030\(8\)](#)
WEST VIRGINIA: [W. Va. Code § 61-11A-6\(a\)\(8\)](#)
WISCONSIN: [Wis. Stat. § 950.04\(1v\)\(bm\)](#)

RECENT LEGISLATIVE PROPOSALS

The following legislation has been introduced in the current or prior legislative sessions. The contents of the bills vary and the status of a particular bill may change very quickly. For more information about each bill, you may contact Legal Momentum or the legislative information service at your state or city legislature, or consult your legislature’s web page.

Domestic and Sexual Violence Employment Leave

FLORIDA: [S.B. 498](#), 2006 Reg. Sess. (Fl. 2006).

An employee who is a victim of domestic violence or is a household member of a victim is permitted to request or take up to 3 working days of leave from work in any 12-month period, with or without pay. The statute only applies to employers who have 50 or more employees and to employees who have been working for the employer for 12 or more months. The employee may use the leave to seek an injunction for protection, obtain medical care or mental health counseling, obtain other victim services like a shelter, program, or rape crisis center, make her home secure from the perpetrator, and seek legal assistance. The employer must keep all information relating to the employee’s leave confidential. Further, the employer may not “discharge, demote, suspend, retaliate, or in any other manner discriminate” against such an employee. The employee must exhaust all vacation, personal, and sick leave before seeking leave under this statute, unless specifically waived by the employer.

INDIANA: [H.B. 1200](#), 114th Reg. Sess. (2006).

This bill provides that an individual is entitled to take unpaid leave to file for an order for protection or attend a hearing on a petition for an order for protection. It also makes it a Class-B misdemeanor for an employer to “knowingly or intentionally” dismiss an employee for filing for an order of protection or attending a hearing on an order of protection.

LOUISIANA: H.B. 242, 2004 Reg. Sess. (La. 2004).

An employee who is a victim of domestic or sexual violence or has a family or household member who is a victim of such violence and is employed by a private employer with over 50 employees—or by a state or local government or school district—may take up to 6 weeks unpaid leave during any 12 month period to address the violence. This leave may be used to seek medical attention or counseling, obtain services from a victim services organization, participate in safety planning or relocation, or seek legal assistance. Unless impracticable, the employee shall provide 48-hour notice of the leave. The employer may require the employee to provide certification of the violence and that the leave is for an enumerated purpose. The certification requirement may be satisfied by the employee's sworn statement and by documentation from a service provider who has assisted the employee or his or her family member in addressing the violence, by police or court records, or by other corroborating evidence. Includes confidentiality provisions. Additional provisions of this bill would address discrimination against victims more generally; these are described in greater detail on the "Discrimination Against Victims of Domestic or Sexual Violence" state law guide.

KENTUCKY: H.B. 171, 2003 Reg. Sess. (Ky. 2003).

An employer is prohibited from discharging, or discriminating or retaliating against, an employee who is a victim of domestic violence and abuse, stalking, or sexual assault for taking time off to obtain or attempt to obtain judicial relief addressing the violence. The employee must give the employer reasonable notice unless advance notice is not feasible. When an unscheduled absence occurs, the employer may require certification of the violence. The certification requirement may be satisfied by a police report, a court order or other evidence from the court or prosecuting attorney that the employee has appeared in court, or documentation from a relevant service provider. The employer is also required, to the extent allowed by law, to maintain the confidentiality of an employee requesting such leave. In addition, employers with 25 or more employees may not discharge, or in any manner discriminate or retaliate against, an employee who is a victim of domestic violence and abuse, stalking, or sexual assault for taking time off from work to seek medical attention; obtain services from a domestic violence shelter, program, or rape crisis center; obtain psychological counseling; participate in safety planning; or relocate. The bill also prohibits an employer from discharging, or discriminating or retaliating against, an employee, "including but not limited to ... a victim of crime," for taking time off to appear in court to comply with a subpoena or other court orders as a witness in any judicial proceeding. This bill passed the House.

MASSACHUSETTS: S.B. 2338, 2005-2006 Reg. Sess. (Mass. 2006).

This proposed bill would allow an employee who is (or has a household or family member who is) a victim of domestic violence, sexual assault, or stalking to take up to 15 days of leave from work to seek or obtain a court order of protection, medical attention, counseling, victim services, legal assistance, secure housing, or to appear in court as a witness, attend child custody proceedings, or consult with a district attorney or other law enforcement official. Employers could require employees to provide certification of the violence; this requirement could be satisfied by providing a sworn statement of the employee, court record, medical record, statement from a service provider, or other corroborating evidence. The law would only apply to businesses with 50 or more employees. Specifically, employers may not make the leave contingent upon whether or not the victim maintains contact with the alleged abuser. Additionally, an employee who is a victim of domestic violence could take up to 6 months of unpaid leave in the event that such employee seeks emergency shelter placement. In such cases, employers shall make every attempt to allow that employee to return to work to the original or equivalent position. This is new version of S.B. 1091, introduced in 2005.

MISSISSIPPI: H.B. 1426, 2006 Reg. Sess. (Miss. 2006).

This bill would require employers to grant “reasonable and necessary” leave, with or without pay, to victims of domestic violence, sexual assault, or stalking in order for the victim to prepare for and attend court proceedings, receive medical treatment, or obtain necessary services to remedy a crisis resulting from the violence. The employer has the discretion to deny the leave request if the employer would sustain undue hardship from the victim’s absence or the requested leave is impractical, unreasonable, or unnecessary based on the facts made known to the employer. This bill is very similar to HB 953, introduced in 2005, and H.B. 739, introduced in 2002.

NEW JERSEY: A.B. 434 and S.B. 1194, 212th Legis., 2006-2007 Reg. Sess. (N.J. 2006).

These bills would create the New Jersey Security and Financial Empowerment Act to assist victims of domestic or sexual violence. Any employee who is the victim of domestic violence or of a sexually violent offense, or who has a family member who is, shall be entitled to leave of 20 days in any 12-month period as needed for the purpose of: seeking medical attention, obtaining victim services or psychological or other counseling, or participation in safety planning or temporary or permanent relocation. Leave may also be used to seek legal assistance, including attending, participating in, preparing for, or requesting leave to attend, participate in, or prepare for, a criminal or civil court proceeding relating to an incident of domestic or sexual violence to the employee or the employee's family or household member. The employer may require the employee to exhaust accrued paid leave provided by the employer or leave provided under the state or federal family and medical leave acts before using this leave. The employer may require documentation of the domestic violence or sexual offense; this requirement may be satisfied by a restraining order; police record; record of that the perpetrator of the violence has been convicted of a domestic or sexual violence offense; medical documentation; or documentation from a relevant professional. Employers would be required to post notice of the rights under the law. Additional provisions of these bills would address discrimination against victims; these are described on the “Discrimination Against Victims of Domestic or Sexual Violence” state law guide. These bills are very similar to A.B. 3837 and S.B. 2364, introduced in 2005.

NEW YORK: A.B. 4776 & S.B. 3761, 2005-2006 Reg. Sess. (N.Y. 2005).

These bills would create an unpaid leave of absence for victims of domestic violence, sexual offenses, or stalking. They would permit victims of domestic violence, sexual offenses, and stalking to take an unpaid leave of absence from employment for up to 90 days in a twelve-month period to address on-going effects of domestic violence, such as seeking medical attention, attending counseling, seeking legal assistance, seeking support services, or for safety planning. They also contain a provision to protect the individual’s job position and benefits. The individual could be required to submit certification of the violence. This could be satisfied by the individual’s sworn statement, evidence from a professional who assisted the individual, a court proceeding, medical records, or other corroborating evidence. These bills are very similar to A.B. 31 and S.B. 4646, which were introduced in 2004; A.B. 31 passed the Assembly in 2004.

OKLAHOMA: H.B. 2576, 50th Legis., Second Sess. (Ok. 2006).

This bill would create the Victims Economic Security and Safety Act. They would require employers with at least 100 employees to allow employees who are, or have family members who are, victims of domestic violence, sexual assault, and stalking up to 12 weeks of unpaid leave from work for medical care, support services, counseling, safety planning, legal assistance and for court appearances. The employer could require certification of the violence. This could be satisfied by the employee’s sworn statement; additionally, the employee shall provide additional documentation from a service provider or court or police records upon acquiring it. Additional provisions of these bills would address discrimination against victims; these are described in greater detail on the “Discrimination Against Victims of Domestic or Sexual Violence” state law guide. The bill would also offer leave and protections to pregnant women. This bill is very similar to H.B. 1699 & S.B. 935, introduced in 2005. S.B. 935 passed the Oklahoma Senate on March 15, 2005.

PENNSYLVANIA: H.B. 24 & S.B. 424, 189th Gen. Assemb., 2006-2006 Reg. Sess. (Pa. 2005).

These bills would create the Victims of Domestic Violence Employment Leave Act, and would require employers of more than 50 employees to provide up to 30 days leave for eligible employees to secure medical

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treatment and attend to legal proceedings relating to domestic violence involving the eligible employee or the eligible employee's minor child. Leave would also be available for the eligible employee to relocate to a new temporary or permanent residence for reasons related to domestic violence, for the eligible employee to obtain counseling or advocacy services, or for the eligible employee to assist their minor child who is a victim of domestic violence. It also provides that employers shall not discriminate against an eligible employee for exercising the eligible employee's rights under the act. These bills are very similar to H.B. 375 and S.B. 235, which were introduced in 2003; H.B. 375 passed the House in June 2004.

TENNESSEE: H.B. 713 & H.B. 315, 102d Gen. Assemb. (Tenn. 2001).

These bills would create leave for domestic violence victims. H.B. 713 permits an employee to be absent for up to four months to address domestic violence if it is impacting the employee's ability to perform the functions of her position or to care for a child or parent of the employee who is addressing domestic violence. An employer may require documentation of the domestic violence. Additionally, employees who are entitled to take paid or unpaid leave may use such leave to address domestic violence in their lives or to care for a child or parent who is a victim of domestic violence. H.B. 315, which would also cover victims of sexual assault or stalking, would permit employees to take "reasonable and necessary leave from work" for court proceedings, medical treatment, or support services. Such leave need not be granted if the employer would sustain undue hardship from the victim's absence or did not receive the request for leave within a reasonable time under the circumstances, or where the requested leave is "impractical, unreasonable or unnecessary" based on the facts made known to the employer.

WASHINGTON: S.B. 5329, 57th Leg. (Wash. 2001).

An employer must grant "reasonable and necessary leave from work" of up to 6 weeks during any 12-month period for an eligible employee to: (a) prepare for and attend court proceedings; (b) receive medical treatment; or (c) obtain necessary services to address a crisis caused by the violence. To be eligible, an employee must be a victim of a criminal act, harassed or followed by a stalker, a survivor of a homicide victim who was an immediate family member, or the parent of a child who has been subject to sexual abuse. The employer is not required to grant leave if the employer would sustain "undue hardship," if "requested leave is impractical, unreasonable or unnecessary based upon the facts known to the employer;" or if the criminal act has not been reported to local law enforcement. Additionally, the employer is not required to pay for such leave. This bill did not pass, and has not been reintroduced in the current legislative session.

Crime Victim Job Protection Bills

ALASKA: H.B. 391, 23rd Leg., 2d Sess. (Alaska 2003) (would broaden Alaska's existing victim leave statute, Alaska Stat. § 12.61.017, to provide leave for any proceeding where the victim has a right to be present)

DELAWARE: H.B. 276, 141st Gen. Assemb. (Del. 2001) (would allow eligible employees who are victims of violent crime up to 30 days leave for medical treatment, legal proceedings, relocating, or therapy)

GEORGIA: H.B. 52, 149th Gen. Assemb. (Ga. 2005) (would amend Chapter 1 of Title 34, the section of the Georgia Code dealing with general labor issues, to allow an employee who is a victim of a crime to be absent from employment to attend judicial proceedings when such presence is not required by subpoena, summons, or other court order)

INDIANA: H.B. 1185, 114th Gen. Assemb., 2d Sess. (In. 2006) (would allow employees who are the victims of crimes to take unpaid leave from work to attend court proceedings and confer with attorneys *unless* the absence would cause significant difficulty or expense to an employer)

IOWA: H.F. 179, 81st Gen. Assemb. (Ia. 2005) (would require employers to grant leaves of absence, without pay, for crime victims to attend court proceedings)

KENTUCKY: H.B. 69, 2005 Reg. Sess. (Ky. 2005) (would prohibit employers of victims or witnesses from retaliating against or discharging the victims or witnesses based on absence related to investigation or cooperation in the prosecution of the case)

MINNESOTA: S.F. 1438, 84th Legis. Sess. (Mn. 2005-2006) (would offer crime victims protection from employer retaliation when the employee takes reasonable time off from work to obtain relief under this bill)

NEW MEXICO: H.B. 578, 47th Leg. Reg. Sess. (N.M. 2005) (would require employers with more than four employees to give time off to an employee for any judicial proceeding related to a crime against the employee).

SOUTH CAROLINA: H.B. 4651, 115th Sess. (S.C. 2004) (would require the State to grant paid leave for a state employee who was a victim of a violent crime or whose immediate family member was a victim of a violent crime to attend the court proceedings related to that crime). This bill passed the House on Feb. 20, 2004.

TEXAS: H.B. 1750, 79th Legis. Sess. (Tx. 2005) (would allow eligible employees who are crime victims, unpaid time off to attend to a legal or investigative proceeding associated with the prosecution of the crime, or a counseling session conducted by a certified psychiatrist, psychologist, pastoral psychologist, clinical social worker, or clinical mental health counselor)

WISCONSIN: A.B. 269, 96th Leg. (Wisc. 2003) (would allow an employee who is the victim of a crime leave to attend proceedings related to the crime that the victim "has a right to attend" and up to 12 hours counseling)

This fact sheet, with links to cited laws and bills, is available on the Legal Momentum web site at <http://www.legalmomentum.org/issues/vio/FactsheetPage.shtml>.

For more information, contact Staff Attorneys Deborah Widiss, dwidiss@legalmomentum.org or Maya Raghu, mraghu@legalmomentum.org, at (212) 925-6635.