News from Senator

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FOR IMMEDIATE RELEASE:
OCOTBER 1, 1982

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DOLE SAYS HOUSE FAILS AMERICAN PEOPLE WITH BALANCED BUDGET REJECTION

WASHINGTON -- Senator Robert Dole (R.-Kan.) today said the House of Representatives failed the American people by rejecting the proposed constitutional amendment to balance the budget and impose tighter fiscal restraints on Congress.

"Today's vote is a backward step away from fiscal responsiblility, and a great disappointment for American taxpayers, who have the right to expect better from Congress on an issue of this magnitude. If we can't have a balanced budget, then we ought to have a balanced Congress. Hopefully the voters will respond to the regrettable House action and give us a new Congress in November that can and will reverse today's decision."

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SECTION-BY-SECTION SUMMARY
"Sex Discrimination in the U.S. Code Reform Act"

MILITARY

Army

*10 U.S.C. 3683 (Section 101(a)) applies to nurses, women medical specialists and similar employees of the Army Medical Department who received special appointments during World War II. It identifies various periods of service which are creditable for retirement eligibility and for computing retirement pay. It applies only to service completed before January 1, 1949. DOD has indicated that the section is probably obsolete because all personnel with service prior to 1949 should have retired by now. The Act would repeal Section 3683, but contains a grandparent clause in the event that there may be persons still on active duty.

*10 U.S.C. 3963 (Section 101(b)) also applies to nurses, women medical specialists and similar employees of the Army Medical Department who received special appointments during World War II. It provides that personnel in these categories who served before July 1, 1946 in a higher active duty grade, can be retired in that grade. Again, DOD has indicated that the section is probably obsolete as anyone with service prior to 1946 should have retired by now. The Act would repeal Section 3963, but contains a grandparent clause in the event that there may be persons still on active duty.

10 U.S.C. 4309 (Section 101(c)) allows "members of armed forces and able-bodied males capable of bearing arms" to use rifle ranges operated by the Secretary of the Army. The Act would amend Section 4309 by changing "males" to "persons".

10 U.S.C. 4651 (Section 101(d)) allows the Secretary of the Army to provide equipment to any school that does not have an ROTC unit but does have a course in military training and at least "100 physically fit male students". The Act would amend Section 4651 by deleting "male".

*Women in these classes of service received appointments to higher grades during WWII, but were then demoted after the war was over. Sections 3683, 3963, 8683 and 8963 were necessary to restore benefits lost as a result of the demotion.

10 U.S.C. 4712(d)(Section 101(e)) contains the priority list for the disposition of effects of deceased military personnel by summary court martial. The list gives preference to a "son" over a "daughter" a "father" over a "mother" and a "brother" over a "sister". The Act would amend Section 4712(d) so that family members are treated on a sex-neutral basis.

10 U.S.C. 4713(a)(2) (Section 101(f)) contains the same priority list for the disposition of effects of certain deceased military personnel which have been held by the Army for three years after death. The Act would amend Section 4713(a)(2) so that family members are treated on a sex-neutral basis.

24 U.S.C. 52 (Section 105) allows the inmate of a soldier's home to have the inmate's pension paid to a "child, wife, or parent living". The Act would amend Section 52 by replacing "wife" with "spouse".

50 U.S.C. 1591 - 1598. (Section 104) All sections refer to P.L. 78-3509, which provided temporary appointments for Army Nurse Corp members, women medical specialists or similar employees of the Army Medical Department. They contain separate standards for these classes of female personnel in such areas as retirement grade and pay, computation of length of service, uniform allowance, rank, pay and travel allowances. P.L. 78-3509 was passed only for World War II and is now, therefore, obsolete. The Act would repeal these provisions, but contains a savings provision clarifying that the repeal is not in any way to affect the present status of women who received these appointments.

Navy

10 U.S.C. 5896-99, (Section 102(a)-(d)) generally provides separate promotion consideration for men and women among Naval and Marine Corps Reserve officers. A DOD Task Force charged with the responsibility of reviewing and proposing comprehensive reforms in the reserve system (ROPMA Study Group) has already recommended that such distinctions be eliminated. The Act would amend Section 5896-99 so that Naval and Marine Corps Reserve officers receive the same promotion consideration, regardless of sex.

10 U.S.C. 6403 (Section 102(e)) authorizes the Secretary of the Navy to eliminate women officers from active duty status in the Naval and Marine Corps Reserve. Again, the ROPMA Study Group has already recommended that this section should be repealed, so that women can be eliminated from active status only under the same conditions that would require men from being eliminated from the active list. The Act would repeal Section 6403.

10 U.S.C. 7601 (Section 102(f)) lists, among others, the "widows" but not the widowers of members of the Navy as persons who may use

commissaries. The Act would amend Section 7601 by replacing "widows" with "surviving spouses".

Air Force

10 U.S.C. 8683 (Section 103(a)) applies to nurses, women medical specialists and similar employees of the Air Force Medical Department who received special appointments during World War II. It identifies various periods of service which are creditable for retirement eligibility and for computing retirement pay. It applies only to service completed before January 1, 1949. DOD has indicated that the section is probably obsolete because all personnel with service prior to 1949 should have retired by now. The Act would repeal Section 3683, but contains a grandparent clause in the event that there might still be persons on active duty.

10 U.S.C. 8963 (Section 103(b)) applies to nurses, women medical specialists and similar employees of the Air Force Medical Department who received special appointments during World War II. It provides that personnel in these categories who served before July 1, 1946 in a higher active duty grade, can be retired in that grade. Again, DOD has indicated that the Section is probably obsolete as anyone with service prior to 1946 should have retired by now. The Act would repeal Section 8963, but contains a grandparent clause in the event that there may still be a few persons on active duty.

10 U.S.C. 9651 (Section 103(c))allows the Secretary of the Air Force to provide equipment to any school that does not have an ROTC unit but does have a course in military training and at least "100 physically fit male students". The Act would amend Section 9651 by deleting "male".

10 U.S.C. 9712 (Section 103(d)) contains the priority list for the disposition of effects of deceased military personnel by summary court martial. As is the case with the Army, it gives priority to male family members. The Act would amend Section 9712 so that family members are treated on a sex-neutral basis.

10 U.S.C. 9713 (Section 103(e)) contains the same priority list for the disposition of effects of deceased military personnel by a Soldier's home and would be amended so that family members are treated on a sex-neutral basis.

Coast Guard

(The Coast Guard now allows women to participate in all components of the service.)

14 U.S.C. 371 (Section 108(a)) provides that only "male citizens ... may be enlisted as" and "male enlisted members of the Coast Guard ... may be designated as aviation cadets". The Act would amend Section 371 by deleting "male". (The Coast Guard no longer has aviation cadets. However, because the Coast Guard may wish to resurrect the program in the future, the Section should be amended, not repealed.)

14 U.S.C. 487 (Section 108(b)) lists, among others, the "widows" but not the widowers of members of the Coast Guard as persons who may use commissaries. The Act would amend Section 487 by replacing "widows" with "surviving spouses".

46 U.S.C. 599 (Section 110(b)) allows for the allotment of a portion of sailor's wages to "his grandparents, parents, wife, sister or children". The Act would amend Section 599 to permit allotment of wages to the "sailor's grandparents, parents, spouse, sibling, or children".

46 U.S.C. 561 (Section 110(c)) allows for the apprenticing only of "boys" to the sea service. The Act would amend Section 561 by replacing "boys" with "youths".

Benefits for Spouses and Families

5 U.S.C. 2108(3)(f)&(g) (Section 301) provide for benefits to be paid to "mothers" but not fathers of disabled veterans or other individuals who lost their lives during active duty under certain sets of circumstances. The Act would amend Section 2108(3)(f)&(g) so that both parents of the veteran would be eligible for benefits if they met the criteria specified in the statute.

30 U.S.C. 902(a) (Section 332) defines, for purposes of black lung benefits, a "dependent" as including "wife" and "widow" but not husbands and widowers. 30 U.S.C. 843(d), 902(e), 902(g), 921, 922(a), 922(b), 923(b), 924(a)&(e), 931, and 934 also contain the sex-based references of "wife" and "widow" as a result of this definition of "dependent". These sections would be amended so that "husbands" and "widowers" are included as dependants as well. The Department of Labor has already so amended its regulations.

42 U.S.C. 1652 (Section 329) is a little used section of the Defense Base Compensation Act. It provides that compensation to "dependents" of aliens and nonnationals includes the "wife" but not the husband. The section would be amended by replacing "wife" with "spouse".

33 U.S.C. 771 & 772 (Sections 109(a)&(b)) provide survivor's benefits for the "widows" but not the widowers of Lighthouse Service Personnel. The Act would amend Sections 771 & 772 by replacing "widows" with "surviving spouse". (The Lighthouse Service is no longer a separate

service of the Coast Guard and the class of persons to whom Sections 771 & 772 applies is extremely small, if any.)

18 U.S.C. 3056 (Section 313) provides only for Secret Service protection of a former President's "wife" or "widow". The Act would amend Section 3056 by changing "wife" to "spouse" and "widow" to "surviving spouse".

28 U.S.C. 604 (Section 328) allows the Director of the Administrative Office of the U.S. Courts to regulate and pay annuities to "widows" of judges. P.L. 94-544 extended benefits to both the widows and widowers of judges on a sex-neutral basis, but failed to correct Section 604. The Act would amend Section 604 by replacing "widow" with "surviving spouse".

Immigration and Naturalization

8 U.S.C. 1557 (Section 302(e)) prohibits the transportation in foreign commerce of "women and girls" for the purposes of prostitution and debauchery. The Act would amend Section 1557 by replacing "women and girls" with "adults and youths".

8 U.S.C. 1353 (Section 302(a)) authorizes payment of the transportation expenses of the "wives" and dependent children of employees of INS performing duties in foreign countries. The Act would amend Section 1353 by providing for the expenses of "spouses" of INS employees, consistent with current practice.

**8 U.S.C. 1452 (Section 302(c)) provides procedures to procure certificates of citizenship for persons who derived U.S. citizenship through the naturalization of a parent or "husband". The Act would amend Section 1452 by changing "husband" to "spouse".

**8 U.S.C. 1451(e) (Section 302(b)) provides that the revocation of a person's citizenship or naturalization shall not affect any right or privilege of the person's "wife" or minor child which would have derived if the revocation had not occurred. The Act would amend Section 1451(e) by changing "wife" to "spouse".

**8 U.S.C. 1489 (Section 302(d)) provides that notwithstanding any treaty or convention to the contrary no "woman" is to lose U.S. nationality because of marriage to an alien, or through residence abroad following such a marriage. The Act would amend Section 1489 by changing "woman" to "person".

22 U.S.C. 214 (Section 302(f)) excuses the payment of passport fees for a "widow" of a deceased member of the Armed Forces who is travelling abroad to visit the grave of the deceased. The Act would amend Section 214 by changing "widow" to "surviving spouse".

**These statutes are "protective" in nature. That is, they were designed to protect women from laws existing in the early part of the century in this country, and the customs and conventions of foreign countries, making the legal status of a woman dependent on that of her husband. Because there are no similar known laws, customs, or conventions affecting men, rephrasing the language of these statutes in sex-neutral terms will not bestow any additional citizenship rights, priveleges, etc. that do not already exist under current law.

Social Security***

42 U.S.C. 402(b),(c),(e)&(f) (Section 201) provides for the payment of benefits to aged divorced wives and aged or disabled surviving divorced wives, but benefits are not provided for similarly situated men. These provisions have been held unconstitutional in a number of court decisions and benefits are currently also being paid to aged divorced husbands and aged surviving divorced husbands, based on their former wives' earnings. The Act would amend these Sections to conform to the court decisions.

42 U.S.C. 402(b)&(g) (Section 206) provide benefits for a mother who has in her care a child of her retired, disabled, or deceased husband. Benefits are not provided for similarly situated men. This distinction was held unconstitutional in Weinberger v Wiesenfeld, 420 U.S. 636 (1975), other court decisions and subsequent administrative decisions. Currently a similarly situated father can also qualify for benefits based on his retired, disabled, or deceased wife's past earnings. The Act would amend these Sections to conform to the court decisions.

42 U.S.C. 402(e)&(f) (Section 202) provides that widows and widowers who remarry before age 60 are treated differently with respect to their eligibility for benefits based on their deceased spouses' earnings. A woman may qualify for benefits as a surviving spouse, even though she has remarried, so long as she is not married at the time she applies for benefits. A man on the other hand, currently loses forever his eligibility as a surviving spouse of his deceased working wife if he remarries before age 60. This distinction was held to be unconstitutional in Mertz v Harris, 497 F. Supp. 1134 (S.D. Tex. 1980) and benefits are now paid to widowers who have remarried but are not married at the time of application. The Act would amend these Sections to conform to the court decisions.

***A cost impact analysis of eliminating gender-based distinctions in the Social Security Act was done in late 1980. None of the proposed changes would have a cost-impact greater than 1/2 million dollars.

42 U.S.C. 403 &405 refer to benefit categories established by the preceeding sections and would be amended to conform to the amendments made to those sections.

42 U.S.C. 416 (Section 203) relates to benefits for illegitimate children. In general, the determination of one's status as a parent or child for purposes of the Social Security program is based upon the intestate succession laws of the state in which the insured individual is domiciled. However, an illegitimate child may be eligible for benefits based upon a man's earnings, without regard to the appropriate state intestate laws, if, among other things, the man has been decreed by a court to be the father of the child, or the man is shown by evidence satisfactory to the Secretary to be the father of the child. Similar provisions do not currently apply when an illegitimate child claims a benefit based upon his mother's earnings. The Act would amend this Section so that illegitimate children would be eligible for benefits based on their mother's earnings as they are currently for benefits based on their father's earnings.

42 U.S.C. 417 (Section 207) permits the widow of a veteran, under certain circumstances, to waive her right to a civil service survivor's annuity and receive credit for military service prior to 1957 for purposes of determining eligibility for, or the amount of, Social Security survivor's benefits. The Act would amend this Section to extend the same option to widowers.

42 U.S.C. 422, 425, and 426 refer to benefits categories established by Section 402 (listed above and would be amended to accordingly).

42 U.S.C. 427. (Section 204) Under this provision, certain workers who attained age 72 before 1969 are eligible for Social Security benefits under transitional insured status provisions which require fewer quarters of coverage than would ordinarily be required. Wives and widows of eligible male workers who reached 72 prior to 1969 also are eligible for benefits under this provision, but husbands and widowers of eligible female workers are not. The Act would amend this Section to extend transitional insured status to such husbands and widowers.

42 U.S.C. 428 (Section 205) authorize benefits for certain uninsured individuals who attained age 72 prior to 1972. In order for a couple to receive benefits under this section, both spouses must have attained age 72 prior to 1972. However, even though each spouse must meet the same eligibility requirements he or she would have to meet if not married, once the eligibility of both is determined, the couple is treated as if the husband were the retired worker and the wife were the dependent. The amount of the special payment of the couple is not divided equally between husband and wife. Rather, the payment is allocated so that the husband is paid 2/3 and the wife is paid 1/3. The Act would amend these Sections so that the payment is equally divided between the two.

Welfare

42 U.S.C. 633 (Section 214(a)) gives priority for placement in the WIN program first, to unemployed fathers, and then to mothers. The Act would amend Section 633 by giving a uniform category of preference to "unemployed parents". (The priorities are a vestige of the Aid to Dependent Children Unemployed Fathers Program under 42 U.S.C. Section 607. The courts found the sex-based distinction unconstitutional in Westcott v Califano, 443 U.S. 76 (1979). As a result, that program is now the Unemployed Parents Program. Note: The Administration has recommended the termination of the WIN program, though the Congress may decide to continue funding.)

Department of Agriculture

42 U.S.C. 1773(c) (Section 304) concerns the priority to be given to the selection of schools for participation in the school breakfast program. One of the factors listed to consider is whether there is a special need to improve the dietary practices of children of working "mothers". The Act would amend Section 1773(c) by changing "mothers" to "households in which both parents work or from single-parent households in which the parent works".

Department of Transportation

46 U.S.C. 331 (Section 311) abolishes customs and other fees for certain services to U.S. vessels. One of these services is the apprenticing of "boys" to the merchant service. The Act would amend Section 331 by changing "boys" to "youths".

46 U.S.C. 601 (Section 312) prohibits the attachment of a sailor's wages unless attached pursuant to a court order regarding the payment of support and maintenance for the sailor's "wife and minor children". The Act would amend Section 601 by replacing "wife" with "spouse".

Bureau of Indian Affairs

25 U.S.C. 13 (Section 305) authorizes the Bureau of Indian Affairs to direct, supervise and expend monies for the benefit, care and assistance of Indians for a number of specified purposes, including the employment of "field matrons". This particular provision is obsolete. The Act would amend Section 13 by deleting "field matrons".

25 U.S.C. 137 (Section 306) was enacted in 1875 and authorizes an agent distributing supplies on an Indian reservation to require "able-bodied Indian males" to perform certain services for the benefit of a tribe. The Act would repeal Section 137.

****25 U.S.C. 181 (Section 307(2)) provides that a white man may not acquire a right to tribal property by marrying an Indian woman. The Act would amend Section 181 by providing that no "non-Indian" may acquire a right to tribal property by marrying an Indian.

25 U.S.C. 182 (Section 307(3)) provides that an Indian woman who marries a U.S. citizen also becomes a U.S. citizen, but does not lose any tribal property rights. Section 182 was made obsolete by the Indian Citizenship Act. The Act would repeal Section 182.

****25 U.S.C. 183 (Section 307(4)) specifies the type of evidence which is required to prove a marriage between a "white man" and "Indian woman". The Act would amend Section 183 by changing "white man" to "non-Indian" and deleting "woman".

****25 U.S.C. 184 (Section 308(1)) provides that the children of a marriage solemnized prior to June 7, 1897, between a "white man" and an "Indian woman" shall have the same rights and privileges as other members of the "mothers" tribe. The Act would amend Section 184 so that the children of marriages between a "non-Indian" and an "Indian" will have the rights and privileges of the "parents" tribe.

****Sections 181, 183, and 184 were all designed to protect Indian women from tribal customs giving the non-Indian spouse all her tribal property rights, and divesting the children of such marriages of tribal property rights. Because there are no similar tribal customs applying to men, extending the same protections to men by rephrasing the language of these provisions in sex-neutral terms will have no substantive impact.

25 U.S.C. 274 (Section 308(2)) authorizes the Commissioner of Indian Affairs to employ "Indian girls as Assistant matrons" and "Indian boys as farmers and industrial teachers". The Act would amend Section 274 by allowing the Commissioner to employ Indian "youths" as "dormitory aides" and "as farmers and industrial teachers", consistent with current practice.

25 U.S.C. 342 (Section 309) prohibits the removal of Southern Utes to a new reservation without the consent of the "adult male" tribal members. Section 342 is obsolete and would be repealed by the Act.

*****25 U.S.C. 371 (Section 310) provides that illegitimate Indian children are the legitimate issue of their father for the purpose of determining descent of land. The Act would amend Section 371 to provide that illegitimate children are the legitimate issue of both parents for such purposes.

*****Under the applicable tribal customs and common law principles, illegitimate children are also deemed the legitimate issue of the mother. Thus, rephrasing the language of Section 371 in sex-neutral terms will have no substantive impact.

Homesteading******

43 U.S.C. 161 and 162 (Sections 314&315) allows a citizen or a person intending to become a citizen, who has reached the age of 21, or who is "the head of a family" to be entitled to enter unappropriated public lands. Under state statutes, federal regulations and the common law, the "head of a family" customarily refers to the husband or the father. The Act would amend Sections 161 and 162 to clarify that either spouse or parent is entitled to entry.

43 U.S.C. 164 (Section 316) sets forth the rules for the issuance of certificates or patents. The provisions applicable when the enterer dies refer only to the "widow". The Act would amend Section 164 by replacing "widow" with "surviving spouse".

43 U.S.C. 166 (Section 317) provides that an unmarried female settler does not forfeit her rights to enter upon marriage so long as she does not abandon her residence. Section 166 also provides, however, that she forfeits her rights if the man she marries claims a separate tract under the homestead laws. The Act would amend Section 166 by eliminating the provision requiring the woman to forfeit her rights if her husband claims a separate tract, and extends to both sexes the requirement that they must continue to reside on the tract if they wish to make entry.

43 U.S.C. 167 (Section 318) provides that the marriage of two homesteaders does not impair either's right to a patent, but gives the husband the right to choose the family's domicile. The Act would amend Section 167 so that both husband and wife must elect together on which tract they wish to live.

43 U.S.C. 168 (Section 319) provides that the marriage of a female enterer to an alien does not impair the females entitlement to a certificate or patent. The provision was designed to protect women from the once prevalent legal doctrine that if a female citizen marries an alien she forfeits her citizenship. Since this legal doctrine no longer applies, Section 168 is obsolete and would be repealed by the Act.

43 U.S.C. 170 (Section 320) provides certain protections to the "wives" of enterers who are deserted. The Act would amend Section 170 to provide the same protections to either spouse if they have been deserted.

******The Homesteading provisions amended by the Act now only apply to the state of Alaska, and will no longer be effective after 1986.

43 U.S.C. 240, 243(a), 255, 272, 278 and 50 U.S.C. 563, 564 and 570 (Sections 321-326) permit service personnel and their families to count service time toward homestead entry requirements. All sections assume that service personnel are only male, referring only to the "wives" and "widows" of service personnel. The Act would amend the Sections by replacing"wife" with "spouse" and "widow" with "surviving spouse", and clarifying that service personnel includes persons of both sexes.

Department of Justice

42 U.S.C. 1986 (Section 330) creates a cause of action for damages resulting from a wrongful conspiracy. The section provides that if death results from the conspiracy, the deceased's legal representative can recover damages for the benefit of the "widow" and if there is no widow, to the "next of kin". The Act would amend Section 1986 by replacing "widow" with "surviving spouse".

Railroad Retirement Board

45 U.S.C. 231a(c)(1)(ii)(C) (Section 213) pertains to retirement benefits for the spouses of retired employees. Generally, the spouse of a retired employee will not be eligible for benefits unless the spouse has also reached retirement age. The exception is for a "wife" when the couple has dependent children in their care. The Act would amend this Section to also provide benefits to the husbands of female retired employees where the husband has not yet reached retirement age and the couple still has dependent children.

45 U.S.C. 231a(d)(1). This Section entitles a widow, surviving divorced wife, and surviving divorced mother to annuity benefits, but not to similarly situated males. These eligibility provisions are based on definitions contained in Section 216 of the Social Security Act, which, as previously mentioned, have been held unconstitutional. The Railroad Retirement Board currently pays benefits to widowers, surviving divorced husbands, and surviving divorced fathers. The Act would amend this Section to conform to current practice.

45 U.S.C. 231e(a)(2) was amended by the Omnibus Reconciliation Act in this Congress (P.L. 97-35) and the sex based distinction contained in it was simply a drafting error. A code section of the Social Security Act was used as a guide, even though the particular section used has been held unconstitutional. The section, as written, provides eligibility for lump-sum payments where an individual has died leaving no "widow, surviving divorced wife, or widower", but not requiring there to be no surviving divorced husband. The Act would amend this Section to include a requirement that there also be no surviving divorced husband.

Criminal Code

18 U.S.C. 2032 provides that whoever, within the special maritime and territorial jurisdiction of the United States "carnally knows any female, not his wife, who has not attained the age of sixteen years" shall, for a first offense, be imprisoned not more than fifteen years, and for a subsequent offense, be imprisoned not more than thirty years. The Act would replace the quoted language with the phrase "engages in a sexual act with another person who is not his spouse, who in fact, is less than sixteen years old". This language is identical to that proposed by S. 1630 (Section 1643). The Title of Section 2032 would also be amended to read "Sexual Abuse of a Minor".

18 U.S.C. 1153 makes a violation of Section 2032 (above) on Indian territory a federal offense. The gender based language would be amended in accordance with the amendments made to Section 2032.

18 U.S.C. 2198 makes it an offense to "seduce" a female passenger on an American vessel. Section 2198 would be repealed by the Act.

18 U.S.C. 3614 specifies the penalty for a violation of Section 2198 (above) and would also be repealed by the Act.

18 U.S.C. 2424 is an obsolete provision of the Mann Act which pertains to the filing of factual statements with the Immigration and Naturalization Service concerning "women and girls" who have been kept, maintained, controlled, etc., in this country for the purpose of prostitution or other immoral purposes. The Act would repeal Section 2424.

18 U.S.C. 245 prohibits interference with certain civil rights by force or threat of force. The Act would add "sex" as a protected category.

Miscellaneous

24 U.S.C. 165 (Section 331(a)) provides that pensions of male inmates of St. Elizabeth's may be used for the benefit of their "wives and minor children," but pensions of female inmates may be used only for the benefit of "minor children". The Act would amend Section 165 by allowing pensions to be used for the benefit of both the "spouse and minor children" of female inmates.

24 U.S.C. 191 (Section 331(b)) provides that St. Elizabeth's may admit insane civilians of the Quarter Master Corps and "men" who were insane while in military service and become insane again after discharge. The Act would amend Section 191 by replacing "men" with "persons".

48 U.S.C. 1461 (Section 327) provides that no polygamist or bigamist or woman cohabiting with the same may vote or hold office in a U.S.

Territory. The provision is of questionable constitutionality and in any event no longer has any known substantive application. The Act would repeal Section 1461.

41 U.S.C. 35 and 36 (Section 303(a)&(b)) establish minimum age levels for persons able to enter into contracts with executive departments, independent agencies, etc. The minimum age for males is 16 but for females, 18. DOL has already amended its regulation to provide the same minimum age of 16 for both sexes. The Act would amend Sections 35 and 36 to conform to current practice.

CODE SECTIONS IDENTIFIED AS CONTAINING SEX BIAS
WHICH WOULD NOT BE AMENDED BY THE ACT

A. Controversial Code Sections

Military

10 U.S.C. 6015 (Department of Navy) prohibits women in combat.

10 U.S.C. 8549 (Air Force) prohibits women in combat.

50 U.S.C. App. 453-456, 466 Selective Service Provisions.

Immigration and Naturalization

8 U.S.C. 1101(b)(1)(D), 1409, 1432 provide that children born out of wedlock are deemed to have acquired the nationaltiy status of their mother, but not their father, and thus relates to the sensitive "Amerasian Children" issue. Separate legislation to address the problem is currently moving its way through the Senate.

8 U.S.C. 1101(a)(42), 1182(e), 1253(h)(1) all provide protections to aliens fleeing from countries because of persecution based on race, religion, nationality, etc. Sex is not a protected category. These Code Sections implement the U.N. Convention Relating to the Status of Refugees. (Adopted in 1951. U.S. became signatory in 1968.) The convention is not self-executing. To date, U.S. laws have been implemented and applied coextensively with the Convention, but have not gone beyond it. The legislative solution should entail a careful analysis of the policy implications of going beyond the convention, and resolution of the definitional problems arising as a result of including "sex" as a protected category.

Social Security

42 U.S.C. 202(c) and (d) pertain to benefits for spouses of disabled workers and childhood disability beneficiaries. Currently, in general, if a childhood disability beneficiary or disabled worker beneficiary marries a person getting certain kinds of social security dependent or survivor benefits, the benefits of each individual continue. If the beneficiary is a male and he recovers or engages in substantial work and his benefits are terminated, his wife's benefits also end. If, however, the disabled beneficiary is a woman, her husband's benefits are not terminated when her disability benefits end. There is a significant difference in opinion as to whether benefits would be "equalized up" so that neither beneficiary loses benefits when the spouse recovers, or whether they should be

"equalized down" so that either beneficiary loses benefits when the spouse recovers, the presumption being that the dependency situation on which the benefits were originally based no longer exists. The legislative solution should entail a careful analysis of the impact of each approach, and exploration of possible "middle-road" alternatives.

42 U.S.C. 411. This Section currently provides that in community property states, all income from a business owned or operated by a married couple is deemed, for purposes of Social Security, to be the husband's unless the wife exercises substantially all the management and control. In all other States, such self-employment income is credited to the spouse who owns or is predominantly active in the business. Simple deletion of the sex-based distinction, i.e., so that the self-employment income of a married couple in a community property state is treated the same as such income in non-community property state, may not be the most equitable solution, and in any event, would be inconsistent with the recent case of Edwards v Schweicker, a nationwide class action suit, where the court ordered that a pro-rata share of the income should be credited to each spouse, depending upon the contributions of that spouse. The legislative solution to the problem should entail a detailed analysis of the Edwards order and evaluation of SSA's experience in complying with it.

Criminal Code

18 U.S.C. 2031 provides that "Whoever within the special maritime and territorial jurisdiction of the United States, commits rape shall suffer death, or imprisonment, for any terms of years or for life." Though the statute on its face contains no gender-based distinctions, it has been interpreted as incorporating the common law definition of rape, i.e., that it involves carnal knowledge of a female not the offender's wife by force or threat of bodily harm and without her consent. Every state in the Union now has a sex-neutral definition of the rape offense in their criminal codes. Unfortunately, efforts in Congress to cure this provision have met with opposition centered on such issues as the removal of the common law requirements that the victim and offender not be married, and that a victim's testimony must be corroborated.

18 U.S.C. 2421-2423, the Mann Act, is the principal federal statute dealing with prostitution. Section 2421 makes it an offense for a person to knowingly transport in interstate or foreign commerce any "woman or girl" for the purpose of prostitution, debauchery, or other immoral purposes. Section 2422, a companion statute, makes it an offense for any person to knowingly pursuade, induce, entice, etc., any "woman or girl" to travel in interstate or foreign commerce for the purposes of prostitution, debauchery, etc. Section 2423, as amended by P.L. 95-225 is now phrased in sex-neutral terms and deals with the transportation of minors for prostitution purposes or to otherwise commercially exploit the sexual conduct of the minor.

As the Report on the proposed criminal code, S. 1630 states, in addition to being objectionable because of its sex-bias, the Mann Act is also defective because its focus is on the jurisdictional, rather than on areas where there is a true federal government interest, e.g., organized crime's involvement in prostitution businesses. As the Report concludes, the Mann Act should be repealed and replaced with a sex-neutral offense of prostitution, which focuses on those who operate prostitution businesses, and which is not geared primarily toward enforcement against the female prostitute, a focus of many state prostitution statutes.

Note: Section 2424 of the Mann Act which is obsolete would be repealed by the Act.

B. Code Sections Already Cured or Containing no Facial Substantive Bias

Military

10 U.S.C. 3504 repealed P.L. 96-513, Title II, Section 210, 12/12/80.

10 U.S.C. 3848 (Separate Section for women repealed 1960 P.L. 86-559.)

10 U.S.C. 3888 repealed 96-513 12/12/80.

10 U.S.C. 3927 Repealed P.L. 96-513 12/12/80.

24 U.S.C. 44a repealed 94-454 10/2/76.

14 U.S.C. 372, 373 and 10 U.S.C. 6912, 6913 and 6915 provide benefits for aviation cadets. They contain no facial sex-bias. Presumably were listed because 14 U.S.C. 371 and 10 U.S.C. 6015 do not allow women to be aviation cadets, and therefore women would not be eligible for those benefits. (14 U.S.C. 371 would be cured by Act.)

33 U.S.C. 773, 774 and 775 contain no facial sex-bias.

Benefits for Spouses and Families

28 U.S.C. 375 repealed P.L. 96-504(1980).

Welfare

42 U.S.C. 602, 602(a)(19)(A), and 602(a)(19)(G)(iv) have all been cured in this Congress by P.L. 97-35 (Omnibus Reconciliation Act).

Department of Agriculture

7 U.S.C. 1923 was cured in this Congress by P.L. 97-98.

Department of Interior

43 U.S.C. 271, 278 contain no facial bias.

U.S. Congress

31 U.S.C. 97, 43(b) were cured in this Congress by P.L. 97-258.

Miscellaneous

31 U.S.C. 125 was cured in this Congress by P.L. 97-258.

42 U.S.C. 1395 mm(a)(3)(A)(iv) was cured in this Congress by P.L. 97-248.

Remedial

10 U.S.C. 8848(b) allows the Secretary of the Air Force to retain on active duty nurses, medical specialists and female line officers who are in the reserve grade of lieutenant colonel until the completion of 30 years of active service. Section 8848(b) is apparently remedial in nature as previously, these categories of female personnel were limited to 25 years (as opposed to 28 for their male counterparts).