

## VAWA Reauthorization 2012 – RF Position

- **What is VAWA?**

- The Violence Against Women Act (VAWA) is a federal law intended to improve America’s response to crimes targeting women, such as domestic violence, sexual assault, dating violence, and stalking. VAWA attempts to accomplish this by providing for federal prosecution of many such crimes and by furnishing funding and a framework for a coordinated, community-based response to these crimes, uniting the criminal justice system, social services, and private organizations. The Act uses a two-fold approach: it seeks to improve detection, prosecution, and prevention of violent crimes against women within the criminal justice system, and it increases funding for victim services, for both government and private providers. VAWA was first enacted in 1994 and was reauthorized in 2000 and 2005. It is currently up for reauthorization again.
- Some Specific Provisions<sup>1</sup>:
  - Tougher federal laws
  - Interstate recognition of protective orders
  - Mandated restitution for victims of certain federal sex offenses
  - New civil remedy for victims of sexual assault
  - Funding for a variety of grant programs focusing on three areas—violence prevention (e.g., youth education), prosecution and investigation (grants to state, local, and tribal law enforcement agencies), and victim services (court advocates, National Domestic Violence Hotline, etc.)
  - Research to be done on violence against women by the Department of Health and Human Services, National Academy of Sciences, and the Attorney General
  - Established the Office of Violence Against Women

- **Relation to Trafficking**

VAWA intersects with the trafficking movement in a number of ways, including that it...

- helps strike at one of the prime causes of domestic sex trafficking—domestic violence<sup>2</sup>
  - Funds prevention programs that intervene early with children who have witnessed domestic violence,
  - Supports young families at risk for violence,
  - Sponsors targeted interventions with men and youth;
- provides extended protections for immigrant victims of sex trafficking<sup>3</sup>
  - Created U and T visas, as well as the VAWA self-petition
  - Removes penalties for failing to depart voluntarily,
  - Waives requirement that trafficking victims assist law enforcement if psychological or physical trauma impedes their ability to do so,

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<sup>11</sup> Congressional Research Service, *The Violence Against Women Act: Overview, Legislation, and Federal Funding*, Lisa M. Seghetti and Jerome P. Bjelopera, CRS Report R42499 (Washington, DC: Office of Congressional Information and Publishing, May 10, 2012). Pp. 2-4. (Hereinafter VAWA 2012 CRS Report).

<sup>2</sup> National Network to End Domestic Violence, *The Violence Against Women Act of 2005 Fact Sheet*, <http://www.nnedv.org/docs/Policy/VAWA2005FactSheet.pdf> (accessed June 22, 2012)

<sup>3</sup> Joanne Lin and Leslye Orloff, *VAWA 2005 Immigration Provisions*, [http://www.legalmomentum.org/assets/pdfs/vawa\\_immigration\\_provisions.pdf](http://www.legalmomentum.org/assets/pdfs/vawa_immigration_provisions.pdf) (accessed June 22, 2012)

- Improves protection for children of U visa recipients by providing that certain family members can receive U visas without having to show that the visas are necessary to avoid extreme hardship,
    - Protects trafficking victims' family members living abroad by allowing them to receive T visas without having to show extreme hardship,
    - Provides exception to the penalties for being unlawfully present when trafficking was main reason for unlawful presence,
    - Grants VAWA confidentiality to trafficking victims,
    - Implements stronger vetting process for US residents seeking a K visa for an immigrant spouse or fiancée to better prevent abuse;
  - demonstrates a successful model for coordinating community resources to provide support services for crime victims;
  - strengthened evidentiary protections for victims of sexual crimes<sup>4</sup>
  - Raises general awareness about sex crimes against women, who are by far the most frequent victims of sex trafficking.<sup>5</sup>
- **2012 VAWA Reauthorization**
  - VAWA's funding allocation ran out in 2011, and two main reauthorization bills have been proposed and passed, S. 1925 in the Senate, and H.R. 4970 in the House
  - Some pertinent common features<sup>6</sup>:
    - Both bills would cut back overall funding by either decreasing or maintaining the previous level of funding for each program
      - H.R. 4970 would decrease the annual VAWA appropriation by about \$135 million to roughly \$655 million per year<sup>7</sup>
      - S. 1925 would decrease the annual VAWA appropriation by about \$129 million to roughly \$661 million per year<sup>8</sup>
    - Both the House and the Senate versions broaden the purpose areas of grants to tribal governments and coalitions to include raising awareness of sex trafficking
    - Both bills would create mandatory minimum sentences for aggravated sexual abuse by force or threat (5 year minimum in S. 1925, 10 year minimum in H.R. 4970)
    - Both seek to increase accountability of grantees (though H.R. 4970's accountability provisions are more stringent in this regard)<sup>9</sup>

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<sup>4</sup> See Fed. R. of Evid. 412.

<sup>5</sup> An estimated 80% of international trafficking victims are women. See U.S. Department of State, *Trafficking in Persons Report*, 7th ed. (Washington, DC: U.S. Department of State, 2007), 8.

<sup>6</sup> *Id.* at 11-12.

<sup>7</sup> See Congressional Budget Office Cost Estimate, *H.R. 4970 Violence Against Women Reauthorization Act of 2012*, (Washington: Government Printing Office, May 11, 2012), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr4970.pdf>

<sup>8</sup> See Congressional Budget Office Cost Estimate, *S. 1925 Violence Against Women Reauthorization Act of 2011*, (Washington: Government Printing Office, May 11, 2012), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/s1925.pdf>

<sup>9</sup> See VAWA 2012 CRS Report, p. 16.

- Both bills enhance criminal penalties for assaulting a spouse, intimate partner, or dating partner, and for criminal and civil rights violations involving sexual abuse
- Both include provisions designed to prevent VAWA self-petitioners from aging out while their petition is being adjudicated, and exempting self-petitioners, U visa applicants, and battered foreign nationals from being refused admission on the basis of their financial condition, as well as several other immigrant-related gap-closing provisions<sup>10</sup>
- Some controversial differences:
  - Related to U visas
    - S. 1925 raises the cap on U visas from 10,000 to 15,000<sup>11</sup>
    - H.R. 4970 adds two requirements to the prerequisite law enforcement certification that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of a crime; namely that:
      - the criminal activity is actively under investigation or a prosecution has been commenced, and
      - the petitioner has provided to law enforcement information that will assist in identifying the perpetrator of the criminal activity or the perpetrator’s identity is known<sup>12</sup>
    - H.R. 4970 largely curtails the ability of U visa grantees to adjust their status to lawful permanent residency after three years, limiting it to only those situations where the criminal convicted of the offense for which the grantee received a U visa was an alien, and has been deported to the grantee’s home country<sup>13</sup>
  - Related to VAWA self-petitions
    - H.R. 4970 clarifies that USCIS investigative officials may consider any credible evidence, including that proffered by the accused spouse, when adjudicating VAWA self-petitions<sup>14</sup>
    - H.R. 4970 requires a face-to-face interview by a local USCIS official as part of the VAWA self-petition adjudicative process<sup>15</sup>
    - H.R. 4970 requires USCIS investigative officials to determine whether:
      - the VAWA petitioner has previously been denied immigration benefits, and if so, the reasons therefore<sup>16</sup>

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<sup>10</sup>Congressional Research Service, *Immigration Provisions of the Violence Against Women Act (VAWA)*, by William A. Kandel CRS Report R42477 (Washington, DC: Office of Congressional Information and Publishing, May 15, 2012), p. 13.

<sup>11</sup> Violence Against Women Reauthorization Act of 2011, S. 1925, 112th Cong. § 805(a)(2) (2011).

<sup>12</sup> H.R. 4970, § 802(1).

<sup>13</sup> Violence Against Women Reauthorization Act of 2012, H.R. 4970, 112th Cong. § 801(a) (2012).

<sup>14</sup> *Id.* at § 806.

<sup>15</sup> *Id.* at § 801(b)(1) (prospectively codified in 8 U.S.C. 1154(a)(1)(A)(iii)(III)(bb))

- any law enforcement agency has launched or completed an investigation or prosecution based on the alleged abuse, and consider the evidence uncovered by the investigation or the lack thereof in making a final decision (if an investigation is ongoing, the adjudication process will be stayed until the investigation is complete)<sup>17</sup>
- **Conclusions**
  - Reauthorization of the majority of core VAWA programs and grants are non-controversial and urgently needed, and should be the main priority of advocates
  - Putting aside the tribal jurisdiction and sexual orientation/identity non-discrimination issues, the primary tension points seem to be:
    - How broadly U visa protections should be spread:
      - Should U visa eligibility be tightened up to apply to only those immigrants who are participating in ongoing police investigations or prosecutions, or
      - Should it continue to include all immigrant crime victims who have been, are being, or are likely to be helpful to a criminal investigation or prosecution?
    - Whether the U visa should be a stop en route to a green card, or whether it should function as a terminus for the vast majority of U visa grantees
      - Is the U visa functioning as a loophole for otherwise illegal immigration, or
      - Is the possibility of transitioning to lawful permanent residency necessary to encourage immigrant crime victims to cooperate with law enforcement?
    - The extent of fraud within the VAWA self-petitioning system
      - Are some immigrants successfully falsely accusing U.S. residents of violence in order to obtain a green card, or
      - Are the additional anti-fraud measures (personal interview prior to granting petition, expanded evidence review) unnecessary and harmful to legitimate petitioners?

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<sup>16</sup> *Id.* (prospectively codified in 8 U.S.C. 1154(a)(1)(A)(iii)(III)(dd))

<sup>17</sup> *Id.* (prospectively codified in 8 U.S.C. 1154(a)(1)(A)(iii)(V)(aa))