ADOPTED

AMERICAN BAR ASSOCIATION

COMMISSION ON DOMESTIC & SEXUAL VIOLENCE
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
NATIONAL CONFERENCE OF WOMEN'S BAR ASSOCIATIONS
CENTER FOR HUMAN RIGHTS

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges Congress to re-authorize and fully
fund the Violence Against Women Act ("VAWA") and similar legislation that:

1. Preserves the protections approved in the 2013 reauthorization of VAWA, and
continues to respond to emerging challenges and to the concerns from the field of
expert professionals;

2. Improves services, minimizes bias, and prioritizes safety, autonomy, and support
for all victims of gender-based violence, with a particular emphasis on the self-
defined needs of marginalized and underserved groups, including victims who:
   a. are LGBTQ;
   b. are immigrants, without regard for their legal status;
   c. are Indigenous;
   d. are persons of color;
   e. live with a disability, including mental/behavioral health disabilities and/or
      substance use disorders;
   f. are youth or elders;
   g. primarily speak a language other than English;
   h. are members of a religious minority;
   i. live in rural or frontier areas; or
   j. are or were incarcerated;

3. Enhances judicial, legal, and law enforcement tools that respond to domestic
violence, dating violence, sexual assault, and stalking in a trauma-informed way,
including by:
   a. recognizing tribal courts’ inherent jurisdiction over gender-based and
      related violence committed on tribal lands;
b. restricting adjudicated abusers’ access to firearms; and

c. allowing for innovation in developing victim-defined alternatives to
   traditional justice responses;

4. Strengthens the healthcare system’s comprehensive and trauma-informed
   response to domestic violence, dating violence, sexual assault, and stalking;

5. Provides economic and housing opportunities and protections for victims of
   domestic violence, dating violence, sexual assault, and stalking, including non-
   discrimination protections; and

6. Implements evidence-based prevention and educational programs that encourage
   healthy relationships and teach how to respond to attitudes and behaviors
   contributing to sexual and domestic violence.
REPORT

This Resolution urges Congress to re-authorize and fully fund the Violence Against Women Act ("VAWA") and similar legislation that seeks to support the existing law, while continuing to be responsive to the needs of all survivors of gender-based violence. This is an update to existing American Bar Association policy supporting VAWA reauthorization, 10M115. In the more than ten years since that resolution’s adoption, shifting dynamics in Congress have made it increasingly challenging to move any piece of legislation. In the past, a single VAWA reauthorization bill was introduced, negotiated and passed relatively quickly with bipartisan support; however, the last two VAWA reauthorizations have been much more contentious, involving multiple competing bills, draft bills, and marker bills, resulting in significant delays.

In the current reauthorization process, H.R.1585 was voted out of the U.S. House of Representatives on April 4, 2019 with bipartisan support. On November 13, 2019, a companion to H.R.1585 was introduced in the Senate as S.2843. A week later, S.2920 was introduced, an alternative VAWA reauthorization bill that includes rollbacks to the existing law. At the time of this writing, both Senate bills remain pending.

While the ABA has supported VAWA since its first passage in 1994, it is now necessary to refine the Association’s position of general support to allow the Association to distinguish between competing bills in Congress. This Resolution aims to do that.

First, any reauthorization of VAWA must be forward-looking, preserving the hard-fought gains of previous reauthorizations while evolving to respond to emerging and unmet challenges. Rollbacks in existing protections—for example, to remove or undermine non-discrimination mandates, or to weaken outreach and services to underserved communities—are unacceptable.

A key strategy to maintaining the balance between defending the existing statute and being responsive to unmet needs, is to attend to the experts who work every day to identify and meet the needs of survivors, and specifically, to “center the margins” by focusing on safety, autonomy, and support for the most underserved populations of victims. Removing barriers for these victims will mean VAWA programs are truly available to anyone who needs them.

VAWA currently funds programming in legal, healthcare, housing, economic, victim advocacy, and prevention responses. Years of experience have demonstrated that all are most successfully implemented with a trauma-informed approach, recognizing that it is extremely common for victims of domestic violence, sexual assault, and stalking to experience symptoms of post-traumatic stress.

Particular legal system goals identified for the current reauthorization include: maintaining and extending the unmitigated success of the 2013 pilot program to recognize the
inherent jurisdiction of tribal courts over gender-based violence on tribal lands;\(^1\) restricting adjudicated abusers’ access to firearms by enforcing existing federal law, and by closing the “boyfriend loophole” which allows abusers not married to their victims a functional free pass from surrender provisions; and, acknowledging that survivors have been asking for meaningful alternatives to a criminal justice response for decades, and finding ways through VAWA pilot programs and other mechanisms to allow for responsibly-crafted, victim-defined innovations in this area.

Further discussion of the reasons behind all of these the points are captured effectively in the Department of Justice report, *Twenty Years of the Violence Against Women Act: Dispatches from the Field*.\(^2\) *Twenty Years* provides a review of the successes and remaining gaps for VAWA, as described by VAWA grantees from around the country.

VAWA has become integral to our nation’s response to gender-based violence, both as a key funding source for critical infrastructure, and as a response to the evolving needs of survivors. The ABA should continue its tradition of pursuing justice for the most marginalized and underserved victims by adopting this updated resolution.

Respectfully submitted,

Andrew King-Ries
Chair, Commission on Domestic & Sexual Violence
August 2020

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1 The ABA has already adopted policy on this point, most recently at the 2020 Midyear meeting (20M116).
GENERAL INFORMATION FORM

Submitting Entity: Commission on Domestic & Sexual Violence
Submitted By: Andrew King-Ries, Chair, CDSV

1. **Summary of the Resolution(s).** This Resolution urges Congress to re-authorize and fully fund the Violence Against Women Act and similar legislation that seeks to support the existing law while continuing to be responsive to the needs of all survivors of gender-based violence.

2. **Approval by Submitting Entity.** The CDSV voted to approve this proposal on 3/25/2020.

3. **Has this or a similar resolution been submitted to the House or Board previously?** This is an update to existing ABA policy supporting VAWA reauthorization, 10M115. Many other existing ABA policies intersect with or are relevant to this policy proposal.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?** There are many ABA policies relevant to VAWA reauthorization (96A100; 10M115; 18M106), including (but not limited to) policies urging civil rights protection (89M8; 95A123; 04A301; 13A113A; 15A109A; 19M114), immigration relief (01M110; 06M107F; 19M106B; 20M117;), gun violence prevention (94A10E; 04A115; 11A10A; 20M107B; 20M107C), acknowledgement of Tribal authority (12A301; 20M116; 20M10A), criminal justice reform (94A101B; 07M102A; 11A105C; 11A109), access to civil justice (02M112; 06A 112A; 06A112B; 10A105), language access (97A106A; 97A109; 12M113), housing (03M106B; 13A117; 15M109B), or economic supports (14A112A; 18A104E). We are not aware of any that would be adversely affected by this policy.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?** n/a

6. **Status of Legislation.** H.R. 1585 was voted out of the U.S. House of Representatives on April 4, 2019 with bipartisan support. On November 13, 2019, a companion to H.R. 1585 was introduced in the Senate as S. 2843. A week later, S. 2920 was introduced, an alternative VAWA reauthorization bill that includes rollbacks to the existing law. At the time of this writing, both Senate bills remain pending.

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.** If adopted, supporting entities, together with GAO, can advocate for legislative change as described.

8. **Cost to the Association.** (Both direct and indirect costs) None.

9. **Disclosure of Interest.** CDSV has received funding pursuant to VAWA since 1998.
10. Referrals.
   Criminal Justice Section
   Section of Civil Rights and Social Justice
   Section of Family Law
   Health Law Section
   Litigation Section
   Science & Technology Law Section
   Tort Trial & Insurance Practice Section
   Government and Public Sector Lawyers Division
   Solo, Small Firm and General Practice Division
   Judicial Division
   Law Student Division
   Young Lawyers Division
   Standing Committee on Legal Aid and Indigent Defense
   Standing Committee on Gun Violence
   Commission on Homelessness & Poverty
   Commission on Immigration
   Commission on Law & Aging
   Commission on Sexual Orientation and Gender Identity
   Commission on Women
   Commission on Youth at Risk
   Center for Pro Bono
   Center for Human Rights
   National LGBT Bar Association
   National Native American Bar Association
   National Association of Women Judges
   National Association of Women Lawyers
   National Conference of Women's Bar Associations

11. Contact Name and Information prior to the Meeting. Please include name, telephone number and e-mail address.
    Rebecca Henry, 202-662-1737, rebecca.henry@americanbar.org

12. Contact Name and Information of who will present the Resolution with Report to the House. Please include best contact information to use when on-site at the meeting.
    Mark Schickman, 415-541-0200, Mark@SchickmanLaw.com.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges Congress to re-authorize and fully fund the Violence Against Women Act and similar legislation that seeks to support the existing law while continuing to be responsive to the needs of all survivors of gender-based violence.

2. Summary of the Issue that the Resolution Addresses

Reauthorization of VAWA has become more and more contentious over the years, resulting in the introduction of multiple competing reauthorization bills and marker bills in the House and Senate. Existing ABA policy supporting VAWA is not fine-tuned enough to allow the Association to take a position in support of one bill over another, forestalling its ability to weigh in on the national debate at the time when it is most necessary.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This policy provides more detailed guidance that the existing VAWA policy (which is 10 years old) does about the preferred content of any VAWA reauthorization bill or marker bill.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

No internal opposition has been identified. External opposition would exclude immigrant and/or LGBTQ survivors from receiving federally funded services, would emphasize a criminal legal response to gender-based violence to the exclusion of other services and remedies, would refuse to acknowledge Tribal sovereignty, and would decline to enforce or expand existing federal gun restrictions for abusers.