

# **The Current of State of the Reauthorization of the Violence Against Women Act: HR4970 and S1925**

## **Congress Still Has Time to Ensure All Victims Receive Protection**

*- June 2012 -*

For the past several months, the Congress has been debating the reauthorization of the Violence Against Women Act (VAWA). At this time, the law has not yet changed and VAWA continues to be a resource for victims of domestic violence, sexual assault, and human trafficking. At this time, Victims should not be discouraged from coming forward and seeking protection under VAWA.

The next step should begin at the bipartisan Senate bill, S1925. S1925 best protects all victims; however, it is not perfect and section 1008 should be removed to ensure unrelated immigration policy riders are kept off. The House passed HR4970, a dangerous bill that undercuts existing protections for immigrant survivors, endangers victims, and goes against the intent of VAWA.

### **Background and Existing Protections**

- Since its enactment in 1994, VAWA has received broad bipartisan support and has always included special protections for immigrant survivors of domestic violence, recognizing that the abusers of immigrant victims use their victims' lack of immigration status as a tool for abuse, leaving the victim afraid to seek services or report the abuse to law enforcement.
- VAWA "self-petitioning" was created in 1994 to assist those victims married to U.S. citizen or lawful permanent resident abusive spouses, who use their control over the victims' immigration status as a tool of abuse (either failing to petition for them leaving victims without legal status or threatening to withdraw it).
- In 2000, the U visa was created as a law enforcement tool, to encourage victims to come out of the shadows to report crimes to law enforcement and to protect victims who cooperate with law enforcement in the investigation or prosecution of relevant crimes. To be eligible for a U visa, victims must obtain law enforcement certification demonstrating that they have assisted in a criminal investigation or prosecution. Likewise, the T visa was created to help victims of human trafficking and to gain their help in turn with investigations and prosecutions of traffickers.
- In 2005, the "International Marriage Broker Regulation Act" (IMBRA) was enacted as part of VAWA, to regulate the so-called "mail-order bride" industry and make changes to the process by which Americans petition to sponsor visas for foreign fiancé(e)s and spouses to protect against abuse and exploitation.
- Congress has repeatedly reaffirmed its commitment to these provisions in each reauthorization of VAWA, reflecting bipartisan recognition that domestic violence is a serious crime and public safety issue that cannot be fully addressed if all victims are not safe and all perpetrators are not held accountable.

Congress must begin the next steps to reauthorize VAWA with the bipartisan S1925, by taking out unrelated immigration policy riders and ensuring that all victims have access to meaningful protections from harm.

## **Congress Must Reject Harmful Provisions**

- **HR4970, Section 801 keeps the victim trapped with the abuser, limits meaningful access to protection for many victims and creates inefficiencies and delays in the adjudication process by:**
  - **Limiting protections to victims** by requiring victims filing VAWA self petitions to attend at least two interviews at their local immigration office. This requirement will significantly diminish access to VAWA protections as many immigrant victims live with the abusers and would have to wait months and travel many miles for an interview at the local office.
  - **Requiring duplicative interviews** will create backlogs and inefficiencies in the adjudication process. Requiring self-petitioners to appear for an interview (which will happen again, when the person adjusts their status later), is duplicative, expensive and burdensome on victims. Local officers have a poor record on interviewing victims, victims often live far from service centers, and are re-traumatized by untrained adjudicators who do not know the law or have expertise in interviewing victims of crimes.
  - **Weakens historic confidentiality** protections by allowing abusers to influence the protection process. Victim protection should not be in the hands of the abuser.
- **HR4970, Section 802 imposes arbitrary and unreasonable barriers for victims, and undermines the law enforcement purpose of the U visa by:**
  - **Imposing unreasonable and arbitrary burdens** on crime victims by requiring that the criminal activity must be “actively” under investigation or that prosecution has commenced and results in protection that would be extremely difficult to obtain. Current law already requires law enforcement to certify that the victim is being helpful or is likely to be helpful in an investigation or prosecution.
  - **Requiring that the Victim must provide information** that will assist in identifying the perpetrator. Victims often are unaware of the identity of the perpetrator and may not be able to provide specific evidence. Many sexual assault or child victims may not know the identity of the perpetrator or have specific information regarding the identity of the assailant.
- **HR4970, Section 806 places victims on a path from report to deport and discourages victims of crime from cooperating** with law enforcement in the investigation and/or prosecution of crime by denying access to lawful permanent resident status to many victims. Changes proposed to this section are insufficient and fail to protect most victims, especially in complex or dangerous criminal investigations or prosecutions or where the victim may fear retaliation. It also eliminates stability for vulnerable crime victims and their children that will discourage victims from reporting and could result in children being left in the custody of abusers when the victim is deported.
- **HR4970, Section 814 burdens victims and existing state criminal court processes** addressing domestic violence by discouraging plea bargains. Because this provision will allow evidence outside the criminal conviction record in determining if someone is deportable due to a domestic violence conviction, it will be impossible for defendants to know whether to accept a plea. This will result in additional criminal trials and more victims being forced to face their abusers in criminal cases.
- **S1925, Section 1008 sets a dangerous precedent by using VAWA as an avenue to pass unrelated immigration provisions by** expanding the definition of aggravated felony in this unrelated immigration rider.

## **Congress Must Ensure Protection for All Victims**

*The Senate made some modest changes and slight improvements to VAWA as part of S1925. Some of these provisions are also found in HR4970. Current improvements in S1925 do not expand or rewrite VAWA; they simply close the gap that exists under current law to ensure that victims have meaningful access to legal protections. Congress must ensure that all victims have protection from domestic violence, sexual assault, child abuse and human trafficking.*

- **S1925, Section 801 ensures protection for victims of stalking by** adding “stalking” to the crimes covered by the U visa recognizing that perpetrators use different techniques to abuse their victims.
- **S1925, Section 802 requires annual reports to Congress** regarding outcomes and processing times for VAWA Self Petitions, U and T visas (for victims of human trafficking) to ensure efficiency and victims’ timely access to life-saving protections.
- **S1925, Section 803/HR4970, Section 808 extends the widow fix<sup>1</sup> to abused victims of domestic violence** who survive their abusive parents. Abusive spouses and parents would not be eligible.
- **S1925, Section 804/HR4970, Section 809 clarifies that victims should not be charged as inadmissible based on public charge by** exempting VAWA self-petitioner, a “U” visa petitioner or holder, or an alien who was battered and “qualified aliens” under the 1996 Welfare Reform law.
- **S1925, Section 805(a) ensures victims of crimes who cooperate with law enforcement receive protection by** allowing DHS to issue up to 5,000 additional visas for the next few years through recapture of unused U visas.
- **S1925, Section 805(b)/HR4970, Section 810 ensures protection for children of U visa applicants by** clarifying that when an applicant files for a U-visa that includes their under 21 year old children, the will be able to receive immigration benefits of the U-visa along with their parent even if the child turns 21.
- **S1925, Section 806/HR4970, Section 811 extends hardship waivers for conditional residents** where the abuse occurred at the hands of a U.S. citizen or LPR spouse, but the underlying marriage was invalid because the U.S. citizen or LPR committed bigamy unbeknownst to the non-citizen victim spouse.
- **S1925, Section 807, strengthens existing protections to foreign fiancés and fiancées of U.S. citizens** who enter abusive or violent marriages through amendments to the International Marriage Broker Regulation Act (IMBRA).

---

<sup>1</sup> In 2009, Congress enacted the so-called “widow’s and widower’s fix” to enable a spousal-based petition for lawful permanent residence (LPR) to survive when a U.S. citizen spouse died after filing the petition for their non-citizen spouse. This will offer children of VAWA self-petitioners the same protection.