

# VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2011

## Section by Section Analysis

### **Sec. 3. Universal definitions and grant conditions.**

This section is comprised of updates to two major subsections that apply to all VAWA programs: universal definitions and universal grant conditions. The changes are both substantive and technical in nature.

The universal definition section clarifies key terms by incorporating references to existing statutory definitions or providing further description. For example, the definition of “community-based organization” is amended to clarify that it covers only nongovernmental, nonprofit organizations, except in tribal communities where the nonprofit sector is often underdeveloped and tribal government programs may fill a void. The definition of “legal assistance” is modified to clarify that intake or referral services on their own do not constitute legal assistance. “Rural area” is broadened to include federally-recognized Indian tribes, some of which have been precluded from participating in programs such as the Rural grant program. The definition of “personally identifying information” is also updated by adding items such as a driver’s license number to the current list that includes name, address, and Social Security number. The definition also removes the provision that other information that could be personally identifying must be combined with one of the listed items.

This section also includes new definitions of “culturally specific services,” “population specific services,” and “underserved populations.” Together, these definitions, as applied through grant programs and set-asides throughout the bill, help to ensure that VAWA funded services effectively reach victims from communities with unique needs and characteristics, and communities whose members face barriers to access to traditional services. Other new definitions are added to improve clarity in programming, such as “Alaska Native village,” “homeless,” “rape crisis center” and “sex trafficking.” Other existing definitions including “sexual assault” are updated and the definition of “rural state” is modified to reflect overall population growth.

This section also includes technical updates to VAWA definitions, which are incorporated throughout the bill. For example, in several places the four crimes of domestic violence, dating violence, sexual assault and stalking are explicitly enumerated to ensure uniformity. The original VAWA legislation emphasized reducing violence and strengthening services to victims of domestic violence and sexual assault. In subsequent reauthorizations, VAWA also addressed the offenses of dating violence and stalking, but not all of the grant programs were updated to reflect this change. Additionally, VAWA currently defines both “victim services” and “victim service provider” in a single definition as the type of organization that provides assistance to victims but does not address the services provided. This section separates out the term “victim services” and includes in the definition activities such as social support systems, crisis intervention, referrals, and legal advocacy. Corresponding edits are made throughout the bill to reflect this change.

The second part of this section addresses changes to universal grant conditions, the conditions to which all VAWA programs must adhere. One modification is the requirement that any grantee or subgrantee that provides legal assistance with VAWA funds be sufficiently trained or experienced in providing such assistance to victims of domestic violence, dating violence, sexual assault, and stalking, consistent with the requirements in the Legal Assistance to Victims program. Another modification is more stringent constraints on grantees in disclosing confidential and personally identifying information. Grantees are now explicitly prohibited from conditioning services on whether a victim provides consent to release confidential information. Grantees must also document compliance with the confidentiality and privacy provisions of this section.

Additionally, this section provides grantees with the ability to advocate for state, local or tribal model codes or legislation to better respond to the needs of victims, which is a core aspect of a coordinated community response to the four crimes. At present, grantees may not use grant funds to advocate for these policies or legislative changes, even though some VAWA grant programs require grantees to adopt certain legislation or policies as a prerequisite for receiving funding (e.g., under the STOP and Arrest programs, grantees must certify that their laws or official policies are in compliance with certain requirements, including the payment of forensic medical exams and HIV testing of certain defendants indicted for sexual offenses). To ensure that grantees may engage in advocacy without running afoul of the federal anti-lobbying statute, the bill proposes to authorize certain limited activities that are necessary to grantees' work but will not undermine the principle that federal funding must not be used to lobby for more funding.

The bill also updates the anti-discrimination provision for VAWA grantees. Currently, there are significant differences in the level of anti-discrimination protections for VAWA programs due to the various statutes under which the grants were authorized. For example, some programs are authorized in the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Act), which contains its own anti-discrimination provision. Other VAWA programs are covered by Title VI of the Civil Rights Act of 1964, which is less expansive in terms of the classes of individuals who are protected from discrimination. This section creates uniformity so that a grantee may not discriminate on the basis of race, color, religion, national origin, sex, gender identity, sexual orientation or disability.

This section also promotes improved communication between grantees and the Office on Violence Against Women ("OVW") by establishing a biennial conferral process to allow key stakeholders to share ideas and concerns affecting their programs. The areas of conferral include how grants are administered and promising practices in the field. After each conferral, OVW is required to prepare and publicize a report summarizing the issues presented and the steps it will take to address those issues.

# TITLE I

## ENHANCING JUDICIAL AND LAW ENFORCEMENT TOOLS TO COMBAT VIOLENCE AGAINST WOMEN

### **Sec. 101. STOP grant.**

The STOP (Services -Training - Officers – Prosecutors) grant is the primary VAWA formula grant program for states, U.S. territories, and the District of Columbia that addresses the crimes of domestic violence, sexual assault, dating violence and stalking. Upon application, each state, U.S. territory, and the District of Columbia receives grants according to a statutory formula. They can then subgrant these funds to state agencies, state and local courts, units of local government, tribal governments, and nonprofit, nongovernmental victim services providers.

Three significant changes are made to the STOP grant program. First, this section makes several changes to increase the attention given to crimes of sexual violence. Although sexual assault has been one of the core crimes addressed by VAWA since its passage in 1994, a smaller percentage of STOP grant funding goes to sexual violence programming than is proportional to victimization rates. For example, a recent CDC survey reports that 35 percent of women in the United States are victims of domestic violence and 18 percent experience sexual assault. In 2007 and 2008, however, STOP grantees reported that on average 85 percent of victims served were domestic violence victims, 13 percent were sexual assault victims, and 2 percent were stalking victims. Moreover, only 3 percent of the charges filed by STOP-funded prosecutors were for sexual assault, while 80 percent were for domestic violence.

In response, this section includes the addition of purpose areas that are more directly responsive to the needs of sexual assault victims, including an increased focus on training for law enforcement and prosecutors and efforts to reduce rape kit backlogs. These new purpose areas will encourage states to address the ongoing needs of sexual assault victims. This section also includes a 25 percent set-aside for sexual assault programming to ensure that more funding under the STOP program is used to address this serious crime. The set-aside is to be implemented over three years and builds in flexibility to ensure that states can effectively and efficiently address the needs of all victims.

Second, while VAWA's focus on violence against women appropriately reflects the disproportionate number of women who experience severe forms of domestic and sexual violence, men are also the victims of these crimes. This section adds purpose areas so states may target the needs of male victims. It also clarifies that funds may be used for programs aimed at supporting victims who have had difficulty accessing traditional services because of their sexual orientation or gender identity, a problem indicated in recent surveys.

Third, this section streamlines the application process for the STOP program, which currently requires states to provide extensive documentation that is of little use to OVW in monitoring the use of funds, and instead requires the state to develop a comprehensive implementation plan addressing how it will spend the funds received. A wide variety of key stakeholders must be involved in the planning process to ensure a coordinated effort to address victims' needs and strengthen enforcement efforts. To ensure the efficient use of funds, this proposal also requires that states coordinate their STOP implementation plans with plans they

have developed under other federal programs, such as the Family Violence Prevention and Services Act, the Public Health Services Act (which authorizes Rape Prevention and Education grants), and the Victims of Crime Act.

The authorized funding for STOP is reduced from \$225 million to \$222 million.

### **Sec. 102. Grants to Encourage Arrest Policies and Enforce Protection Orders (“Arrest” or “GTEAP”).**

The Arrest program is OVW’s primary discretionary funding mechanism for encouraging criminal justice system reform and promoting coordinated community responses. It focuses on helping state, local, and tribal governments and agencies investigate and prosecute instances of domestic violence, dating violence, sexual assault, and stalking, and treat them as serious criminal violations. This section enhances that effort in several ways.

The most significant change is the emphasis on sexual assault, similar to other programs in this bill. As with the changes made in STOP, the grant purpose areas in Arrest are updated to include activities that are tailored to sexual assault issues, such as implementing Sexual Assault Nurse Examiner programs, Forensic Examiner programs, Sexual Assault Response Teams, and programs to reduce rape kit backlogs. Additionally, this section sets aside 25 percent of the available amounts to ensure that more funding under the Arrest program is used to address this serious crime.

Another important change is a modification of the requirement that state and local government recipients of Arrest program funds certify that they test sex offenders for HIV at the request of the victim within 48 hours of information or indictment and provide the results of the testing to the victim. Grantees that cannot certify in this manner lose five percent of the funding from their grant. Current law makes no allowance for jurisdictions that must exceed the 48-hour limit when offenders are not in custody or otherwise easily accessible (for example, there is no allowance for a case in which the defendant has been charged even though his or her whereabouts are unknown).

This section clarifies that grantees must also certify that they do not charge victims for costs associated with the modification, enforcement or dismissal of a protection order. Current law prohibits funds from going to states, tribes, and units of local government that impose fees for the filing, issuance, registration or servicing of protection orders.

This section also continues VAWA 2011’s emphasis on reducing domestic and dating violence homicides through the use of evidence-based risk assessments.

The authorized funding for Arrest is reduced from \$75 million to \$70 million.

### **Sec. 103. Legal Assistance for Victims (“LAV”).**

The LAV program is a highly competitive grant program which has expanded the availability of legal assistance for many victims of domestic violence, dating violence, sexual assault, and stalking. This section seeks to build on that foundation by strengthening the training requirements for eligible entities to ensure that they have the relevant expertise in providing legal assistance to victims of domestic violence, dating violence, sexual assault, or stalking. Those

without such expertise may provide assistance only if they complete appropriate training in this area of law and also practice while partnered with a legal assistance provider with demonstrated expertise. Additionally, this section allows grantees to recruit, train, and mentor pro bono attorneys and law students to address the continuing difficulty of limited resources and capacity.

The authorized funding for LAV is reduced from \$65 million to \$57 million.

#### **Sec. 104. Consolidated grants to support families in the justice system.**

This section proposes to consolidate two programs that train judges and court personnel about the intersection of domestic violence and family court proceedings, and promote safe supervised visitation for families in cases involving domestic violence and sexual assault. Too often the steps victims are encouraged to take to escape violence – breaking the silence about abuse, seeking protection, limiting contact with the abusive partner – put them at a disadvantage in family court proceedings. This crisis in family courts is driven by a number of factors, including the prevalence of judges and court personnel who are not adequately trained to understand domestic violence. This consolidation conserves resources and creates a program that encourages states to focus on training and protocol development for family courts.

Authorized funding for this program is \$22 million, a \$3 million reduction from the aggregate total of the individual programs that were consolidated.

#### **Sec. 105. Sex offender management.**

This section reauthorizes training programs to assist probation and parole officers and other personnel who work with released sex offenders. Authorized funding for this program remains at \$5 million.

#### **Sec. 106. Court-Appointed Special Advocate program (“CASA”).**

This section reauthorizes the Court-Appointed Special Advocate program, which provides assistance to child victims of abuse or neglect. A new annual reporting requirement is added. Authorized funding for this program remains at \$12 million.

#### **Sec. 107. Criminal provision relating to stalking, including cyberstalking.**

This section updates the federal anti-stalking statute to capture more modern forms of communication that perpetrators use to stalk their victims.

#### **Sec. 108. Outreach and Services to Underserved Populations grant.**

This section strikes the text of the exiting Outreach to Underserved Populations grant program, which focused exclusively on public information campaigns, and replaces it with a program offering services to adult and youth victims in underserved communities. Outreach, education, prevention, and intervention strategies remain an allowable purpose for the grant funding. However, a greater emphasis is placed on the planning and implementation of

programs that directly meet the needs of victims. The current \$2,000,000 authorization levels for this program does not change, but is augmented with a two percent set-aside from funds appropriated to the STOP and Arrest programs.

**Sec. 109. Culturally-Specific Services grant.**

This section removes the term “linguistically” which has caused confusion about the purpose of the program. Many entities that provide culturally specific programming but not linguistically specific programming mistakenly believed they would not be eligible. This change clarifies that the program is not limited to linguistically specific services. Funding for this program does not change and continues to be drawn from set-asides from the Arrest, LAV, Rural, Elder, and Disabilities programs.

## TITLE II

### IMPROVING SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

**Sec. 201. Sexual Assault Services Program (“SASP”).**

The Sexual Assault Services Program is the only VAWA program that is entirely dedicated to providing assistance to victims of sexual assault. It is similar to, though significantly smaller than, the Family Violence Prevention and Services Act, (42 U.S.C. 10401, *et seq.*), which addresses domestic violence and is administered through the Department of Health and Human Services. SASP provides grants to states and territories, tribes, state sexual assault coalitions, tribal coalitions, and culturally specific organizations. Currently, funding is distributed to states and territories pursuant to a formula which treats the District of Columbia and Puerto Rico as territories despite their significantly larger populations. This section changes the formula by treating the District of Columbia and Puerto Rico as states in calculating minimum state funding allocations.

The authorized funding for SASP is reduced from \$50 million to \$40 million.

**Sec. 202. Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance.**

The Rural grant program was established by the first VAWA to address the unique challenges faced by victims of domestic violence and dating violence in rural jurisdictions. It encourages cooperation among law enforcement and victim service providers, among others, to investigate criminal incidents and provide treatment, education, and prevention strategies. This section, similar to the changes in other parts of VAWA 2011, strengthens responses to sexual assault through the inclusion of additional purpose areas. It also incorporates the use of multidisciplinary teams to address and prevent domestic and dating violence homicide.

The authorized funding for the Rural grant program is reduced from \$55 million to \$50 million.

**Sec. 203. Training and Services to End Violence Against Women with Disabilities grant.**

The Disability grant program, which addresses the gaps in abuse suffered by domestic violence, dating violence, sexual assault, and stalking victims with disabilities, is reauthorized and adds the use of evidence-based indicators to assess the risk of domestic and dating violence homicide. The authorized funding for the Disability grant program is reduced from \$10 million to \$9 million.

**Sec. 204. Training and Services to End Violence Against Women in Later Life grant.**

This section strikes the existing Elder Abuse grant program and replaces it with a more comprehensive response to this increasing problem. Currently, grantees are funded to train law enforcement and prosecutors in recognizing and responding to elder abuse, and to provide services for victims of elder abuse. Under this new section, entities may also educate and train health care providers, faith-based leaders, and conduct outreach activities to ensure that victims of elder abuse receive appropriate assistance.

The authorized funding for the Elder Abuse grant program is reduced from \$10 million to \$6 million.

## TITLE III

### SERVICES, PROTECTION, AND JUSTICE FOR YOUNG VICTIMS OF VIOLENCE

**Sec. 301. Rape Prevention Education grant (“RPE”).**

The RPE grant program supports the efforts of rape crisis centers, sexual assault coalitions, and other nonprofit organizations to educate and increase awareness on how to prevent sexual assaults. Funding is distributed to states based on population. This section ensures that every state, and the District of Columbia and Puerto Rico, receives a minimum allocation of \$150,000 for prevention and education activities. Remaining funds are distributed pursuant to population.

The authorized funding for RPE is reduced from \$80 million to \$50 million.

**Sec. 302. Creating Hope through Outreach, Options, Services, and Education for Children and Youth (“CHOOSE Children & Youth”).**

A critical aspect of combating domestic violence, dating violence, sexual assault, and stalking is the impact these crimes have on children and youth, who may have been either directly victimized or traumatized by being exposed to such violence. VAWA addressed this issue by creating several different programs throughout the years that were aimed at providing education, prevention strategies, and services to children and youth.

Consistent with the overall goal of VAWA 2011, this section, along with section 402, consolidates eight current grants into two more streamlined programs. This section focuses on

grants to provide services for children and youth victims, such as counseling, mentoring, and legal assistance, as well as training and assistance to personnel at middle and high schools who can help victims. Grantees may be victim service providers and community-based organizations that are encouraged to partner with state, tribal, and local governments, and other agencies that work with children and youth.

The authorized funding for this consolidated grant program is \$15 million, a \$15 million reduction from the \$30 million authorized by the individual programs.

### **Sec. 303. Grants to Combat Violent Crimes on Campuses (“Campus Program”).**

The Campus program encourages institutions of higher education to partner with community-based organizations to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. The Department of Justice, in awarding these grants, has determined that a successful response to victims of the four crimes in colleges and universities must include the following components: (1) implementing a coordinated community response both internal to and external to the campus; (2) providing prevention education for all incoming students; (3) providing training on domestic violence, dating violence, sexual assault and stalking for campus law enforcement; and (4) providing training on such crimes to members of the campus judicial board. This section clarifies that these four components are minimum requirements that each grantee is expected to fulfill during the grant period.

The authorized funding for the Campus program is reduced from \$15 million to \$12 million.

### **Sec. 304. Campus Sexual Violence, Domestic Violence, Dating Violence, and Stalking Education and Prevention.**

This section updates the Clery Act, which requires colleges and universities to provide information about campus security policies and crime statistics to students and staff. Under this section, colleges and universities must inform their community of the school’s policies and procedures related to domestic violence, dating violence, sexual assault, and stalking. This includes disclosures regarding the disciplinary proceedings when alleged offenses are reported, the policies and procedures in place to protect and maintain the confidentiality of the victim, and the resources available to victims of these offenses.

There are no funds authorized for this section.

## TITLE IV

### VIOLENCE REDUCTION PRACTICES

**Sec. 401. Study conducted by the Centers for Disease Control and Prevention.**

This section continues to authorize funding to the Centers for Disease Control and Prevention (“CDC”) to provide grants to academic institutions and organizations to conduct research that examine best practices for reducing and preventing domestic violence, dating violence, sexual assault, and stalking. The authorized funding for this research is reduced from \$2 million to \$1 million.

**Sec. 402. Saving Money and Reducing Tragedies through Prevention grant (“SMART”).**

As discussed in section 302 (above), VAWA and its subsequent reauthorizations created several programs that address child and youth victims of domestic violence, dating violence, sexual assault, and stalking. While section 302 combined four related programs into one that addresses victim services and education, this section consolidates an additional four programs into one grant aimed at prevention. The new “SMART” grant provides funds for three primary purposes: (1) raising awareness and changing attitudes about teen dating violence; (2) preventing, reducing, and responding to children’s exposure to violence at home; and (3) helping men to serve as role models in preventing domestic violence, dating violence, sexual assault, and stalking.

The authorized funding for this consolidated program is \$15 million, a \$22 million reduction from the \$37 million authorized for the individual programs.

## TITLE V

### STRENGTHENING THE HEALTHCARE SYSTEM’S RESPONSE TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

**Sec. 501. Consolidated grants to strengthen the healthcare system's response to domestic violence, dating violence, sexual assault, and stalking.**

An essential component in combating domestic violence, dating violence, sexual assault, and stalking is engaging the healthcare profession to provide services to victims and train professionals in identifying signs of victimization. This section consolidates three existing VAWA programs related to the healthcare system’s response to the four crimes and creates a comprehensive updated program that focuses on grants for developing interdisciplinary training for health professionals and education programs for health professions students. It also encourages the development of comprehensive strategies to improve the response of hospitals, clinics, and other public health facilities to domestic violence, dating violence, sexual assault, and stalking. A grantee may be a nonprofit organization, a healthcare provider, an accredited

healthcare school, or a state, local, or tribal governmental entity. Grantees are also required to comply with relevant confidentiality and nondisclosure requirements.

The authorized funding for this consolidated program is \$10 million, a \$3 million reduction from the \$13 million authorized for the individual programs.

## TITLE VI

### **SAFE HOMES FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING**

#### **Sec. 601. Housing protections of victims of domestic violence, dating violence, sexual assault, and stalking.**

One of the continuing obstacles faced by victims of domestic violence, dating violence, sexual assault, and stalking is the availability of temporary or permanent housing. The 2005 reauthorization of VAWA added crucial protections that prevented applicants from being evicted from or denied admission to certain housing programs because they were victims. This section modifies the substance and the scope of those housing protections in three significant ways. First, it extends the housing protections to victims of sexual assault. Second, it updates the definition of “immediate family member” to include persons with a close association with the victim that is the equivalent of a family relationship to protect those victims who are living with, but not married to, an abuser. Third, the VAWA housing protections are extended to nine federal programs that are not covered currently, including the McKinney-Vento Act, which provides housing for the homeless, the HOME Improvement Partnership Program, the Low Income Housing Tax Credit, and the Rural Housing Services program.

There are no funds authorized for this section.

#### **Sec. 602. Transitional housing assistance grants for victims of domestic violence, dating violence, sexual assault, and stalking.**

The Transitional Housing Assistance program focuses on a comprehensive victim-centered approach to provide transitional housing services that move individuals into permanent housing and for victim for whom emergency shelter services are unavailable or insufficient. This highly successful program is reauthorized at a slightly lower funding level and also clarifies that a qualified applicant is one whose policies protect victim safety, reflect an understanding of the dynamics of the four covered crimes, and do not include prohibited activities such as background checks or clinical evaluations to determine eligibility for services.

The authorized funding for Transitional Housing is reduced from \$40 million to \$35 million.

**Sec. 603. Addressing the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking.**

This section reauthorizes two VAWA housing programs. The first awards grant funds to entities that assist victims who are currently homeless or at risk of becoming homeless by designing and implementing new activities, services, and programs to increase their stability and self-sufficiency. The second program provides grants to promote full and equal access to housing by adult and youth victims.

The authorized funding for each program is reduced from \$10 million to \$5 million.

## TITLE VII

### ECONOMIC SECURITY FOR VICTIMS OF VIOLENCE

**Sec. 701. National Resource Center on Workplace Responses to assist victims of domestic and sexual violence.**

This section reauthorizes funding for the operation of the National Resource Center on Workplace Responses, which provides information and assistance to employers to aid in efforts to develop and implement responses to domestic and sexual violence.

The authorized funding for the National Resource Center is maintained at \$1 million.

## TITLE VIII

### Protection of Battered Immigrants

**Sec. 801. U nonimmigrant definition.**

The “U” visa is a valuable law enforcement tool that is available to non-citizen victims of certain enumerated crimes, listed at section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (8 USC 1101(a)(15)(U)(iii)), who have been or are likely to be helpful to the investigation or prosecution of the crime. Current law includes domestic violence and sexual assault in the list of enumerated crimes, and this section adds dating violence and stalking.

**Sec. 802. Annual report on immigration applications made by victims of abuse.**

This section requires the Secretary of Homeland Security to report annually on the number of persons who have applied for and been granted or denied a petition for a “T” or “U” visa or a VAWA self-petition; the mean and median time it takes DHS to adjudicate such petitions; the mean and median time between receipt of an application for work authorization related to such petitions and the issuance of authorization to eligible applicants; the number of victims of trafficking granted continued presence; and any efforts being taken to reduce processing and adjudication time for the above.

### **Sec. 803. Protections for children of VAWA Self-Petitioners.**

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. Prior to this change in the law, the non-citizen spouse could not be granted LPR status based on the spousal petition, because the basis of the petition had ceased to exist. This section of the bill will add the beneficiaries of VAWA self-petitioners to the immigration statute’s “widow’s and widower’s fix,” but in this case the beneficiaries will *not* be surviving spouses, but rather the surviving children of VAWA self-petitioners. Spouses, parents, and extended family members would not be eligible.

### **Sec. 804 Public Charge.**

Typically a non-citizen who is likely to become a public charge is considered to be inadmissible to the United States. This section amends the INA to clarify that the following persons are exempt from the public charge inadmissibility ground: an individual who is a VAWA self-petitioner, a “U” visa petitioner or holder, or an alien who was battered and is deemed to be a qualified alien under the 1996 Welfare Reform law (section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996). Congress has previously enacted laws recognizing that such individuals are deserving of protection and/or immigration status in the United States. This section makes explicit that such persons should, therefore, not be barred from admission on public charge grounds. Recipients of “U” visas are not entitled to any benefits other than a work permit, and this section would not make them eligible for any new benefits.

### **Sec. 805. Requirements applicable to U visas.**

Current law requires that a “U” visa application include a statement from a law enforcement entity certifying that the non-citizen crime victim has been or is likely to be helpful to the investigation or prosecution of the crime. Regulations issued by USCIS require that certification to be signed by the head of the relevant law enforcement agency or an official designated by the head of such agency. This modification will continue to require the certification (and therefore deter fraud), but would authorize an official with supervisory responsibilities to sign the certification, enabling the crime victim to seek certification from an official below the level of the head of the agency. This section would also authorize the Secretary to consider evidence when reviewing an application for a “U” visa that the victim attempted to be helpful to the investigation, and attempted to obtain a certification.

This section also raises the number of “U” visas that are available per year from 10,000 to 15,000, a smaller increase than has been requested by the Secretary of Homeland Security. In the past two years, the current cap of 10,000 “U” visas has been met prior to the end of the fiscal year.

A “U” visa holder may petition for his or her child to obtain a derivative “U” visa. However, in some cases, because the agency takes time to adjudicate the petition, the child may “age out” of eligibility if he or she reaches the age of 21 before the adjudication is completed.

This section clarifies that, if the principal “U” visa applicant files a petition while the derivative child is under 21 years of age, the child will be treated as under 21 for the purposes of adjudication as a derivative.

#### **Sec. 806 Hardship Waivers.**

Typically, immigration law requires a non-citizen spouse of a U.S. citizen or lawful permanent resident (LPR) who has applied for lawful permanent residence to wait two years before seeking to remove his or her conditional status and apply for lawful permanent resident status. Waivers of the two-year period of conditional status are available at the discretion of the Secretary of Homeland Security under certain circumstances where the non-citizen spouse suffers a hardship, such as where the non-citizen spouse was a victim of abuse at the hands of the U.S. citizen spouse. This section would extend the discretion of the Secretary to grant a waiver in a situation 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.

#### **Sec. 807. Employment authorization.**

This section clarifies that VAWA Self-Petitioners and “U” visa applicants may be granted work authorization by the Secretary of Homeland Security 180 days after filing the application for VAWA or “U” visa relief, or upon approval of the application, whichever occurs first.

#### **Sec. 808. Protections for a fiancée or fiancé of a citizen.**

This section strengthens the existing International Marriage Broker Regulation Act (IMBRA) in several ways to protect foreign fiancés and fiancées of U.S. citizens from entering abusive or violent marriages. First, it requires that a petition filed by a U.S. citizen for a “K” visa (for a foreign fiancé or fiancée) include information about any permanent protection orders or restraining orders that have been issued against the U.S. citizen petitioner. Such information will be seen in advance by the potential “K” visa recipient, enabling that individual to make an informed decision about whether to proceed with the marriage.

Second, this section expands the list of specific criminal convictions that must be disclosed in a petition for a “K” visa. Current law requires disclosure of the crimes of domestic violence, sexual assault, child abuse and neglect, and stalking. This section adds convictions for the attempt to commit any of those crimes to the list that must be disclosed.

Third, this section requires the Secretary to notify the State Department if a U.S. citizen petitioner has had two “K” visa petitions approved in the prior ten-year period, and requires the State Department to make such information available to the potential “K” visa recipient.

Fourth, this section requires the Secretary of Homeland Security to run an NCIC background check on “K” visa petitioners and to turn over any background information to the State Department, which is then required to turn it over to the potential “K” visa recipient.

Fifth, this section requires the Secretary to produce a cover sheet to accompany negative information (including any criminal convictions or protection orders, and whether the U.S. citizen petitioner accurately disclosed the number of prior “K” visa petitions). The cover sheet is designed to ensure that the potential “K” visa recipient is aware of any negative information about the U.S. citizen petitioner.

#### **Sec. 809 Regulation of International Marriage Brokers.**

This section requires an International Marriage Broker to collect proof of age from the potential “K” visa recipient in order to ensure that the foreign fiancé or fiancée is of the age of consent. This section also requires the GAO to report on implementation of IMBRA.

#### **Sec. 810. Eligibility of crime and trafficking victims in the Commonwealth of the Northern Mariana Islands to adjust status.**

The Consolidated Natural Resources Act of 2008 (the CNRA) made the U.S. territory of the Commonwealth of the Northern Marianas (CNMI) a part of the United States for purposes of U.S. immigration law as of November 28, 2009. Prior to that date, victims of trafficking or certain other crimes who were physically present in the CNMI were able to apply for “T” or “U” visas, but a grant of such status did not actually confer upon the victim a “nonimmigrant” status unless the visa holder was admitted to the United States in Guam or elsewhere. As a result, such visa holders could not begin to accrue time toward the three-year continuous presence requirement for adjusting their status to lawful permanent resident. To conform with the CNRA, this section allows “T” and “U” visa holders who are physically present in the CNMI to count their time toward the three-year requirement of continuous presence.

## **TITLE IX**

### **SAFETY FOR INDIAN WOMEN**

#### **Sec. 901. Grants to Indian tribal governments**

This section improves an existing grant program targeted at curbing domestic violence, sexual assault, dating violence, and stalking in Indian country, by extending its coverage to sex trafficking crimes. It also adds two purpose areas to the program. The first allows grant money to go toward developing and promoting best practices for responding to domestic violence, dating violence, sexual assault, sex trafficking, and stalking in Indian country. The second allows grant money to go toward providing services to address the needs of youth in Indian country who are victims of domestic violence, dating violence, sexual assault, sex trafficking, or stalking and the needs of children exposed to domestic violence, dating violence, sexual assault, or stalking.

#### **Sec. 902. Grants to Indian tribal coalitions.**

This section improves the existing tribal coalition grant program, by incorporating a purpose area that would allow grant money to go toward developing and promoting policies that promote best practices for responding to domestic violence, dating violence, sexual assault, sex trafficking, and stalking.

### **Sec. 903. Consultation.**

Current law requires the Attorney General to consult annually with Indian tribal governments on the federal administration of programs funded by VAWA. This section requires the Attorney General to report to Congress on the annual consultations, and on the administration's recommendations for administering tribal funds and programs, enhancing the safety of Indian women, and strengthening the federal response to such violent crimes.

### **Sec. 904. Tribal jurisdiction over crimes of domestic violence.**

This section would recognize certain tribes' concurrent jurisdiction to investigate, prosecute, convict, and sentence persons who assault Indian spouses, intimate partners, or dating partners, or who violate protection orders, in Indian country. This provision recognizes that tribal nations may be best able to address violence in their own communities. It also seeks to ensure that there is an ability to prosecute the broad spectrum of domestic violence offenses that fall between the minor offenses currently reachable by tribal courts and the very serious offenses most often prosecuted by United States Attorneys. Neither the United States nor any state would lose any criminal jurisdiction as a result. This section requires participating tribes to grant defendants all rights guaranteed by the United States Constitution and authorizes grants to assist tribes with carrying out this section.

The authorized funding for this section is \$5 million.

### **Sec. 905. Tribal protection orders.**

At least one Federal court has opined that tribes lack civil jurisdiction to issue and enforce protection orders against non-Indians who reside on tribal lands. This undermines the ability of tribal courts to protect victims. This section clarifies that tribal courts have full civil jurisdiction to issue and enforce certain protection orders involving any persons, Indian or non-Indian.

### **Sec. 906. Amendments to the Federal assault statute.**

This section amends the Federal Criminal Code to provide a ten-year offense for assaulting a spouse, intimate partner, or dating partner by strangling or suffocating; a five-year offense for assaulting a spouse, intimate partner, or dating partner resulting in substantial bodily injury; and a one-year offense for assaulting a person by striking, beating or wounding. These changes will enable Federal prosecutors to more effectively combat three types of assault frequently committed against women in Indian country and to appropriately address the gradual escalation of seriousness often associated with domestic violence offenses.

**Sec. 907. Analysis and research on violence against Indian women.**

This section expands a baseline study of violence committed against Indian women to include women in Alaska Native Villages and sex trafficking crimes. Authorized funding for the study is maintained at \$1 million. This section also maintains the \$1 million authorization for tribal sex offender registries.

**Sec. 908. Effective dates; pilot project.**

This section sets the effective date for this title as the date of enactment for the bill with the exception of section 904 which would go into effect 2 years after the date of enactment. This delay is intended to give tribes time to amend their codes and procedures as necessary to exercise the jurisdiction established by section 904. For tribes wishing to implement the changes in section 904 on an accelerated basis, this provision gives them a mechanism to do so through a pilot project.

## TITLE X

### OTHER MATTERS

**Sec. 1001. Criminal provisions relating to sexual abuse.**

This section prohibits a person who has supervisory or custodial authority over a person who is under arrest, on pretrial release, on probation, or otherwise under supervision pending further judicial proceedings from engaging in sexual activity with the person who is under his or her supervisory or custodial authority. Current law only prohibits such sexual activity with a person in official detention, yet the same imbalance of power and potential for abuse of authority exists in the supervised release context. This section would prohibit such conduct if it occurs in the special maritime and territorial jurisdiction of the United States or if the person engaging in the sexual activity was exercising federal supervisory or custodial authority.

This section also makes the penalties for criminal civil rights violations involving sexual abuse consistent with the penalties for sexual abuse in other federal statutes. Currently, civil rights violations involving sexual abuse are punished only as misdemeanors, even though the same sexual misconduct would garner serious felony penalties under other federal statutes if it occurred on federal land or was within other federal jurisdiction.

**Sec. 1002. Sexual abuse in custodial settings.**

The Prison Rape Elimination Act of 2003 (PREA) required the Attorney General to adopt national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in federal facilities. When PREA was introduced, all immigration detention facilities were under the authority of the Department of Justice. When the Homeland Security Act of 2002 was enacted, adult immigration authority was transferred to the Department of Homeland Security (DHS), and the authority for detaining unaccompanied minors was transferred to the

Department of Health and Human Services (HHS). This section fulfills the congressional intent of PREA by extending its requirements for national standards to DHS and HHS.