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The Violence Against Women Act (VAWA) Reauthorization: Issues for Congress

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SUMMARY

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The Violence Against Women Act (VAWA) Reauthorization: Issues for Congress

The Violence Against Women Act (VAWA; Title IV of P.L. 103-322) was originally enacted in 1994 and has been reauthorized three times. It was last reauthorized in 2013 (P.L. 113-4). At the end of FY2018, authorizations for appropriations for all VAWA programs expired; however, all VAWA programs funded in the last year of authorization (FY2018) have continued to receive funding each year since.

There are several issues that Congress may consider in its effort to reauthorize VAWA. These include, but are not limited to, the definition of domestic violence in the context of VAWA; data collection on domestic violence, stalking, and the rape kit backlog; the implementation of, and future directions for, tribal jurisdiction over nontribal members in certain types of domestic violence incidents; new approaches for assisting domestic violence victims; expanded protections for transgender people; and enforcement of the federal prohibition on firearms for those convicted of a misdemeanor crime of domestic violence and those who are subject to domestic violence protective orders.

The Violence Against Women Act Reauthorization Act of 2021 (H.R. 1620) passed the House on March 17, 2021. Several of the issues mentioned above, and others that were discussed in prior VAWA reauthorization efforts, are addressed in this bill. Among other things, H.R. 1620 would reauthorize funding for VAWA programs and authorize new programs for FY2022-FY2026; amend and add definitions used for VAWA programs; amend federal criminal law relating to firearms, custodial rape, and stalking; expand tribal jurisdiction over certain crimes committed on tribal lands; create positions in the Office on Violence Against Women and the Office of Justice Programs to address culturally specific needs; and add programs to address housing and financial needs among survivors.

This report briefly discusses the policy issues commonly associated with VAWA as well as several provisions of H.R. 1620. The bill would make many other changes that are not discussed in detail in the report (e.g., the creation of new grant programs that address issues such as lethality assessment in domestic violence cases). Instead, this report primarily focuses on issues that were raised in VAWA reauthorization efforts from the 116th Congress.

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Introduction

The Violence Against Women Act (VAWA; Title IV of P.L. 103-322) was originally enacted in 1994 and has been reauthorized three times. It was last reauthorized in 2013 (P.L. 113-4).[1] Congress has continued to appropriate funding for VAWA programs even though authorized appropriations expired at the end of FY2018. Each VAWA program funded in FY2018 received funding in each subsequent fiscal year through FY2021.

There are several issues Congress may consider in its effort to reauthorize VAWA. These include, but are not limited to, the definition of domestic violence in the context of VAWA; data collection on domestic violence, stalking, and the rape kit backlog; the implementation of, and future directions for, tribal jurisdiction over non-tribal members in certain types of domestic violence incidents; new approaches for assisting domestic violence victims; expanded protections for transgender people; and enforcement of the federal prohibition on firearms for those convicted of a misdemeanor crime of domestic violence and those who are subject to domestic violence protective orders.

The Violence Against Women Act Reauthorization Act of 2021 (H.R. 1620) passed the House on March 17, 2021. Several of the issues mentioned above and others that were discussed in prior VAWA reauthorization efforts are addressed in this bill. Among other things, H.R. 1620 would reauthorize funding for VAWA programs and authorize new programs; amend and add definitions used for VAWA programs; amend federal criminal law relating to firearms, custodial rape, and stalking; expand tribal jurisdiction over certain crimes committed on tribal lands; create positions in the Office on Violence Against Women and the Office of Justice Programs to address culturally specific needs; emphasize restorative practices; and add programs to address housing and financial needs among survivors.

This report briefly discusses the policy issues commonly associated with VAWA as well as several provisions of H.R. 1620. The bill would make many other changes that are not discussed in detail in the report (e.g., the creation of new grant programs that address issues such as lethality assessments in domestic violence cases). Given the size and broad scope of H.R. 1620, this report primarily focuses on issues that were raised in VAWA reauthorization efforts from the 116th Congress.

VAWA Appropriations

Congress has reauthorized and amended VAWA programs three times since its enactment in 1994.[2] Congress has continued to appropriate funding for VAWA programs even though authorized appropriations expired at the end of FY2018. Table 1 shows VAWA appropriations from FY2018 to FY2021.

[1] For a broader discussion of the Violence Against Women Act, see CRS Report R45410, *The Violence Against Women Act (VAWA): Historical Overview, Funding, and Reauthorization*.

[2] Congress reauthorized VAWA in 2000 through the Victims of Trafficking and Violence Protection Act (P.L. 106-386), in 2005 through the Violence Against Women and Department of Justice Reauthorization Act (P.L. 109-162), and in 2013 through the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4).

Table 1. Appropriations and Set-Asides for VAWA Programs, FY2018–FY2021

(Dollars in millions)

Office and Program	FY2018 VAWA Authorization Level	FY2018 Enacted Approps. and Set-Asides	FY2019 Enacted Approps. and Set-Asides	FY2020 Enacted Approps. and Set-Asides	FY2021 Enacted Approps. and Set-Asides
Office on Violence Against Women (OVW)					
STOP (Services, Training Officers, and Prosecutors) Violence Against Women Formula Grant Program	*$222.00*	$215.00	$215.00	$215.00	$215.00
Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant Program (also known as Grants to Encourage Arrest Policies or Arrest Program)	*$73.00*	$53.00	$53.00	$53.00	$53.00
Civil Legal Assistance for Victims Grant Program	*$57.00*	$45.00	$45.00	$46.00	$47.00
Tribal Governments Program	[a]	($40.15)	($40.45)	($40.92)	($41.59)
Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance	*$50.00*	$40.00	$42.00	$43.50	$45.00
Transitional Housing Assistance Grants for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program	*$35.00*	$35.00	$36.00	$37.00	$40.00
Sexual Assault Services Program (SASP)	*$40.00*	$35.00	$37.50	$38.00	$41.00
Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program	*$12.00*	$20.00	$20.00	$20.00	$20.00
Justice for Families Program (also known as Family Civil Justice Program or Grants to Support Families in the Justice System)	*$22.00*	$16.00	$16.00	$17.00	$18.00
Consolidated Youth Oriented Program	[b]	$11.00	$11.00	$11.50	$12.00

Office and Program	FY2018 VAWA Authorization Level	FY2018 Enacted Approps. and Set-Asides	FY2019 Enacted Approps. and Set-Asides	FY2020 Enacted Approps. and Set-Asides	FY2021 Enacted Approps. and Set-Asides
State and Territorial Sexual Assault and Domestic Violence Coalitions Program	[a]	($10.75)	($10.75)	($10.75)	($10.75)
Grants to Enhance Culturally Specific Services for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking	[a]	($7.45)	($7.55)	($7.68)	($7.85)
Tribal Domestic Violence and Sexual Assault Coalitions Grant Program	[a]	($6.49)	($6.49)	($6.49)	($6.49)
Training and Services to End Violence Against Women with Disabilities Grant Program	*$9.00*	$6.00	$6.00	$6.00	$6.50
Grants for Outreach and Services to Underserved Populations	[a]	($5.36)	($5.36)	($5.36)	($5.36)
Enhanced Training and Services to End Abuse in Later Life Program	*$9.00*	$5.00	$5.00	$5.00	$5.50
Grants to Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction	*$5.00*	$4.00	$4.00	$4.00	$4.00
Domestic Violence Homicide Prevention Initiative	[c]	($4.00)	($4.00)	($4.00)	($4.00)
Research and Evaluation on Violence Against Women[d]	[e]	$3.50	$3.00	$2.50	$2.50
SASP Culturally Specific Services	[a]	($3.50)	($3.75)	($3.80)	($4.10)
Tribal SASP	[a]	($3.50)	($3.75)	($3.80)	($4.10)
SASP State Coalitions	[a]	($3.15)	($3.38)	($3.42)	($3.69)
Rape Survivor Child Custody Act[f]	*$5.00*	$1.50	$1.50	$1.50	$1.50
Research on Violence Against Indian Women[d]	[g]	$1.00	$1.00	$1.00	$1.00
National Indian Country Clearinghouse on Sexual Assault	[c]	$0.50	$0.50	$0.50	$0.50

Office and Program	FY2018 VAWA Authorization Level	FY2018 Enacted Approps. and Set-Asides	FY2019 Enacted Approps. and Set-Asides	FY2020 Enacted Approps. and Set-Asides	FY2021 Enacted Approps. and Set-Asides
National Resource Center on Workplace Responses to Domestic Violence, Dating Violence, Sexual Assault, and Stalking	*$1.00*	$0.50	$1.00	$1.00	$1.00
SASP Tribal Coalitions	[a]	($0.35)	($0.38)	($0.38)	($0.41)
Total OVW	[h]	**$492.00**	**$497.50**	**$502.50**	**$513.50**
(Total OVW Set-Asides)	[a]	**($84.70)**	**($85.85)**	**($86.59)**	**($88.34)**
Office of Justice Programs					
Court Appointed Special Advocates for Victims of Child Abuse	*$12.00*	$12.00	$12.00	$12.00	$12.50
Centers for Disease Control and Prevention					
Rape Prevention and Education Grants	*50.00*	$49.43	$49.43	$54.43	$52.75
Total VAWA	[h]	**$553.43**	**$558.93**	**$568.93**	**$578.75**

Source: FY2018 enacted amounts were taken from the joint explanatory statement to accompany P.L. 115-141, printed in the March 22, 2018, *Congressional Record* (pp. H2084-H2115). FY2019 enacted amounts were taken from H.Rept. 116-9. FY2020 enacted amounts were taken from H. Rept. P.L. 116-93. FY2021 enacted amounts were taken from H.Rept. 116-455. Set-aside amounts were provided by OVW.

Notes: Programs in this table include those authorized by the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4) as well as supplemental funding for VAWA programs under the Rape Survivor Child Custody Act. Numbers in parentheses are set-asides and are not included in the sum total amounts. FY2019 authorization levels are not provided because authorizations of appropriations for VAWA programs have expired. From FY2015 to FY2021, Congress transferred funds from the Crime Victims Fund (CVF) to OVW to help fund VAWA programs at the levels provided in this table. For more information on these transfers and the CVF, see CRS Report R42672, *The Crime Victims Fund: Federal Support for Victims of Crime*.

a. Set-asides are authorized in VAWA statute. For example, the Tribal Governments Program is funded by authorized set-asides from seven other OVW grant programs: STOP; Grants to Encourage Arrest Policies and Enforcement of Protection Orders; Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance; Civil Legal Assistance for Victims; Grants to Support Families in the Justice System; and Transitional Housing.

b. This program does not have a specific authorization but rather relies on several separate authorizations. Congress authorized $15 million annually from FY2014 through FY2018 for CHOOSE Children and Youth and $15 million annually from FY2014 through FY2018 for SMART Prevention. The Consolidated Youth Oriented Program is a combination of these authorizations.

c. Technical assistance initiatives are generally authorized under 34 U.S.C. §12291(b)(11).

d. These funds are transferred from OVW to the Office of Justice Programs (OJP).

e. A research agenda is authorized under 34 U.S.C. §12331, but a funding amount is not specified.

f. Under the Rape Survivor Child Custody Act, states are eligible to receive additional funds in their STOP and SASP formula grant awards if they meet the requirements of the act.

g. VAWA 2013 reauthorized appropriations ($1 million each year) for the study of violence against Indian women for FY2014 and FY2015 only.

h. Total authorized amounts are not provided because not all VAWA-authorized programs are included in this table. Only those that received funding in FY2018 and FY2019 are included.

Definition of Domestic Violence for VAWA Programs

The federal government defines *domestic violence* in different ways and for different purposes. Under 18 U.S.C. §2261, a *domestic violence offender* who falls under federal jurisdiction is defined as:

> [a] person who travels in interstate or foreign commerce or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner.

Under 34 U.S.C. §12291, for the purpose of VAWA grant program, domestic violence includes:

> felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

In past reauthorizations of VAWA, Congress has both added and amended definitions of terms relevant to VAWA programs. Victim advocates have proposed a more expansive definition of domestic violence for the purposes of VAWA.[3] For example, some have advocated for the VAWA definition to include a pattern of abusive behavior as well as verbal, emotional, economic, and technological abuse. A more expansive definition of domestic violence would generally expand the number of individuals who are eligible for support from VAWA grantees. A broader definition would also capture harmful behavior (such as financial abuse) that is not physical but is another form of abuse common in relationships involving domestic violence.[4]

On the other hand, some argue that a violent physical act is qualitatively different from other forms of abuse such as economic abuse, and legal definitions should reflect that distinction.[5] Further, defining domestic violence as *a pattern of behavior* seemingly excludes isolated domestic violence incidents that do not involve a pattern of behavior. The proposed definition

[3] National Coalition Against Domestic Violence, *NCADV Statement on Recent Article and the Definition of Domestic Violence*, https://ncadv.org/blog/posts/statement-on-recent-article-and-the-definition-of-domestic-violence.

[4] National Domestic Violence Hotline, Identify Abuse, *Power and Control*, https://www.thehotline.org/identify-abuse/power-and-control/

[5] In *United States v. Castleman*, the U.S. Supreme Court held that a misdemeanor offense of having "intentionally or knowingly cause[d] bodily injury to" the mother of the respondent's child qualified as "a misdemeanor crime of domestic violence." The opinion of the Court (delivered by Justice Sotomayor) included extensive discussion of defining and distinguishing between acts of physical force. The Court ruled that it must attribute "the common-law meaning of 'force' to [18 U.S.C.] §921(a)(33)(A)'s definition of a 'misdemeanor crime of domestic violence' as an offense that 'has, as an element, the use or attempted use of physical force'." In a concurring opinion, Justice Scalia argued that "when everything is domestic violence, nothing is." He further argued that if a domestic violence definition were to include all harmful domestic acts, Congress would "have to come up with a new word … to denote actual domestic violence."

could exclude isolated incidents of domestic violence that do not meet the pattern of behavior standard.

The definition of domestic violence in H.R. 1620 includes:

> a pattern of behavior involving the use or attempted use of physical, sexual, verbal, psychological, economic, or technological abuse or any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, by a person who—
>
> (A) is a current or former spouse or dating partner of the victim, or other person similarly situated to a spouse of the victim;
>
> (B) is cohabitating with or has cohabitated with the victim as a spouse or dating partner;
>
> (C) shares a child in common with the victim;
>
> (D) is an adult family member of, or paid or nonpaid caregiver in an ongoing relationship of trust with, a victim aged 50 or older or an adult victim with disabilities; or
>
> (E) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

The definition in H.R. 1620 as passed by the House would apply to VAWA grants and would not alter the definition of domestic violence in Title 18 of the U.S. Code that defines the federal crime of domestic violence. In further considering VAWA reauthorization, Congress may choose to accept the expanded definition of domestic violence in H.R. 1620 or maintain the current definition. Alternatively, it could separately define terms such as *economic abuse* and *technological abuse* and add them to the eligibility criteria for specific grant programs. The addition of these terms to grant programs' purpose areas would achieve some advocates' desired goal of expanding VAWA support for more victims, including those who are not solely victims of violent physical abuse.

Domestic Violence Data Collection

In the past, national data about domestic violence were unavailable because the Summary Report System (SRS)[6] used by the Federal Bureau of Investigation's (FBI's) Uniform Crime Reporting Program (UCR) did not collect that information from state and local agencies.[7] In 2021, the FBI retired the SRS in favor of the National Incident-Based Reporting System (NIBRS).[8] Although domestic violence is not listed as a separate offense in NIBRS, the data collection program allows law enforcement agencies to report the relationship between the victim(s) and offender(s) in a given offense, if known.[9] For example, NIBRS allows for the following within-family victim-offender relationships to be reported: spouse, common-law spouse, parent, sibling (brother or

[6] Stalking was listed as an example of a local jurisdiction offense titles that could be collected under the category "Other Assaults".

[7] The UCR Part I violent crime category includes murder, rape, robbery, and aggravated assault. The Part I property crime category includes burglary, larceny-theft, motor vehicle theft, and arson. In SRS, there was no coding scheme to identify whether a given crime was domestic violence. For example, an aggravated assault committed by a husband against his wife would be coded as an aggravated assault with no marker identifying it as domestic violence or the relationship between the victim and offender. For more information, see https://ucr.fbi.gov.

[8] See CRS Report R46668, *The National Incident-Based Reporting System (NIBRS): Benefits and Issues*.

[9] U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Uniform Crime Reporting Program, *2019.2.1 National Incident-Based Reporting System User Manual*, September 2020, p. 127.

sister), child, grandparent, grandchild, in-law, stepparent, stepchild, stepsibling (stepbrother or stepsister), and victim was other family member.[10]

NIBRS also records stalking under an intimidation offense category.[11] H.R. 1620 does not include any new provisions regarding NIBRS. Congress may consider options to encourage participation in the NIBRS program or to adjust the program in other ways, such as by requiring the FBI to collect data on stalking as a separate offense.

Congress may also address the availability of data on the sexual assault kit (SAK, or *rape kit*) backlog through VAWA reauthorization. SAKs are used by medical professionals to gather forensic evidence from victims and are typically considered backlogged if they have been submitted to a crime laboratory but remain untested after 30 days.[12] According to the National Institute of Justice (NIJ), "it is unknown how many unanalyzed [SAKs] there are nationwide."[13] NIJ notes that while there are many reasons why there are no data on the number of untested SAKs in law enforcement's possession, one contributing factor is that there is no national system for collecting these data. Also, tracking and counting SAKs is an antiquated process in many jurisdictions (often done in nonelectronic formats), and the availability of computerized evidence-tracking systems has been an issue for many jurisdictions for years. A 2018 study estimated that 200,000 SAKs remain untested in the custody of police departments.[14] H.R. 1620 would reauthorize funding for existing SAK programs. Congress may choose to add to existing programs a mechanism for better understanding the SAK backlog, for example by establishing a national system for logging SAKs or commissioning a study to assess the SAK backlog.

Tribal Jurisdiction

The reauthorization of VAWA in 2013 (P.L. 113-4) granted authority to American Indian tribes to exercise special domestic violence criminal jurisdiction and civil jurisdiction to issue and enforce protection orders over any person, including nontribal members.[15] Specifically, tribes were empowered to prosecute nonmembers for domestic and dating violence committed against tribal members if the defendant has sufficient ties to the tribe[16] and a defendant's constitutional rights are fulfilled.

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[10] U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Uniform Crime Reporting Program, *2019.2.1 National Incident-Based Reporting System User Manual*, September 2020, pp. 127-129 (hereinafter, "NIBRS User Manual"). Victim-offender relationship categories in NIBRS also include outside family but known to victim, not known by victim, and other.

[11] NIBRS User Manual, p. 18. NIBRS defines *intimidation* as "to unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct but without displaying a weapon or subjecting the victim to actual physical attack. This offense includes stalking. In addition, the offender can make the threats associated with Intimidation in person, over the telephone, or in writing."

[12] National Institute of Justice, *Sexual Assault Kits: Using Science to Find Solutions*, https://www.nij.gov/unsubmitted-kits/.

[13] National Institute of Justice, *Untested Evidence in Sexual Assault Cases*, March 2016, https://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx.

[14] Rebecca Campbell et al., "Tested at Last: How DNA Evidence in Untested Rape Kits Can Identify Offenders and Serial Sexual Assaults," *Journal of Interpersonal Violence*, vol. 33, no. 24 (2018).

[15] These provisions do not apply to Alaska Native tribes, with the exception of two tribes.

[16] As enacted in P.L. 113-4, "a participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant—'(i) resides in the Indian country of the participating tribe; (ii) is employed in the Indian country of the participating tribe; or is a spouse, intimate partner, or dating partner of—(I) a member of the participating tribe; or ''(II) an Indian who resides in the Indian country of the participating tribe."

According to the National Congress of American Indians (NCAI), there are 27 tribes currently exercising this expanded jurisdiction.[17] The NCAI also published a 2018 report evaluating the expanded jurisdiction five years after passage.[18] In 2018, the implementing tribes reported "143 arrests of 128 non-Indian abusers. These arrests ultimately led to 74 convictions, 5 acquittals, and 24 cases currently pending."[19] The report states tribes are exercising jurisdiction "with careful attention to the requirements of federal law and in a manner that upholds the rights of defendants."[20] The NCAI also stated that many implementing tribes were constrained by the inability to prosecute nontribal members for crimes that commonly co-occur with domestic violence such as drug and alcohol offenses and crimes against children. H.R. 1620 would expand tribal jurisdiction over certain nonmembers to include obstruction of justice, sexual violence, sex trafficking, stalking, and assault of a law enforcement or corrections officer.

H.R. 1620 also includes an annual reporting requirement that mandates the Attorney General and the Secretary of the Interior prepare and submit a report to Congress with statistics about missing and murdered Indian women and recommendations for improving data collection on these victims. Congress may elect to require a similar accounting or annual report on the implementation of the expanded tribal jurisdiction; for example, Congress could require the Government Accountability Office (GAO) to evaluate expanded tribal jurisdiction.

New Approaches for Serving Crime Victims

Researchers and practitioners have developed new approaches for law enforcement and other criminal justice personnel as well as victims' services organizations to work with victims of domestic violence, sexual assault, dating violence, and stalking. For example, over the last decade, there has been a push for criminal justice professionals to incorporate trauma-informed policing and response practices.[21] These practices are designed to prevent re-traumatization of crime victims, improve communication between victims and law enforcement officers, and increase the likelihood of successful investigations and prosecutions of reported crimes in a manner that protects victims to the greatest extent possible. The Office on Violence Against Women (OVW) has supported several initiatives related to trauma-informed approaches.[22] H.R. 1620 would authorize the Attorney General to award grants to implement evidence-based or promising trauma-informed policies and practices.

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[17] National Congress of American Indians, *Currently Implementing Tribes*, https://www.ncai.org/tribal-vawa/get-started/currently-implementing-tribes.

[18] National Congress of American Indians, *VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five-Year Report*, 2018, http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf (hereinafter, "SDVCJ 5 Year." At the time of publication, 18 tribes were currently implementing the expanded jurisdiction.

[19] SDVCJ 5 Year, p. 1.

[20] SDVCJ 5 Year, p. 1.

[21] For additional information on trauma-informed law enforcement policies, see Substance Abuse and Mental Health Services Administration, *Trauma Training for Criminal Justice Professionals*, https://www.samhsa.gov/gains-center/trauma-training-criminal-justice-professionals; Rebecca Campbell, Giannina Fehler-Cabral, and Steven J. Pierce et al., *The Detroit Sexual Assault Kit (SAK) Action Research Project (ARP), Final Report*, National Institute of Justice, December 2015, https://www.ncjrs.gov/pdffiles1/nij/grants/248680.pdf; and U.S. Department of Justice, Office for Victims of Crime, Training and Technical Assistance Center, *Using a Trauma-Informed Approach*, Human Trafficking Task Force e-Guide, https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/41-using-a-trauma-informed-approach/.

[22] See, for example, National Association of State Mental Health Program Directors, Federal Partners, *Impact of Trauma*, https://www.nasmhpd.org/sites/default/files/FedPartnersOVW.pdf; and International Association of Chiefs of Police, *Trauma Informed Sexual Assault Investigation Training*, http://www.theiacp.org/trauma-informed-sexual-assault-investigation-training.

Another new approach incorporated in H.R. 1620 is the use of restorative practices. H.R. 1620 defines *restorative practices* as:

> a process, whether court referred or community-based, that—
>
> (A) involves, on a voluntary basis, and to the extent possible, those who have committed a specific offense and those who have been harmed as a result of the offense, as well as affected community;
>
> (B) has the goal of collectively seeking accountability from the accused, and developing a process whereby the accused will take responsibility for his or her actions, and a plan for providing relief to those harmed, through allocution, restitution, community service or other processes upon which the victim, the accused, the community, and the court (if court-referred) can agree;
>
> (C) is conducted in a framework that protects victim safety and supports victim autonomy; and
>
> (D) provides that information disclosed during such process may not be used for any other law enforcement purpose, including impeachment or prosecution, without the express permission of all participants.

H.R. 1620 would authorize the development and implementation of restorative practices in grant programs to encourage improvements and alternatives to the criminal justice system; to support families in the justice system, creating hope through outreach, options, services, and education (CHOOSE) for children and youth; and to combat violent crimes on campuses.[23]

In addition to trauma-informed and restorative justice approaches, there are other new and developing approaches to working with domestic violence victims that policymakers might choose to promote through conditions on VAWA funding. For example, there are new model protocols for police officers about when they would activate their body-worn cameras when they interact with victims of domestic violence, sexual assault, dating violence, or stalking. Policymakers may consider these new approaches if they debate additional grant program purpose areas or encourage states to adopt certain practices.

Provisions for the LGBTQ+ Population

The reauthorization of VAWA in 2013 (P.L. 113-4) expanded transgender protections in VAWA grant programs as well as other areas. For example, it expanded the definition of *underserved populations* (as applicable for VAWA grants)[24] to include populations underserved because of sexual orientation, gender identity, and religion. It also added a civil rights provision applicable to all VAWA grant programs that prohibits discrimination on the basis of race, color, religion, national origin, sex, gender identity, sexual orientation, or disability in VAWA programs while including a specific exception for sex segregation or sex-specific programming that is "necessary to the essential operation of a program."[25]

H.R. 1620 would, among other provisions, authorize a new grant program that specifically addresses the needs of members of the LGBTQ+ population who are victims of domestic violence, sexual assault, stalking, and dating violence. The bill also includes new provisions for transgender individuals in federal custody. H.R. 1620 would expand the definition of a *vulnerable person* in the context of women in federal custody to include those identifying as lesbian, gay,

[23] See H.R. 1620, §§102, 104, 302, and 303.

[24] 34 U.S.C. §12291(a)(39).

[25] 34 U.S.C. §12291(b)(13)(B).

bisexual, transgender, or intersex. The bill also includes a provision that states a transgender prisoner's sex is determined according to the sex with which the prisoner identifies. In addition, H.R. 1620 includes a provision stating that,

> in deciding whether to assign a transgender or intersex prisoner to a facility for male or female prisoners, and in making other housing and programming assignments, consider on a case-by-case basis whether a placement would ensure the prisoner's health and safety, including serious consideration of the prisoner's own views with respect to their safety, and whether the placement would present management or security problems.

Domestic Violence and Federal Prohibition of Possession of Firearms

Under current law, persons under court-order restraints related to harassing, stalking, or threatening an intimate partner or child of such intimate partner[26] and persons convicted of a misdemeanor crime of domestic violence[27] are prohibited from receiving or possessing firearms or ammunition. Current law also bans any person from transferring a firearm or ammunition to a person about whom there is reasonable cause to believe it would be prohibited.[28]

H.R. 1620 would[29]

- expand the definition of *intimate partner* used to prohibit the possession and transfer of firearms and ammunition to include dating partners and former dating partners as well as a person "similarly situated to a spouse";
- expand the domestic violence-related prohibitions on possessing and transferring firearms and ammunition to include a person convicted of a misdemeanor crime of stalking; and
- expand the ban on receipt, possession, or transfer of a firearm to any person with a protection order or court-order restraint to include restraining orders under state, tribal, or territorial law that are issued after an ex parte hearing and restraining orders related to witness intimidation.

The Gun Control Act (GCA)[30] prohibits certain individuals from possessing firearms, including individuals who have been convicted of a misdemeanor crime of domestic violence[31] and those who are subject to a protective order involving an intimate partner or child of an intimate partner.[32] Despite federal law prohibiting those convicted of a misdemeanor crime of domestic

[26] 18 U.S.C. §922(d)(8) and (g)(8)) .

[27] 18 U.S.C. §922(d)(9) and (g)(9)).

[28] 18 U.S.C. §922(d)).

[29] For more detailed information on firearms provisions in H.R. 1620 and their potential implications, see CRS In Focus IF11784, *Firearms Eligibility: Stalking- and Domestic Violence-Related Provisions in H.R. 1620*.

[30] 18 U.S.C. §921 et seq.

[31] Of note, the Gun Control Act prohibits any person convicted of any felony, a crime punishable by imprisonment for a term exceeding one year, from possessing firearms. See 18 U.S.C. §922(g)(1). Domestic violence can be a misdemeanor or a felony depending on the circumstances and the jurisdiction.

[32] More precisely, 18 U.S.C. §922(g)(8) and (g)(9) state that it shall be unlawful for a person

(1) "who is subject to a court order that—(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or

violence or who are subject to a protective order from purchasing a firearm,[33] there is not a federal process for these individuals to surrender their firearms. The process is left up to states and local jurisdictions, which vary in their approaches to enforcing these prohibitions. In some jurisdictions, the process for informing defendants/respondents they must surrender their firearms can vary by judge.[34] Of note, the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162) required states or units of local government to certify that their judicial policies and practices included notification to domestic violence offenders of the firearms prohibitions in Section 922(g)(8) and (g)(9) of Title 18 of the U.S. Code to be eligible to receive STOP funding.[35]

H.R. 1620 would

- require the National Instant Criminal Background Check System (NICS) to notify law enforcement of background check denials related to domestic violence or stalking;
- allow the Attorney General to cross-deputize attorneys and law enforcement officers to investigate and prosecute NICS denial cases; and
- require the Attorney General to "(1) identify no less than 75 jurisdictions among States, territories and Tribes where there are high rates of firearms violence and threats of firearms violence against intimate partners … and where local authorities lack the resources to address such violence"[36] and use the cross-deputization program to assist these jurisdictions in reducing firearms homicides and injury rates.

Congress may consider a number of other issues surrounding prohibitions on firearms possession and matters of domestic violence, which are often the subject of some debate. For example, Congress may consider so-called red flag laws that allow law enforcement officers or family members to petition a court to have firearms removed from those who are a danger to themselves or others. Congress may choose to take further steps to restrict firearms sale to, or possession by, those convicted of VAWA-related offenses, or it might continue to leave the decisions to the states, some of which have enacted laws requiring the removal of firearms from those subject to the prohibitions described in H.R. 1620.

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engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury" or

(2) "who has been convicted in any court of a misdemeanor crime of domestic violence" to ship, transport, receive, or possess firearms or ammunition.

For more information on firearms restrictions and relevant laws, see Bureau of Alcohol, Tobacco, Firearms, and Explosives, "Firearms," https://www.atf.gov/firearms.

[33] The process does not apply to all transactions. For information on the National Instant Criminal Background Check System, see U.S. Department of Justice, Federal Bureau of Investigation, *National Instant Criminal Background Check System (NICS)*, https://www.fbi.gov/services/cjis/nics. For discussion of federal regulation of firearms, see CRS Report R44655, *Gun Control: Federal Law and Legislative Action in the 114th Congress*.

[34] Laurie Duker, *Do domestic violence victims in Montgomery County have full access to justice?*, Court Watch Montgomery, June 28, 2018, https://courtwatchmontgomery.org/wp-content/uploads/2018/07/CWM-Fundamentals-Report.FIN-6.28.18.pdf.

[35] See U.S. Department of Justice, Office on Violence Against Women, *OVW Fiscal Year 2020 STOP Formula Grant Program Solicitation*, March 2020, p. 10.

[36] H.R. 1620, Title XII, §1203 (§925C (b)(1)).

Other Changes Included in H.R. 1620

H.R. 1620 includes several new provisions that were not in prior enacted versions of VAWA, including the following:

- It would authorize new resources for DOJ to address certain forms of cybercrime. It authorizes a new grant for a National Resource Center on Cybercrimes Against Individuals to aid state and local law enforcement and criminal justice systems in identifying, prosecuting, and protecting individuals from certain forms of cybercrime. The bill defines cybercrimes against individuals as "criminal offenses applicable in the relevant State or unit of local government that involve the use of a computer to cause personal harm to an individual, such as the use of a computer to harass, threaten, stalk, extort, coerce, cause fear, intimidate, without consent distribute intimate images of, or violate the privacy of, an individual."
- It includes the Keeping Children Safe from Family Violence Act (Kayden's Law), which would allow the Attorney General to increase STOP grant funding to those states that meet certain standards for expert testimony in custody proceedings and the methods used in state courts to determine whether a child should be in contact with a parent, and to provide court officials with trauma-informed and culturally appropriate training.
- It would create positions for Deputy Director for Culturally Specific Communities in both the OVW and the Office of Justice Programs (OJP).
- It would define female genital mutilation or female genital cutting (FGM/C) for VAWA grant purposes and amend the purpose areas of three VAWA grant programs (STOP, Outreach and Services to Underserved Populations, and CHOOSE Children and Youth) to include providing culturally specific victim services regarding responses to, and prevention of, FGM/C.
- It would amend Rape Prevention and Education (RPE) programs by increasing authorized annual funding from $50 million each fiscal year to $110 million each year and would require the Centers for Disease Control and Prevention Director to submit to Congress a report on the activities funded by grants and best practices relating to rape prevention and education.
- It includes the Closing the Law Enforcement Consent Loophole Act of 2021, which among other things strengthens federal laws criminalizing sexual acts by federal law enforcement with individuals under arrest, in detention, or in custody. This provision also incentivizes states to enact similar laws for any person acting under the color of law of the state.
- It includes unemployment compensation for victims of harassment and survivors of domestic violence, sexual assault, or stalking who are out of work as a result of these experiences.
- It would establish and define a National VAWA Victims Relocation Pool voucher[37] for VAWA programs and establish new relocation provisions for victims of domestic violence, sexual assault, dating violence, and stalking.

[37] It would define it to mean a housing voucher provided under Section 8(o) of the United States Housing Act of 1937 (42 U.S.C. §1437f(o)).

- It would require the Secretary of Education, the Secretary of Health and Human Services, and the Attorney General to establish a new Task Force on Sexual Violence in Education.
- It includes supports for immigrants who are victims of domestic violence, including cases in which a victim's immigration status is dependent on their abuser. The bill would require the Secretary of Homeland Security to publish an interim final rule establishing a six-year pilot program allowing nonimmigrants authorized for employment under Section 106 of the Immigration and Nationality Act[38] and their children to apply for lawful temporary status and travel authorization independent of the principal nonimmigrants to which their current status is or was tied.[39]

H.R. 1620 would make many other changes that are not discussed in this report. Beyond what is discussed above, some of these additional changes include modifications to definitions used for VAWA grant purposes and the creation of new grant programs that address issues such as lethality assessment in domestic violence. Of note, H.R. 1620 would reauthorize funding for most VAWA programs for FY2022-FY2026.

Additional VAWA Considerations

Congress may debate additional changes to VAWA programs such as adding new purpose areas or qualifying crimes to existing grant programs, creating new programs, or consolidating existing programs. Some issues Congress might consider as they debate H.R. 1620 include the following:

- Many VAWA grant programs fund the same services and the same organizations.[40] For example, nine separate VAWA programs may be used to fund emergency shelters or transitional housing.[41] Congress may consider streamlining funding into fewer, larger grant programs.
- Congress may choose to provide focused support for domestic violence courts.[42] While some grantees already use funds for this purpose and OVW has provided technical assistance to fund model domestic violence courts,[43] Congress may elect to create a program to support these specialized courts.

[38] 8 U.S.C. §1105a.

[39] For background information, see CRS Report R42477, *Immigration Provisions of the Violence Against Women Act (VAWA)*.

[40] For examples of organizations that receive multiple VAWA grants, see the Office on Violence Against Women (OVW), *Awards*, https://www.justice.gov/ovw/awards.

[41] See the following 2016 reports to Congress from OVW: *The 2016 Biennial Report to Congress on the Effectiveness of Grant Programs under the Violence Against Women Act*; *SASP Formula Grant Program, Sexual Assault Services Formula Grant Program, 2016 Report*; and *STOP Program, Services·Training·Officers·Prosecutors, 2016 Report*.

[42] A domestic violence court is a specialized court program that processes cases involving domestic violence offenses. For more information, see National Institute of Justice, *Domestic Violence Courts*, https://www.nij.gov/topics/courts/domestic-violence-courts.

[43] See the following 2016 reports to Congress from OVW: *The 2016 Biennial Report to Congress on the Effectiveness of Grant Programs under the Violence Against Women Act*; *SASP Formula Grant Program, Sexual Assault Services Formula Grant Program, 2016 Report*; and *STOP Program, Services·Training·Officers·Prosecutors, 2016 Report*; as well as OVW, *OVW Fiscal Year 2017 Domestic Violence Mentor Court Technical Assistance Initiative Solicitation*, January 18, 2017.

- Congress may wish to address the effects of the Coronavirus Disease 2019 (COVID-19) pandemic on domestic violence case backlogs and potential limitations victims experienced in accessing VAWA-related services.[44]

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[44] See CRS Insight IN11323, *Domestic Violence in the Context of COVID-19*.