



April 22, 2021

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The Honorable Charles Schumer
Majority Leader
United States Senate
Washington DC, 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

Re: H.R. 1620, the Violence Against Women Reauthorization Act of 2021

Dear Majority Leader Schumer and Minority Leader McConnell:

The Association of Prosecuting Attorneys (APA) is a non-profit organization made up of elected and appointed prosecuting attorneys throughout the nation. APA provides valuable resources to prosecutors to develop proactive and innovative prosecutorial practices that prevent crime, ensure equal justice, and help communities become safer. APA is at the forefront of supporting prosecutors in their efforts to create safer communities through criminal justice reform.

Formed in 2017, APA's Domestic Violence Committee (Committee) brings together the nation's leading domestic violence (DV) prosecutors and victim advocates to advance the field of DV prosecution through practice and policy. The Committee is comprised of practitioners from major jurisdictions around the country that represent over 30 million community members and are responsible for tens of thousands of felony and misdemeanor DV cases every year. In addition to prosecutors and victim advocates, the Committee's work toward criminal justice reform related to DV cases is informed by its partnership with national experts and allied DV partners.

The Committee strongly supports renewal of the Violence Against Women Act (VAWA) with critical enhancements. VAWA's successful implementation has led to a significant drop in DV since its passage in 1994 and has served as an international beacon for the collaboration of justice systems and community responses to reduce violence against women and girls.¹ However, the COVID-19 pandemic brought these advancements in the DV arena to a screeching halt. Despite the best efforts of advocates, attorneys, and community members alike, the dark reality of lockdown orders and increasing levels of stress related to a post-pandemic world created dangerous situations for women and children experiencing violence from family members.² The exact impact to DV victims and survivors is not yet well understood

¹ Catalano, S. *Intimate Partner Violence: Attributes of Victimization, 1993-2011*, Special Report NCJ 243300 (Nov. 2013), <https://www.bjs.gov/content/pub/pdf/ipvav9311.pdf> (last accessed Apr. 9, 2021). See also Sacco, L. N., *The Violence Against Women Act (VAWA): Historical Overview, Funding, and Reauthorization*, U.S. Congressional Research Service, Rep. No. R45410 at 6 (Updated Apr. 23, 2019), available at <https://fas.org/sgp/crs/misc/R45410.pdf> (last accessed on Apr. 9, 2021).

² Piquero, A. Jennings, W. G., Jemison, E., Kaukinen, C., & Knaul, F. M. *Domestic Violence During COVID-19: Evidence from a Systemic Review and Meta-Analysis*. National Commission on COVID-19 and Criminal Justice



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due to limitations in data collection and analysis.³

The COVID-19 pandemic also brought to light the need for additional investments in risk reduction, deepening collaboration between systems and communities, adoption of a public health approach for offender treatment, and data enhancements to better understand DV. Attempts to implement pandemic protocols for DV prosecution and victims' services exposed the lack of reliable data specific to such cases. This dearth of reliable data as well as the absence of data-sharing linkages across various health and criminal justice systems impacts all facets of fighting DV, from prosecution and legislative efforts to task forces and victims' services. Obtaining necessary data and establishing a data-sharing infrastructure represents a necessary next step in DV to inform further policies.

Today, with compounding backlogs of DV cases and the unaddressed needs of victims and their children, VAWA has never been more important. Therefore, we express our support for the version of VAWA encompassed in House Resolution 1620, specifically in four critical areas of reform: firearms, diversion and sentencing alternatives, material witness testimony, and investment in data-driven public health partnerships.

Restricting Access to Firearms

The firearms provisions in VAWA are necessary, evidence-based steps proven to reduce the risk of violent death. The connection between firearms, DV offenders, and homicide is long recognized and orders of magnitude greater than any other risk in DV. Women are five times more likely to die in DV-related incidents when a firearm is present.⁴ We see this first-hand from crime scenes to courtrooms, as well as responding to families who have suffered enormous tragedies due to firearms and DV. However, armed DV offenders not only harm those close to them. They also pose the greatest risk to police who respond to DV calls; to the broader community where armed DV offenders are a leading risk for general violent crime and mass shootings; and to themselves where DV is a key driver of offender suicide.

The specific provisions included in H.R. 1620 strike a balance between homicide

(Feb. 2021), available at

https://cdn.ymaws.com/counciloncj.org/resource/resmgr/covid_commission/Domestic_Violence_During_COV.pdf.

³ *Id.*

⁴ Kivisto, A.J. & Porter, M. *Firearm Use Increases Risk of Multiple Victims in Domestic Homicides*, J. Am. Acad. Psychiatry Law 48(1):2 (2020), available at <http://jaapl.org/content/jaapl/early/2019/11/21/JAAPL.003888-20.full.pdf> (last accessed April 9, 2021); Campbell, J.C., Webster, D., et al, *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, A. J. Pub. Health 93: 1089-97 (2003)). See also Websdale, N., Ferraro, K., & Barger, S.D., *The Domestic Violence Fatality Review Clearinghouse: Introduction to a New National Data System with a Focus on Firearms*. Injury Epidemiology 6(1):1, available at file:///C:/Users/rebec/Downloads/The_domestic_violence_fatality_review_clearinghous.pdf (highlighting a 2015 study that found “[f]ifty to 60 % of male perpetrators of intimate partner homicide kill with firearms.”) (last accessed Apr. 14, 2021).



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reduction and constitutional rights. The inclusion of non-cohabitant dating relationships and stalkers to the list of offenders prohibited from owning a firearm acknowledges the myriad relationships in which DV can exist and where a vast majority of the homicidal incidents occur. These minor changes would afford protection to the numerous DV victims who remain at risk, as the current VAWA firearm provisions apply only to the percentage of offenders and victims who are current or former spouses, cohabitants, or have a child in common.⁵ Further, the requirement of a court order or conviction prior to restricting firearm ownership preserves an alleged offender's due process and related constitutional rights. Armed DV offenders pose an enormous risk for all, and VAWA's commitment to limit their access to firearms is the most significant criminal justice reform issue in DV.

Diversion and Sentencing Alternatives

We support VAWA's inclusion of DV offender treatment as part of a targeted approach to restore safety and positive relationships between affected family members. The unique relationship between DV offenders and victims makes the offenders' treatment and rehabilitation paramount to the victim's safety and the family's wellbeing. Unfortunately, research behind the efficacy of offenders' treatment and rehabilitation has been missing from our national response to DV for too long. We raised these concerns with NIJ just before the pandemic and implored NIJ to focus on DV offender treatment.⁶ Our members routinely employ diversion and sentencing alternatives in DV cases to reduce violence and recidivism for low-risk offenders. While these practices show promise, their implementation must be done with careful planning and rigorous protocols to ensure safety and efficacy. They should complement, rather than replace, existing commitments to DV offender treatment options. Accordingly, we encourage the inclusion of DV offender treatment as a part of VAWA--a holistic approach that should encompass victims, their children, and the offenders who commit harm.

Batterer treatment is the premier tool for rehabilitation in the legal community. Batterer Intervention Programs (BIPs), if effective, provide the ability to match the offender's sentence to the specific offense, thereby decreasing the potential of future abuse, not just future arrest. In addition to reducing recidivism rates, BIPs improve victim safety and aim to prevent re-victimization. There has been a lack of attention, or even resistance, to addressing the health and treatment needs of DV perpetrators and the effectiveness of DV treatment.⁷ VAWA should invest in DV offender

⁵ See University of Pennsylvania, *Dating Partners More Violent and Account for More Domestic Violence than Spouses*. *ScienceDaily*, available at [sciencedaily.com/releases/2018/01/180131090254.htm](https://www.sciencedaily.com/releases/2018/01/180131090254.htm) (highlighting data that current or former dating partners, rather than spouses, account for 82% of domestic violence incidents over a five-year period).

⁶ Association of Prosecuting Attorneys, *Letter to National Institute of Justice* (Feb. 28, 2020), available at <https://www.apainc.org/wp-content/uploads/2021/04/Efficacy-of-BIP-Letter-to-NIJ-.pdf>.

⁷ Wilson, D. B., Feder, L. & Olaghere, A. *Court-Mandated Interventions for Individuals Convicted of Domestic Violence: An Updated Campbell Systematic Review* (Mar. 15, 2021), available at



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treatment to promote evidence-based standards and emerging practices for effective, affordable, and culturally-competent treatment grounded in science and evidence. Investments in treatment for DV offenders should bring together leading public health and justice agencies (CDC, NIH, DOJ-NIJ), as well as subject matter experts. Given the pervasiveness of DV nationwide and the limited options for effective solutions, investing in offenders' treatment and rehabilitation is long overdue.

Compelling Material Witness Testimony

We also support the establishment of prosecutors' standards in compelling victim testimony, a critical issue directly connected to offender tampering and intimidation. Many obstacles prevent victims from participating in a criminal case against their perpetrator, such as exposure to retaliation, escalating violence, forced separation, and financial hardship. Witness tampering and intimidation by perpetrators is a significant problem in DV cases, and victims recant or refuse prosecution due, in part, to perpetrators' manipulation and threats.⁸ As recognized by the U.S. Supreme Court, "[t]his particular type of crime is notoriously susceptible to intimidation or coercion of the victim to ensure she does not testify at trial."⁹ Minimization and recantation are often the disheartening by-products of sophisticated manipulation by DV offenders. Victims are presented with mutually exclusive and often competing demands – preservation of the family versus holding a loved one accountable for ending their violence versus immediate and long-term safety and well-being. The reality for many DV victims is that recantation or non-cooperation often seems to be the safest and most prudent course of action. Prosecution of DV crimes mandates consideration of these competing issues and new strategies to encourage victim cooperation, with stringent standards for seeking a material witness warrant.

Our membership recognizes the importance of understanding the difficult issues confronting DV victims and using standards and training to navigate them. We have led trainings on compelling witness testimony for state prosecutor associations. We are grateful that our suggestion to create model standards and practices to guide prosecutors in the consideration of material witness warrants was accepted in the current version of VAWA, and we stand ready to assist in discussions of such standards and trainings.

Investment in Data and Public Health Partnerships

We also encourage investment in data and partnership with public health entities as proposed in Title V and other research grants contained in H.R. 1620. The surge of

<https://onlinelibrary.wiley.com/doi/epdf/10.1002/cl2.1151> (finding that eight U.S. studies failed to demonstrate the effectiveness of current feminist-based and cognitive-behavioral BIPs).

⁸ Bonomi, A.E., Gangamma, R., Locke, C.R., *et al*, *Meet Me at the Hill Where We Used to Park: Interpersonal Processes Associated with Victim Recantation*, *Social Science & Medicine* 73:1054-61 (2011).

⁹ *Davis v. Washington*, 547 U.S. 813, 833, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006).



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DV due to COVID-19¹⁰ exposed the lack of DV data and highlighted the challenges to obtaining reliable data. Indeed, with stagnated funding for research and data analytic entities such as the Bureau of Justice Statistics, the lack of available data for most crimes has been called “[o]ne of the most notorious process problems with America’s criminal justice system.”¹¹ Few communities can answer basic questions such as how often DV occurs there or how many deaths nationally are due to DV. For example, the national Violent Death Reporting System has only eight states that utilize domestic violence reporting.

A public health approach to DV begins with accurate data to guide the development of prevention strategies. The World Health Organization recently published a new report on DV, recommending enhanced data capacity and analysis as the "foundation to epidemiological evidence" of public health strategies to reduce DV-related incidents. The National Commission on COVID-19 and Criminal Justice study on Domestic Violence during COVID-19 found the need to link multiple forms of civil and criminal justice data, police, clinical, healthcare, and other administrative datasets to estimate the diverse types of DV and the various contexts in which it occurs. DV-specific data hold significant promise in helping understand the various causes of DV, community impacts, and effectiveness of DV treatments to highlight how we can better serve victims and the community.¹² DV data will illuminate and amplify reform-enabling solutions to move faster and see what works. VAWA should include properly skilled, well-respected, and credible public health partners with access to critical public health data sets. VAWA can and should invest in data infrastructure and data linkages to take an important step toward a public health response to DV.

We hope that you will consider our positions and highlighted points when deciding to reauthorize VAWA. DV crimes impact so many family and community members, related to both the victim and the offender. Therefore, continuing in the pursuit for justice must be a holistic approach for all people affected.

Respectfully submitted,

Dave LaBahn
President and CEO

¹⁰ Gosangi, B., Park, H., & Thomas, R. *et al*, Exacerbation of Physical Intimate Partner Violence during COVID-19 Pandemic, *Radiology*, 298(1), 38-45 (2021), available at <https://doi.org/10.1148/radiol.2020202866>.

¹¹ Buck, S. *We Need Criminal Justice Data that Doesn't Exist. Here's How the Biden Administration can Fix It*, Arnold Ventures (Apr. 15, 2021), <https://www.arnoldventures.org/stories/we-need-criminal-justice-data-that-doesnt-exist-heres-how-the-biden-administration-can-fix-it>.

¹² *See id.* (highlighting that research and data allow policymakers to “effectively target reforms, or measure whether they work,” which are critical to implementing DV programs).