May 16, 2012

Dear Representative:

RE: ACLU Urges NO Vote on the Violence Against Women Reauthorization Act of 2012 (H.R. 4970)

On behalf of the American Civil Liberties Union (ACLU), a nonpartisan public interest organization dedicated to protecting the principles of freedom

AMERICAN CIVIL
LIBERTIES UNION

we write to urge Members of the House of Representatives to vote NO when the s Amendment #1) to the Violence Against Women Reauthorization Act of 2012 (H.R. 4970) comes to the House floor.

In a letter to members of the House Judiciary Committee, before markup of H.R 4970, we provided the Committee with our views and urged the Committee to address certain critical deficiencies in the bill and model certain elements of the Senate-passed bill (S. 1925). Unfortunately, after the markup, not only did the deficiencies such as coverage for LGBT survivors and protections for Native American and immigrant survivors of domestic violence remain, but new harmful language was added, via the Gowdy Amendment.

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Although we recognize that at least one element of the House bill improves upon S. 1925, specifically in the provisions relating to cyberstalking, on balance, H.R. 4970 contains far too many deficiencies; unlike S. 1925, the bad simply outweighs the good and we must urge Members to oppose.

T deficiencies. In fact, as discussed in section D below, the amendment creates additional problems with the bill.

A. Applying PREA Standards to All Immigration Detainees

The Prison Rape Elimination Act of 2003 (PREA), which set standards for preventing, detecting, and responding to sexual abuse in custody, was intended to protect every detainee from sexual abuse and assault. To date, that has not occurred. We are mostly pleased that section 1002(c) of H.R. 4970 has taken a positive step forward by requiring that the Department of Homeland Security (DHS), which detains almost 400,000 persons annually, and the Department of Health and Human Services (HHS), which detains 9,000 unaccompanied alien children annually, recognize a unanimous

Section 1002(c) allows DHS and HHS to undertake their own rulemaking, but under a strict deadline

[n]o period of detention, regardless

DHS and HHS to conduct and include PREA performance assessments in their evaluations of detention facilities, ensuring system-

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jails based on the federal, state, or local detainees held, as well as help with the swift and successful implementation of final PREA standard

E. Housing Protections

In the last reauthorization of the Violence Against Women Act, Congress specifically acknowledged the interconnections between housing and abuse.[6] It recognized that domestic violence is a primary cause of homelessness; that 92% of homeless women have experienced severe physical or sexual abuse at some point in their lives; that victims of violence have experienced discrimination by landlords; and that victims of domestic violence often return to abusive partners because they cannot find long-term housing.

The LGBT-inclusive provisions in S. 1925 represent a critical step forward for VAWA, ensuring that it will reach those most in need of its services, regardless of sexual orientation or gender identity. The need could not be clearer. Studies indicate that LGBT people experience domestic violence at roughly the same rate as the general population. However, it is estimated that less than one in five LGBT domestic violence victims receives help from a service provider and less than in one in ten victims reports violence to law enforcement. H.R. 4970 does nothing to address the unacceptable discrimination that LGBT people often face when attempting to access services for those who experience intimate-partner violence, and nothing to change the fact that the LGBT community is underserved in this area.

G. Protections for Native American Survivors of Abuse

The crisis of violence against Native American women has been well documented.[9] Native American women are almost three times as likely to be raped or sexually assaulted as all other races in the United States and more than one-quarter of Native women have reported being raped at some point in their life.[10] Additionally, while violence against white and African-American victims is primarily intra-racial, nearly four in five American Indian victims of rape and sexual assault described their offender as white.[11] This is particularly significant because the legal decision that stripped Indian tribes of criminal jurisdiction over non-Indians[12] even for crimes committed against Native American women on tribal lands and thus placed non-Indian perpetrators of violence outside the reach of tribal courts, has exacerbated the cycle of violence on tribal lands.[13] Because tribal governments lack the authority to prosecute an alleged non-Indian abuser and federal law enforcement officers and prosecutors are, for a variety of reasons,[14] unable or unwilling to investigate or prosecute, victims are left without legal protection or redress and abusers act with increasing impunity.

We are disappointed that H.R. 4970 fails to address this legal impediment, which it could have done by restoring tribal authority to exercise concurrent criminal jurisdiction over non-Indian perpetrators of domestic violence and dating violence that occurs in the Indian country of a participating tribe. Giving tribes such authority, while at the same time providing those accused of such crimes all the constitutional rights to which they are entitled including the opportunity to have their sentences reviewed by an appellate court, would have empowered tribal governments to respond more fully to

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[9] *See e.g.*, AMNESTY INTERNATIONAL, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA (2007), *available at* http://www.amnesty.org/en/library/asset/AMR51/035/2007/en/cbd28fa9-d3ad-11dd-a329-2f46302a8cc6/amr510352007en.pdf.

[10] RONET BACKMAN ET AL., VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND THE CRIMINAL JUSTICE RESPONSE: WHAT IS KNOWN, 33 (2008), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf; CENTER FOR DISEASE CONTROL AND PREVENTION, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT, 3 (2011), *available at*

the cycle of violence in Indian country and to hold perpetrators, no matter their race or ethnicity, accountable.

H. New Mandatory Minimums and New Death Penalties under Sections 1001 for Sexual Abuse of a Minor and 1005 for Aggravated Sexual Abuse

Section 1001 of H.R. 4970 would result in a person convicted of sexually abusing a minor or ward being subject to the penalties that would include new 5- and 10-year mandatory minimums and a 30-year mandatory minimum for aggravated sexual abuse of a child under 16. Such provisions would also make it unlawful, in the course of committing a civil rights offense under 18 U.S.C. §§ 241-249 or the Fair Housing Act under 42 U.S.C. § 3631, to engage
under Chapter 109A of the federal code and subject these new crimes to the penalties for sexual abuse under Chapter 109A. The penalties for sexual abuse that would apply to civil rights and Fair Housing Act offenses would include the new 5- and 10-year mandatory minimums for sexual abuse of a minor, the 30-year mandatory minimum for aggravated sexual abuse, and the death penalty for aggravated and any other crime of sexual abuse if a the crime resulted in murder.

Section 1005 of H.R.4970 creates new 5- and 10-year mandatory minimum sentences for aggravated sexual abuse that occurs in special maritime and territorial jurisdiction or Federal prison. This new 10-year mandatory sentence could be charged in cases of sexual assault that involve force or threat and the 5-year mandatory minimum in cases that the victim was rendered unconscious or involuntary administered a drug or intoxicant.

We oppose the death penalty because we think that it inherently violates the constitutional ban against cruel and unusual punishment and the guarantees of due process of law and of equal protection under the law. Furthermore, we believe that the state should not kill with premeditation and ceremony, in the name of the law or in the name of its people, or in an arbitrary and discriminatory manner. The number of people being sentenced to death for murder in the United States has declined in recent years. In 2010, the number of new death sentences was 104,[15] the lowest level in 30 years. However, the United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power.

Also, we oppose mandatory minimum sentences because they generate unnecessarily harsh sentences,

in sentencing, and empower prosecutors to force defendants to bargain away their constitutional rights. Mandatory minimum sentences defeat the traditional rehabilitative purposes of sentencing by taking discretion away from judges and ceding it to prosecutors who then use the threat of lengthy sentences
utional rights.

recent report on mandatory minimum sentences. In its report, the Commission concluded that a strong

did not come to a consensus about mandatory minimum penalties as a whole, it unanimously agreed that certain mandatory minimum penalties apply too broadly, are excessively severe, and are applied inconsistently in the federal system. [17]

In addition, the Chair of the Commission, Judge Patti Saris, acknowledged that mandatory minimum sentences have contributed to federal prison overcrowding, with the federal Bureau of Prisons currently over its capacity by 37%.

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have a chilling effect on the exercise of other constitutional rights and may be legitimately proscribed.[23] As written, section 1003 would not fix the existing unconstitutional overbreadth and vagueness in section 2261A but is preferable to the Senate legislation.

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injury or death. Without such language, this provision could be applied to situations where such malicious intent does not exist and impose inappropriate criminal penalties.

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Because of the deficiencies outlined, above, we urge House members to oppose H.R. 4970 as amended
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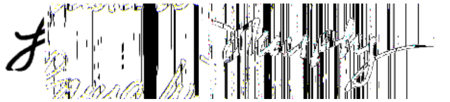
Sincerely,



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