May 7, 2012

Honorable Lamar Smith
Chairman
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Smith and Ranking Member Conyers

RE: ACLU Views 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 and equality set forth in the Constitution and in our nation's civil rights laws, we write to express our views on the Violence Against Women Reauthorization Act of 2012 (H.R. 4970), which the House Judiciary Committee is expected to debate this week. While we support some elements of the bill, there are several provisions and omissions in the bill that we strongly oppose.

A. Housing Protections

In the last reauthorization of the Violence Against Women Act, Congress specifically acknowledged the interconnections between housing and abuse.[1] 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.[2] The ACLU has represented victims of violence who faced eviction because of

States and more than one-quarter of Native women have reported being raped at some point in their life.[5] 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.[6] This is particularly significant because the legal decision that stripped Indian tribes of criminal jurisdiction over non-Indians[7] — 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.[8] 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,[9] 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 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 the cycle of violence in Indian country and to hold perpetrators, no matter their race or ethnicity, accountable.

D. 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 Congress's intent under PREA to cover all immigration detainees.

Section 1002(c) allows DHS and HHS to undertake their own rulemaking, but under a strict deadline of 180 days and with "due consideration" to the extensive work conducted by the National Prison Rape

[5] RONET BACKMAN ET AL., VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND THE CRIMINAL J

Sections 802 and 806 further weaken existing protections by stating that U visa certifications are only valid where the crime was reported within 60 days, the statute of limitations for prosecution has not lapsed, and an active investigation or prosecution of the crime is underway, and by terminating the eligibility of U visa recipients for permanent residence. Together, these provisions arbitrarily limit the remedies available to immigrant victims, discouraging cooperation with law enforcement. Law enforcement relies on information provided by victims even where a crime cannot be prosecuted, such as when identifying a serial perpetrator. By placing arbitrary limitations on the relief available to victims who come forward, the bill damages law enforcement's ability to stop crime in their jurisdictions.

F. "Cyber-Stalking" Criminal Expansion

H.R. 4970 fails to address certain constitutional deficiencies in existing "cyber-stalking" law, 18 U.S.C. § 2261A (2006) ("section 2261A"), though we note that section 1003 of the bill is preferable to its Senate-passed counterpart, S. 1925. We recognize that perpetrators of domestic and sexual violence and stalking can use the Internet

facility of interstate or foreign commerce in a course of conduct" into one section. It helpfully does not extend the triggering electronic devices or services beyond an "interactive computer service." Additionally, it limits the intent standard for the "use of the mail" provision by removing liability for actions taken merely with the "intent to . . . cause substantial emotional distress," which is currently in

G. 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 or the Fair

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.[28]

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 (BOP) currently over its capacity by 37 percent. The ACLU urges the House to strip both the mandatory minimum and death penalty provisions of H.R. 4247 and focus its efforts on providing victims of domestic violence with the resources to combat violence in their communities.

H. New Crime of Strangulation and Suffocation

H.R. 4970 amends the federal criminal code to provide a ten year offense for assaulting a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate. In its current form, the bill does not clearly define the intent required to commit either strangling or suffocating. Instead, the bill simply states that intent "to kill or protractedly injure the victim" is not required.

While we recognize that this provision is intended to address the difficulties of prosecuting strangulation, we urge that the bill be amended to clarify the requisite intent and harm, so as to avoid prosecution for crimes that are not adequately defined. For example, the legislation could clarify that the acts of strangling or suffocating require the intent to harass, put in fear of injury or death, or cause injury or death. Without such language, this provision could be applied to situations where such malicious