



Dear Senators Richard C. Shelby and Tommy Tuberville,

We are writing to support VAWA Reauthorization but strongly oppose the “Restorative Practice” and “Diversion” sections, as currently worded, in the House-approved (HR1620) version of VAWA Reauthorization.

One Place Family Justice Center in Montgomery, Alabama provides immediate crisis intervention services for victims of domestic violence, child abuse, human trafficking and elder abuse. Our mission is to provide a comprehensive service and support center which affords greater safety, access to services and confidentiality for victims and their families by co-locating services under one roof. Our onsite partners include, Montgomery county District Attorney’s office, Montgomery Police Department, Legal Services Alabama, Jones School of Law, and a City Magistrate.

As the Senate considers reauthorization of the Violence Against Women Act (VAWA) this fall, little known provisions of the current bill passed by the House (HR1620) have avoided public scrutiny. The deeply troubling provisions refer to “Restorative Practice” and include promoting diversion for all felony and misdemeanor domestic violence, dating violence, sexual assault, and stalking offenses under VAWA. “Restorative Practice” in the pending VAWA bill is defined as: “...a process, whether court- referred or community-based, that— (A) involves, *on a voluntary basis* [emphasis added], 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 the 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) includes protocols to address the use of information disclosed during such process for other law enforcement purposes.”

This definition of “Restorative Practice” in the pending bill has never been validated in any published research on its application to the handling of domestic and sexual violence cases. The more commonly used phrase “Restorative Justice” also has scant research to support it in the context of domestic and sexual violence. But now the Senate is being asked to make it public policy in America in addressing domestic violence, dating violence, sexual assault, and stalking. The House already passed HR1620 and provided no critical review of the provision. What is the import of such a policy statement in VAWA? All felony and misdemeanor offenders could be eligible for non-criminal justice system, yet to be defined or researched intervention processes. Attempted murderers, rapists, sex traffickers, stranglers, and stalkers can avoid criminal convictions or responsibility for their offenses with the sanctioned approval of the Congress of

the United States. There are no limits in HR1260 to the types of offenders or the types of cases that will be eligible for “Restorative Practice.”

If there is any question about the intended reach of the Restorative Practice approach in VAWA, one need only look at the “diversion” section of the bill to get clarification.

The diversion provision in HR1620 is in Title I, Section 102 and reads in part:“(28) To develop or strengthen policies and training for law enforcement officers, prosecutors, and the judiciary in recognizing, investigating, and prosecuting instances of domestic violence, dating violence, sexual assault, and stalking against individuals who have been arrested or otherwise have contact with the juvenile or adult criminal justice system, and to develop or strengthen diversion programs for such individuals and for such individuals to receive comprehensive victim services...” Diversion programs are well-known across America. They allow certain types of criminal offenders to avoid criminal prosecution and be “diverted” from the criminal justice system through informal mechanisms that allow them to avoid a criminal conviction or criminal sanctions of any kind. It is generally prohibited in domestic violence and sexual assault offenses. The formal legal definition in the context of criminal law refers to “...diverting a defendant out of the criminal justice system by having them complete a diversion program rather than be incarcerated or serve another alternative sentence. Criminal charges are typically dropped when a defendant successfully completes a diversion program. The defendant therefore avoids the stigma of a criminal conviction.”

The Restorative Practice provision of HR1620 ignores the reality of gender-based violence in America, and particularly ignores the intimidation and terror experienced by so many victims. It is well researched that domestic violence and sexual assault perpetrators often get their victims to drop charges through threats of violence or through apologetic manipulations ((Goodman & Epstein, 2008; Hanna, 1996; Kuennen, 2007). In the domestic violence context, the U.S. Supreme Court has found that domestic violence cases are “notoriously susceptible to intimidation or coercion of the victim to ensure that she does not testify at trial.” (Davis v. Washington, 54 U.S. 813 (2005)). The Battered Women’s Justice Project has found: “Violent criminals routinely escape justice by intimidating witnesses to their crimes, which has resulted in justice system professionals, community leaders, and researchers declaring witness intimidation a national concern and a challenge to administering justice.” (Martinson, 2012). Nevertheless, HR1260 assumes “voluntary” agreement by victims to diversion and restorative practice processes. It also draws a target on victims of these crimes but sending the message that if perpetrators threaten or intimidate the victim into “voluntarily” agreeing to no criminal prosecution, they will avoid accountability for their crimes.

The effort of the authors of HR1620 to defund and eliminate criminal prosecution of domestic and sexual violence perpetrators ignores the massive body of evidence that VAWA’s focus on criminal justice system intervention since its passage in 1994 has saved lives and reduced violence against women, children, and men.

We support reauthorization of VAWA by the Senate but strongly oppose the “Restorative Practice” and “Diversion” language (without major amendments) in HR1620. Please ensure the Senate’s VAWA reauthorization bill will continue to stand for increased victim safety and offender accountability even while seeking to create alternatives to criminal justice system intervention for those survivors who want other alternatives. Family Justice Centers offer many options for survivors other than criminal justice system intervention and we are committed to advocating for funding and resources for evidence-based alternatives.

Respectfully,

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Executive Director