

**Testimony of Terry O'Neill, Esq., President
National Organization for Women**

**A Hearing before the Senate Committee on the Judiciary
July 13, 2011**

**The Violence Against Women Act -
Building on Seventeen Years of Accomplishment**

NEEDED IMPROVEMENTS TO VIOLENCE AGAINST WOMEN PROGRAMS

Chairman Leahy, Ranking Member Grassley and Committee members - My name is Terry O'Neill and I am president of the National Organization for Women which represents hundreds of thousands of members and contributing supporters with chapters in each state and the District of Columbia. I thank you for this opportunity to comment on the Violence Against Women Act (VAWA) -- the groundbreaking 1994 legislation that the National Organization for Women considers one of the most important initiatives for women ever undertaken. VAWA has unquestionably saved thousands of lives, prevented untold injury and anguish and served to educate a generation about the tragic consequences of family violence. The U.S. law and its many proven effective programs is a model for anti-violence efforts around the world. The National Organization for Women frequently hosts international visitors concerned about women's rights and the most often-asked question is what can be done about domestic violence? What are we doing in the United States to stop battering? Proudly, we can point to the Violence Against Women Act and we have the leadership of the U.S. Senate as well as Vice President Joe Biden to thank for that.

Continued federal, state and local funding for anti-violence programs are more crucial than ever as we see demand for services rising each year. The National Network to End Domestic Violence's (NNEDV) annual one-day census of services documented that in 2010, there were 9,541 unmet requests for services on a single day with many programs reporting a critical shortage of funds and staff. Translating that number to a year 'round estimate means that as many as 3.5 million clients in need may have been turned away. Thirty-eight percent of the 1,746 responding programs in the NNEDV survey reported insufficient funding to meet needed programs and services; 29 percent reported not enough staff, one-quarter reported no available beds or funding for hotels and so forth. The economic recession has meant a cutback in funds at state and local levels while private donations have fallen off. These shortages should not continue unaddressed.

Our work to effectively prevent violence and assist survivors must be taken to a higher level -- as the committee recognizes -- and much more remains to be accomplished in building upon VAWA's early successes. Most recently, the National Organization for Women, along with a coalition of women's rights and human rights organizations, academics, attorneys and service providers assisted the United Nations Special Rapporteur on Violence Against Women, the Honorable Rashida Manjoo, Esq., in conducting an information-gathering mission in the United States. Ms. Manjoo held meetings and conducted interviews in Washington, D.C., North Carolina, Florida, California, Minnesota and New York. With the help of the coalition members and the University of Virginia School of Law's Human Rights Law Clinic, the Special Rapporteur examined violence against women in custodial settings and in the military, as well as violence against women who face multiple, intersecting forms of discrimination -- particularly Native American, immigrant, and African American Women. Her report, released June 1, 2011 at the U.N. Human Rights Council, 17th Session, in Geneva, describes what Ms. Manjoo learned about problems encountered by survivors, service providers and advocates and makes specific recommendations for reforms. The full report is found at

http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.26.Add.5_AEV.pdf

But what I would like to call to the attention of Committee members are the Special Rapporteur's Conclusions and Recommendations and am incorporating her written comments verbatim here. The National Organization for Women endorses Ms. Manjoo's recommendations; in fact, we have advocated for many of the recommended improvements in recent years.

Report of the Special Rapporteur on violence against Women, its causes and consequences, Ms. Rashida Manjoo. Mission to the United States of America.

The government has taken positive legislative and policy initiatives to reduce the prevalence of violence against women, including the enactment and subsequent reauthorizations of the Violence against Women Act, and the establishment of dedicated offices on violence against women at the highest level of the Executive. The government has also allocated substantial resources which are beneficial to advocates and service providers, particularly at the grassroots level.

Nevertheless, the lack of substantive protective legislation at federal and state levels, and the inadequate implementation of current laws, policies and programs, has resulted in the continued prevalence of violence against women and the discriminatory treatment of victims, with particularly detrimental effects on poor, minority, and immigrant women.

It is clear that multiple forms of discrimination against certain groups of women not only makes them more vulnerable, but also exacerbates the negative consequences that violence has upon them. Thus the implementation of current policy and programmatic initiatives must address the persistent structural challenges which are often both the causes and consequences of violence against women.

In light of the information received, the Special Rapporteur would like to make the following recommendations to the Government:

A. Remedies for victims of domestic violence, sexual assault and stalking

- (a) Explore more uniform remedies for victims of domestic violence, sexual assault and stalking. Expanding federal causes of action under VAWA, where possible, would mitigate current discrimination, and increase uniformity and accountability at the state and local levels.
- (b) Review and more effectively address the disproportionate impact that violence has on poor, minority, and immigrant women.
- (c) Re-evaluate existing mechanisms at federal, state, local and tribal levels for protecting victims and punishing offenders, given that calls for help often do not result in either arrests or successful prosecutions.
- (d) Establish meaningful standards for enforcement of protection orders and impose consequences for a failure to enforce.
- (e) Initiate local and national dialogues with relevant stakeholders to consider the effectiveness, in theory and application, of expedited proceedings, mandatory arrest policies, mandatory prosecution policies, and batterer's programs. This dialogue is necessary in light of the skepticism regarding the state's response to domestic violence, and also the de facto disparate impact of such measures.
- (f) Initiate more public education campaigns that condemn all forms of violence, both public and private.
- (g) Enhance gun control measures, by ensuring an adequate background check system to capture all relevant elements that determine an individual's suitability for gun ownership. Background checks for licensed individuals should be revisited periodically to determine continued suitability. States should have clear gun removal policies when intervening in domestic violence cases, including the possibility of removal of guns after the first notification of domestic disputes. Gun dealers should be penalized for illegally selling guns and also for failure to report stolen guns which are subsequently used to commit crimes.
- (h) Ensure effective implementation, regulation, monitoring and evaluation of VAWA's housing provisions, including making available more affordable, secure housing options for those fleeing

domestic violence. Federal and state housing policies should not discriminate against victims of domestic violence, sexual assault, and stalking - by excluding them as applicants or evicting them based on their histories of abuse.

(i) Reform Federal and State labor laws to prohibit discrimination against survivors of domestic violence, sexual assault, and stalking; and provide for emergency leave when employees need time off to address safety, health, housing, and legal concerns.

(j) All courts should order safe and appropriate parenting arrangements, including considering any history of domestic violence, prior orders of protection and domestic violence criminal convictions when determining custody, visitations and mediation issues. Furthermore, “failure to protect” statutes should not be used to unjustly remove children from non-offending caregivers.

B. Military violence

(a) Ensure the effective implementation of a no-tolerance policy for rape, sexual assault and sexual harassments in the military, ensure adequate investigation of all allegations by an independent authority and allow victims to bring claims against the military when damages arise out of negligent or wrongful acts.

(b) Ensure the effective implementation of training for all SAPRO employees, including Victim Advocates, SARC's, investigators and health professionals. Furthermore, the role and authority of the SARC's should be strengthened beyond their current advisory role.

(c) Enable more female-only and service specific in-patient PTSD and MST programs within the VA, to ensure victims a safe place to privately seek assistance without threats of further harassing behavior. Furthermore, mandatory and routine training on the specific issues facing women veterans should be instituted for all VA staff. The VA should also extend evidentiary relief to victims claiming in-service sexual assault and accept their testimony as main proof to support a diagnosis of PTSD.

C. Violence against women in detention

(a) Adopt international legal standards and norms for the protection of prisoners and detainees through the implementation of laws, policies and programmes at the Federal, State and local levels.

(b) Explore and address the root causes, including the multiple and intersectional challenges, which lead to the increasing number of immigrant and African-American women in prisons and detention facilities.

(c) Consider alternatives to incarceration, particularly for women detainees who are primary caregivers of their children, given the non-violent nature of many of the crimes for which women are incarcerated, and also in light of laws relating to loss of parental rights.

(d) Consider amendments to the ASFA with a view to ensure that women in custodial settings do not easily or arbitrarily lose their parental rights. States should be encouraged to take a balanced approach when assessing the interest of the child's welfare and the parental rights of incarcerated or detained mothers.

(e) Ensure that sentencing policies reflect an understanding of women's levels of culpability and control with drug offenses. Review laws that hold women responsible for their association with people involved in drug activities, and which punish them for activities of drug operations they may have little or no knowledge.

(f) Emulate current programs to equip inmates with marketable skills for reintegration into society in all federal and state prisons, and ensure access to all women prisoners, regardless of their immigration status.

(g) Adopt policies at the federal and state level to ensure that women in prisons receive the highest attainable level of physical and mental health care. In particular, women's prisons should provide comprehensive reproductive health services and gender-sensitive mental health and drug treatment programs. Women should not be punished, through administrative segregation or otherwise, for behavior associated with their mental illness. Adequate independent oversight processes should be instituted to improve minimum standards of health services and to ensure that costs do not prohibit inmates from accessing health care.

- (h) Adopt legislation banning the use of restraints on pregnant women, including during labor or delivery, unless there are overwhelming security concerns that cannot be handled by any other method.
- (i) Enact laws criminalizing sexual abuse and other misconduct towards prisoners, covering not only guards and correctional officers, but also all individuals who work in prisons including volunteers and government contractors. The National Standards to Prevent, Detect, and Respond to Prison Rape should reflect the substantive issues indicated in the NPREC report of 2009. As articulated in the NPREC's finding number five, victim's health and safety should remain the focus, reporting procedures should be improved and responsive, and accountability should be the norm rather than the exception. Compliance with these laws should be monitored through an independent mechanism through which prisoners can file grievances directly. Furthermore, prosecutors should receive specialized training on sexual abuse cases, to enable more responsive prosecutions in prison contexts.
- (j) Strengthen institutional oversight to ensure a comprehensive approach in preventing and responding to rape and sexual abuse in prisons, including through more accessible and transparent grievance procedures.
- (k) Amend the Prison Litigation Reform Act to ensure women prisoners and detainees equal protection before the law, thereby addressing the numerous complaints noted above.
- (l) Eliminate cross-gender searches and provide for supervision in privatespaces within all women's prisons, in line with international standards regarding the treatment of prisoners. The National Standards should include NPREC recommendations that cross-gender pat searching be done only in the case of an emergency and not on a routine basis. Unnecessarily invasive and degrading strip search procedures should also be eliminated.
- (m) Improve and adopt national standards to transform the country's immigration detention system into a truly civil model, thus avoiding the custody of immigrant detainees with convicted individuals. These standards should be made legally binding in all detention facilities, including those run by state, local, or private contractors.
- (n) Locate immigration detention facilities closer to urban centers where legal services and family members are more accessible.

D. Violence against Native-American women

- (a) Prioritize public safety on Indian land by fully implementing and funding the Violence against Women and Tribal Law and Order Acts.
- (b) Assist tribal authorities in their efforts to respond to violence against women, including by allowing these law enforcement agencies to access federal criminal databases and by establishing, in consultation and cooperation with Indian nations, a national reporting system to investigate and prosecute cases of missing and murdered Native-American women.
- (c) Establish federal and state accountability for the investigation and prosecution of violent crimes against Native-American women. The government should also ensure that state authorities recognize and effectively enforce tribal court protection orders.
- (d) Increase resource allocation to Indian tribes and tribal non-profit organizations providing services to women to develop comprehensive services for survivors of sexual and domestic violence.
- (e) Consider restoring, in consultation with Native-American tribes, tribal authority to enforce tribal law over all perpetrators, both native and non-native, who commit acts of sexual and domestic violence within their jurisdiction.

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I thank the Committee for the opportunity to present this information to you.