

**SPECIAL REPORT**

**Has VAWA Delivered on its  
Promises to Women?**



**Respecting Accuracy in Domestic Abuse Reporting**

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## RESPECTING ACCURACY IN DOMESTIC ABUSE REPORTING

The Violence Against Women Act was enacted in 1994 by President Bill Clinton to prevent and treat intimate partner abuse. Since that time, many abused women have received sorely needed services and public awareness of the problem has been raised.

But has VAWA reduced the overall level of partner abuse? Have VAWA programs paid heed to the needs and wishes of abused women? Have they respected and supported the families and communities in which women live? Have VAWA programs balanced the needs of victims with the due process rights of alleged offenders?

In short, has the Violence Against Women Act delivered on its promises to women?

To answer those questions, we first need to understand the dynamics of partner aggression. Over 200 scholarly studies of domestic violence reveal that:

- Women are at least as likely as men to engage in partner violence.<sup>1,2</sup>
- In about half of all cases, the aggression is mutual and there is no clear-cut initiator.<sup>3</sup>
- About two-thirds of those cases are *minor* (e.g., shoving, throwing a pillow), while the remaining one-third involve *severe* incidents (e.g., hitting with a fist or attacking with a weapon).<sup>4</sup>

The Violence Against Women Act provides funding to develop counseling, medical, and other services for victims of domestic violence; to step up law enforcement programs to prevent partner assault; and to aggressively prosecute perpetrators. As a result, 1,500 domestic violence laws have been passed at the state level that overhauled the legal framework for addressing partner abuse.<sup>5</sup> These laws:

- Provide for a broad range of benefits to domestic violence victims.
- Mandate treatment programs for abuse perpetrators.
- Allow for the easy availability of domestic restraining orders.<sup>6</sup>
- Encourage or mandate arrest.
- Encourage jurisdictions to adopt “no-drop” prosecution policies.

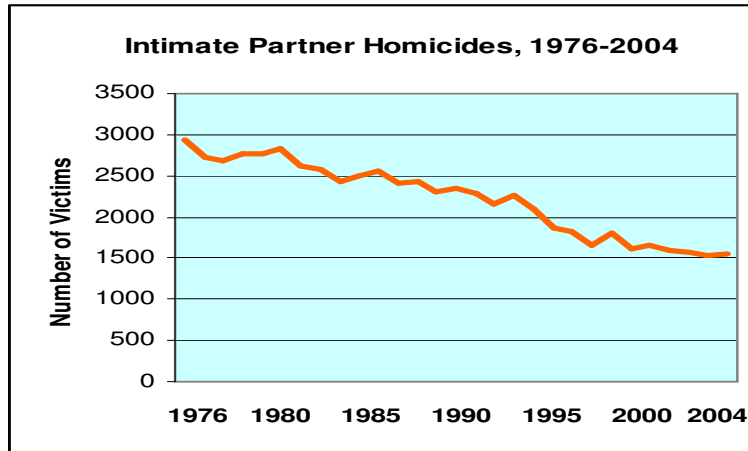
But many of these laws are based on questionable assumptions and may infringe on civil liberties. A sizeable number of VAWA-funded services lack evidence of effectiveness. Indeed, VAWA programs have been criticized for ignoring a large segment of the domestic violence problem.

These issues are examined in the next 10 sections.

## 1. No Proof that VAWA Has Reduced Intimate Partner Abuse

Violent crime of all types—robberies, simple assaults, and aggravated assaults—has been falling in the United States for many years. That long-term decline also has been observed for intimate partner crimes.

In 1976, 2,944 men and women were victims of intimate partner homicide. By 1994, the year that VAWA was enacted into law, that number had fallen to 2,087 persons—a 29% drop.<sup>7</sup> So fatal partner crime began to fall long before VAWA had been passed:



Hence, there is no evidence that VAWA-funded programs have accelerated the decline in intimate partner homicides.

*“We have no evidence to date that VAWA has led to a decrease in the overall levels of violence against women.”* —Angela Moore Parmley, PhD, U.S. Department of Justice<sup>8</sup>

## 2. Aggressive Prosecution Policies Place Women at Greater Risk

Three studies reveal that get-tough prosecution measures may actually make things worse for female victims of partner aggression:

*Mandatory Arrest for Restraining Order Violations:* Many states have enacted laws that mandate arrest and prosecution in the event of a restraining order violation. One Department of Justice-funded project studied the effectiveness of such prosecution policies and concluded, “Increases in the willingness of prosecutors’ offices to take cases of protection order violation were associated with *increases in the homicide* of white married intimates, black unmarried intimates, and white unmarried females.”<sup>9</sup> (emphasis added)

*Mandatory Arrest for Assault:* Another analysis of arrest policies found that women whose partners were arrested under mandatory arrest laws were far less likely to request police assistance in the event of future of violence.<sup>10</sup> This is worrisome because if persons don't report the abuse, the criminal justice system is of only marginal relevance to persons who need help.

*No-drop Prosecution:* Sixty-six percent of prosecutors' offices have implemented so-called "no-drop" prosecution, in which the prosecutor continues the case despite the victim's stated wishes to the contrary.<sup>11</sup> But one National Institute of Justice analysis warns, "We do not know whether no-drop increases victim safety or places the victims in greater jeopardy."<sup>12</sup>

### **3. Real Victims Have To Compete with Minor Cases to Get Help**

Our nation's broadly defined domestic abuse laws have opened the flood gates to minor allegations of domestic "violence." Currently, half of all restraining orders do not include even an *allegation* of physical abuse.<sup>13</sup> Elaine Epstein, former president of the Massachusetts Bar Association, once revealed, "Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply ... In many cases, allegations of abuse are now used for tactical advantage."<sup>14</sup>

A case involving a well-known media personality illustrates the problem:

*New Mexico Judge Daniel Sanchez issued a restraining order to protect Colleen Nestler. According to Nestler, a man had been sending her mental telepathic messages over the past 11 years expressing his desire to marry her. Her alleged harasser: CBS talk show host David Letterman.*

One commentator deplored the questionable basis of the Letterman case, arguing that the "abuse of temporary restraining orders endangers real victims."<sup>15</sup>

Likewise, one National Institute of Justice report questioned the wisdom of mandatory arrest laws, saying that "arrests for all suspects may unnecessarily take a community's resources away from identifying and responding to the worst offenders and victims most at risk."<sup>16</sup>

In short, court dockets have become choked with minor and even vindictive complaints of abuse. As a result, the voices of the real victims of violence often go unheard.

*Judge Rucker Smith, of Sumter County, Georgia, was assaulted by his ex-girlfriend. Even though she had instigated the incident and he did not retaliate, he was charged with battery. A jury later acquitted Smith of all charges. The judge subsequently recounted, "For someone to falsely accuse another out of anger and vengeance silences the voices of the many real victims."<sup>17</sup>*

#### 4. No-Drop Prosecution Ignores Women's Wishes

The majority of abuse cases involve disputes in which the conflict is a minor, mutual, and/or one-time occurrence. Women often believe these situations can be handled better through counseling rather than legal intervention. So in about 80% of cases, women who request police assistance later recant or decide to drop the charges.<sup>18</sup>

As discussed above, “no-drop” prosecution policies often discourage women from seeking police help in the event of future violence.<sup>19</sup> No-drop is controversial for other reasons, as well. If the woman refuses to testify, the prosecutor may charge her with obstruction of justice and threaten to take away her children.<sup>20</sup> In one case, the county prosecutor put a woman in jail for 8 days after she refused to testify against her boyfriend. She later won a \$125,000 settlement for false imprisonment.<sup>21</sup>

New York University professor Linda Mills explains it this way: “Mandatory policies turn professionals away from women in abusive relationships by focusing so exclusively on arrest and prosecution and ignoring the opportunity, through human contact, to nurture a relationship with the victims.”<sup>22</sup> In short, mandatory arrest and prosecution policies silence women's voices.

And sometimes no-drop policies turn out to be embarrassing to all parties concerned:

*Former NFL quarterback Warren Moon got into an argument with his wife, Felicia. The police were summoned and, against her wishes, Mr. Moon was arrested. When the case went to trial, Felicia Moon admitted that she had instigated the altercation by kneeling him in the groin and throwing a candlestick at him. Mr. Moon was acquitted of all charges.*<sup>23</sup>

#### 5. Lulled into a False Sense of Security

American taxpayers pay hundreds of millions of dollars each year for domestic violence treatment programs and law enforcement and prosecution policies. Yet there is considerable doubt about the effectiveness of these programs.

*Treatment:* Offenders are often ordered to undergo treatment programs based on the Duluth model. But psychologist Donald Dutton, PhD notes, “Research shows that Duluth-oriented treatments are absolutely ineffective, and have no discernible impact on rates of recidivism.”<sup>24</sup> The National Research Council explains that these programs lack effectiveness because they are “driven by ideology and stakeholder interests rather than by plausible theories and scientific evidence of cause.”<sup>25</sup>

*No-Drop Prosecution:* Only one randomized study has been conducted that evaluates the effectiveness of no-drop prosecution. The research found that only one factor reduced abuser recidivism rates—allowing the victim to select whether and how aggressively the prosecutor would pursue the case.<sup>26</sup> But by their nature, no-drop prosecution policies *eliminate* the ability of abused women to make that choice.

*Restraining Orders:* Restraining orders do not appear to be effective in deterring subsequent physical violence. One study concluded that restraining orders were flatly “ineffective in stopping physical violence.”<sup>27</sup> Similarly a second report concluded that “having a permanent order did not appear to deter most types of abuse.”<sup>28</sup> One review concluded that such interventions may, in fact, “lull women into a false sense of security.”<sup>29</sup>

## **6. Rigid Law Enforcement Programs Ensnare Women**

The Violence Against Women Act encourages states to enact get-tough laws that promote the issuance of restraining orders, promote arrest, and facilitate prosecution efforts. But these laws may be going too far.

*Restraining Orders:* State laws have been broadened to the point that almost any action can be viewed as domestic “violence.” Once a restraining order is in place, a vast range of ordinarily legal behavior becomes criminalized. As a result of open-ended definitions, almost any lover’s quarrel or marital spat now qualifies as domestic abuse.<sup>30</sup> 2-3 million temporary restraining orders are currently issued each year—15% of them against women, and many of them for trivial incidents.<sup>31</sup>

*In August 2006, Saturday Night Live comedian Joe Piscopo obtained a restraining order against his wife, Kimberly. The allegation? She was using foul language and spitting at him.*<sup>32</sup>

*Arrest:* Thirty states have now enacted laws that promote or mandate arrest for domestic violence.<sup>33</sup> As a result, the number of female offenders in domestic violence arrests rose by 10–25% in many areas.<sup>34</sup> In California, the number of women arrested soared by 446% as a result of mandatory arrest policies,<sup>35</sup> even though a number of those arrests may have been considered unnecessary by the woman’s partner.

*Prosecution:* In Colorado, a “Fast Track” prosecution system put accused persons in jail, charged them with third-degree assault, and then offered a plea bargain involving a lesser charge. In exchange, the defendant agreed to not seek legal representation—a transparent violation of due process protections. One woman who went through the system stated, “It ain’t about justice, that’s for sure.”<sup>36</sup>

## 7. Female Abusers Can't Get the Help They Need

Research shows that women are at least as likely as men to engage in partner aggression. This is one example:

*On November 10, 2006, Krystle McGlothin of Peoria County, Illinois, rammed the pick-up truck of her ex-husband, Dennis, smashed its windows, and then ran him down, all the while yelling obscenities. Ms. McGlothin was charged with six counts of first-degree murder.<sup>37</sup>*

Most abusive women do not take their anger to the point of killing their partners. But where can violent women get the help they need?

Violence initiated by a woman increases the chances of retaliatory aggression *against* that woman.<sup>38</sup> But experience reveals that when abusive women request help from VAWA-funded agencies, they learn that female-specific treatment programs are almost non-existent, and their requests for treatment may be dismissed with comments such as, "I'm sure you're under stress," or "He must have provoked you." Or if these women do find services designed specifically for women, they may find that female *offenders* are actually treated as the *victims*, which allows the abuse to continue.

Researcher Susan Steinmetz tells of receiving letters from violent women who recognized that they needed help, but were "turned away or being offered no help when they called a crisis line or shelter."<sup>39</sup> As attorney Linda Kelly puts it, "Today's treatment denies the possibility that women can be violent."<sup>40</sup>

When government policies neglect the problem, it's often children who pay the price:

*Socorro Caro of San Fernando Valley, California, had repeatedly attacked her husband. But her husband, a well-known physician, was reluctant to report the incidents because he thought that the authorities wouldn't believe him. On November 22, 1999, Mrs. Caro shot their three sons with a .38-caliber handgun. Two years later she was convicted of first-degree murder.<sup>41</sup>*

## 8. Abuse Shelters Do Not Meet Victims' Needs

Abuse shelters are considered to be a mainstay of treatment services for domestic violence victims. But evidence supporting the effectiveness of these shelters is not persuasive. Whether the outcome measure is recurrence of the violence, long-term separation of the abuser and victim, or victim satisfaction, the results have been found to be mixed.<sup>42</sup>

One survey of shelters found that half of them stressed feminist political activism over providing women with practical solutions to their problems.<sup>43</sup> An example of such bias came from a former volunteer who was told by her supervisor to not advise an abused

woman to learn self-defense techniques. Why? Because such advice could be interpreted as blaming the woman for not protecting herself.<sup>44</sup>

In Massachusetts, one mother was pressured to attend a group for abused women run by volunteers with no professional qualifications. She claimed that the clients were coerced by use of “threats, intimidation, and fear of losing their children.” In the end, she filed a lawsuit against the shelter alleging a variety of civil rights violations.<sup>45</sup>

*Marilyn Hooks, 25, and Milaus Almore, 8 weeks pregnant, were residents in the SafeSpace shelter in Stuart, Florida. On October 31, 2007, the women fell into an argument. Hooks pulled out a knife and fatally stabbed Almore. Hooks was later charged with second-degree murder.*

*Before the incident, Hooks had made death threats to a staff member and resident, but the shelter manager ignored staff recommendations to evict the woman. The manager was later terminated from her position.<sup>46</sup>*

## 9. System Removes Children from Their Homes

In many states, the definition of child abuse has now been expanded so if a child simply *observes* partner aggression, it is deemed to constitute child abuse. The mere accusation of partner aggression means that that parent will also be suspected of child abuse—and the other parent may be charged with child neglect. That becomes grounds for removing the child from the family home.

In one case, a shelter held meetings for abused women and promised their statements would be kept confidential. In spite of assurances to the contrary, however, one woman’s comments were passed along to the state child abuse agency. Shortly afterwards, the agency ordered the woman’s daughter be removed from the home, accusing the mother of neglectfully allowing the girl to be exposed to domestic violence. The daughter, who had never suffered any physical abuse, was returned home 13 months later.<sup>47</sup>

This is another example:

*A couple had several heated arguments, but neither had suffered any physical abuse. When Susan began to think about striking her husband with an object, she realized that she needed to get help. So she went to her local shelter to seek counseling. The shelter called the police to take a statement. The police report stated—erroneously—that Susan’s husband had threatened to rape her and to kill the children.*

*On the basis of that faulty report, the husband was arrested and bail set at \$350,000. He was eventually placed on 3 years probation. The children were placed in foster care for 38 days. The woman concluded, “These people have no idea of the damage they have done. I compare it to someone coming into your home and ransacking it.”<sup>48</sup>*

In addition, when a restraining order is issued, it forbids contact not only between the alleged offender and the *victim*, but also between the alleged abuser and the *children*.

This restriction extends to the couple's parents and extended family members as well. As a result, grandmothers and grandfathers may be prohibited from seeing their own grandchildren.

## 10. Policies Break Up Families and Harm Children

Research shows that the safest place for women is in the intact family. According to the Department of Justice, only 2% of partner aggression involves currently married couples who live together.<sup>49</sup> The majority of domestic abuse incidents are minor, such as a shove or one-time slap. In such cases, reconciliation is preferable. But no-contact restraining orders and policies of women's shelters preclude persons from receiving couples' counseling.

Harvard law professor Jeannie Suk argues that restraining orders amount to "state-imposed *de facto* divorce" in which the mere presence of the accused offender in the family home becomes a proxy for the crime of domestic violence. As a result, the government "initiates and dictates the end of the intimate relationship as a solution to DV." Suk wonders whether such orders violate persons' fundamental right to marry.<sup>50</sup>

Some VAWA-funded programs appear to actively promote divorce. Abuse shelters have been referred to as "one-stop divorce shops." The website of one DoJ-funded program includes an advertisement for a divorce lawyer matching service.<sup>51</sup>

Thus, a mere allegation of domestic violence—substantiated or not—can lead to family break-up.<sup>52</sup> As a result, the child often loses regular contact with his or her non-custodial parent. Research shows that children who grow up in a one-parent family are at greater risk of child abuse, and fare worse on a broad range of indicators of academic, emotional, and social well-being.<sup>53</sup>

## Women Speak Out

Women's groups are saying that our domestic violence laws may be hurting families more than they are helping:

- *Independent Women's Forum*: "Men may become alienated from and hostile toward the system in the conviction that it is stacked against them and unjustly favors women."<sup>54</sup>
- *Eagle Forum*: "VAWA funds the re-education of judges and law enforcement personnel to teach them...how to ride roughshod over the constitutional rights of men."<sup>55</sup>
- *Ms. Foundation for Women*: "Unfortunately, when state power has been invited into, or forced into, the lives of individuals, it often takes over."<sup>56</sup>

And a growing number of women are now calling for change:

- “There is no compassion without justice for all perpetrators and victims of domestic violence. All victims and perpetrators should receive help from VAWA programs.” —Sheila Smith, LCSW, board member, Stop Abuse for Everyone
- “Research suggests that men and women in heterosexual and same-sex relationships are both perpetrators and victims of intimate partner violence. If we as a society hope to end violence in our families, the feminist perspective needs to be replaced with a more holistic approach.” —Jan Brown, executive director, Domestic Abuse Helpline for Men and Women
- “Regrettably, some State Institutions collude in the dishonest representation of domestic violence as consisting only of violent men abusing innocent defenseless women. Now that equality is deemed to be a worthy aspiration, government agencies must openly reject the myth that domestic violence is a gender issue.” —Mary T. Cleary, director, Amen (Abused Men), Ireland

### **A Time for Reform**

This Special Report documents how the Violence Against Women Act—and the state-level laws it has engendered—are ineffective in reducing abuse, may place women at greater risk of violence, make it difficult for real victims to get help, ignore the wishes of abused women, lull women into a false sense of security, ensnare women in a rigid law enforcement bureaucracy, neglect the needs of female aggressors, fail to provide needed services at abuse shelters, remove kids from their homes, and harm families and children.

Previous Special Reports have documented other problems with our nation’s domestic violence system, including discrimination against male victims,<sup>57</sup> politicization of the judiciary,<sup>58</sup> and violations of due process and civil rights.<sup>59,60,61</sup>

Scientific research, expert panels, and individual cases all point to a singular conclusion: Our nation’s domestic violence system, once conceived with high hopes and the best of intentions, is now in need of reform.

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