

## **SPECIAL REPORT**

# **Have Domestic Violence Programs Delivered on Their Promises to Women?**



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## SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

In 1994 the landmark Violence Against Women Act (VAWA) was passed into law. The focus of the act is to strengthen the criminal justice system's response to intimate partner violence (IPV) by means of enhanced use of restraining orders, mandated arrest policies, aggressive prosecution measures, training of criminal justice personnel, and the like.

But have these programs reduced levels of partner abuse? Have they paid heed to the needs and wishes of abused women? Have they supported the families and communities in which women live?

In short, has the federal commitment to thwart domestic violence delivered on its promises to women?

To answer these questions, we first need to understand the dynamics of partner aggression. Research shows men and women are approximately equally likely to engage in partner violence.<sup>1</sup> For example, the CDC National Intimate Partner and Sexual Violence Survey (NISVS) reported the following sex-specific victimization rates:<sup>2</sup>

	Male Victimization	Female Victimization
Physical violence	6.5%	6.3%
Stalking	0.5%	2.8%
Psychological aggression	18.1%	13.9%
Control of reproductive and sexual health	10.4%	8.6%

In more than half of all cases, the aggression is bi-directional with no clear-cut initiator, based on population-based survey samples.<sup>3</sup> About two-thirds of these 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>

About 1,500 domestic violence laws have been passed at the state level that revamped the legal framework for addressing intimate partner violence (IPV).<sup>5</sup> These laws:

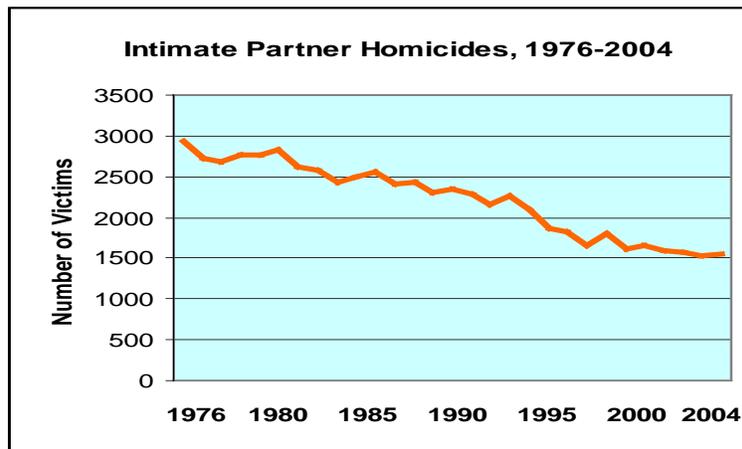
- Provide for a broad range of benefits to abuse victims
- Mandate treatment programs for perpetrators
- Allow for the easy availability of domestic restraining orders
- Encourage or mandate arrest
- Allow jurisdictions to adopt aggressive prosecution policies

Nearly two decades after passage of VAWA, public awareness of the problem has been raised and many abused women are receiving services. But many of domestic violence policies lack a credible scientific foundation or evidence of effectiveness. These concerns are examined in the next 10 sections.

## 1. There is No Proof that VAWA-Funded Programs Have Reduced Intimate Partner Violence

Beginning in the 1970s, our society began to see a downward trend in all forms of violent crime. Changes in intimate partner homicides have followed this same course.

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>6</sup>



So fatal partner crime began to fall long before VAWA had been passed. One analyst explains, “the downward trend in domestic violence is just part of a larger, society-wide drop in all violent crime. Indeed, incidents of violent crime generally dropped from about 80 per 100,000 people in 1993 to about 21 in 2010. That’s a decrease of almost 74 percent.”<sup>7</sup>

Hence, there is no evidence that VAWA-funded programs have contributed to or accelerated the decline in intimate partner violence. And as discussed below, some VAWA policies may be escalating partner aggression, resulting in higher homicide rates.

*“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 Arrest and Prosecution Policies Place Victims at Greater Risk

Several studies reveal get-tough arrest and prosecution measures may place victims of intimate partner violence at greater risk:

*Mandatory Arrest:* A Harvard University study analyzed the impact of mandatory arrest laws in 15 states. The study concludes: “Intimate partner homicides increased by about

60% in states with mandatory arrest laws.”<sup>9</sup> This outcome may be understood in light of another study which found mandatory arrest policies often discourage women from requesting police assistance.<sup>10</sup>

*Prosecution of Restraining Order Violations:* Many jurisdictions have enacted policies that define a restraining order violation as a criminal offense. 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>11</sup> (emphasis added).

In these two studies, mandatory arrests and prosecutions generally led to more homicides. No studies could be found that showed mandatory arrests and prosecutions decrease fatal outcomes.

### **3. Mandatory Prosecution Ignores Women’s Wishes**

A majority of IPV cases involves disputes in which the conflict is a minor, mutual, and/or a one-time occurrence. Women may believe these situations are better handled through counseling rather than legal intervention. In a large majority of cases—80% according to one analysis<sup>12</sup>—women who request police assistance later recant or refuse to pursue the charges.

Mandatory, “no-drop” prosecution is controversial because if the woman refuses to testify, the prosecutor may charge her with obstruction of justice and threaten to take away the children. In one case, the county prosecutor put a woman in jail for 8 days after she refused to testify. She later won a \$125,000 settlement for false imprisonment.<sup>13</sup>

There is no evidence that mandatory prosecution is effective in curbing future IPV. One study of prosecution policies 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>14</sup> By their nature, no-drop prosecution policies remove the ability of abused women to make that choice.

And no-drop prosecution may deter women from seeking police help in the event of future violence.<sup>15</sup>

*“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.” -- New York University professor Linda Mills<sup>16</sup>*

### **4. Women May Become Lulled into a False Sense of Security**

Vulnerable abused women are led to believe that abuse-reduction policies and programs are there to help them. Yet there is considerable doubt about the very effectiveness of these programs.

*Treatment:* Offenders are often ordered to undergo anger-management 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>17</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>18</sup>

*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>19</sup> Similarly a second report concluded that “having a permanent order did not appear to deter most types of abuse.”<sup>20</sup>

Criminal justice interventions that are based more on symbolism than substance may in the end, “lull women into a false sense of security.”<sup>21</sup>

## **5. Aggressive Criminal Justice Measures Ensnare Women**

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

*Restraining Orders:* State laws have been broadened to the point that a broad range of non-violent actions are now defined as “violence.”<sup>22</sup> Each year, 2-3 million temporary restraining orders are issued—15% of them against women, with many of them for arguably trivial incidents:

*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.*

*Arrest:* Thirty states have now enacted laws that promote or mandate arrest for domestic violence.<sup>23</sup> As a result, the number of female offenders in domestic violence arrests began to rise. In California, the number of women arrested soared by 446% as a result of such policies.<sup>24</sup>

*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—an apparent violation of due process protections. One woman who went through the system jeered, “It ain’t about justice, that’s for sure.”<sup>25</sup>

## **6. Bloated Caseloads Make it Harder for Real Victims to Get Help**

Broad definitions of domestic abuse have had the effect of bringing minor cases under the purview of the criminal justice system. One National Institute of Justice report questioned the value of mandatory arrest laws, saying that “arrests for all suspects may unnecessarily

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take a community's resources away from identifying and responding to the worst offenders and victims most at risk."<sup>26</sup>

Regarding restraining orders, half of all orders in one state do not include any allegation of physical abuse.<sup>27</sup> One case involving a well-known media personality illustrates the concern:

*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.*

Deploring the laughable but wasteful nature of the Letterman case, one commentator argued the "abuse of temporary restraining orders endangers real victims."<sup>28</sup>

Now, court dockets are becoming filled with minor cases of intimate partner aggression, diverting scarce resources from victims of serious crime.

*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>29</sup>*

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

Abuse-prone women need help before conflict escalates to a level of overt violence. Violence initiated by a woman increases the chances of retaliatory aggression,<sup>30</sup> making female-perpetrated abuse the leading risk factor for subsequent female victimization. Dr. Sandra Stith has called this "a dramatically more important factor than anything else."<sup>31</sup>

But when abusive women request help from VAWA-funded agencies, they learn that female-specific treatment programs are almost non-existent. Their requests for treatment may be dismissed with comments such as, "He must have provoked you."

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>32</sup> As attorney Linda Kelly puts it, "Today's treatment denies the possibility that women can be violent."<sup>33</sup>

When government policies neglect the problem, it may be children who suffer the consequences:

*Socorro Caro of 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.*

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

Abuse shelters are a mainstay of treatment services for domestic violence victims. But evidence supporting the effectiveness of these shelters is not persuasive. Whether the 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>34</sup>

The lack of demonstrated success may be the by-product of misplaced focus. One study found that half of the surveyed shelters stressed feminist political activism, rather than providing residents with practical solutions to daily problems.<sup>35</sup>

In Massachusetts, a mother attending a group for abused women discovered the group was run by volunteers with no professional qualifications. She later claimed the clients were coerced by use of “threats, intimidation, and fear of losing their children.”<sup>36</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>37</sup>*

## 9. Policies Remove Children from Their Homes

In many states, the definition of child abuse has been expanded so if a child only *observes* partner aggression, it is deemed to constitute child abuse. In practice, the mere accusation of partner aggression means the non-abusing parent also becomes suspected of child abuse. This may become the basis for removing the child from the family home.

In one case, a shelter organized meetings for abused women and promised their statements would be kept confidential. In spite of these assurances, 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>38</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>39</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, grandparents may be prohibited from seeing their own grandchildren.

## **10. Policies Break Up Families**

According to the Department of Justice, only 2% of partner aggression involves currently married couples who live together,<sup>40</sup> suggesting that the safest place for women is in the intact family. In cases of minor or one-time aggression, reconciliation is preferable over marital dissolution. But no-contact restraining orders 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>41</sup>

Thus, only the allegation of domestic violence can lead to family break-up.<sup>42</sup> As a result, the child often loses regular contact with his or her non-custodial parent. 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>43</sup>

## **Women Speak Out**

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

- *Ms. Foundation for Women*: "Unfortunately, when state power has been invited into, or forced into, the lives of individuals, it often takes over."<sup>44</sup>
- *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>45</sup>
- *Concerned Women for America*: VAWA is "more about building feminist power structures than about protecting vulnerable women or helping battered women."<sup>46</sup>

This Special Report documents how the Violence Against Women Act, and the state-level laws it has engendered:

- Are ineffective in reducing abuse
- Promote arrest and prosecution policies that place women at greater risk
- Often ignore the wishes of abused women
- May lull women into a false sense of security
- Ensnare women in a rigid criminal justice bureaucracy
- Make it more difficult for real victims to get help
- Shortchange the needs of female aggressors
- May not provide needed services at abuse shelters, and
- Can lead to the removal of children from their homes

Scientific research, expert recommendations, and the collective experience of millions of women all point to a singular conclusion: Our nation's domestic violence system, conceived with high hopes and the best of intentions, is desperately in need of reform.

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