

Appendix: Are Domestic Violence Policies Respecting Our Fundamental Freedoms?

Analysis of Civil Rights and Domestic Violence Policies

Civil Right	Amendments that Protect the Civil Right	Supreme Court Rulings	How Domestic Violence Laws and Policies Violate Civil Rights	Number of Persons Whose Rights Are Violated Each Year
<i>Civil Restraining Orders</i>				
1. Freedom of speech	First Amendment: <i>“Congress shall make no law... abridging the freedom of speech.”</i>	Enactments are facially overbroad when their reach is so sweeping that they could deter persons from engaging in protected speech. (<i>Broadrick v. Okla.</i> , 413 U.S. 601, 612 (1973))	<ul style="list-style-type: none"> • State-level civil law definitions of domestic violence commonly include “annoyance,” “emotional distress,” and “harassment.” Such psychological states are typically caused by speech that is viewed as offensive.¹ • Some VAWA-funded organizations assert that verbal statements that minimize, deny, or blame the “victim” constitute domestic violence.² 	It is not known how many persons refrain from making certain statements to their partners because they fear the legal consequences of uttering such a statement.
2. Protection from governmental intrusion	Fourth Amendment: <i>Citizens must be “secure in their persons, houses, papers, and effects.”</i>	The right to privacy protects one’s private life from government intrusion. (<i>Olmstead v. United States</i> , 277 U.S. 438, 478–79 (1928))	Section 102 of the Violence Against Women Act, Grants to Encourage Arrest and Enforce Restraining Orders, provides funds to state-level law enforcement, judges, and prosecutors to recommend, issue, and enforce restraining orders.	An estimated 2–3 million restraining orders are issued each year. ³ A Massachusetts study found that 76% of restraining orders did not allege actual injury or harm, ⁴ and a West Virginia study concluded that 81% of such orders were unnecessary or false. It is conservatively estimated that 1.5 million restraining

Civil Right	Amendments that Protect the Civil Right	Supreme Court Rulings	How Domestic Violence Laws and Policies Violate Civil Rights	Number of Persons Whose Rights Are Violated Each Year
				orders are unnecessary or false. * For this analysis, it is assumed that these orders were issued against 1.5 million persons.
3. Due process	Fifth and Fourteenth Amendments: <i>No person shall be deprived of life, liberty, or property "without due process of law."</i>	Due process requires the opportunity to be heard "at a meaningful time and in a meaningful manner" before the government burdens life, liberty or property. (<i>Armstrong v. Manzo</i> , 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965)) Law and court procedures that may be "fair on their faces" but administered "with an evil eye or a heavy hand" are discriminatory. (<i>Yick Wo v. Hopkins</i> , 118 US 356 (1886))	In most states, civil law definitions of domestic violence are overbroad and vague, to the point that it is extremely difficult to disprove an allegation of abuse. ⁵ Thus, the presumption of innocence has been removed.	See above.
4. Freedom to marry and the right to privacy in family matters	First Amendment: <i>"Congress shall make no law...abridging ...the right of the people to peaceably assemble."</i>	"Choices about marriage, family life, ... are among associational rights [the Supreme] Court has ranked as 'of basic importance in our society.'" (<i>M.L.B. v. S.L.J.</i> , 519 U.S. 102, 116, (1996))	Restraining orders bar couples from associating together, and thus prevent them from marrying or continuing a marriage. This represents an infringement on citizens' fundamental right to privacy.	An estimated 2–3 million restraining orders are issued each year. ⁶ It has been estimated that one-quarter of divorces involve an allegation of intimate partner violence. ⁷ The number of persons who are prevented from marrying

* 2 million x 0.76 = 1.52 million

Civil Right	Amendments that Protect the Civil Right	Supreme Court Rulings	How Domestic Violence Laws and Policies Violate Civil Rights	Number of Persons Whose Rights Are Violated Each Year
	<p>Fourth Amendment: <i>"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."</i></p> <p>Also, by extension, the Third, Fifth, and Ninth Amendments.</p>	<p>The First, Third, Fourth, Fifth, and Ninth Amendments afford "zones of privacy" to married couples. (<i>Griswold v. Connecticut</i> (1965))</p>		<p>or continuing their marriage as a result of such orders is unknown.</p>
<p>5. Right to parent one's own children, sometimes referred to as the Parental Liberty Doctrine</p>	<p>First Amendment: <i>"Congress shall make no law... abridging ... the right of the people to peaceably assemble."</i></p> <p>Fourth Amendment: <i>Citizens must be "secure in their persons, houses, papers, and effects."</i></p> <p>Fourteenth</p>	<p>"The Fourteenth Amendment guarantees the right of the individual ... to establish a home and bring up children" (<i>Meyer v. Nebraska</i>, 262 U.S. 390 at 403 (1923))</p> <p>"It is cardinal with us that the custody, care, and nurture of the child reside first in the <i>parents</i>, whose primary function and freedom include preparation for obligations the State can neither</p>	<p>In all but two states, divorce judges are required to consider allegations or findings of intimate partner violence in the award of child custody.⁸</p>	<p>Each year, about 175,000 children are involved in a divorce with a false allegation of domestic violence.⁹ Assuming 2.0 children per divorce, it is estimated that, annually, 87,500 parents are deprived of their right to parent their children on a routine basis. The 87,500 number is subsumed within the 1.5 million persons cited under Civil Right #2 above.</p>

Civil Right	Amendments that Protect the Civil Right	Supreme Court Rulings	How Domestic Violence Laws and Policies Violate Civil Rights	Number of Persons Whose Rights Are Violated Each Year
	Amendment: <i>No person shall be deprived of life, liberty, or property "without due process of law."</i>	supply nor hinder." (<i>Prince v. Massachusetts</i> , 321 U.S. 158 at 166 (1944))		
6. Right to bear arms	Second Amendment: The <i>"right of the people to keep and bear Arms, shall not be infringed."</i>	The U.S. Supreme Court has ruled that gun ownership is an individual right, and does not pertain solely to the use of guns by members of the National Guard. (<i>McDonald et al v. City of Chicago, Illinois</i> (2010))	The federal Domestic Violence Offender Gun Ban of 1996, often referred to as the Lautenberg Amendment, bans the ownership and use of guns by individuals who are under a final restraining order for domestic violence.	The right to bear arms is a fundamental right that cannot be revoked merely on the preponderance of evidence standard, which is the evidentiary requirement for restraining orders in most states. According to the Gallup poll, 49% of American men and 33% of women report gun ownership. ¹⁰ An estimated 860,000 final restraining orders are issued each year. ¹¹ About 85% of these are issued against men. ¹² Conservatively assuming that 40% of persons under a final restraining order possess guns, then 344,000 persons lose their right to bear arms each year as a result of domestic violence laws. The 344,000 number is subsumed within the 1.5 million persons cited under Civil Right #2 above.

Civil Right	Amendments that Protect the Civil Right	Supreme Court Rulings	How Domestic Violence Laws and Policies Violate Civil Rights	Number of Persons Whose Rights Are Violated Each Year
<i>Criminal Justice System</i>				
7. Right to be secure in their persons	Fourth Amendment: <i>Citizens must be "secure in their persons, houses, papers, and effects." There must exist "probable cause" before a person can be "seized."</i>	Probable cause means that if the circumstances would "warrant a man of reasonable caution in the belief" a crime had been committed. (<i>Dumbra v. United States</i> (1925))	<ul style="list-style-type: none"> • Twenty-two jurisdictions have implemented mandatory arrest laws for allegations of domestic violence assault,¹³ and 33 states have laws that mandate arrest for violation of a restraining order.¹⁴ Such mandatory arrest policies override constitutional guarantees of probable cause. • Twenty-three states have predominant aggressor policies, of which 19 employ criteria that constitute gender-profiling.¹⁵ • The Violence Against Women Act funds the training of law enforcement personnel. Such training has often been shown to be biased, thus predisposing law enforcement personnel to arrest the male.¹⁶ 	Each year about one million persons are arrested for allegations of domestic violence, of whom 77% are male. ¹⁷ But only 33% of arrests result in a conviction, ¹⁸ indicating that many arrests do not meet the "probable" cause standard. Using the most conservative definition of "probable" (meaning that at least 51% of defendants charged with domestic violence are convicted), it is estimated that 18,000 persons are wrongfully arrested each year. [†] The 18,000 number is subsumed within the 462,000 persons cited under Civil Right #8 below.
8. Right to a fair trial	Fifth and Fourteenth Amendments: <i>No person shall be deprived of life, liberty, or property</i>	"[W]here fundamental rights and liberties are asserted under ... Equal Protection ... classifications which might invade or restrain them must be	<ul style="list-style-type: none"> • The Violence Against Women Act includes the Legal Assistance for Victims program. In practice, the identified victim (plaintiff) is not required to provide any proof of injury or harm in order to receive legal 	Each year about 1 million persons are arrested on allegations of domestic violence, of whom 77% are male. ²⁵ About three-fifths of such cases result in the filing of

† (51% – 33%) x 1,000,000 = 18,000

Civil Right	Amendments that Protect the Civil Right	Supreme Court Rulings	How Domestic Violence Laws and Policies Violate Civil Rights	Number of Persons Whose Rights Are Violated Each Year
	<p><i>“without due process of law.”</i></p> <p>Sixth Amendment: <i>“In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.”</i></p>	<p>closely scrutinized and carefully confined.” (<i>Harper v. Virginia State Bd. of Elections</i>, 383 U.S. 663, 670, 1966; <i>Zablocki v. Redhail</i>, 434 U.S. 374, 388 (1978))</p> <p>The Sixth Amendment was designed to frustrate “any attempt to employ our courts as instruments of persecution.” (<i>In re Oliver</i>, (1948))</p> <p>The Supreme Court has ruled against the admissibility of testimony by a witness who did not appear at trial, unless the witness was unavailable to testify at the trial and the defendant had a prior opportunity for cross-examination. (<i>Crawford v. Washington</i> (2004))</p>	<p>representation. But defendants are not qualified to receive free legal assistance from VAWA.</p> <ul style="list-style-type: none"> • VAWA funds the training of prosecutors and judges. Such training programs have been shown to present one-sided information, thus biasing the criminal justice system against males.¹⁹ • Sex bias has been documented to affect the decision whether to prosecute the case, jury selection, and sentencing.²⁰ • Two-thirds of prosecutors’ offices have implemented no-drop policies.²¹ As a result, weak cases are prosecuted, and the resulting conviction rate is only 35%,²² indicating that many innocent persons are being subjected to unnecessary prosecution. • Perjury is believed to be widespread in domestic violence cases, but prosecutors are reluctant to punish these persons.²³ • In many domestic violence cases the complainant refuses to testify. In such cases, the District Attorney may attempt to introduce prior statements by the complaining witness, even though <i>Crawford v. Washington</i> would disallow such a practice.²⁴ 	<p>charges and subsequent prosecution.²⁶</p> <p>Thus, an estimated 462,000 men are subjected to biased criminal justice procedures each year.[‡]</p>

‡ 1,000,000 x 0.77 x 0.6 = 462,000

Civil Right	Amendments that Protect the Civil Right	Supreme Court Rulings	How Domestic Violence Laws and Policies Violate Civil Rights	Number of Persons Whose Rights Are Violated Each Year
<i>Treatment Services</i>				
9. Equal treatment under the law	Fourteenth Amendment: <i>"No State shall make or enforce any law which... den[ies] to any person within its jurisdiction the equal protection of the laws."</i>	<p>The Supreme Court ruled "separate educational facilities are inherently unequal." (<i>Brown v. Board of Education of Topeka, Kansas</i> (1954))</p> <p>The Court ruled that an all-female nursing school violated the equal protection rights of men. (<i>Mississippi University for Women v. Hogan</i> (1982))</p>	<ul style="list-style-type: none"> • VAWA classifies persons so as to prevent the exercise of fundamental rights on equal terms: (1) males v. females, and (2) U.S. citizens v. non-permanent aliens. • The Family Violence Prevention and Services Act openly condones sex discrimination: "Nothing in this chapter shall require any such program or activity to include any individual in any program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or programmatic factor reasonably necessary to the normal operation of that particular program or activity." (Section 10406(a)(2)) • The widespread discrimination of abuse shelters against male victims of domestic violence has been documented.²⁷ 	<p>An estimated 275,000 men are subjected to severe domestic violence each year and need treatment or rehabilitation.²⁸ But less than 1% of persons who receive assistance from abuse shelters are male.²⁹ Thus, more than 272,000 male victims of domestic violence are unable to access needed services.⁵</p>

⁵ 275,000 x 0.99 = 272,250

References

- ¹ Stop Abusive and Violent Environments. Without restraint: The use and abuse of restraining orders. Rockville, MD, 2010. <http://www.saveservices.org/downloads/VAWA-Restraining-Orders>.
- ² Stop Abusive and Violent Environments. Domestic violence-related immigration fraud. Rockville, MD, 2010. <http://www.saveservices.org/downloads/VAWA-Funded-Immigration-Fraud>.
- ³ Stop Abusive and Violent Environments. The use and abuse of restraining orders. Rockville, MD, 2010, p. 9. <http://www.saveservices.org/downloads/VAWA-Restraining-Orders>.
- ⁴ Basile S. Comparison of abuse alleged by same- and opposite-gender litigants as cited in requests for abuse prevention orders. *Journal of Family Violence*, Vol. 19, February 2004, pp. 59–68.
- ⁵ Stop Abusive and Violent Environments. Expanding definitions of domestic violence. Rockville, MD, 2010. <http://www.saveservices.org/downloads/Vanishing-Rule-of-Law>.
- ⁶ Stop Abusive and Violent Environments. The use and abuse of restraining orders. Rockville, MD, 2010, p. 9. <http://www.saveservices.org/downloads/VAWA-Restraining-Orders>.
- ⁷ Stop Abusive and Violent Environments. What is the cost of false allegations of domestic violence? Rockville, MD, 2010, p. 6. <http://www.saveservices.org/downloads/False-DV-Allegations-Cost-20-Billion>
- ⁸ American Bar Association. Custody decisions in cases with domestic violence allegations, 2004. http://www.abanet.org/legalservices/probono/childcustody/domestic_violence_chart1.pdf.
- ⁹ Stop Abusive and Violent Environments. What is the cost of false allegations of domestic violence? Rockville, MD, 2010, p. 7. <http://www.saveservices.org/downloads/False-DV-Allegations-Cost-20-Billion>.
- ¹⁰ Carlson DK. Americans and Guns: Danger or Defense? Gallup, January 4, 2005. <http://www.gallup.com/poll/14509/americans-guns-danger-defense.aspx>.
- ¹¹ Miller N. What does research and evaluation say about domestic violence laws? A compendium of justice system laws and related research assessments. Alexandria, VA: Institute for Law and Justice, 2006, pp. 39–40. <http://www.ilj.org/publications/dv/DomesticViolenceLegislationEvaluation.pdf>.
- ¹² Young C. Domestic violence: An in-depth analysis. Washington, DC: Independent Women’s Forum, 2005. p. 25.
- ¹³ Miller N. Domestic violence: A review of state legislation defining police and prosecution duties and powers. Alexandria, VA: Institute for Law and Justice, 2004. http://www.ilj.org/publications/DV_Legislation-3.pdf.
- ¹⁴ Hirschel D, Buzawa E. Understanding the context of dual arrest with directions for future research. *Violence Against Women* Vol. 8, pp. 1449-1455, 2002.
- ¹⁵ Stop Abusive and Violent Environments. Predominant aggressor policies: Leaving the abuser unaccountable? Rockville, MD, 2010. <http://www.saveservices.org/downloads/Predominant-Aggressor-Policies>
- ¹⁶ Stop Abusive and Violent Environments. Are DV education and training programs telling the truth? Rockville, MD, 2010. <http://www.saveservices.org/downloads/Education-For-Injustice>
- ¹⁷ Stop Abusive and Violent Environments. Arrest policies for domestic violence. Rockville, MD, 2010, p. 6. <http://www.saveservices.org/downloads/Justice-Denied-DV-Arrest-Policies>
- ¹⁸ Garner JH, Maxwell CD. Prosecution and conviction rates for intimate partner violence. *Criminal Justice Review* Vol 34, No. 1, 2009.

-
- ¹⁹ Stop Abusive and Violent Environments. Are DV education and training programs telling the truth? Rockville, MD. 2010. <http://www.saveservices.org/downloads/Education-For-Injustice>.
- ²⁰ Stop Abusive and Violent Environments. Equal justice under the law? Rockville, MD. 2010. <http://www.saveservices.org/downloads/Bias-In-The-Judiciary>.
- ²¹ Rebovich D. Prosecution response to domestic violence: Results of a survey of large jurisdictions. In Buzawa E and Buzawa C (eds.): *Do Arrests and Restraining Orders Work?* Thousand Oaks, CA: Sage Publications, 1996.
- ²² Garner JH, Maxwell CD. Prosecution and conviction rates for intimate partner violence. *Criminal Justice Review*, Vol. 34, No. 1, March 2009.
- ²³ Atty. Casey Gwinn, part 2 admits Perjury not Prosecuted. <http://www.youtube.com/watch?v=UOCIDr5DviU&feature=related>.
- ²⁴ McElroy W. Supreme Court Ruling May Impact Domestic Violence Cases. *Fox News*. March 31, 2004. <http://www.foxnews.com/story/0,2933,115672,00.html>
- ²⁵ Stop Abusive and Violent Environments. Arrest policies for domestic violence. Rockville, MD. 2010, p. 6. <http://www.saveservices.org/downloads/Justice-Denied-DV-Arrest-Policies>.
- ²⁶ Garner JH, Maxwell CD. Prosecution and conviction rates for intimate partner violence. *Criminal Justice Review*, Vol. 34, No. 1, 2009.
- ²⁷ Stop Abusive and Violent Environments. Domestic violence programs discriminate against male victims. Rockville, MD. 2010. <http://www.saveservices.org/downloads/VAWA-Discriminates-Against-Males>.
- ²⁸ Gelles RJ. *Intimate Violence in Families*. Thousand Oaks, CA: Sage Publications, 1997.
- ²⁹ Lyon E, Lane S, Menard A. Meeting Survivors Needs: A Multi-State Study of Domestic Violence Shelter Experiences. October 2008. Prepared for the National Institute of Justice. Page 94. <http://www.ncjrs.gov/pdffiles1/nij/grants/225025.pdf>