

VAWA Is Not Enough: Academics Speak Out About VAWA

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The VAWA reauthorization bill would extend funding for important services; provide additional protections for victims of domestic violence, dating violence, sexual assault, and stalking; and would ensure that tribal courts have jurisdiction over domestic violence that occurs on tribal land. We urge Congress to pass this bill!

But while we applaud much that is in the bill, we are concerned that like its predecessors, the bill focuses a significant amount of funding on criminal justice responses and much less on economic and racial justice initiatives that would support efforts to stop domestic violence. We urge Congress to do more to address economic and racial inequalities that make poor women-- particularly poor women of color, undocumented women, and Native American women, more vulnerable to intimate violence. We urge Congress to recognize that economic policies that result in widespread unemployment and downward mobility increase domestic violence. We further urge Congress to recognize that as important as criminal remedies may be for some victims, a focus on criminal justice remedies will never be sufficient to empower women. Many women who experience domestic violence do not want the current limited menu of criminal justice responses. We urge Congress, therefore, to consider and support programs that explore alternatives to the current criminal adjudication models, and that address the underlying causes of abuse.

What VAWA Does Right

The VAWA reauthorization bill provides funding for critical services and includes important law reform that will improve women's access to justice. The bill expands the public housing protections that were introduced in VAWA 2005, expands protections for immigrant victims and for foreign brides, and makes it clear that tribal courts have jurisdiction over non-Indians who commit acts of domestic violence on tribal land. The bill continues the requirement of setting aside a percentage of funding to assist tribal governments and coalitions. Native women experience significantly higher rates of domestic violence and sexual assault than do other women, much of it perpetrated by non-Native persons. Strengthening the capacity of Indian Nations to protect Native women is a critical step in addressing this gross injustice. The bill authorizes funding to train courts and police in assisting immigrant women who cooperate with law enforcement to receive T- and U-Visas. The bill continues funding for civil legal assistance, training for family court judges and custody evaluators, and efforts to beef up the criminal justice response in tribal jurisdictions and rural areas where it is particularly hard to get police to

respond at all. The bill also provides important assistance for anti-domestic violence programs for youth, expands protections for sexual assault victims, and funds efforts to reduce rape kit backlogs. The bill expands non-discrimination provisions and clarifies that funding is available for programs that meet the needs of LGBT victims. The bill provides additional protection against sexual abuse and exploitation for prisoners and probationers by prohibiting someone with criminal justice authority from engaging in sexual activity with a person under his or her authority. The bill also makes national standards for the elimination of prison rape applicable to immigration detention facilities

Beyond VAWA

Congress should do more to stop violence against women by focusing more on the structural inequalities that make women vulnerable to violence. Funding for criminal justice intervention makes up the largest portion of VAWA funding. The primary criminal justice grants are the STOP (Services, Training, Officers, Prosecution) grants – funded at \$222 million, and the GTEAP (grants to encourage arrest and enforce protection orders) funded at \$73 million, creating a combined total of \$295 million focused on the criminal justice response. Compare this with the \$57 million dedicated to civil legal assistance, or the \$22 million dedicated to training family court judges and court personnel, or the \$39 million dedicated to housing for battered women and their children.

Congress Should Focus Efforts on Economic Justice

Research shows that downward mobility and economic inequality weakens social controls in neighborhoods, giving rise to increases in domestic violence. Research also demonstrates that unstable male employment in heterosexual couples is linked to significant increases in domestic violence. In response to these threats, federal legislation should encourage jurisdictions to link job training or job placement with batterer treatment programs, incorporate domestic violence awareness and programs within every community-based response to the economic crisis, provide more meaningful and targeted funds to help women achieve economic stability, and amend the Trade Adjustment Assistance and Workforce Investment statutes to include domestic violence screening and services.

Poor women are particularly vulnerable to domestic violence. Congress should increase dramatically the total funding that goes to assisting poor women with material assistance from housing to emergency financial assistance to small business creation to micro-finance. The current VAWA bill provides \$39 million for housing assistance (*a reduction of \$11 million compared to prior funding levels*), another \$2 million to meet the needs of “underserved” populations (augmented by 2% set-asides from STOP and GTEAP), and \$1 million for the National Resource Center on Workplace Responses to Domestic Violence. While these provisions are important, Congress should do more – much more.

For example, Congress should change the focus of TANF – from a program that focuses on placing recipients into low-wage dead-end jobs, to a program that provides a bridge out of poverty. In addition, given the clear link between women’s reproductive rights and their ability to live free from violence, Congress should help alleviate abuse of women by fully funding reproductive health care and by eliminating prohibitions on federal spending for abortion.

Congress Should Expand Criminal Justice Options Beyond Arrest and Prosecution

Research demonstrates that the failure of police to respond to domestic violence - as well as the likelihood that police will respond in an over-aggressive manner- is related to racial characteristics of the neighborhood in which the violence occurs. The VAWA bill addresses this concern by incorporating a strong anti-discrimination provision, by providing grants for training law enforcement and victim advocacy in “underserved” communities, and by providing funding for tribal governments and tribal domestic violence coalitions. In addition to these efforts, Congress should expand its current focus to fund law-enforcement strategies that encourage a shift from post hoc responses to preventative initiatives with a focus on community problem-solving as an alternative to crime surveillance and arrests. Many women who experience domestic violence are interested in alternative forms of adjudication than those currently provided by the criminal justice system. Congress should help women to find justice beyond the limited options currently available in the criminal justice system by funding pilot projects that investigate the effectiveness of restorative justice, truth commissions, and other “alternative” programs in cases of domestic violence.

Congress Should Spearhead Efforts to Stop Mass-Incarceration

Congress should spearhead efforts to change the trend of over-incarceration of both men and women and should fund more prisoner reentry programs that incorporate anti-domestic violence initiatives. Mass incarceration destabilizes neighborhoods and increases unemployment – effects that are linked with higher rates of domestic violence. Dehumanizing prison conditions further reinforce violent behavior rather than curtail it. Congress should change federal sentencing guidelines that result in unfairly long sentences for low-level drug offending and encourage states to do the same. Congress should lead efforts to do away with “war on drugs” practices that result in the over-surveillance and mass incarceration of poor persons. These policies have had a devastating impact on low income communities of color. The incarceration and criminal justice oversight of significant numbers of adults, many of them parents, leaves neighborhoods unstable and creates the circumstances for more intimate violence. The concentration of disenfranchised ex-felons who face significant obstacles to employment further weakens the social fabric of neighborhoods and increases the likelihood of more domestic violence.

Congress Should Increase Funds for Civil Legal Assistance

Congress should increase funds for civil legal representation for poor women. Poor women of color, immigrant women and undocumented women, and Native American women face

substantial bias both from service providers and courts, particularly in child abuse and neglect proceedings and in family court. It is critical that victims of domestic violence have zealous advocates who can ensure equal access to justice.

Since 1994, VAWA has broken new ground in federal and state responses to domestic violence, sexual assault and stalking. At this juncture, rather than continuing to prioritize the criminal justice response to domestic violence, Congress should increase the focus on creative and innovative ways to stop domestic violence, and address the structural inequalities that make women vulnerable to violence, and the myriad needs of those subjected to abuse.

Sincerely,

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Selected Reading

This is an abbreviated list of related resources. Any list of resources is likely to miss a great deal. Please accept our apology for any omissions. For additional resources, please contact the authors.

Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Mission to the United States of America, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/138/26/PDF/G1113826.pdf?OpenElement>

Violence Against Women in the United States and the State's Obligation to Protect: Civil Society briefing papers on community, military and custody, submitted to the United Nations Special Rapporteur on Violence Against Women, Rashida Manjoo (2011), available at www.law.virginia.edu/vaw

Caroline Bettinger-Lopez, *Human Rights at Home: Domestic Violence as a Human Rights Violation*, 40 Columbia Human Rights L. Rev. 19 (2008) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1310316

Clan Star - *Restoration: Increasing Safety for Native Women* (magazine) available at <http://www.clanstar.org/restoration-magazine/>

Donna Coker, *Shifting Power for Battered Women: Law, Material Resources and Poor Women of Color*, 33 U.C. DAVIS LAW REVIEW 1009 (2000) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2011468

Marilyn Fernandez, *Restorative Justice for Domestic Violence Victims: An Integrated Approach to Their Hunger for Healing* (Lanham, MD: Lexington Books, 2010)

Sarah Deer, Bonnie Clairmont, Carrie A. Martell, Maureen L. White Eagle (editors), *Sharing Our Stories of Survival: Native Women Surviving Violence* (AltaMira Press 2008).

Julie Goldschied, *Domestic Violence and Sexual Violence as Sex Discrimination: Comparing United States and International Approaches*, 28 T. Jefferson L. Rev. 355 (2006) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=950127

Lisa A. Goodman and Deborah Epstein, *Listening to Battered Women: A Survivor-Centered Approach to Advocacy, Mental Health, and Justice* (Washington, DC: American Psychological Association, 2007)

Leigh Goodmark, *A Troubled Marriage: Domestic Violence and the Legal System* (New York: NYU Press, 2011)

Rebecca Hall, *Utah Domestic Violence Council Economic Justice and Empowerment Project*, Final Report (May 31, 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1962781

Angela Harris, *Beyond the Monster Factory: Gender Violence, Race, and the Liberatory Potential of Restorative Justice*, 25 Berkeley J of Gender, Law & Justice 199 (2010) available at <http://genderlawjustice.berkeley.edu/beyond-the-monster-factory-gender-violence-race-and-the-liberatory-potential-of-restorative-justice-by-angela-p-harris/>

INCITE! Women of Color Against Violence, *The Color of Violence: The Incite! Anthology* by (2006); see also <http://www.incite-national.org/index.php?s=35>

Valli Kalei Kanuha, Keynote Address, Annual Conference of Washington State Coalition Against Domestic Violence (Sept. 23, 2008) available at http://web.mac.com/valkaleikanuha/iWeb/Kalei%20Web%20Site/CV%20&%20Publications_files/08Conf_valkanuha_speech.pdf

Mimi Kim, *The Community Engagement Continuum: Outreach, Mobilization, Organizing and Accountability to Address Violence Against Women in Asian and Pacific Islander Communities* (2005) available at <http://www.vaw.umn.edu/documents/communityengagementcontinuum/dvcommunityengagementnt.pdf>

Jessica Lenahan (Gonzales) et al v. United States, Case 12.626, Rpt No. 80/11, Merits, July 21, 2011, available at www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc;

Susan L. Miller, *After the Crime: The Power of Restorative Justice Dialogues between Victims and Violent Offenders* (New York: NYU Press, 2011)

Lisa Pruitt, *Place Matters: Domestic Violence and Rural Difference*, 23 Wis. J.L. Gender & Soc'y 347 (2008) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1276045

James Ptacek (editor), *Restorative Justice and Violence Against Women* (New York: Oxford University Press, 2010)

Beth Richie, *Compelled to Crime: The Gendered Entrapment of Battered, Black Women* (1995)

Elizabeth M. Schneider, *Battered Women and Feminist Lawmaking* (2000)

Natalie J. Sokoloff (editor) with Christina Pratt, *Domestic Violence at the Margins: Readings on Race, Class, Gender and Culture* (2005)

Deborah Weissman, *The Personal is Political - and Economic: Rethinking Domestic Violence*, 2007 B.Y.U. L. Rev. 387 (2007) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=937110