

AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
FEBRUARY 8-9, 2010

RECOMMENDATION

RESOLVED, That the American Bar Association urges Congress to re-authorize and fully fund the Violence Against Women Act and similar legislation that:

1. Enhances judicial, legal and law enforcement tools to combat domestic violence, dating violence, sexual assault, and stalking;
2. Improves services for victims of domestic violence, dating violence, sexual assault, and stalking;
3. Strengthens the healthcare system's response to domestic violence, dating violence, sexual assault, and stalking;
4. Provides housing opportunities and economic security for victims of domestic violence, dating violence, sexual assault, and stalking;
5. Provides services, protection, and justice for underserved and vulnerable victims of violence, including children and youth who are victims or are witnesses to family violence, and victims who are disabled, elderly, immigrant, trafficked, LGBT and/or Indian;
6. Strives to prevent domestic violence, dating violence, sexual assault, and stalking.

REPORT

The Scope of the Problem

Domestic violence, dating violence, sexual assault and stalking¹ are epidemics in our society with dramatic, negative effects on individuals, families and communities. These crimes know no economic, racial, ethnic, religious, age or gender limits. Moreover, although these crimes can and do occur independently, they may also occur together, committed by the same perpetrator against the same victim. A sexual assault victim may have been stalked prior to the assault; a domestic violence victim may experience systematic rape in addition to physical and psychological abuse.

In order to understand the dynamics of a particular domestic violence, dating violence, sexual assault or stalking case, it is important to understand the broader continuum of violence in which these cases occur. By conservative estimates, 1.5 million women in the United States are assaulted by their intimate partners every year.² Nationally, one in three women will experience sexual violence in her lifetime,³ and one in twelve women will be stalked in her lifetime.⁴ Although women are the victims in the majority of these crimes, men are also victims: the same studies reveal that 835,000 men are physically assaulted by an intimate partner annually in the United States, one in five sexual assault victims are male, and one in forty-five men is stalked in his lifetime.⁵ The need for protection from violence cannot be underestimated.

¹ The ABA Commission on Domestic Violence defined these terms in its *Standards of Practice For Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases* (adopted as ABA Policy, August 2007) as follows:

“Domestic Violence”: Physical abuse, alone or in combination with sexual, economic or emotional abuse, stalking, or other forms of coercive control, by an intimate partner or household member, often for the purpose of establishing and maintaining power and control over the victim.

“Sexual Assault”: Any type of non-consensual touching or sexual penetration, however slight. Sexual assault may be perpetrated by an intimate partner (including a spouse), a non-intimate person known to the victim, or a stranger.

“Stalking”: A course of conduct directed at a specific person that would cause a reasonable person to experience fear.

“Dating Violence”: Physical abuse, alone or in combination with sexual, economic or emotional abuse, stalking, or other forms of coercive control, by a person who is or has been in a romantic or intimate relationship with the victim, often for the purpose of establishing and maintaining power and control over the victim.

² Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Just., NCJ 183781, *Full Report of the Prevalence, Incidence, and Consequences of Intimate Partner Violence Against Women: Findings from the National Violence Against Women Survey* (2000), available at <http://www.ojp.usdoj.gov/nij/pubs-sum/183781.htm>

³ Id.

⁴ Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Justice, NCJ 169592, *Stalking in America: Findings from the National Violence Against Women Survey*, (1998), available at <http://www.ojp.usdoj.gov/nij/pubs-sum/169592.htm>

⁵ See *supra* notes 1, 2 and 3.

The impact of domestic violence reaches well beyond those who are the specific targets of physical assault or abuse. It is estimated that at least 3.3 million children are exposed to parental violence each year,⁶ causing children to suffer significant immediate and long-term harms. Childhood exposure to domestic violence can result in behavioral, social and emotional problems, cognitive and developmental delays, as well as other long-term consequences, such as higher levels of adult depression and increased likelihood of substance abuse issues.⁷

In addition to the detrimental effect witnessing domestic violence can have on children, there is also a strong correlation between incidences of domestic violence and child maltreatment. In 1995, the U.S. Advisory Board on Child Abuse and Neglect cited domestic violence as the “single major precursor to child abuse and neglect fatalities in the United States.”⁸

Unfortunately, many adolescents themselves experience assault or abuse in the form of dating violence. Approximately one in ten high school students experiences physical violence in a dating relationship.⁹ About one-third of all females under the age of 20 have either experienced some kind of dating violence or will experience it before becoming an adult.¹⁰

The History of the Violence Against Women Act

In response to this national problem, the Violence Against Women Act (“VAWA”) was enacted by Congress in 1994 as part of omnibus anti-crime legislation, with a five-year authorization. In addition to promoting interstate enforcement of civil protection orders, it created new federal rights for victims of domestic violence, imposed new funding eligibility requirements on government and authorized grants for new education and training. It provided increased or new federal funding for a range of programs including rape prevention and education programs, safe homes for victims, shelter grants, youth education and community programs. It also created new federal criminal offenses for interstate acts of domestic violence and a federal civil rights cause of action for victims of gender-motivated violence.

VAWA has since been reauthorized on two occasions, in 2000 and in 2005, and is set for reauthorization again in 2010. In its most recent iteration, VAWA focuses on nine specific areas of intervention:

⁶ Jaffe, Wolfe, Wilson, *Children of Battered Women*, Sage Publications 19 (1990).

⁷ *Ohio Children’s Defense Fund, Issue Brief: Children Who Witness Domestic Violence* (Oct 2009), <http://cdf.childrensdefense.org/site/DocServer/children-who-witness-domestic-violence-ohio.pdf?docID=9961>.

⁸ Howard Davidson, “Professionals Working with Children,” *The Impact of Domestic Violence on Your Legal Practice: A Lawyer’s Handbook*, 5-20, (Goelman, Lehrman, Valente, eds., 1996) citing U.S. Dep’t of Health & Human Services, *A Nation’s Shame: Fatal Child Abuse and Neglect in the United States* (1995).

⁹ Stacy L. Brustin, *Legal Responses to Teen Dating Violence*, 29 Fam. L. Q. 331 (1995).

¹⁰ Kathryn E. Suarez, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 Calif. L. Rev. 423, 426 (1994).

TITLE I—Enhancing Judicial and Law Enforcement Tools to Combat Violence Against Women

TITLE II—Improving Services for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

TITLE III—Services, Protection, and Justice for Young Victims of Violence

TITLE IV—Strengthening America’s Families by Preventing Violence

TITLE V—Strengthening the Healthcare System’s Response to Domestic Violence, Dating Violence, Sexual Assault, and Stalking

TITLE VI—Housing Opportunities and Safety for Battered Women and Children

TITLE VII—Providing Economic Security for Victims of Violence

TITLE VIII—Protection of Battered and Trafficked Immigrants

TITLE IX—Safety for Indian Women

In the fifteen years of its enactment, VAWA has provided significant funding to support projects and positions in law enforcement, prosecution, courts, legal services, and community-based service providers to combat intimate partner violence and its effects on victims and their families. VAWA is, in fact, the largest single source of funding, apart from the Legal Services Corporation, supporting victims’ attorneys in civil cases. These programs have made a profound difference in the lives of millions of victims of domestic violence and their children as well as their communities and workplaces across the country.

VAWA has also made a difference in the last fifteen years in how our courts and legal system respond to domestic violence and its victims. One of the most effective tools available to victims of domestic violence to ensure their safety and to reduce violence is remedies obtainable through the legal system, particularly the civil protection order. VAWA-funded programs including the Legal Assistance to Victims (LAV) and STOP Grants programs have improved and aided in the prosecution of domestic violence, sexual assault, and child abuse cases, provided necessary training and support for law enforcement personnel, and increased civil legal services for victims of domestic violence, especially in the areas of civil protection orders and family law matters. The value of these programs to victims of domestic violence, dating violence, sexual assault, and stalking cannot be underestimated. These programs have become essential, core components of the justice system. Nonetheless, nearly 70% of victims of domestic violence are still without legal representation.

Moreover, VAWA and its reauthorization have increased public awareness of domestic violence. Although rates of reported domestic violence have decreased in the last fifteen years, due in no small part to VAWA and its reauthorization, domestic violence remains an epidemic, having a profound impact not only victims' health and welfare, but that of their children, families, communities, and workplaces. VAWA-funded programs have increased American society's understanding that it takes the coordinated efforts of all members of a community to prevent domestic violence and to stop it once it has begun. For example, the last fifteen years have seen tremendous strides as domestic violence advocates have worked closely with experts in the fields of civil and criminal justice, health care, children's advocacy, business, welfare, law enforcement, insurance, and housing and homelessness to increase awareness and provide effective and comprehensive services to victims of domestic violence. Today, many employers have adopted domestic violence in the workplace policies that include job guaranteed leave to employees who are victims of violence to attend court proceedings as well as assistance to relocate if necessary. Similarly, healthcare providers across the country have begun to incorporate screening for domestic violence into their protocols; hairdressers have integrated questions about domestic violence into their discussions with their clients; and many attorneys have information about domestic violence and the legal remedies available in their waiting rooms. VAWA and its reauthorization has been the impetus for many of these efforts as well as state legislation addressing these issues that have literally saved lives.

We must not let this success languish, as there is much more that can and must be done to end domestic violence.

ABA Commitment to Ending Domestic Violence

The American Bar Association has a long history of responding to the epidemic of intimate partner violence by striving to promote access to justice and safety for its victims. In 1978—fifteen years before the Violence Against Women Act was enacted, and the ABA's Commission on Domestic Violence was formed—the ABA adopted policy supporting efforts to combat the incidence, causes and effects of family violence and the implementation of programs to protect the victims of family violence. In nearly every year since, the ABA has continued to adopt policies that support victims and strive to strengthen legal protections on their behalf.¹¹

In response to the passage of the Violence Against Women Act, then-ABA President Roberta Cooper Ramo created the Commission on Domestic Violence in 1995, with the following express mission and jurisdiction approved by the Board of Governors.

The Commission on Domestic Violence shall:

(1) identify and promote successful

¹¹ Please see the attached summary of *ABA Policies Related to Domestic Violence* practice, also available (with full reports and recommendations) at <http://www.abanet.org/domviol/policy.html>.

- (a) *domestic violence legal and judicial system policies, procedures, and approaches, and*
 - (b) *community-based programs for the treatment of domestic violence issues, to state and local bar associations, legislatures, and the courts;*
- (2) *study and provide guidance nationally on actions to improve the administration of justice in the areas of prevention, identification, intervention, and treatment of domestic violence;*
- (3) *develop policy recommendations related to domestic violence for consideration by the House of Delegates;*
- (4) *mobilize the bar on improving the legal response to domestic violence, including implementing domestic violence-related provisions of the 1994 Federal Violence Against Women Act and related state legislation;*
- (5) *work in conjunction with other ABA entities and outside organizations on the dissemination of information and education to professionals and the public on domestic violence law-related concerns, [...];*
- (6) *coordinate with other disciplines and organizations [...]; and*
- (7) *provide liaison to diverse public health, mental health, human services, and other professional efforts to improve the response to victims of domestic violence and their children.*

The Commission continues to dedicate itself to each of these tasks. In particular, the Commission led the ABA's efforts to support VAWA reauthorization in both 2000 and 2005 (when it was a legislative priority for the Association), as well as annual appropriations. Working closely with the ABA's Government Affairs Office and the Office of the President, the Commission has sought to educate the public and the Congress about the valuable services provided through VAWA and the continued need for federal support to combat this persistent social problem. Since 1998, the Commission has participated in cooperative agreements with the U.S. Department of Justice to provide continuing education and technical assistance to lawyer-grantees under VAWA, and is currently chairing the legal services sub-committee of the *ad hoc* National Task Force to End Domestic and Sexual Violence, the consortium of providers, policy advocates and experts seeking VAWA reauthorization in 2010.

The Continuing Need

On September 17, 2008, the National Network to End Domestic Violence conducted its third annual National Census of Domestic Violence Services, a non-invasive, unduplicated count of adults and children who seek services from U.S. domestic violence shelter-based programs during a single 24-hour survey period. 78% of

identified domestic violence programs in the United States and Territories, or 1,553 out of 2,000 programs, participated in the 2008 Census, reporting the following sobering facts.¹²

60,799 Victims Served In One Day

30,433 domestic violence victims found refuge in emergency shelters or transitional housing provided by local domestic violence programs. 30,366 adults and children received non-residential assistance and services, including individual counseling, legal advocacy, and children's support groups.

Percentage of Participating Programs Providing These Services on the Census Day

- 87% Individual Support or Advocacy
- 58% Children's Support or Advocacy
- 58% Legal Accompaniment/Services
- 51% Transportation
- 46% Group Support or Advocacy
- 33% Transitional Housing
- 24% Childcare/Daycare

21,683 Hotline Calls Answered

Domestic violence hotlines are a lifeline for victims in danger, providing support, information, safety planning, and resources. In the 24-hour survey period, domestic violence programs answered more than 14 hotline calls every minute.

30,210 People Trained

On the survey day, individuals in communities across the United States attended 1,455 trainings sessions provided by local domestic violence programs, gaining much needed information on domestic violence prevention and early intervention.

8,927 Unmet Requests for Services in One Day

Many programs reported a critical shortage of funds and staff to fully assist victims in need of services such as transportation, childcare, language translation, mental health and substance abuse counseling, and legal representation.

Over 50% of these unmet requests for services were from victims seeking emergency shelter or transitional housing.

Most programs operate shelters, hotlines, and outreach services 24 hours a day, 7 days a week. In many areas, domestic violence programs provide a wide variety of services to large geographic areas. Lack of staffing was a key reason many programs could not meet domestic violence victims' requests for services. 70% of programs have less than

¹² National Network to End Domestic Violence, *Domestic Violence Counts 2008: A 24-Hour Census of Domestic Violence Shelters and Services* (2009), <http://www.nnedv.org/resources/census/232-census2008.html>.

20 paid staff, including 38% with less than 10 paid staff. The average starting salary of a full-time, salaried front-line advocate is \$24,765.

Limited Legal Services

Victims of domestic abuse often need legal assistance with restraining orders and civil and criminal court matters. Without the financial resources to hire attorneys to properly represent them in court, many victims are further victimized by their abusers through the court system. Of programs that participated in the Census, only 10 percent of programs are regularly able to connect victims to attorneys when legal representation is needed.

- 7% Programs have attorneys on staff to represent victims.
- 25% Programs have an established partnership with a legal services organization.
- 36% Programs refer victims to legal services or pro bono attorneys, and most often, they are ABLE to be served.
- 26% Programs refer victims to legal services or pro bono attorneys, and most often, they are UNABLE to be served.
- 6% No response provided.

Sadly, these results make it all too clear that the battle has not yet been won. The Violence Against Women Act, for fifteen years a boon to survivors across the country who otherwise would not have received counseling, transitional housing or legal services, or had access to well-trained police, prosecutors, lawyers and judges, must be reauthorized so that new survivors are not forced to go it alone. VAWA must be reauthorized to ensure that the strides that have been made to make victims safer are continued and reaffirmed. We cannot afford to see them diminished.

Respectfully Submitted,

Debbie Segal, Chair
ABA Commission on Domestic Violence
February 2010