

# Reimagining VAWA: Why Criminalization Is a Failed Policy and What a Non-Carceral VAWA Could Look Like

Violence Against Women

1–18

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Leigh Goodmark<sup>1</sup>

## Abstract

The Violence Against Women Act (VAWA) is the signature federal legislative accomplishment of the anti-violence movement and has ensured that criminalization is the primary response to intimate partner violence in the United States. But at the time of its passage, some anti-violence activists, particularly women of color, warned that criminalization would be problematic for a number of reasons, a caution that has borne fruit in the 25 years since VAWA's passage. This article critiques the effectiveness of criminalization as anti-domestic violence policy and imagines what a non-carceral VAWA could look like.

## Keywords

VAWA, criminalization, non-carceral

The Violence Against Women Act (VAWA) is the signature federal legislative accomplishment of the anti-domestic violence movement. First enacted in 1994 and reauthorized in 2000, 2005, and 2013, VAWA has created new federal programs to serve individuals subjected to intimate partner violence, rape, sexual assault, stalking, and other forms of gendered harm; provided protection for undocumented immigrant women; and funded supervised visitation centers, housing, and lawyers for civil matters. One of VAWA's greatest achievements, however, has been ensuring that criminalization is the primary response to intimate partner violence in the United States.

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<sup>1</sup>University of Maryland Francis King Carey School of Law, Baltimore, USA

## Corresponding Author:

Leigh Goodmark, University of Maryland Francis King Carey School of Law, 500 W Baltimore St., Baltimore, MD 21201, USA.

Email: [lgoodmark@law.umaryland.edu](mailto:lgoodmark@law.umaryland.edu)

VAWA has promoted the criminalization of intimate partner violence in a number of ways. VAWA defines intimate partner violence through the language of the criminal law. For the purposes of VAWA, domestic violence is defined as:

Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner . . . (34 U.S.C. §12291(a)(8))

VAWA also created a number of new crimes of intimate partner violence. Although VAWA initially required that states receiving grant funding adopt mandatory arrest policies, requiring police to make an arrest in any case involving domestic violence when they had probable cause to do so, subsequent reauthorizations have provided some flexibility, enabling states to enact either mandatory or preferred arrest laws. As of 2019, VAWA's two largest grant programs channel approximately US\$268 million yearly to courts, police, prosecutors, and nongovernmental organizations supporting the criminal legal response (Sacco, 2015). Through both its changes to the substantive law and its funding priorities, VAWA signals the federal government's assessment that intimate partner violence is best addressed via the criminal legal system. While later reauthorizations have funded additional services and supports, VAWA's core commitment to the criminalization of intimate partner violence has remained intact since 1994.

Not everyone embraced VAWA's commitment to criminalization at the time of its original passage. In a 1994 article in *Ms.* magazine, law professor Mari Matsuda questioned why feminists would embrace a carceral solution to intimate partner violence or uncritically partner with law enforcement (Kim, 2014). Law professor Brenda Smith, then the general counsel of the National Women's Law Center (NWLC), dissuaded the NWLC from endorsing VAWA given her concerns about the impact of VAWA's provisions on communities of color (Meisel, 2016). As almost 35 years of evidence on the impact of criminalization mounts, criticisms continue, and a growing number of anti-violence advocates are asking whether VAWA should maintain its strong support for criminalization. This article argues that VAWA's criminal system focus limits its impact on decreasing intimate partner violence and serving victims of that violence and explores what a non-carceral VAWA might look like.

## **Criminalizing Intimate Partner Violence Before and After VAWA**

The criminalization of intimate partner violence began long before the passage of VAWA; in fact, intimate partner violence was first criminalized in the Massachusetts Bay Colony in 1641. The modern era of criminalization really began in the 1970s, when anti-violence advocates began to focus on police inaction. Class action lawsuits brought in the late 1970s in New York City and Oakland, California challenged police's failure to intervene in intimate partner violence cases, which resulted in police

promises to treat intimate partner violence like other crimes. In 1977, Oregon passed the first mandatory arrest law in the United States. Subsequently, in 1984, Tracey Thurman won a multi-million-dollar verdict against the city of Torrington, Connecticut after Torrington police failed to intervene to protect her from repeated assaults by her husband, which culminated in a brutal attack that left her partially paralyzed (*Thurman v. City of Torrington*, 1984). In that same year, Lawrence Sherman and Richard Berk published the results of the Minneapolis Domestic Violence Experiment, which found that arrest was associated with lower recidivism rates in men who abused their partners (Sherman & Berk, 1984). Despite Sherman's warning that the results of the study should be replicated prior to the widespread adoption of mandatory arrest policies (Sherman, 1992), anti-violence advocates seized on Sherman and Berk's findings to urge jurisdictions throughout the United States to adopt arrest laws like Oregon's. Many jurisdictions, eager to avoid the kind of liability Torrington, Connecticut had faced, rushed to enact such policies.

Prosecutors also came under scrutiny for their failure to pursue intimate partner violence cases. In 1975, a class action lawsuit challenged the failure of the Cleveland District Attorney's Office to prosecute zealously domestic violence cases. The settlement of that case required district attorneys to: consider each case on its merits, inform victims of their right to review decisions not to prosecute, investigate complaints even when they did not issue warrants, and inform police of their intent to prosecute intimate partner violence cases (*Raguz v. Chandler*, 1975).

Prosecutors began to innovate in responding to intimate partner violence in the late 1980s and early 1990s. Prosecutors' offices created victim support units and instituted vertical prosecution, with one prosecutor handling a case from arraignment to sentencing, and specialized domestic violence prosecution units. Prosecutors implemented evidence-based prosecution, investigating and prosecuting domestic violence cases as though they were homicide cases, using all of the available evidence without having to rely on the victim's testimony. In addition, prosecutors instituted no-drop prosecution policies, which mandated that they go forward with cases regardless of the victim's wishes, sometimes using techniques like subpoenaing and jailing victims to compel their testimony (Corsilles, 1994).

Anti-violence advocates had called for enhancements to the criminal legal response to intimate partner violence for 10-15 years by the time that then-Senator Joe Biden asked his counsel, Victoria Nourse, to give him "something on women for the crime bill" (Meisel, 2016). Congress passed VAWA in 1994 as Title IV of P.L. 103-322, the Violent Crime Control and Law Enforcement Act. The enactment of VAWA as part of the omnibus crime bill was not an accident or coincidence but stemmed from advocacy by the anti-violence community urging police, prosecutors, judges, and lawmakers to see intimate partner violence as a criminal problem requiring a criminal solution. Congress passed VAWA against a backdrop of what many perceived as continued police and prosecutorial inaction on violence against women despite the law and policy changes that had already been implemented in many parts of the country. The portions of VAWA targeting the criminal legal system were intended to express society's condemnation of and to create incentives for police and prosecutors to

pursue more actively cases involving violence against women, particularly intimate partner violence.

VAWA changed the substantive law of intimate partner violence. Specifically, VAWA's Subtitle B, *Safe Homes for Women*, created federal penalties for domestic violence committed across state lines and for interstate violations of protective orders. It also required states to give full faith and credit to protective orders issued elsewhere. But VAWA is primarily a funding bill. Since 1995, the Department of Justice's Office on Violence Against Women, which administers most VAWA grant programs, has made over US\$8 billion in grants (Sacco, 2015). Much of that money has been awarded to police, prosecutors, courts, and community-based agencies supporting the work of law enforcement.

Subtitle A, *Safe Streets for Women*, authorized VAWA's single largest grant program, *The Services \* Training \* Officers \* Prosecutors (STOP) Violence Against Women Formula Grant Program*, appropriated at US\$215 million for fiscal year 2019. Subtitle B established VAWA's second largest grant program, *Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant Program*, formerly known as the *Grants to Encourage Arrest Policies and Enforcement of Protective Orders Program*, appropriated at US\$53 million for fiscal year 2019. Law enforcement receives additional monies from other VAWA grant programs. All of these resources are intended to help law enforcement do things that, for the most part, are already required by law—investigating incidents, bringing charges, prosecuting crimes.

The centrality of the criminal legal system is clear in VAWA's definition of intimate partner violence as “felony or misdemeanor crimes of violence.” Despite its failure to capture a significant amount of the various forms of intimate partner violence documented by researchers over the past 25 years (e.g., emotional abuse, spiritual abuse, reproductive abuse, and economic abuse), that definition has not changed since 1994. VAWA created a number of new federal crimes, including interstate travel to commit intimate partner violence, interstate violation of a protective order, and interstate stalking. Other crimes instituted under VAWA include possession of a firearm while subject to a protective order or after a misdemeanor conviction of domestic violence, and causing someone to cross state lines by force, fraud, coercion, or distress, causing injury because of that conduct. VAWA's original iteration required that states adopt mandatory arrest laws as a condition of funding. The 2003 Act amended that provision to require either mandatory or preferred arrest laws.

VAWA's focus on criminalization is also clear in its funding priorities. Although VAWA has expanded to fund a number of programs outside of the criminal legal system, the proportion of funding dedicated to the criminal legal system has grown over time. In 1994, around 62% of VAWA funding was dedicated to the criminal legal system; by 2013, approximately 85% of VAWA's funding went to the criminal legal system (Messing et al., 2015).

Congress generally supported the expansion of VAWA until 2013 when, for the first time, VAWA faced significant opposition. That opposition centered in part on a pilot project that extended the jurisdiction of tribal courts to crimes committed on tribal

land by non-tribal members. To date, this is the only VAWA criminal provision ever to face serious opposition. The most recent iteration of VAWA expired in 2019; the reauthorization bill, H.R.1585, currently before Congress continues to channel significant resources to law enforcement. H.R.1585 would expand tribal jurisdiction over crimes committed by non-tribal members. It would fund trauma-informed training for law enforcement, and provide money to pilot lethality assessment programs that ask law enforcement to administer surveys to victims of domestic violence at the time of a police intervention to determine their risk of lethality and to refer victims to services appropriate to their level of risk.

## **Is Criminalization Working?**

VAWA proponents regularly refer to data demonstrating that intimate partner violence has decreased significantly since VAWA's inception. On February 15, 2019, for example, former Vice President Joe Biden, VAWA's chief proponent in Congress in 1994, tweeted, "Since the passage of VAWA, annual rates of domestic violence have dropped by 63%" (Jacobson, 2019). That assertion is true, but misleading. Since 1994, all violent crime rates in the United States have fallen significantly. Between 1994 and 2000, domestic violence decreased by about the same amount as the overall crime rate (48% vs. 47%; Catalano, 2015). Between 2000 and 2010, the period that encompasses VAWA's subsequent reauthorizations, rates of domestic violence decreased less than the drop in the overall crime rate, however. Between 2000 and 2005, violent crime fell 33%, while intimate partner violence fell 25%; from 2005-2010, violent crime fell 26% and intimate partner violence fell 6% (Catalano, 2015).

In total, between 1994 and 2012, rates of domestic violence dropped 63%, as compared with a 67% drop for the overall crime rate (Truman & Morgan, 2014). Since 2016, the number of incidents of intimate partner violence in the United States has risen substantially, from 597,200 in 2016 to 847,230 in 2018 (Morgan & Oudekerk, 2019). One might argue that those increases resulted from a greater willingness of victims to report intimate partner violence because of increased awareness of services funded by VAWA. Those numbers reflect incidents of victimization reported to the National Crime Victimization Study. It is impossible to know why those numbers grew, whether they represent increases in the number of intimate partner violence incidents or victims' greater willingness to report such victimization.

It is not clear that victims of intimate partner violence are more likely to report their victimization to the police due to VAWA. The percentage of incidents reported to police rose in the first years after VAWA's passage, between 1995 (49.2%) and 2003 (60.7%). Subsequently, the percentage of reported incidents decreased until 2006 (45.1%), then rose to a high of 66.2% in 2010. Between 2010 and 2018, reporting rates generally fell and have decreased substantially in the last few years, from 57.9% in 2014 to 45.1% in 2018 (Morgan & Kena, 2018; Morgan & Oudekerk, 2019; Morgan & Truman, 2018; Truman et al., 2013; Truman & Langton, 2014, 2015; Truman & Morgan, 2018; Truman & Planty, 2012). Although rates of domestic violence fell less than the overall crime rate between 1994 and 2012 and reporting rates have fluctuated,

reporting is now lower than at the time of VAWA's inception (49.2% in 1995 versus 45.1% in 2018), and the number of incidents of intimate partner violence is rising. In addition, after years of decline, intimate partner violence homicides, particularly gun deaths, have increased in the past several years (Fridel & Fox, 2019), although gun ownership has remained largely static, and, if anything, has decreased during the same period (Gallup, 2019). These trends are particularly telling, because since 1994, the Federal government has spent hundreds of millions of dollars to improve the criminal legal system's response to intimate partner violence.

VAWA's disproportionate focus on the criminal legal system reflects a belief that criminalization addresses the needs of victims of violence. The criminal legal system can offer benefits to individuals subjected to abuse. Police intervention interrupts violent incidents and creates immediate separation between victims and offenders. Courts issue stay-away orders to prevent contact before and after prosecution. Prosecution can send the message that both a victim and the state are serious about ending the violence and give victims leverage with their partners in the future (Ford, 1991). The criminal legal system also provides victims with resources, including victim-witness advocates and compensation funds for crime victims. Incarceration and continued monitoring can create longer-term separation and time for victims to implement short- and long-term safety plans. Intervention by the criminal legal system sends a message that society will not tolerate intimate partner violence, a message that can vindicate victims' experiences and prompt offenders to change their behavior.

Criminalization is linked to accountability, with offenders being held responsible for their behavior by experiencing negative consequences through criminal punishment. Criminalization is also retributive, enabling those who equate justice with punishment to feel that the harm they have experienced has been properly redressed. But VAWA's prioritization of criminal legal responses to intimate partner violence is more than an acknowledgment of these potential benefits. Instead, the continued reliance on criminalization reflects a belief that criminalization is working to lower rates of intimate partner violence or deter violent behavior. That belief is unwarranted.

If "working" is measured by lowering rates of intimate partner violence more than other forms of violent crime that are not receiving similar resources, criminalization is not working. Deterrence, however, might provide an alternative validation of criminalization's effectiveness. Criminalization could be said to be working if there is reason to believe that criminalization deters offenders from committing intimate partner violence. However, the evidence on the deterrent effects of arrest is not conclusive. Replication studies have failed to find that arrest consistently deters further violence. Studies have shown effects ranging from modest to nonexistent; in some populations, arrest exacerbated violence (Berk et al., 1992; Dunford, 1990; Dunford et al., 1990; Garner et al., 1995; Hirschel et al., 1992; Pate & Hamilton, 1992). One study found that the relationship between arrest for intimate partner violence and future violence was attributable to pre-arrest differences in risk of offending, such as a prior criminal history of any kind (Hilton et al., 2007).

Studies on the deterrent effect of prosecution are similarly inconclusive. Although convictions may have some impact on recidivism, the deterrent value may disappear

when ongoing monitoring and accountability are not part of the sentence (for a summary of the research, see Ventura & Davis, 2005). Some studies find that incarceration has no impact on recidivism (Gross et al., 2000; Sloan et al., 2013); others find that incarceration plus continued post-release monitoring can deter further violence (Thistlewaite et al., 1998). The failure to find a strong deterrent effect could be related to a number of factors: inconsistent enforcement of the law, despite mandatory policies; the lack of a credible threat of punishment; the use of recidivism as a measure of deterrence; the underreporting of intimate partner violence; the failure of criminalization to target the factors that spur perpetration of violence. Some might argue that, in fact, we cannot possibly know whether criminalization would deter intimate partner violence because we have never implemented criminal law reforms with the regularity or severity needed to create a deterrent effect.

### **Is the Cost of Criminalization Too High?**

Even if criminalization of intimate partner violence was “working”—lowering rates of violence or deterring future violence—it would still be necessary to ask whether the costs associated with implementing the criminal legal system’s response to intimate partner violence are too high. It is impossible to talk about criminalization of intimate partner violence without considering the larger context of mass incarceration in the United States. Kelly (2015, p. 1) describes the United States’ ever-increasing reliance on the criminal legal system as a “remarkable” failure, “perhaps the greatest in American history.” As of 2019, approximately 2.3 million people in the United States were incarcerated in federal prisons, state prisons, local jails, and other facilities. An additional 4.4 million people are currently on probation or parole (Sawyer & Wagner, 2019). A disproportionate number of those incarcerated come from historically marginalized communities (Bronson & Carson, 2019; Center for American Progress & Movement Advancement Project, 2016; Nellis, 2016). A substantial percentage of those individuals is likely incarcerated or under community supervision as a result of intimate partner violence. Approximately 21% of violent crime involves intimate partner violence (Truman & Morgan, 2014). While there are no national data on the issue, an informal survey of Vermont’s prison population found that approximately 20% of those in Vermont’s prisons were incarcerated as a result of intimate partner violence (Kenyon, 2016).

The growth in the prison population is attributable at least in part to “governing through crime,” using the criminal legal system to address the consequences of unresolved social problems, including intimate partner violence (Simon, 2007). Some data suggest that communities of color are disproportionately affected by criminalizing domestic violence (Doege, 2001). Mass incarceration, and the disproportionate impact of mass incarceration on marginalized communities, is a significant social problem. Incarceration rates could dramatically increase if each of the approximately 847,000 incidents of intimate partner violence committed in the United States in 2018 was addressed through criminalization (Morgan & Oudekerk, 2019).

Even for those who are not incarcerated, the collateral consequences of criminal system involvement are significant. Criminal convictions can result in social stigma

and a host of associated restrictions, including denial of the right to vote; ineligibility for public housing, federal welfare benefits, military service, and education grants; and barriers to finding employment. For undocumented people, criminal convictions can result in deportation (Pinard & Thompson, 2006). Criminalization can also subject people to state surveillance through community monitoring and probation and to public surveillance via online databases accessible to all that provide information about criminal cases.

For those who are incarcerated, the physical costs of criminalization are even higher. Incarceration is a dehumanizing experience. American prisons still use practices shunned by most developed nations, including using attack dogs to remove people from cells, regular strip and body cavity searches, serious overcrowding, and the provision of inedible food (Gottschalk, 2015). Physical and sexual assault are regular occurrences in these facilities (Beck & Johnson, 2012; Wolff et al., 2007). Law professor Jonathan Simon (2007) has referred to American prisons as “waste management,” intended not to rehabilitate but to warehouse those convicted of criminal offenses.

Once released, incarceration depresses earning power. Formerly incarcerated people have difficulty finding employment, are less likely to be employed, work less, earn less, and are often employed in jobs with high turnover and little chance of advancement. These effects are more prevalent for people of color (Gottschalk, 2015; Kelly, 2015). Formerly incarcerated people are often released into communities that are challenged by poverty, high unemployment, and the loss of community members who should be raising children and contributing to the community’s economy. Investment in prisons directs resources away from these communities, depriving them of funding for education, health care, employment assistance, housing, and other services that could benefit the formerly incarcerated. All of these conditions—trauma suffered in prison and economic and community instability—are highly correlated with perpetration of intimate partner violence (Benson & Fox, 2004; Taft et al., 2011). Criminalization creates the very conditions that spur the violence that it seeks to remedy.

Criminalizing intimate partner violence has had serious unintended consequences for those it was meant to benefit, particularly women. Since the inception of mandatory arrest policies for intimate partner violence, arrest rates for women have increased significantly (S. L. Miller, 2005; Ms. Foundation for Women, 2003). At least part of that increase “is directly attributable to the implementation of mandatory arrest policies and not simply an increased use of violence by women in intimate relationships” (Durfee, 2012, p. 75). Dual arrests also increased substantially after the adoption of mandatory arrest laws, again without evidence that women’s use of violence has increased. The research suggests that women are penalized by arrest policy without justification. Rates of dual arrest remain disproportionately high in some states, spurring the passage of primary aggressor laws, meant to ensure that police arrest only the person who instigated the violence (Connecticut Coalition Against Domestic Violence, 2018). Women arrested for intimate partner violence are less likely to have physically assaulted, injured, or threatened their partners than their male counterparts (Durfee, 2012). In addition, many women who are arrested under mandatory and preferred arrest laws have been subjected to abuse (S. L. Miller, 2005).



Criminalization increases state control over women in other ways as well. Increased police involvement in families experiencing domestic violence leaves mothers vulnerable to failure to protect allegations. Some police departments require officers to make reports to child protective services whenever children are present when they respond to a domestic violence call. Such policies can have grave consequences for women subjected to abuse. For example, in Oklahoma, Tondalao Hall was sentenced to 30 years imprisonment for “failure to protect” her children from her abusive boyfriend who broke the children’s femurs and ribs; the boyfriend was sentenced to 2 years incarceration (Goodmark, 2019b). Hall was recently released after serving 15 years in prison (Baer, 2019).

When criminalization is instituted through policies like mandatory arrest, no-drop prosecution, and compulsory criminal stay-away orders, it deprives people subjected to abuse of the opportunity to make decisions about whether and how the state will intervene in their relationships. Such policies serve as sources of disempowerment for women subjected to abuse. Furthermore, they may dissuade women from seeking help through state channels (Erez & Belknap, 1998; McDermott & Garofalo, 2004; Novisky & Peralta, 2015).

While criminalization of intimate partner violence can confer benefits upon victims of violence, its costs are quite high. Those costs are borne disproportionately by people of color and individuals with lower incomes, their partners (particularly when intervention by the criminal system is not what the person would have chosen or when they themselves are arrested and prosecuted), their children, and their communities. Because funding is often a zero-sum game, the dedication of the majority of VAWA’s resources to criminalization has precluded communities from investing in non-carceral solutions to intimate partner violence.

For over 25 years, VAWA has dedicated significant resources to criminalizing intimate partner violence—in essence, to encourage police and prosecutors to do things that were already required by law. That funding has not resulted in lower rates of intimate partner violence, has not deterred intimate partner violence, and has had serious consequences, both intended and unintended, for the people whose lives it has affected. It is well past time to reimagine what VAWA funding could do if it was not dedicated to criminalization—to imagine a non-carceral VAWA.

## **Imagining a Non-Carceral VAWA**

Rather than focusing on after the fact punishment that is unlikely to decrease or deter intimate partner violence, VAWA could begin or increase funding and promotion of policies designed to prevent intimate partner violence. VAWA, for example, could fund public health prevention programs designed to address factors correlated with perpetration of intimate partner violence—child abuse and neglect, exposure to intimate partner violence, and other adverse childhood experiences. VAWA could fund child abuse intervention programs like nurse practitioner partnerships, which send nurses to the homes of newborns to help at-risk families learn to parent their children and alleviate the stressors that often come with having a newborn. Such partnerships

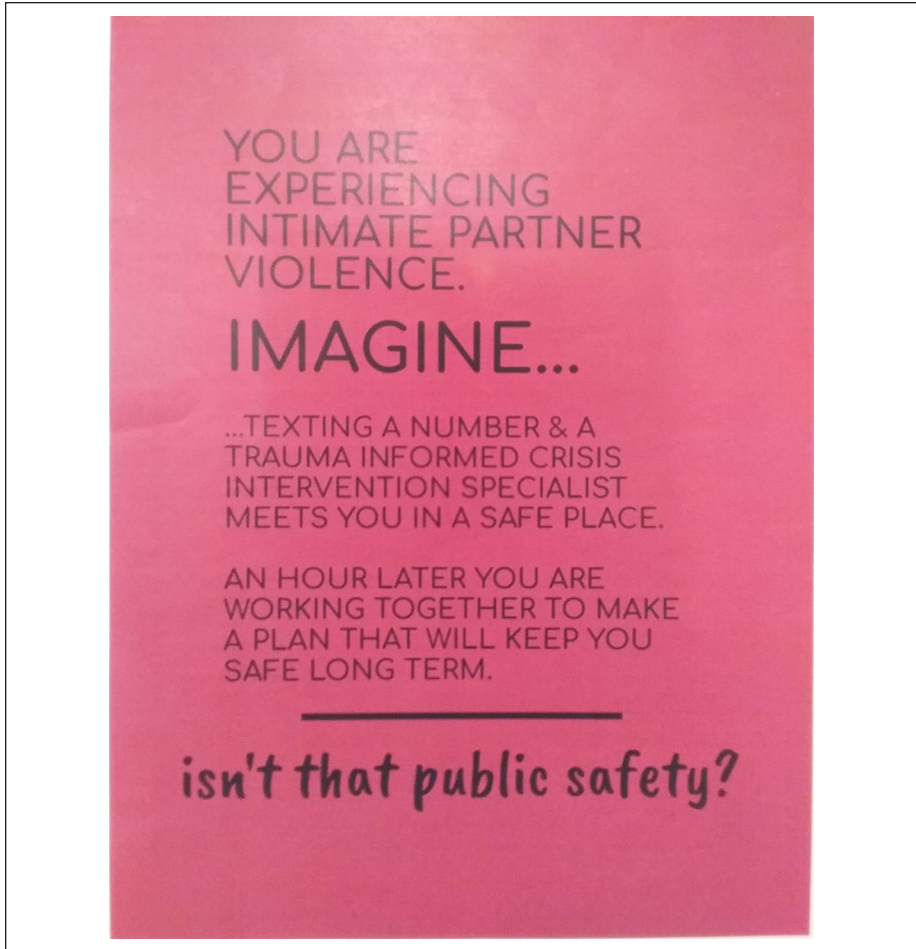
have been correlated with decreased rates of intimate partner violence among at-risk families (Bair-Merritt et al., 2010; Duggan et al., 2004).

VAWA could promote interventions with men who use violence. Programs that engage with men as fathers, like the MenCare campaign or Fathers for Change, have been effective in decreasing violence (Flood, 2015; Stover, 2013). VAWA has already recognized the need to educate adolescents about relationship violence, but it could increase its commitment to such interventions with adolescents by shifting funding from criminalization to athletic and school-based programs such as Coaching Boys into Men, Safe Dates, and Fourth R: Strategies for Healthy Youth Relationships, which have had success in decreasing rates of perpetration and victimization among teenagers (Foshee et al., 2004; E. Miller et al., 2012; Wolfe et al., 2003, 2009). VAWA could pilot edutainment programs that use broadcast media to teach a wide audience about social issues like intimate partner violence. For example, South Africa has used the SoulCity broadcast, an edutainment project that successfully changed community attitudes about intimate partner violence (Usdin et al., 2005).

VAWA funds could be used to rectify the economic stressors that contribute to intimate partner violence and keep victims of violence entrapped in violent relationships. VAWA could supplement existing sources of emergency funding for victims of violence to meet the immediate needs that come with leaving a violent relationship—e.g., deposits for rental housing, money for food or transportation. VAWA funding could be used to create work opportunities for victims of violence, seeding innovative programs that provide victims with the skills they need to secure living-wage work. VAWA could create microfinance programs for victims of violence, enabling victims to start small businesses or seek education without incurring significant debt. VAWA could serve as a vehicle for changing federal laws to address the problems of economic abuse, coerced debt, and the imposition of unfair tax liability on victims of violence. More controversially, VAWA could provide job training and assistance in finding work to those who use violence, recognizing that male under- and unemployment is significantly correlated with perpetration of intimate partner violence (Benson & Fox, 2004; Campbell et al., 2003; National Institute of Justice, 2004). VAWA could include a provision, for example, to increase the federal minimum wage to US\$12 per hour, a move that President Obama's Council of Economic Advisors estimated could decrease rates of crime by 3-5% (Furman, 2016).

VAWA could provide incentives to reimagine who should act as first responders to intimate partner violence. Rather than calling police for assistance with intimate partner violence, for example, violence interrupters, like those involved with the Safe Streets program, could be dispatched to help deescalate conflict. Crisis intervention specialists could be available to meet victims of violence and help them safety plan. As Amber Hughes notes in the poster below, our capacity to reimagine what public safety could look like in the context of intimate partner violence is bounded only by our creativity and our willingness to reconsider carceral responses.

VAWA could promote policies that enable people subjected to abuse to seek justice outside of formal justice systems. One key inclusion in draft versions of H. R.1585 is



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money to pilot restorative justice programs, seen by some as an alternative to intervention by the criminal legal system. That proposal reflects an increasing concern among anti-violence advocates about VAWA's disproportionate focus on criminalization and a desire to provide people subjected to abuse with options beyond criminalization. Restorative justice focuses on harms rather than crimes, allowing victims to articulate the harm done to them, requiring offenders to acknowledge that harm, and bringing victims, offenders, and their supporters together to design plans that hold offenders accountable for and address harms.

Restorative processes enable victims to confront their partners directly about how their partners' behavior affected them and require active accountability of those who do harm. Although the research on restorative justice in the context of intimate partner

violence is limited, it suggests that victims who participate in restorative processes are satisfied with the process and appreciate the focus on accountability for their partners (Kingi, 2014; Pennell & Burford, 2000). Restorative processes in the context of intimate partner violence would look different than the models used in other contexts. Restorative processes in cases involving intimate partner violence must be victim-initiated and victim-led, allowing victims to determine whether, when, and how such processes would proceed. Facilitators would have experience with intimate partner violence, and the preparation process might be lengthier and more intensive than in other settings, because the victim's readiness to participate in the process would be the paramount concern. Restorative processes should be linked to services and supports for both victims and offenders, and those services and supports should be available before, during, and after the restorative process.

Restorative processes give victims of violence access to justice without requiring them to use state-based justice systems. Moreover, by involving community members, particularly as support people for victims and offenders, restorative processes educate participants about intimate partner violence and engage them as part of a network of support and accountability. Ideally, this kind of involvement increases community awareness of, and condemnation of, intimate partner violence, which can lead to changes in community norms around the acceptability of intimate partner violence (Goodmark, 2019a).

VAWA could also provide money for developing community accountability models. Such models provide communities with tools to assist victims of violence seeking safety outside of state-based systems. For example, Mimi Kim founded the Bay Area nonprofit Creative Interventions to provide “family, friends, neighbors, co-workers and others toward whom persons in need first turn . . . with the model and tools to effectively intervene” (Kim, 2010). Those tools help communities to identify and understand violence, find allies, and confront barriers in addressing violence, supporting victims, and helping those who use violence accept accountability. Such interventions are individually tailored and responsive to the victim's answer to the question, “What do you need to feel safe?” Programs such as these are particularly important, as many victims of violence will never seek help through formal systems. In fact, between 2006 and 2015, law enforcement was not called in 44% of incidents of intimate partner violence (Reaves, 2017). VAWA could create incentives to provide access to safety, accountability, and justice outside of the criminal system.

VAWA undeniably does a great deal of good outside of the criminal legal system—e.g., it funds civil legal assistance, transitional housing assistance, and violence prevention programs. What VAWA primarily does, however, is to bolster the criminal legal response to intimate partner violence. For 25 years, VAWA has defined intimate partner violence using the criminal law, created new crimes of intimate partner violence, and disproportionately funded courts, police, prosecutors, and community-based agencies supporting the carceral response, with real questions about the return on investment and serious unintended consequences. The draft H.R.1585 legislation includes seed money for some promising alternatives to the carceral system. Nevertheless, because it continues to devote the majority of its resources to the

criminal legal system, H.R.1585 will send “good money after bad” and continue to give victims false hope that criminalization will curb their partners’ violence. The next iteration of VAWA could, and should, be a non-carceral VAWA, one that steers VAWA away from criminalization and toward the kind of reform that might actually reduce intimate partner violence.

## Conclusion

Since its original passage in 1994, anti-violence advocates have sought to expand the reach of the Violence Against Women Act, dedicating the majority of an ever-increasing budget to interventions by the criminal legal system. The evidence does not support the conclusion that the criminalization of intimate partner violence that was funded and promoted by the Violence Against Women Act is decreasing or deterring intimate partner violence, however. In fact, criminalization may be exacerbating the correlates of intimate partner violence. This article suggests that rather than continue to fund criminalization, anti-violence advocates turn their attention to developing a non-carceral VAWA, one that focuses on prevention and addressing known correlates of violence rather than intervening after the fact.

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### **Author Biography**

**Leigh Goodmark** is the Marjorie Cook Professor of Law at the University of Maryland Francis King Carey School of Law, where she directs the Gender Violence Clinic. She is the author of *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* (University of California Press, 2018) and *A Troubled Marriage: Domestic Violence and the Legal System* (New York University, 2012); the latter was named a CHOICE Outstanding Academic Title of 2012.