

**MANDATORY ARREST POLICIES
OF
VIOLENCE AGAINST WOMEN ACT
HARMFUL TO AFRICAN-AMERICAN
COMMUNITIES**

Recommended Amendments

Written

by

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Introduction

The Violence Against Women Act (VAWA) is a United States federal law and serves as the nation's response to domestic violence. The legislation was passed as Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994 HR 3355 and signed as Public Law 103-322 by President Bill Clinton on September 13, 1994. VAWA funds training programs for professionals in the domestic violence industry, such as victim advocates, family court judges, prosecutors and law enforcement personnel.

This Act created the stage for an overhaul of state domestic-violence laws that determine the civil and criminal statutes governing domestic violence. Begun as well-intentioned legislation, the Violence Against Women Act has resulted in some unintended and unforeseen consequences.

Despite the fact the alleged act of domestic violence usually does not occur in the presence of law enforcement officers, the officers called to the scene are, nonetheless, mandated to make an arrest. In some instances, the allegations establish probable cause for only a misdemeanor assault. Known as mandatory arrest, the law was adopted state by state, beginning in 1987. When responding to a domestic-violence call, law enforcement officers, following mandatory arrest requirements, must either make a warrantless arrest or provide written explanations as to why they have not made an arrest. These detailed explanations are included in various reports. Before the Violence Against Women Act

became law, however, the decision to arrest was left to the discretion of the law enforcement officers. The legislative enactment of VAWA eliminated such discretion. Moreover, before the enactment of VAWA, law enforcement officers were permitted to mediate family disputes without the involvement of the formal process of an arrest. Currently, VAWA provides millions of dollars to all fifty states and the District of Columbia to implement mandatory arrest policies in domestic violence cases. This financial incentive serves as an economic boon for many states.

VAWA's mandatory arrest policies have substantially weakened the Constitutional requirements for probable cause. This has resulted in an increase in the number of false allegations of domestic violence, for the accusers have no fear of penalties for making false allegations; therefore, those who have been falsely accused are often deprived of their civil rights and due process of the law. Because of mandatory arrest policies of both state and local police departments, a new class of victims has been created—those who have been falsely accused of domestic violence. Frequently, the motivation for making false accusations is to achieve tactical advantage in divorce and/or child custody proceedings.

Studies have shown that the gender and race of the accused and the accuser play a significant role in the decision to charge, arrest and prosecute those accused in domestic violence cases. However, American families of all races and ethnicities are being negatively affected by mandatory arrest policies. It is a well-known fact that these policies are having a disproportionate effect on African-American families and are contributing to the following social pathologies and health issues in the African-American community:

- The over-incarceration rate of African-American males
- The dissolution of marriages and/or relationships
- The perpetuation of domestic violence
- The epidemic of fatherlessness
- The HIV/AIDS crisis
- Unemployment leading to domestic violence
- Domestic violence homicides

The Over-Incarceration Rate of African-American Males

According to FBI statistics, African-Americans represent 23 percent of all spouses and 35 percent of all boyfriends or girlfriends arrested for partner aggression (Ducrose, 2005). This translates to 300,000 African-Americans being arrested every year for domestic violence. The Congressional Black Caucus notes that African-American men represent only 6 percent of the total United States population; however, they make up 44 percent of all the male inmates in state and federal correctional facilities.

The over-incarceration rate of African-American men has a devastating effect on the African-American community and has produced a gender imbalance in the community, leaving few dating partners and marriageable men for African-American women. As a result, African-American women have fewer options in their search for a dating or marital partner. Currently, 43 percent of black women in the United States have never been married (Matherson, 2009). By the age of thirty, only 45 percent of African-American women have been married compared to 80 percent of Caucasian women (Bachrach, 2000).

The Dissolution of Marriages/Relationships

After a domestic violence event has occurred, VAWA-funded domestic violence victims' advocates and other domestic violence professionals strongly suggest to the domestic violence victims that they end their relationship or marriage with the offenders. These professionals explain that offenders cannot change their violent behavior and that domestic violence is a social problem deeply rooted in sexism and patriarchy.

In some cases, these professionals even coerce the domestic violence victims. For instance, numerous victims are told by these professionals that unless dissolution of the marriage or relationship takes place, their children will be removed from the home by the state.

Of course, in some cases where physical abuse has actually occurred, removing the children from the home might be necessary. But for low-level domestic violence (arguments, verbal abuse, emotional abuse and other forms of non-physical abuse), removing the children from the home may not be the best practice. Instead, encouraging parents to obtain effective parenting skills may be the only intervention required.

An ethical domestic violence professional should allow clients to make their own decisions about whether to dissolve a relationship/marriage.

The Perpetuation of Domestic Violence

Sexism and patriarchy are not the core causes of domestic violence. The causes of domestic violence are far more complex. However, most offenders can change their behavior if given appropriate psychologically based treatment. The offenders, of course, must be motivated to change. Most offenders have never learned the skills required to

have an intimate relationship that is strong and healthy because many have grown up in unstable homes. Thus, they have had no role models to provide them with an example of a healthy, intimate relationship.

Batterers Intervention Programs (BIPs), are VAWA-supported programs that domestic violence offenders attend as part of the legal system's response to domestic violence. Unfortunately, these programs have only a small effect or no effect on stopping domestic violence (University of Georgia and Tulane University, Society for Social Work and Research, 2006). Not psychologically based, BIPs are instead ideologically driven. In fact, female domestic violence offenders are turned away from BIPs because of the program-based ideological views of women as always the victims and men as always the offenders.

Batterers Intervention Programs are not culturally appropriate for the African-American population. Many African-American domestic violence victims have expressed a need for domestic programs for offenders that are therapeutic and not punitive. Hence, the victims just want the violence to stop and to keep their family together.

African-American couples, as well as couples of other races and ethnicities who decide to continue their relationship after domestic violence, can be taught skills to develop healthy, satisfying and non-violent relationships. These couples should be supported and provided with the opportunity to obtain these skills. If these couples are successful, this is the best legacy they can give their children.

The Epidemic of Fatherlessness in the African-American Community

The children of incarcerated men are often forced to grow up in a fragile and

fragmented single-parent household or as wards of the state. Fatherlessness, the absence or lack of the biological father in a child's life, is a growing problem in the African-American community. The number of children affected by their father's absence is approximately twenty-four million (National Fatherhood Initiative, 2010). One out of every three children goes to bed without their biological father in the home (National Fatherhood Initiative, 2010).

A child without a father in the home is more likely to suffer from a wide range of social and psychological problems. Such problems include, but are not limited to, poor academic achievement, low self-esteem, psychological distress, involvement in gangs and crime, perpetrating teen-dating violence or being a victim of teen-dating violence, teen pregnancy, substance abuse, sexual precocity, depression and suicidal behavior.

The HIV/AIDS Crisis in the African-American Community

African-American men are contracting HIV/AIDS while in prison and sometimes are dying there. Those who survive and are released bring HIV/AIDS back into the community and infect unsuspecting female and/or male partners. Indeed, AIDS is the leading cause of death among African-Americans between the ages of 25 and 44. About half of all new HIV cases in the United States each year are African-American men and African-American women, although African-Americans make up only 13 percent of the population (U.S. Department of Health and Human Services, Office of Minority Health Resource Center, 2002).

Almost 60 percent of all children in the United States who are living with HIV are African-Americans. (U.S. Department of Health and Human Services, Office of Minority Health Resource Center, 2002).

Unemployment Leading to Domestic Violence

Those who have paid their debt to society have difficulty finding employment after incarceration because of their criminal record. Studies have revealed that unemployment is a major risk factor in the perpetration of domestic violence.

Six randomized field experiments/studies were conducted to determine the effectiveness of arrests in domestic-violence recidivism. These studies were conducted in the following geographical areas and are referred to by the location where the study was conducted: Duluth, Minnesota; Omaha, Nebraska; Milwaukee, Wisconsin; Charlotte, North Carolina; Colorado Springs, Colorado; and Metro-Dade, Florida.

The overall findings of the arrest studies revealed the following information:

- Arrest decreases domestic violence recidivism when the offender is employed or married and when the victim is Caucasian or Hispanic (National Institute of Justice, 1998)
- Arrest increases domestic violence recidivism when the offender is unemployed or unmarried and when the victim is African-American (National Institute of Justice, 1998).
- Arrest may reduce domestic violence in the short run, but this reduction is temporary (National Institute of Justice, 1998).

Criminologist Lawrence Sherman states that mandatory-arrest laws can result in more violence to women. In cases where the perpetrator is unemployed, there is an escalation of violence as a result of mandatory arrest policies (Stark and Sherman, 1994).

Domestic Violence Homicide

There is no scientific evidence that mandatory arrest reduces domestic violence

recidivism. A 2007 Harvard University study conducted by Dr. Radha Iyengar has found that mandatory-arrest policies actually cause more violence and increase partner homicides by nearly 60 percent (National Bureau of Economic Research, June 2007).

A more recent analysis conducted by the Sanford Institute of Public Policy at Duke University has also concluded that mandatory-arrest laws either increase female homicide rates or have no effect (Points and Richie, 2009).

Mandatory arrest is placing victims at greater risk for more violence and even increasing the likelihood that domestic homicide will occur.

Repeal Mandatory Arrest Policies

It is clear that mandatory arrest and subsequent incarceration of African-American males are key threads that weave a web of entanglement—a web that traps many African-American men, women and children in a life of struggle, poverty, ill health, violence and limited opportunities.

Domestic violence is, indeed, a significant problem in the African-American Community, but studies have shown that mandatory arrest is not deterring domestic violence but is causing other problems in the lives of African-Americans.

In response to requests from women's organizations and civil liberties groups, the 2005 reauthorization of VAWA removed mandatory-arrest policies and substituted a pro-arrest stance. Unfortunately, the 2005 reauthorization did not include financial incentives for states to repeal the existing mandatory-arrest laws. Therefore, five years later, no state is known to have removed the unsafe policies. In the meantime, the African-American community is in social distress and teetering on the edge of destruction.

African Americans for the Reform of the Violence Against Women Act (AAVR) is joining women's groups and civil liberties groups in the call to repeal mandatory-arrest policies.

Incarceration as a means of stopping domestic violence has proven ineffective. AAVR is, therefore, recommending that psychological treatment programs be established to help family members who are experiencing and perpetuating low-level domestic violence. Low-level domestic violence consists of verbal abuse, emotional abuse and other forms of non-physical abuse.

However, as part of the intervention for physical abuse, AAVR recommends short-term incarceration, followed by mandatory psychological treatment upon release.

The Authors

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Although the Center serves all domestic violence victims, offenders and their children, the Center's specialty is providing culturally appropriate services to the underserved population—African-American individuals and families; African-American and Caucasian male victims of domestic violence; and African-American and Caucasian female offenders of domestic violence.

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African-Americans for the Reform of the Violence Against Women Act (AAVR) is a national coalition of domestic violence professionals and other professionals who are concerned about the Violence Against Women Act (as it now stands) and its effects on African-American communities.

AAVR believes that domestic violence is a core issue for many of the problems facing African-Americans across the nation. If domestic violence matters were addressed in a therapeutic and culturally appropriate manner, quality-of-life opportunities could be maximized for the population.

For more information on African-Americans for the Reform of the Violence Against Women Act, consult the website at www.aavreform.org or contact our office by calling (304) 342-7752.

Recommended Amendments to the Violence Against Women Act

African-Americans for the Reform of the Violence Against Women Act has compiled the following list of recommended amendments to VAWA. Implementation of this list will ensure that VAWA is effective and culturally appropriate for African-American individuals and families.

1. Respect the integrity of African-American families.
2. Promote counseling and treatment in cases of low-level abuse (arguments, verbal abuse and other non-physically abusive actions) instead of arrest and incarceration. If law enforcement officers intervene in a domestic violence incident, they should encourage those experiencing and/or perpetuating low-level abuse to seek counseling and treatment. The children should also obtain counseling and treatment to break the cycle of violence.
3. Require arrest and incarceration in cases where physical abuse has been perpetrated. Mandate counseling and treatment after release.
4. Require couples to meet individually with a domestic violence therapist/counselor when an allegation of domestic violence has been filed with law enforcement and the accused disputes the allegation. An experienced domestic violence therapist can perform an assessment to discern if the domestic abuse actually occurred. If the complainant or the accused fails to meet with the therapist, that person will be subjected to legal sanctions. If it is determined that the allegations are true, the accused will be subjected to legal sanctions. Likewise, if the complainant is found to be making false allegations of abuse, the complainant (accuser) will be subjected to legal sanctions.
5. Establish and promote domestic violence counseling services for children who have witnessed domestic violence or have had other exposures to family violence.
6. Provide for the entire family (offender, victim, and children) counseling and treatment to minimize the short-term and long-term emotional and psychological harm caused by domestic violence trauma. Substance-abuse treatment, parenting education and treatment for addictive disorders may also be indicated.
7. Require law enforcement to suggest that one of the parties leave the home for a cooling-off period after low-level abuse has occurred. Low-level abuse could

- possibly escalate. The cooling-off period should be for at least twenty-four hours. The party who leaves the home should be the one who would have less difficulty seeking alternative shelter. Law enforcement should question the parties to determine who has alternatives for temporary shelter and encourage that person to leave.
8. Establish and fund throughout the nation four pilot domestic violence counseling centers to provide counseling and treatment for individuals and families who are experiencing and/or perpetrating domestic violence. These centers would collaborate with domestic violence shelters and other relevant organizations and would focus exclusively on counseling and treatment services. A prototype of such a center has been in existence for fifteen years and is known as the *Domestic Violence Counseling Center*. The Center is located in Charleston, West Virginia, and provides culturally appropriate, evidenced-based domestic violence counseling and treatment services.
 9. Allow anyone who is experiencing and/or perpetrating domestic violence to receive assistance at a domestic violence counseling center, although the domestic violence may not have been reported to law enforcement. Due to mistrust and other reasons, African-American victims and offenders of domestic violence do not always involve law enforcement in their domestic-violence issues. Some programs providing assistance to domestic violence victims, such as Crime Victims Compensation Fund programs, will not assist domestic violence victims unless they have filed a police report. This should be changed.
 10. Establish a national domestic-violence hotline for offenders. This hotline would provide support for the prevention/intervention of violence. Domestic violence offenders have reported to AAVR that it would be helpful to have someone to “talk them down” when they are becoming angry. A hotline could possibly facilitate offenders in managing their anger and preventing violence. Also, the hotline could serve as a method for offenders to obtain information and referral for assistance. The hotline would operate twenty-four hours a day, seven days a week, and every day of the year. Every offender, regardless of gender, would be welcome to contact the hotline. This hotline would be similar to the National Domestic Violence Hotline but would be for all domestic violence offenders.
 11. Require that domestic violence training programs and public education efforts not promote racial or gender stereotypes and that the information be based on objective research.

12. Provide training for and encourage all domestic-violence service providers (counselors/therapists, shelter personnel, victim advocates, law enforcement officers, judges and prosecutors) to deliver services to domestic-violence victims and offenders in a culturally appropriate manner. Ensure that a percentage of the trainers providing cultural sensitivity are African-Americans and other people of color.
14. Mandate that qualified African-Americans and males of all races and ethnicities are given a fair and equal opportunity to obtain employment as domestic violence-service providers. This would increase the likelihood that the under-served population, namely, African-Americans and men, would utilize domestic-violence programs and other relevant services.
15. Require that domestic-violence programs and services provide interventions that are culturally appropriate for the African-American community.
16. Conduct a research study on domestic violence experienced and perpetrated by the clients at the Domestic Violence Counseling Center in Charleston, West Virginia. The Domestic Violence Counseling Center, which has been in existence for fifteen years, serves the underserved population (African-American individuals and families; African-American and Caucasian male victims of domestic violence; and African-American and Caucasian female offenders of domestic violence). This is one of few domestic violence programs in the nation with such a diverse clientele and the reason it is recommended that four pilot centers be established throughout the United States, using the West Virginia Center as a prototype.

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