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## The Evolution of a National Response to Violence Against Women

*Robin R. Runge\**

Violence against women reflects as much a failure of our Nation's collective willingness to confront the problem as it does the failure of the Nation's law and regulations. Both our resolve and our laws must change if women are to lead free and equal lives.<sup>1</sup>

The Violence Against Women Act of 1994 (VAWA 1994) was the first comprehensive legislative effort to create a national response to the epidemic of violence against women.<sup>2</sup> VAWA 1994 had lofty goals, including shifting attitudes regarding violence against women through the creation of specific legal protections, improved enforcement, increased access to existing legal structures, funding for public education, training for service providers, and expanded services for victims.<sup>3</sup> Today, almost twenty years later, we are at another critical juncture for the Violence Against Women Act (VAWA): consideration of the law's reauthorization by Congress for the third time.<sup>4</sup> The recent passage and signing of

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1. S. REP. NO. 103-138, at 37 (1993).

2. It was not the first federal law to address family violence in the U.S. See The Family Violence Prevention and Services Act, Pub. L. No. 98-457 (1984) (current version at 42 U.S.C. § 10401 (2010)), was the first:

It is the purpose of this title to –

demonstrate the effectiveness of assisting States in efforts to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents; and

provide for technical assistance and training relating to family violence programs to States, local public agencies including law enforcement agencies, nonprofit private organizations, and other persons seeking such assistance.

3. S. REP. NO. 103-138, at 38 (It was “intended to respond to both the underlying attitude that this violence is somehow less serious than other crime and to the resulting failure of our criminal justice system to address such violence.”).

4. Violence Against Women Reauthorization Act of 2013 (2013) passed by the Senate on February 12, 2013 and by the House on February 28, 2013. *Final Vote Results for Roll Call 55, Violence Against Women Reauthorization Act of 2013*, CLERK OF THE HOUSE OF REPRESENTATIVES (Feb. 28 2013 11:56 AM), <http://clerk.house.gov/evs/2013/roll055.xml>. President Obama signed the Violence Against Women Reauthorization Act of 2013 into law on March 7, 2013. Valerie Jarrett, *No One Should Have to Live in Fear of Violence*, THE

legislation reauthorizing VAWA by President Obama, offers a particularly relevant moment to reflect upon the evolution and impact of VAWA.<sup>5</sup> This keynote presentation provides a brief reflection on the progression of some of the legal provisions and grant programs of VAWA<sup>6</sup> from the original Act through the reauthorizations in 2000, 2005 and 2013. These reflections are offered from the perspective of an advocate and attorney who has participated in the development of these laws and their implementation.<sup>7</sup> By analyzing the evolution of specific provisions incorporated into VAWA through the years, my intent with these remarks is to highlight some ways in which the experiences learned from its implementation have informed reauthorizing legislation. Moreover, my hope is that my comments explain how VAWA has improved the legal response to violence against women and achieved the goal of changing social attitudes toward violence against women.

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WHITE HOUSE (Mar. 7, 2013 3:59 PM), <http://www.whitehouse.gov/blog/2013/03/07/no-one-should-have-live-fear-violence>. Last year the Violence Against Women Reauthorization Act of 2011 was passed by the Senate on April 26, 2012, Violence Against Women Re-authorization Act of 2011, S. 1925, 112th Cong. (2011) [hereinafter VAWA 2011], and the Violence Against Women Reauthorization Act of 2012 was passed by the House of Representatives on May 16, 2012 [hereinafter VAWA 2012].

5. This is not a comprehensive discussion of all of the provisions of VAWA 1994 and its progeny or the substantial impacts those provisions have made in the lives of women, girls, families, and communities. For a comprehensive discussion of VAWA 1994, see Sally F. Goldfarb, *"No Civilized System Of Justice": The Fate of The Violence Against Women Act*, 102 W. VA. L. REV. 499, 504–510 (2000). Nor is it a critique of the efficacy of the law and its approach to ending violence against women. See generally Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. REV. 7 (2004) (arguing that VAWA-funded resources support legal interventions that operate under the incorrect assumption that battered women want to end their relationships to obtain assistance, and further articulating that this makes VAWA resources less effective and possibly detrimental to the goal of providing support to victims); LEIGH GOODMARK, *A TROUBLED MARRIAGE* (NYU Press 2012).

6. Throughout these remarks "VAWA" refers collectively to the original Act, VAWA 1994, and the legislation reauthorizing it in 2000 and 2005; "VAWA 1994," "VAWA 2000" and "VAWA 2005" are used to reference each bill individually.

7. The author received federal funding authorized by VAWA beginning in 1999 to provide civil legal assistance to victims as the coordinator of the Domestic Violence Employment Project at the Legal Aid Society of San Francisco, Employment Law Center, served as faculty for trainings for grantees of the Civil Legal Assistance grant program of VAWA from 1999–2009, and managed several cooperative grants with the Office on Violence Against Women at the U.S. Department of Justice funded by VAWA to provide technical assistance and training to programs providing civil legal assistance with VAWA funding as director of the American Bar Association Commission on Domestic Violence from 2003–2009. She also advocated for the passage of VAWA 1994, provided information and guidance to members of Congress regarding VAWA 2000 as a policy advocate at the National Coalition Against Domestic Violence, and advocated for passage of VAWA 2005 as director of the ABA Commission on Domestic Violence.

## I. BACKGROUND

Congress passed VAWA 1994 as a part of the Violent Crime Control and Law Enforcement Act of 1994.<sup>8</sup> From the beginning, Congress recognized that the vast majority of the victims of the crimes addressed by VAWA 1994 are women.<sup>9</sup> Nonetheless, the language used in VAWA 1994 was gender neutral.<sup>10</sup> The primary mechanism by which VAWA achieves its goals is through targeted funding for training and services and enactment of federal legal protections for victims. VAWA 1994 authorized Congress to appropriate \$1.6 billion over the course of six fiscal years to improve the criminal justice system's response to violence against women through enforcement of existing law, the enforcement of new federal legal protections, and funding social programs, training, and public education to prevent violence against women.<sup>11</sup> VAWA 1994 encouraged community-coordinated responses that include involvement of the criminal justice system, the social services system, the justice system and private non-profit organizations including legal aid organizations and shelters, toward ending violence against women through targeted funding.

In 2000, Congress reauthorized VAWA 1994 as part of the Victims of Trafficking and Violence Protection Act of 2000 (VAWA 2000).<sup>12</sup> VAWA 2000 authorized Congress to appropriate \$3.33 billion, double the amount authorized in VAWA 1994, over the next five fiscal years to continue to carry out the goals of the original VAWA 1994 and to address new issues identified by advocates and victims through implementation of VAWA 1994.<sup>13</sup> VAWA 2000 expanded the types of violence against women crimes to be targeted with grant funding. It also added initiatives

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8. Pub. L. No. 103-322 (1994).

9. S. Rep. No. 103-138, at 37 (1993) (stating that VAWA was intended to address the problem of violence against women).

10. *Id.* It is unclear if there was Congressional intent to include victims in same gender relationships within the definition of domestic violence; however, the legislative history indicates that careful consideration was given to ensure VAWA 1994's constitutionality. See generally Sally F. Goldfarb, *The Supreme Court, The Violence Against Women Act, and the Use and Abuse of Federalism*, 71 *FORDHAM L. REV.* 57 (2002); David M. Fine, *The Violence Against Women Act of 1994, The Proper Federal Role in Policing Domestic Violence*, 84 *CORNELL L. REV.* 252 (1998) (providing a thorough analysis of the constitutionality of the criminal provisions of VAWA, concluding that they are all constitutional).

11. VAWA funding for Fiscal Year 1995 through Fiscal Year 2000 was authorized through the Violent Crime Reduction Trust Fund (VCRTF), created under Title XXXI of Pub. L. No. 103-322. Most of the programs in VAWA were funded through appropriations in Fiscal year 2001 without authorization.

12. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 §§ 1101–1513 (codified as amended in scattered sections of 18 U.S.C., 22 U.S.C., 27 U.S.C., 42 U.S.C. (2012)) [hereinafter Victims of Trafficking and Violence Protection Act of 2000].

13. *Id.*

specifically to assist victims of dating violence, victims of elder abuse, and people with disabilities who experience domestic violence.<sup>14</sup>

On January 5, 2006, President George W. Bush signed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) into law. Authorizing a total of \$3.935 billion over the next five fiscal years, a slight increase from VAWA 2000, VAWA 2005 continued many of the programs developed under VAWA 2000 and VAWA 1994.<sup>15</sup> VAWA 2005 also expanded support for collaboration in preventing and responding to violence to include health care professionals and those who work with youth.<sup>16</sup> In addition, it strengthened provisions addressing the housing needs of victims, increasing funding for long-term housing and including legal protections prohibiting discrimination against victims of domestic violence and sexual assault in public housing.<sup>17</sup> VAWA 2005 also dedicated targeted funding for victims facing unique challenges, such as older victims, emerging issues such as college students and teenagers, and meeting the needs of underserved communities and those who are disproportionately victimized.<sup>18</sup>

On April 26, 2012, the Violence Against Women Reauthorization Act of 2011 (VAWA 2011) was passed by the Senate.<sup>19</sup> On May 16, 2012, instead of voting on the Senate bill, the House of Representatives passed the Violence Against Women Act of 2012. The House bill contained several provisions that differed from VAWA 2011.<sup>20</sup> Congress did not pass either VAWA 2011 or VAWA 2012 in 2012. On January 22, 2013, the Violence Against Women Reauthorization Act of 2013 was introduced in

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14. Victims of Trafficking and Violence Protection Act of 2000; *see also* National Coalition Against Domestic Violence, Comparison of VAWA 1994, VAWA 2000, and VAWA 2005 Reauthorization Bill 1/6/06, *available at* [http://www.ncadv.org/files/VAWA\\_94\\_00\\_05.pdf](http://www.ncadv.org/files/VAWA_94_00_05.pdf) (last visited Jan. 31, 2013).

15. Violence Against Women and Department of Justice Reauthorization Act of 2005 (codified as amended in scattered sections of 18 U.S.C., 42 U.S.C.).

16. 42 U.S.C. § 294h (2012) (authorizing \$3 million for each of fiscal years 2007 through 2011 for training and education of health professional in domestic and sexual violence); 42 U.S.C. § 280g-4 (authorizing the director of the Centers for Disease Control and Prevention to award \$5 million in grants each fiscal year from 2007 to 2011 to foster public health responses to domestic violence, dating violence, sexual assault, and stalking).

17. 42 U.S.C. § 14043e (2012) (addressing the housing needs of victims of domestic violence, dating violence, sexual assault, and stalking, including appropriation of grants to develop long-term sustainable housing options); 42 U.S.C. § 1437f (prohibiting discrimination against victims of domestic violence, dating violence, or stalking in some forms of public housing).

18. Title III of the Violence Against Women and Department of Justice Reauthorization Act of 2005; 42 U.S.C. § 13925 (stating that youth under the age of 18 account for 67 percent of all sexual assault victimizations reported to law enforcement officials and young women between the ages of 16 and 24 experience the highest rate of nonfatal intimate partner violence and describing grant programs funding organizations serving youth victims of dating violence, sexual and domestic violence and stalking).

19. VAWA 2011, *supra* note 4.

20. *Id.*

the House of Representatives and on February 7, 2013, Senator Leahy introduced a distinct Violence Against Women Reauthorization Act of 2013, containing almost all of the same provisions as VAWA 2011.<sup>21</sup> On February 12, 2013, the Senate passed their version of VAWA 2013 and on February 28, 2013 the House passed the same bill.<sup>22</sup> On March 7, 2013, President Obama signed VAWA 2013 into law, authorizing \$660 million each year for the next five fiscal years, representing a seventeen percent decrease from VAWA 2005 authorization levels.<sup>23</sup>

A. CREATION OF THE OFFICE ON VIOLENCE AGAINST WOMEN IN THE U.S.  
DEPARTMENT OF JUSTICE

One of the most impactful outcomes of VAWA has been the development of a high level, permanent office within the U.S. Department of Justice devoted to implementing VAWA and to addressing violence against women on a national level. The creation of the Violence Against Women Office is recognition of the scope of the problem of violence against women and the need for a national response and has provided critical leadership on these issues within the Federal government. To implement VAWA, President Clinton and Attorney General Janet Reno created the Violence Against Women Office in the U.S. Department of Justice in 1995.<sup>24</sup> The office was codified in VAWA 2000<sup>25</sup> and then in 2002 federal legislation introduced by then-Senator Biden further clarified the role and position of the Office on Violence Against Women (OVW) in the U.S. Department of Justice as a separate office led by a director who reports directly to the Attorney General.<sup>26</sup> The enabling legislation allocated authority to the Director of OVW to carry out the functions of the Department of Justice (DOJ) under the VAWA provisions.<sup>27</sup> OVW has administered and continues to administer the grant programs created in VAWA 1994, VAWA 2000 and 2005 and provides critically needed advice and guidance to the administration, Congress, grantees and service providers on violence against women issues.<sup>28</sup> OVW symbolizes the commitment and investment that the U.S. government has made in addressing violence against women and makes it harder for people to deny that violence against women exists or is limited in its scope and impact.

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21. Violence Against Women Reauthorization Act of 2013, H.R. 11, 113th Cong. (2013); Violence Against Women Reauthorization Act of 2013, S. 47, 113th Cong. (2013).

22. VAWA 2013, *supra* note 4; U.S. Senate Roll Call Votes 113th Congress - 1st Session (2013), at [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?&congress=113&session=1&vote=00019](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?&congress=113&session=1&vote=00019).

23. H.R. 11, 113th Cong., *supra* note 22; S. 47, 113th Cong., *supra* note 22.

24. See About the Office, Office on Violence Against Women, U.S. Department of Justice, available at <http://www.ovw.usdoj.gov/overview.htm> (last visited Feb. 3, 2013).

25. 42 U.S.C. § 3796gg-0 (2012).

26. *Id.* § 3796gg-0(a) (2012).

27. *Id.*

28. *Id.* § 3796gg-0(c)(2).

## II. VAWA'S ROLE IN ENDING VIOLENCE AGAINST WOMEN

### A. DEFINING VIOLENCE AGAINST WOMEN

A critical way that VAWA 1994 and subsequent reauthorizations have changed attitudes toward violence against women is by providing a federal definition of violence against women through inclusion of specific crimes of which women are the majority of victims and the contexts in which they occur. VAWA and its reauthorizations represent an evolution in thinking about the crimes that constitute violence against women and its scope and impact on different groups of victims. VAWA 2005 addresses more forms of violence against women more effectively than VAWA 1994.<sup>29</sup> Understanding why this is the case and how VAWA 2005 came to include the crimes of domestic violence, sexual assault, dating violence, elder abuse, child abuse and neglect, child maltreatment, and stalking is an important part of the history of this landmark legislation.<sup>30</sup>

The titles of VAWA 1994—including Safe Streets for Women, Safe Homes for Women, Civil Rights for Women, and Equal Justice for Women in the Courts—demonstrate Congress' intent to comprehensively address violence against women.<sup>31</sup> At the same time, there was no recognized crime of violence against women at the time of its passage. In fact, there still is no such recognized federal crime. Rather, VAWA 1994 responds to the “national tragedy” of violence against women at home, at work and on the street by targeting funding and legal protections on crimes that are disproportionately committed against women: domestic violence and sexual assault.<sup>32</sup> The definition of domestic violence in VAWA 1994 was:

felony or misdemeanor offenses committed by a current or former spouse of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse, a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or committed by any other

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29. See e.g., Violence Crime Control and Law Enforcement Act of 1994 Sec. 2001 Grants to Combat Violent Crimes Against Women (describing that grant for training and technical assistance to address violent crimes against women including domestic violence and sexual assault).

30. 42 U.S.C. § 13925(a) (2011) (containing all of the definitions used in current VAWA-funded programs).

31. S. Rep. No. 103-138, at 37 (1993) (describing how VAWA was enacted to address the escalating problem of violence against women).

32. Violent Crime Control and Law Enforcement Act of 1994 Sec. 2003 Definitions amending 42 U.S.C. § 3796gg-2(1) (defining domestic violence); 42 U.S.C. § 3796gg-2(6) (defining sexual assault); Violence Crime Control and Law Enforcement Act of 1994 Sec. 2001 Grants to Combat Violent Crimes Against Women (describing that grant for training and technical assistance to address violent crimes against women including domestic violence and sexual assault); S. Rep. No. 102-197, at 39 (1991).

adult person upon a victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction receiving grant monies.<sup>33</sup>

This definition was integrated into the legal and funding provisions of VAWA 1994 and reflected the widely held understanding of domestic violence at the time.<sup>34</sup> It was largely understood that for violence to be considered domestic violence, it had to be committed by the victim's spouse or common law spouse (such as living together or formerly living together and/or having a child in common).<sup>35</sup> Moreover, research at the time indicated that the most dangerous time for a victim was when she took steps to leave or separate from the perpetrator and so VAWA included former spouses.<sup>36</sup>

In VAWA 1994, Congress recognized that domestic violence and sexual assault are violence against women crimes that frequently co-occur but have different elements and impacts by including the distinct crime of sexual assault in VAWA 1994.<sup>37</sup> In order to ensure that all victims of sexual assault would receive supportive services and protection under the law, VAWA 1994 incorporated the federal felony definition of sexual abuse<sup>38</sup> with the additional language "not only assaults committed by offenders who are strangers to the victim but also assaults committed by offenders who are known or related by blood or marriage to the victim."<sup>39</sup> The inclusion of this language was significant because it emphasized a key characteristic of sexual assault that was often misunderstood: the majority of perpetrators of sexual assault know and are known to their victims, often

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33. 42 U.S.C. § 3796gg-2(1).

34. See e.g., Joshua L. Friedman & Gary C. Norman, *Protecting the Family Pet: The New Face of Maryland Domestic Violence Protective Orders*, 40 U. BALT. L.F. 81, 88-89 (2009)(describing the evolution of the Domestic Violence Act in Maryland from initial passage in 1980 when it limited eligibility to the spouse or blood relative of the abuser and requiring the victim and abuser to have lived together when the alleged abuse took place. It was amended repeatedly and subsequently expanded eligibility to former spouses, current spouses who are not household members and vulnerable adults).

35. *Id.*

36. See Catherine F. Klein & Leslye E. Orloff, *Promising Legal Protections for Battered Women An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 815-816 (1993) (describing how former spouses were eligible for civil protection orders in the majority of states recognizing that when women attempt to leave or separate is one of the most dangerous times).

37. See Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Just., *Full Report of the Prevalence, Incidence, and Consequences of Intimate Partner Violence Against Women: Findings from the National Violence Against Women Survey*, at iv (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/183781.pdf>. Of people who report sexual violence, sixty-four percent of women were raped, physically assaulted, or stalked by an intimate partner. This includes a current or former spouse, cohabitating partner, boyfriend/girlfriend, or date. *Id.*

38. 18 U.S.C. § 2242 (2012).

39. 42 U.S.C. § 3796gg-2(6) (2012).

as intimate partners.<sup>40</sup> In this way, Congress' decision to include this definition of sexual assault in VAWA 1994 and each VAWA reauthorization has worked to change societal understandings of violence against women.

By 2000, studies offered evidence to support what domestic violence advocates already knew: more than fifty percent of domestic violence victims were abused by a current or former boyfriend or girlfriend.<sup>41</sup> Studies also indicated that the highest rates of victimization were against girls and women between the ages of sixteen and twenty-four.<sup>42</sup> Informed by these improved understandings, VAWA 2000 expanded funding for services and trainings focusing on these populations and their unique needs.<sup>43</sup> In addition, Congress kept the crimes of domestic violence and sexual assault as defined in VAWA 1994, but it also established the federal crime of dating violence.<sup>44</sup>

VAWA 2000 defined dating violence as violence committed by a person who is or was in a social relationship of a romantic or intimate nature with the victim where the existence of such relationship is determined based on a consideration of the length of the relationship, the type of relationship and the frequency of the interaction between the persons involved in the relationship.<sup>45</sup> VAWA 2000 also amended several grant programs to specifically target victims of dating violence, including the STOP grants and grants to reduce violent crimes against women on campus,<sup>46</sup> grants to encourage arrest policies,<sup>47</sup> rural domestic violence and child abuse enforcement grants,<sup>48</sup> and funds for dissemination of model judicial programs.<sup>49</sup>

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40. 42 U.S.C. § 13925.

41. Shannan Catalano, *Special Report: Intimate Partner Violence and Age of Victim 1993-1999*, BUREAU OF JUSTICE STATISTICS (revised Dec. 19, 2007), available at <http://bjs.gov/content/pub/pdf/ipvus.pdf>.

42. *Id.*

43. See e.g., Victims of Trafficking and Violence Protection Act of 2000, PL 106-386, 114 Stat. 1464, October 28, 2000, Sec. 1103, Reauthorization of STOP Grants (amending 42 U.S.C. § 3796gg to add subsection (8) (supporting formal and informal statewide, multidisciplinary efforts, to the extent not supported by State funds, to coordinate the response of State law enforcement agencies, prosecutors, courts, victim services agencies, and other State agencies and departments, to violent crimes against women, including the crimes of sexual assault, domestic violence and dating violence).

44. 42 U.S.C. § 3796gg-2 (defining dating violence as "violence committed by a person . . . who is or has been in a social relationship of a romantic or intimate nature with the victim").

45. 42 U.S.C. § 13925(7-8)(2010).

46. 20 U.S.C. § 1152.

47. 42 U.S.C. § 3796hh.

48. 42 U.S.C. § 13971(d).

49. 42 U.S.C. § 13994(3)(c).

In addition, there was a growing awareness that older women and people with disabilities are at high risk of victimization.<sup>50</sup> While the abuse they experience shares some similarities with other victim groups, it is unique to their vulnerable circumstances.<sup>51</sup> VAWA 2000 responded to the unique needs of older individuals and individuals with disabilities by authorizing \$5 million dollars in funding for programs for each fiscal year from 2000 to 2005 to specifically target the needs of these victims.<sup>52</sup>

#### B. THE CIVIL RIGHTS REMEDY

Arguably the most controversial provision of VAWA 1994 was the establishment of a civil rights remedy that enabled a victim of gender-motivated violence to bring a civil cause of action against the perpetrator.<sup>53</sup> A crime of violence was defined as “an act or series of acts that would constitute a felony against the person or that would constitute a felony against property if the conduct presents a serious risk of physical injury to any other whether or not those acts have actually resulted in criminal charges, prosecution or conviction.”<sup>54</sup> To prove that the crime of violence was gender-motivated, a victim would have to prove that it was committed “because of gender or on the basis of gender. . . due, at least in part to an animus based on a victim’s gender.”<sup>55</sup> Advocates worked closely with members of Congress to address possible constitutional challenges to the provision by creating an extensive legislative history.<sup>56</sup>

Although the U.S. Supreme Court ultimately found the civil rights remedy to be unconstitutional in *United States v. Morrison*,<sup>57</sup> its inclusion in VAWA represented a significant achievement that continues to

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50. See e.g., Bonnie Brandl & Tess Meuer, *Domestic Abuse in Later Life*, 8 ELDER L.J. 297, 299 (2000) (defining domestic or family violence in later life as including abuse of individuals over 60, who are abused by family members or caregivers, the majority of whom are female and unique intervention strategies to protect victims); Doug Jones, *Domestic Violence Against Women with Disabilities: A Feminist Legal Theory Analysis*, 2 FLA. A & M U. L. REV. 207, 208 (2007) (stating that women with disabilities are assaulted, raped and abused more than twice as often as women without disabilities); Barbara Faye Waxman Fiduccia & Leslie R. Wolfe, Center for Women Policy Studies, *Violence against Disabled Women 1* (1999), <http://www.centerwomenpolicy.org/pdfs/vaw5.pdf> (last visited Feb. 9, 2007) (describing how disabled women are more likely than nondisabled women to experience more prolonged and severe forms of violence by caregivers).

51. *Id.*

52. 42 U.S.C. § 14041 (incorporating definition “older” from the Older Americans Act of 1965; 42 U.S.C. § 3002, and “individuals with disabilities” from the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102.).

53. Pub. L. No. 103-322, 108 Stat. 1902 (1994) (codified in relevant part at 42 U.S.C. § 13981).

54. 42 U.S.C. § 13981(d)(2)(A).

55. 42 U.S.C. § 13981(d)(1) (1994).

56. See e.g., S. Rep. 103-138 at 48–57 (103rd Cong. 1993).

57. *United States v. Morrison*, 529 U.S. 598 (2000); see also Goldfarb, *supra* note 10, at 61) (analyzing the civil rights provision of VAWA as a federal-state cooperation and criticizing the Supreme Court’s decision in *Morrison*).

reverberate throughout the U.S.<sup>58</sup> The recognition by Congress of gender-motivated crime and that perpetrator must be held accountable was and still is profound. Since the *Morrison* decision, several states have passed legislation creating a civil rights remedy for victims of gender-motivated crime, and scholars have noted the continued need for such a remedy on a federal level, arguing that it was improperly held unconstitutional.<sup>59</sup>

### C. FEDERAL CRIMES AND FULL-FAITH AND CREDIT

VAWA 1994 contained amendments to federal criminal law intended to provide additional protections to victims of domestic violence, sexual assault and stalking and to bolster protections provided under state law, VAWA 1994 established the federal offenses of felony interstate domestic violence,<sup>60</sup> interstate violation of a state court's civil protection order,<sup>61</sup> and interstate stalking.<sup>62</sup> It created the crime of interstate domestic violence to punish perpetrators who forced a victim to cross a state line and then physically harmed the victim in the course of a violent crime.<sup>63</sup> VAWA 1994 also established federal guarantees of interstate enforcement of state issued protection orders through full-faith and credit provisions to hold perpetrators accountable when they crossed a state line to injure or harass a victim.<sup>64</sup> This provision required courts in any jurisdiction to honor and enforce orders issued by courts in other jurisdictions, even if the same order could not be issued in their jurisdiction.<sup>65</sup> The full-faith and credit provisions addressed circumstances in which perpetrators of domestic violence had evaded arrest and prosecution by fleeing to a different state from where the acts occurred and in which victims were fleeing to other jurisdictions to escape the violence and sought to enforce their protection orders in a jurisdiction different from the one that issued the order. In this way, Congress attempted to eliminate "safe havens" for perpetrators while creating uninterrupted safety and protection for victims who seek enforcement from a non-issuing jurisdiction.

VAWA 1994 also required a federal court that convicted an individual under one of these new provisions to issue a restitution order, granting remedies to the victim that included medical services, transportation costs, temporary housing, attorneys' fees and "any other losses suffered by the

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58. See Julie Goldscheid, *The Second Circuit Addresses Gender-Based Violence: A Review of Violence Against Women Act Cases*, 66 BROOK. L. REV. 457, 457-58 (2000).

59. See Goldscheid, *supra* note 58, at 457-58.

60. 18 U.S.C. § 2261 (2012).

61. *Id.* § 2262.

62. *Id.* § 2261(a).

63. *Id.* § 2265.

64. *Id.*

65. *Id.*

victim as a proximate result of the offense.”<sup>66</sup> This order of restitution addressed the needs articulated by many victims of these crimes beyond punishment of the perpetrator in order to remain safe and to rebuild their lives. Access to restitution through state civil protection order statutes had become a critical tool for victims who often found themselves homeless and without an income after being forced to flee a violent relationship.<sup>67</sup>

As the full faith and credit provisions were implemented, advocates for victims and others raised concerns that Congress addressed in VAWA 2000. One issue involved the practice of law enforcement in some states that required victims who obtained protection orders in another state to register the protection order in the new state to receive the enforcement protections of the full-faith and credit provisions in VAWA 1994. This was problematic for several reasons. First, no such requirement existed in the text of the law, so victim advocates did not know to advise their clients of registration. Second and more importantly, survivors who expected and deserved protection from abuse pursuant to a protective order when they traveled from one state to another were placed at risk if they did not register their order. In response, VAWA 2000 amended the full-faith and credit provisions of VAWA 1994 to clarify that registration is not a prerequisite to enforcement of out-of-state orders.<sup>68</sup> It also prohibited the notification of a batterer of the registration without the victim’s consent if an out of state order is registered in a new jurisdiction.<sup>69</sup>

Another set of concerns involved the interstate enforcement of protection orders when the protections and remedies provided by the issuing state and the enforcing state were different. Congress added language to the full faith and credit provisions of VAWA 2000 to clarify that custody, visitation and child support provisions included in a civil protection order and issued under a state protection order statute are to be given full-faith and credit.<sup>70</sup> VAWA 2005 further strengthened these provisions by requiring law enforcement agencies and state and tribal courts to enforce state civil protection order statutes.<sup>71</sup> VAWA 2005 also amended the federal interstate domestic violence prohibition to include a

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66. 18 U.S.C. § 2264; *see also* United States v. Hayes, 135 F.3d 133, 136–38 (2d Cir. 1998) (applying this section).

67. *See* Barbara J. Hart & Erika A. Sussman, *Civil Tort Suits and Economic Justice for Battered Women*, 4 Victim Advoc. 3, 4 (2004) (explaining that access to economic viability is critical to the long-term safety of victims, but that civil protection orders and the majority of legal mechanisms available to battered women do not account for this reality).

68. 18 U.S.C. § 2265(4)(d).

69. *Id.*

70. *Id.* § 2265(5)(B) (directing courts to enforce “any support, child custody, or visitation provisions, orders, remedies, or relief issued as part of a protection order”).

71. *Id.*

crime of violence against a dating partner as well as a spouse or intimate partner, thereby expanding these protections for more victims.<sup>72</sup>

Another evolution is in the definition of the federal crime of stalking. In VAWA 2000 Congress strengthened the crimes of interstate domestic violence, violation of a protection order<sup>73</sup> and stalking by authorizing prosecution for each, including a new stalking definition that included cyber-stalking, and entering and leaving Indian country as an interstate violation.<sup>74</sup> VAWA 2000 also added the language “intimate partner” or “spouse” in the definition of stalking and made it a crime to use the mail or any facility of interstate or foreign commerce to engage in a course of conduct that would place a person in reasonable fear of harm to themselves or their immediate family or intimate partner.<sup>75</sup> These amendments are evidence of the evolving understanding of violence against women as inclusive of stalking and the increased use of electronic and internet-based tools to harass and threaten victims and the recognition that victimization is not limited to marital relationships. The integration of the term “intimate partner” broadened the application of protections and services to all victims of violence in intimate relationships, recognizing that many individuals have intimate relationships outside of marriage and need and deserve protection from violence in those relationships as well.

#### D. PROTECTIONS FOR IMMIGRANT VICTIMS

The structure and language of VAWA 1994 expresses Congressional intent to provide protection and support to all victims of violence against women crimes. and recognized the unique challenges facing battered immigrant women seeking safety by providing new legal protections for undocumented immigrants who face immigration-related threats and abuse from their batterers if they take action to increase their safety.<sup>76</sup> VAWA 1994 addressed the unique needs of this group of victims by creating visa self-petitioning rights for undocumented individuals whose citizen or limited permanent resident (LPR) spouses or parents have subjected them to battering or extreme cruelty and whose deportation would result in extreme hardship.<sup>77</sup>

The provisions providing protections for immigrant victims of domestic violence were among the most effective of VAWA 1994. Nonetheless, relying on their experiences enforcing these protections, advocates identified and pushed for areas for improvements through their

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72. 18 U.S.C. § 2261(a).

73. *Id.*

74. *Id.* § 2261(a)–(b).

75. *Id.* § 2261(a).

76. See Leslye E. Orloff & Janice V. Kaguyutan, *Offering A Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 108–09 (2001).

77. 8 U.S.C. § 1154(a); see Orloff & Kaguyutan, *supra* note 76, at 108–09.

experiences enforcing the protections. VAWA 2000 extended immigration relief to immigrant victims of sexual assault, human trafficking, and other violent crimes who agree to cooperate in criminal investigations or prosecutions through the creation of the non-immigrant “U” Visa.<sup>78</sup> The U visa enables certain noncitizen victims of violent crime to remain temporarily in the United States to assist with the investigation and prosecution of crimes committed against them and, in certain circumstances, to become permanent residents.<sup>79</sup> Building upon the success of the provisions contained in VAWA 1994 and responding to the issues raised by advocates, VAWA 2000 also created another new category of visa, the “T” visa.<sup>80</sup> The T visa allows certain noncitizen victims of human trafficking to remain temporarily in the United States and eventually apply for legal permanent resident status.<sup>81</sup> The availability of these new T and U visas was intended to serve the overarching goals of enhancing the ability of law enforcement to prosecute violent crimes while providing protection to the victims of these crimes. VAWA 2005 built upon provisions providing support for immigrant victims in VAWA 1994 and 2000 by bolstering the protections for this uniquely vulnerable population. It also eliminated some of the major obstacles immigrant crime survivors face in achieving safety and legal immigration status. Many of the amendments from VAWA 2005 are technical in nature, but are very powerful in their impact. Recognizing the efficacy of the U visa, VAWA 2013 expands access to U visas to victims of stalking.<sup>82</sup>

#### E. ADDRESSING VICTIMS’ HOUSING NEEDS

One of the most critical needs for victims of domestic and sexual violence is housing. Historically, battered women were expected to leave their homes and their communities to obtain safety.<sup>83</sup> VAWA 1994 provided funding for emergency shelter in support of the thousands of battered women’s shelters that formed the backbone of the service provider community for victims at the time.<sup>84</sup> Although some emergency shelters exist for battered women, they are not appropriate for or available to all victims of intimate partner violence. They only provide a temporary solution and often require the residents to participate in counseling and

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78. 8 U.S.C. § 1184.

79. 8 U.S.C. § 1184.

80. Victims of Trafficking and Violence Protection Act of 2000, § 107 (2000) (describing eligibility for and creation of T visas).

81. 8 U.S.C. § 1101.

82. Violence Against Women Reauthorization Act of 2013 § 801 (2013).

83. See Sally Goldfarb, *Reconceiving Civil Protection Orders For Domestic Violence: Can Law Help End The Abuse Without Ending The Relationship*, 29 CARDOZO L. REV. 1487, 1488–89 (2008).

84. Violent Crime Control and Law Enforcement Act of 1994, ch. 4 § 40241 (current version at 42 U.S.C. § 10408 (2012)).

other responsibilities that not all survivors are equipped for want to do.<sup>85</sup> Advocates worked with survivors who were able to find temporary shelter in programs designed for no longer than sixty or ninety days and realized that it was impossible to achieve lasting safety for many of the women in such a short period of time.<sup>86</sup>

In recognition of the need for victims to have more than emergency shelter and the need for long-term housing solutions to ensure their safety, VAWA 2000 authorized funding for a transitional housing grant program that funded up to twelve months of housing-related assistance to prevent homelessness for those fleeing domestic violence.<sup>87</sup> The new provisions also funded support services such as transportation, counseling, childcare services or employment counseling.<sup>88</sup> This program was expanded and improved in VAWA 2005 to including funding to support long-term housing services in public and private housing.<sup>89</sup> Specific reference was included to increasing the long-term stability of adult and youth victims of domestic violence, dating violence, sexual assault and stalking who are homeless or at risk for becoming homeless.<sup>90</sup> Moreover, prioritization was included for grants to be given to programs to provide linguistically and culturally specific services to underserved populations, to organizations that include a sexual assault service provider and Congress directed that a minimum of fifteen percent of the funds appropriated in any fiscal year be given to tribal organizations.<sup>91</sup> In these ways, Congress created more and different models of shelter that reflected the diverse needs of victims seeking safety.

While transitional housing programs for battered women have increased in recent years due in part to funding from VAWA 2000 and VAWA 2005, many battered women seek to remain in their homes or apartments, only to become homeless when they are evicted because of their status as victims of domestic violence or because of violence perpetrated against them on the property.<sup>92</sup> Then, when they seek new

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85. Linda Olsen, *Battered WOMEN'S SHELTERS: REFLECTIONS 5* (2007), available at [http://www.wscadv.org/docs/Mar\\_07\\_Inside\\_Scoop.pdf](http://www.wscadv.org/docs/Mar_07_Inside_Scoop.pdf) (describing the structures of battered women's shelters and the limited stay required in most shelters).

86. *Id.* at 5–6 (describing the need for longer term, transitional housing).

87. Victims of Trafficking and Violence Protection Act of 2000, § 1203, 114 Stat. 1464 (2000) (authorizing \$25 million dollars for fiscal year 2001).

88. *Id.*

89. 42 U.S.C. § 14043e-3 (private housing); 42 U.S.C. § 14043e-4 (public housing).

90. Violence Against Women and Department of Justice Reauthorization Act of 2005, 42 U.S.C. § 14043e-3 (2012) (authorizing \$10 million dollars for each of fiscal years 2007 through 2011).

91. 42 U.S.C. § 14043e-3(d).

92. See generally, Kristin M. Ross, *Eviction, Discrimination, and Domestic Violence: Unfair Housing Practices Against Domestic Violence Survivors*, 18 HASTINGS WOMEN'S L.J. 249 (2007) (detailing studies that demonstrate discrimination against victims of domestic violence in housing, including denial of rental housing and eviction based on their status as victims).

housing, victims increasingly are discriminated against based on their status as a victim and for having been an evicted tenant.<sup>93</sup> In the last ten years, research has improved understanding about the link between domestic sexual violence and homelessness, including that these crimes are leading causes of homelessness for women and children in the United States.<sup>94</sup> Between twenty-two percent and fifty-seven percent of women experiencing homelessness stated that domestic violence was the cause of their homelessness.<sup>95</sup> A 2005 study found that one out of every four homeless women is homeless because of violence committed against her.<sup>96</sup>

To address these issues, VAWA 2005 included specific new protections for victims of domestic violence and stalking from denial of housing, eviction, or termination of federal housing assistance.<sup>97</sup> These protections apply to a victim of domestic violence, dating violence, or stalking (and her immediate family member) who is seeking to reside in, or who resides in, federal public housing, any housing subsidized by a federal “Section 8” voucher (which eligible low-income people use to rent housing on the private market), or any building receiving a direct federal Section 8 subsidy.<sup>98</sup>

Recognizing the profound positive impact that the public housing protections for victims in public housing created by VAWA 2005 have had, VAWA 2013 will extend public housing protections established in VAWA 2005 for victims of domestic violence and stalking to victims of sexual assault as well as extend VAWA public housing protections to nine federal public housing programs previously not covered.<sup>99</sup>

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93. *Id.*

94. *Id.* at 250–251 (citing to studies indicating that many of the nation’s mayors identified domestic violence as a primary cause of homelessness in 2004 and fifty-six percent of homeless women in Chicago were survivors of domestic violence).

95. See Wilder Research Center, HOMELESS IN MINNESOTA 2003 22 (Feb. 2004); Rebekah Levin et al., CENTER FOR IMPACT RESEARCH, PATHWAYS TO AND FROM HOMELESSNESS: WOMEN AND CHILDREN IN CHICAGO SHELTERS 2 (2004); National Center on Family Homelessness & Health Care for the Homeless Clinicians’ Network, SOCIAL SUPPORTS FOR HOMELESS MOTHERS 14, 26 (2003); Institute for Children and Poverty, THE HIDDEN MIGRATION: WHY NEW YORK CITY SHELTERS ARE OVERFLOWING WITH FAMILIES (Apr. 2004); Homes for the Homeless & Institute for Children and Poverty, TEN CITIES 1997–1998: A SNAPSHOT OF FAMILY HOMELESSNESS ACROSS AMERICA 3 (1998).

96. See Jana L. Jasinski et al., THE EXPERIENCE OF VIOLENCE IN THE LIVES OF HOMELESS WOMEN: A RESEARCH REPORT 2, 65 (Sept. 2005) (Univ. Cent. Fla., submitted to Nat’l Inst. of Justice, U.S. Dep’t of Justice).

97. Violence Against Women and Department of Justice Reauthorization Act of 2005, § 606, 42 U.S.C. § 1437(f) (2012).

98. *Id.*

99. Violence Against Women Reauthorization Act of 2013 § 41411 (2013).

### III. EFFECTIVE TARGETED FUNDING: CIVIL LEGAL ASSISTANCE, YOUTH AND NATIVE AMERICANS

In addition to the legal rights and protections described above, through VAWA 1994 and its reauthorizations, Congress provided targeted funding that significantly changed the way that services are provided to victims, making it more effective and more tailored to the needs of specific groups of underserved victims. The following are just a few examples.

#### A. CIVIL LEGAL ASSISTANCE

The leadership and funding regarding civil legal assistance provided by VAWA 1994 and its reauthorizations has profoundly changed the understanding of the civil legal needs of victims and has significantly expanded the provision of civil legal services to victims of domestic violence, sexual assault, stalking and dating violence. The first grants to fund civil legal assistance for victims of domestic violence were awarded by OVW to legal assistance programs and victim service providers.<sup>100</sup> Although not originally included in VAWA 1994, \$12 million was appropriated in fiscal year 1998 for grants to provide civil legal assistance to victims of domestic violence, and VAWA 2000 included \$40 million for each fiscal year from 2001 to 2005.<sup>101</sup> The grant funding from this program could be used to provide legal assistance to victims of domestic violence, sexual assault, and stalking in a range of civil matters, family, immigration, administrative, housing protection order proceedings or similar matters.<sup>102</sup> In 2004, providing civil assistance related to dating violence was added to the list of permissible uses of funds in the Civil Legal Assistance grant program.<sup>103</sup> Then, VAWA 2005 increased the funding to \$65 million for fiscal years 2007 to 2011.<sup>104</sup>

Previously, there was no federal funding specifically dedicated to provide civil legal assistance to victims of domestic violence and sexual assault.<sup>105</sup> Similarly, there was no national recognition of the need for civil attorneys providing that assistance to be trained about domestic violence and sexual assault. VAWA 2000 was the first time that the need for civil legal assistance for victims of domestic violence, sexual assault and stalking was articulated on a national level so clearly. Previously, the needs of victims were generally understood to be limited to criminal

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100. The author received one of the first VAWA grants in 1998 to provide civil legal assistance to victims of domestic violence at the Domestic Violence and Employment Project at the Legal Aid Society of San Francisco, Employment Law Center.

101. Victims of Trafficking and Violence Protection Act of 2000, § 1201; 42 U.S.C. § 3796gg-6 (2012).

102. 42 U.S.C. § 3796gg-6(c)(2).

103. Justice For All Act of 2004, § 205, 42 U.S.C. § 3796gg-6 (2012).

104. 42 U.S.C. § 3796gg-6(f)(2).

105. Legal Services Corporation Act funding priorities included domestic violence, among others.

prosecution of batterers and in civil protection order proceedings. VAWA 2000 clarified that the purpose of the funds available through the Legal Assistance for Victims grant program is “to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence, at minimal or no cost to the victims.”<sup>106</sup> Congress recognized that these crimes impacted all aspects of victims’ lives and thus they needed legal assistance in other areas of law by defining “legal assistance” to include immigration, family administrative, protection or stay away orders, and housing law.<sup>107</sup> This also represented an understanding of the importance of access to justice and legal assistance is victims to ensure that they are able to become and stay safe.

Historically, legal services programs that provide legal assistance to low-income individuals and domestic violence social service organizations did not always work together effectively or comprehensively in all instances to serve victims. At the same time, it is recognized that a collaborative approach in which a victim advocate and an attorney work together to support the victim during litigation is often very effective.<sup>108</sup> Staff at victim service organizations was often frustrated with the long waitlists for legal assistance at legal services as their clients were living in fear and crises, often in an emergency battered women shelter.<sup>109</sup> Moreover, victim advocates frequently reported struggling with what they perceived to be the attorneys’ lack of understanding of the unique circumstances and dynamics of domestic violence as reported by the victims. Similarly, legal services attorneys struggled with the role of victim advocates. They misinterpreted the non-judgmental support and victim-centered approach that victim advocates used in counseling victims as blindly believing whatever the victim told them about the violence without scrutiny. Further, when victim advocates accompany the victim to

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106. Victims of Trafficking and Violence Protection Act of 2000 PL 106-386, 114 Stat. 1464 (2000), Title II Strengthening Services to Victims of Violence, Sec. 1201 Legal Assistance for Victims.

107. *Id.*

108. ABA STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING IN CIVIL PROTECTION ORDER CASES 27 (2007) (stating that advocates working at domestic violence centers may play a critical role by working with an attorney and the client to provide support services including safety planning); *see generally* Tricia P. Martland, *How Domestic Violence Advocates Help Aid Attorneys and Their Clients*, 55 APR R.I. B.J. 29 (2007) (describing the role of the advocate as empowering clients by providing support and education).

109. Personal experiences of the author working as a hotline and shelter volunteer in Washington, DC and San Francisco, California 1994–2002.

meetings with the attorney for support, the attorney not infrequently perceives them as risking attorney-client privilege and confidentiality.<sup>110</sup>

To address these concerns, VAWA 2000 specifically stated that one of the goals of this funding was to expand and implement collaboration between legal services organizations and domestic violence and sexual assault victim services organizations.<sup>111</sup> VAWA 2000 required that a person providing legal assistance to victims through this grant program had to receive training from a domestic violence or sexual assault program.<sup>112</sup> Indian tribal governments and law schools may qualify to receive funds to provide civil legal services to victims, and the funds from this grant program must be used to “implement, expand, and establish projects to provide legal assistance for victims of domestic violence, stalking and/or sexual assault.”<sup>113</sup> To be eligible for this grant funding, VAWA 2000 specified that the applicant must certify that those providing legal services have training in domestic violence or sexual assault, that the legal program has been developed with input from, and in collaboration with, a domestic violence or sexual violence program, and that the program will let victim services programs know of the legal assistance being provided.<sup>114</sup> Importantly, reflecting the need for increased civil legal services for victim and effectiveness of the provision of civil legal assistance in ensuring the safety of victims, Congress increased authorized funding for the Civil Legal Assistance for Victims of Violence grant program in VAWA 2000 to forty million dollars each fiscal year from 2001 through 2005.<sup>115</sup>

The renamed Legal Assistance for Victims grant program remains the most competitive grant program administered by OVW based upon number of applicants since VAWA 2000. Studies continued to demonstrate that one of the most effective ways to ensure safety for victims of domestic violence is access to the justice system.<sup>116</sup> As a result, VAWA 2005 retained the effective structure of this program, increased funding, and provided key clarifications regarding populations that could receive civil legal assistance that made its reach more comprehensive and reflected global changes in the reauthorization. It specified that adult and youth victims of the four crimes are the targets of the civil legal assistance funded

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110. See Jeffrey R. Baker, *Necessary Third Parties: Multidisciplinary Collaboration and Inadequate Professional Privileges in Domestic Violence Practices*, 21 COLUM. J. GENDER & L. 283, 317–322 (2011) (describing clashes between lawyers and advocates caused by the lawyer's participation in the adversarial process and their ethical requirements regarding confidentiality and privilege and how to navigate them).

111. 42 U.S.C. § 3796gg-6(c)(1).

112. *Id.* § 3796gg-6(d).

113. 43 U.S.C. § 3796gg-6(c)(1).

114. *Id.* § 3796gg-6(d).

115. *Id.* § 3796gg-6(f).

116. See generally Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 CONTEMP. ECON. POL'Y 158 (2003)(stating that one of the most effective mechanisms contributing to declines in domestic violence is access to justice).

by including victim of dating violence.<sup>117</sup> It also stated that the funds may be used in cases and courts such as family, tribal, territorial, immigration, employment, administrative agency, housing, campus administrative or stay away orders and similar matters, as well as criminal investigations, prosecutions and post-trial matters that impact a victim's safety and privacy.<sup>118</sup> In addition, VAWA 2005 expanded the purposes of this legal assistance to include to support for victims' dealings with the criminal justice system related to domestic violence, sexual assault, dating violence and stalking.<sup>119</sup> VAWA 2005 sought to expand civil legal assistance for victims through an amendment to ensure that legal services organizations that receive funding from the Legal Services Corporation (LSC) may assist a victim of domestic violence, sexual assault or trafficking without regard to the victim's immigration status.<sup>120</sup> The amendment clarified that organizations may use any source of funding they receive—Legal Services Corporation, Violence Against Women Act—to provide legal assistance that is directly related to overcoming the victimization, and preventing or obtaining relief for the crime perpetrated against them that is often critical to promoting victim safety.<sup>121</sup>

An improvement to the Legal Assistance for Victim's program in VAWA 2013 recognizes the need to bring as many resources to bear as possible to provide civil legal services to victims by authorizing grantees to recruit, train, and mentor pro bono attorneys and law students to represent victims of domestic violence in civil matters.<sup>122</sup> In addition, VAWA 2013 clarifies that legal assistance may be provided to victims of domestic violence, dating violence, sexual assault or stalking who are also victims of severe forms of trafficking.<sup>123</sup>

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117. 42 U.S.C. § 3796gg-6(a).

118. Violence Against Women and Department of Justice Reauthorization Act of 2005, § 40002; 42 U.S.C. § 13925 (defining domestic violence, dating partner, dating violence, elder abuse, legal assistance and protection order or restraining order); Violence Against Women and Department of Justice Reauthorization Act of 2005, § 104; 42 U.S.C. § 3796gg-6 (defining legal assistance to permit representation of victim in civil and criminal matters, and to include representation of adult and youth victims).

119. Violence Against Women and Department of Justice Reauthorization Act of 2005, § 103; 42 U.S.C. § 3796gg-6(a)(C).

120. Violence Against Women and Department of Justice Reauthorization Act of 2005, § 104 (2006) (authorizing LSC funded organizations to use LSC funds and non-LSC funds to provide "directly related" legal services to serve immigrants and their children who have been battered or subject to extreme cruelty, victims of sexual assault or trafficking). Previously, the Kennedy Amendment to the Legal Services Corporation Act permitted organizations receiving Legal Services Corporation funding to represent undocumented victims of domestic violence using non-LSC funds. See Pub. L. No. 104-208, 110 Stat. 3009 (1996).

121. Modifying section 502 of the Department of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act of 1998, Pub. L. No.105-119, 111 Stat. 2510.

122. Violence Against Women Reauthorization Act of 2013 § 103 (2013).

123. *Id.*

## B. SUPPORTING CHILDREN AND YOUTH VICTIMS

Recognizing that violence against women is a learned behavior, VAWA 1994 included funding for education of youth to recognize abuse and protect youth themselves.<sup>124</sup> VAWA 1994 provided \$400,000 per year to educate youth about domestic violence and to support model programs for primary schools, middle schools, secondary schools and institutions of higher education.<sup>125</sup>

VAWA 2000 created the Safe Havens for Children Pilot Program to fund supervised visitation centers to ensure the safe visitation exchange of children by and between parents in situations involving domestic violence, child abuse, sexual assault and/or stalking.<sup>126</sup> This pilot program was in direct response to the dangerous circumstances under which supervised visitation had been occurring. There were reports from advocates, attorneys, victims and judges of drop-offs and pick-ups at fast-food restaurants, police stations and other public locations because there was no other place in many communities where victims felt safe to exchange the children with the abusive parent.

VAWA 2005 included a new program entitled Services, Protection, and Justice for Young Victims of Violence in response to the growing awareness of the high rates of violence experienced by young women.<sup>127</sup> In this title, Congress included in the findings the most recent research showing significant victimization experienced by young women: youth, defined as those under the age of eighteen, account for sixty-seven percent of all sexual assault victimizations reported to law enforcement officials, and the Department of Justice consistently finds that young women between the ages of sixteen and twenty-four experience the highest rate of nonfatal intimate partner violence.<sup>128</sup> Further, Congress acknowledged that youth experience unique obstacles when seeking help, including lack of access to money, transportation or shelter and a lack of knowledge about available resources and pressure from parents and peers.<sup>129</sup> In response to the high rates of victimization and the obstacles youth face in seeking supportive services, Congress authorized \$15 million in grants to be awarded to organizations serving youth, setting aside seven percent of those funds each year specifically for Indian Tribes or tribal organizations.<sup>130</sup>

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124. Violent Crime Control and Law Enforcement Act of 1994, ch. 5, § 40251 (1994).

125. *Id.*

126. Victims of Trafficking and Violence Protection Act of 2000, § 1301; 42 U.S.C. § 10420 (2012).

127. Violence Against Women and Department of Justice Reauthorization Act of 2005, § 301; 42 U.S.C. § 13925.

128. 42 U.S.C. § 13925.

129. *Id.*

130. *Id.* § 14043(c).

VAWA 2005 also dedicated grant funding to cross training and collaboration of the courts, domestic violence and sexual assault service providers, youth organizations and service providers and law enforcement to develop policies and practices to more effectively serve youth victims of dating violence, domestic violence, sexual assault and stalking.<sup>131</sup> VAWA 2005 also authorized grants to enable high schools and middle schools to work with domestic violence and sexual assault experts to provide training, develop and implement policies and provide support services.<sup>132</sup> Finally, VAWA 2005 included a grant program to provide training and collaboration focused on the connection between domestic violence and child maltreatment by supporting efforts by child welfare agencies, domestic violence or dating violence victim service providers, courts, law enforcement, and other related professionals and community organizations to develop collaborative responses and services.<sup>133</sup> In addition, VAWA 2005 included a new set of provisions focused on preventing violence against women and children in which it specifically addressed the negative impact of exposure to violence in the home on children.<sup>134</sup>

VAWA 2013 authorized funding to raise awareness and changing attitudes about teen dating violence, preventing, reducing and responding to children's exposure to violence at home and helping men serve as role models in preventing domestic violence, dating violence, sexual assault, and stalking.<sup>135</sup>

### C. SERVING NATIVE AMERICAN VICTIMS

Native American and Alaska Native victims are particularly vulnerable populations for domestic and sexual violence. American Indian women living on Indian reservations experience domestic and sexual violence assault at higher rates than women of other ethnicities and locations.<sup>136</sup> In a 2008 study, thirty-nine percent of Native women surveyed were identified as victims of intimate partner violence at least once in their lifetime, a rate higher than any other race or ethnicity surveyed.<sup>137</sup> Approximately one in three Native women will be raped during her lifetime.<sup>138</sup> In VAWA 1994 and its reauthorizations, Congress has increasingly acknowledged and

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131. 42 U.S.C. § 14043c-1.

132. *Id.* § 14043(c-3).

133. *Id.* § 14043(c-2).

134. *Id.* § 14043(d-1).

135. Violence Against Women Reauthorization Act of 2013, § 402 (2013).

136. Steven W. Perry, U.S. Dep't. of Justice, Office of Justice Programs, BUREAU OF JUSTICE STATISTICS, A BJS STATISTICAL PROFILE 1992–2000, AMERICAN INDIANS AND CRIME (Dec. 2004).

137. *Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence, United States, 2005*, 57 MMWR Weekly 113 (2008), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm>.

138. Tjaden & Thoennes, *supra* note 37.

addressed the extremely high rates of victimization among this population. This has led to increased funding and protections for Native survivors.

VAWA 1994 specifically authorized grants to be awarded to Tribal governments, states, Indian tribal governments and local governments of rural states or to other entities in rural states to enhance services for domestic violence and child abuse survivors.<sup>139</sup> An increased understanding and awareness of the high rates of violence against Native women and challenges in enforcing protection orders and jurisdictional problems led to provisions in VAWA 2000. VAWA 2000 stated that Indian tribal governments were eligible to apply for funds and reserved five percent of the funds available each fiscal year from the Legal Assistance for Victims program specifically for victims of domestic violence, stalking and sexual violence on lands within the jurisdiction of an Indian tribe.<sup>140</sup> Similarly, Indian tribal governments were eligible to apply for grant funding from the Safe Havens for Children Pilot Program and provided that not less than five percent of the total amount made available for each fiscal year for this program shall be available to grants to Indian tribal governments.<sup>141</sup> VAWA 2000 included language specifying that tribal courts have jurisdiction to enforce state civil protection orders, thus ensuring full faith and credit on reservations.<sup>142</sup> This provision was intended to help state and tribal courts improve the cross-jurisdictional enforcement of protection orders.

Building upon the provisions in VAWA 2000, VAWA 2005 included the clearest and strongest provisions incorporated to date to create a targeted response to violence against Native American women. It created the position of Deputy Director for Tribal Affairs within the OVW in the U.S. Department of Justice to oversee the grant programs related to combating violence against Native Americans and providing technical assistance to tribes regarding the prosecution of perpetrators of violence.<sup>143</sup> In conjunction with the creation of this new position, VAWA 2005 specifically authorized funding from the Education and Training for Judges and Court Personnel grant program to create national and tribal educational curricula for state and tribal judges.<sup>144</sup>

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139. Violent Crime Control and Law Enforcement Act of 1994, § 40295; 42 U.S.C. § 13971.

140. Violent Crime Control and Law Enforcement Act of 1994, § 1201; 42 U.S.C. § 3796gg-6(c),(f).

141. Victims of Trafficking and Violence Protection Act of 2000, § 1301; 42 U.S.C. § 10420 (2010).

142. 18 U.S.C. § 2265(e).

143. Violence Against Women and Department of Justice Reauthorization Act of 2005, § 907; 42 U.S.C. § 3796(gg-11).

144. Violence Against Women and Department of Justice Reauthorization Act of 2005, § 41005; 42 U.S.C. § 14043(a-2).

Continuing to focus on the unique needs of Native American victims, VAWA 2013 expands the grant program targeted at curbing domestic violence, sexual assault, dating violence, and stalking in Indian country by extending coverage to sex trafficking crimes.<sup>145</sup> It also encourages grantees to develop and promote best practices for responding to these crimes in Indian country and to provide services to address the needs of youth in Indian country who are victims of these crimes.<sup>146</sup> Further, VAWA 2013 addresses ongoing challenges faced by law enforcement and courts when attempting to prosecute and hold perpetrators accountable for violence against Native American victims.<sup>147</sup> VAWA 2013 includes language recognizing the concurrent jurisdiction of some tribes to investigate, prosecute, convict and sentence persons who assault Indian spouses, intimate partners or dating partners who violate protection orders in Indian country and clarification that Tribal courts have full civil jurisdiction to issue and enforce certain protection orders involving any persons, Indian or non-Indian.<sup>148</sup> These provisions recognize the previous lack of accountability of batterers who commit violence against Native American women that lead to increased vulnerability.

#### IV. WHAT HAS BEEN LEFT OUT OF VAWA

As a part of the discussion of VAWA and its influence, it is important to mention provisions that were proposed by advocates and championed by members of Congress but were not included in VAWA or reauthorizing legislation so far. The best examples are related to the provision of economic justice remedies for victims of domestic violence (and later sexual assault, dating violence, stalking and trafficking). VAWA 2000 included authorization for a study on insurance discrimination against victims and to conduct a national survey of employers and employees about appropriate responses to victims of domestic violence, sexual assault and stalking.<sup>149</sup> It also mandated that the Secretary of Labor conduct a study of the state laws that address unemployment due to domestic violence.<sup>150</sup> VAWA 2005 included authorization to fund each fiscal year from 2007 to 2011 for a National Resource Center on Workplace Responses to assist victims of domestic and sexual violence by providing assistance to employers and labor organizations in development and implementation of responses to these crimes and VAWA 2013 included funding to continue the National Resource Center.<sup>151</sup>

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145. Violence Against Women Reauthorization Act of 2013, § 901 (2013).

146. *Id.*

147. *Id.*

148. *Id.*

149. Victims of Trafficking and Violence Protection Act of 2000, § 1206–1207.

150. *Id.* § 1208.

151. 42 U.S.C. § 14043(f) (2012); Violence Against Women Reauthorization Act of 2013.

Since the passage of VAWA 1994, the civil legal response to domestic violence has developed and expanded in large part because of VAWA funding to provide legal assistance to victims regarding family law, housing, and increased access to visas for immigrant victims of domestic violence, sexual assault, and victims of sex trafficking. These advances are a reflection of a progression of our response from addressing the immediate legal needs of victims to addressing the long-term needs of victims to enable them to live lives free from violence. Development of civil legal remedies for victims coincides with increased awareness that the experiences of victims of domestic violence, sexual assault, and stalking are unique although these crimes often co-occur. It also reflects a deeper understanding of the impact that these crimes have on all aspects of a victim's life and that of her family and community, including her workplace.

Over the last twelve years, extensive research has been conducted regarding the number of employees in the workforce who are victims of domestic violence, the ways in which domestic and sexual violence impacts a victim who is an employee, and the ways in which that violence negatively impacts a workplace overall. In 2005, a national benchmark survey of twelve hundred employed adults (age eighteen and over) by the Corporate Alliance to End Partner Violence found that intimate partner violence has a wide and far-reaching effect on Americans' working lives: forty-four percent of employed adults surveyed personally experienced domestic violence's effect in their workplaces; twenty-one percent of respondents (men and women) identified themselves as victims of intimate partner violence; and sixty-four percent of victims of domestic violence indicated that their ability to work was affected by the violence.<sup>152</sup>

Survivors seeking to address the violence in their lives may need to miss work to go to court to seek safety for themselves and their families from the perpetrator, or they may miss work or need job accommodations due to injuries or illnesses caused by the violence.<sup>153</sup> Victims may not feel comfortable disclosing the reason for missing work or they may exceed their limited annual leave, leading to job loss.<sup>154</sup> Survivors of violence may need to seek ongoing counseling to cope with the trauma caused by the abuse, requiring them to miss work as well.<sup>155</sup> Finally, survivors may experience difficulty focusing and concentrating at work because of their

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152. Corporate Alliance to End Partner Violence, NATIONAL BENCHMARK TELEPHONE SURVEY ON DOMESTIC VIOLENCE IN THE WORKPLACE 1 (2005), available at <http://www.ncdsv.org/images/CAEPVSurvey.WorkPlace.pdf>.

153. See Robin Runge, *Double Jeopardy: Victims of Domestic Violence Face Twice the Abuse*, 25 SPF HUM. RTS. 19 (1998) (describing how victims of domestic violence are fired for taking time from work to address the violence or experience declining performance or missing work).

154. *Id.*

155. *Id.*

fear that the perpetrator may come to the workplace, or harm them or their children when they return home.<sup>156</sup> Studies and surveys of survivors of domestic and sexual violence have shown that almost fifty percent of sexual assault survivors lose their jobs or are forced to quit their jobs in the aftermath of the crime;<sup>157</sup> thirty percent to fifty percent of employed victims of domestic violence lose their jobs due at least in part to the domestic violence;<sup>158</sup> and, seventy-four percent of employed battered women were harassed at work by their partner.<sup>159</sup>

Since 1995, Representative Lucille Roybal-Allard and Senator Paul Wellstone among others, have introduced federal legislation focusing specifically on the economic needs of victims, including access to housing, insurance, and employment protections. These bills included provisions that would have required employers to provide job guaranteed leave from work to employed victims to address the impact of the violence in their lives, provided access to unemployment insurance benefits, and prohibited employment discrimination against victims.<sup>160</sup> These proposals evolved from addressing only victims of domestic violence, to including victims of sexual assault, dating violence, and stalking, paralleling the expansion of protections in VAWA as a whole as described above. During the legislative sessions in which VAWA 2000, 2005, and 2011 were pending, some or all of these provisions were part of early drafts, or were introduced as part of the original bill, but were left out of the versions that passed.<sup>161</sup> In spite of valiant efforts, these provisions have not yet been included in VAWA or passed by Congress as stand alone legislation.

In the interim, significant progress has been made regarding employment protections and access to unemployment insurance for victims

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156. See Deborah A. Widiss, *Domestic Violence and the Workplace: The Explosion of State Legislation and the Need for a Comprehensive Strategy*, 35 FLA. ST. U. L. REV. 669, 676-78 (2008).

157. S. Rep. No. 138, 103rd Cong., 2d Sess. 54, n.69 (citing Elizabeth M. Ellis et al., *An Assessment of the Long Term Reaction to Rape*, 50 J. ABNORMAL PSYCH. 264 (1981)).

158. See, e.g., Health, Educ., & Human Servs. Div., U.S. Gen. Accounting Office, DOMESTIC VIOLENCE PREVALENCE AND IMPLICATIONS FOR EMPLOYMENT AMONG WELFARE RECIPIENTS, 7-8 (1998), available at <http://www.gao.gov/archive/1999/he99012.pdf> (finding between thirty-five percent and fifty-six percent of employed battered women surveyed were harassed at work by their abusive partners and up to half lost their jobs because of the abuse).

159. Family Violence Prevention Fund, THE WORKPLACE GUIDE FOR EMPLOYERS, UNIONS AND ADVOCATES 7 (1998).

160. See, e.g., Battered Women's Employment Protection Act, H.R. 3837, 104th Cong. (1996); Battered Women's Employment Protection Act, S. 367, H.R. 851, 105th Cong. (1997); Battered Women's Economic Security Act, S. 2558, 105th Cong. (1998); Battered Women's Employment Protection Act, H.R. 5262, 106th Cong. (2000) (leave, unemployment insurance); Security and Financial Empowerment Act, S. 1801 108th Cong. (2003) (victims of domestic violence or sexual assault); Security and Financial Empowerment Act, S. 1796, 109th Cong. (2005) (victims of domestic violence, dating violence, sexual assault or stalking).

161. The author was involved in the drafting and discussions regarding these provisions.

on the state level based in large part on the legislative language that has been pending in Congress since 1996. Over thirty states and the District of Columbia have passed statutes clarifying that victims of domestic violence, sexual assault, and/or stalking are eligible for unemployment insurance.<sup>162</sup> More than ten states and jurisdictions have passed laws providing unpaid, job guaranteed leave for victims of domestic violence, sexual assault, dating violence and/or stalking to attend court proceedings and to heal from injuries caused by the violence.<sup>163</sup> Three states and several jurisdictions have passed legislation prohibiting discrimination against victims of domestic violence and sexual assault in employment.<sup>164</sup> Nonetheless, federal legislation providing these protections for victims is necessary, and domestic violence victim advocates continue to support these efforts.

## V. CONCLUSION

VAWA has had a profound impact on the way the legal system defines, identifies, and responds to violence against women. Although more progress is needed, these remarks about the development of some of VAWA's key provisions demonstrate the importance of a national response that provides consistent legal protections and substantial targeted funding for legal and social services. Today, the funding and legal provisions of VAWA include consistent reference to the four crimes of domestic violence, dating violence, sexual assault, and stalking, and incorporate specific vulnerable populations including youth, elder, persons with disabilities, and culturally and linguistically vulnerable populations. The most recent authorization, VAWA 2013, makes some of the most significant strides in this regard by addressing the high rates of victimization of Native American women, the ongoing struggles faced by

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162. See LEGAL MOMENTUM, STATE LAW GUIDE: UNEMPLOYMENT INSURANCE BENEFITS FOR DOMESTIC & SEXUAL VIOLENCE SURVIVORS (2011), available at <http://www.legalmomentum.org/our-work/women-at-work/resources-and-publications/unemployment-insurance.pdf> (an up-to-date list of these statutes).

163. See, e.g., CAL. LAB. CODE §§ 230, 230.1 (West 2012); COLO. REV. STAT. § 24-34-402.7 (2002); CONN. GEN. STAT. §§ 54-85b (2010), 85(b) (1980); FLA. STAT. § 741.313 (2008); HAW. REV. STAT. ANN. § 378.72 (LexisNexis 2010); 820 ILL. COMP. STAT. 180/15 (2009); KAN. STAT. ANN. §§ 44-1131-1132 (2010); ME. REV. STAT. tit. 26, § 850 (2007); N.M. STAT. ANN. § 50-4a-3 (2009); N.C. GEN. STAT. §§ 50b-5.5, 95-270(a) (2010); OR. REV. STAT. §§ 659A.290, 659A.885 (2003); WASH. REV. CODE § 49.76.010 (2011).

164. See e.g., 820 ILL. COMP. STAT. 180/1-45 (West 2004) (covered employers may not fail to hire, fire, constructively discharge, harass, or otherwise discriminate, or retaliate against any individual because the individual is, or is perceived to be, a victim of domestic or sexual violence or has a family or household member who is, or is perceived to be, a victim of domestic or sexual violence); N.Y. EXEC. L. §§ 296-1(a), 292(34) (victims of domestic violence are protected from employment discrimination); OR. REV. STAT. §§ 659a.290, 659A.885 (prohibiting employers from discharging, discriminating, or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking because of the employee's status as a victim).

undocumented immigrants and the need for funding to support training, education and services for lesbian, gay, bisexual and transgender victims.

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