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VAWA @ 20: IMPROVING CIVIL LEGAL ASSISTANCE FOR ENDING GENDER VIOLENCE

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INTRODUCTION

The Violence Against Women Act (VAWA) provides vital funding for improved civil legal responses to domestic and sexual violence, but current approaches do not go far enough to address deep-rooted problems. This essay advocates for new approaches that address the problems survivors encounter in family courts, where civil remedies for domestic violence are typically pursued. These reforms require addressing stereotypes about perpetrators as well as victims, and lifting barriers to civil legal assistance for vulnerable populations. This essay describes the goals of civil responses, barriers to achieving those goals, and proposes amendments to VAWA to address the problem.

I. GOALS OF CIVIL REMEDIES FOR DOMESTIC VIOLENCE

Anti-domestic violence activists pursued civil remedies for domestic violence as an alternative to the criminal justice system.[1] Specifically, legislation creating civil protection orders was seen as a way for women of color to obtain injunctive relief prohibiting abuse without subjecting

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[1] Interview with Barbara Hart, Director of Strategic Justice Initiatives and Director of Law and Policy, Violence Against Women Initiatives, Muskie School of Public Service, Cutler Institute for Health and Social Policy, University of Southern Maine Nov. 21, 2013 (notes on file with author) [hereinafter Hart Interview]; *See also* SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 162–65 (1982) (describing early civil legal reforms for battered women).

abusive partners to racist law enforcement practices.[2] Protection orders were also designed to improve upon injunctive relief available through divorce proceedings, and expand protection from abuse and other relief to unmarried women.[3] Civil orders could be enforced through criminal contempt proceedings in family court, and not require engagement with the criminal system.[4] Overall, activists wanted battered women to have more agency and control over remedies for domestic violence than those available through criminal responses. They also hoped that family court orders for custody and protection of children created a hedge against removal of children by child protective services; a prophylactic against intrusion of state into the lives of battered women.[5] However, numerous problems plague survivors seeking help for domestic violence in civil as well as criminal courts, including family courts where remedies for domestic violence are typically pursued.

II. PERFECT VICTIMS AND PERCEIVABLE PERPETRATORS

Family courts are rife with bias, especially for domestic violence survivors.[6] Critical feminist theories like intersectionality explain why some women may be recognized as victims more readily than others because of the ways that dominant social norms about victims interact with race and gender stereotypes.[7] In particular, domestic violence law and policy is informed by an ideal of the perfect victim: a woman who is white, middle class, heterosexual, and passive.[8]Women who diverge from that norm are less likely to be recognized as victims. Additionally, recognition as a victim depends on the identity of the perpetrator.[9] As a companion to the victim identity, the "perceivable perpetrator" identity is hinged on assumptions

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[2] Hart Interview; Schechter, *supra* note 1, at 163.

[3] *See id*. at 163 (noting problematic nature of remedies for unmarried women); Hart Interview, *supra* note 1.

[4] *Id*. *But see* Schechter, *supra* note 1, at 162–63 (describing family courts' failure to enforce orders).

[5] Hart Interview, *supra* note 1, at 163.

[6] *See, e.g.*, Elizabeth L. MacDowell, *Theorizing from Particularity: Perpetrators and Intersectional Theory on Domestic Violence*, 16 J. GENDER, RACE & JUSTICE 531, 539 n.28 & 29 (2013) (describing studies); Jeannette F. Swent, *Gender Bias at the Heart of Justice: An Empirical Study of State Task Forces*, 6 S. CAL. REV. L. & WOMEN'S STUD. 1, 55–58 (1996); Schechter, *supra* note 1, at 162–63.

[7] *See generally* Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1257 (1991).

[8] *See generally* Adele M. Morrison, *Changing the Domestic Violence (Dis)Course: Moving from White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061 (2006).

[9] *See* MacDowell, *supra* note 6, at 546–49.

about criminality that relate to race, sexuality and class. In brief, these assumptions tend to view men of color as more likely to be perpetrators than white men.[10] Thus, being recognized as a victim deserving of assistance or relief requires fulfilling two sets of expectations: that of the perfect victim and the perceivable perpetrator. For poor women, women of color, lesbians, and women who fight back, this also requires overcoming stereotypes that negate their victimization.

III. INTERSECTING CIVIL, CRIMINAL, AND CHILD WELFARE SYSTEMS

Despite the intentions of activists, survivors accessing civil remedies may also become engaged with the criminal justice system and other potentially punitive state systems, and experience unwanted interventions into their families. Such interventions become more likely when systems are intertwined, such as when family courts utilize child welfare workers to investigate custody claims,[11] when criminal and civil remedies are combined within specialized, integrated domestic violence courts,[12] and when civil legal assistance and other services are combined with law enforcement within Family Justice Centers.[13] In these instances, the goals and objectives of the State supersede those of survivors, and the benefits of civil responses are unrealized.

IV. NEW APPROACHES TO ADDRESS OLD PROBLEMS

A. Expanding Anti-Bias Training and Accountability Measures

Congress should amend VAWA to address the intersectional nature of gender stereotyping. Training for judges and other court personnel under VAWA focuses on stereotypes as they pertain to victims, not addressing stereotypes about perpetrators.[14] Additionally, training about stereotypes regarding the prevalence of domestic violence in particular racial communities does not necessarily address the intersecting nature of race and gender stereotypes and how this impacts assessments of whether domestic

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[10] *Id*. at 547.

[11] *See* Leah Hill, *Do You See What I See? Reflections on How Bias Infiltrates the New York City Family Court— the Case of the Court Ordered Investigation*, COL. J. L. & SOC. PROB. 527 (2007).

[12] *See* Elizabeth L. MacDowell, *When Courts Collide: Integrated Domestic Violence Courts and Court Pluralism*, 20 TEX. J. WOMEN & L. 95 (2011).

[13] *See* History of the Family Justice Center Movement, Family Justice Center Alliance, http://www.familyjusticecenter.org/index.php/history.html (last visited Dec. 5, 2014).

[14] *See* 42 U.S.C. § 13992(6) & (13) (2013) (regarding training on sex stereotyping of victims provided by grants).

violence has occurred (e.g., that white men may be perceived as less culpable than black men, especially of violence against woman of color, or that white women are more credible victims than are black or Latina women).[15] Neither does it necessarily address the ways in which class intersects with stereotypes about race and gender. VAWA should be amended to specify that trainings for court personnel include a more comprehensive and intersectional approach to these issues. Additionally, VAWA should be amended to encourage greater understanding about how these stereotypes impact outcomes and accountability for courts and service providers. This should include funding to encourage tracking of statistics on the race and gender configurations of parties and outcomes in civil court cases. Court watch programs are also a promising way to promote accountability and improve legal responses,[16] and should be funded as well.

B. Separating Systems and Services and Fostering Accountability

The goal of civil legal responses is to increase safety and eliminate violence by offering survivors a positive alternative to the criminal justice system and encourage freedom from unwanted state intervention. Thus, civil remedies should not be bundled with criminal remedies or law-enforcement services, nor should survivors be exposed to child welfare systems as a price of accessing civil assistance. Federal grants should be structured to encourage independence of civil and criminal courts, and independence of child welfare systems from cases where the state is not a party. If integrated courts and programs continue, they should be required to demonstrate how survivors are protected from unwanted state interventions. Moreover, civil legal services, including self-help services, should be required to demonstrate independence from courts, law enforcement, and any other potentially conflicting service partners. Federal law should also require funded legal service programs to demonstrate accountability to survivors both in terms of their own services and how they foster accountability of the courts; for example, by partnering with other advocacy organizations in systemic advocacy and reform.[17]

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[15] *See id*. at § 13992(13).

[16] *See* MacDowell, *supra* note 6, at 575–76; *see also* Laura Jones, Court Monitoring as Advocacy, 16 CONNECTIONS 17, 7–11 (Fall 2012), *available at* http://www.wcsap.org/sites/wcsap.huang.radicaldesigns.org/files/uploads/resources_and_pubs/connections_2012_10/Connections_2012_10.pdfp.

[17] For a detailed discussion of access to justice reform, *see* Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People's Courts*, 22 GEO. J. POV. L. & POL'Y (forthcoming 2015) (manuscript on file with author).

C. Removing Funding Restrictions that Limit Access and Remedies

Funding restrictions that defeat the development, study, and dissemination of best practices should be eliminated. These include federal prohibitions on tort litigation, lobbying,[18] and legal assistance to prisoners.[19] In particular, the problems of stereotyping and bias as well as the strong connection between incarceration and victimization demonstrate the need for legal services to assist incarcerated women and aid in their reentry.[20] Therefore, barriers to legal assistance for prisoners should be eliminated through VAWA with the express purpose of addressing and eliminating gender violence.

CONCLUSION

Problems in the civil system have inhibited access to important resources for gender violence survivors. However, through some relatively minor amendments to VAWA, the goals of civil remedies may be more readily achieved.

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[18] 42 U.S.C. § 13925(b)(9) – (10).

[19] *See* Rebekah Diller & Emily Savner, *A Call to End Federal Restrictions on Legal Aid for the Poor*, BRENNAN CENTER FOR JUSTICE 3-4 (2009), *available at* http://www.brennancenter.org/publication/call-end-federal-restrictions-legal-aid-poor.

[20] *See* Corr. Assoc. of N. Y., Survivors of Abuse & Incarceration (2012), *available at* http://www.correctionalassociation.org/issue/domestic-violence.