

A SHORT HISTORY OF THE VIOLENCE AGAINST WOMEN ACT

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Legal Momentum

In recognition of the severity of the crimes associated with domestic violence, sexual assault and stalking, Congress passed the Violence Against Women Act of 1994 (VAWA 1994)¹ as part of the Violent Crime Control and Law Enforcement Act of 1994. The protections and provisions afforded by the 1994 legislation were subsequently expanded and improved in the Violence Against Women Act of 2000 (VAWA 2000)², the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005)³, and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013).⁴

The 1994 bill was a watershed, marking the first comprehensive federal legislative package designed to end violence against women. It was also a triumph for women's groups that lobbied hard to persuade Congress to legislate federal protections for women on the grounds that states were failing in their efforts to address this violence. VAWA included provisions on rape and battering that focused on prevention, funding for victim services, and evidentiary matters. It included the first federal criminal law against battering and a requirement that every state afford full faith and credit to orders of protection issued anywhere in the United States. Since the passage of VAWA, from law enforcement to victim services to Capitol Hill, there has been a paradigm shift in how the issue of violence against women is addressed.

The enactment of VAWA 1994 culminated an effort begun in 1990 to draft and pass what became this landmark legislation. Vice President Joseph Biden, then Senator from Delaware, initiated this effort when he submitted to Congress a preliminary proposal to address the issue of violence against women, sparking a long-awaited national conversation about violence prevention and services. Working closely with the staff of the Senate Judiciary Committee, Legal Momentum (then NOW Legal Defense and Education Fund) brought experts and organizations together in the Task Force on the Violence Against Women Act to help draft and pass the legislation. This initial coalition has become the very large and diverse National Task Force to End Sexual and Domestic Violence, which continues to collaborate to help draft and pass each VAWA reauthorization.

¹ Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended at scattered sections of 18 U.S.C. and 42 U.S.C.)

² Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1491 (codified as amended at scattered sections of 42 U.S.C.)

³ Violence Against Women Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2964 (codified as amended at scattered sections of 8 U.S.C., 18 U.S.C., and 42 U.S.C.)

⁴ Violence Against Women Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (codified as amended at scattered sections of 8 U.S.C., 18 U.S.C., 22 U.S.C., 42 U.S.C., 47 U.S.C., and Title IV)

Legal Momentum

Drafting and passing the 1994 bill took four years because of strenuous opposition to the Act's most controversial provision, a private civil rights remedy – modeled on late nineteenth century laws intended to protect African Americans – that allowed victims of gender-based violence to sue their attackers. The opposition was led by then Chief Justice William Rehnquist. He and several judicial organizations argued that this private civil rights remedy would bring large numbers of family disputes into the federal courts and overwhelm the system with matters that did not belong there.

In response to this opposition, Legal Momentum sought the support of the National Association of Women Judges (NAWJ), which became the only judicial organization to support the civil rights remedy. NAWJ joined with Senate Judiciary Committee staff and Legal Momentum to refine the language of the provision to meet the concerns voiced by legislators and judges. Through dedicated redrafting and advocacy efforts, the bill passed in 1994 with the civil rights remedy intact and almost everything the Task Force had wanted included in the final version. By the time it was approved, VAWA 1994 had the bipartisan support of 226 sponsors in the House and 68 in the Senate.

For several years following its enactment, VAWA's civil rights remedy was upheld as constitutional in cases across the country. Congress had asserted its power to pass VAWA under the Commerce Clause and the Fourteenth Amendment of the Constitution. At the time the advocates and Congressional staff were drafting the law, the controlling precedent under the Commerce Clause suggested that Congress had the power to regulate activities which, under a rational basis test, had a substantial effect on commerce. Congress found that domestic and sexual violence qualified under this test, given the vast costs borne by taxpayers as a result of such violence. At that time, estimates suggested that domestic violence alone cost between \$5 and \$10 billion a year in health care, criminal justice, and other special costs.

However, when a case challenging the civil rights remedy reached the U.S. Supreme Court in 2000, it was struck down as unconstitutional in a 5-4 decision written by Chief Justice Rehnquist, *United States v. Morrison*, 529 U.S. 598 (2000). The majority rejected the civil rights remedy, asserting that domestic violence crimes were not themselves "economic" in nature, and thus, that Congress could not claim power under the Commerce Clause. The majority also rejected the claim that Congress had the power under the 14th Amendment on the ground that the civil rights remedy was aimed at harm inflicted by individuals rather than state actors.

Despite elimination of the civil rights remedy, VAWA and its subsequent reauthorizations have vastly improved services for victims of sexual and domestic violence and stalking. VAWA requires a coordinated community response (CCR) that encourages jurisdictions to bring together actors from diverse backgrounds to share information and use their distinct roles to improve community responses to violence against women. To further this goal, VAWA provides training and education for victim advocates, police officers, prosecutors, judges, probation and corrections officials, health care professionals, leaders within faith communities, and others who interact with victims.

Legal Momentum

In its original enactment VAWA was designed to improve criminal justice responses to domestic violence and increase the availability of services to those victims. VAWA 2000 and VAWA 2005 reauthorized the grant programs created by the original VAWA and expanded the initial mandate to address not only domestic violence, but also dating violence, sexual assault and stalking, and specifically took into account the needs of underserved populations. VAWA 2000 improved protections for immigrant victims of domestic violence, sexual assault survivors, and victims of dating violence. It enabled domestic violence victims who flee across state lines to obtain custody orders without returning to jurisdictions where they may be in danger, and improved enforcement of protection orders across state and tribal lines. VAWA 2005 continued to improve upon these laws by providing an increased focus on access to services for communities of color, immigrant women, and American Indian and Alaska Native communities. New programs under VAWA 2005 included Court Training and Improvements, Child Witness, Culturally Specific programs, and the creation of the National Resource Center on Workplace Responses to Domestic and Sexual Violence. VAWA 2005 also included a ban on states charging rape victims for forensic sexual assault examinations and criminalized stalking by electronic surveillance.

While previous reauthorizations of VAWA passed with strong bipartisan support, the most recent reauthorization faced strong resistance. VAWA 2005 expired in 2011, but it was not reauthorized again until 2013 due to intense opposition among Republican House members towards new provisions that would expand protections for LGBT, Native American, and immigrant survivors of gender-based violence. One provision sought to allocate grant money to programs and services specifically dedicated to LGBT victims. Another would expand the jurisdiction of tribal courts, enabling them to try non-Native perpetrators of certain domestic and dating violence crimes. Another clause sought to increase the number of U visas available; these visas are available to immigrant victims of crimes—often victims of domestic or sexual violence—in exchange for their cooperation with law enforcement. Opposition to these provisions stalled the bill in the GOP-controlled House.

A version of VAWA excluding the controversial positions was introduced in the House, but it did not pass. Eventually, the House passed the Senate's version of the bill in March 2013. In addition to expanding LGBT rights, granting tribal courts greater jurisdiction in domestic violence cases, and increasing the number of U-visas, VAWA 2013 allocated funds to address the backlog of untested rape kits, and increased funding for services to sexual assault survivors. VAWA 2013 also included a nondiscrimination provision that expanded the term "underserved populations" in order to preclude "victims of sexual assault [being] denied services based on religion, sex, gender, race, color, sexual orientation, or disability." VAWA funds are administered by the Office on Violence Against Women (OVW), a component of the Department of Justice created specifically to implement VAWA 1994 and subsequent legislation. OVW administers financial and technical assistance to communities around the country to facilitate the creation of programs, policies, and practices aimed at ending domestic violence, dating violence, sexual assault, and stalking. Legislation passed in 2002 made OVW a permanent part of the Department of Justice with a Presidentially-appointed, Senate-confirmed Director.

Legal Momentum

Since 1994, OVW has awarded nearly \$5 billion in VAWA grant funds to state, tribal, and local governments, non-profit organizations, and universities. The American Recovery and Reinvestment Act, signed into law on February 19, 2009, included an additional \$225 million for OVW to combat the legacy of laws and social norms that long served to justify violence against women.

Sources: Office on Violence Against Women, www.ovw.usdoj.gov; Victoria Nourse, Violence Against Women (2006); Pat Reuss, The Violence Against Women Act: 10 Years of Prevention, www.now.org/nnt/fall-2004/vawa.html; Lisa N. Sacco Violence Against Women Act: Overview, Legislation, and Federal Funding, <https://www.hsdl.org/?view&did=751863>; Fred Strebeigh, EQUAL: Women Reshape American Law (2009); U.S. v. Morrison, 529 U.S. 598 (2000) and sources therein.