

Addressing Domestic Violence: United States and New York State, Achievements and Under-Achievements

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ABSTRACT:

This paper provides an overview of United States and New York State policy and law on domestic violence, indicating achievements and shortcomings. A focus on the availability of judicial tort remedies, arrest policies and funding levels reflects criticisms inherent in the Inter-American Commission on Human Rights ruling in *Gonzales vs. United States* (2011) and subsequent report (2014) from the United Nations Special Rapporteur on Violence Against Women. This paper explores the current status of domestic violence policy and law at the federal and state level. It finds that while NYS demonstrates higher political commitment to addressing DV than the federal government, NYS funding is proportionately lower, and neither jurisdiction provides sufficient funds for services and prevention programs.

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Introduction

According to Dr. Margaret Chan, Director-General of the World Health Organization (WHO), “Violence against women is a global health problem of epidemic proportions” (2013). A study by WHO in partnership with the London School of Hygiene & Tropical Medicine and the South African Medical Research Council found that 35 percent of women worldwide will experience violence, most of them (86 percent of those victims) in the form of intimate partner violence, or IPV (WHO, 2013).

Costs to society from IPV are “substantial” (Centers for Disease Control and Prevention [CDC], 2018):

- lifetime per-victim cost: \$103,767 for women and \$23,414 for men.
- total lifetime economic cost to the U.S. population: \$3.6 trillion for almost 32 million female and 12 million male victims of IPV, including:
 - \$2.1 trillion (59%) in medical costs,
 - \$1.3 trillion (37%) in lost productivity among victims and perpetrators
 - \$73 billion (2%) in criminal justice costs, and
 - \$62 billion (2%) in other costs, such as victim property loss or damage.

Domestic violence (including IPV and other family violence) is devastating to the individual, his/her family, the community and the society-at-large. The impacts are not only, or even primarily, economic and societal, but also individual and physio-psychological. The forms of abuse are not only physical and psychological, but, increasingly, economic and legal.

In this paper, the author focuses on political and legal efforts to address domestic violence in the United States and New York State, within the context of developments at the international level. The author would prefer to address the context of every victim of domestic violence, for there are many, and each story deserves telling. I cannot do that, but I dedicate this work to all survivors of domestic and other interpersonal violence. I also acknowledge the considerable work of individuals and organizations outside the federal and state government that dedicate themselves to serving victims and trying to prevent further violence.

Levels of Domestic Violence in the Jurisdictions Studied

The World Health Organization has estimated domestic violence victimization rates to average around 30 percent of the world’s total population, for sexual and physical attacks only (2017). Increasingly, however, domestic violence (DV) includes psychological and economic harm, within families and households, and between intimate partners (IPV) and those in more casual, such as dating, relationships. The author of this paper acknowledges that this complicates presentation of precise definitions and accurate data and hopes to refine these parameters in future projects. For the purposes of this paper, the author generally uses the term “DV,” and acknowledges further that, given the sensitive and traditionally private nature of DV, changing but unknown reporting rates potentially further skew data. (The same goes for presentation and analysis of funding levels targeting DV, IPV and violence against women – more research is necessary.)

According to another study by the CDC, lifetime prevalence of IPV as of 2010-12 was 37.3 percent of the population in the United States and 31.7 percent in New York State (Smith et al, 2017). State IPV prevalence rates range from Kentucky’s 45.3 percent to South Dakota’s 27.8 percent (Smith et al, 2017). In sum, to paraphrase a statement by Amnesty International on rates of violence against women: domestic violence is “a US [and New York] problem, too” (2012).

United States’ Non-Compliance with International Norms: The Case of *Gonzales v. United States* (2011)

In 2011, the Inter-American Commission on Human Rights (IACHR) found the United States responsible for failure to protect Jessica Lenahan (formerly Gonzales) and her three deceased daughters against domestic violence. Ruling under the 1948 American Declaration of the Rights and Duties of Man, the IACHR found the US in violation of their rights to life, equal protection and due process. The Commission recommended the US provide Jessica with a judicial or other remedy and institute significant reforms to address systemic gender bias and violence (IACHR, 2011).

The United Nations Special Rapporteur on Women, Rashida Manjoo, visited the United States in the year of the IACHR decision to investigate violence against women, and found little to praise beyond the Violence Against Women Act of 1994 (Manjoo, 2014). She concluded that, "...although VAWA's intentions are laudable, there is little in terms of Federal substantive protection or prevention for domestic violence ... This has been exacerbated by U.S. Supreme Court jurisprudence [such as] *Town of Castle Rock v. Gonzales*" (Manjoo, 2014).

Manjoo's predecessor, Yakin Ertuk, had previously contacted the US, a year after the Supreme Court ruled in *Town of Castle Rock v. Jessica Gonzales* (2005) that the US Constitution imposed no affirmative duty on the state to protect individuals from private action. The US responded by contesting the factual evidence, and claiming that "the United States is among the world's strongest protectors of victims of domestic abuse" (Manjoo, 2014).

The US subsequently reported to the IACHR that it disputed the facts of the case, and that the Declaration "imposes no affirmative duty, such as the exercise of due diligence, to prevent the commission of individual crimes by private actors" (IACHR, 2011). This perspective, communicated by the executive branch of the US, reflects that of its judiciary as expressed by the *Town of Castle Rock v. Jessica Gonzales* Supreme Court bench (2005). However, it differs greatly from the growing consensus on responsibility to prevent violence against females, which, as Manjoo pointed out in her submission to the IACHR, "is primarily the responsibility of the State, as the ultimate duty bearer" (2014).

Also in 2014, the UN Human Rights Committee noted that "domestic violence continues to be prevalent in the State party [the US], and ethnic minorities, immigrants, American Indian and Alaska Native women are at particular risk," while the UN Committee on the Elimination of Racial Discrimination urged the US to "provide sufficient resources [to address] violence against women."

The author of this paper can find no evidence of subsequent action or other response on the part of the United States regarding Jessica Lenahan.

Violence Against Women Act of 1994 and Subsequent Reauthorizations

The Violence Against Women Act of 1994, and its three subsequent reauthorizations (2000, 2005, 2013), have received considerable commendation from many quarters.

"VAWA made violent crimes against women a federal priority for the first time in history, transforming our nation's response to domestic violence, sexual assault, dating violence, and stalking and serving as a model for the world" (National Organization for Women of New York City [NOWNYC], 2019)

"Passed in 1994, VAWA was intended to improve the criminal justice system by strengthening federal penalties for domestic violence offenders, training for officers and prosecutors, and services for victims. Since its passage, VAWA has garnered wide bipartisan support and little opposition" (Espinosa, 2012).

"Since it was first proposed by then-Delaware Sen. Joe Biden, and authorized by Congress in 1994, VAWA has created a comprehensive response to domestic and sexual violence, stalking and harassment. It has been a game changer for victims and survivors by helping to eradicate some of the stigmas they face; making law enforcement more responsive to their victimization; and providing them with comprehensive services that allow them to move beyond their trauma" (The Center for Family Justice, 2018).

A summary of some key provisions follows below (Congressional Research Service, 2015; Edgar Dyer Institute for Leadership and Public Policy, 2013):

- Grant programs through the Office on Violence Against Women (OVW), CDC, and the Department of Health and Human Services
- Enhanced protection-order enforcement and new DV offenses
- Cross-state-line offenses and penalties
- Confidentiality for DV victims

- Federal research into DV
- Special programs for tribal victims
- Extension to undocumented immigrants and LGBTQ
- Higher education IPV programs
- National Domestic Violence Hotline

More than \$8.1 billion in grants (OVW, 2019) has been distributed under VAWA since 1994, and a Bureau of Justice study showed a 72 percent decrease in serious IPV violence against women, and 64 percent decrease against men, between the first passage of VAWA and 2011 (Catalano, 2013). However, a subsequent CDC study found that, between 2003 and 2014, IPV-related female deaths remain significantly higher among racial and ethnic minorities, particularly American Indian and Alaska Native (Petrosky et al, 2017).

Status of the Violence Against Women Act 2018-19

One of the weaknesses of VAWA is its five-year reauthorization requirement. The Act expired most recently in February 2019 (Brufke, 2019), and feminist organizations and DV service providers are pushing for VAWA 2019 re-enactment, specifically in the form of Bill H.R. 1585 (NOWNYC, 2019). This version includes increased funding and other services for victims, particularly children/young people and Native Americans. Other provisions facilitate access to safe housing, enhance economic security and opportunity for victims, and inhibit perpetrators' access to firearms (VAWA Reauthorization Act of 2019). As of March 20, 2019, the Senate was drafting a different VAWA bill, and prospects for H.R. 1585 remained uncertain (National Task Force to End Sexual & Domestic Violence [NTFESDV], 2019). This is not the first time VAWA has expired; the legislation was inactive from 2010-2013, but program funding continued throughout that period (National Coalition Against Domestic Violence [NCADV], 2019a). That said, the decision to make the country's principal VAWA legislation impermanent, and to allow it to lapse more than once, indicates that DV and VAWA are a low priority at the federal level. On the international stage, the same is suggested by the US' failure to join the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (IACPPEVAW, 1994).

To keep programs running in the context of the current VAWA expiration, Congress appropriated funds totaling \$497.5 million for VAWA through September 30, 2019 (H. Rep. No. 115-794 of 2018). While the NTFESDV "applaud[ed] Congress for supporting victims and survivors" (NCADV, 2019b) in this way, it is worth noting that this amounts to roughly \$1.5 per capita for the US population of 328,582,499 (United States Census Bureau [Census], 2019). Per capita defense spending, by contrast, stands at \$1,879.3 (Stockholm International Peace Research Institute, 2017).

Unmet and Increasing Demand at the National and State Level

Every year, on a single day, the National Network to End Domestic Violence (NNEDV) surveys domestic violence shelters and other service providers to assess demand for and provision of services. Unmet requests for services on the chosen day more than doubled between 2007 and 2017, both for the US and NYS, with requests for safe housing being the most commonly denied (data for unmet housing requests unavailable for 2007). The following information reflects unmet requests within a 24-hour period on September 27, 2007 and on September 30, 2017 (NNEDV):

- United States: 2007: 5,157 unmet requests for services
- United States: 2017: 11,441 of which 7,416 (65%) were for housing)
- New York: 2007: 259 unmet requests for services
- New York State: 2017: 852 unmet requests for services of which 660 (77%) were for housing

The high demand and insufficient supply of safe housing explains the inclusion in the VAWA bill of 2019 of provisions relating to this.

As another indication of increasing demand, the NNEDV has reported that 88 percent of its shelters and other services are experiencing significantly increased demand (Theresa's Fund, Inc., 2015). In NYS,

orders of protection for domestic violence cases increased from 164,331 in 2007 to 232, 803 in 2017 (New York State Office for the Prevention of Domestic Violence [NYSOPDV], 2017).

Sample New York State Domestic Violence Policy & Law

New York State has been actively legislating in regards to domestic violence since it passed the Domestic Violence Protection Act of 1987. Since then, in addition to provisions in related legislation, NYS has passed various major Acts funding a variety of DV programs, including: shelter, legal, financial, counseling and other services to victims; expanding DV offenses and penalties; training lawyers, judges and law enforcement; and raising public awareness. Highlights include ((Leidholdt & Beller, 2017; NYSOPDV, 2019):

- 1987 Domestic Violence Prevention Act
- 1994 Family Protection and Domestic Violence Act
- 1998 Primary Aggressor Law
- 2009 and 2012 Domestic Violence Omnibus Bills

New agencies established include the NYSOPDV and the New York State Domestic and Sexual Violence Hotline, and major reform has included the institution of concurrent criminal and family law jurisdiction, previously mutually exclusive (Leidholdt & Beller, 2017). The early 2000s development of Integrated Domestic Violence Courts, which provide one judge to each case for family, criminal and matrimonial matters, has generally met with approval, even from outside NYS and the US, as demonstrated by this headline in the *Toronto Sun*: “Ontario lags behind New York in creating safer courts for domestic violence victims” (Carville, 2015).

In recent years, the NYS Assembly Majority has begun drafting what it calls the annual “Domestic Violence Package,” which aims to “strengthen protections for survivors of domestic violence (Giglio, 2017). Ten such bills passed the NYS Assembly last May (Heastie, 2018) and are still in the legislative process (NYS Assembly, n.d.). These cover issues ranging from DV training for hospital personnel and victims’ rights to cancel phone contracts, to employer responsibility to make accommodations for victims and restrictions on gun ownership for DV perpetrators (Heastie, 2018).

Some of these Bills and previously enacted legislation reflect provisions in the yet-to-be renewed federal VAWA bill of 2019. A recent example, the NYS Domestic Violence Survivor’s Justice Act, was signed into law in March 2019, offering options for lower sentences and alternatives to incarceration for domestic violence victims (Persaud, 2019).

Furthermore, the persistent attention of the NYS Assembly to DV means that this issue is a constant topic of policy conversation, legislation, and reform in Albany, NY, and, unlike the federal VAWA, which lasts only five years, NYS legislation is permanent until amended. Lawmakers in Washington, DC, should consider such an approach.

That said, NYS funding for domestic violence prevention and services is low. A survey of domestic violence shelters by state showed New York’s average spending per victim served to be \$10.42 (Theresa’s Fund, Inc., 2019). Furthermore, state spending through the NYSOPV comes to roughly 26 cents per capita: \$5,197,000 (New York State Division of the Budget, 2018) for the population of 19,542,209 (Census, 2018). The author notes, however, that spending through the NYSOPDV does not represent all funds allocated to domestic violence. For example, DV victims, along with victims of crime, are eligible for reimbursement of certain costs from the NYS Office of Victim Services, which works with the NYS Police and NYS Division of Criminal Justice Services (NYSOVS, n.d.) In addition, jurisdictions below the state level direct expenditure to address DV in their own budgets, such as the New York City Mayor’s Office to Combat Domestic Violence (MOCDV, 2017).

When it comes to judicial tort remedies, which the UN Special Rapporteur on VAW criticized as a glaring omission in US federal law (Manjoo, 2014), NYS likewise lacks such redress. *Bruno v. Codd* (1977) established the principle of public responsibility in NYS to protect DV victims from DV, but subsequent jurisprudence has effectively barred survivors from gaining recompense from public authorities (Levinson, 2015, 130-136). For example, the *Valdez v. City of New York* (2011) jury verdict of \$9.93 million was

vacated because of the “difficulty of establishing special relationship” and “fiscal concern that NYC is not a liability insurer” (Levinson, 2015, 130-136).

For victims seeking compensation from abusers, the cases *Nussbaum v. Steinberg* (1994) and *Chen v. Fisher* (2004) appear to be anomalies, the first because of the extent of the injuries, the second because of lack of general releases between divorcing parties (Levinson, 2015, 130-136). These cases have not acted as precedent to allow subsequent victims to successfully sue their abusers.

Arrest policies are of particular concern in domestic violence cases, because of the risk of continued violence against victims after they call law enforcement. The US has no federal DV arrest policy; 20 states allow the officer’s discretion in all cases; seven states mandate arrest in all cases, while the remaining states, including New York, have mixed policies (American Bar Association, 2011).

New York State mandates arrest in the case of probable cause to believe a felony or a violation of a protection order has taken place; arrest in cases in which there is probably cause to believe a violation or misdemeanor has been committed is discretionary (N.Y. Crim. Proc. Law § 140.10 (1) and (4)(a) and (b)). Since many DV-related offenses could be categorized as either misdemeanor or felony, this still leaves the officer discretion in deciding whether to arrest. To increase the chances of arrest, NYS has introduced new DV offenses, including “aggravated family offense,” whereby a misdemeanor may be treated as a felony in the context of previous misdemeanor or other wrongdoing (N.Y. Crim. Proc. Law §240.75).

New York State Domestic Violence Victimization Rates

While domestic violence rates across the US decreased significantly following enactment of the 1994 VAWA, at least according to one government study (Catalano, 2013), the same cannot be said of NYS DV rates, at least over the over the past ten years. In common with the US as a whole, however, DV in NYS is far more prevalent among minorities than among whites. The following is taken from the New York State Division for Criminal Justice Services (Fernandez-Lanier, 2017) and *New York City Domestic Violence Fatality Committee (2018):

- African American women are more likely to become a domestic homicide victim (40.9 percent) than Hispanic (20.4 percent) or Whites (34.3 percent) Notably, in view of concerns about the victimization rates of Native American women, this racial group is not singled out but included in “other” races.
- *In New York City, the ratio is 50.8 to 31.7 to 11.1 percent
- Domestic homicides increased by 20.2 percent from 2015 to 2016
- Non-domestic homicides declined by 1.2 percent
- The number of child victims increased by 20.8 percent
- Between 2007 and 2016 domestic homicides remained roughly level (135 and 137 deaths in those two years, with a peak at 171 in 2011).
- 61.3 percent of domestic homicide victims were female

As noted in the introduction, insufficient is known about reporting rates, and, in the case of NYS, it may be that significant public awareness raising has produced higher reporting rates, and that the incidence rate has decreased, rather than remained steady, over the past ten years.

Conclusion

The United States since 1994 and New York State since 1987 have formally recognized the individual and societal injury that domestic violence, and disproportionate violence against women in general, causes. These governments have committed funding and other resources toward tackling DV: laws recognizing violence against women and other minorities have expanded in terms of recognized offenses, increased penalties, survivor services, and public education and other prevention. Demand for services is up, suggesting increased public awareness of domestic violence as a wrong and of services for victims and families.

In terms of legal recourse for victims/survivors, the US and NYS continue to lack judicial tort remedies to hold perpetrators and public authorities charged with protecting citizens accountable. Emerging norms

surrounding the responsibility to exercise due diligence to protect citizens from domestic and other internal (to the country/state) call for such avenues to individual compensation and subsequent reforms to policy and practice as needed.

New York State should maintain its focus on DV and VAW policymaking and reform, including of judicial tort remedies for victims. The US should do likewise, and not only reauthorize VAWA 2015 but make it permanent, to ensure funding and demonstrate long-term political commitment to addressing these forms of violence. For the same reason, the US should ratify the 1979 CEDAW, and sign and ratify the 1994 IACPPEVAW.

For both the US and NYS, more research is necessary to verify the reported reductions in national domestic violence, and to explain the apparently stagnant rate in domestic violence across NYS. Reporting, arrest, prosecution and conviction/other remedy rates need to be distinguished to understand trends in these and all jurisdictions

A more significant challenge is under-funding, and while the NYS legislature, executive and judicial branches demonstrate stronger political commitment to addressing DV than their federal counterparts, NYS funding in this area is pitifully low. That said, neither the US [nor NYS] provide sufficient resources to address DV at its roots, embedded in patriarchal structures that continue to inhibit women's and other minority empowerment (Manjoo, 2014).

As Manjoo indicated in her 2014 response to the US refusal to take responsibility to protect its citizens from DV, societies that seek to eliminate such violence must:

- 1) treat women's [and all domestic violence victims'] rights as human rights, both universal and specific to this social group
- 2) recognize that violence against women [and other minorities] comes from "allowing other forms of discrimination and patriarchy to flourish"
- 3) provide services and legal remedies not only to individuals, but also undertake reform to address structural inequality affecting all minorities
- 4) analyze hierarchies not only between men and women but within the genders "to identify how discrimination affects women in different ways depending on how they are positioned within social, economic and cultural hierarchies, and incorporating this into anti-violence efforts."

If the US is "among the world's strongest protectors of victims of domestic abuse" (as quoted by Manjoo, 2014), these are the standards to which it should aspire, as should New York.

Such goals and methods may seem idealistic to some, but this author plans to continue research in this area. A possible next focus relates to the first policy proposal, above, of the Special Rapporteur on VAW: what is the significance of human rights discourse to DV protection and prevention? What is the significance of absence of such discourse in both US and NYS domestic violence policy and law?

Thank you for reading. JK.

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