

SPECIAL REPORT

A Culture of False Allegations: How VAWA Harms Families and Children

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Families are the cornerstone of an orderly, prosperous, and free society. Families provide the environment in which children are nurtured and protected. In all countries and cultures, families constitute an important social welfare net for its members.¹

Over the last 30 years, the American family has grown progressively weaker. Now, persons are far less likely to wed. From 1970 to 2002, the annual number of marriages dropped by 40%.² When persons do marry, their risk of divorce is almost 50%.

Non-marital births represent a growing concern. In 2004, a record high 1.5 million babies were born to single mothers, representing 35.7% of the total. Among Blacks, the number reaches 69.2%.³

Father absence is another indicator of family dissolution. Now, 34% of American children live away from their biological father, placing these children at higher risk for a broad range of social pathologies, including academic difficulties, conduct issues, and involvement with the criminal justice system.⁴

The Violence Against Women Act (VAWA) was first passed into law by President Bill Clinton in 1994 and was extended by George W. Bush for five more years in 2006. VAWA (and companion laws such as the Victims of Crime Act and Family Violence Prevention and Services Act) funnel about \$1 billion a year to provide victim services and enhance law enforcement efforts.⁵ The Violence Against Women Act has also spawned the passage of about 1,500 state-level laws.⁶

This Special Report analyzes how the Violence Against Women Act establishes the legal framework to create perverse incentives, make false claims of abuse, escalate partner conflict, and discourage partner reconciliation. The end result is to break up families and separate children from one of their parents.

Dynamics of Partner Abuse

Domestic violence programs often portray partner abuse as men assaulting their wives or girlfriends. This depiction is one-sided and misleading. Research reveals these dynamics of partner aggression:

- About two-thirds of partner abuse cases are *minor* (e.g., shoving, throwing a pillow), while the remaining one-third involve *severe* incidents (kicking, punching, and choking).⁷
- Men and women are equally likely to initiate and engage in partner aggression.⁸
- In about half or more of abuse cases, the aggression is mutual, meaning that there is no clear-cut initiator.⁹
- Due to differences in size and strength, women are more likely to be harmed during an altercation. Nonetheless, 38% of persons who suffer an injury from partner aggression are male.¹⁰

The following discussion details how VAWA weakens families and harms children.

Legal Framework

The nation's domestic violence laws create a legal framework that serves to facilitate allegations of abuse that often lead to family break-up and harm children. The framework has five components.

1. *Broad Definitions of Domestic "Violence"*

The Violence Against Women Act defines domestic violence this way:

"The term 'domestic violence' *includes* felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse,..."¹ [italics added]

Good laws rely on definitive and unambiguous definitions. But VAWA employs the vague term "includes," a word that opens the door to broad interpretations.

State legislatures have used that loophole to enact domestic abuse statutes that allow persons to claim they are merely "afraid" or "fearful" as the basis for a domestic restraining order. Now, 63% of all states' definitions of domestic abuse include psychological distress and 33% incorporate the ill-defined allegation "harassment."¹¹

The result is that in many states, almost any action, violent or not, can be construed as domestic "violence."

2. *Incentives to Make Allegations of Abuse*

State domestic violence laws provide for a variety of "remedies" to persons who claim to be abuse victims. These remedies, awarded as part of a restraining order, typically include sole control of the family residence and temporary custody of the children. Most states also allow for a broad range of other benefits, such as reimbursement for medical expenses, counseling costs, attorney's fees, and, in some cases, even punitive damages.¹²

These remedies are granted following a brief *ex parte* hearing. In many cases the defendant is not invited to present his side of the case, and indeed may not be aware that the hearing is taking place. Even though a final hearing is held 10–14 days later, such proceedings are considered by many to be a rubberstamp exercise.¹³

The allure of extensive remedies with minimal attention to due process protections and no penalties for perjury serves as a powerful incentive to make questionable allegations.

¹ 2005 Violence Against Women Act, Section 3(A)(6)

3. *Aggressive Law Enforcement and Prosecution Measures*

Communication break-downs and conflict are inherent in all human relationships. Most couples resolve misunderstandings on their own; police and legal intervention is seldom necessary. But most states have instituted intrusive pro-arrest or mandatory-arrest laws, even when a brief cooling-off period will suffice.¹⁴

Many jurisdictions have instituted “no-drop” prosecution policies. No-drop means that even if the alleged victim recants the allegation and requests that the case be dropped, the prosecutor must still pursue the case.

These programs operate under the doubtful assumption that most partner conflict requires heavy-handed legal intervention.

4. *Child Custody Laws*

Domestic violence advocates have pushed to enact laws that govern how allegations or findings of domestic violence should be considered in making determinations of child custody. Twenty-six states require the divorce court to regard domestic violence as a “best interest of the child” consideration, 23 jurisdictions have a rebuttable presumption against shared parenting, and four states have an outright prohibition on shared parenting in such cases.¹⁵

At first these may appear to be reasonable provisions, until one begins to consider the previously discussed problems of open-ended definitions and perverse incentives. For example, the Kentucky statute defines domestic violence as:

“physical injury, serious physical injury, sexual abuse, assault, or the infliction of *fear* of imminent physical injury ... between family members or members of an unmarried couple.”¹⁶ [italics added]

The law also governs the impact of DV allegations on visitation arrangements:

“If domestic violence and abuse, as defined in KRS 403.720, has been *alleged*, the court shall, after a hearing, determine the visitation arrangement, if any, which would not endanger seriously the child’s or the custodial parent’s physical, mental, or emotional health.”¹⁷ [italics added]

Thus simply claiming to be fearful may be sufficient to remove the other parent’s child visitation rights.

5. *Politicization of the Judiciary*

One might expect the judiciary to serve as a buffer against unfounded claims of partner abuse. But the Violence Against Women Act funds judicial education programs that have been shown to be ideological and one-sided.¹⁸ Rather than helping judges to balance the

legitimate needs of the accuser with the due process rights of the accused, the training sessions do the opposite, instructing judges to grant a restraining order if there is “any hint whatsoever that there’s a problem.”¹⁹

At one New Jersey program, a trainer openly advised judges to ignore due process protections: “Your job is not to become concerned about all the constitutional rights of the man that you’re violating as you grant a restraining order. Throw him out on the street, give him the clothes on his back, and tell him, ‘See ya’ around.”²⁰

The Judiciary of Rhode Island has a web page that explains, “Domestic violence is not just a shame ... It’s a crime.” The page then lists several criteria for DV, including: “Are you concerned about your relationship?” and “Does your partner tell you what to do?”²¹

The Rhode Island Judiciary apparently believes that’s domestic violence.

False Allegations of Domestic Violence

These five factors—broad definitions, powerful incentives, aggressive law enforcement and prosecution efforts, laws that link child custody to domestic violence charges, and the politicization of the judiciary—create a nexus that gives rise to all-too-common allegations of domestic “violence” in which no violence actually occurred.

Criminal Law

Each year about one million persons are arrested under criminal law for intimate partner violence,² of whom 77% are male.²² A disproportionate number of arrestees are Black.²³ One report by the Ms. Foundation for Women expressed the concern that overly aggressive law enforcement has led to “mass incarceration of men, especially young men of color, decimating marginalized communities.”²⁴

Many persons assume a criminal charge of domestic violence involves an actual assault. But about one-third of domestic violence criminal prosecutions do not arise from a physical attack. One analysis in New York City found that 15% of the cases that went to criminal court involved criminal contempt (typically arising from restraining order violations) and 20% included crimes such as harassment, criminal mischief, and larceny.²⁵

² According to the FBI National Incident-Based Reporting System, 106,962 persons (58,113 spouses and 48,849 boyfriends/girlfriends) were arrested for violent crimes in 2000 (as reported by Durose et al, 2005, Table 5.8). This number is an underestimate for two reasons: 1. It does not include divorced couples, which account for about 18% all intimate partner violence (as reported by Catalano S, 2006). 2. The NIBRS receives data from only one-quarter of law enforcement agencies in the United States, which collectively have jurisdiction over 13% of the crime. Therefore it is calculated that 1,003,392 persons are arrested each year for intimate partner violence: $106,962/0.82 = 130,441$ persons from areas covered by reporting agencies; $130,441/0.13 = 1,003,392$ total.

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It is not known how many domestic violence arrests involve allegations that are frivolous or false, but one former DV prosecutor in Georgia wrote, “As politically incorrect as it is to say, many women file charges against boyfriends/spouses on a routine basis, and then recant the charges when the cases come to trial. Some of the alleged perpetrators are really guilty, and [a] *very large percentage (though not majority) are not guilty of anything except making the woman in their life angry.*”²⁶ [italics added].

Or a person can be arrested for simply acting in self-defense:

*Lisa Ortiz attacked her boyfriend, Baltimore Orioles pitcher Scott Erickson, by throwing objects at him. To protect himself, Erickson carried Ortiz out of his apartment. Even though Ortiz suffered no injuries, the police arrested Erickson. Ortiz later admitted that Erickson “has never been physically abusive toward me, and in no way do I feel threatened or have I felt fear from Scott.”*²⁷

A vindictive motive can be discerned in some cases:

*“Sally” of Vallejo, California, had been ordered by the court to vacate the family home. But the day she was supposed to move out, she accused her husband “Joe” of pushing her. Joe spent the night in jail. The judge later dismissed the charges. “Even the cop was apologetic,” said Joe. “She told me she didn’t believe (my wife), but that she had to arrest me because the accusation had been made.”*²⁸

Two New York City attorneys have claimed the local police policy is to “arrest everyone and let the prosecutor sort ‘em out.”²⁹ Whatever happened to the legal requirement for “probable cause”?

Thus, a significant number of criminal prosecutions for domestic violence do not include any allegation of physical “violence,” and some claims are actually frivolous and false.

Civil Law

It has been noted that allegations of domestic violence tend to cluster around partners with children and no prior history of violence.^{30,31,32} Such domestic violence allegations are made to gain a legal advantage during a divorce proceeding, many believe. With remarkable candor, one legal expert advised, “With child abuse and spouse abuse you don’t have to prove anything. You just have to accuse.”³³

These tactics have become so widespread that divorce lawyers euphemistically refer to them as “silver bullets,” “slam-dunks,” or “divorce planning.” Legal commentators have expressed alarm over the perversion of justice:

- Elaine Epstein, former president of the Massachusetts Bar Association, once revealed, “Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply... In many cases, allegations of abuse are now used for tactical advantage.”³⁴

- In California, the State Bar admits that protective orders are “almost routinely issued by the court in family law proceedings, even when there is relatively meager evidence and usually without notice to the restrained person...it is troubling that they appear to be sought more and more frequently for retaliation and litigation purposes.”³⁵
- New Jersey attorney David Heleniak sums up the process this way: “In ten days, the hypothetical husband has gone from having a normal life with a wife, children and home to being a social pariah, homeless, poor, and alone, trapped in a Kafkaesque nightmare.”³⁶

By any common-sense definition, “violence” involves the perpetration of a physical assault that may result in injury. Each year 2–3 million civil restraining orders are issued in the United States. But analyses by the Massachusetts Trial Court and others reveal that half of those orders are not based on even an *allegation* of physical violence.³⁷

Thus each year, at least one million civil restraining orders are issued without any allegation of violence - often with serious consequences for families and children.

Impact on Families

The current epidemic of domestic violence claims weakens the American family by promoting family dissolution and discouraging men from marriage.

Family Dissolution

Our nation’s domestic violence system often portrays intact families as violent, escalates partner conflict, imposes separation, thwarts reconciliation, leads to divorce, and blocks pro-family reform.

1. Portrays Intact Families as Violent: According to the Department of Justice, only 2% of DV incidents involve currently married couples who live together.³⁸ But the domestic violence industry often makes dishonest claims such as, “women are safer in the streets than they are in their own homes.” Likewise, training videos and TV documentaries (such as Lifetime’s “Terror at Home”) often depict domestic violence as a problem mostly of married couples.

2. Escalates Partner Conflict: In the past, police intervention encouraged the parties to calm down and make amends. But now, a call to the police has the opposite effect. One former prosecutor in Ohio notes, “In the past the officers would intervene or separate the parties to let them cool off. Now these cases end up in criminal courts. It’s exacerbating tensions between the parties, and it’s turning law-abiding citizens into criminals.”³⁹

Indeed under the laws of most states, any marital tiff can be considered domestic “abuse”⁴⁰ and a single incident of physical aggression can be deemed to be full-scale battering. “There are cases of pushing and shoving that are treated like crimes of the

century,” relates California attorney John Digicanto.⁴¹ Thus, state intrusion into the matter only serves to heighten the dispute.

3. Imposes Separation: One California assistant public defender complains that “the district attorney pushes a particular point of view: separation.”⁴² Likewise, women’s shelters, sometimes criticized as “one-stop divorce shops,” discourage clients from reuniting with their partners, even when the abuse is minor.⁴³

One woman’s account illustrates how a shelter’s false police report impacted the family:

Following several heated arguments with her husband, Susan went to her local shelter for get counseling for herself. She emphasized to the shelter worker there had been no physical violence.

Nonetheless, the shelter called the police. The police report stated—falsely—that Susan’s husband had threatened to rape her and to kill the children. As a result, the husband was ordered out of his house.

Two days later, the Child and Protective Services worker came to the house and detained the children, claiming the mother had not adequately protected her children. The children were placed in foster care for 38 days.

Then Susan’s husband was arrested and bail was set at \$350,000. Because he worked as a truck driver, he couldn’t afford an attorney. So he agreed to a plea bargain with 3 years probation—even though no physical violence had ever occurred.⁴⁴

4. Thwarts Reconciliation: VAWA-endorsed treatment programs likewise stymie reconciliation. One analysis of 30 states that have implemented standards for offender treatment programs found that 42% of states actually prohibit couple’s counseling.⁴⁵

A study by the National Institute for Justice observed, “Restrictions on couples therapy and individual psychotherapy for battering are a point of contention between feminist-oriented batterer intervention providers and mental health providers in many communities.”⁴⁶

5. Leads to Divorce: As a result of aggressive law-enforcement and prosecution efforts, our nation’s domestic violence system amounts to “state-imposed *de facto* divorce,” explains Harvard Law School professor Jeannie Suk.⁴⁷ The government “initiates and dictates the end of the intimate relationship as a solution to DV.”

6. Blocks Pro-Family Reform: Efforts to reform divorce laws or promote marriage are often opposed by domestic violence industry advocates at both the state and national levels.^{48,49}

Men Reluctant to Commit

Most young women hope to eventually settle down and get married. But given the number of fathers who have lost their homes and children to false allegations of domestic

violence, it is not surprising that many single men are now opting to forego family life altogether.

According to a national Rutgers University survey, 22% of single heterosexual American men 25–34 years old indicate that they do not plan to ever marry. And 53% of these men say that they are “not interested in getting married anytime soon.”⁵⁰

These figures translate into many millions of families that will never come into existence. In sum, there is very little that is family-friendly in our nation’s domestic violence system.

Effects on Children

More than one million American children experience divorce each year.⁵¹ How often is a false allegation of DV made during the course of the divorce proceeding?

One study of divorcing couples with custody disputes found that DV allegations were made in 55% of the cases, 59% of which could not be substantiated as true.⁵² Thus, each year, many thousands of children experience divorces in which false allegations of partner violence are made, allegations that often serve as the basis to deprive children of contact from one of their parents.

Even after the divorce, allegations of domestic abuse may be used to separate children from a parent:

My ex-wife used a domestic violence charge against me so that she could take the children out of state. It worked great for her. The judge automatically granted a restraining order so that I had to stay away from her and my children (no more visits with my children). My ex-wife had no proof and actually told the judge that I was OK but she didn’t like my [new] wife.

After a year and 25K in expenses, and almost losing my job and my license for being an accused domestic violence offender, I gave in and let her take my children out of state. And she agreed to drop the charges.⁵³

The all-too-common result of these laws is a weakening or severing of the child-parent bond. “I’ve run into hundreds of fathers who’ve been falsely accused of domestic violence and can’t see their children because of it,” notes one shared-parenting proponent.⁵⁴ These non-custodial fathers experience a range of emotional and psychological problems, ranging from a sense of displacement and loss, depression, and even suicide.⁵⁵

Four decades ago, Daniel Patrick Moynihan foresaw the impact of fatherless families:

From the wild Irish slums of the 19th century eastern seaboard to the riot-torn suburbs of Los Angeles, there is one unmistakable lesson in American history:

A community that allows a large number of young men to grow up in broken families, dominated by women, never acquiring any stable relationship to male authority, never acquiring any rational expectations about the future—that community asks for and gets chaos.

Moynihan's prediction is now confirmed by dozens of studies that gauge the effects of separating children from their fathers.⁵⁶ These are some highlights:

Child Abuse

As discussed above, most states have enacted laws that restrict shared parenting, based on the belief that abusive husbands are also likely to be abusive fathers. However, the advocates of such laws rarely mention that the perpetrators of child mistreatment and homicide are more likely to be mothers than fathers—not because women are more abusive, but because single parents, who are usually mothers, lack the social supports that intact families have.⁵⁷

Extensive research shows that when a couple separates, the risk of physical and sexual child abuse increases dramatically. For example, one national survey found that 7.4% of children who lived with one parent had ever been sexually abused, compared to only 4.2% of children living with both parents.⁵⁸

The most recent National Incidence Study (NIS) of Child Abuse and Neglect found that, compared to children living with both parents, children living with a single parent were placed at substantially higher risk of abuse.⁵⁹ These children have a:

- 64% greater risk of experiencing emotional neglect
- 165% greater risk of experiencing physical neglect
- 77% greater risk of being harmed by physical abuse
- Approximately 80% greater risk of suffering *serious* injury or harm from abuse or neglect

But these statistics actually *understate* the risk, because the NIS combines co-habiting and married parents into one group—and child abuse is substantially higher among co-habiting parents.

A better gauge of the risk that single parenthood places on children comes from a large British study. The research found that, compared to married biological parents, children with single mothers have a 14-fold higher risk of experiencing *serious* child abuse, and a 7-fold higher risk of suffering *fatal* child abuse.⁶⁰

Other Indicators of Child Welfare

Children who live apart from their fathers are at risk for a broad range of social pathologies, including educational, behavioral, and health problems:

School performance:

- Academic performance: A study of Black children ages 6–9 showed that children living with both parents scored significantly higher on tests of intellectual ability than children in mother-only households.⁶¹
- School drop-out rates: Fatherless children are twice as likely to drop out of school.⁶²
- School disciplinary problems: Only 13% of 6th to 12th graders living with both parents have had behavior problems that resulted in suspension or expulsion, compared to 27% who lived in mother-only families.⁶³

Behavioral issues:

- Among young adolescents, only 10% living with both parents had had sexual relations, compared to 23% who lived with a single mother.⁶⁴
- Suicide: Only 9% of high school students from intact families reported suicidal behavior, compared to 20% of teens from single-parent homes.⁶⁵

Health:

- Injuries: A study of 17,110 children showed that children who lived with their divorced mothers had risks of injury that were 20–30% higher than children who lived with both biological parents.⁶⁶
- Longevity: Children who experienced parental divorce had a lifespan 4 years shorter than children who did not experience divorce.⁶⁷

Poverty:

- In 1999, the poverty rate for children living in single-mother families was 50%, compared to only 9% of children in married-couple families.⁶⁸
- During the first 4 months of a father's absence, the chances that the child's family would fall below the poverty line increased from 18.5% to 37.6%.⁶⁹
- Of all children in TANF (Temporary Assistance to Needy Families) families, 71.8% lived with a single parent in 1998.⁷⁰

Crime:

- Juvenile delinquency: The chances that a young male will engage in criminal activity doubles if he is raised without a father.⁷¹
- Violent crime: Low percentages of father-absent households were associated with lower rates of homicide among black and white men.⁷²

Children are our Future

Tim Russert, former moderator of NBC's Meet the Press, wrote a sleeper best-seller. *Wisdom of Our Fathers* consists of dozens of poignant letters from children to their fathers.⁷³ Most letters are edifying, some are amusing, a few are sad. All of them drive home the same essential message: children need and want their fathers.

Some may dispute the value of aggressive law enforcement measures. Many believe that restraining orders are ineffective and even counter-productive. And there may be controversy as to whether the Violence Against Women Act can be credited for reducing overall levels of partner abuse.

But there can be little doubt that VAWA has contributed to our culture of false allegations. Each year, at least one million false allegations of domestic violence are made, often in the context of a divorce.

The resulting separation of children from one of their parents is linked to higher child abuse rates and the worsening of a broad range of indicators of child well-being. Any society that aspires to survive and prosper must be careful to place our children first.

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