
Volume 18 | Issue 1

2014

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Recommended Citation

Ann Cammett, *VAWA @ 20: VAWA and Welfare Reform: Criminalizing the Most Marginalized Women*, 18 CUNY L. Rev. (2014).

Available at: <https://academicworks.cuny.edu/clr/vol18/iss1/21>

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CUNY Law Review Footnote Forum

November 21, 2014

Recommended citation:

Ann Cammett, *VAWA @ 20: VAWA and Welfare Reform: Criminalizing the Most Marginalized Women*, 18 CUNY L. REV. F. 67 (2014),

<http://www.cunylawreview.org/vawa-20-vawa-and-welfare-reform-criminalizing-the-most-marginalized-women-by-ann-cammett/> [<https://perma.cc/CAD7-HF2Y>].

VAWA @ 20: VAWA AND WELFARE REFORM: CRIMINALIZING THE MOST MARGINALIZED WOMEN

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INTRODUCTION

The Violence Against Women Act (VAWA), originally passed by Congress as part of the Violent Crime Control and Law Enforcement Act of 1994,¹ was intended to provide federal intervention into the problem of pervasive gender violence. Soon after VAWA's enactment, however, national welfare reform legislation, along with a skyrocketing rate of female incarceration, served to undermine the aspirational goals of VAWA for the most marginalized victims—poor women. Therefore, the enactment of VAWA must be viewed in the political context of conservative retrenchment into law and order policies and the elimination of the social safety net.

WELFARE REFORM

Before VAWA, feminist advocates in the 1970s developed a strategic network of services for battered women to help them procure public benefits in order to gain independence from intimate partners who often blocked access to resources.² This strategy was predicated on the common sense notion that economic freedom was a critical element in rebuilding the lives of victim/survivors and their children. Domestic violence was, and is, a primary cause of homelessness.³ In addition to shelter arrangements, the

¹ P.L. 103-322 (1994).

² Christine George, *Welfare Reform and the Safety Needs of Battered Women*, in *THE PROMISE OF WELFARE REFORM: RHETORIC OR REALITY?* 184 (K. M. Kilty & E. Segal, eds., 2006).

³ ACLU Women's Rights Project, *Domestic Violence and Homelessness* (2006),

provision of food stamps, Medicaid, and public assistance—then called Aid to Families with Dependent Children or AFDC—were important stepping-stones toward financial independence for battered women. However, less than two years after the original VAWA legislation President Bill Clinton also signed into law the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA),⁴ fulfilling his pledge to “end welfare as we know it.”⁵ The new legislation abolished AFDC and replaced it with Temporary Aid To Needy Families (TANF), a time-limited, discretionary state block program that sharply curtailed or denied benefits to many women, including noncitizens. Propelled by racialized rhetoric framing welfare as a “culture of dependency” that discouraged work among poor mothers, politicians successfully sought to stoke white resentment to shred the social safety net.⁶ When the dust cleared, welfare was no longer an entitlement and TANF did not guarantee enough income to keep families out of dire poverty.⁷

The weakened social safety net had particularly dire consequences for women attempting to separate from domestic violence situations. Apart from an emphasis on work to the exclusion of nearly all other activities, PRWORA institutionalized a reactionary vision of family construction. Central to the logic of welfare reform is “marriage promotion”—the preferred solution to poverty, which is clearly laid out in the legislation. In fact, PRWORA itself exalts the heteronormative family as a policy prerogative, as indicated in Congressional findings on the importance of marriage and two-parent households.⁸ In the absence of reconstituting a

available at <https://www.aclu.org/sites/default/files/pdfs/dvhomelessness032106.pdf>.

⁴ P. L. 104-193 (1996).

⁵ William J. Clinton, Op-Ed., *We Ended Welfare Together*, N.Y. TIMES, Aug. 22, 2006, available at <http://www.nytimes.com/2006/08/22/opinion/22clinton.html>.

⁶ I have developed this concept much more in a separate paper. See Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C.J.L. & SOC. JUST. 233 (2014), available at <http://lawdigitalcommons.bc.edu/jlsj/vol34/iss2/3>.

⁷ See Jason DeParle, *Welfare Limits Left Poor Adrift as Recession Hit*, N.Y. TIMES, Apr. 7, 2012, available at <http://www.nytimes.com/2012/04/08/us/welfare-limits-left-poor-adrift-as-recession-hit.html?pagewanted=all> (The women that DeParle interviewed “have sold food stamps, sold blood, skipped meals, shoplifted, doubled up with friends, scavenged trash bins for bottles and cans and returned to relationships with violent partners—all with children in tow.”)

⁸ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 101, 110 Stat. 2105 (1996). (“Findings: The Congress makes the following findings:

- (1) Marriage is the foundation of a successful society.
- (2) Marriage is an essential institution of a successful society which promotes the interests of children.
- (3) Promotion of responsible fatherhood and motherhood is integral to successful child rearing and the well-being of children.

two-parent household through marriage promotion, PRWORA requires women to participate in paternity establishment and child support enforcement in order to aggressively transfer the obligation of support for very poor children from the state to “absent” parents, usually fathers.

In this gendered framework, it is easy to imagine why meeting enhanced requirements for necessary benefits would be even more onerous for women fleeing marriages or relationships plagued by intimate partner violence. For example, these women often have difficulty fulfilling work requirements given the other immediate priorities that dovetail with their safety needs, including safe housing and the need to manage altered childcare and school responsibilities. To this end advocates fought for, and obtained, important exemptions and specialized services for victims of domestic violence.⁹ Specifically, the Family Violence Option (FVO) gives states the option to screen recipients for domestic violence and to grant exemptions from work and paternity/child support enforcement.¹⁰ However, while these provisions have mitigated the impact of PWRORA for many women, their limited scope, haphazard application, local implementation problems, and even caseworker hostility have left a weakened system of support for many battered women.¹¹ These problems undermine the intent of VAWA, and put pressure on some women to return to dangerous and unhealthy relationships, as they often are compelled to make choices between survival and punitive state regulation.

THE CRIMINALIZATION OF POOR WOMEN

When welfare reform was signed into law there was vigorous debate about the historic gutting of the longstanding entitlement program, but one very significant portion of the legislation received far less attention at the time: the felony drug ban on welfare benefits.¹² While Congress did allow

(4) In 1992, only 54 percent of single-parent families with children had a child support order established and, of that 54 percent, only about one-half received the full amount due. Of the cases enforced through the public child support enforcement system, only 18 percent of the caseload has a collection.

(5) The number of individuals receiving aid to families with dependent children (in this section referred to as “AFDC”) has more than tripled since 1965. More than two-thirds of these recipients are children. Eighty-nine percent of children receiving AFDC benefits now live in homes in which no father is present.”);

See also Ann Cammett, *Deadbeats, Deadbrokes, and Prisoners*, 18 GEO. J. POVERTY L. & POL’Y 127 (2011).

⁹ See George, *Welfare Reform and the Safety Needs of Battered Women*, *supra* note 2, at 185.

¹⁰ *Id.*

¹¹ *Id.*

¹² 21 U.S.C.A. § 862(a).

for modification or opt-out for the states,¹³ PRWORA imposed a lifetime denial of federal welfare benefits on people convicted of felony drug-related crimes.¹⁴ This aspect of welfare reform serves as a significant barrier for survivors of intimate partner violence because of the very strong correlation between exposure to domestic and sexual violence, women's criminality, and the "war on drugs."

The so-called war on drugs had a radical negative effect on communities of color generally, but especially on women. The exponential growth of women's incarceration in the 1980s and 1990s¹⁵ is directly tied to prosecutions for drug offenses, which are also linked to extremely high percentages of co-recurring domestic violence. Researchers consistently have found high levels of past and current physical and emotional abuse in the lives of women drug abusers.¹⁶ For instance, by some accounts more than seventy-five percent of incarcerated women report histories of severe physical abuse by an intimate partner during adulthood, and eighty-two percent suffered serious physical or sexual abuse as children prompting, for many, illegal drug use as a form of self-medication.¹⁷ While VAWA funding has encouraged efforts to recognize and address domestic violence, the Correctional Association aptly notes that, "[t]he large numbers of survivors in prison represents a failure of both the criminal justice and social service systems."¹⁸ Stated differently domestic violence serves as a risk factor for women's incarceration, which should be directly confronted to alleviate unnecessary suffering.

As such, the felony drug ban has an outsized impact on poor women who are recovering from both drug abuse and domestic violence. The

¹³ States can opt out of the complete lifetime ban, modify it, or adopt it in its entirety. To date nearly three quarters of states have adopted some form of restriction. See Marc Mauer & Virginia McCalmont, *A Lifetime Of Punishment: The Impact Of The Felony Drug Ban On Welfare Benefits*, THE SENTENCING PROJECT (2013), available at http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf.

¹⁴ *Id.*

¹⁵ The number of women in prison increased by 646% between 1980 and 2010, rising from 15,118 to 112,797. See Paul Guerino, Paige M. Harrison & William J. Sabol, Bureau of Justice Statistics, *Prisoners in 2010* (2011), available at <http://www.bjs.gov/content/pub/pdf/p10.pdf>.

¹⁶ See AM. CIVIL LIBERTIES UNION, *BREAK THE CHAINS: COMMUNITIES OF COLOR AND THE WAR ON DRUGS, AND THE BRENNAN CENTER AT NYU SCHOOL OF LAW, CAUGHT IN THE NET: THE IMPACT OF DRUG POLICIES ON WOMEN AND FAMILIES* 9 (2005).

¹⁷ See Correctional Association of New York, *Survivors of Abuse and Incarceration* <http://www.correctionalassociation.org/issue/domestic-violence>, last visited Nov 5, 2014.

¹⁸ "Some women are in prison for defending themselves against an abuser. Others are incarcerated because they engaged in criminal activity to survive or because they took action at the behest of an abuser out of fear and threat of harm." Correctional Association of New York, *Survivors of Abuse and Incarceration Fact Sheet* (April 1, 2009), <http://www.correctionalassociation.org/resource/survivors-of-abuse-in-prison-fact-sheet>.

number of victims affected by the ban is substantial. According to the Sentencing Project, the felony drug ban has likely affected hundreds of thousands of women over the course of their lifetimes, well after most will have completed serving their felony sentences.¹⁹ Moreover, the felony drug ban operates in tandem with a host of other civil collateral consequences²⁰ that women face after a criminal conviction, creating obstacles to both freedom from abuse and successful reintegration.

CONCLUSION

While we celebrate the important successes of VAWA on its 20th anniversary—especially the expansion of protections and resources to underserved groups—we should undertake a critical assessment of how welfare reform and the escalating criminalization of poor women limited the contours of service delivery to some victims from the outset. The prevalence of incarcerated survivors of violence demonstrate the importance of acknowledging, prioritizing and providing responsive services to survivors of domestic violence who also have criminal records related to their victimization.

* * *

¹⁹ See Mauer & McCalmont, *supra* note 13, at 4.

²⁰ COLGATE LOVE, MARGARET, JENNY ROBERTS & CECELIA KLINGELE, *COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS: LAW, POLICY AND PRACTICE* § 9:10 (NACDL Press & Thomson Reuters Westlaw 2013).