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## When It Rains, It Pours: The Violence against Women Act's Failure to Provide Shelter from the Storm of Domestic Violence.

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## COMMENTS

### WHEN IT RAINS, IT POURS: THE VIOLENCE AGAINST WOMEN ACT'S FAILURE TO PROVIDE SHELTER FROM THE STORM OF DOMESTIC VIOLENCE

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I. INTRODUCTION

On September 17, 2008 . . . a woman decided to stay with her abuser because her only other choice was to be homeless.<sup>1</sup>

At seventeen years old, Latanya had her first child and dropped out of high school.<sup>2</sup> Becoming a teenage mother was the first of many challenges in Latanya’s adult life, and years later she became a victim of domestic violence while struggling to find stable housing.<sup>3</sup>

For the first five years of the baby’s life, Latanya lived with the child’s father. After five years, the relationship deteriorated, and Latanya found housing funded by the U.S. Department of Housing and Urban Development (HUD).<sup>4</sup> Latanya lived in HUD housing until she met a new boyfriend, Emil. Soon after moving in with Emil, he began to violently

1. THE NAT’L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS 2008: A 24-HOUR CENSUS OF DOMESTIC VIOLENCE SHELTERS AND SERVICES 2 (2008), available at <http://www.nnedv.org/resources/census/census-2008-report.html> (select Full Report “in color” hyperlink) [hereinafter CENSUS OF DOMESTIC VIOLENCE]. The National Network to End Domestic Violence conducted a census on September 17, 2008, surveying “[seventy-eight percent] of identified domestic violence programs in the United States.” *Id.* at 1. The census also reported “8,927 requests for services went unmet because of a lack of resources.” *Id.* at 3.

2. Jean C. Williams, *Domestic Violence and Poverty*, 19 FRONTIERS 143, 149 (1998). Williams conducted a study of domestic violence and homeless shelters in Phoenix, Arizona from 1994 to 1996. *Id.* at 145. The research included interviews with thirty-three homeless women, reviews of fifty case files, and observations in various shelters of fifty residents and their caseworkers. *Id.*

3. *Id.* at 149–50.

4. See *Greetings from the Secretary*, HUD.GOV, <http://portal.hud.gov/hudportal/HUD?src=/hudprograms> (last visited Mar. 16, 2012) [hereinafter *Greetings from the Secretary*] (offering a program that provides government housing in a variety of forms, including Housing Choice Vouchers for disabled individuals, project-based Section 8, and Public Housing programs).

HUD’s mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination; and transform the way HUD does business.

*Mission*, HUD.GOV, <http://portal.hud.gov/hudportal/HUD?src=/about/mission> (last visited Mar. 16, 2012).

attack Latanya, physically abusing her.<sup>5</sup> Latanya escaped Emil by going to live at a domestic violence shelter, Rose's House. Unfortunately, Rose's House, like many battered women's shelters, limits the length of victims' residency.<sup>6</sup> Latanya applied for subsidized housing during the three-month time period that she was allowed to stay at Rose's House. She was placed on a two-year waiting list, with no immediate answer to her impending homelessness.<sup>7</sup> Women who are given a choice between homelessness and returning to their abuser's home most often choose to seek shelter at their abuser's home—"shelter" in a violent and abusive environment.<sup>8</sup> Latanya and her son faced the high likelihood of returning to Emil's violent home, despite the threat of abuse, because of the lack of shelter alternatives.<sup>9</sup>

Whether it is a personal story of abuse and survival or the abuse of a family member, friend, or acquaintance, domestic violence touches al-

5. Williams, *supra* note 2, at 150.

6. *Id.* at 162. The time limit for domestic violence shelter is often limited to somewhere between thirty days and three months. *Id.* at 143, 162. Following the thirty days, women may choose to transition to a homeless shelter, which problematically do not provide programs specially tailored to domestic violence victims. *Id.*

7. *Id.* at 150. The "Housing Choice Voucher Program" is the federal program that provides Section 8 housing to low-income families, the disabled, and the elderly. *Housing Choice Vouchers Fact Sheet*, HUD.GOV, [http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8) (last visited Mar. 17, 2012). Section 8 housing vouchers are administered locally by public housing agencies, which receive funding from HUD. *Id.* Women like Latanya can utilize this program to gain public housing, but there are often lengthy waiting lists. According to the Maricopa County (which encompasses the city of Phoenix) website on subsidized housing, it takes "several years" to receive a Section 8 voucher, and "as little as [six] months" to receive a Public Housing voucher. *FAQ: General Eligibility and Wait List Questions*, HOUS. AUTH. OF MARICOPA CNTY., <http://www.maricopahousing.org/faq/faqg.htm> (last visited Mar. 17, 2012).

8. See AMY CORREIA & ANNA MELBIN, HOUS. COMM. OF THE NAT'L TASK FORCE TO END SEXUAL & DOMESTIC VIOLENCE, TRANSITIONAL HOUSING SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE 2-3 (Nov. 2005), available at [http://new.vawnet.org/Assoc\\_Files\\_VAWnet/TransHousingServices.pdf](http://new.vawnet.org/Assoc_Files_VAWnet/TransHousingServices.pdf) ("Without access to housing options, women fleeing from abusive relationships are often forced to live in substandard conditions or return to their batterers."). Approximately twenty-five percent (27 of 107) women will end their abusive relationship due to assistance from shelter housing. Sharon A. Chanley et al., *Providing Refuge: The Value of Domestic Violence Shelter Services*, 31 AM. REV. PUB. ADMIN. 393, 402 (2001) available at [www.chanley.org/value%20of%20shelter%20services.pdf](http://www.chanley.org/value%20of%20shelter%20services.pdf).

9. For example, an alternative to HUD housing might be through a transitional housing program associated with Rose's House, or through another local emergency battered women's shelter. If Latanya does return to Emil, she will face the increased danger of "separation violence," which occurs when a victim attempts to leave her abuser. Chanley et al., *supra* note 8, at 406. "[W]omen are at the greatest risk of serious injury or death when they are ending an abusive relationship . . ." *Id.*

most all lives in some way.<sup>10</sup> There is no zip code, socioeconomic level, nor education level that isolates women from the threat of abuse.<sup>11</sup> For centuries, women were second-class citizens in the eyes of society and the government. Left without empowering resources to prevent violence, women were also denied essential victim services.<sup>12</sup> With the passage of the Violence Against Women Act (VAWA), 1994 brought about significant changes to the status quo; this legislation expressed the federal government's commitment to ending domestic violence, sexual assault, stalking, and other gender-based, violent crimes.<sup>13</sup> While VAWA has im-

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10. See Kit-Bacon Gressitt, *Domestic Violence Awareness Month Welcomes with Rape "Jokes" at CSUSM*, CALL OUT THE KOALA (Oct. 2, 2011), <http://calloutthekoala.com/2011/10/02/domestic-violence-awareness-month-welcomed-with-rape-jokes-at-csusm/> (stating that one of four women you know will be a victim of domestic violence at some point in their lives). The National Network to End Domestic Violence's yearly census reported 70,648 victims were served in just one day in 2010, which implies that over 25 million domestic violence victims request services in the United States each year. CENSUS OF DOMESTIC VIOLENCE, *supra* note 1, at 6.

11. See *Who Is Affected by Domestic Violence?*, NEV. ATT'Y GEN., <http://ag.state.nv.us/victims/dv/nv/affected.html> (last visited Mar. 17, 2012) (describing domestic violence as "transcend[ing] all boundaries: age, gender, race, ethnic, geographical, economic and sexual orientation"). Abuse also comes in a variety of forms, from physical and sexual, to psychological, all of which can have drastically detrimental effects on victims. NICKY A. JACKSON, *ENCYCLOPEDIA OF DOMESTIC VIOLENCE* 67–68 (Tod W. Burke et al. eds., 2007).

12. JACKSON, *supra* note 11, at 60. The author writes that:

In 1974, Judge Marjory D. Fields, a former legal-aid attorney at the Brooklyn Legal Services Corporation, discovered that a large number of her clients had called the police after being battered by their husbands or ex-husbands. However, the police frequently refused to respond to these emergency calls, viewing each situation as a private family conflict rather than an illegal act.

*Id.*

13. CLAIRE M. RENZETTI ET AL., *SOURCEBOOK ON VIOLENCE AGAINST WOMEN* 279 (2001). The definitions of domestic violence, sexual assault, stalking, and gender-based crimes of violence vary slightly from source to source, but a fairly uniform definition can be given for each. Domestic violence is sometimes called "Intimate Partner Violence" (IPV), and "includes rape, physical assault, and stalking perpetrated by a current or former date, boyfriend, husband, or cohabiting partner, with cohabiting meaning living together as a couple. Both same-sex and opposite-sex cohabitants are included in the definition." *CTR. FOR DISEASE CONTROL & PREVENTION, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES* 8 (Mar. 2003), available at <http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf> [hereinafter *COSTS OF INTIMATE PARTNER VIOLENCE*]. "Sexual Assault" can be a combination of the definition of "rape": "the use of force, without the victim's consent, or threat of force to penetrate the victim's vagina or anus by penis, tongue, fingers, or object, or the victim's mouth by penis." *Id.* The definition includes both attempted and completed acts. *Id.* "Physical assault" is defined as:

[A]ny behavior that inflicts physical harm or threatens or attempts to do so. Specific behaviors include throwing something at the victim; pushing, grabbing, or shoving; pulling hair; slapping, hitting, kicking, or biting; choking or trying to drown; hitting

proved awareness, prevention, and services,<sup>14</sup> violence against women continues to be pervasive, devastating women's lives on a daily basis.<sup>15</sup> VAWA has fallen short of its commitment to combat domestic violence,<sup>16</sup> and improvements to VAWA could bring the United States significantly closer to being free of widespread gender-based crimes.<sup>17</sup>

Victims of domestic violence face a number of issues, including, but not limited to: protecting children from abuse, finding and securing emer-

with an object; beating up the victim; threatening with a gun or knife; and shooting or stabbing the victim.

*Id.* "Stalking" is defined as follows:

Stalking is repeated visual or physical proximity, non-consensual communication, and/or verbal, written, or implied threats directed at a specific individual that would arouse fear in a reasonable person. The stalker need not make a credible threat of violence against the victim, but the victim must experience a high level of fear or feel that they or someone close to them will be harmed or killed by the stalker.

*Id.* at 9. Gender-based violence applies to any acts fitting these definitions that is perpetrated against a person primarily because of their gender.

14. *The Violence Against Women Act: Building on Seventeen Years of Accomplishments: Hearing Before the S. Comm. on the Judiciary*, 112th Cong. (2011) (testimony of Dr. Jane A. Van Buren, Exec. Dir., Women Helping Battered Women, Inc.), available at [www.judiciary.senate.gov/pdf/11-07-13%20Van%20Buren%20Testimony.pdf](http://www.judiciary.senate.gov/pdf/11-07-13%20Van%20Buren%20Testimony.pdf) [hereinafter *Hearing Testimony of Van Buren*].

15. See THE NAT'L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS 2010: A 24-HOUR CENSUS OF DOMESTIC VIOLENCE SHELTERS AND SERVICES 5 (2011), available at [http://www.nnedv.org/docs/Census/DVCounts2010/DVCounts10\\_Report\\_Color.pdf](http://www.nnedv.org/docs/Census/DVCounts2010/DVCounts10_Report_Color.pdf) [hereinafter *DOMESTIC VIOLENCE COUNTS 2010*] (counting 70,648 adults and children in one single day that were given shelter and support through domestic violence programs, with an additional 9,541 individuals who requested assistance but were left with unmet needs).

16. Senator Patrick Leahy (D-Vt.) stated that VAWA is a "centerpiece of the Federal Government's commitment to combat domestic violence, dating violence, sexual assault, and stalking. We should reauthorize and strengthen these programs." 157 CONG. REC. S8071 (daily ed. Nov. 30, 2011) (statement of Sen. Patrick Leahy (D-Vt.)). See also *Reauthorizing VAWA*, YOUTUBE (Nov. 30, 2011), <http://www.youtube.com/watch?v=IhFyaQIA8s8> (recording Senator Leahy's statement upon the introduction of Senate Bill 1925, the proposed 2011 Violence Against Women Act reauthorization).

17. Note, VAWA is designed to address challenges facing women who are victims of domestic violence, and there are a variety of other gender-based crimes to be addressed with other legislative measures before the nation is truly free of such widespread crimes. It has been written that VAWA:

[E]ncourages collaboration among law enforcement, judicial personnel, and public and private service providers to victims of domestic and sexual violence; increases public awareness . . . ; authorizes long-term and transitional housing for victims . . . ; and requires studies and reports . . . of approaches used for certain grants in combating violence.

GARRINE P. LANEY, CONG. RESEARCH SERV., RL 30871, VIOLENCE AGAINST WOMEN ACT: HISTORY AND FEDERAL FUNDING 2 (Feb. 2010), available at <http://fpc.state.gov/documents/organization/139296.pdf>.

gency shelter, informing family of the situation, and sorting through housing and financial options for the future.<sup>18</sup> All of these issues are equally important, because “[shelters] provide comprehensive services for those affected by domestic violence who are seeking immediate and long-term help to escape abusive situations and improve their lives.”<sup>19</sup>

Housing for domestic violence victims includes emergency shelters and transitional housing, which are both incredibly significant in assisting victims to escape the cycle of abuse.<sup>20</sup> Nonetheless, despite the importance of providing housing to victims, the 2005 VAWA reauthorization, and the 2011 reauthorization, bill cut housing services funding considerably.<sup>21</sup>

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18. DOMESTIC VIOLENCE COUNTS 2010, *supra* 15, at 13; see *Violence Against Women Act*, A.B.A. (July 20, 2011), [http://www.americanbar.org/advocacy/governmental\\_legislative\\_work/priorities\\_policy/access\\_to\\_legal\\_services/vawa\\_home.html](http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/access_to_legal_services/vawa_home.html) (noting that VAWA [1994] reflects the breadth of issues domestic violence victims face, reflected in “nine specific areas of intervention”). The bipartisan bill S. 1925 encompasses the 2011 VAWA reauthorization, titling the nine areas of intervention as follows: Enhancing Judicial and Law Enforcement Tools to Combat Violence Against Women (TITLE I); Improving Services for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking (TITLE II); Services, Protection, and Justice for Young Victims of Violence (TITLE III); Violence Reduction Practices (TITLE IV); Strengthening the Healthcare System’s Response to Domestic Violence, Dating Violence, Sexual Assault, and Stalking (TITLE V); Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking (TITLE VI); Economic Security for Victims of Violence (TITLE VII); Protection of Battered Immigrants (TITLE VIII); and Safety for Indian Woman (TITLE IX). *Violence Against Women Reauthorization Act of 2011*, S. 1925, 112th Cong., available at <http://thomas.loc.gov/cgi-bin/query/F?c112:2:./temp/~c112R3aHqG:e295>: (introduced in the Senate on Nov. 30, 2011). There is an additional tenth section directed at miscellaneous issues entitled “Other Matters” (TITLE X). *Id.*

19. Hearing Testimony of Van Buren, *supra* note 14.

20. See CORREIA & MELBIN, *supra* note 8 (referencing the well-documented point that women without safe housing options will return to their abusers, and illustrating the benefits of transitional housing for long-term success). All of the issues surrounding domestic violence are important, yet housing is the biggest issue for 2011. Without housing, victims will be forced back into the cycle of abuse, or into homelessness.

21. NAT’L COAL. AGAINST DOMESTIC VIOLENCE, COMPARISON OF VAWA 1994, VAWA 2000 AND VAWA 2005 REAUTHORIZATION BILL 5 (Jan. 2006), available at [www.ncadv.org/files/VAWA\\_94\\_00\\_05.pdf](http://www.ncadv.org/files/VAWA_94_00_05.pdf) [hereinafter COMPARISON OF VAWA]. When VAWA was enacted in 1994, there was a large allocation for “Shelter Services for Battered Women and Children,” the 2005 reauthorization did not reauthorize the provision. *Id.* The 1994 VAWA reauthorization allocated at least \$50 million per year to shelter services from 1996–2000, while the 2000 VAWA authorization increased that amount significantly to \$175 million per year. *Id.* VAWA 2005 abruptly cut off funding for shelter services, and did not reauthorize the VAWA shelter services provision. *Id.* The 2011 proposal references an amount of \$10 million per year (for 2007 to 2011) “to develop . . . options for adult and youth victims of domestic violence . . .” per 42 U.S.C. § 14043e-3(i), however that statute is a collaborative grant program for housing, not direct funding to shelters. See *Violence Against Women Reauthorization Act of 2011*, §603 (authorizing the allocation of funds to “Collaborative Grants to Increase the Long-Term Stability of Victims”). At the

Shelters and transition housing resources across the country are unable to meet victims' needs;<sup>22</sup> therefore, a reduction in funding of those resources dramatically widens the existing gap in victims' services.<sup>23</sup>

Often the most critical stage in a violent relationship occurs when victims are faced with the decision to leave their abusers, but have nowhere to go.<sup>24</sup> Domestic violence is one of the leading causes of homelessness in the United States,<sup>25</sup> and without emergency shelter and transitional housing options, the numbers of victims rendered homeless will continue to rise. Many women may be forced to choose between returning to their abuser or becoming homeless.<sup>26</sup> In that common situation, many victims turn to battered women's shelters or homeless shelters. Unfortunately, the VAWA 2011 reauthorization proposes drastic reductions to federal funding for shelters and transitional housing, and allocates most funding to prevention services.<sup>27</sup> Furthermore, the resources and survivor educa-

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time of publication the 2011 reauthorization bill had passed the Senate and was pending in the House of Representatives.

22. See Judith Kurens, *After Escaping Domestic Abuse, Survivors Confront the Housing Crisis*, GOTHAM GAZETTE (Feb. 2010), <http://www.gothamgazette.com/article/socialservices/20100219/15/3186> (reporting a thirty-five percent increase in emergency shelter beds for survivors and children over the past year, yet shelters must turn away hundreds per day due to lack of resources). The number of people turned away due to space reasons more than doubled between fiscal years 2009 and 2010. Brian Wellner, *Domestic Violence Shelter Sees Need Rise*, QUAD-CITY TIMES (Iowa), Jan. 21, 2011, [http://qctimes.com/news/local/article\\_155502e6-251e-11e0-ae88-001cc4c03286.html](http://qctimes.com/news/local/article_155502e6-251e-11e0-ae88-001cc4c03286.html). "In 2005, well over 15,000 individual requests for shelter from victims of domestic violence and their children in the Seattle-King County area were turned away." *Service Assessment*, UNITED WAY OF KING CNTY., <http://www2.uwkc.org/kcca/printver.asp?REF=/kcca/impact/DVSA/service.asp> (last visited Mar. 17, 2012).

23. There is no guarantee that women seeking shelter will have their needs met, and in fact, most shelters report, "[a]ll our services are overextended." Kurens, *supra* note 22.

24. See Chanley et al., *supra* note 8, at 406 (recognizing the end of an abusive relationship as the most dangerous time for abused women, where they are at the greatest risk of serious injury or death). Women must find safe shelter, because if they attempt to leave and are unable to secure housing, their chances of being killed by their intimate partner increases dramatically due to "separation violence." *Id.*

25. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, THE IMPACT OF THE VIOLENCE AGAINST WOMEN ACT 2005 (VAWA) ON THE HOUSING RIGHTS AND OPTIONS OF SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE 1 (n.d.), available at [www.nlchp.org/FAQ\\_VAWA\\_Housing\\_1-082.pdf](http://www.nlchp.org/FAQ_VAWA_Housing_1-082.pdf) [hereinafter IMPACT OF THE VIOLENCE AGAINST WOMEN ACT 2005].

26. *Service Assessment*, *supra* note 22. Women might also turn to homeless shelters and not disclose the violence, flee to family and friends, or hide in their cars. *Id.* However, the most frequent choice women make when they are turned away from an emergency shelter is to return to their abuser. CORREIA & MELBIN, *supra* note 8.

27. The amount of money provided to housing for victims through grant programs in the 2005 VAWA reauthorization was \$10 million per year, and, if VAWA 2011 is approved, the amount will be reduced to half that (\$5 million per year). Violence Against Women



tion programs provided at shelters are fundamental to reducing the instance of violence in women's lives.<sup>28</sup> Consequently, it is also fundamental that the federal funding for these services is maintained in order for VAWA to realistically address the basic challenges that victims face.

This Comment examines the changing view of domestic violence in the United States, from an essentially taboo topic to the subject of major federal legislation (VAWA) aimed at reducing the horrific number of domestic violence cases across the country. This Comment acknowledges the strengths of VAWA, while pointing out the impermissible neglect of the most essential service for victims—housing.<sup>29</sup>

Part II of this Comment provides a history of VAWA, particularly the improvements in the national perspective on domestic abuse, which led to the implementation of VAWA. This section covers the background of VAWA, and the incredible progress VAWA has brought to the United States' perspective and treatment of domestic violence.

Part III analyzes the VAWA of 1994, the two following reauthorizations, and the proposed 2011 reauthorization, focusing on the weaknesses and areas requiring change. The third subsection within Part III is the primary focus of this Comment: the necessity, and the federal government's surprising neglect, of housing for battered women. Beginning with an overview of the most frequent criticisms of VAWA, the first subsection of Part III addresses the controversy surrounding 42 U.S.C. Section 13981, the civil remedy portion of VAWA 1994. The second subsection of Part III touches on the abuse of VAWA's programs through false accusations, and suggestions for safeguarding those provisions without removing the benefits to victims. The third subsection of Part III provides an overview of emergency battered women's shelters, homeless shelters, and transitional housing. The overview leads into an extensive

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Reauthorization Act of 2011, S. 1925, 112th Cong., available at <http://thomas.loc.gov/cgi-bin/query/F?c112:2:/temp/~c112R3aHqG:e295>: (introduced in the Senate on Nov. 30, 2011). Universities are given \$500,000 *each* for campus sexual assault prevention services, for a total of up to \$12 million per year being allocated to campus prevention services. 42 U.S.C. § 14045b (2006). The 2011 VAWA proposal reduces the university allocations to \$300,000 each, maintaining a significant contribution to universities. Violence Against Women Reauthorization Act of 2011; IMPACT OF THE VIOLENCE AGAINST WOMEN ACT 2005, *supra* note 24; Kurens, *supra* note 22.

28. See Chanley et al., *supra* note 8, at 402 (discussing research on one shelter's services and predicting that the program would prevent between 108 and 756 injurious assaults during 2002 for a group of 27 women who received assistance from the shelter).

29. See CORREIA & MELBIN, *supra* note 8, at 2, 6 ("Without a safe, secure base from which to operate families cannot achieve stability."); Chanley et al., *supra* note 8, at 409 (implying that the availability of shelter services could relate to a decrease in the number of deaths of women).

analysis of VAWA's housing issues and the drastic decline in federal funding given to shelters. The deficit in shelter and housing programs can be addressed primarily through a repurposing of the VAWA funding allocations. To illustrate the necessity of such change, this Comment outlines the correlations between the continuation of violence and the lack of housing options for victims.

Primarily asking for a simple re-allocation of funds already included in VAWA, Part IV of this Comment evaluates potential solutions to the housing issue, which can lead to essential improvements in victims' services and housing to effectively combat domestic violence.

## II. 1994: THE OUTCRY AGAINST DOMESTIC VIOLENCE

### A. *The Accepted Abuse of Women*

Throughout the fourteenth to seventeenth centuries, women were synonymous with property—specifically, women were the property of men.<sup>30</sup> Women lacked agency, autonomy, and the ability to live free of abuse.<sup>31</sup> “Corporal punishment” was the norm, and there was no legal recourse for women who endured “trivial” physical abuse from their husbands.<sup>32</sup> Slowly, the United States began implementing legal assistance programs for domestic violence victims,<sup>33</sup> but it was not until the 1970s that the United States, following England's example, began to view domestic violence as a significant social problem.<sup>34</sup> In 1972, the states fi-

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30. JACKSON, *supra* note 11, at 60. Property: “that which a person owns; the possession or possessions of a particular owner.” *Property*, DICTIONARY.COM, <http://dictionary.reference.com/browse/property> (last visited Mar. 17, 2012).

31. JACKSON, *supra* note 11, at 60. The Fourteenth Amendment passed in 1868, extending citizenship to African-American men, but not to women. COLLEEN ADAMS, *WOMEN'S SUFFRAGE: A PRIMARY SOURCE HISTORY OF THE WOMEN'S RIGHTS MOVEMENT IN AMERICA* 9 (2003). Activists like Susan B. Anthony and Elizabeth Cady Stanton opposed the Fourteenth Amendment because it defined “citizens” as males. *Id.* The Fifteenth Amendment gave Black men the right to vote in 1870, whereas women were not given the right to vote until 1920 with the passage of the Nineteenth Amendment. *Id.* at 10–12.

32. JACKSON, *supra* note 11, at 60. English common law allowed men to beat their wives with a “rod not thicker than his thumb.” H.R. REP. NO. 103-395, at 27 (1993). “Corporal Punishment” can be defined as “physical punishment . . . inflicted on the body.” *Corporal Punishment*, DICTIONARY.COM, <http://dictionary.reference.com/browse/corporal+punishment> (last visited Mar. 27, 2012).

33. JACKSON, *supra* note 11, at 60. The Chicago Protective Agency for Women was one of the first official protective responses to providing legal services to victims and to advocate for their protection. *Id.*

34. *Id.* In 1971, the Chiswick Women's Aid was the first emergency shelter for battered wives in West London, England. *Id.* The next year, two shelters were opened in the United States. *Id.* By the mid-1970s, battered women in the United States began to speak out against their abusers and more organizations responded in their support by setting up emergency shelters and safe home networks. *Id.*

nally took accountability for the tragedy of violence against women, and the first shelters for battered women opened in the United States.<sup>35</sup> By the late 1970s, the number of battered women shelters in the United States grew to over eighty shelters nationwide.<sup>36</sup> However, despite the public awareness of domestic violence in the United States throughout the years, the legal system continued to ignore the cries of battered women.<sup>37</sup>

Wives and women are not the only victims of domestic violence—men have been, and continue to be, battered.<sup>38</sup> However, the Department of Justice reports that women, when compared to men, experience more intimate partner violence, with 22.1 percent of women and 7.4 percent of men reporting being physically assaulted in their lifetime.<sup>39</sup> As a result of studies showing that women are victims of domestic violence far more frequently than men, legislation has focused on preventing violence against women.<sup>40</sup> “Women are more likely to be the recipients of more injuries even when there is mutual violence in the relationship.”<sup>41</sup> Therefore, because studies have shown that women are victims of domestic vio-

35. *Id.* The first shelters to open in the United States were the Women’s Advocates in St. Paul, Minnesota, and the Haven House in Pasadena, California. *Id.*

36. *Id.* “The services provided included peer counseling, crisis intervention programs, group counseling and social support, legal aid and advocacy of reforms in courtroom procedures, and emergency shelters for battered women and their children.” *Id.*

37. *Id.* By considering the abuse of women a private family conflict, law enforcement agencies were essentially encouraging violence against women. *Id.* As a result, a woman could sometimes endure unconscionable domestic abuse and find no legal recourse. *Id.*

38. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP’T OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCE OF VIOLENCE AGAINST WOMEN IV (Nov. 2000), available at <https://www.ncjrs.gov/pdffiles1/nij/183781.pdf>. Violence against men is predominantly violence inflicted by other males. *Id.* at 47. The majority of men reported being raped, stalked, or physically assaulted by another man, as opposed to a comparatively small percentage of men who reported being raped, stalked, or physically assaulted by a woman. *Id.*

39. *Id.* at 26. The authors state that:

[V]iolence against women is primarily intimate partner violence: 64.0 percent of the women who reported being raped, physically assaulted, and/or stalked since age 18 were victimized by a current or former husband, cohabitating partner, boyfriend, or date . . . .

In comparison, results from the survey indicate U.S. men are predominantly victimized by strangers . . . 16.2 percent were victimized by a current or former wife, cohabitating partner, girlfriend, or date . . . .

*Id.*

40. See JACKSON, *supra* note 11, at 67 (stating that women are often seen at an emergency room after a domestic violence incident). “Some have estimated that by the time an arrest is made, as many as thirty-five physically abusive incidents may have occurred.” *Id.*

41. *Id.* The author points out that it is difficult to get an accurate picture of all the domestic violence occurrences because men and women tend to differ in their reporting.

lence more frequently than men, legislation like VAWA should primarily serve to protect women.<sup>42</sup>

The movement towards recognizing domestic violence as a social problem was largely motivated by the deplorable and abusive treatment of wives.<sup>43</sup> In the early 1900s, women were a minority in the United States—they were not citizens, and were therefore not allowed the right to vote, much less the right to be free from violence at their husbands' hands.<sup>44</sup> The evolution of domestic violence awareness progressed a bit in the 1970s,<sup>45</sup> but women remained second-class citizens, still ignored while being beaten at the hands of their husbands, until the passage of the Violence Against Women Act of 1994.<sup>46</sup> VAWA gave each woman a voice, demonstrating that abuse is unacceptable, and revealing the marginalization of women as recently as the 1990s.

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*Id.* For example, women will often not report incidents in which they were not injured. *Id.* As a result, some incidents of domestic violence go uncounted. *Id.*

42. *See id.* at 60 (explaining that VAWA was first passed to assist battered women and sexual assault victims). A discussion of the domestic abuse of women would be incomplete without an understanding of the term “victim.” LEE A. HOFF, *VIOLENCE AND ABUSE ISSUES: CROSS-CULTURAL PERSPECTIVES FOR HEALTH AND SOCIAL SERVICES* 20 (2009). For purposes of this Comment, the term “victim” refers to “victim/survivor,” which is commonly used to convey growth and development from abuse. *Id.* As Hoff observes, “. . . it is crucial to acknowledge the inherent freedom, resilience, and indeterminate nature of human beings, their resiliency, and capacity to rise beyond tragic circumstances . . .” *Id.* Accordingly, women seeking help under VAWA are not just victims, they are also survivors on a journey to achieve autonomy. *Id.* Thus, not until women are allowed to achieve that end, will VAWA achieve its full purpose. *Id.*

43. JACKSON, *supra* note 11, at 60. “Husbands were allowed to punish and discipline their wives through corporal punishment and other methods.” *Id.*

44. The Nineteenth Amendment finally gave women the right to vote in 1920. ADAMS, *supra* note 31, at 10–12. *See* U.S. CONST. amend. XIX (eliminating the ability to restrict citizens from voting based on their sex); JACKSON, *supra* note 11, at 60 (describing the widespread practice and acceptance of corporal punishment).

45. *See* JACKSON, *supra* note 11, at 60 (pointing out the timeline of changes in society's view of domestic violence).

46. Domestic violence is not limited to heterosexual spousal relationships. While VAWA tends to be described as a response to husband-against-wife violence, it encompasses, and is equally meant to address, the violence experienced by many lesbian, gay, bisexual, and transgender (LGBT) couples. Amy Williams, *Violence Against Women Act Protects LGBT Couples, Too*, MS. MAG. BLOG (June 18, 2010), <http://msmagazine.com/blog/blog/2010/06/18/violence-against-women-act-protects-lgbt-couples-too/>. Unfortunately, “same-sex Intimate Partner Violence (IPV)” victims are not sufficiently protected by the federal government, reportedly due to an inadequacy in the recognition of classifying same-sex IPV. *Id.* The issues facing LGBT domestic violence victims exceed the scope of this Comment, but it is imperative to recognize the need for all victims to “access the same legal and social protections afforded to those in heterosexual relationships.” *Id.*

B. *Changing Perspectives and the Birth of the Violence Against Women Act*

The 1990s marked the United States' first federal effort to legitimize women's need for assistance in preventing and intervening in domestic violence.<sup>47</sup> At that time, a survey of judicial treatment of abuse cases revealed consistent mishandling or dismissiveness towards victims, suggesting that a cavalier attitude towards battered women was ever-present in the United States.<sup>48</sup> A Georgia judge was reported to have humiliated and mocked a domestic abuse victim, going so far as to laugh at the woman as she left the hearing.<sup>49</sup> Soon after, the mocked victim was killed by her abuser.<sup>50</sup> Today, societal standards would vehemently reject the Georgia judge's unacceptable behavior, and his conduct would likely create a media scandal regarding the egregious misconduct of the court. The transition from an indifferent attitude towards such mishandling of domestic violence, to the current climate demanding justice, was a slow process that can vastly be attributed to VAWA.

The Senate, in consideration of such judicial embarrassments and mismanagement of victims, recognized that there was a failure in addressing

47. Some individual cities had protections for victims as early as 1885—the year Chicago created an agency providing legal assistance to rape victims and shelters for victims of spousal abuse. *Id.* Twenty-five cities followed Chicago's lead between 1915 and 1920, developing similar agencies for domestic violence victims. *Id.* Pennsylvania became the first state to establish a coalition against domestic violence in 1976, creating legislation to help victims obtain protective orders. *Id.* Yet the most far-reaching and monumental legislation addressing domestic violence was not enacted until 1994 with the passage of the Violence Against Women Act. *Id.*

48. See FRED STREBEIGH, *EQUAL: WOMEN RESHAPE AMERICAN LAW* 351 (2009) (analyzing a long history of discrimination against women in the legal system, focusing on women's increased admission to law schools during the Vietnam War, the obstacles to women being hired as attorneys, and women's fight to reshape the law).

49. *Id.* The information regarding the Georgia judge's case originated in a gender-bias task force report, published in October 1991. *Id.*

50. *Id.* Five additional reports from the gender-bias task force included:

In Vermont, a probation officer questioned whether a 9-year-old girl was a "real victim," since he had heard she was a "tramp."

In California, a judge commented at a hearing that a domestic violence victim "probably should have been hit."

A Connecticut prosecutor badgered a 15-year-old: "Come on, you can tell me. You're probably just worried that your boyfriend got you pregnant, right? Isn't that why you're saying he raped you?"

A Florida judge commented during sentencing that he felt sorry for a confessed rapist because his victim was such a "pathetic" woman.

*Id.*

the problems of domestic violence,<sup>51</sup> and proposed the Violence Against Women Act (VAWA) as a response to this national crisis. Vice President Joseph Biden (at the time a U.S. Senator D-Del.) was a primary figure for advocating a “national conversation about violence prevention and services,” and ultimately submitted the proposal of VAWA to Congress.<sup>52</sup> Over the course of the next four years, the proposed Violence Against Women Act faced controversy, principally surrounding the federal civil remedy portion of the bill.<sup>53</sup> The general public was split on reactions to the bill, and even women’s groups did not whole-heartedly embrace Senator Biden’s efforts.<sup>54</sup> Despite the lack of whole-hearted support, Congress finally passed the Violence Against Women Act as part of the Violent Crime Control and Law Enforcement Act of 1994.<sup>55</sup> President Bill Clinton signed the bill into law on September 13, 1994.<sup>56</sup>

In passing VAWA, Congress “envisioned a nation with an engaged criminal justice system and coordinated community responses.”<sup>57</sup> Since

51. See S. REP. NO. 102-197, at 36, 41 (1991) (commenting on “the puzzling persistence of public policies, laws, and attitudes that treat some crimes against women less seriously than other violent crimes”). Later Senate Reports indicated the appalling statistics of abuse in the United States, revealing that three out of four women will be violent crime victims sometime during their life. S. REP. NO. 103-138, at 38 (1993).

52. *History of the Violence Against Women Act*, LEGAL MOMENTUM: THE WOMEN’S LEGAL DEF. & EDUC. FUND, <http://www.legalmomentum.org/our-work/vaw/history-of-vawa.html> (last visited Mar. 17, 2012). A coalition was formed to assist in drafting VAWA, and has now become the National Task Force to End Domestic and Sexual Violence. *Id.* The coalition continues to help draft the subsequent reauthorizations of VAWA. *Id.*

53. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, tit. IV, § 40302, 108 Stat. 1796 (codified as amended at 42 U.S.C. § 13981 (2000)).

54. See Donna E. Shalala, Letter to the Editor, *Violence Act Safeguards Women*, N.Y. TIMES, Aug. 2, 1995, at A18 (acting Secretary of Health and Human Services responding vehemently to an article by Anita K. Blair, who insinuated that VAWA’s funding would mostly benefit bureaucrats and consultants). Barbara Vobejda, *Battered Women’s Cry Relayed Up From Grass Roots*, WASH. POST, July 6, 1994, at A1 (outlining the resistance to VAWA in its beginnings, and providing hope for support as the issue of domestic violence becomes more prevalent); *But see, e.g.*, Jenny Rivera, *A Promise Waiting to be Fulfilled: The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements*, J.L. & POL’Y 463, 464 (1996) (hailing VAWA as “a success of historic proportions on various political and social fronts . . . an undeniable victory for feminism . . . also a civil rights victory”).

55. Violent Crime Control and Law Enforcement Act of 1994, 2 PUB. PAPERS 1546–48 (Sept. 14, 1994).

56. *Id.* At the signing of the Act, President Clinton focused on the prevention of teen gun use as the highlight of the legislation, but remarked, “[v]iolence in and around the home is still a terrible problem in this country, and [the Violence Against Women Act] gives us the tools to do something about it.” *Remarks to U.S. Att’ys on the Violent Crime Control and Law Enforcement Act of 1994*, 2 PUB. PAPERS 1546–48 (Sept. 14, 1994).

57. NAT’L TASK FORCE TO END SEXUAL AND DOMESTIC VIOLENCE AGAINST WOMEN, *THE VIOLENCE AGAINST WOMEN ACT: 10 YEARS OF PROGRESS AND MOVING FOR-*

1994, VAWA was reauthorized twice, in 2000 and 2005.<sup>58</sup> In 2011, a third reauthorization was introduced in the Senate, expanding VAWA's scope as well as limiting or eliminating established programs.<sup>59</sup> While VAWA originally focused on domestic violence victims, the subsequent reauthorizations incorporated aid for sexual assault and stalking victims, and dedicated special services to immigrant women and Native Americans.<sup>60</sup> In 2000, the enforcement of VAWA was placed in the hands of the Office on Violence Against Women (OVAW), which is a division within the United States Department of Justice (DOJ).<sup>61</sup> Susan B. Carbon, the current director of OVAW, stated that VAWA's impact has made us a different country than we were seventeen years ago in reference to our viewpoint and treatment of domestic violence.<sup>62</sup> Carbon's statement expresses the immeasurable benefits that have flowed from the creation and

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WARD (n.d.), available at <http://www.ncadv.org/files/OverviewFormatted1.pdf>. VAWA 1994 fostered:

- Community-coordinated responses that brought together, for the first time, the criminal justice system, the social services system, and private nonprofit organizations responding to domestic violence and sexual assault
- Recognition and support for the efforts of domestic violence shelters, rape crisis centers, and other community organizations nationwide working everyday to end this violence
- Federal prosecution of interstate domestic violence and sexual assault crimes
- Federal guarantees of interstate enforcement of protection orders
- Protections for battered immigrants
- A new focus on underserved populations and Native victims of domestic violence and sexual assault

*Id.*

58. COMPARISON OF VAWA, *supra* note 21.

59. See generally Violence Against Women Reauthorization Act of 2011, S. 1925, 112th Cong., available at <http://thomas.loc.gov/cgi-bin/query/F?c112:2::/temp/~c112R3aHqG:e295>: (introduced in the Senate on Nov. 30, 2011) (providing the amount of federal funding appropriated for the VAWA 2011 reauthorization, in comparison with previous allocations). Each VAWA contains a timeline for the bill and contains an expiration date, upon which the bill must be reauthorized in order to continue federal funding for the programs and services. COMPARISON OF VAWA, *supra* note 21. It is likely that VAWA must continuously be reauthorized because it primarily revolves around federal funding, and the budget can change dramatically depending on the economy and government spending. *Id.*

60. See *History of the Violence Against Women Act*, *supra* note 52 (describing the improvements made to VAWA by expanding it to provide minority women access to services).

61. Office on Violence Against Women, U.S. DEP'T JUST., <http://www.ovw.usdoj.gov/> (last visited Feb. 12, 2012); see 28 C.F.R. § 0.122(a)(1) (2006) (granting general authority to the Office on Violence Against Women).

62. Susan B. Carbon, *Messages from the Director*, U.S. DEP'T JUST., <http://www.ovw.usdoj.gov/director-sept2011msg.html> (last updated Sept. 2011). Carbon recognizes VAWA's progress with caution, urging readers to keep in mind that there are still

subsequent reauthorizations of VAWA.<sup>63</sup> The DOJ extends national support to victims of domestic violence, sexual assault, dating violence, and stalking by funding and administering hotline numbers, grant programs, and local resource contacts for specialized services like housing and community groups.<sup>64</sup> With all of these services, VAWA has exemplified major changes, even a “paradigm shift,” in the way violence against women is addressed in the United States.<sup>65</sup>

### III. THE IMPLICATIONS AND IMPACT OF THE VIOLENCE AGAINST WOMEN ACT

Name four women you know.

One of them likely was, is being, or will be punched, kicked, strangled, burned, stabbed, raped—physically harmed by an intimate partner.<sup>66</sup>

The Violence Against Women Act created a shift in the perception of domestic violence in the United States. VAWA has allowed domestic violence to move out of the shadows of secrecy into the forefront of the media. It has been discussed by celebrities<sup>67</sup> and has even become an

many victims, and outlines the next steps towards fulfilling the “commitment to end violence.” *Id.*

63. For example, “corporal punishment” is now a shameful thing of the past, and women are more readily able to access help in times of crisis. *See generally History of the Violence Against Women Act, supra* note 52 (noting the benefits and protections provided to women since the passing of VAWA).

64. *See Grant Programs*, U.S. DEP’T JUST., <http://www.ovw.usdoj.gov/ovwgrant-programs.htm> (last updated Mar. 2012) (listing a multitude of grant programs and their links, which illustrate the expansiveness of the services offered by OVAW). Many of the resource sites now include a “Safety Alert” telling viewers that their online activity can easily be monitored, and they may want to seek a more secure computer or call a hotline instead. *See, e.g.,* FLA. COAL. AGAINST DOMESTIC VIOLENCE, <http://www.fcadv.org/> (last visited Mar. 17, 2012) (providing an “Escape” button at the top right page to quickly leave the site); *Local Resources*, U.S. DEP’T JUST., <http://www.ovw.usdoj.gov/statedomestic.htm> (last updated June 2011) (listing each state’s domestic violence coalition, tribal coalition, and sexual assault coalition); TEX. COUNCIL ON FAM. VIOLENCE, <http://www.tcfv.org/> (last visited Mar. 17, 2011) (briefly flashing an alert in the top right corner with alternatives to browsing the website).

65. *History of the Violence Against Women Act, supra* note 52. Senator Leahy remarked, “Since VAWA’s passage in 1994, no other law has done more to stop domestic and sexual violence in our communities.” 157 CONG. REC. 8071 (daily ed. Nov. 30, 2011) (statement of Sen. Patrick Leahy (D-Vt.)).

66. Gressitt, *supra* note 10.

67. For example, singer Rihanna made headlines in 2009 when she filed a police report against her boyfriend, Chris Brown, after he got violent with her. *Rihanna Bloodied, Beaten, Bitten by Chris Brown*, THE HUFFINGTON POST, Mar. 12, 2009, [http://www.huffingtonpost.com/2009/02/09/rihanna-bloodied-beaten-b\\_n\\_165474.html](http://www.huffingtonpost.com/2009/02/09/rihanna-bloodied-beaten-b_n_165474.html).



open subject on college campuses.<sup>68</sup> Along with this increased attention to domestic violence within society, VAWA has improved conditions for victims by saving lives, and saving state and federal money as a direct result of VAWA's prevention efforts.<sup>69</sup> A cost-benefit analysis of the 1994 VAWA suggests that the legislation, which provided \$1.6 billion for various prevention programs, saved \$14.8 billion in social costs over five years.<sup>70</sup> With a wide range of benefits, VAWA has had a positive impact on society's understanding and response to domestic violence, and even saved in spending on domestic violence. Overall, VAWA has facilitated progress in assisting with issues like immigration, heightened abuse of Native American women, dating violence, and the impact of family violence on children.<sup>71</sup> However, while there are substantial benefits flow-

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68. See Nicholas Kristof, Op-Ed., *Sexual Violence, and How to Help*, N.Y. TIMES, Oct. 8, 2011, <http://kristof.blogs.nytimes.com/2011/10/08/sexual-violence-and-how-to-help/?scp=1&sq=&st=nyt> (remarking on violence in Sierra Leone and pointing to the International Violence Against Women Act as a solution); *An Inside Look at Domestic Violence*, SW. U., <http://www.southwestern.edu/live/news/2770-an-inside-look-at-domestic-violence> (last updated May 24, 2010) (detailing a grant program for students to work with domestic violence agencies). While pre-VAWA domestic violence was a "don't ask, don't tell" topic, it is now commonly portrayed in film and television. See, e.g., *Piers Morgan: Interview with Sharon Osbourne* (CNN television broadcast Oct. 11, 2011), available at <http://cnnpressroom.blogs.cnn.com/2011/10/11/piers-morgan-tonight-sharon-osbourne-opens-up-about-the-past-abuse-in-her-marriage/?iref=allsearch> (interviewing Sharon on abuse that occurred in her marriage to Ozzy Osbourne); *THE COLOR PURPLE* (Warner Bros. Pictures 1985); *BURNING BED* (Tisch/Avnet Productions 1984); *Friday Night Lights* (NBC television broadcast 2006-2011).

69. Kentucky reportedly saved \$85 million in one year due to a reduction in violence resulting from the issuance of protective orders. PAULETTE S. MOORE & MONICA MC-LAUGHLIN, *THE NAT'L NETWORK TO END DOMESTIC VIOLENCE, REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT 1* (n.d.), available at [www.nnedv.org/docs/Policy/VAWA\\_Reauthorization\\_Fact\\_Sheet.pdf](http://www.nnedv.org/docs/Policy/VAWA_Reauthorization_Fact_Sheet.pdf). "VAWA not only saves lives, it also saves money. In its first six years alone, VAWA saved taxpayers at least \$14.8 billion in net averted social costs." *Id.*

70. David Williamson, *Analyses of Violence Against Women Act Suggest Legislation Saved U.S. \$14.8 Billion*, UNC NEWS SERVICES, Mar. 28, 2002, <http://www.unc.edu/news/archives/apr02/martin040102.htm>. With almost 5.3 million victims per year, the result is 2 million injuries, 18.5 million mental health visits and about 1,300 deaths—all of which have associated costs. COSTS OF INTIMATE PARTNER VIOLENCE, *supra* note 13, at 7, 25. In addition to the hospitalization costs, there is a consideration of the 13.6 million days of lost productivity, plus loss of expected lifetime earnings, totaling a significant financial burden on society. *Id.* at 25. The total estimated health care costs from intimate partner violence is approximately \$4.1 billion per year. *Id.* at 36. Therefore, federally funded prevention and victim assistance is a substantial factor in reducing the cost to society incurred by domestic violence.

71. The effect of domestic violence on children is an isolated problem that specifically needs to be addressed. See, e.g., Tracy Russo, *October is National Domestic Violence Awareness Month*, THE JUST. BLOG (Oct. 4, 2011), <http://blogs.usdoj.gov/blog/archives/1633> (quoting President Obama: "Children who experience domestic violence are at a

ing from VAWA, VAWA is not all-encompassing, and there are multiple areas in need of improvement.

According to United Nations Special Rapporteur Rashida Manjoo: “While landmark U[.]S[.] legislation such as the Violence Against Women Act exists to address the high incidence of violence against women, ‘there is little in terms of legally binding federal provisions which provide substantive protection or prevention for acts of domestic violence against women.’”<sup>72</sup>

Despite the progress VAWA has made towards reducing domestic violence and assisting victims, domestic abuse remains a serious and destructive force that requires greater attention and more focused efforts. There are three continuing issues that affect the protection afforded to victims of domestic violence. First, the stigma of intervening in “private” family matters continues to prevent courts from imposing the necessary criminal sanctions on batterers, yet courts alternatively tend to sanction women who defend themselves from abuse.<sup>73</sup> Second, it is apparent that the benefits of many programs are being mishandled, and will continue to be abused without more stringent requirements and monitoring.<sup>74</sup> Finally,

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*higher risk for failure in school, emotional disorders, and substance abuse, and are more likely to perpetuate the cycle of violence themselves later in life”); Vice President Biden Discusses Violence Against Young Women on The View, THE WHITE HOUSE BLOG (Sept. 30, 2011), <http://m.whitehouse.gov/blog/2011/09/30/vice-president-biden-discusses-violence-against-young-women-view> (citing Vice President Biden’s reasoning for the focus on prevention on college campuses) [hereinafter *Vice President Biden Discusses*]. Primarily, the concern regarding children and domestic violence is the propensity for children to witness such abuse and subsequently repeat that violent behavior. Rosie Gonzalez & Janice Corbin, *Cycle of Violence: Domestic Violence and Its Effects on Children*, 13 SCHOLAR 405, 415–21 (2010). See also Chanley et al., *supra* note 8, at 403 (“Annually, an estimated 3.3 million children are witnesses to the physical abuse of women by men in their households . . . . It has also been estimated that [forty percent] to [sixty percent] of men who abuse women also abuse children . . .”).*

72. *UN Must Do More to Protect Women From Domestic Violence, UN Rights Expert Warns*, UN NEWS CENTRE (Aug. 23, 2011), <http://www.un.org/apps/news/story.asp?NewsID=39362&Cr=Violence+against+women&Cr1=>. Majoo is likely addressing the removal of the civil remedy portion from VAWA and the absence of a similar solution in subsequent reauthorizations. *Id.* As one of the most frequently criticized gaps in VAWA, the civil remedy statute should be reconsidered within the purview of the Constitution. *Id.*

73. SHERYL J. GRANA, *WOMEN AND JUSTICE* 181 (2010). “On average, abusive men who kill serve two to six years in prison while abused women who kill serve fifteen years. She kills to save her life; he serves less time.” *Id.* The civil remedy found in 42 U.S.C. § 13981 (2000) provided some protection addressing this gap, but without such a statute, women are unlikely to see an equitable remedy in the courtroom.

74. See, e.g., STOP ABUSIVE AND VIOLENT ENV’TS, DOMESTIC VIOLENCE-RELATED IMMIGRATION FRAUD 6 (n.d.), available at [www.saveservices.org/downloads/VAWA-Funded-Immigration-Fraud](http://www.saveservices.org/downloads/VAWA-Funded-Immigration-Fraud) [hereinafter SAVE] (indicating conflict between various government agencies when it comes to handling immigration matters); *Fact Sheet: USCIS Is-*

and most importantly, the state of the economy has negatively impacted the efforts to combat domestic violence, both in funding programs and criminalizing abuse and the allocation of VAWA funds is detracting from the effectiveness of combating domestic violence.<sup>75</sup>

#### A. 42 U.S.C. §13981: VAWA's Failed Civil Remedy

Since its inception, the most controversial portion of VAWA has been the federal civil remedy portion. The civil remedy gave individuals a “right to be free from crimes of violence[,]” creating a cause of action for victims of gender-motivated violent crimes.<sup>76</sup> Chief Justice William Rehnquist, and many others in the judicial and non-judicial arenas, strongly opposed the civil rights remedy.<sup>77</sup> Justice Rehnquist's main objection was the potential for VAWA's civil remedy to cause an inundation in the courts.<sup>78</sup> Despite strong judicial opposition, the federal civil remedy statute, 42 U.S.C. Section 13981 was intact when VAWA passed in

*ues Guidance for Approved Violence Against Women Act (VAWA) Self-Petitioners*, U.S. CITIZENSHIP & IMMIG. SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=2cac37668c779110VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> (last updated April 11, 2008) [hereinafter *Fact Sheet: USCIS*] (allowing victims of domestic abuse to self-petition for VAWA benefits, which prevents abusers from threatening to withhold sponsorship for benefits); David T. Pisarra, *The Easiest Lie*, THE HUFFINGTON POST (Nov. 4, 2011), [http://www.huffingtonpost.com/david-t-pisarra/the-easiest-lie\\_b\\_1070799.html](http://www.huffingtonpost.com/david-t-pisarra/the-easiest-lie_b_1070799.html) (recognizing the burden on taxpayers when individuals are falsely accused of domestic violence).

75. A. G. Sulzberger, *Facing Cuts, a City Repeals Its Domestic Violence Law*, N.Y. TIMES, Oct. 11, 2011, [http://www.nytimes.com/2011/10/12/us/topeka-moves-to-decriminalize-domestic-violence.html?\\_r=1&scp=2&sq=domestic%20violence&st=cse](http://www.nytimes.com/2011/10/12/us/topeka-moves-to-decriminalize-domestic-violence.html?_r=1&scp=2&sq=domestic%20violence&st=cse). In Topeka, Kansas, despite the fact that about half of the misdemeanors prosecuted last year were domestic violence cases, budget cuts caused the city to vote, and approve, the decriminalization of domestic violence due to under-funding in the local District Attorney's office. *Id.*

76. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 40302, 108 Stat. 1796, 1941 (codified as amended at 42 U.S.C. § 13981 (2000)).

77. *History of the Violence Against Women Act*, *supra* note 52. The website states that:

The National Association of Women Judges (NAWJ) was 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.

*Id.*

78. *Id.* Specifically, Justice Rehnquist was concerned that the courts would be overwhelmed with matters that did not belong there. *Id.*

1994.<sup>79</sup> Congress initially justified the constitutionality of Section 13981 under the Commerce Clause<sup>80</sup> and the Fourteenth Amendment.<sup>81</sup> However, the Supreme Court struck down Section 3981 in 2000, stating that it was a violation of the Commerce Clause.<sup>82</sup> Since the Supreme Court declared the civil remedy unconstitutional, there has been extensive discussion of methods and reasons to re-institute a similar remedy.<sup>83</sup> However,

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79. *Id.*

80. *Id.* In justifying the civil remedy of VAWA, Congress suggested that it “had the power to regulate activities which, under a rational basis test, had a substantial effect on commerce.” *Id.* Congress specifically applied its commerce power to VAWA by demonstrating that “domestic and sexual violence qualified under [the rational basis test], given the vast costs born[e] by taxpayers as a result of such violence.” *Id.* See U.S. CONST. art. I, § 8, cl. 3 (“To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”).

81. See U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment states that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Id.* See also U.S. CONST. amend. XIV, § 5. (“The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”).

82. *United States v. Morrison*, 529 U.S. 598, 624–27 (2000). Petitioner Brzonkala filed charges under VAWA, specifically the federal civil remedy portion of 42 U.S.C. Section 13981 for victims of gender-motivated violence, against fellow students at Virginia Polytechnic University, after allegedly being raped. *Id.* at 601–04. The Supreme Court held that Section 13981 could not be sustained under the Commerce Clause or Section 5 of the Fourteenth Amendment, which provides that “no State shall deprive any person of ‘life, liberty, or property without due process,’ nor deny any person ‘equal protection of the laws.’” *Id.* at 617–19 (quoting U.S. CONST. amend. XIV, § 1). Essentially, the Supreme Court deemed the civil remedy statute within VAWA unconstitutional because Congress lacked the authority to enact the statute since it did not involve economic activity or interstate commerce. *Id.*

83. See, e.g., Senator Joseph R. Biden, Jr., *The Civil Rights Remedy of the Violence Against Women Act: A Defense*, 37 HARV. J. ON LEGIS. 1 (2000) (explaining the necessity of the civil rights remedy and evaluating its constitutional basis); Sally F. Goldfarb, *The Supreme Court, the Violence Against Women Act, and the Use and Abuse of Federalism*, 71 FORDHAM L. REV. 57 (2002) (discussing federal legislative authority and the VAWA’s civil rights provision as the epitome of cooperative rights federalism, ultimately supporting the constitutionality of the remedy); cf. Christopher J. Regan, *A Whole Lot of Nothing Going On: The Civil Rights ‘Remedy’ of the Violence Against Women Act*, 75 NOTRE DAME L. REV. 797, 797 (1999) (analyzing why the VAWA civil rights remedy “failed to ameliorate the problems faced by abused women” and how all the attention focused on discussing it could be better spent on resolving the problem through other means). The scholarly works available on the civil remedy portion of VAWA are so extensive that the list is best characterized by the sardonic observation of one law student: “[T]he civil rights remedy has proven to be a federal response to the problem of journal topic selection for American law students.” *Id.*

it seems unlikely that such a remedy will be found constitutional at this point in time. The majority of VAWA is still constitutionally valid, and warrants analysis in the interest of improving VAWA's assistance to domestic violence victims.

#### B. *False Accusations: The Exploitation of VAWA Programs*

With nine areas of intervention encompassing everything from housing to immigration, there are inevitably areas of VAWA that are abused, and receive criticism for the legislation's lack of safeguards.<sup>84</sup> Some of the most common abuses of VAWA's services derive from false accusations. The range of potential mishandling of VAWA is best illustrated by pointing to a highly criticized area of VAWA: the manipulation of immigration self-petitions.<sup>85</sup>

The immigration portion of VAWA, while benefitting a multitude of individuals, lacks the structure to prevent the extensive exploitation of the provision as it stands.<sup>86</sup> The Violence Against Women Act allows battered immigrants, who are married to abusive U.S. citizens or residents, to self-petition for legal status in the United States without relying on their abusive spouses to sponsor the petition.<sup>87</sup> Countless women use the self-petition as a method to escape from violent situations at home. One Houston, Texas woman named Teresa Uribe was profiled in 2011 for her journey as an abuse survivor, mainly because she was an illegal immigrant who was able to leave her husband's abusive home with VAWA's help.<sup>88</sup> Teresa found help at the local Women's Center, where

84. *Violence Against Women Act*, *supra* note 18.

85. *See, e.g., SAVE*, *supra* note 74, at 6 (recognizing the potential for abuse of VAWA petitions, wherein an individual facing deportation could claim abuse from another in order to try and obtain VAWA relief); *Fact Sheet: USCIS*, *supra* note 74 (discussing the governmental position of protecting non-citizen abuse victims); *Pisarra*, *supra* note 74 (recounting the author's experience with a client, wherein the client's child was abducted by the client's soon-to-be ex-wife, who subsequently claimed abuse under VAWA to avoid deportation—no abuse had occurred). *See also* Press Release, *Leahy Bill Would Turn Every College Male Into a Rape Suspect, Group Warns*, THE WALL ST. J.: MARKETWATCH (Oct. 27, 2011), <http://www.marketwatch.com/story/leahy-bill-would-turn-every-college-male-into-a-rape-suspect-group-warns-2011-10-27> [hereinafter Press Release, Leahy Bill] (discussing the proposed lower standard of proof for sexual assault investigations on college campuses, which gained a lot of media attention and resulted in the removal of that provision from the 2011 VAWA Senate bill).

86. *See, e.g., Vital Pointers Concerning the Violence Against Women Act Self-Petition*, EDEN ESE (Oct. 3, 2011), <http://www.edenese.com/eden-ese/11072> (providing that the VAWA self-petition is useful in that one doesn't have to risk having to deal with an abuser in order to receive the benefits).

87. Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101–1106 (2006).

88. *See* Monica Rohr, *Abuse Survivor Finds Fulfillment in Giving*, HOUS. CHRON., Dec. 29, 2011, available at <http://www.chron.com/news/houston-texas/article/Abuse-survi->

she was directed to use VAWA to legalize her immigration status and create a safe environment for herself and her three children.<sup>89</sup> After counseling and returning to the Women's Center as a volunteer, Teresa is now a senior client manager for a nonprofit health and social services organization.<sup>90</sup> Teresa's story mirrors the story of thousands of other immigrant women, whose personal tales of success due to VAWA's provisions reveal the vital role the VAWA self-petition plays for immigrant victims.<sup>91</sup>

The self-petition, authorized under VAWA, is designed to combat abusers' ability to withhold their sponsorship as a tool of abuse.<sup>92</sup> Additionally, the self-petition allows applicants to circumnavigate the general requirement that immigrants must have entered the United States through inspection at a port-of-entry.<sup>93</sup> Critics take issue with the removal of this inspection requirement because "the VAWA self-petitioner will not need to show that his or her illegal entry into the United States had a substantial connection to the domestic violence, battery, or extreme cruelty."<sup>94</sup> Once a self-petition has been approved, the immigrant victim can then file for a Green Card to directly become a permanent resident.<sup>95</sup> Opponents of VAWA's immigration policies suggest that the bar has been lowered on the need for hard evidence to the "credible evidence" standard, which can be met easily with documents like a sworn statement.<sup>96</sup> Furthermore, many individuals, both women and men, are able to use the protections of this provision to falsely accuse their spouse, with varied consequences for the falsely accused.<sup>97</sup> Some judge the VAWA self-peti-

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vor-finds-fulfillment-in-giving-2431906.php (profiling Teresa Uribe's story from an undocumented abuse victim to successful victim's advocate, and citizen of the United States).

89. *Id.* Teresa recalled: "When I was in that situation, I thought there was no one who could help me. . . . Your mind, body and soul are stuck in the problem. I felt like I was dying and no one could help me." *Id.*

90. *Id.* Teresa works for the non-profit Epiphany Community Health Outreach Services, connecting low-income clients to medical and social services through the Harris County Hospital District, Medicaid, and CHIP. *Id.*

91. *Id.*

92. *Fact Sheet: USCIS, supra* note 74.

93. *Id.*

94. *Id.*

95. *Id.*

96. SAVE, *supra* note 74, at 6. Criticism of the immigration portion of VAWA is powerful, so much so that as of March 2012, the VAWA 2011 reauthorization was stalled in the Senate significantly because of Republican opposition to the bill's visa provisions for immigrants. Laurie Kellman, *Democrats Raise Violence Against Women Act*, MSNBC, <http://www.msnbc.msn.com/id/46750978#.T21qaI4xq7k> [*Democrats Raise VAWA*].

97. *See The Violence Against Women Act: Building on Seventeen Years of Accomplishments: Hearing Before the S. Comm. on the Judiciary*, 112th Cong. (2011), available at <http://judiciary.senate.gov/hearings/hearing.cfm?id=3d9031b47812de2592c3baeba61af68b> [here-

tion harshly, stating that it creates a new class of victims, projecting victim-status onto those who are falsely accused.<sup>98</sup>

Similarly, critics find that VAWA has led to an outpouring of false accusations by those attempting to gain an unmerited advantage in litigation. “In our rush to avoid tragedies through a ‘zero tolerance policy,’ claims of domestic violence have become a fast track process by which unscrupulous parties gain sole custody of the children based on a lie, a lie that is shockingly easy to tell.”<sup>99</sup> For example, in a divorce case, a claim of “I was afraid” can sometimes be enough for the court to view the “victim” as a better parent without further evidence of abuse.<sup>100</sup> This unfair presumption can give the accusing party favor in custody and visitation, resulting in the marginalization of the falsely accused.<sup>101</sup> The primary difficulty in dealing with such false accusations is preventing the restrictions in response to these abuses of the system from overcoming the benefits of VAWA.

VAWA’s immigration provisions require extensive assessment and suggestions to safeguard against false accusations, but the advantages to victims give weight to the absolute need to retain the VAWA self-petition benefits. The 2011 VAWA reauthorization bill includes the self-petition provision for immigrants, with an expansion of benefits to the children of immigrants.<sup>102</sup> While it does not implement any of the suggested safeguards to prevent immigration fraud, the 2011 reauthorization proposal does attempt to improve assistance to victims, which is compatible with the main purpose of VAWA.<sup>103</sup>

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inafter *VAWA Hearing 2011*] (including a brief testimony of an abused woman who was falsely accused by her husband of abusing him, resulting in extreme complications with her immigration process).

98. *Fact Sheet: USCIS*, *supra* note 74.

99. Pisarra, *supra* note 74. Pisarra is a family law attorney, and wrote this article on one of his cases in which his client was falsely accused. *Id.*

100. *Id.* The obvious difficulty with trivializing statements like “I was afraid” is the fact that emotional abuse is domestic violence, and no physical violence need occur in order for a woman to be battered and live in fear. See *Definition, DOMESTIC VIOLENCE.ORG*, <http://www.domesticviolence.org/definition/> (last visited Mar. 17, 2012) (citing “name-calling or putdowns” as an example of abuse).

101. Pisarra, *supra* note 74. The article references a study by the non-profit advocacy group Stop Abusive and Violent Environments revealing that more than 700,000 individuals are falsely accused each year. *Id.*

102. The proposed reauthorization of VAWA includes a provision for alien children to petition for immigrant status as “a derivative beneficiary of an alien who was a VAWA self-petitioner.” Violence Against Women Reauthorization Act of 2011, S. 1925, 112th Cong. § 803(3), available at <http://thomas.loc.gov/cgi-bin/query/F?c112:2:./temp/~c112R3aHqG:e295>: (introduced in the Senate on Nov. 30, 2011).

103. *Violence Against Women Act of 2000: Bill Summary, Nat’l Coal. Against Domestic Violence* (Oct. 11, 2000), <http://www.acadv.org/VAWAbillssummary.html>.

### C. VAWA Funding: A Failure to Resolve the Housing Crisis

The VAWA housing crisis is “an unconscionable gap between desperate need and available resources.”<sup>104</sup> The most severely inadequate provision of VAWA is undoubtedly the shelters and housing sections. In contrast to the shortcomings of the false accusations and abuses of the VAWA system, the housing issue is one that can effectively be addressed without removing any benefits to victims. Rather, improvements to VAWA’s housing provisions would dramatically improve the welfare of battered women in the United States.<sup>105</sup>

#### 1. Shelter Options

The state of the economy in the new millennium has been on a steady decline,<sup>106</sup> and with it, funding for VAWA programs has also diminished.<sup>107</sup> Specifically, battered women’s shelters, also known as domestic violence shelters, and transitional housing have seen a sharp decrease in funding from the federal government.<sup>108</sup> While VAWA has made strides in providing resources to women and promoting awareness in the interest

104. *Family Violence Prevention & Services Act*, NAT’L NETWORK TO END DOMESTIC VIOLENCE, <http://www.nnedv.org/policy/issues/fvpsa.html> (last visited Feb. 12, 2012).

105. The 2010 domestic violence census reported “9,541 unmet requests for services” in just one day, sixty percent of which were requests for emergency shelter or transitional housing. DOMESTIC VIOLENCE COUNTS 2010, *supra* note 15, at 4. Of the programs unable to meet service requests in 2010, thirty-eight percent reported they did not have enough funding for the needed programs. *Id.* Compare CENSUS OF DOMESTIC VIOLENCE, *supra* note 1, at 1–2 (reporting 8,927 unmet service requests in one day), with DOMESTIC VIOLENCE COUNTS 2010, *supra* note 15, at 4 (revealing the reported unmet need on the census day increased by 614 requests between 2008 and 2010). Shockingly, the increasing shortage of services, mainly a deficit in housing for victims, is followed by a further removal of funding with VAWA cutting housing grants by half. See Violence Against Women Reauthorization Act of 2011 (proposing the reduction of collaborative grant programs for victims’ housing by half of the previous amount allocated each year).

106. Charles Riley, *90 Percent of Americans Say Economy Stinks*, POLITICAL TICKER CNN BLOG (Sept. 30, 2011), <http://politicalticker.blogs.cnn.com/2011/09/30/90-percent-of-americans-say-economy-stinks/>. The 2008 recession appears to have continued into 2011, with ninety percent of Americans reporting that economic conditions are poor. *Id.*

107. See generally COMPARISON OF VAWA, *supra* note 21 (noting that the funding for shelters for battered women and children was not reauthorized for 2005; however, other VAWA programs have continued to be funded and yet new programs have been implemented in 2005).

108. Telephone Interview with Gay L. Schwenk, Dev. Dir., Family Violence Prevention Servs., Inc. (Sept. 16, 2011) (on file with *The Scholar: St. Mary’s Law Review on Minority Issues*) [hereinafter Interview with Gay L. Schwenk]. Schwenk discussed the tedious and unsuccessful grant-writing process required to fund transitional housing for victims: “It is very frustrating that an organization who has provided services to domestic violence victims for thirty-five years, [and] has a comprehensive group of services and a proven history of success and innovation, cannot find \$25,000 for such a basic need.” *Id.*



of prevention, there are noticeable gaps in VAWA's provisions, namely housing for victims. "The most underserved groups seem to [include] . . . poor battered women in dire need of transitional second-stage housing . . . ." <sup>109</sup>

a. Emergency Shelters and Services

Abused women are often faced with the choice of whether to continue living in a household with violence, or to leave and make a home elsewhere. For a variety of reasons, including safety concerns and lack of other resources, women who choose to leave are frequently forced to seek housing at a battered women's shelter.<sup>110</sup> A traditional domestic violence shelter is an emergency shelter for victims that provides services that include a bed, counseling, case management, advocacy, batterers intervention, and access to outside services like legal counsel.<sup>111</sup> The draft of the 2011 VAWA reauthorization altered the "services" definition by separating "victim services" from its prior definition within "victim service provider," and expanded the definition to include both legal and social support.<sup>112</sup> Sometimes private rooms are offered at emergency shelters, but there is low availability, and requirements to gain access to a private room vary by shelter.<sup>113</sup> Victims who do reside at domestic violence shelters are generally given a three-month maximum residency pe-

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109. JACKSON, *supra* note 11, at 62.

110. Laurie, a New Jersey wife and mom, suffered at the hands of her abusive husband and was one of the many women everyday who turn to shelters for an escape from violence. *Personal Stories*, JERSEY BATTERED WOMEN'S SERVS., [http://www.jbws.org/personal\\_stories.html](http://www.jbws.org/personal_stories.html) (last visited Mar. 17, 2012).

As I fled our home with the children and drove to that secret place, I began to curse myself for being too hasty. Reality hit me. We would have Christmas alone. Nobody cared about me—my husband often told me so. The memory of his words stung. I should have stayed for the kids' sakes. They would never forgive me for robbing them of their Christmas.

Lonely, depressed, confused and angry, I entered the safe house. . . .

. . . .

During my two months at the Arbour House, I received my most cherished possessions—self-respect, dignity and inner peace.

*Id.*

111. ARIZ. DEP'T OF ECON. SEC. & ARIZ. DEP'T OF HEALTH SERVS., DOMESTIC VIOLENCE EMERGENCY SHELTER SERVICES REPORT 1-10 (Sept. 2000), *available at* [www.jrsa.org/dvsa-drc/arizona/DES\\_DV.pdf](http://www.jrsa.org/dvsa-drc/arizona/DES_DV.pdf).

112. VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2011, SECTION BY SECTION ANALYSIS 1-2 (n.d.), *available at* [http://www.americanbar.org/content/dam/aba/multimedia/domestic\\_violence/2011\\_vawa\\_reauthorization/SectionBySection-ViolenceAgainstWomenReauthorizationAct.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/multimedia/domestic_violence/2011_vawa_reauthorization/SectionBySection-ViolenceAgainstWomenReauthorizationAct.authcheckdam.pdf).

113. Generally, the referral agency or person is contacted and agree to house the victim at the shelter. ARIZ. DEP'T OF ECON. SEC., *supra* note 111.

riod, after which they are expected to exit the shelter.<sup>114</sup> During their time at the shelter, victims are given access to resources to rebuild their lives independent of their abusive partners. The shelter environment is an incredible resource for victims. Unfortunately, not all victims are given the opportunity to utilize these services because many facilities are both underfunded and overcrowded.<sup>115</sup>

Many victims are forced to seek alternative housing at homeless shelters, because it is so complicated to gain access to domestic violence shelters.<sup>116</sup> However, women seeking homeless shelter placement are sometimes turned away because they do not exactly meet the definition of “homeless.”<sup>117</sup> A fundamental issue with battered women being placed in homeless shelters is the necessity that they conform to the definition of “homeless.” This conformity precludes them from receiving individualized treatment, and leads to the manipulation of their identities into “socially constructed categories of need.”<sup>118</sup> Women might also be forced to move into a homeless shelter once the initial three months at the battered women’s shelter have passed, indicating a complex connection between domestic abuse and homelessness.<sup>119</sup> However, it is certainly preferable for a victim of domestic violence to seek assistance at a homeless shelter instead of being forced to live on the streets. Yet, even

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114. Williams, *supra* note 2, at 162. As previously noted, domestic violence shelters may further limit residents to a short thirty-day stay. *Id.* at 143.

115. DOMESTIC VIOLENCE COUNTS 2010, *supra* note 15, at 3.

116. Williams, *supra* note 2, at 143. Unfortunately, along with the common instances of shelters being too full, some cities have seen “as much as a 100 percent increase [in families’ requests for shelter] from 1994 to 1995.” *Id.* at 144. Surveys indicate that the majority of homeless families are headed by females, revealing the uniqueness and importance of exploring issues regarding women’s homelessness. *Id.*

117. *Id.* at 147. The standard definition of “homeless” is “without a home,” or “persons who lack permanent housing.” *Homeless Definition*, DICTIONARY.COM, <http://dictionary.reference.com/browse/homeless> (last visited Mar. 17, 2012). However, shelters tend to base their definitions of “homeless” or “battered woman” on the categories of their offered programs, including considerations of lifestyle, behavioral issues, and mental state. Williams, *supra* note 2, at 147.

118. Williams, *supra* note 2, at 162–63. Due to each shelter directing their services at a specific subpopulation (for example, teen drug abuse), women who do not clearly fall into a battered woman or homeless category often have difficulty locating a program to assist them. *Id.* at 147. Furthermore, society construes homelessness as a product of laziness and consisting of those who “live off the system,” while battered women who live in shelters are viewed positively—as making steps towards helping themselves. *Id.* at 148.

119. *Id.* at 147. Women often have a variety of “issues for which they seek assistance but learn to emphasize one problem and to conceal another to gain acceptance into a particular shelter.” *Id.* at 147. This practice of concealing other issues is unfortunate, and while it may provide an immediate answer to women’s homelessness, it may be highly detrimental in the long-run when women continue to struggle with their unaddressed issues, like drug abuse. *Id.*

if women do receive housing in either a battered women's or a homeless shelter, the three-month time limit precludes serious participation in programs and treatments that mitigate the cycle of abuse. The short time limits for shelters leave these women without further resources.<sup>120</sup> The goal of most shelters in providing case management services is to assist victims in preparing for their exit and planning for the future, including possible housing options. However, not all victims are ready to make that step after only three months, and often are unable to secure housing because public assistance is difficult to gain. Some shelters are associated with transitional housing,<sup>121</sup> and if there is available room, transitional sites are a popular option for victims who are not yet ready to live independently after the three-month period.

#### b. Transitional Housing

“[T]ransitional housing is designed as a bridge to self-sufficiency and permanent housing.”<sup>122</sup> The characteristics of transitional housing for battered women vary based on the service provider. Generally, transitional housing programs provide a range of services including counseling,<sup>123</sup> goal-setting, financial assistance, and skill-building. These services are essential to assisting victims in making a successful transition to living without their abuser.<sup>124</sup> The programs are widely designed to “focus on empowering women: to live self-sufficient safer lives; to make informed decisions; to undergo personal growth; and to participate in both self-help and peer support for other battered women and their children.”<sup>125</sup> Wo-

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120. Federal housing programs, like the Section 8 housing discussed in the Introduction, *infra* Part I, can provide an alternative to seeking emergency shelter or transitional housing, but generally have a two-year waiting list. Williams, *supra* note 2, at 162. Specially addressing the cycle of violence, housing assists women through the implementation of programs, like job training and external resources to reduce the incidences of violence that occur. Chanley et al., *supra* note 8, at 394.

121. Only thirty-five percent of shelter programs offer transitional housing options. DOMESTIC VIOLENCE COUNTS 2010, *supra* note 15, at 4.

122. CORREIA & MELBIN, *supra* note 8, at 3. Transitional housing is also referred to as “second stage housing.” *Id.*

123. CRIS M. SULLIVAN ET AL., TRANSITIONAL HOUSING POLICY AND PRACTICES: BATTERED WOMEN'S AND SERVICE PROVIDERS' PERSPECTIVES 11 (2003), available at [vawnet.org/Assoc\\_Files\\_VAWnet/TransHousPolicy.pdf](http://vawnet.org/Assoc_Files_VAWnet/TransHousPolicy.pdf). Quoting a woman at a transitional housing center, stating: “Counseling helps by allowing me the option not to go back [to assailant].” *Id.*

124. CORREIA & MELBIN, *supra* note 8, at 10–11. In addition to the range of services for victims, transitional housing generally offers childcare assistance, including child development programs, and clinical therapy. *Id.* at 3.

125. *Id.* at 5. The authors continue by stating that:

A number of programs set out to end or eradicate domestic violence, by providing supportive services to victims and education to the general community. Other pro-

men are usually placed in transitional housing for a period between twelve and twenty-four months,<sup>126</sup> and are placed either at a single location or scattered site units.<sup>127</sup> The lack of uniformity in transitional housing structures cause some issues with evaluating the success of many programs, but research indicates that the definition of success for transitional housing is closely tied to the program's ability to assist women in meeting the goals they set for themselves.<sup>128</sup> Regrettably, as needs for transitional housing rise, the federal resources for such housing lessen. An example of this decrease in federal resources is seen in the 2011 VAWA reauthorization bill, which proposes a \$5 million reduction in grant funding for transitional housing.<sup>129</sup>

## 2. The Process of Securing Safe Housing

A victim seeking housing under VAWA must go through a detailed and specific process to gain assistance.<sup>130</sup> To enter an emergency shelter, a

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grams focus on serving women and children who are homeless due to domestic violence, and assisting them in finding permanent housing. A few programs are specifically geared towards helping women leave their abusers, by providing housing and opportunities for economic stability.

*Id.*

126. *Id.* at 7. Of the programs interviewed, “[m]ore than half of the programs offer services for a full two years, and ten of the twelve programs provide a minimum initial length of time for services, with the possibility for extensions.” *Id.* However, “programs reported that participants need increasingly longer stays in transitional housing, often past the allowable length of time, and cite the lack of affordable permanent housing as the reason.” *Id.* at 7–8; SULLIVAN ET AL., *supra* note 123, at 2.

127. *Id.* at 5–6. Scattered site units are considered a fantastic tool to assist victims to transition from life in a shelter to successfully living independently. *Id.* at 6. *See, e.g., HHHNYC Housing, HERITAGE HEALTH & HOUS.*, [http://heritagenyc.org/housing/housing\\_txxx.asp](http://heritagenyc.org/housing/housing_txxx.asp) (last visited Feb. 12, 2012) (describing the transitional housing program at a large New York City facility). Heritage Health and Housing offers thirteen different forms of assisted living. Programs range from complete twenty-four hours a day, seven days a week supervised care, to independent living in scattered site communities. *Id.*

128. CORREIA & MELBIN, *supra* note 8, at 20. Research on staff and participant relationships also revealed that mutual respect and strong relationships between the staff and participants was related to high success rates in transitional housing environments. *Id.*

129. *See* Patrick Leahy, Senate Judiciary Comm., Violence Against Women Reauthorization Act Of 2011, at 10 (2011) (reducing the authorized funding for transitional housing from \$40 million to \$35 MILLION). *See also* 42 U.S.C. § 13975(g)(1) (2006) (allocating \$40,000 to carry out the transitional housing needs established for the years 2007 to 2011); U.S. Dep’t of Justice, 2010 Biennial Report to Congress on the Effectiveness of Grant Programs Under the Violence Against Women Act 23 n.27 (2010), available at [www.ovw.usdoj.gov/docs/2010-biennial-report-to-congress.pdf](http://www.ovw.usdoj.gov/docs/2010-biennial-report-to-congress.pdf) (noting that *only* the transitional housing program was excluded from funding for training professionals).

130. The process to receive funding under VAWA does overlap somewhat with the U.S. Department of Housing and Urban Development, as will be further explained in this section, but there are alternative options to gain public housing through HUD, like Section

victim generally must call the shelter hotline, give their story, and find out from the hotline worker whether there is room at the facility.<sup>131</sup> If there is no availability, the hotline worker often gives references and tries to help the caller take steps to reduce danger;<sup>132</sup> however, many of those callers are often left without safe housing.

Sometimes, a victim who is in fairly immediate danger may currently have safe housing, but finds that their safety may be threatened if they report their situation of domestic violence. Title VI of the 2005 VAWA reauthorization acknowledged the unfortunate and disturbing reality that even in 2005—over ten years after VAWA's original enactment—many victims of domestic violence across the nation who sought or obtained civil protection orders against their abusers, who summoned police in response to domestic violence, or who took other protective measures that VAWA encouraged, were in fact punished for doing so with the loss of their federal housing.<sup>133</sup> To remedy this punishment of victims just for being victims, VAWA directly assists domestic violence victims by prohibiting apartment management companies from evicting the victim due to criminal activity committed by a member of the victim's household.<sup>134</sup> Under this protection, VAWA allows the apartment providers to require the victims to complete a U.S. Department of Housing and Urban Development (HUD)-approved form, which certifies the resident is a domestic

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8 vouchers. See *Housing Choice Vouchers Fact Sheet*, *supra* note 7 (explaining the basics of public housing vouchers and the process to obtain them—primarily through local public housing agencies).

131. See *Get Help Now*, GENESIS WOMEN'S SHELTER (2011), <http://www.genesisshelter.org/page.aspx?pid=402> (directing victims to call their hotline number if they need a safe place and to call 911 if it is an emergency).

132. See *generally id.* (indicating that “[h]elp is available 24 hours a day, 365 days per year”).

133. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, *THE IMPACT OF THE VIOLENCE AGAINST WOMEN ACT 2005 (VAWA) ON THE HOUSING RIGHTS AND OPTIONS OF SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE 1* (2006), available at [www.nlchp.org/FAQ\\_VAWA\\_Housing\\_1-082.pdf](http://www.nlchp.org/FAQ_VAWA_Housing_1-082.pdf).

134. *Violence Against Women Act: Housing Provisions*, NAT'L MULTI HOUS. COUNCIL, <http://www.nmhc.org/Content/ServeContent.cfm?IssueID=156&ContentItemID=3723&siteArea=Topics> (last visited Oct. 15 2011).

An applicant for or tenant of housing assisted under a covered housing program not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission assistance, participation, or occupancy.

Violence Against Women Reauthorization Act of 2011, S. 1925, 112th Cong. § 41411(b)(1), available at <http://thomas.loc.gov/cgi-bin/query/F?c112:2:./temp/~c112R3aHqG:e295>: (introduced in the Senate on Nov. 30, 2011).

violence victim claiming protection under VAWA.<sup>135</sup> VAWA originally intended that HUD certification forms be signed by a third party, such as a victim-service provider, but HUD allows self-certification which circumvents this requirement.<sup>136</sup> Regardless of the apparent ease of the self-certification process, problems with apartment complexes still arise because victims may be unable to transfer out of the space they share with an abuser, and a public housing authority is not required to transfer a tenant solely because she is a victim of domestic violence.<sup>137</sup>

While other federal resources exist for shelters and transitional housing,<sup>138</sup> each program has different reporting requirements and designations for how to use the funding.<sup>139</sup> Most of the programs tout strict limitations and low funding,<sup>140</sup> which makes it difficult for shelters to access the funds they need. VAWA is seen as an expansive resource that supports many areas, from prevention to follow-up care, with funding that does not exclusively come in the form of grants.<sup>141</sup> However, the

135. *Violence Against Women Act: Housing Provisions*, *supra* note 134. Note that if shelter services are funded, even in part, by HUD, they require participants to be categorized as “homeless” prior to entry, creating a plethora of issues for domestic violence victims who are not technically “homeless.” CORREIA & MELBIN, *supra* note 8, at 9.

136. Compare 24 C.F.R. § 5.2007(b)(1) (2010) (“[s]uch certification . . . may be based solely on the personal signed attestation of the victim . . .”), with 24 C.F.R. § 5.2007(b)(3) (2010) (stating the VAWA-intended regulation that a victim-service provider can sign). In addition to the victim-service provider being able to sign as required, the HUD victim certification form under VAWA allows an attorney or medical professional to sign as well. *Id.*

137. *Robinson v. Cincinnati Metro. Hous. Auth.*, No. 1:08-CV-238, 2008 U.S. Dist. WL 1924255 (D. Ohio Apr. 29, 2008). The plaintiff brought a motion for a temporary restraining order and preliminary injunction against her ex-partner, based on a history of her partner’s violence. *Id.* at 1. Additionally, the plaintiff requested a transfer to another public housing unit for fear that her abuser will locate her. *Id.* The Cincinnati Metropolitan Housing Authority (“CMHA”) declined to transfer her because of a policy that transfers cannot be based on the tenant’s status as a victim of domestic violence, and the CMHA claimed that the only exception is for victims of federal hate crimes. *Id.* The plaintiff argued that the CMHA policy included an exception for “extreme harassment,” which “is not inextricably tied to [the] federal hate crimes statute,” and that the CMHA policy violates the Fair Housing Act by discriminating against her on the basis of gender. *Id.* at 2. The court concluded, “the status of the law does not require the CMHA to grant her a transfer on the basis of a threat of future domestic violence.” *Id.* at 6.

138. See CORREIA & MELBIN, *supra* note 8, at 14–16 (listing federal housing assistance programs such as the HUD McKinney-Vento Supportive Housing Program, State Departments of Social Services, and Federal Emergency Management Agency (FEMA)).

139. For example, the scattered site model of transitional housing requires residents to enter into a traditional “master” lease and find their own place in the market while participating in case management programs, whereas the single location transitional housing units often mimic emergency shelters in gaining residency and in operation. *Id.* at 4.

140. *Id.* at 14–16.

141. *Id.* at 16.

2011 proposed reauthorization of VAWA has eliminated direct funding for housing, and funneled the limited amount of housing money into grant programs, which, as previously discussed, are problematic and difficult to obtain.<sup>142</sup> Senator Leahy recognized that housing is a “continuing obstacle” to domestic violence victims, but the VAWA 2011 draft does not appear to address this crisis in funding.<sup>143</sup>

### 3. VAWA’s Problematic Funding Allocations: Widening the Funding Defecit

Prior solutions to the housing gap in VAWA have been proposed and denied, including the proposal to provide federal legal protection against housing discrimination by amending the federal Fair Housing Act.<sup>144</sup> In order to respond to the denial of these legal protections shelters and housing programs must apply for grants through VAWA. The few expansions in housing grants have demonstrated little realistic support for victims, as resources quickly run out and programs are forced to turn needy women away.<sup>145</sup>

2011 marks the seventeenth anniversary of the Violence Against Women Act, and with the anniversary comes the expiration of the 2005

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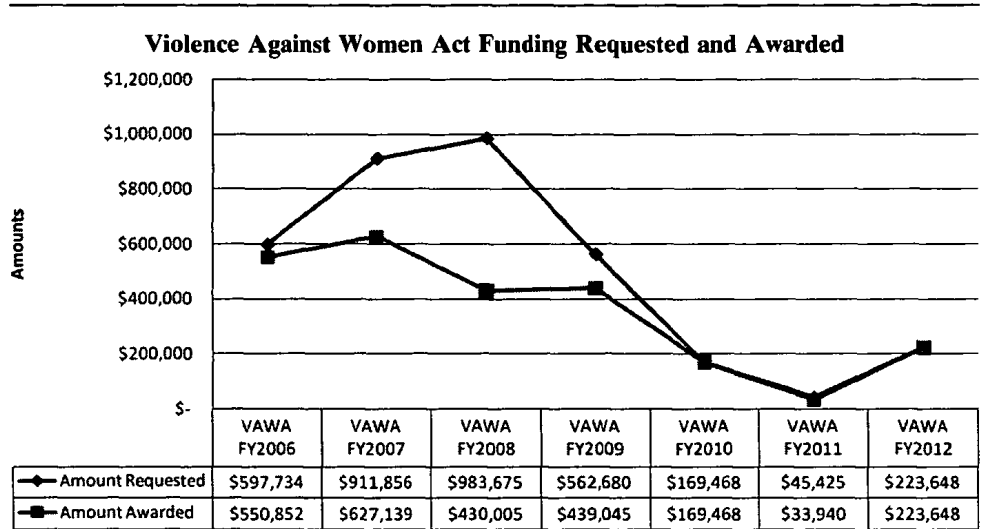
142. See *supra* text accompanying note 108. See also Violence Against Women Reauthorization Act of 2011, S. 1925, 112th Cong., available at <http://thomas.loc.gov/cgi-bin/query/F?c112:2:./temp/~c112R3aHqG:e295>: (introduced in the Senate on Nov. 30, 2011) (establishing collaborative grants for shelter housing).

143. An analysis of VAWA 2011 proposal created by Senator Leahy outlines the crucial protections housing provides for victims, but the analysis section ends with: “[t]here are no funds authorized for this section.” PATRICK LEAHY, VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2011, at 10 (2011), available at <http://leahy.senate.gov/imo/media/doc/SectionBySection-ViolenceAgainstWomenReauthorizationAct.pdf>. The VAWA 2011 will improve housing for victims by modifying the section on housing in three ways: extending housing to sexual-assault victims, including persons with close, family-like association to the victim as an “immediate family member” in order to gain protection for those living with the victim, and extending VAWA housing to nine federal programs not currently covered (McKinney-Vento Act, Low Income Housing Tax Credit, etc.). *Id.* Yet somehow, with the recognition that the availability of temporary or permanent housing is a huge obstacle to victims, the VAWA 2011 proposal fails to directly address this gap with the driving force behind VAWA: monetary relief.

144. NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, THE IMPACT OF THE VIOLENCE AGAINST WOMEN ACT ON HOUSING 6 (2005), available at [www.ncdsv.org/images/ImpactofVAWAHousingFAQ.pdf](http://www.ncdsv.org/images/ImpactofVAWAHousingFAQ.pdf).

145. Kurens, *supra* note 22; Wellner, *supra* note 22; *Service Assessment*, *supra* note 22.

reauthorization.<sup>146</sup> Vice President Biden continues to be an advocate for VAWA, and gained media attention for his speeches on VAWA's important initiatives and programs.<sup>147</sup> The Vice President has made an admirable effort to end dating violence on college campuses, where numerous



ALAMO AREA COUNCIL OF GOV'T GRANT WORKSHOP 5 (Dec. 15, 2011) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (utilizing a chart to illustrate the increase of VAWA funding requests, correlated with a decrease in funding awarded, and finally a dramatic decrease in both requests and awards). The extreme gap in the availability of VAWA funds compared with the high need for funding is indicative that the unavailability of funding caused programs' unwillingness to continue to apply for the needed high award amounts, but the decrease in requests is not indicative of a decrease in actual need.

146. The 2011 VAWA reauthorization faced opposition from Republicans, who objected to provisions such as immigrant visas, language protecting gay and transgender individuals, and an expansion of Native American prosecutorial authority over non-Indians. *Democrats Raise VAWA*, *supra* note 96. As of March 2012, the reauthorization had fifty-eight co-sponsors in the Senate, two senators short of the sixty needed to overcome a possible filibuster. *Id.* The debate over VAWA 2011 may be contributed to a controversial political climate in which Republicans have been accused of waging a "war against women" in 2012, and Democrats dared GOP senators to vote against VAWA. *Id.* The purpose of the dare being a strategic political move, but one with a sound stated reason: "[p]rotecting women against violence shouldn't be a partisan issue." *Id.*

147. See *Seventeenth Anniversary of the Violence Against Women Act*, THE WHITE HOUSE (Sept. 23, 2011), <http://www.whitehouse.gov/photos-and-video/video/2011/09/23/seventeenth-anniversary-violence-against-women-act> [hereinafter *Seventeenth Anniversary*] (recording Vice President Biden's theme on the Anniversary of VAWA, the phrase: "No means no."). See also *1 is 2 Many*, THE WHITE HOUSE, <http://www.whitehouse.gov/1is2many> (last visited Nov. 20, 2011) [hereinafter *1 is 2 Many*] (inviting the public to share ideas on preventing sexual assault, with a focus on preventing the pervasiveness of rape on college campuses).



assaults occur and many more are simply not reported.<sup>148</sup> However, Vice President Biden's focus on this one area has turned the focus away from the under-funded services, such as housing, that are essential to the majority of domestic violence victims. Prevention is essential to ending domestic violence,<sup>149</sup> but a decrease in attention on crisis centers and intervention services will eliminate the most crucial service in ending domestic violence in the United States—housing.<sup>150</sup>

Contrary to the development of proposed new VAWA programs targeted at assisting immigrant victims and university students, other proposed portions of VAWA suggest cutting back provisions, alarmingly in areas that are essential to assisting victims and reducing the continuance of violence.<sup>151</sup> Primarily, the housing gap in VAWA<sup>152</sup> appears to have increased with Senator Leahy's proposed VAWA 2011 reauthorization cutting the appropriations for housing by half—appropriations that only cover grants rather than direct funding to shelters.<sup>153</sup> As discussed previously, without housing options, victims are likely to return to a cycle of violence<sup>154</sup> that merely perpetuates the abusive situations that VAWA was created to prevent.

The most significant issues with VAWA arise as Congress continues to cut funding for housing services, despite the fact that safe housing is an immediate and constant need facing domestic violence victims.<sup>155</sup> From

148. *See 1 is 2 Many*, *supra* note 147 (sharing the statistic: “[o]ne in five young women have been sexually assaulted while they’re in college.”).

149. Young adults tend to craft their treatment of relationships in their teen years, and even behavior patterns that reflect violent tendencies can be molded with effective prevention education programs. Jessica Ramos, *Defining Violence on the Blackboard: An Overview of the Texas Education Code's Approach to Teen Dating Violence*, 13 SCHOLAR 1, 131 (2010).

150. “Emergency shelters are short-term living arrangements for victims in response to immediate crisis and danger . . . . Transitional housing is temporary accommodations . . . imperative to help victims become survivors.” CENSUS OF DOMESTIC VIOLENCE, *supra* note 1, at 4.

151. *See* CORREIA & MELBIN, *supra* note 8 (illustrating the correlation between limited housing and the perpetuation of domestic abuse). *See also* Violence Against Women Reauthorization Act of 2011, S. 1925, 112th Cong., available at <http://thomas.loc.gov/cgi-bin/query/F?c112:2:/temp/~c112R3aHqG:e295>: (introduced in the Senate on Nov. 30, 2011) (proposing cutbacks to the VAWA grant programs for housing).

152. *See generally* COMPARISON OF VAWA, *supra* note 21 (comparing the allocation of funds authorized by VAWA in 1994, 2000, and 2005).

153. *See* Violence Against Women Reauthorization Act of 2011 § 41411(b)(1) (proposing to amend VAWA to include a collaborative grant program for housing, unlike the VAWA 1994 and the VAWA 2000 that each included direct funding for emergency shelters).

154. CORREIA & MELBIN, *supra* note 8, at 2.

155. FAMILY VIOLENCE PREVENTION FUND, ENGAGING WITH FEDERAL POLICY TO BETTER ADDRESS VIOLENCE AGAINST WOMEN: A TOOLKIT FOR ACTIVISTS IN LOS ANGE-

1996 to 2000, VAWA allocated at least \$50 million per year to housing, with an annual increase to \$175 million per year from 2000 to 2005.<sup>156</sup> In 2005, the shelter services provision was not reauthorized, instead the VAWA reauthorization repackaged shelter funding as “Collaborative Grants to Develop Long-Term Housing for Victims,” and took the direct VAWA funding to battered women’s shelters from \$175 million per year to *nothing*.<sup>157</sup> While shelters may apply for grant programs, the actual process and restrictions make grants a less than desirable option.<sup>158</sup>

There are many organizations and battered women’s shelters that are likely in existence primarily due to the public awareness VAWA has created. Unfortunately, those very organizations are often forced to turn women away because VAWA’s provisions do not adequately extend enough funding for the shelters to take on more women and children.<sup>159</sup> What purpose does VAWA serve if it motivates awareness of domestic violence, but falls short of assisting victims in times of crisis?

A repurposing of VAWA’s funding for battered women’s shelters and transitional housing is the first fundamental step towards truly reducing domestic violence in the United States.

#### IV. REPURPOSING THE VIOLENCE AGAINST WOMEN ACT’S HOUSING PROVISIONS

“While we have made great strides in reducing domestic violence and sexual assault, these difficult problems remain, and there is more work to be done.”<sup>160</sup>

The National Network to End Domestic Violence conducts a survey each year in the United States that captures the instances of domestic violence and related issues that occur in just one day.<sup>161</sup> The census re-

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LES 1 (2010), available at <http://www.futureswithoutviolence.org/content/features/detail/1587/> (follow “VAWA Toolkit for LA-based Advocates” hyperlink). “Our nation’s lack of affordable housing can dramatically reduce options for women experiencing domestic violence, trapping them in abusive situations or forcing them and their children to become homeless if they leave.” *Id.*

156. COMPARISON OF VAWA, *supra* note 21.

157. *Id.* The VAWA 2005 simply removed appropriations for shelter services, creating “Collaborative Grants to Develop Long-term Housing for Victims” at \$10 million per year, and it appears that the VAWA 2011 proposal provides funding to shelters only through grant programs rather than the easier, direct funding provisions. *Id.*

158. See Interview with Gay L. Schwenk, *supra* note 108 (describing the laborious restrictions and lengthy waiting periods associated with requesting grants for emergency shelters).

159. See, e.g., *id.*

160. 157 CONG. REC. S8071 (daily ed. Nov. 30, 2011) (statement of Sen. Patrick Leahy).

161. DOMESTIC VIOLENCE COUNTS 2010, *supra* note 15, at 3.

corded 9,541 unmet requests for assistance in 2010—primarily due to lack of funding.<sup>162</sup> It is unacceptable that even one victim is turned away from a shelter in their time of crisis simply due to a lack of financial resources. Unfortunately, an average of 9,000 individuals per day are faced with the horrific reality of unmet requests for assistance. With thousands of women unjustly denied services every day, that forces thousands of women to choose between homelessness and returning to their abusers.<sup>163</sup> At the time of the 2010 census, only thirty-five percent of the programs offering victims services had transitional housing options.<sup>164</sup>

Senator Leahy (D-Vt.), who introduced the 2011 VAWA reauthorization bill in the Senate, noted that victims needs are growing while state budgets are being cut, negatively affecting the availability of shelter and transitional housing.<sup>165</sup> Senator Leahy stated: “[W]e have to go further. We have to prioritize our response to the high rates of violence.”<sup>166</sup>

Money seems to be a necessary tool in utilizing VAWA to combat domestic abuse, especially in funding housing programs that reduce the continuance of violence.<sup>167</sup> But the hundreds of millions already directed at VAWA’s nine areas of intervention indicate that funding is funneled into VAWA without effective means of allocation. Every area that VAWA targets deserves time, attention, and money; but for VAWA to significantly reduce domestic violence in the United States, the most requested service for victims—housing<sup>168</sup>—must be given the proper amount of resources. It is fundamental that a large percentage of victims of domestic abuse will need and seek shelter at some point.<sup>169</sup> A shocking percentage

162. *Id.* Over 70,000 victims were provided services in the form of shelters and housing in the single day, signifying the tremendous need and efforts to meet those needs across the country. *Id.*

163. *See id.* (reporting instances of domestic violence in one day, and implying a high number, in the thousands, of women effected by the lack of resources).

164. *Id.*

165. *The Increased Importance of the Violence Against Women Act in a Time of Economic Crisis: Hearing Before the S. Comm. on the Judiciary*, 111th Cong. (2010) (written testimony of Lolita Ulloa, Managing Att’y of Victim Services Division of Hennepin County Attorney’s Office). Senator Leahy indicated he increased VAWA program funding to transitional housing by creating a \$50 million transitional housing provision in the American Recovery and Reinvestment Act. *Id.* at 6.

166. *Id.*

167. *See* Chanley et al., *supra* note 8, at 402 (demonstrating the vital role that shelter housing plays in extracting women from the cycle of violence).

168. Eighty-nine percent of domestic violence services requested throughout the year are requests for emergency shelter. DOMESTIC VIOLENCE COUNTS 2010, *supra* note 15, at 11.

169. *Id.* at 3.

of those seeking help will not be able to find adequate assistance.<sup>170</sup> Therefore, in order to reduce the number of victims forced to stay with their abusers because shelter services are not available, it is imperative that shelter programs are adequately funded. Victims do not choose shelters as their first option, but are forced into them when they are out of options and their safety is threatened.<sup>171</sup> As Pamela Ellerman, a domestic abuse shelter associate, frankly stated, “we’re . . . well-aware that what we’re already providing is very much inadequate for the need.”<sup>172</sup>

While it may seem futile to demand additional federal funding at a time when the economy is suffering, the victims’ housing crisis can be solved with funding that already exists within VAWA. Vice President Biden’s focus on college campus sexual assault prevention is an admirable and important cause.<sup>173</sup> However, such prevention efforts mainly assist women on college campuses, ignoring the deluge of women who are non-college victims. Logically, college victims are far less likely to require shelter services, compared to victims who are not in college and cannot utilize the dorms and other services provided to students. Additionally, the rush of support for university victims creates a division between classes—those who can afford college and those who cannot. Victims who never attend college are barred from access to these heartily funded prevention programs, and remain segregated from the benefits of funding that not only protects victims, but also provides education designed to mitigate the potential of individuals becoming abusers.<sup>174</sup>

Reducing domestic violence requires both prevention and victim services, but the increasing number of victims turned away from shelters strongly suggests that shelter services need greater assistance from VAWA. Ostensibly, the high number of unmet housing needs<sup>175</sup> necessi-

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170. Along with an eighty-two percent of programs indicating an increase in victim services requests, there was a decrease in funding for seventy-seven percent of programs from 2009 to 2010. *Id.* at 4.

171. See *In Philadelphia, Domestic Abuse Shelter Strains Under Budget Cuts*, FREE SPEECH RADIO NEWS, Nov. 2, 2011, <http://fsrn.org/audio/philadelphia-domestic-abuse-shelter-strains-under-budget-cuts/9375> (reporting on advocacy surrounding the reauthorization of VAWA, pointing out the crucial role of emergency shelters when victims are desperate for help).

172. *Id.*

173. See *Seventeenth Anniversary*, *supra* note 147; *1 is 2 Many*, *supra* note 147.

174. See NAT’L RES. CTR. ON DOMESTIC VIOLENCE, ORGANIZING COLLEGE CAMPUSES AGAINST DATING ABUSE (1999), available at [http://vawnet.org/Assoc\\_Files\\_VAWnet/nrc\\_camp-full.pdf](http://vawnet.org/Assoc_Files_VAWnet/nrc_camp-full.pdf) (providing an extensive overview of programs and tactics to implement and coordinate campus violence prevention).

175. See DOMESTIC VIOLENCE COUNTS 2010, *supra* note 15 (citing 9,541 individuals in one day whose requested needs were not met, where twenty-four percent of requests denied due to no available beds nor funding for hotels).

tates the reallocation of funds from existing prevention provisions to direct shelter services. Campus sexual assault prevention is currently allotted \$500,000 for each university,<sup>176</sup> totaling \$12 million per year to carry out the purpose of combating violent crimes on campuses.<sup>177</sup> The VAWA 2011 proposal neglects to reauthorize the direct shelter funding provision, which was \$175 million per year in 2000.<sup>178</sup> Per the VAWA 2011 proposal, there now exists a glaring disparity between the deficit in victims' housing and the expansive resources for campus prevention.<sup>179</sup> If just a fraction of the money allocated to campus prevention—for example \$2 million per year—were set aside to reauthorize the shelter services provision, the victims' housing deficit could improve significantly.

To resolve the reduction in prevention funding, an alternative solution to address prevention could be implemented. VAWA could require holding individuals accountable for witnessing instances of domestic abuse, potentially through the implementation of stringent mandatory reporting statutes.<sup>180</sup> A heightening of reporting requirements goes hand-in-hand with increased public awareness,<sup>181</sup> which can only benefit VAWA's role in furthering society's rejection of domestic violence and support for VAWA programs.

Whether or not stringent mandatory reporting for the public becomes a reality, it is unlikely that Vice President Biden will support the reallocation of prevention funding in light of his strong campaign for VAWA prevention funding.<sup>182</sup> Therefore, the reallocation might have to come from other sources. A possible alternative for improving VAWA might include

176. 42 U.S.C. § 14045b(a)(2) (2006). The amount is proposed to be reauthorized for each year from 2012 to 2016. 42 U.S.C. § 14045b(c)(3).

177. 42 U.S.C. § 14045b(e).

178. Shelter funding in 2011 will be reduced to \$5 million per year in collaborative grants, as drafted in the current VAWA 2011 reauthorization proposal. Violence Against Women Reauthorization Act of 2011, S. 1925, 112th Cong., *available at* <http://thomas.loc.gov/cgi-bin/query/F?c112:2:./temp/~c112R3aHqG:e295>: (introduced in the Senate on Nov. 30, 2011).

179. The majority of news on the VAWA 2011 draft surrounded Vice President Biden's focus on sexual assault on college campuses, with almost no national attention to the devastating deficit in housing services for victims. *See Vice President Biden Discusses*, *supra* note 71 (recognizing Vice President Biden's attention to freeing college campuses from domestic violence).

180. *See* Paul Riffe, *Mandatory Reporting in Texas for Domestic Violence Against Vulnerable Adults: The Need for Changes in Statutory Enforcement*, 10 SCHOLAR 1, 19 (2007) (evaluating existing mandatory reporting requirements, and suggesting changes to the language of statutes to promote effective enforcement).

181. *Id.*

182. *See, e.g., Seventeenth Anniversary*, *supra* note 147; *I is 2 Many*, *supra* note 147.

deference to other federal housing programs like HUD.<sup>183</sup> By identifying those programs that already contribute a significant amount to victims, there might be some assurance that VAWA can provide sufficient assistance to those in need.

While certain grant programs are available for such purposes, the unmet need is greater than can be addressed through grants.<sup>184</sup> As previously discussed, grant writing demands a great number of resources and a significant time commitment, often resulting in grand awards that are approved only after hundreds of victims have gone without services.<sup>185</sup> Additionally, once grants are distributed, there are a multitude of restrictions that prevent access for many victims.<sup>186</sup> A majority of VAWA funding, per the 2011 proposal, is supported by grant programs that require the extensive time and resources mentioned.<sup>187</sup> It may be more effective to transfer some grant funds, such as those intended to benefit shelters and transitional housing, to VAWA provisions that directly fund such programs. For example, \$2 million could be taken from the existing \$5 million in collaborative grant funding for housing, and transferred to authorizing direct funding to shelter services.<sup>188</sup> The simple reallocation of these assets will appreciably expand the ability of shelters across the United States to serve victims' needs. Increased funding could assist shelters in building new facilities that can feasibly house the number of victims in each city, to hire staff to help increase victims' success in post-

183. See *Greetings from the Secretary*, *supra* note 4 (describing available HUD programs and methods of applying for public housing).

184. See, e.g., CENSUS OF DOMESTIC VIOLENCE, *supra* note 1, at 1–2; NAT'L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS 2009: A 24-HOUR CENSUS OF DOMESTIC VIOLENCE SHELTERS AND SERVICES 4 (2009), available at [http://www.nnedv.org/docs/Census/DVCounts2009/DVCounts09\\_Report\\_Color.pdf](http://www.nnedv.org/docs/Census/DVCounts2009/DVCounts09_Report_Color.pdf) [hereinafter DOMESTIC VIOLENCE COUNTS 2009]; DOMESTIC VIOLENCE COUNTS 2010, *supra* note 15, at 4.

185. Interview with Gay L. Schwenk, *supra* note 108.

There is a great amount of work and collaboration that goes into applying for federal funding, and then there is typically a long period of time before a response is received. By the time the funding is received, and all of the grant conditions are understood and implemented, it is often time to apply again, or the organization learns that the funds are no longer available.

*Id.*

186. *Id.*

187. See, e.g., Violence Against Women Reauthorization Act of 2011 (providing shelter funding through “Collaborative Grants to Increase the Long-Term Stability of Victims”).

188. Compare Violence Against Women Reauthorization Act of 2011, (proposing the allocation of collaborative grant funding for victims' housing), with COMPARISON OF VAWA, *supra* note 21 (outlining the changes in the VAWA reauthorizations, specifically pointing out the “Shelter Services for Battered Women and Children” provision that was not reauthorized after 2005).

shelter life, and to provide the necessary long-term housing options that are sorely lacking at present.

Additionally, the implementation of more transitional housing programs, where residents can stay for up to two years, may effectively address the substantial housing problem victims face when they are asked to leave shelters after three months.<sup>189</sup> Such housing is crucial for women and their children to gain stability, while building credit history, and the skills to maintain their future permanent housing.<sup>190</sup> The 2005 reauthorization of VAWA did provide Transitional Housing Assistance Grants to support a wide-variety of transitional housing services, as do other programs such as the Emergency Shelter Grant Program.<sup>191</sup> Nonetheless, women are consistently turned away from transitional housing because of capacity issues, and some are unable to access transitional housing because it is unavailable through the shelters and services provided.<sup>192</sup> In the face of limited available transitional housing resources, current proposed reauthorization of VAWA includes a further reduction in transitional housing grants, totaling a \$10 million reduction in grants for victims' housing.<sup>193</sup> If future reauthorizations incorporate the reallocation of funding, consideration should be given to increasing the amount attributed for transitional housing.

Overall criticism of the VAWA reauthorization funding includes complaints that VAWA programs lack transparency and accountability, which undermines taxpayer confidence.<sup>194</sup> In addition to making the necessary changes to VAWA funding procedures, it is crucial that supporters should undertake the task changing the public's perception. If the public is further educated on both the prevalence of domestic violence and methods VAWA uses to combat abuse, the United States will make greater strides in becoming a society free of domestic violence.

189. See CORREIA & MELBIN, *supra* note 8, at 4 (characterizing transitional housing and the traditional time limits for emergency shelters and long-term housing).

190. *Id.* at 6. Transitional housing is able to provide long-term success for victims by establishing a support network, giving essential resources to women, and by teaching economic independence from abusers. *Id.*

191. *Id.* at 16. The Emergency Shelter Grant Program is part of HUD's McKinney-Vento program. *Id.* The Federal Emergency Management Agency (FEMA) sometimes provides housing and food for the homeless, assisting some domestic violence victims. *Id.*

192. See DOMESTIC VIOLENCE COUNTS 2010, *supra* note 15, at 6 (providing that "8,927 requests for services were unmet . . . because of a lack of resources").

193. See Violence Against Women Reauthorization Act of 2011, (suggesting an amendment of transitional housing grants to \$35 million per year, compared to \$40 million per year from 2007-2011).

194. See *Analysis of the Leahy-Crapo Bill, STOP ABUSIVE AND VIOLENT ENV'TS* (2012), <http://www.saveservices.org/vawa-reauthorization/analysis/> (listing shortcomings of the VAWA 2011 reauthorization).

## V. CONCLUSION

Currently, the biggest issue in combating domestic violence is housing.<sup>195</sup> The proposed VAWA reauthorization intends to siphon away funding for housing, worsening the already existing housing crisis for victims of domestic abuse.<sup>196</sup> To address the discrepancy between victims' need and the lack of housing available to them, the Senate Committee on the Judiciary should invite shelter directors and transitional housing authorities to testify at the next hearing regarding VAWA. Subsequently, Senator Leahy should take the findings from the Committee Hearing and present them to Vice President Joe Biden, whose platform on VAWA seems to gain national attention and an expected Congressional response in the form of funding allocations.<sup>197</sup> Collectively, VAWA 2011 funding, if approved, will boast millions in prevention and aid funds to each of the designated sections within VAWA,<sup>198</sup> but the effect of reducing domestic violence can only be achieved by directing money to the high-demand areas. Victims' housing is the most important aspect of domestic violence assistance, as it often encompasses medical, emotional, practical, prevent-

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195. Hearing Testimony of Van Buren, *supra* note 14. "As indicated, the major barriers to success for victims of domestic violence . . . are a lack of affordable housing, and a lack of flexible resources to meet emergency needs to prevent homelessness." *Id.*

196. See generally Violence Against Women Reauthorization Act of 2011 (presenting the VAWA 2011 reauthorization bill and the proposed changes in funding allocations).

197. See, e.g., *Seventeenth Anniversary*, *supra* note 147 (including highlights of a press conference where Biden honored VAWA's 17th anniversary); *1 is 2 Many*, *supra* note 147 (presenting recent statistics about violence against women and Biden's role in fighting it). See also SEN. LEAHY, VAWA REAUTHORIZATION 2011: REDLINE DISCUSSION DRAFT 69 (2011), available at [www.saveservices.org/wp-content/uploads/VAWA-2011-Draft.pdf](http://www.saveservices.org/wp-content/uploads/VAWA-2011-Draft.pdf) (reflecting the Vice President's campaign to focus on college-campus violence, through a proposed lowering of the standard of proof in investigating reported sexual assaults on campuses). Notably, prior to the introduction of S. 1925 into the 112th Congress, Senator Leahy received significant criticism for an attempt to include a lowering of the standard of proof to "preponderance of the evidence" in judging allegations of sexual assault on college campuses. Press Release, Leahy Bill, *supra* note 85. Perhaps due to the public pressure and backlash, Senator Leahy removed the proposed change prior to introducing the bill to the Senate. Robert Franklin, Esq., *Good News—In Face of Protests, Leahy Scraps Bill Provision Which Lowers Evidence Standards*, *Fathers & Fam.* (Nov. 14, 2011), [www.fathersandfamilies.org/?p=21183](http://www.fathersandfamilies.org/?p=21183). See also Hans Bader, *Senate Bill Would Further Undermine Due Process on Campus*, OPENMARKET.ORG (Oct. 24, 2011), <http://www.openmarket.org/2011/10/24/senate-bill-would-further-undermine-due-process-on-campus/> (detailing the alleged due process problems with the bill); STOP ABUSIVE AND VIOLENT ENV'TS, SENATE DISCUSSION DRAFT OF THE VIOLENCE AGAINST WOMEN ACT: DANGEROUS TO VICTIMS, HARMFUL FOR AMERICA (2011), available at <http://www.saveservices.org/wp-content/uploads/Flyer-Dangerous-and-Harmful.pdf> (discussing six negative aspects of the updates to VAWA).

198. See Violence Against Women Reauthorization Act of 2011 (introduced in the Senate on Nov. 30, 2011) (listing the exact appropriations amount in various sections).



ative, and long-term services, plus the most basic need of shelter for victims and their children.<sup>199</sup> Daily, thousands of women are denied access to these services simply because the shelters are flooded beyond their staffing capabilities<sup>200</sup>—two obstacles that can be eliminated by distributing more money to certain shelters based on their reported need.<sup>201</sup> Congress has the power to eradicate the shelter crisis by simply repurposing monetary provisions that have already been designated for VAWA.

This Comment highlights the urgency of addressing domestic violence in the United States, and VAWA's role in those efforts. VAWA was a groundbreaking piece of legislation in 1994, paving the way for women to seek assistance in escaping domestic violence situations.<sup>202</sup> Through subsequent reauthorizations of VAWA, Congress continues to improve upon the original VAWA, considering reported information and opinions on ways to improve.<sup>203</sup> Yet despite the reported unmet needs, and the pleas from shelter directors to focus on the funding drought, Congress has thus far failed to adequately provide shelter to victims.<sup>204</sup> The future of VAWA, with the suggested reallocations, could greatly improve the lives of thousands of victims who currently have unmet needs, and with no detriment to the national budget, women could find refuge from the tempest of abuse.

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199. See JACKSON, *supra* note 11, at 60 (referencing the range of shelter services, including counseling, legal assistance, batterer intervention, and emergency shelter).

200. In 2010, twenty-nine percent of the unmet need was reportedly due to lack of staff. DOMESTIC VIOLENCE COUNTS 2010, *supra* note 15, at 3.

201. Shelters are aware of exactly how many individuals they turn away because of lack of funding, and are therefore well versed in the amount of money it will take to bridge that services gap. Interview with Gay L. Schwenk, *supra* note 108. Most shelters already keep detailed records of their funding and needs; therefore it would be easy for shelters to distribute a report to the government in order to gain the necessary amount of aid. *Id.*

202. See JACKSON, *supra* note 11, at 60 (providing a history of domestic violence in the United States and citing VAWA as monumental in improving women's rights).

203. See, e.g., VAWA Hearing 2011, *supra* note 97 (including testimony from a variety of sources on the benefits of VAWA and suggested improvements).

204. See, e.g., DOMESTIC VIOLENCE COUNTS 2010, *supra* note 15, at 3 (citing 9,541 unmet needs in one day in 2010, demonstrating the increase in denied requests simultaneously occurring with reductions in VAWA funding); DOMESTIC VIOLENCE COUNTS 2009, *supra* note 184, at 3 (citing 9,280 unmet needs in one day in 2009); CENSUS OF DOMESTIC VIOLENCE, *supra* note 1, at 4 (citing 8,927 unmet needs in one day in 2008).