



SPECIAL REPORT

**Misconduct and Sex Bias in
Police Response to Domestic Violence**

In recent years, charges of police misconduct and biased practices have been made, especially in the African-American community. As a result, legislative proposals both at federal and state levels have been introduced to curb these problems.

Many of these concerns arise in the context of domestic violence cases. The Violence Against Women Act (VAWA), first enacted in 1994, was designed to strengthen the nation's law enforcement and criminal justice response to domestic violence.¹ Over 25 years later, it is time to evaluate the effects of these VAWA programs.

This report first highlights recent findings from the Centers for Disease Control on the extent of domestic violence victimization and on the extent to which law enforcement is perceived to be "helpful" to victims. The report then analyzes the problem of police misconduct and sex bias from four perspectives:

1. Guilt-presuming investigations
2. Mandatory arrest
3. Primary aggressor policies
4. Biased training

Males More Likely to be the Victim

Hundreds of scholarly studies conducted over the years show that men and women engage in partner aggression at similar levels.²

Recent research from the CDC National Intimate Partner and Violence Survey reveals men are now more likely than women to be victims of domestic violence.³ The survey reveals that overall, 3.8% of men, compared to 2.9% of women, were victims of domestic violence in 2015. Men were at greater risk both for minor violence (slapped, pushed, or shoved), and any severe violence:

¹ Congressional Research Service. The Violence Against Women Act: Overview, Legislation, and Federal Funding (2015) <https://www.everycrsreport.com/reports/R42499.html>

² Fiebert MS. References examining assaults by women on their spouses or male partners: An annotated bibliography. Long Beach, CA: Department of Psychology, California State University, 2009. <http://www.csulb.edu/~mfiebert/assault.htm>

³ CDC. National Intimate Partner and Violence Survey. 2015. Tables 9 and 11. <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>

Table 11						
Lifetime and 12-Month Prevalence of Contact Sexual Violence,¹ Physical Violence, and/or Stalking Victimization by an Intimate Partner — U.S. Men, NISVS 2015						
	Lifetime			12-Month		
	Weighted %	95% CI	Estimated Number of Victims*	Weighted %	95% CI	Estimated Number of Victims*
Physical violence	31.0	(29.2, 32.7)	34,436,000	3.8	(3.2, 4.6)	4,255,000
Slapped, pushed, shoved	28.8	(27.1, 30.5)	31,983,000	3.4	(2.8, 4.1)	3,729,000
Any severe physical violence ²	14.9	(13.6, 16.3)	16,556,000	2.0	(1.5, 2.6)	2,219,000

Table 9						
Lifetime and 12-Month Prevalence of Contact Sexual Violence,¹ Physical Violence, and/or Stalking Victimization by an Intimate Partner — U.S. Women, NISVS 2015						
	Lifetime			12-Month		
	Weighted %	95% CI	Estimated Number of Victims*	Weighted %	95% CI	Estimated Number of Victims*
Physical violence	30.6	(29.1, 32.2)	36,632,000	2.9	(2.3, 3.5)	3,455,000
Slapped, pushed, shoved	29.1	(27.6, 30.6)	34,828,000	2.6	(2.1, 3.3)	3,160,000
Any severe physical violence ²	21.4	(20.0, 22.8)	25,570,000	1.9	(1.5, 2.5)	2,295,000

Police ‘Not at All Helpful’

Arrest statistics reveal a pronounced sex bias. Despite the fact that men are more likely to be victims, over three-quarters—77%—of domestic violence arrestees are male.⁴

Not surprisingly, men view the police as less helpful than do women. According to the CDC, only 21.0% of men who disclosed being a victim of domestic violence, sexual assault, or stalking found the police to be “very” helpful, compared to 36.5% of women.⁵ Conversely, 52.0% of men, compared to 33.7% of women, viewed the police as “not at all” helpful:

⁴ Durose MR et al. Family Violence Statistics. Washington, DC: Department of Justice. NCJ 207846, 2005. <http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>

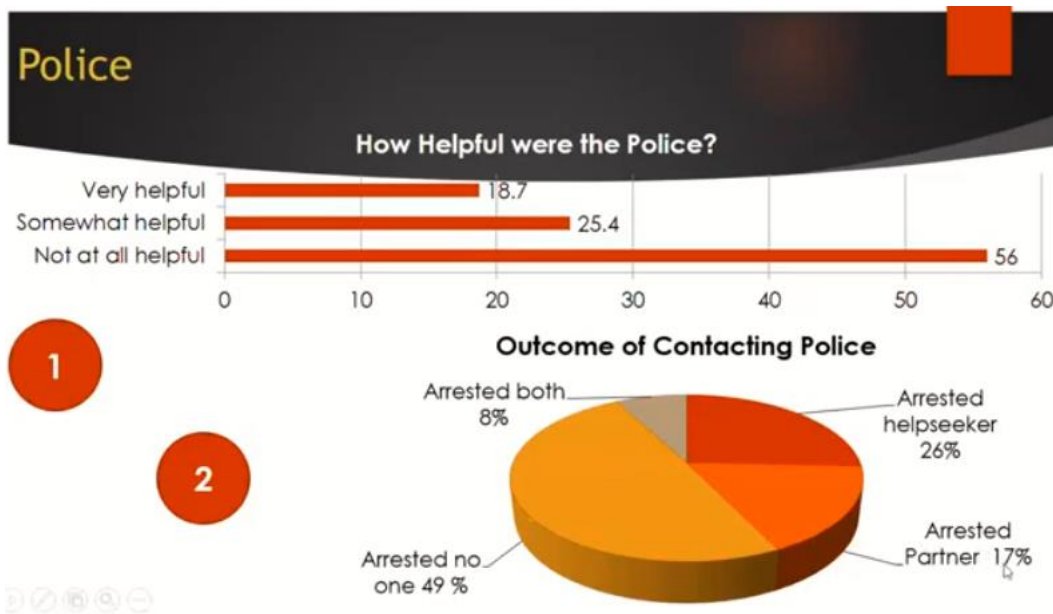
⁵ CDC. National Intimate Partner and Violence Survey. 2013. https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf

Table 7.2

Degree of Helpfulness of Various Sources among those Who Disclosed Lifetime Rape, Physical Violence, or Stalking by an Intimate Partner — NISVS 2010

	Very (%)	Somewhat (%)	A little (%)	Not at all (%)
Men				
Police	21.0	17.8	13.1	52.0
Women				
Police	36.5	22.2	14.2	33.7

Research by Dr. Emily Douglas of Montclair State University confirms the finding that a majority of male victims – 56% in her study -- view the police as “not at all helpful.”⁶ Of greater concern, 26% of these male victims reported that when they reported the incident to law enforcement, they were the person who was arrested (“Arrested Helpseeker”). These men were victimized twice, first by their partner, and then by the criminal justice system:



⁶ Emily Douglas. When Male Targets of Domestic Violence Seek Help. July 20, 2020. <https://www.youtube.com/watch?v=xkbZ514DfjQ>

FOUR TYPES OF BIAS

This report now analyzes four ways in which police misconduct and sex bias are manifested:

1. Mandatory arrest
2. Primary aggressor policies
3. Guilt-presuming investigations
4. Biased training

Mandatory Arrest

As a result of VAWA, domestic violence mandatory arrest policies were implemented around the country. These policies have been found to be problematic for four reasons:

1. Place victims at greater risk of violence – every year, about 600 Americans are killed as a result of mandatory arrest policies⁷
2. Marginalize victims who want their abusers to get treatment, not a police record
3. Ignore Fourth Amendment probable cause requirements
4. Dissipate limited law enforcement resources

The 2018 Biennial Report to Congress on the effectiveness of VAWA similarly explains,⁸

“In jurisdictions where the discretion of law enforcement is subject to mandatory and preferred arrest laws and policies, arrest practices may compromise the interests of victims or may produce disproportionate arrest rates among marginalized populations, including people of color, and particularly African American men.”

A number of professors likewise have expressed their doubts about the value of mandatory arrest policies:

- “Mandatory arrest policies have been widely criticized, in part because they have led to an increase in dual arrests, or the arrest of both partners during incidents of IPV.” -- Jill Theresa Messing, School of Social Work at Arizona State University⁹
- “There is limited empirical support for the assumption that mandatory arrest and prosecution policies in domestic violence cases have the intended effect of

⁷ Iyengar R. Does the certainty of arrest reduce domestic violence? Evidence from mandatory and recommended arrest laws. Cambridge, MA: National Bureau of Economic Research, 2007.

<https://www.nber.org/papers/w13186.pdf>

⁸ Department of Justice. 2018 Biennial Report. Page 22.

<https://www.justice.gov/ovw/page/file/1292636/download>

⁹https://www.researchgate.net/publication/282302806_The_State_of_Intimate_Partner_Violence_Interventi_on_Progress_and_Continuing_Challenges

- reducing violence against women.” -- Linda G. Mills, Public Policy, and Law, New York University¹⁰
- “Men experience the same identical feelings that women experience in violent relationships. Yet our American society has embraced the notion that men can and should ‘take it.’” -- Christine Grant, University of Pennsylvania¹¹
 - “Critics of VAWA point to its inclusion in the notorious 1994 crime bill, which included harsh mandatory sentencing guidelines and numerous measures strengthening the prison system, as an indication that it is embedded in a carceral approach.” -- Nancy Whittier, Smith College¹²
 - “Hence, the growing critique of over-reliance on criminalization has been accompanied by a substantial rise not only in the “encourage to arrest” and law enforcement priorities represented by VAWA, but the increasing occupation of the anti-domestic violence field by institutions directed by the criminal justice system.” -- Mimi E. Kim, California State University, Long Beach¹³

Even though the language of the 2013 VAWA reauthorization changed from a “mandatory” to “pro-arrest” policy, there is no evidence that local jurisdictions have modified their arrest policies.

Primary Aggressor Policies

Research indicates that many domestic violence incidents are bi-directional, meaning both parties are mutually engaging in the physical aggression. One study found 58% of such incidents were mutual,¹⁴ and a survey of American university students found that 70% of partner aggression was reciprocal in nature.¹⁵

But responding to pressures to not arrest both parties in such cases, many police departments have established policies known as “predominant aggressor” or “primary aggressor.”¹⁶ One prosecutor explains the concept this way:¹⁷

“The primary aggressor is the person determined to be the most significant, rather than the first aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from

¹⁰ <http://assets.press.princeton.edu/chapters/p7574.pdf>

¹¹ <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1142&context=jlia>

¹² <https://www.smith.edu/sites/default/files/media/Faculty/Carceral%20and%20Intersectional%20Feminism%20in%20Congress%20postprint.pdf>

¹³ <http://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1372&context=clr>

¹⁴ Langhinrichsen-Rohling, J. Rates of bidirectional versus unidirectional intimate partner violence across samples, sexual orientations, and race/ethnicities: A comprehensive review. *Partner Abuse*, 3(2), 199–230. <https://psycnet.apa.org/record/2012-19696-004>

¹⁵ Straus MA. Dominance and symmetry in partner violence by male and female university students in 32 nations. *Children and Youth Services Review*, Vol. 30, 2008, pp. 252–275.

¹⁶ Coalition to End Domestic Violence. *Predominant Aggressor Policies: Leaving the Abuser Unaccountable?* 2021.

¹⁷ Gael Strack. “She hit me, too” Identifying the Primary Aggressor: A Prosecutor’s Perspective. No date. http://www.ncdsv.org/images/she_hit_me.pdf

continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either party acted in self-defense.”

Many police training programs instruct officers to consider the following factors. The sex bias of each factor is explained in brackets:

- Age, height & weight of the parties [Obvious anti-male bias]
- Presence of fear [Anti-male bias since it is socially unacceptable for a man to have fear of a woman]
- Offensive/defensive injuries [If the woman scratches the man, she is presumed to be acting defensively]
- Strength and skill [Anti-male bias]

A recent study found the impacts of primary aggressor policies have been mixed. While primary aggressor laws decrease the number of dual arrests, the percentage of police interventions in intimate partner violence that result in arrest appears to decline. Further, there is significant variation in rates of arrest based on the race and sexual orientations of the victim and offender.¹⁸

By long-standing legal definition, the aggressor is the person who “begins a quarrel or dispute, either by threatening or striking another.” But the notion of “predominant” aggressor serves to undermine or even negate the fundamental notion of which party initiates the aggression. In this sense, “predominant aggressor” is a legal oxymoron.

The reliance on vague criteria, the use of indicators that are proxies for male gender, and a 2001 Department of Justice policy that was openly designed to minimize dual arrests¹⁹—all point to an unsettling conclusion: *Through use of vague and sex-biased criteria, predominant aggressor laws are designed to minimize the number of female arrests, and maximize the number of male arrests.*

This circumvents the Fourteenth Amendment of the U.S. Constitution, which states, “no state shall ... deny to any person within its jurisdiction the equal protection of the laws.”

Guilt-Presuming Investigations

Many police officers have been trained in the use of investigative methods known as “trauma-informed” or “Start By Believing”, which presume the guilt of the accused and encourage investigators to ignore exculpatory evidence. The utilization of such methods

¹⁸ Hirschel, D., McCormack, P. D., & Buzawa, E. (2017). A 10-Year Study of the Impact of Intimate Partner Violence Primary Aggressor Laws on Single and Dual Arrest. *Journal of Interpersonal Violence*. <https://journals.sagepub.com/doi/abs/10.1177/0886260517739290>

¹⁹ U.S. Department of Justice, Office of Violence Against Women. Grants to encourage arrest policies and enforcement of protection orders program: Fiscal year 2001 application and program guidelines. <http://www.usdoj.gov/ovw/grants/arrest/arrest01.pdf>

represents a form of police misconduct because they violate constitutional due process protections and police ethics codes:

- *International Association of Chiefs of Police*: “The law enforcement officer shall be concerned equally in the prosecution of the wrong-doer and the defense of the innocent. He shall ascertain what constitutes evidence and shall present such evidence impartially and without malice.”²⁰
- *National Association of Legal Investigators*: The investigator “Will make all reporting based upon truth and fact and will only express honest opinions based thereon”²¹
- *World Association of Detectives*: “We will be faithful and diligent in carrying out assignments entrusted to us, and to determine the true facts and render honest, unbiased reports in reference thereto.”²²

Several peer-reviewed articles have discredited the scientific basis of trauma-informed investigations:

1. Title IX and “Trauma-Focused” Investigations: The Good, the Bad, and the Ugly²³
2. Best-Practice Interviewing Spans Many Contexts²⁴
3. The Importance of Training Investigators in Evidence-Based Approaches to Interviewing²⁵

Trauma-informed investigations have come under intense scrutiny.²⁶ In a recent judicial decision against Syracuse University, the federal judge noted:

“Plaintiff alleges that the investigation relied on ‘trauma informed techniques’ that ‘turn unreliable evidence into its opposite,’ such that inconsistency in the alleged female victim’s account . . . becomes evidence that her testimony is truthful”²⁷

²⁰ <http://www.iacp.org/>

²¹ <http://nalionline.org/become-a-member/code-of-ethics/>

²² <http://www.wad.net/code-of-ethics>

²³ Deborah Davis and Elizabeth Loftus. Title IX and “Trauma-Focused” Investigations: The Good, The Bad, and the Ugly. 2019. <http://www.saveservices.org/wp-content/uploads/TitleIXand%E2%80%9CTrauma-Focused%E2%80%9DInvestigations-TheGoodTheBadandtheUgly.pdf>

²⁴ Sonja P. Brubacher and Martine B. Powell, Best-Practice Interviewing Spans Many Contexts, 2019. <http://www.saveservices.org/wp-content/uploads/Best-PracticeInterviewingSpansManyContexts.pdf>

²⁵ Christian A. Meissner* and Adrienne M. Lyles, The Importance of Training Investigators in Evidence-Based Approaches to Interviewing, 2019. <http://www.saveservices.org/wp-content/uploads/TitleIXInvestigations-TheImportanceofTrainingInvestigatorsinEvidence-BasedApproachestoInterviewing.pdf>

²⁶ KC Johnson. Fake Claims of Rape Due to Trauma Under Scrutiny. September 20, 2019.

<https://www.mindingthecampus.org/2019/09/20/fake-claims-of-rape-due-to-trauma-under-scrutiny/>

²⁷ Samantha Harris. Syracuse decision an important step forward for the rights of private university students. 2020. <https://www.thefire.org/syracuse-decision-an-important-step-forward-for-the-rights-of-private-university-students/>

Although trauma-informed investigations have never been authorized by Congress for use by VAWA-funded programs, such approaches are highlighted in a recent report from the DOJ Office on Violence Against Women:²⁸

“Over the past 20+ years, VAWA funding has transformed how criminal justice systems in many communities respond to domestic and sexual violence. Some of the innovations funded by VAWA are...*investigation and prosecution policies and practices that focus on the offender and account for the effects of trauma on victims...*” [emphasis added]

Although trauma-informed may be a useful concept in the counseling and mental health context, in the investigative context it represents a form of police misconduct because it violates ethics codes, undermines impartiality, and predisposes to wrongful convictions.

Biased Training

At the root of these problems lies the biased training of law enforcement officials.²⁹ These are two of many examples:

- In New Hampshire, the Department of Justice Prosecution Protocol warns officers that alleged abusers may claim “to be the victim of an assault by the victim.”³⁰ Under what system of justice should a claim of innocence be interpreted as evidence of guilt?
- A California-based officer described the domestic violence training he attended as “so dripping with male hatred that everyone in the class felt uncomfortable, male and female officers alike.”³¹

The Maine Criminal Justice Academy developed a predominant aggressor curriculum for law enforcement personnel. The curriculum, “Identifying Predominant Aggressors in Domestic Violence Cases,”³² contained numerous deficiencies:

1. Of the 13 “What is Domestic Violence” statements made in the document, only one was found to be verifiable and true. The remaining 12 are misleading, unverifiable, inaccurate, or even false—see Appendix B.

²⁸ Department of Justice. 2018 Biennial Report. Page 10.

<https://www.justice.gov/ovw/page/file/1292636/download>

²⁹ Coalition to End Domestic Violence. Most DV Educational Programs Lack Accuracy, Balance, and Truthfulness. 2021.

³⁰ Governor’s Commission on Domestic Violence. Law enforcement: A model for police response to domestic violence cases. No date. <http://doj.nh.gov/victim/pdf/dvlaw.pdf>

³¹ Sperry G. Domestic violence from an ex-cop’s perspective. *San Diego Union-Tribune*, April 15, 2006.

³² Rogers JB, Faragher-Houghton K. Identifying Predominant Aggressors in Domestic Violence Cases. Vassalboro, ME: Maine Criminal Justice Academy, 2008.

<http://www.maine.gov/dps/mcja/docs/Mandatory-Law/Predominant%20Aggressor.doc>

2. The curriculum arbitrarily classifies face scratches, eye gouges, and arm bites as defensive, when such injuries can also be actions taken by the perpetrator.
3. No logical rationale or scientific evidence is provided to support the seven predominant aggressor criteria.
4. The document features 10 vignettes of intimate partner altercations. None of the vignettes depict same-sex aggression or consider the possibility that the identified victim may misrepresent the facts of the case. In not a single case does the curriculum recommend arresting the female.

FEDERAL LAW PROHIBITS SEX DISCRIMINATION

Sex discrimination is expressly prohibited by the Omnibus Crime Control and Safe Streets Act.³³

“No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this chapter.”

The 2005 renewal of VAWA added this clarification:³⁴

“Nothing in this title shall be construed to prohibit male victims of domestic violence, dating violence, sexual assault, and stalking from receiving benefits and services under this title.”

In 2013, VAWA was changed to make the statutory language sex-neutral. In response, Attorney General Eric Holder noted, “I applaud Congress for passing a bipartisan reauthorization that protects everyone – women and men, gay and straight, children and adults of all races, ethnicities, countries of origin, and tribal affiliations.”³⁵

Despite these repeated prohibitions of sex discrimination, male victims of domestic violence continue to experience misconduct, bias, and mistreatment at the hands of law enforcement personnel.

³³ Omnibus Crime Control and Safe Streets Act of 1968, Section 3789d. (c)(1).

³⁴ Violence Against Women Act 2005, Section 40002(b)(8).

³⁵ Department of Justice. Statement by Attorney General Eric Holder on the House Passage of the Reauthorization of the Violence Against Women Act. February 28, 2013.

<https://www.justice.gov/opa/pr/statement-attorney-general-eric-holder-house-passage-reauthorization-violence-against-women>