

SPECIAL REPORT



**The Negation of Justice at the
U.S. Department of Justice**

COALITION TO END DOMESTIC VIOLENCE

The U.S. Department of Justice (DOJ) states its mission as follows:

To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.

A previous CEDV report, *Thirty Years of Domestic Violence Half-Truths, Falsehoods, and Lies*, documents numerous examples of sex-biased claims about domestic violence that were either published on the DOJ website or promoted by grantees of DOJ Violence Against Women Act programs.¹ The report documents how various Department of Justice funding initiatives, publications, and guidance documents related to domestic violence and sexual assault are serving to misrepresent the truth, erode the presumption of innocence, and thwart Congressional intent.

The actions that negate justice pertain to:

1. Overall sex bias in the criminal system
2. Victim-centered investigations
3. Violence Against Women Act enforcement

These biases have real-world consequences that harm the innocent, shortchange victims, and undermine the Constitution of the United States.

Overall Sex Bias in the Criminal System

Scientific research has demonstrated a persistent sex bias in the criminal justice system. Studies have documented that men convicted of crimes receive sentences that are 10%² to 30%³ longer than women, even after controlling for relevant variables.

For example, University of Michigan professor Sonja Starr analyzed a large dataset of federal cases, concluding, “This study finds dramatic unexplained gender gaps in federal criminal cases,” even after controlling for the arrest offense, criminal history, and other characteristics.⁴ She revealed that sex bias permeates all phases of the adjudication process. At the charging and conviction phases, “Women are also significantly likelier to avoid charges and convictions, and twice as likely to avoid incarceration if convicted.”

¹ Coalition to End Domestic Violence (2021). *Thirty Years of Domestic Violence Half-Truths, Falsehoods, and Lies*. <http://endtodv.org/wp-content/uploads/2021/09/Thirty-Years-of-DV-Half-Truths-Falsehoods-and-Lies.pdf>

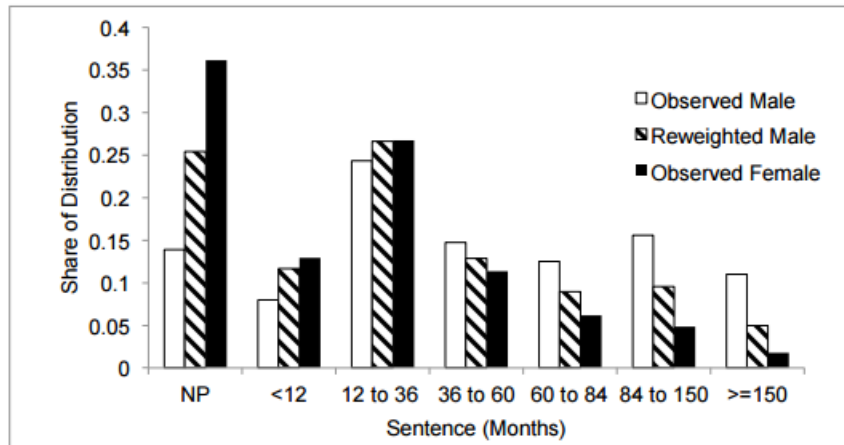
² Ann MA, Cassia S (2006). *Gender and the Social Costs of Sentencing: An Analysis of Sentences Imposed on Male and Female Offenders in Three U.S. District Courts*. Berkeley Journal of Criminal Law.

³ United States Sentencing Commission (2010). *Demographic Differences in Federal Sentencing Practices: An Update of the Booker Report's Multivariate Regression Analysis*.

⁴ Sonja Starr (2012). *Estimating Gender Disparities in Federal Criminal Cases*. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2144002

For convicted persons who were sentenced to imprisonment, Starr revealed that “men receive 63% longer sentences on average than women do.” This finding is illustrated in the following graph. The most appropriate comparison is between the striped and white bars. “NP” refers to non-prison sentences:

Figure 2. - *Gender Disparities in the Sentencing Distribution: Females vs. Reweighted Males*



This bias is even more pronounced for African-American men.^{5,6} As a result, the Congressional Black Caucus has made criminal justice reform a centerpiece of its efforts,⁷ highlighting the system’s disparate impacts on Black men:

- Rep. Sheila Jackson Lee (D-TX) decried the fact that “Almost one in 12 Black men in this age group [25-54 years old] are behind bars, compared with one in 60 non-Black men in the same age group.”⁸
- Rep. Frederica Wilson (D-FL) notes that “Minority males are disproportionately incarcerated and their representation in the nation’s prison population is at record numbers.”⁹

Partiality has been demonstrated in domestic violence cases, as well. One analysis concluded, “[M]ales were consistently treated more severely at every stage of the prosecution process, particularly regarding the decision to prosecute, even when

⁵ American Sociological Association (2007). *Race, Ethnicity, and the Criminal Justice System*. <http://www.asanet.org/sites/default/files/savvy/images/press/docs/pdf/ASARaceCrime.pdf>

⁶ The Sentencing Project (2000). *Reducing Racial Disparity in the Criminal Justice System*. <http://www.sentencingproject.org/wp-content/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf>

⁷ Rep. G.K. Butterfield (2015). *Butterfield Takes Helm of the Congressional Black Caucus*. <https://butterfield.house.gov/media-center/press-releases/butterfield-takes-helm-of-the-congressional-black-caucus>

⁸ Sheila Jackson Lee (2015). *Congressional Black Caucus: The Missing Black Male* VoteSmart.

<https://votesmart.org/public-statement/987398/congressional-black-caucus-the-missing-black-male#.WHN7hFyvhwW>

⁹ Maggie Ybarra (2016). *NC lawmakers want a commission to study challenges facing black males*. McClathy DC. <http://www.mcclatchydc.com/news/politics-government/congress/article97142802.html>

controlling for other variables (e.g., the presence of physical injuries) and when examined under different conditions.”¹⁰

Sex bias pervades police response, as well. So-called “predominant aggressor” policies often include sex-biased criteria such as “size” and “strength.”¹¹ As a result, we are faced with a troubling conundrum: Even though the majority of abuse *victims* are male,¹² 81% of domestic violence *arrestees* are male.¹³

Not surprisingly, male victims of partner violence, sexual assault, or stalking are less likely to have positive experiences in their dealings with police, compared to women:¹⁴

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 (%)
Women				
Police	36.5	22.2	14.2	33.7
Men				
Police	21.0	17.8	13.1	52.0

As a result, men are three times less likely to report such incidents to police, compared to women (12.6% versus 36.3%).¹⁵

How the DOJ Promotes Sex Bias

This pattern of pervasive sex bias did not occur by happenstance. Part of this pattern can be traced to the actions and policies of entities within the U.S. Department of Justice.

¹⁰ Shernock S, Russell, B (2012). *Gender and Racial/Ethnic Differences in Criminal Justice Decision Making in Intimate Partner Violence Cases*. Partner Abuse Vol. 3, No. 4.

<https://connect.springerpub.com/content/sgrpa/3/4/501>

¹¹ Coalition to End Domestic Violence (2021). *Predominant Aggressor Policies and the Mass Incarceration of Men*. <http://endtadv.org/wp-content/uploads/2021/09/Predominant-Aggressor-Mass-Incarceration.pdf>

¹² Centers for Disease Control and Prevention (2018). *National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release*, Atlanta, Georgia. Tables 9 and 11.

<https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>

¹³ Durose MR et al. (2005). *Family Violence Statistics*. Washington, DC: Department of Justice. NCJ 207846. <http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>

¹⁴ Breiding MJ, Chen J, Black MC (2014). *Intimate Partner Violence in the United States (2010)*. Table 7.2. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

¹⁵ Breiding MJ, Chen J, Black MC (2014). *Intimate Partner Violence in the United States (2010)*. Figure 7.2. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

COPS: 'Victim-Centered' Investigations

In 2014 the Office of Community Oriented Policing Services (COPS) awarded a cooperative agreement to the Police Executive Research Forum (PERF). As part of this project, COPS and PERF co-published a “Roundtable Discussion” on gender bias.¹⁶

The COPS-PERF report endorses the use of a controversial investigative method known as “victim-centered,” sometimes referred to as *Start By Believing*. The report describes victim-centered detectives as investigators who hand “control of the process back to the victim” (p. 9), and even afford the complainant the “right to request certain investigative steps not be conducted” (p. 13).

By their name, “victim-centered” investigations assure that accused parties will not receive an impartial investigation, thus curtailing their due process rights. Instead of referring to the accuser as a “complainant,” the DOJ report consistently uses the word “victim,” a conclusory word that presumes a crime has occurred. Victim-centered investigations also may be a form of witness tampering, which is defined by federal law as any attempt to “influence, delay, or prevent the testimony of any person in an official proceeding.”¹⁷

For these reasons, the Arizona Governor’s Office of Youth, Faith, and Family advised criminal justice agencies in Arizona to not adopt the *Start By Believing* approach because it “creates the possibility of real or perceived confirmation bias.”¹⁸

The Center for Prosecutor Integrity, which is affiliated with the Coalition to End Domestic Violence, sent several letters to the Department of Justice protesting its promotion of such guilt-presuming investigations.¹⁹ As a result on July 8, 2021, End Violence Against Women International, which had received millions of dollars in DOJ grants to promote *Start By Believing* methods, released the following statement:²⁰

“What you may not know is that our last federal technical assistance (TA) grant ended in May 2021. These TA grants have been supporting the training and technical assistance programs many of you depend on. Unfortunately, the most recent round of 2021 solicitations did not include similar funding opportunities that we could apply for.”

¹⁶ Community Oriented Policing Services Office & Police Executive Research Forum (2016). *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence: A Roundtable Discussion*. <https://cops.usdoj.gov/RIC/Publications/cops-w0796-pub.pdf>

¹⁷ Title 18 USC §1512.

¹⁸ State of Arizona Office of the Governor (2016). *Guidance: Start By Believing*. <http://www.prosecutorintegrity.org/wp-content/uploads/2019/10/AZ-Governors-Commission-on-SBB.pdf>

¹⁹ Center for Prosecutor Integrity (2016 to 2019). *Complaints to the Department of Justice*. <http://www.prosecutorintegrity.org/sa/victim-centered-investigations/>

²⁰ SAVE (July 9, 2021). Dept. of Justice Ends Support for Start By Believing. <https://www.change.org/p/congress-stop-sham-believe-the-victim-investigations/u/29312796>

COPS: Gender Bias

In 2016 the Office of Community Oriented Policing Services published a guidance document titled, “Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence.” The COPS report makes claims that directly contradict the findings of the CDC surveys cited previously in this Report, claiming that law enforcement bias actually is directed against *women*.²¹

- “In some cases, a police officer may discriminate against victims of sexual assault or domestic violence *because of a general bias against women or LGBT individuals*. More commonly, discrimination may be based on explicit stereotypes about women or LGBT individuals.” (emphasis added)
- “Even where law enforcement officers harbor no explicit biases or stereotypes *about women or LGBT individuals*, an officer’s unconscious bias towards these groups can undermine an effective response to sexual assault and domestic violence incidents.” (emphasis added)

The report does not cite any scientific research to support these claims.

Subsequently, the COPS Office announced a department-wide “implicit bias” training program for 28,000 DOJ attorneys and agents of the FBI, Drug Enforcement Administration, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and U.S. Marshals Service.²² The training program was designed to address “gender” and other forms of implicit bias.

This training was followed by an announcement of the award of nine grants worth \$9.4 million to “implement the department’s Guidance on Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence.” These grants are designed to “provide enhanced training and technical assistance nationally, support research and evaluation and provide resources to law enforcement agencies to implement the guidance,” according to the DOJ press release.²³

There is no doubt that members of racial minorities and others have experienced discrimination by the criminal justice system. But the COPS’ unsupported claims of sex bias against women and award of \$9.4 million in grants to address a non-existent problem are nothing less than Orwellian.

²¹ Department of Justice (2016). *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*. Page 7. <https://www.justice.gov/opa/file/799366/download>

²² Department of Justice (2016). *Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel*. <https://www.justice.gov/opa/pr/department-justice-announces-new-department-wide-implicit-bias-training-personnel>

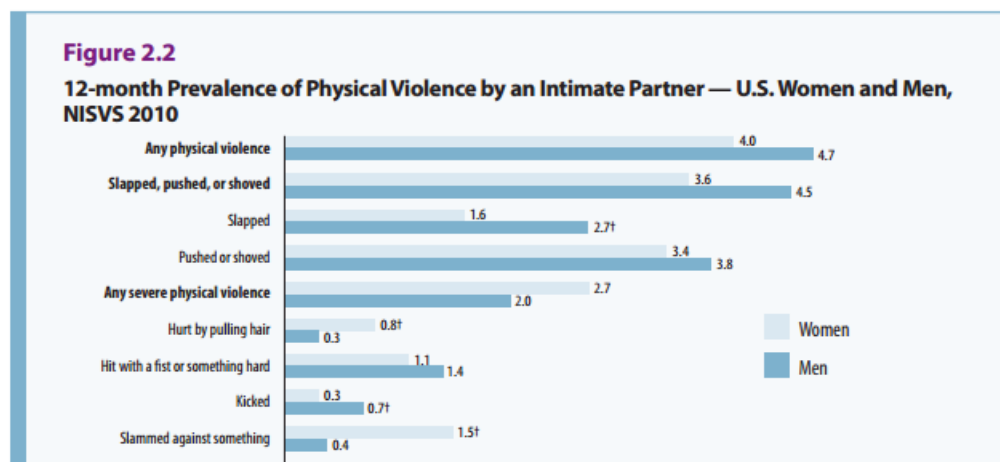
²³ Mike McDaniel (2016). *Department of Justice awards \$9.4m to identify and prevent gender bias in policing*, WDAM. <http://www.wdam.com/story/33331145/department-of-justice-awards-94m-to-identify-and-prevent-gender-bias-in-policing>

Violence Against Women Act Enforcement

A third area of concern relates the failure of DOJ offices to implement Congressional mandates pertaining to domestic violence programs.

Men More Likely to be Victims

The U.S. Centers for Disease Control reports that more men than women are victims of intimate partner violence each year. According to the National Intimate Partner and Sexual Violence Survey (NISVS), 4.7% of men and 4.0% of women have been victims of “Any physical violence” committed by an intimate partner in the past 12 months (top bars).²⁴



In sum, the NISVS data reveal that domestic violence is not a “gendered” crime, in the sense that it is not limited to persons of one sex or gender identity.

Congressional Mandates

Grants awarded under the Violence Against Women Act (VAWA) are required to comply with the non-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968:

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 statutory requirement:

²⁴ NISVS (2010). *12 Month Prevalence of Physical Violence by an Intimate Partner*. Figure 2.2: https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf

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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.²⁵

In 2013, Congress again sought to emphasize its non-discriminatory intent, this time by substituting sex-inclusive language throughout the bill.

Despite these repeated statements of congressional intent, the most recent Biennial Report to Congress documents large disparities in the provision of VAWA services to male victims:²⁶

- Legal Assistance: 6% male, 94% female (Page 162)
- Rural Assistance: 10% male, 90% female (Page 174)
- Sexual Assault Services: 4% male, 96% female (Page 184)
- Transitional Housing: 1% male, 99% female (Page 204)
- Indian Tribal Governments: 5% male, 95% female (Page 222)
- Tribal Sexual Assault: 14% male, 86% female (Page 237)
- Services to Underserved Populations: 14% male, 86% female (Page 248)

Foot-Dragging by the Office of Violence Against Women

As a result of the 2013 statutory clarifications, non-DOJ federal agencies such as the Housing and Urban Development have issued unequivocal statements such as: “Although VAWA refers to women in its title, the statute makes clear that the protections are for all victims of domestic violence, dating violence, sexual assault, and stalking.”²⁷

But in recent years, the Office of Violence Against Women has issued statements that are inconsistent, confusing, and ignore congressional intent.

In 2017, the Office of Violence Against Women (OVW) stated its mission was to provide federal leadership to reduce violence against women, and “to support the administration of justice for and strengthen services to *all* victims of domestic violence, dating violence, sexual assault, and stalking.”²⁸ (emphasis added)

But the OVW mission statement was later revised to this vague statement:

“The Office on Violence Against Women (OVW) provides federal leadership in developing the national capacity to reduce violence against women and administer

²⁵ *Violence Against Women and Department of Justice Reauthorization Act of 2005*. U.S. G.P.O. - 2006, Section 40002(b)(8).

²⁶ Office on Violence Against Women (2018). *2018 Biennial Report to Congress*.
<https://www.justice.gov/ovw/page/file/1292636/download>

²⁷ Department of Housing and Urban Development (April 1, 2015). *Violence Against Women Reauthorization Act of 2013*.
<https://www.govinfo.gov/content/pkg/FR-2015-04-01/html/2015-06781.htm>

²⁸ Office on Violence Against Women (2017). *FY 2017 Budget Request at A Glance*.
<https://www.justice.gov/jmd/file/822296/download>

justice for and strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking.”²⁹

Other statements on the OVW website appear to be designed to confuse rather than elucidate. In response to the clear-cut question, “Can STOP grants support services for men?” the agency provides this wordy and confusing answer:³⁰

“the focus of the subgrant projects must be on violence against women....STOP subgrantees must provide services to a male victim in need who is similarly situated to female victims the subgrantee ordinarily serves and who requests services... To summarize, although the focus of the projects should be on female victims (with the exception of the two new purpose areas), subgrantees are expected to serve male victims who are in need and request services.”

Sex-biased statements have continued to appear on the OVW website (*italics added for emphasis*):

“Statewide sexual assault coalitions provide direct support to member rape crisis centers through funding, training and technical assistance, public awareness activities, and public policy advocacy. Statewide domestic violence coalitions *provide comparable support to member battered women’s shelters* and other domestic violence victim service providers.”³¹

“Enhanced Training and Services to End Abuse in Later Life Program addresses elder abuse, neglect, and exploitation, including domestic violence, dating violence, sexual assault, or stalking, against victims who are 50 years of age or older through training and services. Eligible applicants include states and territories, Indian tribal governments and tribal organizations, units of local government, and nonprofit, nongovernmental victim services organizations with *demonstrated experience in assisting elderly women* or demonstrated experience in addressing sexual assault, domestic violence, dating violence, and stalking.”³²

“OVW is focused on building the capacity of criminal justice and victim services organizations to respond effectively to sexual assault, domestic violence, dating violence and stalking and fostering partnerships among organizations that have not traditionally worked together *to address violence against women.*”³³

²⁹ Office on Violence Against Women (Accessed Dec. 19, 2021). Mission.

<https://www.justice.gov/ovw/about-office>

³⁰ Office on Violence Against Women (2016). Frequently Asked Questions (FAQs) About STOP Formula Grants. Page 1. <https://www.justice.gov/ovw/file/827531/download>

³¹ Office on Violence Against Women (2021). *Grant Programs Office on Violence Against Women.*

<https://www.justice.gov/ovw/grant-programs>

³² Office on Violence Against Women (2021). *Grant Programs Office on Violence Against Women.*

<https://www.justice.gov/ovw/grant-programs>

³³ Office on Violence Against Women (2019). *Technical Assistance Office on Violence Against Women.*

<https://www.justice.gov/ovw/training-and-technical-assistance>

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The OVW also admits that it discourages the participation of professional researchers and academics in its grant peer review process:

“OVW does not use professional peer reviewers because it is our goal to have applications reviewed by individuals with up-to-date, and on-the-ground knowledge of *violence against women issues*. “³⁴

Most troubling is the fact that the Office of Violence Against Women has not instituted audits of VAWA grantees to assure compliance with sex-discrimination mandates, or suspended funding from agencies that engage in sex discrimination.

We conclude the DOJ Office of Violence Against Women has not acted in good faith to implement the Congressional mandates contained in the 2005 or 2013 VAWA reauthorizations to assist “all” victims of domestic violence.

A Deplorable Double-Standard

The Fourteenth Amendment to the Constitution says that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”

But in the area of domestic violence, double-standards are endemic, even to the point of making light of domestic violence that is committed against men. The American Visionary Art Museum in Baltimore, Maryland, for example, has on public display a painting that touts the merits of a “Husband Adjustment Device.” The picture depicts a woman assaulting her husband with a rolling pin – shown on the right.

The chronic problems at the Department of Justice, which enable such double-standards, do not represent the actions of a handful of “rogue” employees. Rather, they reveal a systemic pattern that is weakening the existence of due process, fairness, and the presumption of innocence in American jurisprudence.



³⁴ Office on Violence Against Women (Accessed Dec. 21, 2021). *Peer Review Office on Violence Against Women*. <https://www.justice.gov/ovw/peer-review>