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## NOTE

### AREN'T I A WOMAN DESERVING OF JUSTICE? RESTRUCTURING VAWA'S FUNDING STRUCTURE TO CREATE RACIAL AND GENDER EQUITY

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*“Because young Black women . . . are depicted not as frightened, pregnant adolescents who are . . . abused by men . . . but as criminal defendants . . . it is virtually impossible for the mainstream public, their communities, or their potential advocates to understand their vulnerability or to respond accordingly.”<sup>1</sup>*

*This Note analyzes the funding priorities of the Violence Against Women Act (VAWA), and how the law's egregious funding of prosecutors, enforcement agencies, officers, and courts directly impacts Black female survivors of intimate partner violence (IPV). Although VAWA was passed in 1994 to serve as a federal remedy for women subjected to IPV, over 85% of current VAWA's funding supports law enforcement, prosecutors, and the overall criminal legal system. This directly harms Black women due to this community's historically negative relationship with the legal system. Additionally, Black women subjected to abuse are also uniquely impacted by VAWA's emphasis on punitive measures and enforcement due to their overrepresentation amongst IPV survivors. This Note will advance the argument by investigating three grant programs under VAWA.*

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<sup>1</sup> BETH E. RICHIE, ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION 7 (1st ed. 2012) (emphasis added) (finding that Black women subjected to gendered violence face particular peril because race, gender, and culture are missing from the discussions surrounding punitive policies as a solution to gendered violence).

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## INTRODUCTION

In 2009, Tiffany Wright, a Black girl was shot in the head and killed while she waited at a high school bus stop.<sup>2</sup> At the time, Wright was eight months pregnant.<sup>3</sup> The police told reporters that they believed the shooting arose from a domestic dispute between Wright and her adoptive brother, Royce Mitchell.<sup>4</sup> Previously, Wright had accused Mitchell of raping her, which her foster mother reported to the Department of Social Services and the police before Wright's death.<sup>5</sup> Despite the severity of these allegations and the Wright's age, investigators did not interview Wright until a month after the initial report.<sup>6</sup> The police did not meet with Mitchell until the day of Wright's death, when Mitchell was arrested and charged with statutory rape and taking indecent liberties with a minor.<sup>7</sup> At Mitchell's bond hearing, the defense attorney vilified Wright and diminished her credibility by focusing on the victim's sexual history.<sup>8</sup> Ultimately, in 2021, the District Attorney dropped Mitchell's rape charge.<sup>9</sup>

This is a result known all too well by Black women.<sup>10</sup> Indeed, for Black female victims and survivors<sup>11</sup> who have experienced intimate partner violence (IPV),<sup>12</sup> the criminal legal system either ignores the violence against this community<sup>13</sup> or criminalizes Black women for defending themselves against the violence that they have experienced.<sup>14</sup>

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<sup>2</sup> JournalNow Staff, *Dropped Sex Charges In Dead Teen's Case Upset Police*, WINSTON-SALEM J., [https://journalnow.com/dropped-sex-charges-in-dead-teens-case-upset-police/article\\_41db29b3-fb02-51d5-90fd-da1cf0ddd3a.html](https://journalnow.com/dropped-sex-charges-in-dead-teens-case-upset-police/article_41db29b3-fb02-51d5-90fd-da1cf0ddd3a.html) [<https://perma.cc/C2RT-WN84>] (last updated Apr. 16, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See generally Michael Pinard, *Race Decriminalization and Criminal Legal System Reform*, 95 N.Y.U. L. Rev. 119, 131 (2020) (recognizing how the criminal legal system at "each stage of the system, from policing practices to the impact of criminal records, will continue to harm Black.....women...").

<sup>11</sup> This Note will use the language of "victims and survivors" in reference to women, alive or deceased, subjected to abuse. Also, while it is evident that intimate partner violence crosses all racial, social, economic, and political lines, this Note focuses specifically on Black women due to the unique relationship Black women have historically shared with IPV and the criminal legal system, which receives the majority of VAWA's funding. This Note uses Black women loosely to refer to all women-identifying people of African descent. However, it is important reiterate that intimate partner violence affects all communities. The rate of violence against Native women is 37.5%. Similarly, 23.4% of Latinx women and 41–60% of Asian Pacific Island women have been subjected to intimate partner violence.

<sup>12</sup> This Note generally uses "intimate partner violence" or IPV to describe the phenomenon of domestic violence, sexual assault, dating violence, and stalking perpetrated by a current or former intimate partner or spouse.

<sup>13</sup> See generally Mario L. Barnes, *Black Women's Stories and the Criminal Law: Restating the Power of Narrative*, 39 U.C. Davis L. Rev. 941, 968-980 (2006) (noting the criminal legal stories of Black women who were ignored by prosecutors and other legal actors and were rendered "invisible").

<sup>14</sup> See Kali Nicole Gross, *African American Women, Mass Incarceration, and the Politics of Protection*, 102 J. AM. HIST. 25, 25 (2015) (discussing how racial and gender discrimination contributes to the disproportionate incarceration of Black women who defend themselves against their abusers).

Wright's case illustrates a significant consequence Black female survivors face in their interactions with the legal system—the lack of effective protection.

Individuals and activists are now proposing that resources aimed at reducing violence against women<sup>15</sup> be shifted away from prosecutors and police officers because of the racial and gender inequities that the legal system exacerbates.<sup>16</sup> One central area of focus for these activists is the Violence Against Women Act (VAWA), which is the first federal law to classify IPV as a crime and establishes structural remedies for survivors.<sup>17</sup> As VAWA is currently up for its fourth reauthorization in Congress and was approved by the House in March 2021,<sup>18</sup> civil rights activists have criticized the law's disproportionate funding of the criminal legal system.<sup>19</sup> As the first federal law to sanction penalties for IPV,<sup>20</sup> VAWA reveals a close relationship with the criminal legal system.<sup>21</sup> In reference to VAWA's substantial funding of law enforcement, prosecution, and incarceration to address IPV, Leigh Goodmark, an expert in domestic violence policies, stated, "For the last thirty years, the United States has relied primarily on one tool to combat intimate partner violence—the criminal legal system."<sup>22</sup>

This Note argues that a revised appropriations bill under VAWA which shifts funding away from the legal system and to culturally-specific

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<sup>15</sup> This Note focuses on IPV specifically against women because women have been found to be most at risk of victimization. Women make up 85% of IPV victims. However, it is evident that intimate partner violence affects people of all genders, gender identities, and gender expressions.

<sup>16</sup> See Francesca Willow, *What is Abolition Feminism, What Is Carceral Feminism & What Could a World Without Prisons Look Like?*, ETHICAL UNICORN (Mar. 26, 2021), <https://ethicalunicorn.com/2021/03/26/what-is-abolition-feminism-what-is-carceral-feminism-what-could-a-world-without-prisons-look-like/> [https://perma.cc/Y34C-BRE4] (discussing Abolition Feminism as an alternative to policing and prison systems to combat gender-based violence); see also Leigh Goodmark, *The Violence Against Women Act Is Unlikely To Reduce Intimate Partner Violence – Here's Why*, THE CONVERSATION (Oct. 17, 2018) [hereinafter Goodmark, *Violence Against Women Act*], <https://theconversation.com/the-violence-against-women-act-is-unlikely-to-reduce-intimate-partner-violence-heres-why-103734> [https://perma.cc/L4LS-CCUK] (the author expresses that they "believe that [the Violence Against Women Act] still relies too heavily on the criminal system" and "doesn't do enough to address the causes of intimate partner violence").

<sup>17</sup> *Id.*

<sup>18</sup> Susan Davis, *House Renews Violence Against Women Act, But Senate Hurdles Remain*, NPR (Mar. 17, 2021), <https://www.npr.org/2021/03/17/977842441/house-renews-violence-against-women-act-but-senate-hurdles-remain> [https://perma.cc/E68R-5FVG].

<sup>19</sup> See Leigh Goodmark, *Reimagining VAWA: Why Criminalization Is a Failed Policy and What a Non-Carceral VAWA Could Look Like*, 27 VIOLENCE AGAINST WOMEN 84, 92 (2021) [hereinafter Goodmark, *Reimagining VAWA*] ("For over 25 years, VAWA has dedicated significant resources to criminalizing intimate partner violence—in essence, to encourage police and prosecutors to do things that were already required by law. That funding has not resulted in lower rates of intimate partner violence, has not deterred intimate partner violence, and has had serious consequences, both intended and unintended, for the people whose lives it has affected.").

<sup>20</sup> 34 U.S.C. § 12291(a)(12).

<sup>21</sup> See generally LISA N. SACCO, THE VIOLENCE AGAINST WOMEN ACT (VAWA): HISTORICAL OVERVIEW, FUNDING, AND REAUTHORIZATION, CONG. RSCH. SERV. 12 (2019) ("The fundamental goals of VAWA are to prevent violent crime; respond to the needs of crime victims; learn more about crime; and change public attitudes through a collaborative effort by the criminal justice system.").

<sup>22</sup> LEIGH GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE 1 (Claire M. Renzetti ed., 2018) [hereinafter GOODMARK, DOMESTIC VIOLENCE].

victim programs, economic and housing programs, is necessary to target the pressing needs of Black female survivors.

The ongoing Congressional debates regarding VAWA make now an opportune time to investigate VAWA's funding priorities and the effects its interventions have on Black female survivors. VAWA's emphasis on enforcement is demonstrated by VAWA's two largest grant programs, the Services, Training, Officers, and Prosecutors Grant Program (STOP) and the Improving Criminal Justice Responses Program (ICJR).<sup>23</sup> This Note will examine these two programs, in addition to providing an analysis of the Culturally Specific Services Program (CSSP).<sup>24</sup> This analysis will demonstrate that VAWA harms Black women because the law's two largest grant programs strengthen the legal system that has criminalized Black female survivors, and this enforcement focus is compounded by the inattention to the needs of Black female survivors. Who is VAWA's funding structure working for, and whom is it working against?

Black women are impacted by VAWA's focus on criminal enforcement because they make up a disproportionately high number of IPV victims.<sup>25</sup> IPV disputes increased across the country during the COVID-19 pandemic, "18% in San Antonio, 22% in Portland, Ore.; and 10% in New York City", but the IPV rates dramatically increased to 50% or higher for women of color.<sup>26</sup> However, Black women face 2.5 times the rate of violence of other women of color.<sup>27</sup> IPV is one of the leading causes of death for Black women ages fifteen to thirty-five.<sup>28</sup> Although Black women make up only 7% of the general population, they account for 22% of IPV-related homicides.<sup>29</sup> Additionally, 45% of Black women have experienced IPV.<sup>30</sup>

These shocking statistics are partly due to the fact that Black women's intersectionality leaves them vulnerable to IPV.<sup>31</sup> Recognizing the

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<sup>23</sup> SACCO, *supra* note 21, at 12 (an overview of the appropriations and set-asides for the STOP and ICJR programs that this Note relies heavily on).

<sup>24</sup> *Id.*

<sup>25</sup> See Maya Finoh & Jasmine Sankofa, *The Legal System Has Failed Black Girls, Women, and Non-Binary Survivors of Violence*, ACLU (Jan. 28, 2019), <https://www.aclu.org/news/racial-justice/legal-system-has-failed-black-girls-women-and-non-binary-survivors-of-violence> [<https://perma.cc/SH7S-DDRE>] (explaining that "Black girls, women, and non-binary people are hyper-vulnerable to abuse" including rape, homicide, and sexual and domestic violence).

<sup>26</sup> Jeffrey Kluger, *Domestic Violence Is a Pandemic Within the COVID-19 Pandemic*, TIME (Feb. 3, 2021), <https://time.com/5928539/domestic-violence-covid-19/> [<https://perma.cc/S6EZ-5289>].

<sup>27</sup> N. Jamiyla Chisholm, *COVID-19 Creates Added Danger for Women in Homes With Domestic Violence*, COLORLINES (Mar. 27, 2020), <https://colorlines.com/article/covid-19-creates-added-danger-women-homes-domestic-violence/> [<https://perma.cc/SXX6-CMME>].

<sup>28</sup> Feminista Jones, *Why Black Women Struggle More with Domestic Violence*, TIME (Sept. 10, 2014), <https://time.com/3313343/ray-rice-black-women-domestic-violence/> [<https://perma.cc/PT82-2A9U>].

<sup>29</sup> *Id.*

<sup>30</sup> Stephanie Hargrove, *Intimate Partner Violence in the Black Community*, THE NAT'L WOMEN CTR. ON VIOLENCE AGAINST WOMEN IN THE BLACK CMTY. (Oct. 2018), <https://ujimacommunity.org/wp-content/uploads/2018/12/Intimate-Partner-Violence-IPV-v9.4.pdf> [<https://perma.cc/S4SU-EGSC>].

<sup>31</sup> See Katherine Hilson, *The Intersectionality of Domestic Abuse: Law Enforcement Barriers Black Women Face*, CRIMRXIV (Nov. 16, 2020), <https://www.crimrxiv.com/pub/050p0xl6/release/1?readingCollection=e3ec78b4> [<https://perma.cc/8VBV-G3VZ>].

impact of intersectionality is helpful in understanding how the relationship between IPV and criminal legal enforcement creates harm to Black women. Coined by Kimberlé Crenshaw, intersectionality is an analytical framework for understanding how the interconnected nature of one's identities creates overlapping and interdependent forms of discrimination.<sup>32</sup> Black women's race, class, and gender combine to create compounding oppressions, which increase Black women's disproportionate exposure to IPV.<sup>33</sup> Black female survivors are then detrimentally affected by VAWA's governmental responses to IPV because they continue to perpetuate criminalization and disenfranchisement.<sup>34</sup> For example, evidence has demonstrated that Black female victims are prosecuted and incarcerated at higher rates when they decide to defend themselves during IPV disputes.<sup>35</sup> This occurs because Black women's racial and gender identities have led to stereotypes that deem Black women as violent aggressors who must be punished.

It is imperative to analyze VAWA's current funding structure in a broader intersectional framework to create an approach that effectively prevents and reduces IPV. By investigating the interaction between VAWA's grant programs and Black women, this Note serves to create a path forward for an amended funding structure that effectively serves *all* women subjected to intimate partner violence. This intersectional approach will improve the law's ability to prevent and reduce violence. This approach is crucial because if women subjected to abuse are injured rather than aided by a law specifically intended to address IPV, the law is not working in accord with its purpose. VAWA, the vehicle of alleged assistance, has been tainted and may have been tainted from its very origin.

This Note will proceed in three parts. Part I will review the historical prevalence of violence against women, the evolution of the public and legal responses to IPV, and the relationship between Black women and

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("[O]ppressive structures of race, class, and gender limit the alternatives [Black] women have to resolve domestic encounters and negotiate the institutional challenges they face . . .").

<sup>32</sup> Kimberlé Crenshaw, *Mapping The Margins: Intersectionality, Identity Politics, And Violence Against Women Of Color*, 43 STAN. L. REV. 1241, 1244 (1991).

<sup>33</sup> *Id.* at 1242 ("[T]he violence that many women experience is often shaped by other dimensions of their identities, such as race and class.").

<sup>34</sup> See generally Abigail Higgins & Olúfémi O. Táíwò, *How the Violence Against Women Act Failed Women*, THE NATION (Mar. 3, 2021), <https://www.thenation.com/article/society/violence-against-women-act/> [<https://perma.cc/68FG-562G>] ("[Black women] who do not fit the imagined profile of the right victim (because they are the wrong race, gender, sexual orientation, or even age) report facing exclusion, hostility, and mockery when they attempt to get help from . . . the very same formal institutions supported legally and financially to address the problem by laws like VAWA.").

<sup>35</sup> See generally Jane Coaston, *A Black Woman Shot And Killed Her Abusive Husband In A "Stand Your Ground" State. Now She Faces Murder Charges*, VOX (Aug. 25, 2018), <https://www.vox.com/2018/8/25/17778712/stand-your-ground-alabama-black-woman-guns> [<https://perma.cc/K333-9KEA>] (describing how "Stand Your Ground" laws do not serve Black women who use self-defense against their abusers, citing the story of Jacqueline Dixon); see also *Why do Black women go to Jail for Self-defense?*, NEW YORK MINUTE (Oct. 9, 2020), <https://www.newyorkminutemag.com/why-do-black-women-go-to-jail-for-self-defense/> [<https://perma.cc/7SHZ-5DSU>] (noting how "almost 60% of women state prisoners have a history of sexual abuse. Part of that population...are incarcerated for criminal charges after pleading self-defense to free themselves from their abusers").

the legal system. This Part will also describe VAWA's legislative history and provide a procedural explanation of the Act's funding structure. Part II will analyze three of VAWA's grant programs to examine the programs' effects on Black women. Finally, Part III will analyze how Congress can introduce a revised appropriations bill that will fund economic and housing programs, which will meet the two most pressing needs for Black female survivors.<sup>36</sup>

## I. HISTORY AND SUBSEQUENT TREATMENT OF VIOLENCE AGAINST WOMEN

This Part provides an overview of the history leading up to the passage of VAWA, and connects that history to the policy and legal interpretations of the law. Section I.A outlines the historical prevalence of violence against women and the women's rights movements that arouse of it. Section I.B. discusses the relationship between Black women and the criminal legal system. Then, Section I.C. will examine VAWA's funding structure and its grant programs.

### A. The Conditions That Led to VAWA's Enactment

#### 1. Historical Climate and the Battered Women's Movement

IPV dates back to ancient times.<sup>37</sup> Ancient Roman communities of 600 BC treated women as the property of their husbands, who could lawfully beat, or even murder, their wives for misbehavior.<sup>38</sup> In the United States, violence against women has persisted, especially in light of the increase in overall crime.<sup>39</sup> The disproportionate infliction of violence against women continued through the late 1990s to today, with variations over time.<sup>40</sup> From 2010 through 2017, the homicide of women by their intimate partners increased.<sup>41</sup> According to the Department of Justice

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<sup>36</sup> See generally *Gender and Racial Justice in Housing*, NAT'L WOMEN'S L. CTR. (Feb. 2021), <https://nwlc.org/wp-content/uploads/2021/02/Gender-and-Racial-Justice-in-Housing.pdf> [<https://perma.cc/XVN8-4XWN>] (noting how Black female survivors are disproportionately represented in the homeless population); see also J. Sebastian Leguizamon et al., *Revisiting the Link Between Economic Distress, Race, and Domestic Violence*, 35 J. INTERPERSONAL VIOLENCE 4141, 4141 (2020) (This article uses "a multivariate regression model to estimate how differences in the change in reported incidences of domestic violence by race correlate with changes in mass layoffs by race").

<sup>37</sup> See Anna Clark, *Domestic Violence, Past and Present*, 23 J. WOMEN'S HIST. 193, 193-195 (2011) (describing the history and normalization of IPV dating back to the ancient Roman period).

<sup>38</sup> *Worldwide History of Domestic Violence*, IRESEARCHNET, <http://criminal-justice.iresearchnet.com/types-of-crime/domestic-violence/worldwide-history-of-domestic-violence/> [<https://perma.cc/X9JA-VXHC>] (last visited Oct. 20, 2021).

<sup>39</sup> See RACHEL E. MORGAN & JENNIFER L. TRUMAN, CRIMINAL VICTIMIZATION 2019, DEPT' OF JUST., BUREAU JUST. STAT. 11 (2020), <https://bjs.ojp.gov/content/pub/pdf/cv19.pdf> [<https://perma.cc/87EQ-EFAX>] (reporting that "the percentage of violent victimizations reported to police was higher for females (46%) than for males (36%)").

<sup>40</sup> *Id.* at 6.

<sup>41</sup> See generally Emma E. Fridel and James Alan Fox, *Gender Differences in Patterns and Trends in U.S. Homicide, 1976–2017*, 6 VIOLENCE AND GENDER 1 (2019) (finding that homicides by intimate partners are increasing, driven primarily by gun violence).



(DOJ), women made up 85% of IPV victims in 2001.<sup>42</sup> IPV accounted for 20% of violent crimes against women in that same year. In 2020, one in four women experienced severe physical IPV during their lifetime, compared to one in nine men.<sup>43</sup>

a. The Effects of IPV on Women Were Often Ignored

Despite this grim reality, IPV was trivialized in American society until the 1970s.<sup>44</sup> In 1964, some doctors viewed IPV as “therapeutic.”<sup>45</sup> This characterization as therapeutic stems from a 1964 study that concluded that couples use fighting to “balance out each other’s mental quirks.”<sup>46</sup> Judges and psychiatrists sometimes deemed it a pathology of the underclass or individual women.<sup>47</sup> Consequently, societal influences normalized IPV.

b. The Battered Women’s Movement Encouraged Recognition of IPV and Brought Remedies for Victims

However, the efforts of the Battered Women’s Movement in the 1970s led to societal recognition of the severity of violence against women. The Battered Women’s Movement, or the Movement, was a social movement that developed in the 1970s to support women subjected to IPV. Mirroring the spirit of England’s women’s liberation movements, this grassroots movement called attention to the male hegemony that allowed IPV to persist.<sup>48</sup> G. Kristian Miccio, an expert on domestic violence, rape, and other gender-related crimes, articulated, “By situating male intimate violence within a cultural paradigm, the Battered Women’s Movement focused on altering the social conditions that produced, created, and supported such abuse.”<sup>49</sup>

The initial focus of the Movement’s advocates was to secure domestic violence shelters.<sup>50</sup> The dangerous intersection between IPV and housing insecurity tends to force abused people to remain with their abusers due to financial dependence or the lack of affordable housing for people who choose to leave abusive partners.<sup>51</sup> As a result of the advocates’

<sup>42</sup> CALLIE RENNISON, INTIMATE PARTNER VIOLENCE, 1993-2001, DEP’T OF JUST., BUREAU JUST. STAT. (2003), <https://bjs.ojp.gov/content/pub/pdf/ipv01.pdf> [<https://perma.cc/M8AC-AP9H>].

<sup>43</sup> *National Statistics*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/STATISTICS> [<https://perma.cc/7A2U-N7KB>] (last visited Dec. 21, 2021).

<sup>44</sup> Eliana Dockterman, *50 Years Ago, Doctors Called Domestic Violence ‘Therapy’*, TIME (Set. 25, 2014), <https://time.com/3426225/domestic-violence-therapy/> [<https://perma.cc/T8YU-NCBQ>].

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See Barnes, *supra* note 13, at 974 n. 135 (quoting Randal Albelda, *Fallacies of Welfare-to-Work Policies*, 577 ANNALS 66, 74 (2001) (welfare receipt ‘constitute[s] dysfunctional behavior’ or ‘a pathology — one of the many ‘bad’ behaviors that helps reproduce poverty’’)).

<sup>48</sup> Miccio, G. Kristian, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservation of the Battered Women’s Movement*, 42 HOUST. L. REV. 237, 249 (2007).

<sup>49</sup> *Id.*

<sup>50</sup> Sydney Hyer, *History of the Battered Women’s Movement*, DELAWARE COAL. AGAINST DOMESTIC VIOLENCE, <https://dcadv.org/blog/history-of-the-battered-womens-movement.html> [<https://perma.cc/5ZHW-DR8L>] (last visited Sept. 15, 2021).

<sup>51</sup> See Giulia Paglione, *Domestic Violence and Housing Rights: A Reinterpretation of the Right to Housing*, 28 HUM. RTS. Q. 120, 123 (2006).

organizing, approximately 250 shelters were operating by the end of the 1970s.<sup>52</sup> Eventually, the advocates' efforts led to over 50% of states passing laws that made it easier for survivors to receive civil protections.<sup>53</sup>

However, the Movement shifted away from its initial focus and became increasingly professionalized and allied with other entities like law enforcement.<sup>54</sup> Over time, the organizers of the Battered Women's Movement collaborated with enforcement agencies, prosecutors, the courts, the private bar, and social services organizations.<sup>55</sup> For example, the Movement's organizers began advocating for more funding of police, prosecutors, and courts.<sup>56</sup> Antiviolence reformers also prioritized laws that centered on carceral legal responses to IPV and state-sanctioned punishment.<sup>57</sup> Partnering with law enforcement occurred because feminist movements often focused on the experiences and circumstances of specific women—white middle-class women.<sup>58</sup> Some criminologists point to male entitlement and fragile masculinity as the root of IPV repeat offenders.<sup>59</sup> These feminists posited that the cure was to strengthen criminal laws and remove police discretion because “lax policing of abusers and rapists as *the* gender justice issue . . . .”<sup>60</sup>

The shift in focus away from housing security to more punitive solutions led to policies like mandatory arrest laws, which evidence shows often led to the arrest of abused women and escalated violence.<sup>61</sup> These laws allow an officer to make an arrest when there is probable cause that abuse has been perpetrated or when a person holding a protective order fears imminent harm.<sup>62</sup> Consequently, this collaboration influenced subsequent efforts and legislation that relied on enforcement to solve IPV.<sup>63</sup>

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<sup>52</sup> Kathleen J. Tierney, *The Battered Women Movement and the Creation of the Wife Beating Problem*, 29 SOC. PROBS. 207, 208 (1982).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 286—292.

<sup>55</sup> *Id.*

<sup>56</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 15.

<sup>57</sup> *Id.* at 14.

<sup>58</sup> *Id.* at 7 (recognizing that white middle-class women had “faith in the deterrent power of criminal law”).

<sup>59</sup> *Id.* at 146 (Criminologist Michael Salter states that for repeat offenders “violence appears to be, at least in part, an effort to shore up a fragile and unstable sense of masculine honour and entitlement, the threat of punishment appears as an additional affront to their authority and may trigger a compensatory escalation in violence.”)

<sup>60</sup> AYA GRUBER, THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN'S LIBERATION IN MASS INCARCERATION 7 (2020).

<sup>61</sup> ERICA R. MEINERS & JUDITH LEVINE, THE FEMINIST AND THE SEX OFFENDER: CONFRONTING SEXUAL HARM, ENDING STATE VIOLENCE 15 (2020).

<sup>62</sup> David Hirschel, et al., *Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions?*, 98 J. CRIM. L. & CRIMINOLOGY 255, 256 (2008).

<sup>63</sup> See Mimi E. Kim, *From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration*, 27 J. ETHNIC & CULTURAL DIVERSITY IN SOC. WORK 219, 220 (2018) (noting that decades of anti-violence movements, like the Battered Women's Movement, entailed the “collaboration with the institutions of police, prosecution, courts, and the systems of jails, prisons, probation, and parole.”).

c. Anti-IPV Reformers Shifted their Focus to the Criminal Legal System to Reduce IPV

By the 1970s, IPV disputes resulted in increased arrest and prosecution rates, for abusers but also for victims.<sup>64</sup> This occurred because antiviolence advocates pressured prosecutors to increase their low prosecution rates of IPV cases. Some prosecutors initially argued that they would not bring IPV cases to court because there could be no proof without the cooperation of IPV victims.<sup>65</sup> Victims often feared retaliation by their partners or the financial loss created by their partner's incarceration.<sup>66</sup> Thus, advocates demanded "no-drop prosecution" policies, which allowed prosecutors to circumnavigate victims' refusal to cooperate through various, and sometimes disturbing, tactics.<sup>67</sup> To encourage cooperation, prosecutors provided inducements, subpoenaed reluctant witnesses, and in extreme cases, arrested and imprisoned victims as material witnesses before trial.<sup>68</sup> By 1996, two-thirds of prosecutors' offices adopted some form of no-drop policies.<sup>69</sup>

As this story suggests, the responses to IPV became more focused on enforcement, and women of color warned of the problems that this would create for their communities.<sup>70</sup> Judith Levine and Erica R. Meiners, authors of pieces centered on gender-related crimes, noted that women of color feminists "adamantly opposed outsourcing vengeance to the state," because their experiences indicated that prisons do not eliminate violence, "but instead perpetrate and perpetuate it, while destroying individual lives, families, and communities."<sup>71</sup> This focus has now been labeled "carceral feminism."<sup>72</sup> Coined by sociologist Elizabeth Bernstein, carceral feminism refers to "a reliance on policing, prosecution, and imprisonment to resolve gendered or sexual violence."<sup>73</sup> Black female activists forewarned that this criminal law focus intentionally constructed new laws in a way that negatively impacted Black women subjected to IPV due to increased

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<sup>64</sup> See generally Lisa Holland-Davis & Jason Davis, *Victim Arrest in Intimate Partner Violence Incidents: A Multilevel Test of Black's Theory of Law*, 6 J. PUB. AND PRO. SOCIO. 1 (2014) (finding that the Battered Women's Movement inadvertently led to the increase in arrests and prosecution of victims and perpetrators following the Movement's push for pro-arrest policies).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 15.

<sup>69</sup> *Id.*

<sup>70</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 7 ("From the beginning of the antiviolence movement women of color foresaw the problems that criminalization would create for their communities, but those concerns went largely unheeded in the rush to institutionalize criminalization in law and policy.").

<sup>71</sup> MEINERS & LEVINE, *supra* note 61, at 13.

<sup>72</sup> Elizabeth Bernstein, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns*, 36 J. WOMEN IN CULTURE AND SOC'Y 45, 47–58 (2010) (explaining how feminists' embrace of criminalization laid the groundwork of what became known as carceral politics and carceral feminism).

<sup>73</sup> Alex Press, *#MeToo Must Avoid "Carceral Feminism"*, VOX (Feb. 1, 2018) <https://www.vox.com/the-big-idea/2018/2/1/16952744/me-too-larry-nassar-judge-aquilina-feminism/> [<https://perma.cc/LNMQ7-XJUD>].

policing.<sup>74</sup> During a 2000 conference centered on women of color and IPV, Angela Davis articulated that criminal law is a “poorly suited” solution because IPV is rooted in both individual social circumstances and larger systemic contexts.<sup>75</sup> Additionally, former Senior Counsel for Economic Security at the National Women’s Law Center, Brenda Smith, argued that VAWA’s criminal focus would disproportionately affect Black women because the intersection of racial and gender discriminations coupled with the legal system’s historically oppressive relationship with the Black community leaves Black women the most vulnerable to any expansions of policing.<sup>76</sup> The intersectionality of Black women’s identities has created a “paradoxical political dynamic” that isolates Black female victims and treats them as criminals.<sup>77</sup>

As concerns increased regarding the reliance on the legal system, there is this simultaneous issue facing Black women’s treatment by the legal system. The burgeoning law-and-order focus that “made feminism more prosecutorial and punitive” harmed Black female victims due to their historically oppressive relationship with the criminal legal system.<sup>78</sup> Specific manifestations of the legal system’s oppression of Black female survivors of IPV will be expounded upon below.

## B. Black Women and the Criminal Legal System

In order to understand how VAWA’s enforcement focus is detrimental to Black female survivors, this section will explore how the legal system has historically treated Black women. Section I.B.1 provides an overview of how slavery influenced the relationship between Black women and the criminal legal system. Next, Section I.B.2 explores how racial and gender discrimination combined with punitive policies contributes to the criminalization of Black women. Further, Section I.B.3 addresses legal actors’ damaging perceptions of Black women. Finally, Section I.B.4 explains why Black women—including Black survivors of IPV—distrust the legal system.

### 1. Slavery as the Historical Origins of the Relationship between Black Women and the Legal System and its Effects

The legal system’s criminalization of Black women and their “overrepresentation in prison has a long history rooted in the tangled dynamics of race, gender, enslavement, and the law.”<sup>79</sup> Slavery’s development in the American colonies involved the creation of laws that endangered Black women.<sup>80</sup> Specifically, laws prevented the prosecution of white slave-holding offenders who raped enslaved women; however, Black male offenders who raped white women were violently punished.<sup>81</sup> This

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<sup>74</sup> *Id.*

<sup>75</sup> GOODMARK, *DOMESTIC VIOLENCE*, *supra* note 22, at 18.

<sup>76</sup> See Goodmark, *Reimagining VAWA*, *supra* note 19, at 85.

<sup>77</sup> RICHIE, *supra* note 1, at 112.

<sup>78</sup> GRUBER, *supra* note 60, at 1.

<sup>79</sup> Kali N. Gross and Cheryl D. Hicks, *Introduction—Gendering the Carceral State: African American Women, History, and the Criminal Justice System*, 100 J. OF AFR. AM. HIST. 357, 359 (2015).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

contradictory treatment between white male offenders and Black male offenders within the criminal legal system reflected the prejudicial attitudes against Black women who were seemingly not deserving of legal protections compared to other survivors. Additionally, the legal system often punished Black women who defended themselves against their abusers.<sup>82</sup> For example, Celia (nineteen years old)<sup>83</sup> and Virginia Christian (sixteen years old)<sup>84</sup> were two Black slaves executed in 1855 and 1912, respectively, after defending themselves against their abusive masters.

Moreover, Black women who were not sentenced to death were met with longer prison sentences than their white counterparts who committed similar crimes.<sup>85</sup> In prison, Black women were often confined under harsh conditions, which exposed them to rape and other forms of brutality.<sup>86</sup> The unfair social hierarchy that slavery buttressed contributed to these occurrences in prison systems and within the broader criminal legal system. Over time, this hierarchy not only created the foundation that modern-day punitive policies were established on, but it also contributed to the adverse treatment of Black women.

## 2. Punitive Policies as Causes of Black Women's Vilification by the Legal System

Federal and state governments implemented pro-arrest legislation in response to IPV that have created punitive consequences, which further the criminalization of Black women, expose them to disparate outcomes, and illustrate the legal system's destructive relationship with the community.<sup>87</sup> In the late 1990s, white feminist lawyers pushed for harsher arrest laws.<sup>88</sup> For example, feminist lawyers sued New York City's police departments for their "arrest-avoidance" policies.<sup>89</sup> A similar development

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<sup>82</sup> See Gross, *supra* note 14, at 25–26 ("Structured by colonial and antebellum judiciaries, laws representing the priorities of enslavers effectively negated and criminalized black womanhood by subjecting black women to brutality and exploitation and by barring them from lawful avenues for redress.")

<sup>83</sup> Mariame Kaba, *Black Women Punished For Self-Defense Must Be Freed From Their Cages*, THE GUARDIAN (Jan. 3, 2019) <https://www.theguardian.com/commentisfree/2019/jan/03/cyntoia-brown-marissa-alexander-black-women-self-defense-prison> [https://perma.cc/LP5N-FJA9].

<sup>84</sup> Lashawn Harris, *The "Commonwealth of Virginia vs. Virginia Christian": Southern Black Women, Crime & Punishment in Progressive Era Virginia*, 47 J. SOC. HIST. 922, 923 (2014).

<sup>85</sup> See generally Gross, *supra* note 14, at 29–30 ("Between 1794 and 1835 in Philadelphia, roughly 72 percent of black women who went before juries were convicted. They also had fewer of their cases dismissed than any other group and were more starkly overrepresented in prison than black men.")

<sup>86</sup> See generally Jaclynn Ashly, *Treated Worse Than Animals: Black Women In Pretrial Detention*, ALJAZEERA (Jul. 7, 2021) <https://www.aljazeera.com/features/2021/7/7/treated-worse-than-animals-black-women-in-us-pretrial-detention> [https://perma.cc/87RC-ASV2].

<sup>87</sup> See generally Willow, *supra* note 16 ("[Mandatory arrest] has led to victims being arrested instead of/as well as perpetrators, while perpetrators are still less likely to go to jail or prison than other criminals, sexual assault remains underreported, and violence hasn't stopped.")

<sup>88</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 13.

<sup>89</sup> *Id.*

took place in Oakland, California in 1976, as seen in *Scott v. Hart*.<sup>90</sup> *Scott* challenged the Oakland Police Department's response to calls for assistance from abused women.<sup>91</sup> The goal of this class action was two-pronged: 1) obtain adequate police protection for abused women by reversing the department's arrest-avoidance policy and 2) educate the public and legal system about IPV.<sup>92</sup> In response to *Scott*, the Oakland Police Department rescinded its arrest-avoidance policy and agreed to criminalize domestic violence.<sup>93</sup>

Further, two prominent cases solidified the legal system's arrest policies. Two months following *Scott*, activists filed suit against the New York City (NYC) Police Department for failing to intervene on behalf of twelve women in *Bruno v. Codd*.<sup>94</sup> The lawyer who filed this case argued that prosecution and arrest were necessary to disband IPV.<sup>95</sup> Following this suit, NYC police promised to respond swiftly to IPV calls and to make an arrest whenever they have reasonable cause following an IPV dispute.<sup>96</sup> *Thurman v. City of Torrington* had a similar result. On June 10, 1983, Tracey Thurman, a white woman, was brutally attacked by her husband as nearby police officers watched.<sup>97</sup> Following this case, Thurman received a \$2.3 million dollar judgement against the city of Torrington and United States' jurisdictions gradually enacted mandatory arrest policies in response to this case.<sup>98</sup>

VAWA further incentivized jurisdictions to implement these policies by making participating jurisdictions eligible for millions in federal grant funding.<sup>99</sup> At present, twenty-two states and the District of Columbia have enacted mandatory arrest laws, and the vast majority of police departments have implemented pro-arrest policies.<sup>100</sup> Ultimately, mandatory arrest laws created unintended consequences. These consequences included the rise in mandatory and "dual" arrests of female victims.<sup>101</sup> In jurisdictions that do not require police officers to determine

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<sup>90</sup> See Pauline W. Gee, *Ensuring Police Protection for Battered Women: The Scott v. Hart Suit*, 8 J. WOMEN IN CULTURE AND SOC'Y 554, 556–560 (1983) (provides a full discussion with background of the case).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Bruno v. Codd*, 90 Misc. 2d 1047, 1048 (Sup. Ct. N.Y. Cnty. 1977) ("The complaint, supported by sworn statements in dozens of actual cases, alleges that police officers called to the scene of a husband's assault on his wife, uniformly refuse to take action, even if the physical evidence of the assault is unmistakable and undenied").

<sup>95</sup> *Id.*

<sup>96</sup> See generally *Police*, UNIV. OF MINNESOTA HUM. RTS. LIBR. (2003), <http://hrlibrary.umn.edu/svaw/domestic/link/policerreform.htm> [<https://perma.cc/M8VH-CSCU> (explaining how the NYC police department changed its practices in domestic violence cases)].

<sup>97</sup> *Thurman v. City of Torrington*, 595 F. Supp. 1521, 1522 (D. Conn. 1984).

<sup>98</sup> *Id.*

<sup>99</sup> Violence Crime Control and Law Enforcement Act of 1994, 18 U.S.C. §§1033–1034 (1994); see also H.R. 3355, 103rd Cong. (1994).

<sup>100</sup> See generally GRUBER, *supra* note 60, at 148 ("Although often held up as a stunning liberal victory, VAWA was no less carceral than the rest of the Crime Control Bill . . . VAWA's largest appropriation was grant money to states to encourage 'more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women . . .').

<sup>101</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 19.

the primary aggressor, dual arrests laws allow officers to arrest the victims along with their abusers.<sup>102</sup> The detrimental effects of dual arrests on the victim is wide-reaching, including loss of employment, loss of child custody, labeled as an offender, financial hardship, and future unwillingness to report subsequent victimization.<sup>103</sup> Additionally, certain jurisdictions have nuisance property laws, which could result in victims losing their homes as a result of seeking police protection in an IPV dispute.<sup>104</sup>

Consequently, pro-arrest laws have led to the increase in arrest rates of Black female survivors.<sup>105</sup> Criminologist Alesha Durfee attributed this increase to the “implementation of mandatory arrest policies and not simply an increased use of violence by women in intimate relationships.”<sup>106</sup> Following the expansion of pro-arrest legislation in New Hampshire, Connecticut, Colorado, Minnesota, and Maryland, “[w]omen have been disproportionately affected by the increase in the number of arrests for IPV”.<sup>107</sup> This disparity most likely occurs due to the prevalence of gender discrimination in the penal context and its effects on Black female survivors.<sup>108</sup>

Thus, the increased reliance on enforcement to solve IPV made Black women vulnerable to increased arrests, punitive social services, and rigid institutional regulation.<sup>109</sup> Sociologist Beth Richie states, “The buildup of a prison nation that surrounded the antiviolence movement enacted a set of public policies that favor the creation of a more conservative, punishment-oriented state . . .”<sup>110</sup> Richie explained that this buildup of the prison nation exposed Black women to negative consequences as they simultaneously experienced male violence in communities of concentrated disadvantage.<sup>111</sup> As a result, Black women’s outcomes spurred negative stereotypes about them.

### 3. The Discriminatory Mythologies Held by Legal Actors and Officers about Black Women

The combination of racial and gender discrimination fuels the detrimental perception of Black women by the legal system’s officials.

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<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 20 (“Criminalization has also increased state control over women through the intervention of the child abuse and neglect system. . . . [M]andatory arrest and no-drop prosecution has been disempowering for some people subjected to abuse.”).

<sup>104</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 121.

<sup>105</sup> See generally Carolyn M. West, “Sorry, We Have to Take You In:” *Black Battered Women Arrested for Intimate Partner Violence*, 15 J. AGGRESSION, MALTREATMENT & TRAUMA 95, 102 (2007) (analyzing how mandatory arrest laws contributes to the increased rates of arrest among Black women subjected to IPV).

<sup>106</sup> Alesha Durfee, *Situational Ambiguity and Gendered Patterns of Arrest for Intimate Partner Violence*, 18 VIOLENCE AGAINST WOMEN 64, 75.

<sup>107</sup> See *Id.* at 67.

<sup>108</sup> See SACCO, *supra* note 21, at 18 (“VAWA 2013 . . . established a nondiscrimination provision to ensure that victims are not denied services and are not subjected to discrimination based on actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, or disability.”).

<sup>109</sup> See RICHIE, *supra* note 1, at 25.

<sup>110</sup> *Id.* at 103–104.

<sup>111</sup> *Id.* See *id.*

Judges,<sup>112</sup> juries, and officers perceive Black women as lascivious, dishonest, and predisposed towards criminally violent behavior.<sup>113</sup> This is apparent in the case of former police officer Daniel Holtzclaw.<sup>114</sup> Holtzclaw was convicted of serial sexual violence against thirteen low-income, Black women.<sup>115</sup> According to prosecutors, Holtzclaw deliberately targeted and raped these women because they were unlikely to be believed.<sup>116</sup> Additionally, a juror from a 2008 pornography trial said that he did not believe the testimony from Black women because of how they dressed and “the way they act.”<sup>117</sup> Seemingly, some legal actors do not believe that Black women require or deserve adequate protection.<sup>118</sup> This treatment contributed to Black women’s lack of trust in the legal system.

#### 4. Black Women’s Distrust of the Criminal Legal System

Black women’s apprehension stems from the legal system’s reliance on responses that criminalize Black women or exclude them from the decision-making process following IPV disputes.<sup>119</sup> Mandatory arrest laws, for instance, often deprive Black women of the ability to determine whether and how the state will intervene. The case of Renata Singleton, a Black female IPV survivor, is demonstrative of the specific ways that certain IPV laws fail Black women subjected to IPV.<sup>120</sup> Singleton resided in a mandatory arrest jurisdiction in Louisiana.<sup>121</sup> In this jurisdiction, some prosecutors often issued illegal subpoenas to compel IPV victims to meet with prosecutors and secure convictions.<sup>122</sup> After Singleton refused to meet with prosecutors following her boyfriend’s arrest for assaulting her, prosecutors issued an allegedly fraudulent subpoena to coerce her to appear in court.<sup>123</sup> Singleton spent five days in jail because she could not afford the high bond set at \$100,000.<sup>124</sup> In contrast, her abuser paid his \$3,500 bond and served no time in jail.<sup>125</sup> Singleton’s interactions with the legal system demonstrate the pattern of institutional harm that Black

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<sup>112</sup> See generally Christina Carrega, *Judge Reassigned For Allegedly Calling Black Woman Juror ‘Aunt Jemima’*, ABC NEWS (Feb. 7, 2020), <https://abcnews.go.com/US/judge-reassigned-allegedly-calling-black-woman-juror-aunt/story?id=68824246> [https://perma.cc/9NTV-8Q65] (describing the temporary suspension of a state judge who allegedly referred to a Black woman as “Aunt Jemima”, which is a derogatory term for Black women).

<sup>113</sup> Maya Finoh & Jasmine Sankofa, *supra* note 25.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> See generally Chandra Whitfield, *It’s Complicated: Why Some Black Women Refuse To Call The Police When Their Black Male Partners Threaten Their Lives*, THE GRIO (Apr. 10, 2019), <https://thegrio.com/2019/04/10/why-some-black-women-refuse-to-call-police-black-male-partners/> [https://perma.cc/E43M-9HT9] (“Some domestic violence advocates say that Black women also have a legitimate fear that they themselves may end up arrested or subjected to violence or mistreatment from responding officers if they call police for help, adding to already heightened anxiety levels.”); see also GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 20 (“[M]andatory arrest may reduce reporting of intimate partner violence among women subjected to abuse who oppose the policy.”).

<sup>120</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 21.

<sup>121</sup> *Id.* at 20–21.

<sup>122</sup> *Id.* at 21.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*



female survivors face as a result of the criminal enforcement responses to IPV.

Mandatory policies, such as mandatory arrest, create situations that discourage Black female IPV survivors from reporting abuse. Goodmark claims, “[s]tate intervention cannot guarantee safety for women of color so long as these women both fear and are actively harmed by engaging with the state.”<sup>126</sup> Due to this, Black women may be afraid to call police officers.<sup>127</sup> In 2015, Janisha Fonville was shot and killed by responding officers whom Fonville called to render aid during an IPV dispute.<sup>128</sup> In a survey that analyzed survivors’ experiences with law enforcement, the National Domestic Violence Hotline found that over half of the participants stated that calling the police would worsen their situation.<sup>129</sup> Taken together, the Holtzclaw, Singleton, and Fonville examples point to the *system-wide* harm that Black female survivors consistently face in this context. These present-day events illustrate that the warnings of women of color advocates went unheeded in the race to institutionalize criminalization as a response to IPV. This race culminated in the enactment of VAWA.

##### 5. VAWA Endorsed a Clear Federal Preference for a Carceral Response to IPV

The impact of mainstream antiviolence efforts laid the groundwork for VAWA. During the late 1990s, when antiviolence reformers received growing interest and funding for carceral responses, attorneys, judges, and Congress began paying attention to these issues.<sup>130</sup> To aid this work, feminist legal scholars and attorneys collaborated to educate judges about gender bias in the courts, in addition to other legal issues.<sup>131</sup> Influenced by these movements to address IPV with punitive measures, Congress created a committee to evaluate gender issues in the federal judicial system.<sup>132</sup> Soon after, then-Senator Joe Biden sponsored the Violence Against Women bill that was signed into law by then-President Bill Clinton.<sup>133</sup> Following

<sup>126</sup> Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 HARV. J. OF L. & GENDER 53, 73 (2017) [hereinafter Goodmark, *Domestic Violence Be Decriminalized*].

<sup>127</sup> See Whitfield, *supra* note 119.

<sup>128</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 21.

<sup>129</sup> Goodwin K. Amber & TJ Grayson, *Investing in the Frontlines: Why Trusting and Supporting Communities of Color Will Help Address Gun Violence*, 48 J. L. MED. & ETHICS 164, 165 (2020), [https://law.yale.edu/sites/default/files/area/center/justice/investing\\_in\\_the\\_front\\_lines.pdf](https://law.yale.edu/sites/default/files/area/center/justice/investing_in_the_front_lines.pdf) [<https://perma.cc/FYJ8-WHAC>] (“In a 2015 survey by the National Domestic Violence Hotline analyzing survivor experiences with law enforcement, over half of the participants said calling the police would make their situation worse”).

<sup>130</sup> Jill Tiefenthaler et al., *Services and Intimate Partner Violence in the United States: A County-Level Analysis*, 67 J. OF MARRIAGE AND FAM. 565, 567 (2005) (In 1988, Congress created a committee to examine gender issues in the federal judicial system that was followed by the introduction of VAWA legislation in 1990. After much debate, VAWA became law in the summer of 1994 under the larger Omnibus Crime Control Act.”).

<sup>131</sup> *Id.* at 567 (“[A] group of feminist legal scholars and attorneys founded Gender Bias Task Forces designed to educate judges about gender bias in the courts”).

<sup>132</sup> *Id.* at 567 (“In 1988, Congress created a committee to examine gender issues in the federal judicial system . . .”).

<sup>133</sup> Savannah Behrmann, *Democrats Want To Renew The Expired Violence Against Women Act, Again. Here’s What You Need To Know*, USA TODAY (Mar. 16, 2021) <https://www.usatoday.com/story/news/politics/2021/03/16/violence-against-women-act-joe-biden-backing-goes-back-house/4704243001/> [<https://perma.cc/7N8H-74T9>].

much debate, VAWA became federal law under the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103–322).<sup>134</sup> Although the bill initially stood alone, VAWA acknowledged congressional concerns regarding violent crime that disproportionately targeted women.<sup>135</sup> Although VAWA had various victim-centered responses to violence against women, it centralized the criminal legal system in its solutions.<sup>136</sup>

### C. VAWA’s Funding Structure, Relevant Agencies, and Grant Programs

VAWA’s funding structure reveals that despite the consideration given to victims and survivors in VAWA’s grant program, there is a stark disparity in the Act’s funding between programs intended to support the work of law enforcement and programs specifically dedicated to victims and survivors.

#### 1. VAWA’s Legislative History and Purpose

VAWA’s legislative history relates to the investigation and prosecution of violent crimes against women.<sup>137</sup> Then-senator Biden’s advocacy was motivated by the desire to create the first U.S. federal legislation that recognized IPV as a crime.<sup>138</sup> VAWA represented an approach to strengthening responses at the local, state, tribal, and federal levels to IPV.<sup>139</sup> The Act provided training for police, prosecutors, and judicial officials on dealing with IPV abuse.<sup>140</sup> It also funded services to victims, such as shelters for abused women and children.<sup>141</sup> To efficiently distribute funds authorized by VAWA, the Office on Violence Against Women (OVW) was administratively created in 1995 within the DOJ.<sup>142</sup> The DOJ and Health and Human Services (HHS) also administer VAWA’s programs.<sup>143</sup>

In its original form, VAWA had three primary purposes: 1) it amplified investigations and prosecution of sex offenses; 2) it created grant programs that involved different entities aimed at targeting IPV, such as law enforcement, public and private entities, service providers, and victims

<sup>134</sup> Violence Against Women, 42 U.S.C. § 13925 (2012).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> German Lopez, *The Controversial 1994 Crime Law That Joe Biden Helped Write, Explained*, VOX (Sep. 29, 2020), <https://www.vox.com/policy-and-politics/2019/6/20/18677998/joe-biden-1994-crime-bill-law-mass-incarceration> [<https://perma.cc/7A7P-H34G>].

<sup>139</sup> Laura L. Rogers, *The Violence Against Women Act – An Ongoing Fixture In The Nation’s Response To Domestic Violence, Dating Violence, Sexual Assault, And Stalking*, DEPT OF JUST. ARCHIVES (Feb. 19, 2020), <https://www.justice.gov/archives/ovw/blog/violence-against-women-act-ongoing-fixture-nation-s-response-domestic-violence-dating> [<https://perma.cc/3WHS-VGGK>].

<sup>140</sup> See 34 U.S.C. §12291(b)(11)(A) (“Of the total amounts appropriated under this subchapter, not less than 3 percent and up to 8 percent, unless otherwise noted, shall be available for providing training and technical assistance. . .”).

<sup>141</sup> See 34 U.S.C. §12291(a)(51) (“The terms ‘victim services’ and ‘services’ mean services provided to victims of domestic violence, dating violence, sexual assault, or stalking, including . . . emergency and transitional shelter. . .”).

<sup>142</sup> See Goodmark, *Reimagining VAWA*, *supra* note 19, at 87 (“Since 1995, the Department of Justice’s Office on Violence Against Women . . . administers most VAWA grant programs . . .”).

<sup>143</sup> See SACCO, *supra* note 21, at 30.

of crime; and 3) it established provisions for immigrants subjected to abuse.<sup>144</sup>

To strengthen its efficacy and expand its provisions, VAWA has undergone regular reauthorizations of appropriations for the VAWA grant programs every five years. The Act was reauthorized in 2000, 2005, 2013 and is currently up for reauthorization in the Senate. If authorizations for grants expire, Congress may continue to appropriate funding for VAWA.<sup>145</sup>

Each reauthorization expanded VAWA's provisions. VAWA's 2000 reauthorization created a pertinent legal assistance program that provided representation to IPV survivors, enhanced training for lawyers representing victims, and created other direct legal services.<sup>146</sup> This reauthorization also enabled IPV survivors who escaped their abusers and fled across state lines to obtain custody orders without returning to jurisdictions where they may be in danger.<sup>147</sup> Furthermore, the 2005 reauthorization offered more inclusive approaches.<sup>148</sup> For example, it included funding for rape crisis centers, linguistically-specific services, and housing protections.<sup>149</sup> This reauthorization set forth the Child Witness, Court Training and Improvements, and Culturally Specific programs.<sup>150</sup> Additionally, the 2013 renewal of VAWA strengthened protections for Native Americans and LGBT (lesbian, gay, bisexual, and transgender) survivors.<sup>151</sup> This reauthorization granted tribal courts prosecutorial power over non-Native Americans who abused Native American women on tribal lands.<sup>152</sup> Additionally, VAWA 2013 guaranteed that LGBT survivors could not be denied access to critical services on the basis of gender identity or sexual orientation.<sup>153</sup> VAWA's fundamental goals—preventing violence against women and responding to victims' needs—are advanced by the law's federal funding and grant programs. The Note will turn next to a discussion of VAWA's funding structure and its emphasis on enforcement.

## 2. VAWA's Current Funding Structure and Procedures

The purpose of VAWA's funding is to support programs under the Act that address domestic violence, dating violence, sexual assault, stalking, and additional crimes.<sup>154</sup> The funding distribution is organized through grant programs focused on law enforcement, social and educational programs.<sup>155</sup> Congress appropriates the majority of funds to

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<sup>144</sup> *Id.* at 2.

<sup>145</sup> *Id.* at ii (“Congress may consider . . . to reauthorize VAWA”).

<sup>146</sup> *Legal Assistance for Victims Grant Program*, LAV PROGRAM, <https://www.vawamei.org/wp-content/uploads/2018/03/LAV.pdf> [https://perma.cc/3VQX-8ZT5] (last visited Nov. 1, 2021).

<sup>147</sup> *History of the Violence Against Women Act*, LEGAL MOMENTUM, <https://www.legalmomentum.org/history-vawa> [https://perma.cc/KN4L-8J5R] (last visited Aug. 23, 2021).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> See SACCO, *supra* note 21, at 18–20.

<sup>152</sup> *Id.* at 20.

<sup>153</sup> *Id.* at 18.

<sup>154</sup> *Id.* at ii.

<sup>155</sup> *Id.* at 12.

DOJ through the Office on Violence Against Women.<sup>156</sup> OVW administers technical and financial assistance to communities around the country to facilitate the creation of practices, policies, and programs aimed at eliminating IPV.<sup>157</sup> Also, funds are appropriated to federal agencies responsible for managing VAWA programs, such as the United States Department of Housing and Urban Development (HUD) and HHS.<sup>158</sup> Other federal agencies, such as the Centers for Disease Control and Prevention (CDC) and the Office of Justice Programs (OJP), manage VAWA's programs.

Funding for each fiscal year has increased since VAWA's passage. Under VAWA's 2000 reauthorization, Congress appropriated \$3,300,000,000 over five years to combat IPV.<sup>159</sup> In 2003, the total authorized funding was \$627,300,000, with \$362,300,000 allocated to the DOJ and \$263,000,000 allocated to HHS.<sup>160</sup> Within this allocation, \$290,000,000 of the DOJ dollars fell under three specific grant programs: \$185,000,000 to the Services, Training, Officers, and Prosecutors Violence Against Women Grant Program (STOP) that supports law enforcement and prosecution, \$65,000,000 to Grants to Encourage Arrest Policies (also known as the Improving Criminal Justice Responses Program), and \$40,000,000 to the Rural Domestic Violence and Child Abuse Enforcement.<sup>161</sup>

From 1995 to the fiscal year 2018, \$5,700,000,000 in grants and cooperative agreements have been awarded, and much of this money was allocated to prosecutors, police, courts, and community-based agencies supporting the work of law enforcement.<sup>162</sup> Approximately 62% of VAWA funding was awarded to the criminal legal system in 1994.<sup>163</sup> By 2013, this percentage increased to around 85% of VAWA's funding.<sup>164</sup> VAWA's two largest grant programs were awarded a combined \$266,000,000 to the

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<sup>156</sup> OVW FISCAL YEAR 2022 VIOLENCE AGAINST WOMEN ACT (VAWA) MEASURING EFFECTIVENESS INITIATIVE (MEI), DEP'T OF JUST. (DEC. 15, 2021) [hereinafter DEP'T OF JUST., OVW 2022 MEI], <https://www.justice.gov/ovw/page/file/1461336/download> [<https://perma.cc/JFU4-UTVV>].

<sup>157</sup> See SACCO, *supra* note 21, at 284 ("Many VAWA grant programs fund the same services and the same organizations. For example, nine separate VAWA programs may be used to fund emergency shelter or transitional housing . . . OVW administers 4 formula grant programs and 15 discretionary grant programs.").

<sup>158</sup> *Id.* at 4.

<sup>159</sup> Emily S. Rueb and Niraj Chokshi, *The Violence Against Women Act Is Turning 25. Here's How It Has Ignited Debate*, N.Y. TIMES (Apr. 4, 2019), <https://www.nytimes.com/2019/04/04/us/violence-against-women-act-reauthorization.html> [<https://perma.cc/A5XH-XA8J>].

<sup>160</sup> David M. Heger, *The Violence Against Women Act of 2000*, NATIONAL VIOLENCE AGAINST WOMEN PREVENTION RESEARCH CENTER (Jan. 16, 2001), <https://mainweb-v.musc.edu/vawprevention/policy/vawa00.shtml> [<https://perma.cc/BSY6-8GNX>].

<sup>161</sup> *Id.*

<sup>162</sup> See Goodmark, *Reimagining VAWA*, *supra* note 19, at 2.

<sup>163</sup> *Id.*

<sup>164</sup> Leigh Goodmark, *The Violence Against Women Act is unlikely to reduce intimate partner violence – here's why*, THE CONVERSATION (Oct. 17, 2018) [hereinafter Goodmark, VAWA IPV], <https://theconversation.com/the-violence-against-women-act-is-unlikely-to-reduce-intimate-partner-violence-heres-why-103734> [<https://perma.cc/L4LS-CCUK>].

criminal legal system alone by 2017.<sup>165</sup> Simultaneously, the grants to social services have declined sharply. In 1994, 38% of funding went to organizations dedicated to servicing the needs of women subjected to IPV.<sup>166</sup> By 2013, only 15% of VAWA grants went to social services organizations due to the financial focus on enforcement policies and programs.<sup>167</sup> Surprisingly, even within VAWA's victim services grant programs that are seemingly less focused on enforcement, funding is still allocated to law enforcement. For example, the Rural Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program, which aims to enhance the safety of rural IPV victims, funds police and prosecutors.<sup>168</sup>

### 3. The Procedural Mechanics of VAWA's Grant Programs

The purposes of VAWA's grant programs, funded by the law, re-emphasize VAWA's commitment to criminalizing IPV.<sup>169</sup> The 1994 iteration of VAWA created several grant programs, including programs that targeted 1) investigating and prosecuting domestic violence and related crimes; 2) improving investigations and prosecutions of domestic violence and child abuse in rural states; 3) encouraging states, tribes, and local governments to treat IPV as a crime and implement arrest policies; 4) building cooperation between law enforcement, public and private sector providers, and judicial officials; 5) preventing IPV and sexual assault; 6) preventing crime in public transportation and public and national parks.<sup>170</sup>

Currently, the Office on Violence Against Women administers nineteen grant programs authorized by VAWA and subsequent legislation.<sup>171</sup> Four of these grant programs are "formula" programs.<sup>172</sup> Formula programs provide funding to the states through the Office on Violence Against Women.<sup>173</sup> The enacting legislation specifies how the funds are to be distributed. For example, under the STOP Program, each territory and state must allocate 25% of the grant funds for law enforcement, 25% for prosecution, 30% for victim services, and 5% to state and local courts.<sup>174</sup> The remaining 15% may be allocated at the discretion of the state administering agency and within one of the program's purpose areas.<sup>175</sup> Moreover, the additional programs are "discretionary" programs.<sup>176</sup> The Office on Violence Against Women created program qualifications, parameters, eligibility, and deliverables per authorizing legislation for these programs.<sup>177</sup> To be considered for funding under discretionary programs, organizations must apply directly to the Office on

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<sup>165</sup> Alisha Haridasani Gupta, *Is the Legal System an Effective Solution to Domestic Violence?*, N.Y. TIMES (Jun. 17, 2021), <https://www.nytimes.com/2020/12/15/us/domestic-violence-fka-twigs-shia-labeouf.html> [<https://perma.cc/8ZDK-746A>].

<sup>166</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 2.

<sup>167</sup> *Id.*

<sup>168</sup> 34 U.S.C. § 12341 (2020).

<sup>169</sup> See Goodmark, *Reimagining VAWA*, *supra* note 19, at 12.

<sup>170</sup> *Id.* at 3.

<sup>171</sup> *Id.* at 36.

<sup>172</sup> *Id.* at 28.

<sup>173</sup> *Id.*

<sup>174</sup> 34 U.S.C. § 10132 (2021).

<sup>175</sup> *Id.*

<sup>176</sup> See Goodmark, *Reimagining VAWA*, *supra* note 19, at 28.

<sup>177</sup> *Id.*

Violence Against Women.<sup>178</sup> For instance, OVW set the Legal Assistance for Victims Program guidelines and limited applicants to private nonprofit entities, publicly funded organizations not acting in a government capacity, and tribal organizations.<sup>179</sup>

The discrepancy in enforcement-focused funding and victim-centered funding directly affects Black women due to their relationship to the legal system.<sup>180</sup> To be sure, some of VAWA's grant programs are victim-focused, such as programs that provide direct intervention and related assistance to victims of sexual assault, the development of tribal coalitions focused on IPV, and transitional housing.<sup>181</sup> For example, the Transitional Housing Program supports programs that provide six to twenty-four months of housing for victims in need of shelter due to IPV-related abuse.<sup>182</sup> Nevertheless, like the Transitional Housing Program, many of VAWA's victim-centered programs have limited funding compared to VAWA's more enforcement-focused programs. In 2020, STOP received \$152,900,000 in funding whereas \$40,400,000 was granted to the Transitional Housing Program.<sup>183</sup>

Part II will delineate three specific grant programs that demonstrate VAWA's funding priorities. Section II.A will describe the mechanics of VAWA's STOP Program and how this program adversely affects Black female survivors. In tandem, Section II.B will then conduct a comparative analysis regarding the ICJR Program and the Culturally Specific Services Program (CSSP) to illustrate further how the inequality between VAWA's enforcement and victim-centered funding impacts Black women. CSSP, a program that could substantially aid Black women due to its focus on minority survivors, is underfunded because of the financial emphasis placed on enforcement. Although VAWA funds beneficial programs, the enforcement focus ultimately harms Black women subjected to abuse. Lastly, Part III will then address a two-prong solution that better protects Black women and tailored victim-centered services.

## II. EXAMINING THE RELATIONSHIP BETWEEN VAWA'S GRANT PROGRAMS AND BLACK FEMALE SURVIVORS

The sizable gap in funding between grant programs that emphasize enforcement and grant programs that fund social services organizations is injurious to Black women because their identities have historically heightened their vulnerability to IPV and the criminal legal system.<sup>184</sup> Namely, the reliance on the criminal legal system of VAWA's funding structures exacerbates the negative relationship between Black women

<sup>178</sup> See Goodmark, *Reimagining VAWA*, *supra* note 19, at 36.

<sup>179</sup> 34 U.S.C. § 20121 (2021).

<sup>180</sup> See Section I.B of this paper, *Black Women and the Criminal Legal System*, for more information on black women in the carceral system.

<sup>181</sup> See generally Davis, *supra* note 18 (noting the different victim services programs that VAWA offers).

<sup>182</sup> 34 U.S.C. § 12351

<sup>183</sup> *FY 2020 OVW Grant Awards by Program*, DEP'T OF JUST. (Nov. 23, 2022) [hereinafter DEP'T OF JUST., *OVW Grant Awards*], <https://www.justice.gov/ovw/awards/fy-2020-ovw-grant-awards-program> [<https://perma.cc/9JBK-56F3>].

<sup>184</sup> For more background on black women and the criminal legal system, see Section I.B of this paper, *Black Women and the Criminal Legal System*.

and the legal system, which harms Black women subjected to IPV. While previous literature has argued that VAWA is problematic, none have thoroughly focused on how the interactions between the Act's grant programs and minority victims, specifically Black women, contribute to the law's inefficiency.

#### A. VAWA's STOP Grant Program

##### 1. Statutory Purpose and Procedural Explanation of the STOP Grant Program

While social movement actors and institutions in civil society once led in the dance to mitigate IPV, they quickly became “the subordinate partner in a dance now directed and dominated by the goals . . . of law enforcement.”<sup>185</sup> VAWA's allocation of hundreds of millions of dollars to police, courts, and prosecutors has “creat[ed] a powerful motivation for law enforcement to take the helm of antiviolenence efforts.”<sup>186</sup> But how truly nonviolent can law enforcement's efforts be when used on a community whose relationship with the legal system has historically been violent? An analysis of the STOP Program, VAWA's largest grant program, may shed light on this question.

The STOP Program's structure and its increase in funding illustrate the grant program's emphasis on law enforcement and prosecution. The STOP Program was reauthorized and amended by VAWA 2000, VAWA 2005, and VAWA 2013.<sup>187</sup> In 2019, STOP received \$215,000,000 in funding,<sup>188</sup> compared to the \$45,000,000 in funding granted to the Civil Legal Assistance for Victims Grant Program.<sup>189</sup> The STOP Program promotes the “strengthening of effective law enforcement, prosecution, and judicial strategies and victim services” to improve the legal system's responses to IPV.<sup>190</sup> Eligible applicants for STOP Program grants include all states, the District of Columbia, and U.S. territories.<sup>191</sup> Once the states and territories receive the funds, the grants are then

<sup>185</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 18 (quoting Mimi E. Kim, *Dancing the Carceral Creep: The Anti-Domestic Violence Movement and the Paradoxical Pursuit of Criminalization, 1973-1986*, UC BERKELEY: INST. FOR THE STUDY OF SOCIETAL ISSUES (2015)).

<sup>186</sup> *Id.* at 15.

<sup>187</sup> *STOP Violence Against Women Grant Federal Program Guidelines*, WEST VIRGINIA DIV. OF JUST. AND CMTY. SERVICES, <https://www.justice.gov/ovw/stop-violence-against-women-formula-grant-program> [<https://perma.cc/HR53-KXET>] (last visited Dec. 24, 2022).

<sup>188</sup> *FY19 Appropriations Bill Becomes Law*, ASSOCIATION OF VAWA ADMINISTRATORS (Feb. 21, 2019), <https://www.avadministrators.org/fy19-appropriations-bill-becomes-law/> [<https://perma.cc/BFZ3-RLCB>].

<sup>189</sup> See *Appendix: Budget of the U.S. Government, Fiscal Year 2018*, U.S. OFFICE OF MANAGEMENT AND BUDGET, 720 (2017), [https://www.google.com/books/edition/Appendix\\_Budget\\_of\\_the\\_U\\_S\\_Government\\_Fi/6aTFO9nwmRcC?hl=en&gbpv=1&dq=vawa+ovw+civil+legal+assistance+45,000,000&pg=PA720&printsec=frontcover#v=onepage&q=vawa%20ovw%20civil%20legal%20assistance%2045%2C000%2C000&f=false](https://www.google.com/books/edition/Appendix_Budget_of_the_U_S_Government_Fi/6aTFO9nwmRcC?hl=en&gbpv=1&dq=vawa+ovw+civil+legal+assistance+45,000,000&pg=PA720&printsec=frontcover#v=onepage&q=vawa%20ovw%20civil%20legal%20assistance%2045%2C000%2C000&f=false) [<https://perma.cc/GX5M-XMDL>].

<sup>190</sup> *STOP Program 2016 Report*, DEP'T OF JUST., OFFICE ON VIOLENCE AGAINST WOMEN 15 (2016) [hereinafter DEP'T OF JUST. OVW, *Stop 2016 Report*] [https://www.vawamei.org/wp-content/uploads/2018/10/final\\_2016\\_stop\\_report\\_to\\_congress\\_august\\_2018.pdf](https://www.vawamei.org/wp-content/uploads/2018/10/final_2016_stop_report_to_congress_august_2018.pdf) [<https://perma.cc/6HKX-MP4U>].

<sup>191</sup> *Id.* at 2.

subgranted to programs and agencies.<sup>192</sup> These include state and local courts (including juvenile courts), state offices and agencies, units of local government, victim service providers, and tribal governments.<sup>193</sup> Each state then designates an official to serve as the STOP administrator to manage and oversee the process by which their state awards subgrants.<sup>194</sup>

As previously mentioned, STOP distributes funding based on a statutorily determined, population-based formula<sup>195</sup> and pursuant to the designated purpose areas. According to 34 U.S.C. § 10441(b), funds under this grant program must be used for one or more of the designated purpose areas, which include: 1) training law enforcement officers, judges, other court personnel, and prosecutor to more effectively respond to violent crimes against women, 2) developing, training, or expanding units of law enforcement officers, judges, other court personnel, and prosecutors specifically targeting violent crimes against women, and 3) installing or expanding data collection and communication systems to link police, prosecutors, and courts to identify, classify, and track arrests.<sup>196</sup> Some STOP funding goes to victim-centered initiatives. For example, STOP distributes funding to strengthen victim services and legal assistance programs, authorize specialized domestic violence court advocates in courts, and assist victims of domestic violence in immigration matters.<sup>197</sup> However, STOP's funding is still more skewed toward enforcement. In 2014, compliance with STOP required prosecutors and law enforcement to receive not less than 25% each of STOP funding, whereas community-based organizations must receive at least 10%.<sup>198</sup> The outcomes of STOP's enforcement focus detrimentally affect Black female survivors.

## 2. STOP Contributes to Harmful Outcomes for Black Female Victims and Survivors

STOP's enforcement focus harms Black women because STOP's funding contributes to the increased arrests and convictions of Black female survivors, furthers the community devastation of the Black community, and limits Black women's accessibility to STOP's support services.

### a. The Punitive Consequences for Black Women Who Use Self-Defense in IPV Disputes

Firstly, Black women are disproportionately likely to be prosecuted and incarcerated when they defend themselves against their abusers.<sup>199</sup>

<sup>192</sup> *Id.* at 18.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* at 7—8 (Under STOP, each territory and state must allocate 25% of the grant funds for law enforcement, 25% for prosecution, 30% for victim services, and 5% to state and local courts).

<sup>196</sup> 34 U.S.C. § 10441 (2020).

<sup>197</sup> *Id.* at 15—16 .

<sup>198</sup> *OVW Fiscal Year 2014 STOP Formula Grant Program- Solicitation*, DEP'T OF JUST. 27 (Feb. 6, 2014) [hereinafter DEP'T OF JUST., *OVW 2014 STOP Solicitation*] <https://www.justice.gov/sites/default/files/ovw/legacy/2014/02/24/stop-2014-solicitation.pdf> [<https://perma.cc/N4YF-5D7R>].

<sup>199</sup> See NEW YORK MINUTE, *supra* note 35 (“The ACLU reported almost 60% of women state prisoners have a history of sexual abuse . . . Black women have struggled to be



Thus, STOP's strengthening of the criminal system causes more Black female survivors to suffer. In 2013 and 2014, STOP's funding resulted in 209,535 IPV dispute cases being accepted for prosecution and STOP-funded prosecution offices showing an overall conviction rate of 70%.<sup>200</sup> Additionally, in these same years, STOP funding led to 59,211 arrests.<sup>201</sup> Evidence suggests that Black female victims involved in IPV disputes are overrepresented in these prosecution, conviction, and arrest rates.<sup>202</sup> This reality results because a substantial number of Black female arrestees face punitive consequences after using self-defense against their abusers.<sup>203</sup> The 2013 case of Marissa Alexander is illustrative. Alexander was convicted and received a twenty-year sentence after firing a warning shot in self-defense during a violent confrontation with her abusive husband. To place this in perspective, while Alexander's Stand Your Ground defense was unsuccessful, George Zimmerman's exact defense was successful.<sup>204</sup> Whereas Alexander's act of self-defense injured no one, Zimmerman was not convicted for murdering an unarmed teenaged Black boy.<sup>205</sup>

While the excuse of self-defense is usually believed when applied to white victims who claim they felt threatened by minority aggressors, this defense is less likely to win when applied to Black women who acted in self-defense during an IPV dispute.<sup>206</sup> Although Alexander's conviction was ultimately overturned, her case illustrates how Black female "survivors are systematically punished for taking action to protect themselves and their children while living in unstable and dangerous conditions."<sup>207</sup> This inequality may result, in part, due to prosecutorial discretion.<sup>208</sup> As one

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seen as the victims instead of the aggressors due to the preexisting notions and stereotypes surrounding them").

<sup>200</sup> See DEP'T OF JUST. OVW, *Stop 2016 Report*, *supra* note 190, at 41.

<sup>201</sup> *Id.* at 73.

<sup>202</sup> See RICHIE, *supra* note 1, at 29 ("[R]esearch has . . . established a higher incidence rate of intimate partner violence for Black women").

<sup>203</sup> See Gross, *supra* note 14, at 32 ("Given black women's representation in the criminal justice system and their historic and ongoing vulnerability, there can be little doubt that gender violence is a key factor in their disproportionate representation. Indeed, 68 percent of incarcerated black women had been victimized by intimate-partner violence, and, compared to white women, black women are twice as likely to be killed by a spouse"); see also Kaba, *supra* note 83 ("Multiple studies indicate that between 71% and 95% of incarcerated women, with Black women overrepresented in these statistics, have experienced physical violence from an intimate partner.").

<sup>204</sup> See generally Josephine Ross, *Cops on Trial: Did Fourth Amendment Case Law Help George Zimmerman's Claim of Self-Defense?*, 40 SEATTLE UNIV. L. REV. 1 (2016) (discussing that George Zimmerman, a then-neighborhood watch coordinator, shot Trayvon Martin, an unarmed seventeen-year-old student. Following the trial, Zimmerman was charged with murder for Martin's death, but was eventually acquitted at trial due to his self-defense claim under Florida's Stand Your Ground statute).

<sup>205</sup> *Id.*

<sup>206</sup> See generally Gross, *supra* note 14, at 32 ("Given black women's representation in the criminal justice system and their historic and ongoing vulnerability, there can be little doubt that gender violence is a key factor in their disproportionate representation. Indeed, 68 percent of incarcerated black women had been victimized by intimate-partner violence, and, compared to white women, black women are twice as likely to be killed by a spouse").

<sup>207</sup> See Kaba, *supra* note 83.

<sup>208</sup> JAMES E. JOHNSON ET. AL., RACIAL DISPARITIES IN FEDERAL PROSECUTIONS 11 (2010) ("Unwarranted racial disparities in decision-making may result from outright conscious animus, including the use of race-neutral criteria (such as class or geography) as a pretext for impermissible consideration of race, or from unconscious racial stereotyping.").

scholar has articulated, “Black women were not entitled to the law’s protection, though they could not escape its punishment.”<sup>209</sup>

Through an intersectional lens, it becomes clear that Black women become trapped in cycles of victimization and criminalization due to racialized narratives that place them outside the hegemonic boundaries of womanhood, and thus, outside the bounds of the law’s protection.<sup>210</sup> Through criminalization, Black women are held accountable for their own suffering, which is intensified by their vulnerability to poverty.<sup>211</sup> Black women are vulnerable to economic disadvantage, which increases their likelihood of being exposed to IPV. The overrepresentation of people of color in “economically stressed neighborhoods likely accounts for the high rates of intimate partner violence among low-income women of color.”<sup>212</sup> The disproportionate exposure of Black women to both economic vulnerability and IPV increases the likelihood that they will have to resort to self-defense. Thus, it is not just their individual “choices” but also their social positioning that makes them more susceptible to being criminalized for protecting themselves. While Black women come into contact with the criminal legal system for statutory offenses in the same way others are charged with crimes, the analysis above demonstrates how the STOP Program contributes to the overcriminalization of Black female survivors through increased arrests, prosecution, and convictions.

#### b. STOP’s Effects on the Black Community

Ultimately, the STOP Program contributes to the community devastation of the Black community. This community devastation relates to the breaking up of Black families, social networks, and community structures, which contributes to Black female survivors’ overall vulnerability to subjugation in various spheres, such as economic security. The increase in funding to the legal system, facilitated in part by STOP’s funding, strengthens officers’ and prosecutors’ ability to arrest, convict, and incarcerate Black male abusers, which creates community devastation for the Black community at large. Criminologist Elliott Currie expressed, “[T]he experiences of incarceration, especially in a society that already suffers from a hollowed opportunity structure and thin social supports, is often a disability, one that ... cements great numbers of former offenders into a condition of permanent marginality.”<sup>213</sup> This hollowing of a community is especially apparent within the Black community.

Using criminalization to respond to IPV creates serious harms to Black communities at large, including the mass incarceration of Black men.<sup>214</sup> For example, in Milwaukee, a mandatory arrest jurisdiction, men of color represented 24% of the population of the county’s population but

<sup>209</sup> See Gross, *supra* note 14, at 25.

<sup>210</sup> *Id.*

<sup>211</sup> Robin Bleiweis et. al., *The Basic Facts About Women in Poverty*, CAP (Aug. 3, 2020), <https://www.americanprogress.org/article/basic-facts-women-poverty/> [<https://perma.cc/HC29-NFCR>].

<sup>212</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 37.

<sup>213</sup> ELLIOT CURRIE, VIOLENCE AND SOCIAL POLICY, IN ROUTLEDGE HANDBOOK OF CRITICAL CRIMINOLOGY 472 (2012).

<sup>214</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 19.

represented 66% of the defendants in IPV cases.<sup>215</sup> The evidence suggests that a sizeable portion of these men of color defendants are Black men because Black men dominate Milwaukee's minority population and have been incarcerated at rates highly disproportionate to their share of the state population at all age levels.<sup>216</sup> In relation, most IPV offenses are prosecuted as misdemeanors, and rates of misdemeanor prosecutions are significantly higher among men of color.<sup>217</sup> Despite this reality, separating victims from their abusers does pose benefits and could prevent future abuse. However, restorative programs could serve as an alternative. The disparate prosecution and incarceration of Black men inflicts egregious costs for Black women and their communities. Black women's vulnerability to community devastation intersects with another form of vulnerability that similarly, and overwhelmingly, exposes Black women to poverty: economic abuse.

Incarcerating Black men also erodes Black women's access to financial relief and hollows out the Black community. A report found that 86% of women who experience IPV also report economic abuse.<sup>218</sup> Economic abuse is the range of behaviors that allows a perpetrator to control another's access to economic relief.<sup>219</sup> In tandem, the vast majority of IPV survivors are Black women, so it is reasonable to deduce that Black women are disproportionately impacted due to their financial dependence on their abusers. The statistics confirm this reality. Black women are more likely to be low-income and thus more likely to be subjected to IPV.<sup>220</sup> Black women made up 22.3% of women living in poverty despite only representing 12.8% of the U.S. female population.<sup>221</sup> Women at or below the poverty level experience abuse almost twice as often as women at 101–200% of the poverty level.<sup>222</sup> Scholars Sonia M. Frias and Ronald J. Angel also note, "Those who are unemployed and who lack financial resources are more likely to suffer repeated violence, and they are less likely to leave their abusers permanently than employed women or those with more financial resources."<sup>223</sup> For these aforementioned reasons, it is safe to deduce that economic abuse increases Black women's disproportionate exposure to IPV.

Additionally, when fathers are incarcerated, the family's income declines by 22%, and research suggests that 65% of families cannot meet

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<sup>215</sup> *Id.*

<sup>216</sup> Lois M. Quinn & John Pawasarat, *Statewide Imprisonment of Black Men in Wisconsin* 1, ETI PUBLICATIONS (2014) (providing data on the Black male incarceration for the state of Wisconsin).

<sup>217</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 19.

<sup>218</sup> THE COST OF COVID-19: ECONOMIC ABUSE THROUGHOUT THE PANDEMIC, SURVIVING ECONOMIC ABUSE 3 (2021).

<sup>219</sup> *Id.*

<sup>220</sup> See Goodmark, *Reimagining VAWA*, *supra* note 19, at 92 ("While criminalization of intimate partner violence can confer benefits upon victims of violence, its costs are quite high. Those costs are borne disproportionately by people of color and individuals with lower incomes . . .").

<sup>221</sup> See Bleiweis et. al., *supra* note 211, at 2.

<sup>222</sup> DONNA COKER ET. AL., RESPONSES FROM THE FIELD: SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND POLICING 7, ACLU (2015).

<sup>223</sup> Sonia M. Frias & Ronald J. Angel, *Stability And Change In The Experience Of Partner Violence Among Low-Income Women*, 88 SOC. SCI. Q. 1281 (2007).

all of their financial needs.<sup>224</sup> Children of incarcerated men also suffer as they are more likely to experience homelessness.<sup>225</sup> For the Black community, incarceration serves as a “nearly insurmountable barrier”; only 5% of Black applicants with a criminal record receive callbacks for job interviews.<sup>226</sup> The depression of former inmates’ employment opportunities is particularly troublesome in the context of IPV. Research suggests that rates of IPV are directly correlated with male unemployment.<sup>227</sup> Thus, the longer he is unemployed, as a result of incarceration, the higher the rate of IPV. Black women are then disproportionately exposed to revictimization.

This community devastation is also debilitating to Black women because the investment in prisons reduces social services and resources granted to low-income communities.<sup>228</sup> In turn, this deprives Black communities of funding for health care, education, and housing. These are services that could dramatically stabilize these communities.<sup>229</sup> The majority of former prisoners are released into diminished neighborhoods whose stability is weakened by the loss of their members to prison.<sup>230</sup> The mass incarceration of Black men devastates Black communities at large because pumping more funding into carceral institutions through the STOP Program exacerbates this problem. This concentration of punitive measures in Black communities is detrimental to Black female survivors.

### c. The Outcomes of STOP’s Victim-Centered Services

Due to the outcomes created by STOP’s victim-centered services, Black women are underrepresented in the universe of victims who receive services despite being overrepresented in the universe of people who experience IPV. Currently, 30% of STOP’s funding is attributed to victim services, with the legislation requiring at least 10% for culturally specific victim services.<sup>231</sup> In 2013 and 2014, however, STOP’s distribution of victim services went primarily to aiding white female survivors.<sup>232</sup> For example, in 2013 and 2014, STOP’s victim services served approximately 55% of white male and female survivors.<sup>233</sup> This evidence also shows that 90% of the white survivors who received this funding in both years were female.<sup>234</sup> Thus, white female victims received the most funding of any other individual racial/ethnic group.<sup>235</sup> Although approximately 37.3% of non-Hispanic white women experience IPV in their lifetime,<sup>236</sup> they received

<sup>224</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 27.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> MICHAEL L. BENSON & GREER L. FOX, CONCENTRATED DISADVANTAGE, ECONOMIC DISTRESS, AND VIOLENCE AGAINST WOMEN IN INTIMATE RELATIONSHIPS 3-3 – 3-6 (2004), <https://www.ojp.gov/pdffiles1/nij/199709.pdf> [<https://perma.cc/GC8Y-CZGJ>].

<sup>228</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 22.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.* at 27.

<sup>231</sup> For information on VAWA’s funding structure and its grant programs, see Section I.C.1 of this paper, Aren’t I a Woman Deserving of Justice? Restructuring VAWA’s Funding Structure to Create Racial and Gender Equity.

<sup>232</sup> See DEP’T OF JUST. OVW, *Stop 2016 Report*, *supra* note 190, at 85.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> S.G. SMITH ET. AL., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY 2010–2012 STATE REPORT, CONTROL OF THE CENTERS FOR DISEASE CONTROL AND

more services on average. These victims are overserved relative to the percentage they occupy as victims, which may mean that others are being underserved. In the same years mentioned above, only 23% of Black victims benefitted from these services, and the majority of the Black victims were women.<sup>237</sup> As noted, Black women make up the vast majority of IPV victims yet received less aid on average than white women. The provision of aid to any victim of IPV is crucial and beneficial. However, when there exists a disparity in who receives remedies, the program and VAWA are not advocating on behalf of all survivors. Ultimately, this inequitable service provision disadvantages Black women subjected to IPV.

Even if race and gender disparities are removed from consideration, STOP's funding still is not adequately providing services to victims. A 2018 National Crime Victims' Rights Resource reported, "In more than 80% of intimate partner violent victimizations in 2015, the victim did not receive assistance from victim service agencies."<sup>238</sup> Additionally, even though victim-centered services organizations receive 30% of STOP funding, these organizations are still influenced by law enforcement. In 2013 and 2014, 46% of community agencies and organizations reported meeting weekly or monthly with law enforcement, 40% with the prosecutor's office, and only 30% reported weekly and monthly interactions with social services organizations.<sup>239</sup>

#### d. Additional Inefficiencies of the STOP Program

STOP also contains victim-centered provisions that would benefit Black women subjected to abuse, but they are not well-funded. The program contains the provision of shelters and beds to IPV survivors, which is a significant need for Black women as they disproportionately experience some of the highest rates of economic insecurity.<sup>240</sup> This economic insecurity undermines their ability to afford housing and thus makes some Black female IPV survivors dependent on their abusers.<sup>241</sup> STOP's funding seemingly mitigates this issue and gives Black women and other survivors a pathway to housing security. In 2013 and 2014, STOP funding allowed an annual average of 1,135 victims to receive 346,919 transitional housing bed nights and an annual average of 21,067 victims to receive 1,938,613 emergency shelter bed nights.<sup>242</sup> Nevertheless, housing is by far the one of the most common unmet need by IPV victims annually.<sup>243</sup> Donna Coker,

PREVENTION 120 (2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf> [<https://perma.cc/U7PZ-LS74>].

<sup>237</sup> See DEP'T OF JUST. OVW, *Stop 2016 Report*, *supra* note 190, at 85.

<sup>238</sup> INTIMATE PARTNER VIOLENCE, OFFICE OF VICTIMS OF CRIME (2018), [https://ovc.ojp.gov/sites/g/files/xyckuh226/files/ncvrw2018/info\\_flyers/fact\\_sheets/2018NCV\\_RW\\_IPV\\_508\\_QC.pdf](https://ovc.ojp.gov/sites/g/files/xyckuh226/files/ncvrw2018/info_flyers/fact_sheets/2018NCV_RW_IPV_508_QC.pdf) [<https://perma.cc/64E8-DELW>].

<sup>239</sup> DEP'T OF JUST. OVW, *Stop 2016 Report*, *supra* note 190, at 33.

<sup>240</sup> See RICHIE, *supra* note 1, at 1.

<sup>241</sup> See generally DOMESTIC VIOLENCE AND HOMELESSNESS, ACLU (2006), <https://www.aclu.org/sites/default/files/pdfs/dvhomelessness032106.pdf> [<https://perma.cc/K6W9-JK9T>] ("Poor women, who are more vulnerable to homelessness, are also at greater risk of domestic violence. Poverty limits women's choices and makes it harder for them to escape violent relationships.")

<sup>242</sup> DEP'T OF JUST. OVW, *Stop 2016 Report*, *supra* note 190, at 87.

<sup>243</sup> See generally NNEDV's 14<sup>th</sup> Annual Domestic Violence Counts Report *Illuminates Ongoing Gaps in Services and Need for Policy Changes*, NATIONAL NETWORK TO END DOMESTIC VIOLENCE (March 10, 2020), [https://nnedv.org/latest\\_update/nnedvs-14th-](https://nnedv.org/latest_update/nnedvs-14th-)

former battered women’s shelter worker and law professor, declared, “You look at the relatively minuscule amount of money going to transitional housing compared to criminal justice and it’s outrageous.”<sup>244</sup> In 2012, VAWA’s funding for transitional housing was about one-fifth the total allocated for law enforcement.<sup>245</sup> Thus, the STOP Program is not providing a sufficient amount of housing, and this further marginalizes Black female survivors.

#### e. The Effect of Criminalization on Deterring Abuse

Additionally, STOP may also be ineffective as studies have failed to find that laws that criminalize IPV actually deter abuse, and in some instances, these laws increase abuse.<sup>246</sup> Goodmark states, “But after twenty-six years of public funding [through VAWA], it appears that criminalizing intimate partner violence may not lower incidence rates.”<sup>247</sup> For example, in Quincy, Massachusetts, a jurisdiction that “aggressively” enforced IPV laws, recidivism rates were high primarily because criminalization failed to prevent repeat abusers from engaging in abusive behavior.<sup>248</sup> Additionally, in a review of nineteen studies that measured the recidivism of batterers, social scientists found that the recidivism rate was 40%.<sup>249</sup> Another report found that arrests increase the frequency of IPV in the long run among offenders.<sup>250</sup>

### B. The Funding Differences between VAWA’s Improving Criminal Justice Responses Program and Culturally Specific Services Program

A comparative analysis of two additional grant programs illustrates that VAWA does contain funding of victim services, but the allocations to criminal enforcement dwarf this funding. Unlike VAWA’s STOP Program, the Improving Criminal Justice Responses Program (ICJR), formerly known as the Grants to Encourage Arrest and Enforcement of Protection Orders Program, is a discretionary program.<sup>251</sup> ICJR is VAWA’s second

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annual-domestic-violence-counts-report/ [https://perma.cc/USV9-P878] (“Victims made 11,336 requests for services—including emergency shelter, housing, transportation, childcare, legal representation, and more—that could not be provided because programs lacked the resources to meet victims’ needs.”).

<sup>244</sup> Kate Pickert, *What’s Wrong with the Violence Against Women Act*, TIME (Feb. 27, 2013), <https://nation.time.com/2013/02/27/whats-wrong-with-the-violence-against-women-act/> [https://perma.cc/RG5U-XCN5].

<sup>245</sup> 2012 Biennial Effect Report to Congress on the Effectiveness of Grant Programs Under the Violence Against Women Act, DEP’T OF JUST., OFFICE ON VIOLENCE AGAINST WOMEN 250 (2012) [hereinafter DEP’T OF JUST. OVW, 2012 Biennial], <https://www.justice.gov/sites/default/files/ovw/legacy/2014/03/13/2012-biennial-report-to-congress.pdf> [https://perma.cc/4Y9T-BWHC].

<sup>246</sup> See GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 24.

<sup>247</sup> Leigh Goodmark, *Beyond Criminalizing Domestic Violence*, TRANSFORM HARM (March 27, 2021) [hereinafter Goodmark, *Beyond Criminalizing*], [https://transformharm.org/ab\\_resource/beyond-criminalizing-domestic-violence/](https://transformharm.org/ab_resource/beyond-criminalizing-domestic-violence/) [https://perma.cc/FA7P-K9DV].

<sup>248</sup> GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 25.

<sup>249</sup> JEFFREY FAGAN, THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS 19 (1995), <https://www.ojp.gov/pdffiles/crimdom.pdf> [https://perma.cc/M25T-RTR9].

<sup>250</sup> LAWRENCE W. SHERMAN ET. AL., THE VARIABLE EFFECTS OF ARREST ON CRIMINAL CAREERS: THE MILWAUKEE DOMESTIC VIOLENCE EXPERIMENT 139 (1992), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6733&context=jclc> [https://perma.cc/W358-6PRN].

<sup>251</sup> 34 U.S.C. §§ 10461-10465 (2020).

largest grant program, receiving \$53,000,000 in the fiscal year 2019.<sup>252</sup> In comparison, the Culturally Specific Services Program (CSSP), another discretionary program, received \$7,550,000 in the same fiscal year.<sup>253</sup> CSSP is fairly representative of VAWA's other underfunded grant programs that do not heavily fund the legal system.<sup>254</sup> CSSP is also distinctive because it is a VAWA program that is specifically related to minority IPV victims.<sup>255</sup> Since ICJR and CSSP are discretionary programs and thus do not uniformly operate in all jurisdictions, they cannot be analyzed in the same manner as the STOP Program. This comparative analysis is meant to illustrate how VAWA prioritizes enforcement-focused grant programs to the detriment of programs focused on responding to the economic and social needs of underserved communities.

The statutory purposes of ICJR and CSSP are pertinent. ICJR encourages partnerships between the criminal system and local, state, and tribal governments and courts.<sup>256</sup> The first purpose area for which ICJR funds can be used is “to implement proarrest programs and policies in police departments, including policies for protection order violations and enforcement of protection orders across state and tribal lines.”<sup>257</sup> ICJR funds can also be used for twenty-two other purposes.<sup>258</sup> The purpose of ICJR is to focus on enforcement by ensuring that IPV is treated as a serious violation of criminal law.<sup>259</sup> On the other hand, CSSP is intended to create opportunities for culturally specific community-based organizations to develop culturally-sensitive strategies that enhance access to services and

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<sup>252</sup> See SACCO, *supra* note 21, at 12.

<sup>253</sup> *Id.* at 13.

<sup>254</sup> *Id.* at 13 (noting that the Training and Services to End Violence Against Women with Disabilities Grant program received \$6,000,000, Rape Survivor Child Custody Act received \$1,500,000, Research and Evaluation on Violence Against Women received \$3,500,000 in 2018).

<sup>255</sup> DEP'T OF JUST. OVW, *Stop 2016 Report*, *supra* note 190, at 18 (“Provide culturally specific services and training to underserved communities based on factors such as race, ethnicity, language, sexual orientation, or gender identity”).

<sup>256</sup> *Id.* at 33–51 (explaining the different purpose areas under ICJR).

<sup>257</sup> OVW FISCAL YEAR 2021 IMPROVING CRIMINAL JUSTICE RESPONSES TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING GRANT PROGRAM- SOLICITATION 5—6, DEP'T OF JUST., OFFICE ON VIOLENCE AGAINST WOMEN (2021) [hereinafter DEP'T OF JUST. OVW, 2021 DV RESPONSES].

<sup>258</sup> *Id.* at 6–8; The following are some of the purpose areas included under ICJR: centralize and coordinate police enforcement, prosecution, or judicial responsibility for domestic violence, dating violence, sexual assault, and stalking cases in teams or units of police officers, prosecutors, parole and probation officers, or judges; coordinate computer tracking systems and provide the appropriate training and education about domestic violence, dating violence, sexual assault, and stalking to ensure communication between police, prosecutors, parole and probation officers, and both criminal and family courts; strengthen legal advocacy service programs and other victim services for victims of domestic violence, dating violence, sexual assault, and stalking, including strengthening assistance to such victims in immigration matters; educate federal, state, tribal, territorial, and local judges, courts, and court-based and court-related personnel in criminal and civil courts (including juvenile courts) about domestic violence, dating violence, sexual assault, and stalking and to improve judicial handling of such cases.

<sup>259</sup> *Id.* at 5.

resources for victims of racial and ethnic minority groups.<sup>260</sup> CSSP includes eight purpose areas.<sup>261</sup>

1. The Disparate Number of Victims Served between ICJR and CSSP

The funding disparities between the two grant programs translate to a disparity in the number of victims served. In 2018, the ICJR grantees reported serving 39,632 victims during each sixth-month reporting period.<sup>262</sup> In contrast, only 2,886 victims were served by the CSSP program in 2018.<sup>263</sup> This stark difference is troublesome, especially for Black female survivors who are disproportionately impacted by criminalization.

The limited number of victims served by CSSP, as opposed to ICJR, further marginalizes Black women by reducing their access to services due to poor funding. The increase in victims served by CSSP could diminish this reality for Black women. Minority female survivors of IPV experience significant barriers to seeking support, which is why the provision of services to the most victims by CSSP is necessary. For example, Black and Latina female survivors bear an additional obstacle in seeking support as these two communities have the highest rates of financial insecurity and asset poverty.<sup>264</sup> Additionally, Black women have fewer economic resources and less social capital, while they experience more social stigma and male violence.<sup>265</sup> In turn, this limits Black women's access to social, legal, and medical services.<sup>266</sup> On the other hand, as ICJR poses risk to Black women, CSSP could fill in that gap by pairing Black women with culturally-sensitive organizations. One of the areas in which CSSP funds can be used is to increase communities' access to culturally specific resources and

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<sup>260</sup> OVW FISCAL YEAR 2020 GRANTS TO ENHANCE CULTURALLY SPECIFIC SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING PROGRAM 1, DEP'T OF JUST., OFFICE ON VIOLENCE AGAINST WOMEN (2019) [hereinafter DEP'T OF JUST. OVW, 2020 CSSP GRANTS], <https://www.justice.gov/ovw/page/file/1256526/download> [<https://perma.cc/BE3R-4LU8>].

<sup>261</sup> *Id.* at 2; The following are some of the purpose areas included under CSSP: working with State and local governments and social service agencies to develop and enhance effective strategies to provide culturally specific services to victims of domestic violence, dating violence, sexual assault, and stalking; Increasing communities' capacity to provide culturally specific resources and support for victims of domestic violence, dating violence, sexual assault, and stalking crimes and their families; strengthening criminal justice interventions, by providing training for law enforcement, prosecution, courts, probation, and correctional facilities on culturally specific responses to domestic violence, dating violence, sexual assault, and stalking; enhancing traditional services to victims of domestic violence, dating violence, sexual assault, and stalking through the leadership of culturally specific programs offering services to victims of domestic violence, dating violence, sexual assault, and stalking.

<sup>262</sup> THE 2018 BIENNIAL REPORT TO CONGRESS ON THE EFFECTIVENESS OF GRANT PROGRAMS UNDER THE VIOLENCE AGAINST WOMEN ACT, DEP'T OF JUST., OFFICE ON VIOLENCE AGAINST WOMEN 121 (2018) [hereinafter DEP'T OF JUST. OVW, 2018 BIENNIAL], <https://www.justice.gov/ovw/page/file/1292636/download> [<https://perma.cc/8ESZ-LTYQ>].

<sup>263</sup> *Id.* at 99.

<sup>264</sup> See RICHIE, *supra* note 1, at 11 (“[T]he generally accepted measures of economic and social well-being—income, homeownership, high school graduation rates—predict ongoing disadvantages and persistent poverty, which profoundly shaped women's experiences of abuse.”).

<sup>265</sup> See Harrell R. Rodgers, Jr., *Black Americans and the Feminization of Poverty: The Intervening Effects of Unemployment*, 17 J. OF BLACK STUDIES 402, 404 (1987).

<sup>266</sup> *Id.*



support.<sup>267</sup> However, this improvement is currently rendered unattainable by the severe underfunding of CSSP, which results in the program's inability to reach a sizable, or even decent, portion of minority survivors.

This stark difference in funding between the two grant programs is also troubling due to ICJR's focus on pro-arrest policies. While the lack of funding to CSSP inhibits its ability to reach a good portion of IPV survivors, ICJR increases arrests by promoting mandatory arrest policies,<sup>268</sup> which have historically affected Black women and men. As a result of these laws, arrest rates in IPV cases have increased from 7% to 15% in the 1970s and 1980s to 30% or more in 2008.<sup>269</sup> In Vermont, 20% of the 2014 prison population was incarcerated due to IPV.<sup>270</sup>

This preference for increased funding of social services is also supported by the fact that “[c]riminalization most benefits those who feel safer as a result of interventions but are immune from most of its costs . . . .”<sup>271</sup> These costs fall heavily on low-income people and people of color, who are most likely to be involved in the criminal legal system due to inadequate legal representation and life-affirming social services.<sup>272</sup> In conjunction, children are economically and emotionally harmed by their parents' involvement in the legal system, and communities suffer from the removal of their members in noticeable numbers.<sup>273</sup>

To illustrate further the ways in which VAWA's limited resources and services negatively impact survivors, a 2019 National Network to End Domestic Violence (NNEDV) report that surveyed IPV survivors found unfavorable outcomes for minority communities.<sup>274</sup> For example, the report found that minority survivors in New Jersey remain with abusers because the available shelters do not accommodate their cultures sensitively.<sup>275</sup> On a national level, the report stated that victims made 11,336 requests in one day for services, including emergency shelter and housing, that could not be provided due to a lack of resources.<sup>276</sup> This finding is relevant and damaging to Black women subjected to IPV. Black women are most disproportionately affected by discriminatory housing practices and are

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<sup>267</sup> See DEP'T OF JUST. OVW, 2018 BIENNIAL, *supra* note 262, at 11 (one of the purposes of CSSP is to describe “the barriers experienced by individuals from the identified culturally specific population who are victims of domestic violence, dating violence, sexual assault, and stalking while attempting to seek and access services.”).

<sup>268</sup> See generally DEP'T OF JUST. OVW, 2021 DV RESPONSES, *supra* note 257, at 18 (“State, Unit of Local Government, and Tribal Government Applicants must certify that their laws or official policies: encourage or mandate arrests of domestic violence offenders based on probable cause that an offense has been committed.”).

<sup>269</sup> Elise Inouye, *Mandatory Arrests – A Double-Edged Sword*, 15 UNIVERSITY OF HAWAII L. REV. 33, 33 (2017) <https://hilo.hawaii.edu/campuscenter/hohonu/volumes/documents/MandatoryArrestsADouble-EdgedSword.pdf> [<https://perma.cc/54D9-H5XZ>].

<sup>270</sup> GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 4.

<sup>271</sup> *Id.* at 32.

<sup>272</sup> *Id.* at 31.

<sup>273</sup> *Id.* at 32.

<sup>274</sup> NATIONAL NETWORK TO END DOMESTIC VIOLENCE, *supra* note 243, at 8 (“On September 12, 2019: There were 11,336 requests for services that participating programs were unable to provide due to a lack of resources. . . . Survivors often struggle to find affordable housing in urban areas”).

<sup>275</sup> *Id.* at 5.

<sup>276</sup> *Id.* at 8.

twice as likely to face eviction compared to white people in at least seventeen states.<sup>277</sup> Black women are also most likely to be displaced from their housing following domestic violence calls to the police.<sup>278</sup> Not only are survivors affected by this, but their children are as well. The children of women who face evictions are far more likely to live in substandard housing, which leads to poor health outcomes.<sup>279</sup> Thus, this finding advances the argument that VAWA's policies contribute to dangerous realities for Black female survivors and their families.

In tandem, other minority survivors experience disadvantages encouraged by VAWA's current funding structure. In regards to immigrant survivors, advocates have "noticed a definite chilling effect in immigrant survivors' willingness to report, take legal action, and obtain life-saving resources for their families. There is much fear."<sup>280</sup> Another advocate shared, "a trans survivor opted to seek counseling services through our program since we are able to work with local therapists who have trauma-specific training. Unfortunately, we had already run out of funding for these counselors, and the survivor was unable to receive the help they needed."<sup>281</sup> These adverse outcomes for various minority communities demonstrate a lack of funding for the very victims whom VAWA, particularly through its progressive reauthorizations, is meant to serve. Social service-oriented programs may be better in addressing IPV generally as it pertains to minority survivors and Black female survivors specifically because these programs would create solutions that address the different, nuanced, and complex causes of IPV.

Through various anecdotes and statistics, as well as an analysis of STOP, ICJR, and CSSP, this Part has shown that VAWA's funding priorities are ineffective and injurious to Black women. "The overreliance on criminalization tips the programmatic and policy scales in ways that are harmful to people subjected to abuse, their partners, their families and their communities and prevents the development of a menu of options," said Goodmark.<sup>282</sup> It is time for a new, multifaceted solution that recognizes that there is "no one-size-fits-all solution to the problem of intimate partner violence."<sup>283</sup>

### III. THE FISCAL ROAD TO RACIAL AND GENDER EQUITY

Virtually none of the provisions under *any* VAWA reauthorization focus on the reality that VAWA's funding priorities disproportionately impact Black female survivors. This Note argues that the best solution is a two-pronged approach. First, a legislative restructuring that reduces the funding allocated to law enforcement and prosecutors under STOP and ICJR while increasing the allocation to CSSP will solve the problems that

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<sup>277</sup> Chabeli Carrazana & Ko Bragg, *Americans Were Told To Stay Home. Black Women Are Most At Risk Of Losing Theirs.*, THE 19TH (Dec. 21, 2020), <https://19thnews.org/2020/12/eviction-moratorium-black-women-housing/> [<https://perma.cc/P56K-5PBX>].

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> NATIONAL NETWORK TO END DOMESTIC VIOLENCE, *supra* note 243, at 11.

<sup>281</sup> *Id.* at 13.

<sup>282</sup> GOODMARK, DOMESTIC VIOLENCE, *supra* note 22, at 10.

<sup>283</sup> *Id.*

stem from VAWA's funding priorities. Secondly, the introduction of economic and housing programs will be salient to this approach as these initiatives target the crucial needs of Black female survivors. Section III.A discusses why the best solution to this problem is for Congress to introduce a revised appropriations bill, which will create funding for the proposed economic and housing programs. Section III.B explains how this funding reconfiguration will improve the stability of Black female survivors. Finally, Section III.C proposes specific initiatives that the new funding structure will prioritize.

A. Restructuring the Current Funding Distributions of STOP, ICJR, and CSSP is Necessary to Mitigate the Inequities Exacerbated by VAWA

1. Restructuring VAWA's Funding Priorities Best Serves the Intent and Purpose of VAWA

VAWA provides for some culturally specific services to members of underserved communities, but none of these provisions are specifically tailored to Black female survivors. The law's most recent reauthorizations (in 2005 and 2013) expanded the purpose areas of several VAWA grants by addressing the specific needs of battered immigrants, Native Americans, and other minority communities.<sup>284</sup> For example, VAWA 2005's Sexual Assault Services Program introduced culturally specific resources to assist minorities victimized by sexual assault.<sup>285</sup> Additionally, the law's 2013 reauthorization granted authority to Native tribes to enforce protection orders over any person.<sup>286</sup>

The 2021 reauthorization of VAWA, which is awaiting Senate approval, introduces the most impactful changes for minority survivors.<sup>287</sup> This proposal calls for an increase of \$40,000,000 in authorized funding for culturally specific organizations and measures to ensure that underserved populations are not prevented from accessing grants.<sup>288</sup> It also requires culturally competent training of healthcare providers that includes lessons

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<sup>284</sup> See John Conyers Jr., *The 2005 Reauthorization of the Violence Against Women Act Why Congress Acted to Expand Protections to Immigrant Victims*, 13 VIOLENCE AGAINST WOMEN 457, 457 (2007), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/CONF-VAWA-Art-VAWA2005Reauthorization.pdf> [<https://perma.cc/YA3X-M8Q7>] (provides an "overview of the history of congressional involvement with the Violence Against Women Act's (VAWA) provisions to protect immigrant victims of domestic violence"); see also *Office On Violence Against Women (OVW) VAWA 2013 Summary: Changes To OVW-administered Grant Programs*, DEP'T OF JUST., OFFICE ON VIOLENCE AGAINST WOMEN 4 (2013) [hereinafter DEP'T OF JUST. OVW, *VAWA 2013 Summary*], <https://www.justice.gov/sites/default/files/ovw/legacy/2014/06/16/VAWA-2013-grant-programs-summary.pdf> [<https://perma.cc/7YGL-7XVZ>] ("Refines focus of program by redefining 'culturally specific' to mean primarily directed toward racial and ethnic minority groups as defined in section 1707(g) of the Public Health Service Act ('American Indians (including Alaska Natives, Eskimos, and Aleuts); Asian Americans; Native Hawaiians and other Pacific Islanders; Blacks; and Hispanics'").

<sup>285</sup> Conyers, *supra* note 284, at 458.

<sup>286</sup> See DEP'T OF JUST. OVW, *VAWA 2013 Summary*, *supra* note 284, at 6 ("Reauthorizes funding for tribal sex offender and protection order registries").

<sup>287</sup> H.R. 1620, 117th Cong. (2021).

<sup>288</sup> *Id.*

on systemic racism and equity.<sup>289</sup> Despite the relevancy of these provisions, VAWA's provisions do not thoroughly address the needs of Black women.

Although both programs fall short of provisions aimed explicitly at Black female survivors, the STOP and ICJR programs have also been expanded to include culturally specific provisions. Under STOP, each state's tribes are included for funding purposes, and the program sets aside 10% of victim services funding for culturally specific community-based organizations.<sup>290</sup> The ICJR program sets aside 5% of program appropriations for Tribal Coalitions grants.<sup>291</sup> These expansions are compelling at first glance—and certainly a step in the right direction for minority communities—but STOP and ICJR's current funding structures do not offer enough guidance for Black female survivors or fully satisfy VAWA's intent. Shifting the funding granted from STOP and ICJR's enforcement-focused initiatives to culturally specific victim services under STOP, ICJR, and CSSP will better serve survivors.

## 2. Congress Is Best Suited to Restructure VAWA's Current Funding Structure

Congress could introduce an approved appropriations bill. For this procedural reason alone, Congress is best positioned to announce a restructured plan for these three grant programs. Importantly, there is a strong likelihood that Congress will take up this issue. Congress passed the most recent VAWA reauthorization in 2013.<sup>292</sup> The last significant congressional action occurred in 2021 when the House approved VAWA's 2021 reauthorization.<sup>293</sup> In March 2021, VAWA was referred to the "Committee on the Judiciary, and in addition to the Committees on Financial Services, Ways and Means, Education and Labor, Energy and Commerce, Veterans' Affairs, and Natural Resources".<sup>294</sup> Congress reauthorized VAWA in March 2022.<sup>295</sup> However, each reauthorization to VAWA has experienced lengthy congressional debates. So while an amendment by Congress may be the surest way to introduce a reconfiguration of STOP, ICJR, and CSSP funding, bipartisan debates may challenge this proposal.

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<sup>289</sup> *Id.*

<sup>290</sup> For more background on the mechanics of VAWA's STOP Program and how this program adversely affects Black female survivors, see Section II.A.2 of this paper, *STOP Contributes to Harmful Outcomes for Black Female Victims and Survivors*.

<sup>291</sup> 34 U.S.C. §§ 10461(f) (2020).

<sup>292</sup> See DEPT OF JUST. OVW, 2018 BIENNIAL, *supra* note 262, at 7 ("Reauthorized in 2000, 2005, and 2013, VAWA articulates Congress's commitment to effective strategies for preventing and responding to domestic and sexual violence . . .").

<sup>293</sup> H.R. 1585, 116th Cong. (2019–2020) (proposing amendments to VAWA).

<sup>294</sup> *All Actions: H.R.1620 — 117th Congress (2021-2022)*, LIBRARY OF CONGRESS, <https://www.congress.gov/bill/117th-congress/house-bill/1620/all-actions?s=1&r=92> [<https://perma.cc/CRD7-N3UQ>].

<sup>295</sup> *Fact Sheet: Reauthorization of the Violence Against Women Act (VAWA)*, THE WHITE HOUSE (March 16, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/16/fact-sheet-reauthorization-of-the-violence-against-women-act-vaawa/> [<https://perma.cc/63MZ-AHZX>] (last visited December 30, 2022).

### 3. Potential Difficulties that Congress May Face in Announcing a Restructured VAWA

The Democrats and Republicans who passed VAWA did so partially because of VAWA's tradition of investigating and prosecuting violent crimes against women. VAWA was also passed during a "tough on crime" period.<sup>296</sup> Due to this, there may be pushback to any calls to reduce VAWA's enforcement focus. On the contrary, VAWA's reauthorizations indicate that the law is evolving to be more victim-centered. For example, VAWA 2005 created the first federal funding stream committed to direct services for sexual assault victims. The shift away from enforcement is also reflected in the 2021 version of the law.<sup>297</sup> H.R.1620 focuses on restorative justice, instead of law enforcement, as a way to address victims' needs. It adds purpose areas to LGBTQ+ specific services that implement restorative practices "that are focused on victim autonomy, agency, and safety to provide resolution and restitution for the victim."<sup>298</sup> This version of the law also proposes ways to increase underserved populations' access to grants. Ultimately, although VAWA's origins are rooted in the criminal legal system, VAWA's expanded provisions indicate a move towards a less punitive and more restorative approach. VAWA's evolution indicates that policymakers and advocates are becoming aware of the fact that more victim services are needed. Secondly, opposing political parties may pose challenges to this proposed funding reconfiguration. Yet, this proposal has a strong likelihood of passing due to the country's recent push to interrogate the historically negative relationship between the Black community and the legal system.<sup>299</sup>

#### B. A Legislative Change Should Be Reasonable Within the Context of VAWA

##### 1. Funding Changes Proposed for the STOP Program

Congress should reduce the 50% of VAWA funding allotted to law enforcement and prosecutors to 30%. Then, Congress should increase the funding allotted to victim services to 65%. Within this percentage, 35% of the funding should be specifically allocated to culturally specific victim services. To increase the protection of Black female survivors, this proposal recommends that 15% of the 35% should be allocated specifically to services and organizations aimed at empowering Black female survivors. STOP's specific funding centered on Black female survivors can provide proposals directly influenced by Black female advocates, attorneys, survivors, and policymakers who speak to the needs facing this community. The remaining 30% should be set aside for general victim services that will

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<sup>296</sup> For more background on "tough on crime", reference Section I.B.4 of this paper, *Black Women's Distrust of the Criminal Legal System*.

<sup>297</sup> See generally Goodmark, *Violence Against Women Act*, *supra* note 16 ("For the first time, the act would pay for alternative justice measures designed to help victims of violence find justice without requiring them to turn to the legal system.").

<sup>298</sup> H.R. 1620, 117th Cong. (2021).

<sup>299</sup> See Justin Worland, *America's Long Overdue Awakening to Systemic Racism*, TIME (Jun. 11, 2020), <https://time.com/5851855/systemic-racism-america/> [<https://perma.cc/285M-X2UK>].

benefit all survivors. The 5% of funding currently granted to the courts can remain intact.

## 2. Funding Changes Proposed for the ICJR and CSSP Programs

ICJR's current \$53,000,000 in funding should be reduced by \$20,000,000, and the remaining \$33,000,000 in ICJR funds should be attributed to CSSP's funding. Additionally, the House-approved 2021 reauthorization of VAWA proposed a \$40,000,000 increase of CSSP.<sup>300</sup> This Note argues that this \$40,000,000 increase plus the remaining \$33,000,000 from ICJR's funding should be added to CSSP funding, bringing CSSP's newly proposed funding to \$80,550,000.<sup>301</sup> This Note also argues that Congress should allocate \$35,000,000 of this funding specifically to victim services centered on Black female survivors. This \$35,000,000 may seem high; however, Black female survivors are widely underserved by VAWA so this figure is necessary to improve this community's outcomes. This proposal may also benefit other survivors and the U.S. economy overall. A former labor secretary under former President Bill Clinton and the former commission of the Financial Crisis Inquiry Commission posited that investing in Black women serves as "catalysts for economic growth and community development . . . and a win for the U.S. economy . . ."<sup>302</sup> By reducing the overall funding of ICJR and shifting it to increase the funding of CSSP, Congress can diminish VAWA's contribution to the negative outcomes of Black female survivors and increase the provision of services, economic stability, and protection of Black women. Although it is not certain that ICJR's current total allocation takes away from CSSP's, it is clear that the amount of people who are served by each program is considerably dissimilar.<sup>303</sup>

## C. Victim-Centered Services that Could Improve the Status of Black Women Subjected to Abuse

Programs and services that directly address the specific needs of Black female IPV survivors must also be implemented under these three programs in order for this proposed legislative change to adequately reduce the unfavorable outcomes of Black women. Studies have found that short-term advocacy services were beneficial to Black women following their exit from domestic violence shelters.<sup>304</sup> Thus, investing in long-term victim-centered services that are tailored to the needs of Black female survivors could prevent IPV and provide access to Black women who have already been subjected to abuse.

<sup>300</sup> H.R. 1620, 117th Cong. (2021).

<sup>301</sup> This figure is reached by taking the sum of \$7,550,000 (CSSP's 2019 enacted appropriations), \$40,000,000, and \$33,000,000.

<sup>302</sup> Alexis Herman & Heather Murren, *Invest In Black Women To Drive The Economy Forward*, FORTUNE (Feb. 3, 2021), <https://fortune.com/2021/02/03/black-women-economy-diversity-equity-inclusion/> [<https://perma.cc/Y8YN-85PX>].

<sup>303</sup> For more background on the difference in populations served, see Section II.B.1 of this paper, *The Disparate Number of Victims Served between ICJR and CSSP*.

<sup>304</sup> Cris M. Sullivan & Maureen H. Rumptz, *Adjustment and Needs of African-American Women Who Utilized a Domestic Violence Shelter*, 9 VIOLENCE AND VICTIMS 275, 275 (1994), <https://vaw.msu.edu/wp-content/uploads/2013/10/African-American-women-needs-after-shelter.pdf> [<https://perma.cc/QK2Q-WA9H>].

### 1. Economic Security Programs to Aid Black Women Subjected to Abuse

Funding economic programs for Black women is pertinent due to the damaging relationship between Black women, poverty, and IPV.<sup>305</sup> As a result, VAWA should fund back-to-school, back-to-work, and other initiatives that directly provide forms of financial security to battered Black women. Currently, many states provide educational grants to adult students who can return to vocational schools or college.<sup>306</sup> These programs, such as New York's College Access Challenge Grant, dedicate grants to low-income adults and displaced workers.<sup>307</sup> The proposed increased funding to culturally specific victim services could create similar programs that will allow battered Black women to return to school to improve their employment prospects.

Relatedly, VAWA's funding should develop back-to-work programs. Such initiatives will create funding for Black female survivors who wish to establish and own small businesses. Black women experience the highest rates of unemployment in the United States.<sup>308</sup> In May 2020, the unemployment rate for Black women reached almost 20%.<sup>309</sup> Back-to-work programs will be valuable as Black women and women of color broadly have already shown to be among the group of fastest-growing female entrepreneurs in 2020 and 2021.<sup>310</sup> Caitlin Mullen argued that this occurs because "need, not opportunity, drives many Black women to become entrepreneurs if they feel they've been underpaid or left behind at conventional institutions."<sup>311</sup> This program would serve as an alternative to the back-to-school program as not all Black women may have the time or resources to participate in formal education.

The final economic security program this Note recommends is a program that directly provides money to Black female survivors. For Black women who cannot return to formal education or create their own business, this program will increase their stability and reduce the likelihood of their victimization. The effects of the 2020 COVID-19 stimulus relief checks illustrate the value of this recommendation. A study found that following the distribution of COVID-19 stimulus relief checks, rates of IPV decreased

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<sup>305</sup> See RICHIE, *supra* note 1, at 29 ("[R]esearch has . . . established a higher incidence rate of intimate partner violence for Black women").

<sup>306</sup> *Grants For Adult Students*, COLLEGE SCHOLARSHIPS, <http://www.collegescholarships.org/grants/adult.htm> [<https://perma.cc/7YY7-N3ZX>] (last visited on Dec. 1, 2021).

<sup>307</sup> *Id.*

<sup>308</sup> See JASMINE TUCKER, IT'S TIME TO PAY BLACK WOMEN WHAT THEY'RE OWED, NATIONAL WOMEN'S LAW CENTER 1 (2020), <https://nwlc.org/wp-content/uploads/2020/07/BWEPD-2021-7.26.21.pdf> [<https://perma.cc/7GYV-5EH5>] ("[T]he unemployment rate for Black women reached 16.6% in May 2020 . . .").

<sup>309</sup> *Id.*

<sup>310</sup> Ruth Umoh, *Black Women Were Among The Fastest-Growing Entrepreneurs—Then Covid Arrived*, FORBES (Oct. 26, 2020), <https://www.forbes.com/sites/ruthumoh/2020/10/26/black-women-were-among-the-fastest-growing-entrepreneurs-then-covid-arrived/?sh=5c2010c36e01> [<https://perma.cc/5SDZ-DNFE>].

<sup>311</sup> Caitlin Mullen, *Women Of Color Drive New Business Growth During Pandemic*, BIZWOMEN (Apr. 14, 2021), <https://www.bizjournals.com/bizwomen/news/latest-news/2021/04/minority-women-drive-business-growth-in-pandemic.html?page=all> [<https://perma.cc/4RMP-C5TY>].

in April 2020 because abused women directly received money.<sup>312</sup> Thus, this proposal may effectively attack institutionalized obstacles that Black women face.

This proposal poses challenges. First, it excludes the participation of non-Black female survivors and non-female survivors who are just as likely to experience IPV or have already experienced IPV. Secondly, it excludes Black women who are above the poverty line. Lastly, it could create disparate results between Black women who are eligible for these three programs. For example, Black women who live in rural or underserved areas may not have access to local schools or customers. Although these challenges are relevant, these programs should still be adopted to address the economic factors that drive IPV against Black women.

## 2. Housing as a Major Provision to Aid Black Female Survivors

Due to Black women's high rates of evictions and homelessness and the relationship between housing and IPV, this Note recommends providing long-term transitional housing to Black female survivors. Currently, VAWA does contain provisions that provide housing support, but they are not sufficient.<sup>313</sup> Thus, this Note argues that there should be increased funding for the creation of housing that is specifically available to Black female survivors who are at risk of victimization due to housing insecurity. The Brooks Short-Term Housing Facility in Washington, D.C. could serve as a model.<sup>314</sup> This funding reconfiguration coupled with culturally specific services ought to be adopted because it more thoroughly protects Black female survivors while also balancing other survivors' interests and society's interest.

## IV. CONCLUSION

The intersection of race and gender discrimination has aggressively motivated the violence Black women have faced in America. Further exposing this community to state-sanctioned criminalization pushes Black women into marginalization and keeps them there. In a country reflecting on its traditions and history, in order to make way for justice, attention must be paid to laws that inadvertently work to impede progress and equity. This two-pronged solution would benefit Black female survivors by reducing the inequitable treatment and violence that they face. In turn, these benefits would reflect a society that works to protect, not discard, all individuals, including women like Tiffany Wright.

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<sup>312</sup> Emily Leslie & Riley Wilson, *Sheltering In Place And Domestic Violence: Evidence From Calls For Service During COVID-19*, 189 J. PUB. ECON. 3 (2020) ("The increase in domestic violence persisted for several weeks before attenuating around the middle of April").

<sup>313</sup> See Goodmark, *Reimagining VAWA*, *supra* note 19, at 93 ("VAWA could supplement existing sources of emergency funding for victims of violence to meet the immediate needs that come with leaving a violent relationship—e.g., deposits for rental housing, money for food or transportation.").

<sup>314</sup> *The Brooks Short-Term Housing Facility*, FRIENDSHIP PLACE, <https://friendshipplace.org/programs-outreach/ward-3-family-housing-facility/> [<https://perma.cc/JF4A-5FZJ>] (last visited Jan. 10, 2022).