

criminal provisions of the violence against women act - who's covered?

John was in a three-year intimate relationship with Sean. Sean strangled John and threatened to kill him when they parted ways. John was afraid and filed for a Protection From Abuse Order in Pennsylvania. After a hearing, the Judge granted John a three year Final Protection From Abuse Order. Sean relocated to New York. John was excited that Sean had left the state and was looking forward to moving on with his life. Sean however, could not let it go and traveled from New York to Pennsylvania with the intent to kill John. John immediately called the police when Sean appeared on his porch screaming that he was going to kill John. The police responded and immediately arrested Sean for a violation of the Final Protection From Abuse Order.

Could Sean also be subjected to federal charges under one of the criminal provisions of the Violence Against Women Act?

The Violence Against Women Act (VAWA) was first passed in 1994 as part of the Violent Crime Control and Law Enforcement Act of 1994.¹ Since the initial passing in 1994, the VAWA of 2000 was signed into law and the VAWA of 2005 was signed into law (referred to as the 2006 Amendments).² Each new version of VAWA resulted in additional protections and programs.³ The criminal provisions of VAWA have been there from the beginning, but have undergone changes with each new set of amendments.⁴

There are three criminal provisions of the VAWA: 18 U.S.C. § 2261 (2006), interstate domestic violence; 18

U.S.C. § 2261A (2006), interstate stalking; 18 U.S.C. § 2262 (2006), interstate violation of a protection order.⁵ The language in the provisions is the most telling as to whether or not the federal criminal provisions would apply to Sean's situation. For example, under § 2261 (a)(1), it is a federal crime to travel interstate "with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner" if, as a result of such travel, he or she "commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner."⁶ Similar language is seen under § 2261 (a)(2) relating to an individual forcing a partner to travel interstate or abroad under fraud, duress, force, coercion in an effort to commit an act of violence against them.⁷ Once again, the terms used to describe the required relationship are spouse, intimate partner, or dating partner.⁸ Under § 2261(A) related to stalking, the required relationship includes spouse, intimate partner, or dating partner.⁹ Under § 2262 related to violation of a protection order, neither spouse or intimate

(continued on page 3)



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vawa & immigration

The YWCA Legal Center works hard to provide outreach to the Latino community as well as the community in general, providing legal representation for custody, divorce, protection from abuse orders, child/spousal support, accompaniments through out the criminal justice system, and assistance with immigration needs. We provide these services to persons who are victims of domestic violence and/or sexual assault and also to undocumented victims of domestic violence and/or sexual assault.

The majority of the victims who are undocumented relocate to the United States seeking a better life for themselves and their family. However, for victims of domestic violence and/or sexual assault once they are here they become victimized by their abuser and because they may not have any family or friends and may not speak English, this makes it so much harder for a victim of domestic violence and/or sexual assault to leave an abusive relationship.

One of the primary reasons that undocumented victims stay in abusive relationships is that they are afraid to leave their abusers. An abuser can manipulate a victim by threatening to have him/her deported. Another common tactic abusers implement is prohibiting the victim from communicating with family members overseas or with anyone who they are close to. The abuser instills fear by threatening to harm the victim and/or their family members. Victims for whom English is a second language are further handicapped in their inability to navigate the process of accessing the services that are available to them, if they are even aware that services exist.

The YWCA Legal Center has an immigration legal advocate who helps undocumented victims attain legal status with the Department of Homeland Security as long as she/he is a victim of domestic violence and/or sexual assault and they meet the specific requirements.

The Violence Against Women Act, known as VAWA, was enacted in 1994. The purpose of VAWA was to protect

(continued on page 4)

violence against women act (continued from page 1)

partner is used, in fact the term employed is more neutral: "another person".¹⁰

While VAWA is in fact titled the Violence Against Women Act, provisions of the Act make it clear that that it applies to both male and female victims.¹¹ The Acting Deputy Attorney General, David J. Barron, addressed the question of whether the criminal provisions of VAWA would apply in a case such as Sean and John in a Memorandum Opinion and the answer was, "yes."¹²

The Deputy Attorney General referenced the gender-neutral language of another person, intimate partner and dating partner as encompassing same-sex intimate relationships and males for purposes of prosecution.¹³ The Deputy Attorney General furthered his conclusion by looking at definitions contained in 18 U.S.C. § 2266, which states that the terms "intimate partner" and "dating partner" in § 2261 refers to a person with a specific relationship with the abuser.¹⁴ The gender of that person is not specified. Moreover, the legislative history, however limited, supports the view that the act was intended to cover same-sex intimate relationships.¹⁵ For example, in relation to the 2006 Amendments, the "health-related costs of intimate partner violence" were discussed and the costs included violence against women perpetrated by their girlfriends.¹⁶



The Deputy Attorney General recognized that the use of the term girlfriend in relation to women when discussing intimate partner violence means that VAWA provision would cover same-sex relationships.¹⁷

The Deputy Attorney General Memorandum Opinion concluded that upon review of all relevant text, case law and legislative history that the three criminal provisions of VAWA apply to same-sex relationships.¹⁸ Therefore, Sean could be charged under VAWA for his conduct against John.

¹ USDOJ: Office on Violence Against Women ,The History of the Violence Against Women Act, <http://www.ovw.usdoj.gov/docs/history-vawa.pdf>.

² Id. and David J. Barron, Memorandum Opinion for the Acting Deputy Attorney General - Whether the Criminal Provisions of the Violence Against Women Act Apply to Otherwise Covered Conduct When the Offender and Victim Are the Same Sex, April 27, 2010.

³ USDOJ: Office on Violence Against Women ,The History of the Violence Against Women Act, <http://www.ovw.usdoj.gov/docs/history-vawa.pdf>.

⁴ David J. Barron, Memorandum Opinion for the Acting Deputy Attorney General - Whether the Criminal Provisions of the Violence Against Women Act Apply to Otherwise Covered Conduct When the Offender and Victim Are the Same Sex, April 27, 2010.

⁵ Id. at 1.

⁶ 18 U.S.C. §2261 (2006) (emphasis added).

⁷ Id.

⁸ Id.

⁹ 18 U.S.C. §2261(A) (2006).

¹⁰ 18 U.S.C. §2262 (2006).

¹¹ David J. Barron, Memorandum Opinion for the Acting Deputy Attorney General - Whether the Criminal Provisions of the Violence Against Women Act Apply to Otherwise Covered Conduct When the Offender and Victim Are the Same Sex, April 27, 2010 , page 3.

¹² David J. Barron, Memorandum Opinion for the Acting Deputy Attorney General - Whether the Criminal Provisions of the Violence Against Women Act Apply to Otherwise Covered Conduct When the Offender and Victim Are the Same Sex, April 27, 2010.

¹³ Id.

¹⁴ Id. at 6.

¹⁵ Id. at 6-7.

¹⁶ Id. at 6 referencing Pub. L. No. 109-162, § 501(1)-(2) (emphasis added).

¹⁷ Id. at 6.

¹⁸ Id. at 7.

vawa & immigration

(continued from page 2)

women or men who are in an abusive relationship. One of the reasons the abused undocumented spouse stays in the relationship is because the abuser threatens to have her/him deported. Other threats may be withdrawing the petition if there is one in process already. In order to apply for status under VAWA, the abused spouse must be married to a United States Citizen or Lawful Permanent Resident. If the victim is not married and the victim and abuser are both undocumented, the abused victim may be able to apply for a U-Visa as long as she/he cooperates with law enforcement.

The immigration legal advocate at the YWCA Legal Center has assisted clients with preparing the necessary forms and ensuring all the requirements are met in order for the victim to be granted legal status

in the United States. The legal advocate helps to translate documents, prepare cover letters, assemble documentation necessary to file for I-360 VAWA petitions and U-Visa petitions. To date, every petition filed by our legal advocate has been approved. Once the deferred action is granted then the legal advocate can file on behalf of the victim for a work permit along with lawful permanent residency. Once the work permit is approved, the victim is able to move on with his/her life and work legally in order to be able to take care of their family. All of these benefits empower the victim to become independent and to live a better life without having to depend on anyone else for help. Once the lawful permanent residency is granted the victims is able to travel back to their country, if needed, to visit their loved ones.

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The YWCA of Greater Harrisburg is a 501(c)3 organization, affiliated with the YWCA of the USA and is a United Way Agency. The YWCA is certified under the Pennsylvania Association of Non-Profit Agencies' Standards of Excellence.

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