There's No Place Like Home:
State Laws that Protect
Housing Rights for Survivors of
Domestic and Sexual Violence

A Report by the
NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY
INTRODUCTION

Domestic and sexual violence are leading causes of homelessness nationally. In some areas of the country 1 in 4 homeless adults reported that domestic violence was a cause of their homelessness, and between 50% and 100% of homeless women have experienced domestic or sexual violence at some point in their lives. Some victims and their families lose their homes when they flee abuse. Other survivors become homeless after being wrongfully or discriminatorily evicted or denied housing as a result of the violence against them. Others lose their jobs because of their abuser's interference with their ability to work. In 2005, in response to Congressional findings that families are discriminated against, denied access to, and evicted from housing because of their status as survivors of domestic violence, Congress reauthorized the Violence Against Women Act (VAWA) and included new housing protections for these survivors. While VAWA provides federal housing protections for survivors of domestic violence, its protections are limited in scope and applicability. For instance, VAWA's housing protections only apply to residents of federal public or assisted housing, which excludes residents in private housing and other federal housing programs. VAWA also does not extend protections to survivors of non-intimate partner sexual assault. Currently, Congress has failed to reauthorize VAWA—a reauthorization that would ensure that more survivors of domestic violence, including battered immigrant survivors and Native American survivors, would have access to the housing protections found within VAWA. Because VAWA is stalled in Congress, these women will not benefit from such protections. To fill the gap in the housing protections available in federal law, many states have enacted legislation that goes beyond the limited protections offered in VAWA. Given the recent vulnerability of VAWA, state action on these issues is more important than ever.

In this 50 state review, we summarize the canon of state laws designed to counteract some of the common housing problems faced by victims of domestic violence. The review, indexed by state and type of provision, includes legislation covering sixteen types of housing protections including: prohibitions against housing discrimination against victims of abuse; provisions allowing a battered tenant to terminate a lease early to flee violence; and provisions that protect the confidentiality of domestic violence victims' housing records; among others. The review also includes a summary of pending legislation proposed during the 2011-2012 legislative session, as well as a summary of relevant unsuccessful proposed state legislation. In addition to examining the laws in each state, the guide highlights particularly noteworthy statutes in each area of concern. This information will be useful for advocates and policymakers as they consider ways to provide greater housing stability for survivors in their states so that they must not choose between safety from violence and a roof over their heads and a home for their children.

The information contained in this review is current as of October 2012.

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SUMMARY OF FINDINGS

While the majority of states have enacted some type of housing protection for survivors of domestic and sexual violence, there are noticeable trends that highlight the most and least prevalent types of housing protections being enacted. For instance, the overwhelming majority of states (80%) have enacted laws that allow courts to exclude the perpetrator of domestic or sexual violence from a shared residence regardless of who is the named party on the lease. Similarly, a large majority (76%) of states have laws that protect the confidentiality of a survivor's housing records, many through the use of a state-wide confidentiality program. Other increasingly common protections include provisions that provide relocation assistance or the right to emergency shelter for survivors of domestic violence (44%), and permit early lease terminations for battered tenants (42%).

Although these developments are encouraging, few states have enacted other similarly critical protections for survivors. Such provisions include the right to take leave from work to seek housing (4%), the creation of a civil remedy against landlords for violating a survivor’s housing rights (8%), and the ability of a battered tenant to bifurcate a lease in order to early-terminate or exclude the perpetrator from the lease (10%). These trends indicate that law and public policy is moving in the direction in favor of greater protections for survivors, but also that large gaps in housing protections remain and must be addressed so that flight from domestic violence no longer results in homelessness for so many women and children.
KEY RECOMMENDATIONS

Our research and analysis of state housing laws has identified some measures that are particularly promising protections for survivors of domestic and sexual violence. We offer the following recommendations to guide advocates in proposing, enacting, and strengthening effective protections for survivors in their states.

- Proscribe specific activities that constitute discrimination against survivors in the housing context such as denying a survivor from renewing their lease, increasing rent, and retaliating against the tenant based on her status as a survivor of domestic violence.

- Prohibit lease agreements from including provisions that allow the tenant to waive her right to call for emergency assistance.

- Provide to tenants various methods of certifying that they are survivors of domestic or sexual violence for purposes of early-lease termination such as through attestation from a third party (e.g., healthcare service provider, domestic violence service provider, clergy member, attorney) who has knowledge of the survivor’s current experience with domestic violence.

- Require landlords the authority, at the request of the survivor, to terminate the lease of the perpetrator of domestic or sexual violence while allowing the survivor (and other non-perpetrator tenants) to remain on the lease.

- Permit a landlord to recover for unpaid rent and other damages against a perpetrator for damages arising out of domestic or sexual violence.

- Create a private cause of action based on the applicable state law against landlords who violates the particular housing protections afforded to survivors of domestic or sexual violence, and permit the survivor to recover damages against the landlord for such violations.

- Grant survivors the authority to install new locks on their residence if the landlord fails to do so within 24 hours after the tenant’s request.

- Create an address confidentiality program where the State Attorney General or other Administrator will provide the survivor with a designated address to protect the privacy of the survivor’s actual address, and provide exemptions from supplying personal identifying information for public records requirements.

- Mandate that public housing authorities compile and report on terminations of domestic or sexual violence survivors.

- Require employers to provide employees with the ability to take leave from work, due to domestic or sexual violence, in order to relocate or improve the security of their residence.

An overview of findings and noteworthy statutes organized by type of housing protection follows.
1. Housing anti-discrimination

Several states (13 or 26%) have enacted housing anti-discrimination statutes. These statutes prohibit landlords from discriminating against survivors of domestic violence, sexual assault or stalking. Often these statutes prohibit specific activities that are considered discriminatory including terminating, failing to renew or refusing to renew residential leases or retaliation against a tenant because of the tenant or applicant's status as a survivor.

Noteworthy statutes

Rhode Island's statute prohibits discrimination by not only a landlord but also a mortgage lender. Additionally, Rhode Island includes in its protected class not only the direct survivor, but also a member of the tenant's household and includes those persons who were threatened with domestic violence. R.I. Gen. Laws §§ 34-7-1-4 (2012).

The District of Columbia has enacted legislation that protects survivors of an "intra-family offense" from housing discrimination. This statute also includes in its prohibited discriminatory activities the restriction of use in facilities and refusal to repair or improve the property. D.C. Code §§ 2-1401.01, 1401.02, 1402.01, 1402.21, 1402.24 (2012).

2. Calling police

Several states (9 or 18%) have enacted statutes that prohibit landlords from restricting or penalizing the exercise of a tenant's right to call law enforcement for emergency assistance. The protections afforded to survivors under these statutes range from prohibiting tenants from waiving their right to request emergency assistance to prohibiting a landlord from terminating or failing to renew a lease or increasing rent because of the tenant's summoning of emergency assistance.

Noteworthy statutes

Oregon's statute not only prohibits a landlord from terminating, failing to renew or enter into a lease agreement because of the tenant's summoning of emergency assistance, but also prohibits the landlord from increasing the tenant's rent on this basis. Further, Oregon provides the greater of two months' rent or twice actual damages to the tenant if the landlord should violate this provision. Or. Rev. Stat. § 90.449 (2012).

Texas has enacted a statute that includes language that makes void any provision in a lease limiting the tenant's right to call police or emergency assistance. The Texas statute also permits the tenant to recover court costs, injunctive relief and attorney's fees, in addition to one month's rent, for landlord's who violate this statute. Tex. Prop. Code Ann. § 92.015 (2012).

3. Early lease termination by battered tenant

A sizable amount of states (21 or 42%) have enacted statutes that permit tenants who are survivors of domestic abuse, sexual assault or stalking to terminate their residential lease. Many of these statutes require the tenant provide written notice of their intent to terminate to the landlord and include evidence of domestic or sexual violence.

Noteworthy statute

Illinois' statute notably permits a tenant to terminate a lease early by providing written notice to the landlord within three days of vacating the residence. Further, the statute provides that the tenant may be released from additional obligations under the lease. 765 Ill. Comp. Stat. 750/15 (2012).

4. Eviction defense- general

Several states (9 or 18%) have enacted statutes that provide survivors of domestic or sexual violence with an affirmative defense to an eviction action initiated by the landlord where the basis of the eviction is an incident(s) of domestic violence. Nearly all of these statutes require the domestic or sexual violence be documented.

Noteworthy statutes

The District of Columbia's statute provides an
absolute defense to an eviction based on an intra-family offense where the tenant has a court-issued, temporary or civil protection order. D.C. Code § 42-3505.01 (2012).

Washington’s statute allows a tenant who has been discriminated against due to the tenant’s status as a survivor of domestic or sexual violence to use the fact of discrimination as an affirmative defense in an unlawful detainer action by the landlord. Wash. Rev. Code Ann. § 59.18.580 (2012).

5. Eviction defense - criminal activity

Several states (7 or 14%) have enacted statutes that provide survivors of domestic or sexual violence with an affirmative defense to an eviction action initiated by the landlord where the basis of the eviction is unlawful criminal behavior directly relating to domestic or sexual violence committed against them.

**Noteworthy statute**

Wisconsin’s statute prohibits a tenant’s status as a survivor of domestic or sexual violence from constituting a direct threat to other tenants or employees. Wis. Stat. Ann. § 106.50(5m)(d) (2012).

6. Civil remedy of tenants for violations

Few states (4 or 8%) have enacted statutes that provide a civil right of action or the ability to recover damages against a landlord for violating the state’s housing protections for survivors of domestic violence or sexual violence. Nearly all of those that do provide recovery for violations of the state’s housing anti-discrimination law or exercise of right to summon emergency assistance.

**Noteworthy statute**

Texas’ statute allows tenants whose right to call for police or emergency assistance was violated to recover one month’s rent, actual damages incurred, court costs, injunctive relief, and reasonable attorney’s fees. Tex. Prop. Code Ann. § 92.015(c) (2012).

7. Lease bifurcation

Few states (5 or 10%) have enacted statutes that permit a landlord to sever tenancy in the case of early-termination by the survivor of domestic violence or exclude the perpetrator from the residence. In many of the statutes providing this protection, a court order is required.

**Noteworthy statute**

Indiana’s statute, in addition to providing for the tenant’s early termination of lease or the perpetrator’s exclusion from the residence under court order, permits the rights and obligations of the other adult tenants to remain unaffected. Additionally, where the perpetrator’s exclusion from the residence is required under court order, the perpetrator remains liable under lease for the rent and cost of damages to the residence as a result of the domestic or sexual violence. Ind. Code Ann. §§ 32-31-9-12, 13, 14 (2012).

8. Liability of perpetrator

Several states (11 or 22%) have enacted statutes that permit a landlord to seek damages against the perpetrator of domestic or sexual violence for any unpaid rent or other expenses arising out of the domestic violence. Several of these statutes mandate broad liability upon the issuance of a court order that include the perpetrator’s payment of the survivor’s moving expenses, mortgage payments, or the payment for the connection of utility services.

**Noteworthy statute**

Arkansas’ statute permits a landlord to seek damages against the perpetrator of violence, and makes the landlord immune from civil liability for in good faith changing the locks of the residence, refusing the perpetrator access to the residence, or terminating the lease of the perpetrator. Ark. Code Ann. § 18-16-112 (2012).

9. Lock changes

A sizable number of states (15 or 30%) have enacted statutes that either require the landlord or permit the survivor of domestic violence to install new locks to the tenant’s residence. The majority of these statutes require the tenant to pay for associated costs and provide the landlord with notice. Generally, upon the request of the tenant, the landlord has between 24-48 hours to comply with the change of locks request.
Noteworthy statutes

California's statute requires the landlord to change locks within 24 hours of receiving a police report and allows the tenant to do so if the landlord has not complied within 24 hours. Cal. Civ. Code § 1941.5 (2012). Arkansas' statute also permits a landlord to seek damages against the perpetrator of violence, and makes the landlord immune from civil liability for in good faith changing the locks of the residence, refusing the perpetrator access to the residence, or terminating the lease of the perpetrator. Ark. Code Ann. § 18-16-112.

Indiana's statute allows the tenant to recover actual expenses from changing the residence's locks if the landlord fails to do so within the time allotted. Ind. Code Ann. §§ 32-31-9-9, 10, 11 (2012).

10. Relocation assistance and Right to emergency shelter

A sizable number of states (22 or 44%) have enacted statutes that provide relocation and other housing assistance to families who are homeless due to domestic violence. The assistance provided to survivors and their children range from eligibility for emergency housing in shelters to the payment of a one-time financial award to a survivor for relocation assistance.

Noteworthy statutes

Florida's statute provides a one-time award in the amount of up to $1500 on a one time claim for relocation assistance for a domestic violence survivor with a lifetime maximum of $3000. Fla. Stat. Ann. § 960.198 (2012).

New Hampshire provides that the state must loan first month's rent and security deposit to a survivor that is residing in a shelter, hotel, motel, home of another, or otherwise without shelter. N.H. Rev. Stat. Ann. § 126-A: 63 (2012).

11. Possession of property and Exclusion of abuser

A large majority of states (40 or 80%) have enacted legislation that allows courts to exclude the perpetrator of domestic or sexual violence from the residence of the survivor regardless of ownership.

In these statutes, the mechanism for exclusion is a court or protection order, consent agreement, temporary restraining order, or temporary injunction. Additionally, where the perpetrator is excluded from entering or visiting the residence, many statutes simultaneously award the survivor temporary use and possession of the property.

Noteworthy statutes

California's statutory provisions allows a court to exclude the perpetrator from the residence in order to protect the survivor of domestic violence regardless of which party is a party to the lease. Cal. Fam. Code § 6321 (2012).

Indiana's code provides for the perpetrator's continued liability under the lease for rent and damages to the residence even when the perpetrator is excluded from the residence by court order. Ind. Code Ann. § 32-31-9-14 (2012).


12. Rights of battered tenants on appeal

In only one state, Pennsylvania, a survivor-tenant’s appeal of the trial court's judgment arising out of a residential lease involving domestic violence will suspend the execution of the judgment. The survivor-tenant must continue to pay cash into an escrow account for any rent that comes due during this time. 68 Pa. Stat. Ann. 250.513(b)(2012).

13. Confidentiality of housing records

A significant majority of states (38 or 76%) have enacted legislation that protects the confidentiality of a survivor of domestic violence. Information protected under these statutes includes the survivor's address, phone number, social security number, and additional identifying information. Many of these statutes make it a crime for landlords to disclose confidential information subject to court order or other law. A handful of states have created address confidentiality programs to facilitate compliance with their confidentiality statutes.