

Fair Housing for Battered Women:

Preventing Homelessness Through Civil Rights Laws

By Emily J. Martin

While some women and families lose their homes when they flee abuse, other domestic violence survivors become homeless because of eviction.

Domestic violence and homelessness are intimately linked. Those women most vulnerable to the loss of housing and least likely to afford replacement housing are at the greatest risk of domestic violence.¹ Cities across the country report violence in the home as a primary cause of homelessness. Between 22 and 57 percent of homeless women identify domestic violence as the immediate cause of their homelessness. Many other women remain trapped in violent relationships by the threat of homelessness; they know attempts to stop the violence might leave them and their children on the streets.²

While some women and families lose their homes when they flee abuse, other domestic violence survivors become homeless because of eviction. Many landlords react to criminal activity in a unit by evicting the tenant, regardless of whether she is perpetrator or victim. This is not only unjust, but also sends the pernicious message that battered women must keep abuse secret or risk homelessness. Legal tools are available, however, to fight housing discrimination against victims of violence.

The Violence Against Women Act of 2005. Public housing authorities (PHAs) and Section 8 housing providers must use leases stating that criminal activity is grounds for eviction; this proviso has been interpreted to permit eviction without regard to the tenant's responsibility for the activity.³ In the past, some housing providers have relied on this "one-strike" rule to evict victims of domestic violence. But on January 5, 2006, with the signing of the Violence Against Women Act of 2005 (VAWA), survivors of domestic violence in public and subsidized housing gained important new protection from such discrimination:⁴

- VAWA prohibits PHAs from denying public housing or Section 8 voucher assistance because an applicant is or has been a victim of domestic violence or stalking.

- It makes clear domestic violence or stalking is not good cause for terminating the tenancy or Section 8 voucher of a victim.
- It explicitly states that the one-strike rule does not permit eviction of an individual because she or someone in her family is a victim of domestic violence or stalking. (In a narrow, but potentially troubling exception, the one-strike rule still applies if there is proof of an "actual and imminent threat" to other tenants' or employees' safety if the tenancy or voucher is not terminated.)
- PHAs and Section 8 landlords may terminate an abuser's tenancy, bifurcating a lease if necessary to allow the rest of the household to remain.
- When a family holding a Section 8 voucher moves out of a unit early to protect the safety of a victim, the family may retain the voucher.

The Fair Housing Act. VAWA 2005 does not apply to women in private housing. In many instances, however, the federal Fair Housing Act's (FHA's) prohibition of sex discrimination protects these women.⁵ While relatively novel, the claim that discrimination against a victim of domestic violence is sex discrimination has had success. Most recently, in 2005, a federal district court issued the first published decision holding that discrimination against a victim of domestic violence can violate the FHA.⁶ Fair housing arguments can be made either as a defense to an eviction or through affirmative cases filed in state or federal court.

The FHA prohibits both intentional sex discrimination and policies and practices that have a discriminatory effect on women. Both kinds of discrimination may be at work when a victim is threatened with eviction or denied housing.

First, a landlord may evict a victim of domestic violence (or refuse to rent to her) based on gender stereotypes about battered women. Adverse actions based on gender stereotypes are a form of intentional discrimination. Common stereotypes are that battered women provoke the abuse and so are to blame for

their abusers' actions, or they can end the violence if they only decide to do so. In other contexts, courts have recognized these stereotypes discriminate on the basis of sex.⁷

Second, if the landlord has a policy or practice of denying housing to victims or evicting individuals who experience violence in the home, this policy will fall more heavily on women than on men, because women are the great majority of domestic violence victims. A policy or practice with such a disparate impact will violate the FHA unless a landlord can demonstrate a business necessity for it. Even if the landlord can show business necessity, the policy or practice will violate the FHA if a less discriminatory alternative would be equally effective.⁸ Given the attenuated connection between punishing victims of domestic violence and (for example) preventing crime in a property, a landlord would presumably have difficulty in showing business necessity and defending against arguments that less discriminatory alternatives were available.

State laws. Multiple states have adopted laws specifically protecting the housing rights of domestic violence survivors. Washington, Rhode Island and North Carolina broadly prohibit housing discrimination on the basis of one's status as a victim of domestic violence. Other states have adopted narrower protections. Oregon, for example, allows a victim of domestic violence to terminate a lease early without penalty.⁹

These laws are valuable tools to protect battered women's housing rights and prevent battered women's homelessness. For more information about these strategies, please contact the American Civil Liberties Union Women's Rights Project at (212) 549-2615.

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¹ E.g. Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Justice, NCJ 181867, *Extent, Nature*

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Making a Difference: California Western's Unique Bail Project

By Felicia Huberman

In a joint venture with the Public Defender of San Diego County, students at California Western School of Law (CWSL) are helping provide immediate access to legal services for the indigent accused in San Diego. CWSL's award winning Bail Project is unique in that law students, stationed at the jail in shifts, are able to contact and interview potential clients almost immediately after they are booked.

NLADA guidelines and other national standards provide that defense services should be available to an indigent accused as soon as a person is arrested. Prior to the Bail Project, however, an indigent accused in San Diego normally had no access to legal assistance or even advice about basic rights for several days following their arrest. If arrested just before a holiday, they could remain in jail without access to counsel for up to five days. This was because the public defender had no access to potential clients or even official standing to represent them until formal appointment at arraignment.

To help alleviate this problem, Professor Laurence A. Benner, a past director of NLADA's Defender Division and co-founder of the Institute for Criminal Defense Advocacy at CWSL, worked together with San Diego Chief Public Defender Steven Carroll and CWSL alumnus Gary Gibson to develop a program that would bring law students into the jail. Under this program, second- and third-year law students are given specialized training in client interviewing, ethics and bail representation. After obtaining security clearances and certification from the State Bar, the students then act as pre-arraignment representatives of the public defender's office. Going into the jail in three-hour shifts, the students interview recent arrestees who have not made bail, provide advice as to their rights, obtain information for bail representation and deal with concerns arising from their incarceration. In appropriate cases, the students then argue on the client's behalf for bail reduction or own recognizance release at the client's arraignment. The student has the option to follow any client's case thru the system to disposition.

Honored with the "Program of the Year" award by the California Public Defenders' Association, the Bail Project provides advantages to both clients and the legal system. Due to the high volume of cases, the deputy defender handling felony arraignments formerly had no opportunity to verify factual information important to the judge's bail determination. Now students are able to verify such information, including the defendant's length of residence, ties to the local community and current employment. Not only does the client benefit from the law student's advocacy in their behalf, the judicial system also benefits in being able to make bail decisions on the basis of reliable information. There are also cost savings to the county. Clients who would otherwise have remained in jail do not have to be housed at state expense; do not lose their jobs and do not see their families go on welfare.

While the Bail Project is making a difference in accused person's lives, students are learning from the inside out how the criminal justice system operates. Until I participated in the Bail Project, law school had been primarily about opening books, listening to lectures and learning what the law is about through hypothetical fact patterns. The Bail Project deals with real life issues. Learning to actively listen to people that have major life decisions and helping them to make those decisions is what lawyering is really about. Seeing so many different kinds of people and the wide variety of circumstances that

have led them there in front of you with a county jail outfit on has opened my eyes to a reality that is different from the ordinary law school experience. When the initial interview comes to an end and the inmate — about to be whisked by the deputy back to their cell — touches the separating glass and says "thank you" with a smile, you realize that they are real flesh and blood human beings and not just hypothetical cases.

Even if you don't get the client released on their own recognizance or get bail reduced, you know that the time you spent with them has not been in vain. They have helped to show you reality and in return you have shown them that there is still compassion and human caring in the "system." The Bail Project is the "real world" that is not available in the classroom and that is why I believe every law student, regardless of what kind of law one may wish to practice, should become involved and share in that experience.

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and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Study 4 (2000) (low-income women at greater risk of violence); Callie Marie Rennison & Sarah Welchans, U.S. Dep't of Justice, NCJ 178247, *Intimate Partner Violence 1* (2000) (women in rental housing more likely to experience violence than homeowners).

² See generally ACLU Women's Rights Project, "Domestic Violence and Homelessness" (2004) (collecting studies), at

<http://www.aclu.org/womensrights/violence/13276res20041026.html>.

³ 42 U.S.C. §§ 1437d(l); 1437f(d); 1437f(o)(7) (2005); see *Dep't of Housing & Urban Dev. v. Rucker*, 535 U.S. 125 (2002).

⁴ *Violence Against Women Act and Department of Justice Reauthorization Act of 2005*, Pub. L. No. 109-162, §§ 606, 607 (2006).

⁵ 42 U.S.C.A. § 3604 (2006).

⁶ *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005) (plaintiff made out a prima facie case of sex discrimination under the Fair Housing Act when she showed that less than 72 hours after her husband assaulted her, her landlord issued a notice to quit); see also *Winsor v. Regency Property Mgmt.*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995) (finding discrimination against domestic violence victims had a discriminatory effect on women in violation of state fair housing law) (copy on file with author); 1985 Op. N.Y. Att'y Gen. 45 (1985) (same); *HUD v. CBM Group, Inc., et al.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001) (HUD charge that policy requiring eviction of domestic violence victim had discriminatory effect on women in violation of Fair Housing Act).

⁷ E.g., *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 701 (9th Cir. 1990); *Smith v. Elyria*, 857 F. Supp. 1203, 1212 (N.D. Ohio 1994).

⁸ See generally Robert G. Schwemm, *Housing Discrimination: Law and Litigation* § 10.6 (2005).

⁹ See Legal Momentum, "State Law Guide: Housing Laws Protecting Victims of Domestic and Sexual Violence" (2005) (collecting statutes), at <http://www.legalmomentum.org/issues/vio/housing.pdf>.