

 <p>LEGAL momentum Advancing Women's Rights</p>	<p><i>State Law Guide</i></p> <h2>HOUSING LAWS PROTECTING VICTIMS OF DOMESTIC AND SEXUAL VIOLENCE</h2>
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Many domestic violence victims have reported losing their housing due, at least in part, to the violence in their lives. Three states, North Carolina, Rhode Island and Washington, have enacted laws specifically indicating that domestic violence victims are protected from housing discrimination. An increasing number of other states have passed laws that prohibit housing discrimination against, or provide some protections for, domestic violence victims in certain circumstances; that permit victims to terminate leases; or that permit victims to have their locks changed.

STATE LAWS

ARIZONA: Ariz. Rev. Stat. Ann. § 33-1315.

This law states that a rental lease may not provide that a tenant agrees to waive or limit her right to summon a peace officer or other emergency assistance in response domestic violence or that a tenant agrees to make a payment of monetary or other penalties in connection with doing so. **Approved by the governor on May 11, 2004.**

CALIFORNIA: Cal. Health and Safety Code § 34328.1.

This law requires public housing agencies to submit a report each year on the first of October that includes data on termination of tenancies of victims of domestic violence in housing authority units and termination of section 8 vouchers of domestic violence victims. Terminations must be included regardless of whether the termination was based in whole or in part of activity related to the domestic violence. The report must also state what steps, if any, were taken by the housing authority prior to the termination to assist the victim.

COLORADO: Col. Rev. Stat. Ann. § 13-40-104(4) and § 13-40-107.5(5).

This law, as amended in April 2005, prohibits a landlord from evicting a tenant for a "substantial violation" and provides that a tenant shall not be guilty of an unlawful detention of real property if the tenant is a victim of domestic violence and if the domestic violence was the cause of or resulted in the alleged substantial violation or unlawful detention. The domestic violence must have been documented by a police report or a valid civil or emergency protection order. These protections may not be waived by the tenant in a rental, lease, or other such agreement. They explicitly do not prevent the landlord from taking actions against a tenant or lessee that perpetuated the violence or abuse. **These provisions passed on April 27, 2005 and took effect July 1, 2005.**

COLORADO: Col. Rev. Stat. Ann. § 38-12-401 and § 38-12-402.

This law, passed in 2004, provides that landlords may not include in rental agreements "a provision authorizing the landlord to terminate the agreement or to impose a penalty on a residential tenant for calls made by the residential tenant for peace officer assistance or other emergency assistance in response to" domestic violence. The right to call for police or emergency assistance is non-waivable. A 2005 amendment allows a victim of domestic violence to terminate a residential rental or lease agreement and to vacate the premises without further obligation due to fear of imminent danger to the victim's self or to the victim's children because of the domestic violence. The tenant must notify the landlord in writing that he or she is a victim of domestic violence and provide the landlord with a police report written within the prior sixty days or a valid protection order. A vacating tenant will be responsible for one month's rent if the landlord

experiences and documents damages equal to at least one month's rent as a result of the tenant's early termination of the agreement. **The amendment passed on April 27, 2005 and took effect July 1, 2005.**

IOWA: Iowa Code §§ 562A.27A & 562B.25A(3).

This law creates an exemption from the statutory provision permitting landlords to terminate the tenancy of tenants who create a "clear and present danger" to others for any tenant who provides written proof that the activities creating the danger were conducted by a person other than the tenant, and the tenant (a) sought a protective order or similar order against the person creating the danger, (b) reported the person creating the danger to a law enforcement agency in an effort to initiate criminal action, or (c) wrote a letter to the person creating the danger telling the person not to return to the premises and warning the person that return to the premises may result in a trespass or other action. If the tenant wrote a letter to the person creating the danger and that person nonetheless returned to the premises, the tenant must undertake (a) or (b) to be covered by this exemption. An amendment, signed on March 29, 2004, 2004 Iowa Acts 1016 (S.F. 2199), provides that a landlord seeking to terminate a tenancy on grounds of "clear and present danger" must notify the tenant in writing as to "the specific activity causing the clear and present danger" and inform the tenant in writing of the specific protections described above.

LOUISIANA: La. Rev. Stat. Ann. §46:2136(A)(2).

This law permits judges who issue protective orders to grant possession of residential housing to petitioning victims of abuse "to the exclusion of" the abuser where "the residence is solely owned by the defendant and the petitioner has been awarded temporary custody of the minor children born of both parties." It also extends the law to cover victims of dating violence.

LOUISIANA: La. Rev. Stat. Ann. § 40:506(D).

This law provides that local public housing authorities may not terminate the tenancy of a resident based on "domestic abuse, dating violence or family violence" committed against the head of a household, member of household, or a resident. Local public housing authorities may terminate the tenancy of the perpetrator of such violence. **This law was signed by the governor on June 24, 2004 and took effect immediately.**

MINNESOTA: Minn. Stat. § 504B.205.

This law prohibits a landlord from limiting a tenant's "right to call for police or emergency assistance in response to domestic abuse" or from imposing a penalty on the tenant for exercising that right. The law may be enforced by a tenant in a civil action against a landlord for the greater of actual damages or \$250, or by the attorney general. A tenant may also raise her or his statutory right to request police or emergency assistance as a defense to an eviction, pursuant to MINN. STAT. § 504B.285, provided that the tenant can show by a "fair preponderance of the evidence" that the eviction was in whole or in part "a penalty for the defendant's good faith attempt to secure or enforce" that right.

NEW MEXICO: N.M. Stat. Ann. § 47-8-33(J).

This law provides a defense against eviction for a victim of domestic violence if the landlord tries to evict the tenant because the tenant committed or allowed another person to commit a substantial violation of the lease. The law provides that a tenant will not be evicted if she filed for or received a restraining order before or as a result of the incident leading to the eviction notice. It also grants the court discretion in other cases to evict the resident accused of violating the lease while allowing the other tenants to remain.

NORTH CAROLINA: S.B. 1029, Gen. Ass. Sess. 2005 (N.C. 2005), to be codified at N.C. Gen. Stat. §§42-40, 42-42.1, , 42-42.2, and 42-45.1.

This law prohibits discrimination against tenants based on the tenant's (or a household of the tenant's) status as a victim of domestic violence, sexual assault, or stalking, provided that the domestic or sexual violence has been documented by law enforcement, a court, a federal agency, a domestic violence or sexual assault program, or a religious, medical, or other professional. This law also entitles a tenant who is, or who has a household member who is, a victim of domestic violence, sexual assault, or stalking to terminate a rental

agreement upon 30 days written notice to the landlord. The tenant must provide with the notice a safety plan from a domestic violence or sexual assault agency that recommends relocation and a copy of a valid permanent protection order, a criminal order restraining a person from contact with a tenant, or an address confidentiality program card. Upon termination, the tenant is liable for rent due prorated to the effective date of the termination. The law also entitles tenants who are victims of domestic violence, sexual assault, or stalking to request that the locks to their dwelling units be changed at the tenant's expense; there are documentation requirements that apply only if the perpetrator of the violence is a tenant in the same dwelling unit. **This law took effect October 1, 2005.**

OREGON: Ore. Rev. Stat. §§ 90.453, 90.459.

This law requires a landlord to release a tenant from a rental agreement if the tenant gives the landlord at least 14 days written notice and provides verification that the tenant has been the victim of domestic violence, sexual assault, or stalking within 90 days preceding the date of the notice. The law also requires that a landlord promptly change locks on a tenant's unit if the tenant provides verification that the tenant has been the victim of domestic violence, sexual assault, or stalking. The law exempts the landlord from liability to a perpetrator of violence whom the landlord excludes from the rental unit in response to a court order of protection.

RHODE ISLAND: R.I. GEN. LAWS §§ 34-37-1, -2, -2.4, -3, -4.

This law declares that is illegal, and against public policy, for landlords or mortgage lenders to terminate a lease or otherwise discriminate against a tenant or tenant applicant because that tenant or tenant applicant, or a member of her or his household, "is or has been, or is threatened with being, the victim of domestic abuse" or "has obtained, or sought, or is seeking" a restraining order. The law allows a landlord to evict any household member who is committing domestic abuse.

TEXAS: Tex. Prop. Code Ann. § 92.015.

This law prohibits landlords from (1) interfering with tenants' rights to summon police or other emergency assistance in response to domestic violence, and (2) imposing "monetary or other penalties" on tenants who "summon[] police or emergency assistance." In addition to other remedies provided by law, this law allows a tenant to recover from or against a landlord who violates this law a civil penalty equal to one month's rent, actual damages suffered by the tenant as a result of the landlord's violation of this section, injunctive relief, and reasonable attorney's fees incurred by the tenant in seeking enforcement of this section.

TEXAS: S.B. 1186/H.B. 211, 79th Leg. (Tex. 2005), to be codified at Tex Prop. Code § 92.016.

This grants a victim of domestic violence the right to terminate a lease before the end of the lease term and avoid liability for future rent or other sums due under the lease if the victim obtains and provides the landlord with a temporary or permanent protective orders. A person other than the victim could still be liable for rent. The law also provides explicitly that neither landlord nor tenant can waive this right. It also provides that a tenant will be released from all delinquent rent if the lease does not include language specifically setting forth these rights. **This law was signed by the governor on June 17, 2005 and takes effect January 1, 2006.**

UTAH: Utah Code Ann. § 57-22-5.1.

This law provides that victims of domestic violence, stalking, sexual offenses, dating violence, and burglary who live in residential rental units have a right to have their locks changed at their own expense if they provide their landlord with a protective order or police report. The law includes provisions relating to landlord's responsibilities to provide perpetrators of such violence with access to the property. **This law was enacted on March 16, 2005.**

VIRGINIA: Va. Code Ann. § 55-225.5 & § 55-248.18:1.

This law provides that a tenant who has obtained a judicial order granting the tenant possession of the premises to the exclusion of one or more co-tenants has a right to have their landlord change their locks or install other security devices or to do so themselves; if the landlord does so, the tenant must compensate the

landlord for his or her actual expenses. This law was approved by the Governor on March 26, 2005 and took effect July 1, 2005.

WASHINGTON: Wash. Rev. Code Ann. § 59.18.570, 575, 580, 585.

Under this law, “[i]f a tenant notifies the landlord in writing that he or she or a household member is a victim of domestic violence, sexual assault, or stalking,” and either (1) has a valid order of protection or (2) has reported the incident to a law enforcement officer, court employee, clergy member, attorney, social worker, mental health professional, licensed counselor, or advocate at an agency that assists victims of domestic violence, sexual assault, or stalking,” then the tenant “may terminate the rental agreement and quit the premises without further obligation under the rental agreement,” provided that the tenant requests to terminate the rental agreement within ninety days of the act giving rise to the protective order or the report. In addition, a “landlord may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant’s or applicant’s or a household member’s status as a victim of domestic violence, sexual assault or stalking, or based on the tenant or applicant having terminated a rental agreement under . . . this act.” This law also requires landlords to comply with a tenant’s request to change the locks at the tenant’s expense if the tenant has a court order excluding another tenant from the premises. This law was signed by the Governor on March 15, 2004 and took effect immediately.

WASHINGTON: Wash. Rev. Code Ann. § 59.18.352.

This law allows a tenant to terminate a rental agreement without further obligation if the tenant notifies the landlord that the tenant or a co-tenant was threatened by another tenant with a deadly weapon, the threatening tenant was arrested, and the landlord failed to file an unlawful detainer action against the threatening tenant within seven days of receiving notice of the arrest.

WASHINGTON: Wash. Rev. Code Ann. § 59.18.130(8)(b)(ii).

This section of the law, which prohibits all tenants from engaging in activities “imminently hazardous” to the safety of others that entail physical assaults or use of a deadly weapon and that result in arrest, states: “Nothing in this subsection (8) shall authorize the termination of tenancy and eviction of the victim of a physical assault or the victim of the use or threatened use of a firearm or other deadly weapon.”

WISCONSIN: Wis. Stat. Ann. § 106.50(5m)(d).

This law provides that “[n]o claim that an individual’s tenancy would constitute a direct threat to the safety of other persons or would result in substantial damage to property may be based on the fact that a tenant has or may be the victim of domestic abuse.”

RECENT LEGISLATIVE PROPOSALS ADDRESSING HOUSING RIGHTS OF DOMESTIC AND SEXUAL VIOLENCE VICTIMS

The following legislation has been introduced in the current or prior legislative sessions regarding housing discrimination against, or other protections for, victims of domestic violence. The contents of the bills vary and the status of a particular bill may change very quickly. For more information about each bill, you may contact Legal Momentum or the legislative information service at your state legislature, or consult your legislature’s web page.

ARIZONA: H.B. 2124, 47th Leg., 2d Sess. (Ariz. 2006).

This bill, would expand exhibiting protections (described above) prohibit landlords from waiving or limiting the tenant’s right to summon a peace officer or emergency assistance in response to domestic violence to protect other persons summoning assistance. It would also prohibit the landlord from penalizing a tenant (monetarily or otherwise) for summoning a peace officer or emergency assistance in response to domestic violence.

ARIZONA: H.B. 2317, 46th Leg., 2d Sess. (Ariz. 200).

H.B. 2317, as originally introduced in 2004, would have permitted a victim of domestic violence to terminate her lease on fourteen days' notice after providing the landlord (a) a copy of an order of protection obtained against another tenant or occupant of the rental unit, (b) written proof of the conviction of another tenant or occupant of the unit for domestic abuse, or (c) a copy of a police report regarding an incident of domestic violence by another tenant or occupant of the unit. **An amended version of H.B. 2317, addressing solely limitations in lease terms, passed and was approved in May 2004; a summary of the law is included above.**

FLORIDA: H.B. 1517, 107th Reg. Sess. (Fla. 2005).

This bill would allow a victim of domestic violence, defined as an adult (or the parent or guardian of a minor) who has been granted a permanent injunction against domestic violence, to elect to terminate a rental agreement and vacate the dwelling. The victim must give the landlord written notice of the intent to terminate the lease and a copy of the permanent injunction no later than 15 days after the injunction is entered. The victim must also report the incident of violence and comply with prosecution including testifying.

HAWAII: H.B. 2021, 22nd Leg. (Haw. 2004).

This proposed law would amend Hawaii's fair housing law to prohibit discrimination against victims of domestic violence (as well as discrimination based on source of income) in any real estate transaction. (Previously introduced bills in Hawaii include S.B. 2464 & H.B. 2121, 21st Leg. (Haw. 2002).)

ILLINOIS: H.B. 4715, 94th Gen. Ass. (Ill. 2006).

This proposed law, the "Safe Homes Act," would prohibit a landlord from terminating a tenancy, failing to renew a tenancy, refusing to enter into a rental agreement, or otherwise penalizing a tenant based on the tenant's status as a victim of domestic violence, sexual assault, or stalking or having previously terminated a lease because of domestic or sexual violence. The act would permit a victim to terminate a lease early, upon 30 days written notice to the landlord and evidence (such as a statement from the victim, professional who has assisted the victim, or police, court, or medical records) of the violence. The act would also require landlords to change the locks of an apartment at a victim's request. No documentation would be required to initiate a lock change if the perpetrator is not a leaseholder. If the perpetrator is a leaseholder, the landlord would be able to require a copy of a relevant court order.

INDIANA: S.B. 254, 114th Gen. Ass., 2d Sess. (Ind. 2006).

This bill would prohibit a landlord from terminating a lease, refusing to enter a lease, or retaliating against a tenant because the tenant is a victim or alleged victim of domestic or family violence, sexual violence, or stalking. A victim would have a right to have the locks changed at tenant's cost within 48 hours of notifying the landlord (and upon receipt of a court order if the perpetrator is also a leaseholder). A tenant who is a protected individual can also request early termination of a lease, upon providing the landlord 30 days notice and (1) a copy of an order of protection, (2) a criminal order that restrains a person from contact with the protected individual, (3) an address confidentiality program card, or (4) a copy of a safety plan that recommends relocation of the individual.

IOWA: S.F. 208/H.F. 361/H.F. 444/H.F. 554, 81st Gen. Ass. (Iowa 2005)

These proposed bills would prohibit a landlord from retaliating against a tenant of a dwelling unit or a mobile home space by terminating a rental agreement, raising rent, or decreasing services after a tenant has received police or emergency assistance in response to a domestic violence situation.

KANSAS: H.B. 2864, 80th Leg. (Kan. 2004).

This bill would exempt domestic violence victims from a provision of Kansas landlord-tenant law prohibiting a tenant from terminating a lease because of a condition caused by the tenant or a person or animal on the premises with the tenant's consent. It would also allow a tenant who is a victim of domestic violence to terminate a month-to-month tenancy "upon written notice to the landlord." The bill defines "victim of

domestic violence” as any person “who can prove the existence of domestic violence” by providing (1) a court order, (2) a police record, (3) documentation that the abuser has been convicted under relevant statutes, (4) medical documentation of the abuse, (5) a statement by a counselor, social worker, health care provider, clergy member, shelter worker, legal advocate, domestic violence or sexual assault advocate, or any other professional, or (6) a sworn statement from the person attesting to the abuse.

MASSACHUSETTS: S.B. 793, H.B. 3163 184th Gen. Ct. (Mass. 2005).

This bill would amend existing housing discrimination laws to prohibit discrimination against victims of domestic violence, rape, sexual assault, and stalking. It would also create a defense to eviction if a landlord attempts to evict a tenant because the tenant was a victim of one of those crimes. In addition, “[i]f a tenant notifies the landlord in writing that he or she is a victim” of one of those crimes, and either (1) has a valid order of protection, (2) has notified a law enforcement officer, or (3) has consulted with any of a variety of service providers, then “the tenant may terminate the rental agreement and quit the premises without further obligation.” Tenant screeners may not provide landlords with information about prospective tenants’ status as victims of the above crimes; they may be subject to civil liability if they do so. A similar bill was introduced as S.B. 707 in 2003.

MICHIGAN: S.B. 808, 93d Legis., 1st Leg. Sess. (Mich. 2005).

This bill would permit a tenant who is a victim of domestic assault while that person is a tenant to terminate a lease effective upon submittal of written notice of termination and written evidence that the tenant is a victim of domestic assault.

NEW HAMPSHIRE: H.B. 1565, 159th Sess. Gen. Ct. (NH 2006).

This bill would create a defense to eviction if a tenant has filed for or obtained a restraining order as a result of the incident that is the basis for termination. The tenant also has a defense if the tenant has a restraining order and the incident leading to the eviction was a violation of that restraining order. The bill would explicitly provide courts discretion to evict the tenant accused of the violation.

NEW YORK CITY: Intro 305 of 2004 (New York City Council 2004).

This proposed local law would prohibit housing discrimination against victims of domestic violence, sex offenses or stalking. Such discrimination includes taking adverse actions against an individual “based solely upon the actions of a person who has perpetrated acts or threats of violence against the individual.” It would also require that landlords permit victims of domestic violence, sex offenses or stalking to terminate a lease early. A similar bill was previously introduced as Intro 107 in 2002. An amended version of Intro 107 that did not include the housing provisions was enacted in Dec. 2003.

NEW YORK STATE: S.B. 4112 & A.B. 6282, 228th Ann. Leg. Sess. (N.Y. 2005).

These bills would prohibit housing discrimination against victims of domestic violence and stalking, “as documented by the filing of a police report, the issuance of an order of protection,” or “verification of consultation with” a police officer, health care provider, court employee, clergy member, attorney, social worker, rape crisis counselor, or domestic violence advocate. The law would also prohibit any person or entity from obtaining or providing information relating to the status of a person as a victim of domestic violence or stalking. Similar bills were previously introduced as S.B. 4812 and A.B. 8135 in 2003.

OREGON: H.B. 3290, 72nd Leg. Ass. (Ore. 2003).

This proposed law would amend Oregon’s fair housing laws to prohibit any discrimination against “victims of domestic violence, sexual assault or stalking” in rentals, sales, leases, or other real estate-related transactions.

UTAH: H.B. 194, 56th Leg. (Utah 2005).

This bill would enact the “Fair Housing for Domestic Violence Victims and Landlord Protection Act.” The bill would allow a tenant who is a domestic violence victim and who provides documentation of the violence to require the owner to exclude the perpetrator of the violence from the victim’s unit (if the perpetrator is not

a renter). If the perpetrator has been a renter but ends his or her tenancy or is evicted, it would allow a victim to require an owner to exclude the perpetrator from common areas of the property. It would also allow a victim to void the rental agreement upon 14 days written notice and documentation of the violence. Acceptable forms of documentation for domestic violence include a protective order or a copy of a police report regarding an act of domestic violence. The act would explicitly authorize landlords to evict perpetrators of domestic violence.

WASHINGTON: S.B. 5553, 58th Leg. (Wash. 2003).

This proposed bill provides that a landlord or neighbor, with supporting evidence, may request a court to authorize immediate eviction of a tenant if the tenant has committed acts of domestic violence (or committed other specified crimes). If "the cotenant is a victim of domestic violence that is the basis for the proceeding," the cotenant shall not be removed or evicted.

WASHINGTON: H.B. 2144, 58th Leg. (Wash. 2003).

This proposed law would prohibit a tenant from engaging in "any act of domestic violence . . . against another tenant of the same rental dwelling unit that results in an arrest" but "does not authorize the termination of tenancy and eviction of the victim of an act of domestic violence." A landlord "may not be held liable in any cause of action" for bringing an unlawful detainer action against a tenant who has committed an act of domestic violence.

This guide, with links to cited laws and bills, is available on the Legal Momentum web site, at <http://www.legalmomentum.org/issues/vio/FactsheetPage.shtml>.

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