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## Domestic Violence and Eviction: Housing Protections for Survivors, and What We Can Learn from Eviction Diversion Programs

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**DOMESTIC VIOLENCE AND EVICTION:  
HOUSING PROTECTIONS FOR SURVIVORS, AND  
WHAT WE CAN LEARN FROM  
EVICTION DIVERSION PROGRAMS**

*Ryan Schaitkin*\*

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## INTRODUCTION

There has been a growing eviction crisis in the United States over the past two decades.<sup>1</sup> The Eviction Lab at Princeton University found that between 2000 and 2016, landlords filed for eviction against 9% of all renters in the United States, with an average 3.6 million eviction cases filed annually.<sup>2</sup> Housing courts entered judgments against 1.5 million renters annually, or about 4% of all renters.<sup>3</sup> These numbers may not fully represent the actual number of tenants forced to relocate. The Brookings Institute, for example, reports that some tenants are more likely to vacate their dwellings before any formal eviction because they expect the court will rule in the landlord's favor.<sup>4</sup>

The eviction crisis impacts survivors of domestic violence<sup>5</sup> in particular because of the ways in which nuisance ordinances,<sup>6</sup> one-strike eviction policies,<sup>7</sup> and the covenant of quiet enjoyment implied in landlord-tenant agreements are enforced against people experiencing domestic violence.<sup>8</sup> Nuisance ordinances often penalize conduct based on the frequency or amount of police responses to a certain property — the more tenants contact

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1. See ASHLEY GROMIS, PRINCETON UNIV., EVICTION LAB, EVICTION: INTERSECTION OF POVERTY, INEQUALITY, AND HOUSING 5 (2019).

2. *Id.*

3. *Id.*

4. See CARL ROMER ET AL., BROOKINGS INST., THE COMING EVICTION CRISIS WILL HIT BLACK COMMUNITIES THE HARDEST (2021).

5. This Note uses 'survivors of domestic violence' to refer to tenants who are experiencing, or previously experienced, an abusive domestic relationship.

6. See SCOUT KATOVICH, N.Y. C.L. UNION, MORE THAN A NUISANCE: THE OUTSIZED CONSEQUENCES OF NEW YORK'S NUISANCE ORDINANCES 6 (2018).

7. See 42 U.S.C. § 1437d(l)(6) (2013) (giving the Housing Secretary the authority to establish one-strike eviction policies in public leasing); Dep't Hous. & Urb. Dev. v. Rucker, 535 U.S. 125, 136 (2002) (holding that §1437d(l)(6) not only authorizes but "requires" lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity"); see also Kathryn V. Ramsey, *One-Strike 2.0: How Local Governments Are Distorting a Flawed Federal Eviction Law*, 65 UCLA L. REV. 1146, 1159–62 (2018) (discussing the use of crime free lease addendums and one-strike policies in private housing leases); ELGIN, ILL., MUN. CODE § 6.37.100(F) (2017) (the Crime Free Lease Addendum provides an example of a common municipal one-strike policy, subjecting tenants to one-strike eviction without providing exception for domestic violence).

8. See JOSEPH WILLIAM SINGER ET AL., PROPERTY LAW: RULES, POLICIES, AND PRACTICES 887 (8th ed. 2022) ("One important term implied in every landlord-tenant relationship by common law or statute is the covenant of quiet enjoyment by which the landlord impliedly promises not to disturb the tenant's quiet enjoyment of the property."); 52A C.J.S. Landlord & Tenant § 771 ("[A] breach of the covenant of quiet enjoyment occurs when the landlord substantially interferes with the tenant's beneficial use or enjoyment of the premises," which can include landlord acts or omissions).

police, the more likely the residence is to be characterized as a nuisance.<sup>9</sup> Once a municipality labels a property a nuisance, the landlord or property owner is often responsible for terminating the nuisance.<sup>10</sup> Notably, approximately one-third of all nuisance claims are brought against women experiencing domestic violence.<sup>11</sup>

Zero-tolerance, one-strike eviction policies can jeopardize a tenant's housing even more quickly than nuisance laws. Under the federal one-strike policy, criminal activity can serve as the basis for eviction even if the tenant is not the person who committed the crime.<sup>12</sup> For tenants experiencing domestic violence, this means that their abusers' criminal acts (i.e., the domestic violence) could lead to an eviction, even without any fault by the tenant.

Meanwhile, through the implied covenant of quiet enjoyment, landlords are liable for breaches of their tenants' quiet enjoyment of the property.<sup>13</sup> Landlords can face steep penalties for violating the covenant, including damages such as rent abatement and other reasonable expenses incurred by injured tenants.<sup>14</sup> These policies incentivize landlords to evict survivors quickly, refuse to renew their leases, or discourage them from seeking police assistance in dangerous situations, to protect the quiet enjoyment of the premises for other tenants.<sup>15</sup>

These policies and laws often do not distinguish between the wrongdoer and the victim, such that a residence may still be labeled as a nuisance even if the tenant is the survivor of domestic violence, rather than the source. This poses significant ramifications for survivors of domestic violence.<sup>16</sup> This is notable because the Centers for Disease Control and Prevention (CDC) estimate that approximately 25% of women and 10% of men have experienced sexual violence, physical violence, or stalking by an intimate partner in their lifetime.<sup>17</sup> They further estimate that approximately 6.6

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9. See KATOVICH, *supra* note 6.

10. *See id.*

11. Theresa Langley, Comment, *Living Without Protection: Nuisance Property Laws Unduly Burden Innocent Tenants and Entrench Divisions Between Impoverished Communities and Law Enforcement*, 52 HOUS. L. REV. 1255, 1275 (2015).

12. *See, e.g.*, 42 U.S.C. § 1437d(1)(6); *Burton v. Tampa Hous. Auth.*, 271 F.3d 1274, 1278 (11th Cir. 2001) (stating that a tenant may be evicted due to criminal conduct by another cotenant, guest, or anyone else under the tenant's control regardless of the tenant's knowledge of such conduct).

13. *See SINGER ET AL.*, *supra* note 8.

14. *See id.* at 888–89.

15. *See KATOVICH*, *supra* note 6.

16. *See id.*

17. *See SHARON G. SMITH ET AL.*, CTNS. FOR DISEASE CONTROL AND PREVENTION, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2015 DATA BRIEF – UPDATED RELEASE 7 (2018).

million women and 5.8 million men experienced this conduct in the year prior to the survey's publishing.<sup>18</sup> With so many annual incidences of domestic violence, nuisance ordinances and implied covenants in leasehold agreements can significantly impact tenants in unsafe living situations, and their ability to maintain a safe and stable housing situation. The result is that more than 50% of homeless women report that domestic violence is the cause of their homelessness.<sup>19</sup>

One of the primary federal tools for protecting the housing of survivors is the Violence Against Women Act (VAWA).<sup>20</sup> After more than a three-year lapse in the law dating back to December 2018,<sup>21</sup> the VAWA was reauthorized by Congress and signed into law by President Joseph R. Biden on March 15, 2022.<sup>22</sup> While the VAWA provides key housing protections for federally-covered housing,<sup>23</sup> the law does not apply to housing beyond the federal framework, leaving many tenants unprotected. Some jurisdictions have attempted to fill these gaps with state- and local-level legislation, typically by providing that domestic violence cannot be grounds for eviction or by allowing for affirmative defenses based on domestic violence.<sup>24</sup> The Uniform Law Commission (ULC), a group of attorneys which provides states with non-partisan draft legislation, also recently attempted to provide states with a statutory framework for combating domestic violence in housing with its Revised Uniform Residential Landlord and Tenant Act (RURLTA).<sup>25</sup> Among other proposals, RURLTA permits tenants to escape unsafe situations by terminating their leases.<sup>26</sup>

While the VAWA, RURLTA, and some state laws provide some protection to survivors of domestic violence, these laws fail to address the financial reality facing many women experiencing domestic violence. One study showed that approximately 94% of women in abusive relationships face some form of economic abuse, where their abuser exercises financial

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18. *See id.* at 8–9.

19. *See* H.R. Res. 2471, 117th Cong. § 701(4) (2022) (enacted).

20. *See generally* 24 C.F.R. § 5.2005 (2016).

21. *See* Jenny Gathright, *Violence Against Women Act Expires Because of Government Shutdown*, NPR (Dec. 24, 2018, 3:21 PM), <https://www.npr.org/2018/12/24/679838115/violence-against-women-act-expires-because-of-government-shutdown> [<https://perma.cc/Z83W-YVEC>].

22. *See* H.R. Res. 2471.

23. *See* 24 C.F.R. § 5.2003.

24. *See* Langley, *supra* note 11.

25. *See* REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT art. 11 (UNIF. L. COMM'N 2017) [hereinafter RURLTA].

26. *See id.* § 1102.

control over them.<sup>27</sup> A significant proportion of women report losing employment because of their abuse.<sup>28</sup> Further, the financial constraints placed on women by their abusers may prevent them from terminating their lease agreements because they are unable to afford new housing.

The VAWA and state and local policies attempt to lighten the burden placed on survivors of domestic violence by reducing the negative ramifications of nuisance ordinances, enforcement of quiet enjoyment covenants, and one-strike policies. Still, they fall short of achieving their goal of protecting housing for victims of domestic violence because they fail to address the financial instability that prevents many survivors from being able to move on from abusive situations. While federal, state, and local policies are crucial to protecting housing for survivors of domestic violence, they do not solve the problem completely. Eviction diversion programs such as rental assistance and right to counsel in housing courts are necessary to fill in statutory gaps in protection. Because statutory protections fall short of solving these problems, municipalities must invest in right to counsel and eviction diversion programs to supplement statutory protections and more thoroughly protect survivors of domestic violence.

This Note explores how the eviction crisis affects survivors of domestic violence, where existing legal protections for survivors fall short, and underscores the need for eviction diversion programs to supplement statutory protections. Part I explores the implications of eviction for survivors of domestic violence. Part II discusses the mechanisms for eviction in the United States and their employment in domestic violence situations. Part III reviews the federal protections in the VAWA, and state and municipal housing protections for survivors. Finally, Part IV recommends improvements to survivors' housing protections.

## I. THE IMPACT OF EVICTION ON SURVIVORS OF DOMESTIC VIOLENCE

In domestic violence situations, perpetrators often use economically abusive tactics to financially control their victims.<sup>29</sup> These tactics foster great economic dependence and make it more likely for women to become homeless if they are evicted after seeking help for their abuse. As a result, victims of domestic abuse often must choose between staying in an abusive relationship or becoming homeless because of an eviction. This impacts Black women at higher rates than other demographics due to disparate

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27. See Judy L. Postmus et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 1, 14 (2011).

28. See Emily F. Rothman et al., *How Employment Helps Female Victims of Intimate Partner Violence: A Qualitative Study*, 12 J. OCCUPATIONAL HEALTH PSYCH. 136, 136 (2007).

29. See Postmus et al., *supra* note 27 (stating that 94% of research participants experienced some form of economic abuse).

enforcement of nuisance laws.<sup>30</sup> Further, once a woman has been evicted due to domestic violence, she will likely face significant consequences that impact future housing opportunities, employment, and financial stability.<sup>31</sup> One way to partially combat those effects is through eviction diversion programs, including rental assistance and right-to-counsel laws that ensure that survivor-tenants have financial flexibility to escape dangerous situations, and legal assistance to help them understand their rights in a domestic violence-housing situation.

#### A. The Connection Between Domestic Violence and Eviction

For survivors of domestic violence, eviction can be part a vicious cycle of financial instability and homelessness, partially because of the prevalence of economic abuse in domestic violence situations. In addition to physical violence, sexual violence, and stalking, domestic abusers use isolation and economic abuse to maintain control over their victims, leaving victims without financial resources or social support to leave their situation.<sup>32</sup> Economic abuse in the context of intimate partner violence can involve a range of behaviors, from the abuser discouraging the survivor from working at all, to harassing them at their workplace, to intentionally running up debt or ruining the survivor's credit score to ensure financial dependency.<sup>33</sup> This type of economic abuse is incredibly widespread in cases of intimate partner violence and can have far-reaching impacts on other aspects of survivors' lives.<sup>34</sup>

Tactics such as discouraging work can keep survivors in unsafe situations. Many women report that steady employment and income are crucial to their ability to leave their abusive partners, and that their workplace provides them with physical and emotional safety.<sup>35</sup> However, between 21% and 60% of survivors of intimate partner violence report lose their employment for reasons caused by their abuse.<sup>36</sup> This type of economic abuse makes the choice between staying in an abusive situation and risking eviction by calling

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30. See MATTHEW DESMOND, MACARTHUR FOUNDATION, POOR BLACK WOMEN ARE EVICTED AT ALARMING RATES, SETTING OFF A CHAIN OF HARDSHIP 2 (2014).

31. See Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOCIO. REV. 117, 137–38 (2012).

32. See *Why Do Victims Stay?*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/why-do-victims-stay> [<https://perma.cc/REF2-7EA5>] (last visited Oct. 11, 2022).

33. See Postmus et al., *supra* note 27, at 3–4.

34. See *id.* at 14 (finding that “[s]uch abusive tactics may propel survivors toward poverty, if not trapped already by poverty”).

35. See Rothman et al., *supra* note 28, at 138–41.

36. See *id.* at 136.

the police even more dire.<sup>37</sup> Research has shown that “[t]he combination of abuse and poverty may force women to remain in their abusive relationships as well as keep their focus on basic economic survival.”<sup>38</sup> As a result of this dynamic, a 2005 survey showed that half of all cities in the United States described domestic violence as a key cause of homelessness, and one study confirmed that women experiencing domestic violence were significantly more likely to be evicted.<sup>39</sup>

Not only does financial instability put women at a great risk of homelessness due to eviction, but it is also a significant predictor of domestic violence. Research has shown that women in low-income households are much more likely to experience domestic violence than women in higher-income households.<sup>40</sup> This is true across racial demographics. For white, Black, and Hispanic couples, intimate partner violence increases significantly for couples living in impoverished neighborhoods compared with non-impoverished neighborhoods.<sup>41</sup>

A study of nuisance citations in Milwaukee, Wisconsin showed that nearly one-third of all nuisance claims were brought against women experiencing domestic violence.<sup>42</sup> A related study found that Milwaukee nuisance citations were issued in domestic violence cases more than the sum of all drug activity, battery, disorderly conduct, and fights.<sup>43</sup> Further, most landlords who received a nuisance citation for domestic violence either formally evicted the tenant, informally forced them out of their tenancies, or threatened them to not call 911 services again.<sup>44</sup>

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37. *See id.* at 141 (“Our findings suggest that for many victims of IPV, the financial, social, and emotional benefits of employment may be critical to immediate and long-term safety. Specifically, victims’ capacity to leave their abuser may be directly linked to their employment income.”); *see also* Desmond & Valdez, *supra* note 31, at 137 (describing women’s choice between calling the police and risking eviction or staying in their homes and risking further abuse).

38. Postmus et al., *supra* note 27.

39. *See* WOMEN’S RIGHTS PROJECT, AM. C.L. UNION, DOMESTIC VIOLENCE AND HOMELESSNESS (2008), <https://www.aclu.org/other/domestic-violence-and-homelessness> [<https://perma.cc/SU2Q-ZE7S>].

40. *See id.* (“Women with household incomes of less than \$7,500 are 7 times as likely as women with household incomes over \$75,000 to experience domestic violence.”).

41. *See* Raul Caetano et al., *Alcohol-Related Intimate Partner Violence Among White, Black, and Hispanic Couples in the United States*, 25 ALCOHOL RSCH. & HEALTH 58, 63 (2001) (finding that Black couples were three times more likely to experience domestic violence in impoverished neighborhoods than non-impoverished neighborhoods; white couples were four times more likely to report a domestic violence incident when living in an impoverished area versus a non-impoverished area; and Hispanic couples were twice as likely to report an incident of domestic violence when living in an impoverished area).

42. *See* Langley, *supra* note 11.

43. *See* Desmond & Valdez, *supra* note 31, at 137.

44. *See id.*



While citations and evictions are higher in low-income areas, research has shown that Black women in domestic violence situations are the most at-risk of eviction due to nuisance ordinances.<sup>45</sup> A report by the American Civil Liberties Union (ACLU) detailed discrimination in nuisance enforcement and eviction in low-income and Black neighborhoods.<sup>46</sup> A two-year study by the Milwaukee Police Department found that 56% of nuisance citations were reported in low-income neighborhoods, and 63% were found in Black neighborhoods.<sup>47</sup> A similar study by the ACLU found that in Rochester, New York, from 2012 through 2018, enforcement of nuisance ordinances heavily skewed toward low-income, non-white neighborhoods.<sup>48</sup>

Further, controlling for other demographic characteristics, the number of evictions in an area increases as the Black population increases.<sup>49</sup> For instance, a survey of properties owned by Pretium Partners, a corporate landlord in Florida and Georgia, showed that Pretium has filed for eviction against 10–12% of residents in majority Black counties and just 2% of residents in majority-white counties, despite similar median incomes.<sup>50</sup> A study by Matthew Desmond found that the biggest factor in a property being declared a nuisance after multiple calls to law enforcement was whether the property was in a majority Black neighborhood.<sup>51</sup> While financial instability is a key to the eviction crisis for all survivors, Black women especially bear the burden of strict enforcement of eviction due to domestic violence.

Because of the prevalence of economic abuse in intimate partner relationships, women are often subjected to economic instability at the hands of their partners. This economic instability makes it more difficult for these women to support themselves financially, which makes leaving their situations much harder to afford. Further, due to the inequitable enforcement

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45. See *id.*; see also DESMOND, *supra* note 30, at 2 (“In high-poverty Black neighborhoods . . . one [Black] woman in 17 is evicted. In high-poverty white neighborhoods, in contrast, the ratio is . . . 150:1 for women.”).

46. See KATOVICH, *supra* note 6, at 10 (“[A] lawsuit filed in August 2017 by a fair housing organization in Peoria, Illinois revealed that properties in predominantly Black neighborhoods were more than twice as likely to be cited under the city’s nuisance ordinance as white neighborhoods. A 2013 study conducted in Milwaukee, Wisconsin similarly demonstrated that properties in white neighborhoods had a 1 in 41 likelihood of receiving a nuisance citation, while properties in Black neighborhoods had a 1 in 16 likelihood of citation.”).

47. See Langley, *supra* note 11, at 1276–77.

48. See KATOVICH, *supra* note 6, at 12.

49. See GROMIS, *supra* note 1, at 6–7 (“The [predicted] spike [in eviction filings] that occurs at 40% African American population represents a non-linear increase in eviction case filings that occurs when counties become approximately majority African American.”).

50. See Chris Arnold, *Corporate Landlord Evicts Black Renters at Far Higher Rates Than Whites, Report Finds*, NPR (June 3, 2021, 5:01 AM), <https://www.npr.org/2021/06/03/1001404416/corporate-landlord-evicts-Black-renters-at-far-higher-rates-than-whites-report-f> [<https://perma.cc/2XXC-UDDD>].

51. See Desmond & Valdez, *supra* note 31, at 136.

of nuisance ordinances in lower-income neighborhoods, women are also often disincentivized from reporting abusive incidents to law enforcement out of fear of eviction. The result is that women often have little choice but to stay in abusive situations, because the alternative is to risk eviction by reporting abusive incidents to the police — the latter of which makes it more difficult to find suitable housing in the future.<sup>52</sup>

### B. The Ramifications of Eviction for Tenants

Eviction carries significant long-term ramifications for tenants, making the financial realities for evicted survivors of domestic violence even more severe. First, eviction is the leading cause of homelessness in the United States, leading to great familial, educational, and social instability for women and families.<sup>53</sup> Evicted tenants also often carry a formal public record of their eviction, which landlords frequently use to reject tenants with an on-record history of eviction, leaving these tenants unable to find safe and adequate housing.<sup>54</sup> This is also true of federal housing assistance, where “[a]n eviction record can disqualify tenants from . . . public housing and subsidized housing vouchers . . . limiting access to affordable housing.”<sup>55</sup>

Even for those tenants who are not formally evicted, a landlord’s mere act of filing for eviction can leave a long-lasting impact as landlords tend to view previous eviction filings negatively and often deny potential tenants housing based on such filings.<sup>56</sup> While formal eviction numbers may be understated due to tenants voluntarily moving out to avoid such a declaration,<sup>57</sup> the simple filing of a notice can still hurt their chances of finding suitable housing in the future.

Eviction policies can clearly perpetuate a cycle of poverty, especially for low-income communities and racial minorities who already face the highest rates of eviction.<sup>58</sup> The need to preserve one’s basic economic survival and stable housing can limit a survivor’s ability to navigate out of an abusive situation. Simultaneously, nuisance laws and landlord actions that are designed to protect the interests of other tenants can increase the risk of

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52. See MATTHEW DESMOND, UNIV. WIS., INST. RSCH. ON POVERTY, UNAFFORDABLE AMERICA: POVERTY, HOUSING, AND EVICTION 4 (2015).

53. See *id.*

54. See *id.*

55. GROMIS, *supra* note 1, at 3.

56. See ROMER ET AL., *supra* note 4.

57. See *id.*

58. See GROMIS, *supra* note 1, at 3 (“Experiencing an eviction further compounds economic and material disadvantage. In this way, eviction actively contributes to the reproduction of poverty.”).

eviction and perpetuate the cycle of financial instability often entangled with domestic violence.

## II. EVICTION MECHANISMS AND SURVIVORS OF DOMESTIC VIOLENCE

There are several common mechanisms for evicting tenants, each of them capable of burdening survivors of domestic violence. Nuisance ordinances and one-strike laws may penalize survivors of domestic violence for interacting with the police, thereby disincentivizing survivors from reporting abuse altogether.<sup>59</sup> Meanwhile, the implied covenant of quiet enjoyment incentivizes landlords to quickly move to evict those who may be disturbing the peaceful enjoyment of the premises by other tenants, further jeopardizing housing stability for survivors.<sup>60</sup>

### A. Nuisance Ordinances and One-Strike Laws

Two key mechanisms for triggering eviction filings are nuisance ordinances and one-strike eviction policies. Nuisance ordinances allow cities to label properties as a nuisance based on frequency of police contact with the property, or based on conduct such as assault, stalking, and harassment.<sup>61</sup> Typically, cities assign a certain number of points to a property for different types of disturbances or events. For instance, in Niagara Falls, New York, a noise violation earns a property two points, a marijuana possession earns six points, and an assault garners 12 points.<sup>62</sup> Once a property reaches a certain number of points, the city may designate the property as a nuisance.<sup>63</sup>

Landlords and property owners commonly bear the responsibility to eliminate the source of the nuisance.<sup>64</sup> As a result, landlords may be quicker to evict, or they may discourage tenants from calling the police for assistance altogether.<sup>65</sup> Additionally, because nuisance ordinances are often unconcerned with whether the resident is the abuser or the survivor of the

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59. See KATOVICH, *supra* note 6.

60. See SINGER ET AL., *supra* note 8; see also Kristen M. Ross, *Eviction, Discrimination, and Domestic Violence: Unfair Housing Practices against Domestic Violence Survivors*, 18 HASTINGS WOMEN'S L.J. 249, 256–57 (2007) (discussing the ways in which acts of domestic violence may interfere with other tenants' quiet enjoyment of the premises and the landlord's duties to take action to abate the nuisance). See, e.g., *Barke v. D & D Real Estate Holdings, LLC*, 2022 WL 5067937, at \*1–2 (Iowa Ct. App. Oct. 5, 2022) (where plaintiff reported a neighbor's domestic violence disturbances to their landlord, who gave the neighbor a seven-day notice of the violation with a right to cure).

61. See KATOVICH, *supra* note 6.

62. See *id.*

63. See *id.*

64. See *id.*

65. See *id.*

abusive criminal conduct, properties can still become labeled as nuisances — and a tenant may still face the possibility of eviction — even without tenant fault for the criminal activity.<sup>66</sup>

Further complicating matters for survivors are one-strike, zero-tolerance eviction policies. The statutory basis for federal one-strike policies provides that:

[A]ny criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants . . . engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.<sup>67</sup>

*Burton v. Tampa Housing Authority* highlights the impact that these laws may have on tenants who do not commit any crimes themselves.<sup>68</sup> In *Burton*, the court upheld a mother’s eviction from public housing under the zero-tolerance framework based on her son’s drug-related activity without any finding of fault by the tenant.<sup>69</sup>

While Congress acted through the 2005 VAWA reauthorization to prevent enforcement of the one-strike law in domestic violence situations,<sup>70</sup> this restriction applies only to federally covered housing,<sup>71</sup> leaving private housing tenants unprotected in the more than 2,000 local jurisdictions that still employ nuisance or one-strike ordinances.<sup>72</sup> Even in covered federal

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66. *See id.* at 6–8.

67. 42 U.S.C. § 1437d(1)(6) (2013); *see also* Dep’t Hous. & Urb. Dev. v. Rucker, 535 U.S. 125, 127 (2002) (holding that “Section 1437(d)(1)(6) . . . requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug related activity”). In that statement, not only did the court uphold one-strike laws, they went even further and *required* that public housing leases give landlords one-strike eviction powers. *See id.* at 136.

68. *See* 271 F.3d 1274, 1284–85 (11th Cir. 2001).

69. *See id.*

70. *See* E. GEORGE DAHER ET AL., 33A MASS. PRAC., LANDLORD AND TENANT LAW § 15:22 (3d ed. 2021).

71. *See* 24 C.F.R. § 5.2003 (2016). Federally covered housing includes several Department of Housing and Urban Development (HUD) programs: Section 202 Supportive Housing for the Elderly; section 811 Supportive Housing for Persons with Disabilities; Housing Opportunities for Persons with AIDS (HOPWA) program; HOME Investment Partnerships (HOME) program; homeless programs under Title IV of the McKinney-Vento Homeless Assistance Act including the Emergency Solutions Grants, the Continuum of Care program, and the Rural Housing Stability Assistance program; multifamily rental housing under Section 221(d)(3) of the National Housing Act; multifamily rental housing under Section 236 of the National Housing Act; HUD programs assisted under Sections 6 and 8 of the United States Housing Act of 1937; and the Housing Trust Fund.

72. *See* Kate Walz, *Let’s Stop Criminalizing Victims of Domestic Violence*, SHRIVER CTR. ON POVERTY L. (Oct. 27, 2017), <https://theshriverbrief.org/lets-stop-criminalizing-victims-of-domestic-violence-a72a06b50e42> [<https://perma.cc/PS4N-KDSF>].

housing where VAWA protection should apply, barriers may prevent protection against one-strike evictions based on domestic violence. Namely, tenants who wish to avail themselves of the protections must provide documentation of the occurrence of domestic violence either through a personally completed allegation form, a testimonial from a professional who aided the survivor related to the violence, or a record of action taken against the perpetrator.<sup>73</sup>

These reporting requirements may seem minimal, but they pose an obstacle for survivors. In part, this is because most survivors do not receive treatment from victim-services agencies, leaving survivors without professional testimony regarding their experiences with domestic violence.<sup>74</sup> In addition, survivors reported just 52% of domestic violence incidents to police in 2019,<sup>75</sup> highlighting the reluctance of survivors to report violence, as well as the potential lack of records of action taken against perpetrators to support a survivor's claim to protections against federal one-strike eviction.

There are many reasons that survivors may choose not to report violence, including a fear of retaliation, lack of understanding of the resources available to them, fear of becoming homeless or financial instability, and a lack of means to support themselves.<sup>76</sup> Women may also be more hesitant to report abusive behavior because landlords may choose to evict them for violating the lease when a male abuser responsible for causing the nuisance is not listed on the lease.<sup>77</sup>

Nuisance laws and one-strike policies make it more difficult for women to report domestic violence by discouraging survivors from seeking police assistance. For instance, under Norristown, Pennsylvania's nuisance ordinance, Lakisha Briggs was warned by police that one more altercation with her abusive boyfriend would result in an eviction.<sup>78</sup> Ms. Briggs felt that she had no options — if she tried to kick her boyfriend out, somebody would call the police due to the altercation and she would be evicted. If she called

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73. See 24 C.F.R. § 5.2007.

74. See RACHEL E. MORGAN & JENNIFER L. TRUMAN, U.S. DEP'T JUST., CRIMINAL VICTIMIZATION, 2019, 9 (2020), <https://bjs.ojp.gov/content/pub/pdf/cv19.pdf> [<https://perma.cc/5VBK-DBHN>] (stating that in 2018 just 18.1% of survivors of violent intimate partner attacks received assistance from victim-services agencies, while 26.1% percent of survivors sought services for such attacks in 2019).

75. See *Data Says Domestic Violence Incidents Are Down, But Half of All Victims Don't Report to Police*, USAFACTS (Oct. 21, 2021, 11:43 AM), <https://usafacts.org/articles/data-says-domestic-violence-incidents-are-down-but-half-of-all-victims-dont-report-to-police/> [<https://perma.cc/WEC3-A56G>].

76. See *Why Do Victims Stay?*, *supra* note 32.

77. See DESMOND, *supra* note 30.

78. See Erik Eckholm, *Victims' Dilemma: 911 Calls Can Bring Eviction*, N.Y. TIMES (Aug. 16, 2013), <https://www.nytimes.com/2013/08/17/us/victims-dilemma-911-calls-can-bring-eviction.html> [<https://perma.cc/HTS9-V83K>].

the police herself to remove him, she would likewise be evicted.<sup>79</sup> Ultimately, Ms. Briggs suffered another attack by her abuser which sent her to the hospital for emergency treatment. Norristown officials forced her landlord to evict her as a result.<sup>80</sup> Ms. Briggs sued Norristown over the eviction and the parties reached a settlement, one part of which was the repeal of the nuisance ordinance.<sup>81</sup> Even after the Norristown repeal, nuisance ordinances and one-strike laws are still broadly used. More than 2,000 local governments still operate similar laws, which present potentially dangerous consequences for survivors of domestic violence.<sup>82</sup>

### B. The Implied Covenant of Quiet Enjoyment

In addition to nuisance and one-strike laws, landlords may evict tenants based on the implied covenant of quiet enjoyment.<sup>83</sup> Through this covenant, the landlord is obligated to protect other tenants' rights to quietly enjoy their premises. Under this covenant, a tenant may stop paying rent and move out if the landlord allows substantial interference with their quiet enjoyment, and they are protected by the defense of constructive eviction if their landlord sues them for failure to pay.<sup>84</sup> The tenant may also sue for partial constructive eviction if they have been substantially deprived of the quiet enjoyment of a portion of their residence.<sup>85</sup> Landlords may bear responsibility for breaches of the implied covenant of quiet enjoyment, even when that breach stems from disruption caused by other tenants rather than the landlords themselves.<sup>86</sup>

Unlike nuisance ordinances and one-strike laws, the covenant of quiet enjoyment may be enforced even without criminal activity or police

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79. *See id.*

80. *See id.*

81. *See Briggs v. Borough of Norristown et al.*, AM. CIV. LIBERTIES UNION (Sept. 18, 2014), <https://www.aclu.org/cases/briggs-v-borough-norristown-et-al> [<https://perma.cc/XB3C-VAKT>].

82. *See Walz*, *supra* note 72.

83. *See, e.g.*, SINGER ET AL., *supra* note 8, at 887; *see also* Ross, *supra* note 61, at 256–57. *See, e.g.*, Barke v. D & D Real Estate Holdings, LLC, 2022 WL 5067937, at \*1–2 (Iowa Ct. App. Oct. 5, 2022).

84. *See* SINGER ET AL., *supra* note 8.

85. *See id.* at 888.

86. *See* RESTATEMENT (SECOND) OF PROPERTY, LAND, & TEN. § 6.1 (AM. L. INST. 1977) (“[T]here is a breach of the landlord’s obligations if, during the period the tenant is entitled to possession of the leased property, the landlord, or someone whose conduct is attributable to him, interferes with a permissible use of the leased property by the tenant.”); *see also* Bruckner v. Helfaer, 197 Wis. 582 (1929) (finding that the landlord caused constructive eviction of the tenant by failing to deal with another tenant’s raucous behavior, noise, and disturbance of the building).

responses to a rental unit.<sup>87</sup> Courts have held that tenants have stated a valid defense for failure to pay rent to landlords in cases where neighbors repeatedly caused loud, excessive noise with vulgar language,<sup>88</sup> and where neighbors caused loud noises at unreasonable hours which the landlord did not prevent.<sup>89</sup> Whereas nuisance and one-strike laws discourage survivors from engaging with law enforcement, a tenant can be evicted due to the covenant of quiet enjoyment simply based on repeated altercations that disturb their neighbors' peaceful enjoyment of their residences.

If the landlord fails to resolve the deprivation of quiet enjoyment after a reasonable opportunity to do so, an injured tenant may be entitled to rent abatement,<sup>90</sup> damages,<sup>91</sup> or to withhold rent until the landlord is no longer in default.<sup>92</sup> Since landlords have an opportunity to abate the disturbance to their tenants' quiet enjoyment before being liable for damages or rent abatement/withholding,<sup>93</sup> they are incentivized to quickly evict a tenant who they relate to the disturbance. In addition, many leases include terms obligating residents to preserve the quiet enjoyment of their neighbors and other tenants, the breach of which could allow a landlord to evict a tenant.<sup>94</sup> Survivors may be aware of the disturbances caused by the domestic violence, but may not feel that they can leave because of an inability to financially support themselves, the difficulties of having to raise their children as single parents, or a lack of a safe place to go if they were to leave.<sup>95</sup> As a result, they may be at greater risk for eviction due to the violence's impact on other tenants, even when they choose not to report the abuse.

### III. LEGAL PROTECTIONS FOR SURVIVORS OF DOMESTIC VIOLENCE

Federal, state, and local governments all play a role in stipulating housing protections for survivors of domestic violence. While this Note argues that eviction diversion programs are critical to protecting housing for survivors of domestic violence, it is also important to consider the statutory protections provided by federal and state governments, such as the federal VAWA. Right-to-counsel programs better equip tenants to understand their rights and

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87. See generally *Bruckner*, 197 Wis. at 582; see also *Bocchini v. Gorn Mgmt. Co.*, 69 Md. App. 1, 8–12 (Ct. Spec. App. 1986).

88. See *Bruckner*, 197 Wis. at 582.

89. See *Bocchini*, 69 Md. App. at 4, 12.

90. See RESTATEMENT (SECOND) OF PROP., LAND. & TEN. §§ 6.1, 11.1 (AM. L. INST. 1977).

91. See *id.* §§ 6.1, 10.2.

92. See *id.* §§ 6.1, 11.3.

93. See *id.* § 6.1 (noting that when a landlord fails to meet its obligations under the covenant of quiet enjoyment, a tenant may be entitled to remedies for breach of the landlord-tenant agreement including damages or termination of the lease).

94. See SINGER ET AL., *supra* note 8, at 890.

95. See *Why Do Victims Stay?*, *supra* note 32.

the protections available to them by law, but without the laws that afford tenants those protections the effectiveness of right-to-counsel laws would be limited.

### A. The Violence Against Women Act

In response to the severe consequences of eviction and the burden that they can place on survivors of domestic violence, legal protections have been instituted at the federal and state level to address these issues. Chief among these protections at the federal level is the VAWA.<sup>96</sup> Initially passed in 1994 and reauthorized by Congress in 2000, 2005, and 2013,<sup>97</sup> the VAWA implements key protections intended to protect survivors of domestic violence in the housing context.<sup>98</sup>

Through the informal rulemaking process, the Department of Housing and Urban Development (HUD) defined the VAWA's housing protections to include:<sup>99</sup> notification of occupancy rights to tenants under the VAWA;<sup>100</sup> a prohibition on landlords from denying an otherwise qualified applicant admission to housing, or evicting a tenant from housing on the basis of domestic violence, dating violence, sexual assault, or stalking;<sup>101</sup> and a prohibition on eviction on the basis of criminal activity directly relating to domestic violence if the tenant is the victim or threatened victim of the crime or if engaged in by someone else in the household.<sup>102</sup>

The rule also provides that an actual or threatened act of domestic violence cannot be construed as good cause for terminating the tenancy;<sup>103</sup> and that

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96. See H.R. Res. 2471, 117th Cong. (2022) (enacted).

97. See U.S. DEP'T OF JUST., OFFICE OF VIOLENCE AGAINST WOMEN, TWENTY YEARS OF THE VIOLENCE AGAINST WOMEN ACT: DISPATCHES FROM THE FIELD 1 (2016), <https://www.justice.gov/ovw/file/866576/download> [<https://perma.cc/LV8H-NZQR>].

98. See 24 C.F.R. §§ 5.2003–07 (2016).

99. See Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80724, 80724–99 (final rule Nov. 16, 2016) (“[VAWA 2013] expands housing protections to HUD programs beyond HUD’s public housing program and HUD’s tenant-based and project-based section 8 programs.”). See *id.* Covered programs include Section 202 Supportive Housing for the Elderly; Section 811 Supportive Housing for Persons with Disabilities; Housing Opportunities for Persons with AIDS (HOPWA); HOME Investment Partnerships; homeless programs under Title IV of the McKinney-Vento Homeless Assistance Act; multifamily rental housing under the National Housing Act § 221(d)(3); multifamily rental housing under the National Housing Act § 236; HUD programs under the United States Housing Act of 1937; and the Housing Trust Fund. See *id.*

100. 24 C.F.R. § 5.2005(a).

101. *Id.* § 5.2005(b).

102. *Id.* § 5.2005(b)(2).

103. *Id.* § 5.2005(c); see also *Metro N. Owners, LLC v. Thorpe*, 870 N.Y.S.2d 768, 770 (Civ. Ct. 2008) (upholding housing protections under VAWA because “[a]n incident or incidents of actual or threatened domestic violence . . . will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not



all covered housing providers are required to have emergency transfer plans to aid in the relocation of tenants to safe units in the event that a tenant believes they are unsafe in their current unit due to domestic violence.<sup>104</sup> In such cases, the tenant may bifurcate the lease to remove/evict the abuser from the lease,<sup>105</sup> and may be granted reasonable time up to 90 days to establish continued eligibility for covered housing following termination of the lease.<sup>106</sup>

These protections may help to eliminate some of the issues that survivors face in an unsafe housing situation. For instance, since crimes related to domestic violence cannot be the basis for an eviction, survivors may be less reluctant to report criminal behavior to the police. While the law had lapsed for more than three years since late 2018,<sup>107</sup> President Biden signed the VAWA reauthorization into law on March 15, 2022,<sup>108</sup> clearing up any lingering confusion about the role of VAWA housing protections caused by the lapse.<sup>109</sup>

Title VI of the new law is dedicated to housing protections for survivors of domestic violence.<sup>110</sup> While there will be some uncertainty about how some of the VAWA 2022 reauthorization provisions will be implemented until the enforcing agencies promulgate regulations through the rulemaking process, the text of the VAWA 2022 illustrates some changes to housing protections for survivors. Title VI, Section 601 expands the list of covered federal housing eligible for the housing protections under the VAWA.<sup>111</sup> Title VI, Section 602 establishes a gender-based violence prevention office and creates a VAWA Director, whose duties include tasks such as coordinating with state and local governments for housing protection for

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be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence,” and that “[c]riminal activity directly relating to domestic violence . . . engaged in by a . . . guest . . . shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant . . . is the victim or threatened victim of that domestic violence.”).

104. 24 C.F.R. § 5.2005(e).

105. *Id.* § 5.2009(a).

106. *Id.* § 5.2009(b).

107. *See* Gathright, *supra* note 21.

108. Alex Gangitano, *Biden Signs Reauthorization of the Violence Against Women Act*, HILL (Mar. 16, 2022, 3:07 PM), <https://thehill.com/homenews/administration/598472-biden-signed-reauthorization-of-the-violence-against-women-act/> [<https://perma.cc/DF26-PT9Z>].

109. *See Protections for Survivors of Domestic and Sexual Violence*, NAT’L HOUS. L. PROJECT, <https://www.nhlp.org/initiatives/protections-for-survivors-of-domestic-and-sexual-violence/> [<https://perma.cc/5LBC-3DSE>] (last visited Oct. 18, 2022) (“Advocates are encountering courts that believe the housing protections under the [VAWA] lapsed because of Congress’s failure to reauthorize VAWA in 2018. VAWA’s housing protections do not have sunset provisions and, therefore, did not expire.”).

110. *See* H.R. Res. 2471, 117th Cong. (2022) (enacted).

111. *Id.*

survivors.<sup>112</sup> Title VI, Section 602 also implements several new protections, including regular agency compliance reviews to ensure adherence to the housing protections and prohibitions on retaliation for employment of the protections by tenants.<sup>113</sup>

Title VI, Section 603 attempts to eliminate some of the burden that nuisance ordinances place on survivors by including a right for tenants to report, without penalties, crimes of which they are the victim or for which they are not at fault, and prohibits as a penalty of that criminal activity the designation of the property as a nuisance.<sup>114</sup> By attempting to legislate out the designation of properties as nuisances based on criminal activity, the VAWA 2022 takes an important step toward eliminating a key disincentive for survivors to report abuse to the police in covered federal housing.

These increased protections offer a promising response to the enforcement of nuisance and one-strike laws against survivors of domestic violence. This is particularly true of Title VI, Section 603 of the VAWA 2022, which attempts to limit penalties for criminal activity not created by the survivor. The VAWA attempts to provide some security in the available safeguards for survivors of domestic violence whose abusive partners engage in criminal activity (i.e., domestic violence) that could threaten their housing security.<sup>115</sup>

In addition to those provisions which could help to protect survivors against nuisance ordinances and one-strike policies, Title VI, Section 605 of the VAWA 2022 expands funding so that survivors of domestic violence without the resources to obtain safe, permanent housing may be eligible for homeless assistance under the Act.<sup>116</sup> Section 606 calls for the Secretary of Housing and Urban Development to conduct a study examining the availability of housing for survivors of human trafficking.<sup>117</sup> Finally, Title VII of the VAWA discusses the issues of economic abuse and economic insecurity for survivors, and Section 704 has commissioned a study on economic security for survivors of domestic violence.<sup>118</sup> Partially as a result

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112. *See id.*

113. *See id.*

114. *See id.*

115. *See, e.g.,* Veronica L. Zoltowski, *Zero Tolerance Policies: Fighting Drugs or Punishing Domestic Violence Victims?*, 37 *NEW ENG. L. REV.* 1231, 1239 (2003) (“[A] domestic violence victim cannot rely upon the criminal prosecution or arrest of her abuser to keep her safe in her own home. Any safety provided by the incarceration of the abuser is lost when she becomes homeless because the criminal act leading to the imprisonment has subjected her to a zero tolerance eviction.”).

116. *See* H.R. Res. 2471, 117th Cong. (2022) (enacted) (including expansion of McKinney-Vento Homeless Assistance Programs under 42 U.S.C. §§ 11301–02, and an extension through 2027 of “Collaborative Grants To Increase the Long-term Stability of Victims” under Section 41404(i) of the Violence Against Women Act of 1994).

117. *Id.*

118. *Id.*

of these updated provisions, the bill has been lauded by the National Coalition Against Domestic Violence as “enhanc[ing] implementation and enforcement of [the] VAWA’s existing housing provisions and expand[ing] access to temporary and emergency housing.”<sup>119</sup>

However, the VAWA’s housing protections notably leave key gaps in protection for survivors. While the VAWA sets aside funding for housing grants, the funding is inadequate compared with the need. Congress’ findings indicate that domestic violence costs survivors eight million hours of work each year, and that the annual cost of domestic violence for survivors is over eight billion dollars.<sup>120</sup> And whereas upwards of 90% of all homeless women have experienced abuse, and more than 50% of homeless women say that domestic violence is the cause of their homelessness,<sup>121</sup> the grant program has been capped annually at just four million dollars total.<sup>122</sup>

Another key weakness is that tenants often do not have the means to find adequate representation to assert their rights in housing court proceedings, so they may not be able to access the protections to which they are entitled.<sup>123</sup> Finally, despite the VAWA 2022’s expansion of the list of federal housing entities covered for housing protections, the protections are necessarily limited to covered federal housing,<sup>124</sup> leaving many of the 44.1 million rental households in the United States without the benefit of the VAWA’s housing protections.<sup>125</sup>

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119. Letter from the Nat’l Task Force to End Sexual & Domestic Violence, to Dianne Feinstein, Richard Durbin, Joni Ernst, and Lisa Murkowski, United States Senators (Mar. 2, 2022), [https://static1.squarespace.com/static/57d7477b9de4bb8b14256cf4/t/62192c35cfb305044bc087dd/1645816885457/VAWA+National+Sign\\_On+Letter.pdf](https://static1.squarespace.com/static/57d7477b9de4bb8b14256cf4/t/62192c35cfb305044bc087dd/1645816885457/VAWA+National+Sign_On+Letter.pdf) [https://perma.cc/J2JH-HDL2].

120. See H.R. Res. 2471.

121. *Id.*

122. See Courtney Veneri, *Welcome Home? An Analysis of Federal Housing Programs and Their Efficacy in Reducing Homelessness Among Domestic Violence Survivors*, 14 DEPAUL J. FOR SOC. JUST. 1, 16 (2021).

123. See *id.* at 19.

124. See 24 C.F.R. § 5.2003 (2016) (stating that federally covered housing includes several HUD programs: Section 202 Supportive Housing for the Elderly; Section 811 Supportive Housing for Persons with Disabilities; Housing Opportunities for Persons with AIDS (HOPWA); HOME Investment Partnerships; homeless programs under Title IV of the McKinney-Vento Homeless Assistance Act; multifamily rental housing under the National Housing Act § 221(d)(3); multifamily rental housing under the National Housing Act § 236; HUD programs under the United States Housing Act of 1937; and the Housing Trust Fund).

125. See Drew Desilver, *As National Eviction Ban Expires, A Look at Who Rents and Who Owns in the U.S.*, PEW RSCH. CTR. (Aug. 2, 2021), <https://www.pewresearch.org/fact-tank/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s> [https://perma.cc/7TH6-Z99M].

## B. State and Municipal Housing Protections

Considering the VAWA's limitations to covered federal housing entities, it is also important to examine state and local housing protections for private renters. Some local jurisdictions have attempted to protect survivors of domestic violence by providing that domestic violence cannot be grounds for eviction.<sup>126</sup> Other states have implemented statutes that allow tenants to terminate their leases early in response to domestic violence, rape, sexual assault, or stalking.<sup>127</sup>

As with the VAWA, however, these protections may be limited in their efficacy due to various factors. As Langley notes, these laws often assume that the survivor can successfully keep the abuser away from the home, which is not always possible due to the relationship between the survivor and the abuser.<sup>128</sup>

Additionally, when considering the significant financial strain that those with low economic security face with respect to renting,<sup>129</sup> and the financial dependency abusers impose on survivors of domestic violence,<sup>130</sup> it may be unrealistic to expect that survivors have the financial means to take advantage of protections such as opting out of a tenancy because they may not have the financial flexibility to find alternative housing.

The ULC has attempted to provide states with a blueprint to address domestic violence issues via the RURLTA. The ULC drafted the first version of the law, the Uniform Revised Landlord and Tenant Act (URLTA) in 1972, which has since been adopted by 21 states.<sup>131</sup> More than four decades after the first law was drafted, the ULC crafted RURLTA, which was written to include a new Article 11 dedicated to issues of domestic

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126. See, e.g., Langley, *supra* note 11 (“After a recent revision, Milwaukee’s law now specifies that domestic violence cannot be grounds for eviction. In another example, California Code of Civil Procedure Section 1161.3 provides an affirmative defense for a victim of domestic violence against eviction from a rental unit resulting from an act of domestic violence committed against them as of January 1, 2011.”).

127. See, e.g., SINGER ET AL., *supra* note 8, at 866 (discussing COLO. REV. STAT § 38-12-402 and MASS. GEN. LAWS ch. 186 §§ 23–29, which provide protections for tenant survivors of domestic violence, including the ability to terminate the tenancy after providing notice to the landlord, and protection from being barred from future tenancies in Massachusetts under the circumstances).

128. See Langley, *supra* note 11.

129. See generally MARK TRESKON ET AL., URB. INST., EVICTION PREVENTION AND DIVERSION PROGRAMS: EARLY LESSONS FROM THE PANDEMIC 2 (2021).

130. See Langley, *supra* note 11, at 1274.

131. See *Uniform Law Commission’s Uniform Residential Landlord-Tenant Act*, NAT’L CTR. FOR HEALTHY HOUS., <https://nchh.org/resourcelibrary/Uniform%20Law%20Commission%20-%20URLTA.pdf> [https://perma.cc/AU85-76J2] (last visited Sept. 14, 2022).

violence, dating violence, stalking, and sexual assault.<sup>132</sup> In fact, the desire to adopt Article 11 into the uniform law motivated the ULC's decision to revise the uniform law.<sup>133</sup>

Some of the protections in RURLTA's new Article 11 include Section 1102(a), which provides that a tenant has the right to terminate the lease early if there is "reasonable fear" of being harmed due to domestic violence if they remain in the housing.<sup>134</sup> In such a situation, the tenant is not liable for the remainder of the rent, and may not be penalized for exercising the Section 1102(a) right.<sup>135</sup> The tenant has the right to change the locks rather than terminating the lease, under Section 1106.<sup>136</sup> Finally, Sections 1108 and 1109 include anti-retaliation provisions that prevent landlords from discriminating against a tenant because of "an act of domestic violence, dating violence, stalking, or sexual assault committed against the tenant . . . [resulting] in a violation of the lease . . . by the tenant."<sup>137</sup>

There are some protections in the RURLTA for the landlord as well. For instance, the landlord has a right to recover actual damages from the abuser once the victim tenant terminates the lease due to domestic violence.<sup>138</sup> The landlord also has the right to terminate the abuser's interest in the lease under Sections 1107 and 1108.<sup>139</sup> Under Section 1108, the landlord can even do so without a court order so long as they have a reasonable belief that the perpetrator is an abuser.<sup>140</sup> Given that the covenant of quiet enjoyment of other tenants can lead to unfavorable treatment for tenants who are exposed to domestic violence, such provisions provide incentives for landlords to protect survivors in the private housing context where the VAWA protections do not apply.

Just as with the VAWA, however, there are areas where RURLTA's efficacy may be called into question. This begins with the fact that RURLTA has yet to be adopted by any state.<sup>141</sup> In fact, RURLTA appears to have only

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132. See RURLTA, *supra* note 25.

133. See Sheldon F. Kurtz & Alice M. Noble Allgire, *The Revised Uniform Residential Landlord and Tenant Act: A Perspective from the Reporters*, 52 REAL PROP. TR. & EST. L.J. 417, 497 (2018).

134. See *id.* at 498.

135. See *id.* at 500–01.

136. See *id.* at 502.

137. *Id.* at 503.

138. See *id.* at 501.

139. See *id.* at 504–06.

140. See *id.*

141. See SINGER ET AL., *supra* note 8, at 866.

been brought up for discussion in a few states — Colorado,<sup>142</sup> Oklahoma,<sup>143</sup> Kentucky,<sup>144</sup> and Montana.<sup>145</sup> While very little state legislative history exists to illustrate why RURLTA has not been more widely adopted, the public debate in Montana may be informative. In Montana, the Committee on Judiciary debated the issue on April 13, 2021.<sup>146</sup> While the supporters of exploring RURLTA primarily included students from Montana state universities and disability advocates, the two opponents of the proposal were members of the Montana Landlords Association.<sup>147</sup> In a conversation with Benjamin Orzeske, Chief Counsel of the Uniform Law Commission, Mr. Orzeske noted that landlords presented strong opposition to RURLTA throughout the drafting process.<sup>148</sup> He noted that despite the fact that RURLTA was drafted by attempting to engage stakeholders on both landlord and tenant sides, landlords believed that the law would be too tenant-friendly, and they took issue with many provisions such as Section 205, which awards attorney's fees to the prevailing party in litigation surrounding the lease.<sup>149</sup>

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142. See *Revised Uniform Residential Landlord and Tenant Act: Hearing on LLS 16-0132 Before the Colorado Commission on Uniform State Laws* (2016) (discussing RURLTA at their January 12, 2016 meeting, but deciding to table further exploration of RURLTA for a later legislative session).

143. See H.B. 3710, 57th Leg., 2d Sess. (Okla. 2020). RURLTA was also proposed in front of the Oklahoma state legislature in January 2020, but the bill died in committee. See *OKC Action Plan: Preventing Homelessness*, OKLA. CITY PLAN. DEP'T, <https://www.okc.gov/departments/planning/programs/homelessness/strategies-to-address-homelessness-in-oklahoma-city/preventing-homelessness> [https://perma.cc/R87B-4HLS] (last visited Nov. 10, 2022) (highlighting that the bill was never discussed on the floor after its introduction to the legislature). There is scant legislative history available to understand why the bill did not make it out of committee.

144. See H.B. 152, Reg. Sess. (Ky. 2022). In Kentucky, state representative Nima Kulkarni has proposed a bill to pass RURLTA in her state, which would represent a marked shift over the current law. See *House Bill 152*, KY. GEN. ASSEMBLY, <https://apps.legislature.ky.gov/record/22RS/hb152.html> [https://perma.cc/6FQR-ALHJ] (last visited Nov. 10, 2022). According to the Kentucky legislature, the bill was assigned to the Committee on Committees on January 4, 2022, though it has not yet been the subject of further action. See *id.*

145. See H.J.R. Res. 26, 67th Leg. (Mont. 2021). In Montana, state representative Kathy Kelker introduced a joint resolution in front of the Montana House of Representatives Committee on Judiciary to commission a study of RURLTA most recently during the 67th legislative session in 2021. See *Bill Draft Number: LC1470*, MONT. LEGISLATURE, [http://laws.leg.mt.gov/legprd/law0210W\\$BSIV.ActionQuery?P\\_BILL\\_DFT\\_NO5=L C1470&Z\\_ACTION=Find&P\\_Sess=20211](http://laws.leg.mt.gov/legprd/law0210W$BSIV.ActionQuery?P_BILL_DFT_NO5=L C1470&Z_ACTION=Find&P_Sess=20211) [https://perma.cc/2QU2-KPWW] (last visited Nov. 10, 2022).

146. See *Study of Landlord-Tenant: Hearing on H.J. 26 Before the H. Comm. on Judiciary*, 67th Leg. (Mont. 2021).

147. See *id.*

148. See Telephone Interview with Benjamin Orzeske, Chief Counsel, Uniform Law Commission (May 2, 2022) (transcript on file with author).

149. *Id.*

Based on Montana's legislative history and Mr. Orzeske's perspective on the drafting process, the primary issues that killed the proposal centered around RURLTA provisions other than the domestic violence protections.<sup>150</sup> In fact, RURLTA's new Article 11 and housing protections for survivors of domestic violence were never discussed in Montana's legislative hearings.<sup>151</sup> This could be an indication that landlords view the updated uniform law in its entirety as too tenant-friendly. Therefore, it may be that the larger bill is too ambitious, thereby killing its more well-received domestic violence provisions.

In fact, there seems to be an appetite for pieces of the law such as RURLTA's Article 11. For instance, Nebraska enacted Legislative Bill 320 in May 2021, attempting to strengthen protections for survivors of domestic violence and other affected members of those households.<sup>152</sup> While this enactment was not based in RURLTA, its adoption nevertheless highlights the potential interest among states for increasing housing protections for survivors and demonstrates the potential for states to have interest in RURLTA Article 11 even if other parts of the uniform law are not adopted.

In addition to the difficulty that RURLTA has had picking up steam with state legislatures, there are certain provisions in the law that could cause similar issues as those in the VAWA. Tenants will likely encounter some of the same issues as the federal law regarding early termination of lease, such as financial reliance on abusive partners, overwhelming rent in relation to income, and inability to financially afford alternative housing once the lease has been broken. The financial realities of eviction necessarily limit the efficacy of provisions that require tenants to finance their own relocation, even if they have the right to terminate a lease early due to an unsafe situation.

#### IV. IMPROVING HOUSING PROTECTION FOR SURVIVORS

The timely reauthorization of the VAWA should result in strengthened protections for residents of covered federal housing entities. For example, provisions such as the law's Section 603 that disallows parties from classifying properties as a nuisance based on reported criminal activity<sup>153</sup> have previously served as a strong deterrent for survivors in precarious

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150. See *Study of Landlord-Tenant Laws*, *supra* note 146; Telephone Interview with Benjamin Orzeske, *supra* note 148.

151. See *Study of Landlord-Tenant Laws*, *supra* note 146.

152. See L.B. 320, Leg. 107th Sess. (Neb. 2021).

153. H.R. Res. 2471, 117th Cong. (2022) (enacted).

housing situations to report abusive situations.<sup>154</sup> Still, there is work to be done to strengthen the VAWA's protections.

#### A. Legislative Reforms

One major issue is that funding for the VAWA grant programs has been inadequate compared with the financial stress that survivors often face due to economic abuse,<sup>155</sup> and funding should be increased to attempt to better meet the needs of survivors. The inclusion of survivors of domestic violence in the McKinney-Vento Homeless Assistance programs serves to ensure some level of protection for short-term, medium-term, and permanent housing for those without safe and permanent housing.<sup>156</sup>

Even with improvements to the VAWA, these protections only apply to a small portion of rental housing, and many private renters are not entitled to the protections outlined in the federal law. VAWA's creation of the Violence Against Women Act Director, whose job is to coordinate with state and local governments on housing protection issues, should be helpful in coordinating a response to the issues impacting housing security for survivors and thus filling in gaps at the state and local level.<sup>157</sup> While it would be ideal for states to pass RURLTA in an attempt to fill those gaps, the legislative experience in states like Montana should temper expectations that RURLTA will become widely accepted in replacing current state landlord-tenant law.

One major issue is that the RURLTA's aims may be seen as too tenant-friendly and potentially unworkable by landlords and other key stakeholders. To resolve this, states could adopt Article 11 on its own to incorporate into their current landlord-tenant statutes, thereby severing the portions of the uniform law that they find unpalatable. The ULC could also lead this reform effort by re-drafting Article 11 on its own as an addendum to the URLTA. As 21 states have passed URLTA as their landlord-tenant law,<sup>158</sup> merely proposing an addition to the law to protect survivors of domestic violence may have a stronger chance at passage at the state level as opposed to a broader, more comprehensive replacement of state law that the current RURLTA represents.

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154. See KATOVICH, *supra* note 6.

155. See Veneri, *supra* note 122.

156. See 42 U.S.C. §§ 11301–02 (2004); H.R. Res. 2471.

157. See H.R. Res. 2471.

158. See *Uniform Law Commission's Uniform Residential Landlord-Tenant Act*, *supra* note 131.



### B. Implementation of Diversion Programs, Right to Counsel, and Rental Assistance

The main takeaway from this discussion, however, is that housing security for survivors of domestic violence often comes down to financial instability. Research has shown that domestic violence, eviction, and poverty can create a vicious cycle that is hard to escape. Financial turmoil is quite common among survivors due to widespread economic abuse in abusive intimate partner relationships, and it often hampers one's ability to escape the abuse or, upon eviction, find adequate housing. These factors often keep women tethered to an abusive relationship, fearful of reporting the abuse due to the possibility of being evicted for nuisance and fearful of attempting to leave due to the financial uncertainties of going it alone.

One potentially effective tool to combat eviction and homelessness among survivors of domestic violence are eviction diversion programs that provide rental assistance, access to legal counsel in housing courts, and alternatives to court proceedings to mediate housing issues. Such programs may eliminate two key issues confronting survivors who face eviction due to domestic violence — financial instability, and a lack of awareness of their legal options.

First, rental assistance may help to combat the financial instability that prevents many women from taking action to protect themselves because they fear eviction and homelessness.<sup>159</sup> Rental assistance in an eviction diversion context can be a critical tool for tenants in maintaining housing.<sup>160</sup> This is highlighted by the recent eviction moratoria ordered amid the COVID-19 pandemic.<sup>161</sup> As part of the moratorium program, Congress approved the distribution of \$46 billion in rent assistance among states to prevent evictions during the pandemic.<sup>162</sup> Throughout the pandemic, the Biden Administration has made it clear that there are financial resources available for such eviction diversion programs. In her statement dated July 30, 2021, Associate Attorney General Vanita Gupta noted that states could use the \$350 billion from the Biden Administration's American Rescue Plan

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159. See *Why Do Victims Stay?*, *supra* note 32.

160. See generally DESMOND, *supra* note 52.

161. See Matthew Desmond, *The Moratorium Saved Us. It Really Did.*, N.Y. TIMES (Sept. 30, 2021), <https://www.nytimes.com/2021/09/30/opinion/sunday/eviction-covid-pandemic-housing.html> [<https://perma.cc/N82W-9C8W>].

162. See Juan Pablo Garnham, *Eviction Diversion: Preventing Eviction Before Going to Court*, EVICTION LAB (Sept. 2, 2021), <https://evictionlab.org/eviction-diversion/> [<https://perma.cc/3MCB-ZHYW>].

for eviction diversion programs.<sup>163</sup> Rental assistance provided by eviction diversion programs during this time have had a positive impact on public health and mortality rates.<sup>164</sup> This demonstrates the value that such assistance might provide to financially insecure survivors who are either struggling after an eviction or are stuck in an abusive relationship because of an inability to financially support themselves.

Second, access to legal counsel can help survivors avail themselves of legal protections against domestic violence-related evictions. Currently, only 3% of tenants in housing court have an attorney, while 81% of landlords have retained counsel.<sup>165</sup> At a minimum, this can result in tenants not being aware of their rights, though it may also prevent them from being able to adequately assert those rights in eviction proceedings. To solve this problem, three states have recently guaranteed their citizens a right to counsel in housing eviction courts — Washington, Maryland, and Connecticut.<sup>166</sup> Prior to 2021, zero states guaranteed such a right.<sup>167</sup> These states' experiences will surely serve as a test subject for other states that might be considering similar laws. Research has shown that providing tenants with legal assistance throughout the eviction process can save municipalities money as well. For instance, a program in New York City connected 1,300 families with counsel during the eviction process, costing the city approximately \$450,000 but saving the city around \$700,000 in shelter costs for tenants who may have otherwise been evicted.<sup>168</sup> Not only can these policies be economically viable, but they can be effective in preventing evictions. For instance, a city-wide right-to-counsel policy in Cleveland, Ohio showed promising early results with 93% of renters at risk of eviction being saved from an involuntary move over a six-month span in 2020.<sup>169</sup> For survivors of domestic violence, having the right to counsel in

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163. See Vanita Gupta, *How State Courts Can Prevent a Housing and Eviction Crisis*, U.S. DEP'T OF JUST. (July 30, 2021), <https://www.justice.gov/opa/blog/how-state-courts-can-prevent-housing-and-eviction-crisis> [<https://perma.cc/6PHR-7YEA>].

164. See Desmond, *supra* note 161 (noting that Duke researchers observed a reduction in the death rate by 11 percent, whereas the American Journal of Epidemiology found significantly lower mortality rates in states that kept their statewide eviction moratoria for longer periods of time).

165. Garnham, *supra* note 163; see also DESMOND, *supra* note 30, at 3.

166. Garnham, *supra* note 163.

167. See *id.*

168. DESMOND, *supra* note 30, at 3.

169. William Winans, *Right to Counsel Prevented 93% of Cleveland Family Evictions in First Six Months of Program That Provides Low-Income Tenants with Free Legal Assistance*, UNITED WAY GREATER CLEVELAND (Feb. 10, 2021), <https://www.unitedwaycleveland.org/right-to-counsel-prevented-93-of-cleveland-family-evictions-in-first-six-months-of-program-that-provides-low-income-tenants-with-free-legal-assistance/> [<https://perma.cc/A67K-2UTM>].

eviction proceedings could eliminate some of the disincentives of seeking help from law enforcement in an unsafe situation due to the knowledge that they will have legal assistance if their landlord threatens eviction.

Princeton sociology professor Matthew Desmond's groundbreaking work on eviction found that eviction diversion programs consisting of access to legal counsel and alternatives to court proceedings such as mediation helped more than 70% of tenants who participated in such programs in Durham, North Carolina to remain in their homes.<sup>170</sup> This represents a significant improvement over the research findings from the Eviction Lab, where roughly 44% of eviction proceedings from 2000 to 2016 resulted in an eviction judgment.<sup>171</sup>

Tenants may not even be aware of the legal protections available to them without counsel. Since most tenants do not have counsel in housing court,<sup>172</sup> many may be unable to assert their rights, and may not even be aware of their rights. Research has demonstrated that this domestic violence and eviction cycle impacts low-income households and women of color at disproportionately high rates.<sup>173</sup> This is largely due to inequitable application of nuisance ordinances and one-strike laws against survivors of domestic violence, particularly those in Black neighborhoods. As such, while the VAWA and state solutions like RURLTA provide statutory protection for survivors of domestic violence, those laws often lack teeth because they ignore the economic realities of survivors. Without increased financial support, many survivors are simply unable to avail themselves of the available protections and may not be aware of the protections at all. The most effective solution may be for states to adopt eviction diversion programs that provide rental assistance and legal assistance for low-income tenants, in addition to alternatives to eviction court proceedings such as mediation. Providing tenants with counsel in housing court can be extremely beneficial for survivors<sup>174</sup> and those programs have proven to be successful where they have been implemented, highlighted by the successes seen in cities like New York and Cleveland, where right to counsel laws have saved municipalities money and lowered eviction rates.<sup>175</sup> Washington, Maryland, and Connecticut have thus far been the first three states to pass laws

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170. See Garnham, *supra* note 162.

171. See GROMIS, *supra* note 1.

172. See AM. CIV. LIBERTIES UNION, NO EVICTION WITHOUT REPRESENTATION 3, 8 (2022), [https://www.aclu.org/sites/default/files/field\\_document/no\\_eviction\\_without\\_representation\\_research\\_brief\\_0.pdf](https://www.aclu.org/sites/default/files/field_document/no_eviction_without_representation_research_brief_0.pdf) [<https://perma.cc/7H5E-MS9V>] (internal citation omitted) (indicating that only 3% of tenants have representation in eviction proceedings).

173. See *supra* Part I.A.; DESMOND, *supra* note 30.

174. See DESMOND, *supra* note 30, at 5.

175. See DESMOND, *supra* note 30, at 3; Winans, *supra* note 169.

guaranteeing tenants the right to counsel in eviction proceedings at the state level,<sup>176</sup>

While eviction diversion programs have proven to be successful, programs providing access to counsel in housing court can only protect tenants as much as the law allows. Ensuring that the statutory protections are strong enough to protect survivors of domestic violence is crucial, or else the access to counsel will necessarily be less effective. In this regard, the VAWA brings some key improvements to the table with its 2022 reauthorization, and RURLTA Title 11 could likewise transform state landlord-tenant laws if states were to pass it separately from the broader RURLTA law. The combination of enhanced statutory protection combined with eviction diversion programs gives survivors of domestic violence a more complete toolkit for escaping abusive situations or protecting themselves in eviction proceedings.

### CONCLUSION

The issues of financial stability, domestic violence, and eviction are all incredibly tangled. Inequitable policing of nuisance laws, quick-to-evict landlords, one-strike housing policies, and financial insecurity all put survivors of domestic violence at great risk of either staying in unsafe situations or facing volatile and precarious housing situations. While the Violence Against Women Act provides an ever-improving federal framework for protection of survivors, its scope is necessarily limited. States and municipalities must do more to protect survivors, as well. Most importantly however, is the acknowledgment that these issues often come down to the tenant's financial stability, and in addition to statutory protection, programs providing a right to counsel, rental assistance, and eviction diversion are crucial to finding success in protecting stable housing opportunities for survivors of domestic violence.

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176. See Garnham, *supra* note 162.