

# HOUSING JUSTICE

National Housing Law Project

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## Leaving One's Home to Escape an Abuser: A Brief Overview of Renter's Protections

Survivors of domestic violence, dating violence, sexual assault, and stalking often need to leave their homes and move to a location unknown to their abusers. Survivors who rent their homes, particularly low-income survivors living in federally subsidized housing, may be hesitant to leave their homes out of fear of losing access to affordable housing (such as losing a Section 8 voucher). Other survivors living in market-rate housing may fear the financial penalties associated with ending a lease early. This article discusses select protections that may be available to survivors who wish to leave their rental units immediately for safety.

The first question advocates should consider when assessing what protections are available to survivors who rent their homes is whether the survivor lives in federally subsidized housing. Survivors who participate in certain federally subsidized housing programs may have protections permitting them to relocate for safety reasons.

Note that both survivors who live in federally subsidized housing, as well as those living in unsubsidized housing, may be protected by state laws that allow survivors to terminate their leases early. However, not all

states have early lease termination laws for survivors.

### *Federally Subsidized Housing Tenants*

The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) expands the number of federally subsidized housing programs covered by the statute's protections. Programs covered by VAWA include public housing; the Section 8 Housing Choice Voucher program; Section 8 project-based housing, Section 202 housing for the elderly; Section 811 housing for people with disabilities; Section 236 multifamily rental housing; Section 221(d)(3) Below Market Interest Rate (BMIR) housing; HOME; Housing Opportunities for Persons with AIDS (HOPWA); the McKinney-Vento Act programs; the Treasury Department's Low-Income Housing Tax Credit program (LIHTC); and the U.S. Department of Agriculture's Rural Development multifamily housing programs.

Survivors who participate in these housing programs can use the VAWA and other protections outlined below to move to safety. For any protections asserted under VAWA, a housing provider may ask the survivor to produce documentation to demonstrate that he or she is eligible for VAWA protections. While the focus of this article describes issues

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arising while a survivor is living in his or her unit and seeks to move for safety, advocates should note that the need to relocate can occur at any point—for example, while someone is on a waitlist for subsidized housing, at admission, during occupancy, and during eviction.

### Relocating with a Voucher

A key feature of a Section 8 voucher is that it may move with the family. Generally speaking, a family with a voucher may only leave its current unit at certain points in time. Normally, a voucher household cannot simply move during the lease term; HUD rules also usually require the family to notify the public housing authority (PHA) when the family decides to move with the voucher. However, Department of Housing and Urban Development (HUD) regulations, at 24 C.F.R. 982.314(b)(4), note that a PHA cannot terminate the assistance of a survivor's household if the family had to move to escape domestic violence, dating violence, or stalking. This protection applies even if the family moved without notifying the PHA first. In order to leave the unit, the survivor must "reasonably believe[] he or she was imminently threatened by harm from further violence if he or she remained in the dwelling unit." 24 C.F.R. 982.314(b)(4). HUD regulations, at 24 C.F.R. 982.314(c)(2)(iii), also note that local PHA restrictions on when or how many times a family can move do not apply to survivor families when the move is needed to protect a household member from abuse.

Certain restrictions exist on whether a family is eligible to move to another PHA's jurisdiction with a voucher. Generally speaking, a family participating in the voucher pro-

gram may not use its voucher to move out of the PHA's jurisdiction if the family has moved out in violation of the lease (*e.g.*, leaving the unit before the conclusion of the lease term). A provision of VAWA 2005, 42 U.S.C. § 1437f(r)(5), includes an exception to this rule for survivors and their households. If a survivor participates in the Section 8 voucher program, the PHA can allow the survivor family to move to another jurisdiction with its voucher, even if the lease term has not yet ended, to escape violence by an abuser. However, certain conditions apply. First, the survivor family must have "complied with all other obligations of the section 8 program." 42 U.S.C. § 1437f(r)(5). Additionally, the survivor family must have "moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit." 42 U.S.C. § 1437f(r)(5).

In the prior discussion about moving to another jurisdiction, advocates may notice that sexual assault is omitted from the categories listed in the VAWA 2005 statute. This is because VAWA 2013 did not make any changes to the voucher portability provisions (*i.e.*, the provisions allowing moves with a voucher to another jurisdiction) included in VAWA 2005. Therefore, the category of sexual assault, which was added in VAWA 2013, was not included. This appears to be an oversight, as one of the main aims of VAWA 2013 is to expand the law's protections to survivors of sexual assault.

*Shared voucher with the abuser.* The situation becomes more complicated if the abuser and survivor are both on the voucher.

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In this scenario, when the survivor seeks to escape the abuse, the PHA should apply the rules regarding a family break up. HUD regulations, specifically 24 C.F.R. 982.315, provide that the survivor gets the voucher if the break up results from domestic violence, dating violence, or stalking.

Note that additional issues may arise if the abuser claims a right to the voucher and seeks a hearing to establish that right, particularly if the PHA has no extra vouchers available. One possible solution is for the housing authority to issue two vouchers – one to the survivor and a conditional voucher to the abuser, pending the abuser’s hearing. However, HUD has previously stated that the abuser “will be removed from the original voucher and will not receive a new voucher.” 75 Fed. Reg. at 66,255. Another potential solution may exist if the survivor obtains a court order that awards him or her the voucher itself. VAWA 2013, at 42 U.S.C. § 14043e-11(b)(3)(C), notes that PHAs retain the authority to honor court orders regarding the possession and distribution of property among household members. Thus, if a survivor has a court order distributing the voucher to the survivor, the PHA can comply with the order by awarding the voucher to the survivor alone. Once the abuser is removed from the voucher, the survivor can then use the voucher to locate housing at a location unknown to the abuser. Reliance on a court order would only be necessary if the alleged abuser is also claiming a right to the voucher, because, as noted above, the PHA is obligated to give the voucher to the survivor.

### **Emergency Transfers**

VAWA 2013 requires each federal agency that administers programs covered by

VAWA (HUD, USDA, and the Treasury Department) to devise model emergency transfer plans that will be used by PHAs as well as by owners and managers of covered federally subsidized housing programs.

The transfer plans will allow survivors of domestic violence, dating violence, sexual assault, and stalking to “transfer to another available and safe dwelling unit” covered by VAWA if (1) the tenant requests the transfer; and (2) either the tenant “reasonably believes that the tenant is threatened with imminent harm...if the tenant remains within the same dwelling unit” or the tenant has experienced a sexual assault at the property in the 90 days preceding the request. 42 U.S.C. § 14043e-11(e).

Neither HUD nor the Treasury Department has issued a model emergency transfer plan. USDA has issued such a plan, which includes guidance regarding the process for requesting an emergency transfer and the property manager’s role after a survivor makes such a request.

*Existing transfer plans.* For tenants living in federally subsidized housing programs administered by a housing authority, PHAs may currently have emergency transfer plans in place for survivors. These plans primarily deal with priority consideration for transfers to other public housing units. These plans are subject to change when HUD issues its model emergency transfer plan in accordance with VAWA 2013. Advocates can consult their PHA planning documents, such as the PHA plan, the Section 8 Administrative Plan or the Admission and Continued Occupancy Plan (ACOP), to see if their PHA has an existing transfer plan in place. An August 2013 HUD notice states that PHAs and other housing providers who have such transfer

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plans may continue using those plans as they are outlined in the PHA's ACOP or Administrative Plan. 78 Fed. Reg. at 47,722.

*Tenant protection vouchers.* A separate provision of VAWA 2013, at 42 U.S.C. § 14043e-11(f), also requires HUD to devise policies and procedures that describe how a survivor applying for an emergency transfer may receive a tenant protection voucher. Tenant protection vouchers, which are a type of Section 8 Housing Choice Voucher made available to local PHAs, would (if issued) allow the survivor to move and find housing on the private rental market. This type of voucher is subject to availability, however.

### **Market-Rate Housing Residents**

Survivors who rent their housing without a federal subsidy are not protected by VAWA or the HUD regulations discussed above. Therefore, a survivor who terminates his or her tenancy before the lease has ended could face substantial financial penalties by breaking the lease. The prospect of these penalties could, in turn, prevent a survivor from leaving a dangerous situation.

### **Early Lease Termination Laws**

Certain states have laws that permit survivors to break their lease early without being subject to the full penalties associated with vacating one's residence while the lease remains in effect. These are called early lease termination laws. As of mid-2014, nearly half of all states nationwide permitted survivors to terminate their leases early. Requirements for obtaining an early lease termination—including notice requirements, amount of rent for which the survivor remains responsible,

### **Resources**

HUD, "The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs," 78 Fed. Reg. 47,717 (Aug. 6, 2013), available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-08-06/pdf/2013-18920.pdf>

HUD, "HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule," 75 Fed. Reg. 66,246 (Oct. 27, 2010), available at: <http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf>

NHLP, "VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards" (updated Jan. 2014), available at: <http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated.pdf>

documentation requirements, etc.—vary by state. Advocates can consult state law to see if early lease termination protections are available where their clients reside.

Advocates who represent federally assisted housing tenants should also determine if their clients are protected by early lease termination laws, as these protections are generally not limited to market-rate rental units. ■

### **Webinar Recording Available**

NHLP recently hosted a webinar entitled "Housing Rights for Survivors Who Have Interacted with the Criminal Justice System: Admissions and Nuisance Ordinances."

The materials and recording are now available at: <http://nhlp.org/node/1484/>

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## Report Details Trends Regarding Domestic Violence

In April 2014, the Bureau of Justice Statistics issued a report entitled “Nonfatal Domestic Violence, 2003-2013,” in which the authors used data from the National Crime Victimization Survey (NCVS) to discuss trends and characteristics of domestic violence. For example, the report notes that domestic violence comprised 21% of violent crime in this timeframe. The BJS report defines “domestic violence” to include “rape, sexual assault, robbery, and aggravated and simple assault committed by intimate partners, immediate family members, or other relatives.” This article highlights certain findings included in the report.

### Background

The BJS report details NCVS data that resulted from in-person interviews conducted for the survey. NCVS data only represent information from interviews of individuals who are at least 12 years old. For the year 2012, NCVS interviewed over 90,000 households and 160,000 individuals.

### Details of the Report

The report contains a series of findings that illustrate trends concerning domestic violence found in the survey. However, the survey revealed additional statistics not discussed here, and therefore, interested advocates should consider reading the report in its entirety.

*Domestic violence rates on the decline.* One trend that the report identified was the decrease in domestic violence rates overall

between the years 1994 and 2012. In fact, the report states that the “rate of domestic violence declined 63%” during this time period. The majority of the decrease took place from 1994 to 2002. Violence perpetrated by intimate partners saw the most substantial decrease (67%). Additionally, “serious domestic violence” (defined as “rape, sexual assault, robbery, and aggravated assault”) decreased overall during the 1994-2012 time period. However, serious violence committed by immediate family members or other relatives had fluctuating rates between 2003 and 2014, but still declined overall. That said, domestic violence remains a very serious problem nationwide, as the survey’s other findings demonstrate.

*Women comprised majority of domestic violence victims.* While overall domestic violence rates declined, women comprised 76% of domestic violence victims, and men constituted 24%. The numbers become more stark when discussing intimate partner violence, in which 82% of the victims were female. Data regarding other classifications of domestic violence (including violence perpetrated by immediate family members or other relatives) exhibited a somewhat lower disparity with 40 % of victims being male, and 60% of victims being female. Whereas women experienced higher percentages of serious violent crime perpetrated by someone known to the victim, for men, the opposite was true (meaning that “more serious violent crime against males was committed by a stranger”).

*Intimate partner violence occurred at higher rates than other types of violence.* According to the report, intimate partner violence comprised a greater percentage of violence (14.6%) than violence perpetrated by members of the victim’s immediate family

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(4.7%) or other family members (2%). However, other acquaintances and strangers were responsible for higher rates of “violent victimization” (a category broader than domestic violence) at approximately 32% and 39% respectively.

Both “male and female victims were more likely to experience violence by an intimate partner than a family member or other relative.” Additionally, existing or ex-boyfriends or girlfriends perpetrated a larger share of violence than either spouses or former spouses. Specifically, for women, most domestic violence was perpetrated by a current or ex-boyfriend or girlfriend (39%), when compared with spouses (25%). Men also experienced higher rates of domestic violence perpetrated by a current or ex-girlfriend/boyfriend, when compared with spouses. In fact, survivors of intimate partner violence “were more likely to suffer serious injuries (i.e., sexual violence injuries, gunshots, knife wounds, internal injuries, unconsciousness, and broken bones) than those victimized by immediate family members or other relatives.

#### *Additional observations*

- Knives and other types of weapons were more common than use of firearms in incidents where the perpetrator used a weapon;
- In nearly 80% of domestic violence incidents in the study, no weapons were involved;
- Between 2003 and 2012, incidents of domestic violence were reported to the authorities in approximately 55% percent of cases; and

- Nearly 80% of domestic violence incidents perpetrated by an intimate partner took place at or in the vicinity of the survivor’s home. ▪

#### **Resources**

Drs. Jennifer L. Truman, and Rachel E. Morgan, U.S. Department of Justice, Bureau of Justice Statistics, “Nonfatal Domestic Violence, 2003-2012) (Apr. 2014), available at: <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf>

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