

## REPORT

### I. Background

According to the most recent Bureau of Justice Statistics report on domestic violence incidents, intimate partners perpetrated over one million acts of domestic violence in 1998.<sup>1</sup> Other studies estimate that 1 to 4 million American women are abused by intimate partners each year.<sup>2</sup> Women are the victims in eighty-five percent of domestic violence incidents.<sup>3</sup> Despite repeated efforts to leave their batterers, many domestic violence victims return.<sup>4</sup> Difficulties in finding adequate and affordable housing are a significant factor in domestic violence victims' decision to stay with or return to abusers.<sup>5</sup> A large percentage of homeless women and children are victims of domestic violence.<sup>6</sup>

The ABA has previously expressed, by policy directive, its support for a multidisciplinary approach to domestic violence:

RESOLVED, That the American Bar Association urges Congress, the states and territories, local governments and agencies, and nongovernmental victim services programs to support efforts to pass legislation and secure funding for the development of multidisciplinary, community-based programs to respond to the current epidemic of domestic violence.”<sup>7</sup>

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<sup>1</sup> National Institute of Justice and Centers for Disease Control and Prevention, U.S. Dep't of Justice, *Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey* (Nov.1998).

<sup>2</sup> Bureau of Justice Statistics, U.S. Dep't of Justice, *Special Report: Violence Against Women: Estimates from the Redesigned Survey* 3 (NCJ – 154348, August 1995); American Psychol. Ass'n, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* 10 (1996); S. Rep. No. 103 – 138, at 38 (1993).

<sup>3</sup> See *supra* note 1. It is not the intent of the ABA to discount the prevalence or seriousness of domestic violence against male victims. However, given the prevalence of female victims, the female pronoun is used to refer to domestic violence victims.

<sup>4</sup> Shelly Kintzel, *The Effects of Domestic Violence on Welfare Reform: An Assessment of the Personal Responsibility and Work Opportunity Reconciliation Act as Applied to Battered Women*, 50 U. KAN. L. REV. 591, fn. 178 (2002) (“about one third of women who flee to battered women's shelters will return to their abusers”; noting that almost 75% of the women interviewed in shelters had left at least one before, some as many as ten times (citing Alyce D. LaViolette & Ola W. Barnett, *It Could Happen to Anyone: Why Battered Women Stay* 7, 165-66 (2d. ed. 2000)); On average, victims leave their abuser seven times before terminating the relationship. See Sojourner Center, *Facts About Domestic Violence*, available at [http://www.sojournercenter.org/fact\\_page.htm](http://www.sojournercenter.org/fact_page.htm) (last visited Oct. 30, 2002).

<sup>5</sup> See H.R. 3752 IH (1), (3), (7), (10), 107<sup>th</sup> Cong. (2002); *Responding to Congressional Directive to Protect Victims of Domestic Violence*, 33 Housing Law Bulletin at 43 (Nat'l Housing Law Project, Feb. 2002); Callie Marie Rennison & Sarah Welchans, *Intimate Partner Violence*, (May 2000, U.S. Department of Justice, Bureau of Justice Statistics Special Report) NCJ 178247 (Rev'd 7/17/2000), available at [www.usdoj.gov](http://www.usdoj.gov).

<sup>6</sup> Amy Correia & Jen Rubin, *Housing and Battered Women* 5, Nov. 2001. A recent House Resolution noted that “50 percent of the homeless women and children in the United States are on the streets because of violence in their homes.” (H.R. Con. Res. 501, 107<sup>th</sup> Cong., (2002). See also 2/80 ABA resolution opposing discrimination on the basis of race, color, creed, sex and national origin; 8/87 ABA resolution supporting amendments to the Fair Housing Act to oppose discrimination against families with children.

<sup>7</sup> American Bar Association, 1995 Annual Meeting, Reports with Recommendations, Item 126.

A critical element of such a multidisciplinary approach is housing. Yet fair housing is sometimes denied domestic violence victims.

## II. Public Housing

Congress has recognized that families experiencing domestic violence have unique needs that should be addressed by those administering federal housing programs.<sup>8</sup> In fact, the Conference Committee report accompanying the HUD appropriations legislation for fiscal year 2002 “direct[ed] HUD to work with PHAs [Public Housing Authorities] to develop plans to protect victims of domestic violence from being discriminated against in receiving or maintaining public housing because of their victimization.”<sup>9</sup> Increasingly, the federal government has delegated the design and implementation of public housing programs to local public housing authorities. Congress instructed HUD to provide local housing authorities the discretion to establish independent policies within the broad framework of federal rules and regulations.<sup>10</sup> Therefore, the decision rests with local authorities as to whether and why domestic violence victims remain in their homes or vacate them, perhaps to confront homelessness. These individual decision makers need guidance from an overriding policy instructing them to not evict or otherwise discriminate based on domestic violence having occurred. Other forms of discrimination against victims of domestic violence may include refusal to rent based on the applicant’s status as a victim of domestic violence.<sup>11</sup>

Current federal housing statutes militate against domestic violence victims’ fair housing assurance. The statutes state that “any 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>12</sup> This provision has become known as a “zero tolerance” or “one-strike” policy.

The local housing authority’s discretion to enforce this provision as to drug-related activity was upheld by the U.S. Supreme Court in *HUD v. Rucker*.<sup>13</sup> There, the Court held that “whether or not the tenant knew, or should have known, about the activity” was immaterial.<sup>14</sup> Some local authorities have applied the law to victims in domestic violence cases and the potential remains for its continued application.

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<sup>8</sup> Federal housing programs may include Section 8 housing vouchers and public housing projects,.

<sup>9</sup> H.R. Conf. Rep. No. 107-272, at 120 (2001).

<sup>10</sup> “The Quality Housing and Work Responsibility Act of 1998 instructed PHAs to develop a five-year plan and one-year annual plans... While housing agencies must abide by federal rules and regulations, many local discretionary policies must also be established. This is the level at which advocacy needs to occur around instituting preferences for housing assistance and eviction policies that don’t punish battered women when they call the police.” Amy Correia & Jen Rubin, *Housing and Battered Women* 5, (2001).

<sup>11</sup> See e.g., *Winsor v. Regency Property Mgmt., Inc.*, Case No. 94 CV 2349 (filed Oct. 2, 1995) (discussion at *infra* notes 21 & 22 and accompanying text).

<sup>12</sup> 42 U.S.C. § 1437d (l)(6).

<sup>13</sup> *HUD v. Rucker*, 122 S.Ct. 1230, 1236 (2002) (“The statute does not require the eviction of any tenant who violated the lease provision. Instead, it entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from rampant drug-related or violence crime”).

<sup>14</sup> *HUD v. Rucker*, 122 S.Ct. 1230, 1233 (2002).

Domestic violence cannot be compared to drug use. That would consist of a throwback to the faulty logic that victims of domestic violence provoke the abuse and deserve what they are handed. “The use of the ‘one-strike’ rule to evict domestic violence victims is based upon the false premise that battered women control the behavior of their attacker.”<sup>15</sup> In fact, it is often the batterer who controls the actions of the victim. Power and control are the twin key elements to domestic violence situations. Abusers use a variety of techniques, including sexual and physical violence, to maintain power and control over their victims. To the extent that the batterer has been successful, a victim of domestic violence will have little to no control over the batterer and his activities within the home. In fact, attempting to control the batterer may be unwise and dangerous. Protective orders are generally available to domestic violence victims, but they provide imperfect protection. Making a victim’s access to public housing dependent on her ability to prevent illegal activity from occurring in the home is unjust given the victim’s powerlessness. Expecting a domestic violence victim to control the criminal behavior of her batterer is akin to expecting a burglary victim to control the criminal behavior of a thief entering his home.

HUD has endeavored to curb the negative impact of the “one-strike” rule on domestic violence victims. In April 2001, the Secretary of the U.S. Department of Housing and Urban Development, issued a Charge of Discrimination in *The Secretary, U.S. Dep’t of HUD & Alvera v. CBM Group* [hereinafter *Alvera*], against a defendant landlord on behalf of a public housing tenant, Ms. Alvera, arguing that the eviction based on the tenant’s status as a domestic violence victim constituted sexual discrimination in violation of the Fair Housing Act.<sup>16</sup> The case, subsequently filed in Oregon District Court<sup>17</sup> was settled.

Despite HUD’s position, local public housing authorities continue to misapply “zero tolerance” or “one-strike” provisions in federally-funded housing to evict or otherwise discriminate against victims of domestic violence from federally-subsidized housing.

Legislatures and housing authorities should make clear to local public housing authorities that the criminal activity of domestic violence against a tenant cannot be a justifiable cause for eviction or other discrimination.

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<sup>15</sup> *Responding to Congressional Directive to Protect Victims of Domestic Violence*, 33 HOUSING LAW BULLETIN 43, 45 (National Housing Law Project Feb. 2002).

<sup>16</sup> See Charge of Discrimination, *The Secretary, U.S. Dep’t of HUD & Alvera v. CBM Group* (HUDALJ 10-99-0538-8).

<sup>17</sup> *United States of America v. CBM Group* (No. 01-857-PA).

### III. Private Housing

The Fair Housing Act, originally enacted in 1968, protects tenants from discrimination on the basis of race, color, religion, sex, familial status, or national origin in public and private housing.<sup>18</sup> Women are often evicted or otherwise discriminated against in public and private housing based on their status as domestic violence victims or because of the actions of their abusers. HUD's argument in *Alvera*, that eviction based on status as a domestic violence victim constituted sexual discrimination prohibited under the Fair Housing Act, would likewise apply to private housing.<sup>19</sup> HUD based its argument on statistics indicating that domestic violence victims are more frequently female and that such eviction policy disparately impacts women.<sup>20</sup> As landlords often take their cues from HUD in drafting lease terms, some private landlords have incorporated "one-strike" provisions into their private leases.

In at least one private housing case, plaintiffs argued that the defendant landlord's refusal to rent to the applicants based on their status as victims of domestic violence constituted domestic violence.<sup>21</sup> On a summary judgment motion from the defendant, the court agreed that such an argument did state a cause of action.<sup>22</sup>

Eradicating domestic violence calls for a community response that will restore victims to a state of autonomy and safety. Some battered women state that they would rather be beaten than risk homeless for themselves and their children. A comprehensive approach to eliminating domestic violence in our society must consider the socioeconomic factors that pressure women to remain with their batterers. Until we stop asking women to choose between being beaten and being able to feed and shelter their children, we cannot expect to rid our society of domestic violence. Domestic violence shelters are a temporary stopgap, not a permanent solution to the housing needs of domestic violence victims. We need public housing policies and enforced fair housing laws that promote continued autonomy and safety for battered women and their children. Federal and state legislatures and agencies must act to eliminate discrimination in housing against victims of domestic violence.

### IV. The Recommendation

The recommendation will promote fairness in housing for victims of domestic violence by urging federal, state, local and territorial administrative agencies to adopt and vigorously enforce regulations to combat discrimination in housing against victims of domestic violence.

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<sup>18</sup> 42 U.S.C. § 3604 (1995). The Fair Housing Act applies to all dwellings, except for (1) single-family houses sold or rented by an owner who does not own more than three such houses at a single time or who does not meet certain other conditions and (2) owner-occupied dwellings containing four or fewer units. *See* Fair Housing Act, 42 U.S.C. § 3603 (a)(2), (b) (1995).

<sup>19</sup> *See supra* notes 16 & 18.

<sup>20</sup> *See id.*

<sup>21</sup> *See, e.g., Winsor v. Regency Property Mgmt., Inc.*, Memorandum Decision and Order, Case No. 94 CV 2349 (filed Oct. 2, 1995).

<sup>22</sup> *See id.* ("Plaintiffs have shown that they have satisfied the requisite legal standard of establishing a prima facie case of disparate impact if... a policy of denying rental applications of victims of domestic violence exists").

.<sup>23</sup> The recommendation is a continuation of American Bar Association efforts begun in 1996 to encourage a multidisciplinary approach to the societal problem of domestic violence.<sup>24</sup> It asks simply that those charged with making the decision as to whether domestic violence victims remain in their homes or are evicted, act with fairness.

Federal and state fair housing laws already prohibit discrimination on the basis of gender. Some courts and administrative agencies have held that there cannot be discrimination against domestic violence victims based on their status as victims of domestic violence. However, the decisions are few and discrimination against victims of domestic violence continues to be widespread. This area of law needs to be clarified to give landlords, administrative agencies, and courts better guidance.

Currently, efforts are also underway in the House of Representatives,<sup>25</sup> Department of Justice,<sup>26</sup> Immigration and Naturalization Service,<sup>27</sup> and the Department of Health and Human Services<sup>28</sup> to provide clarity on how federal laws and agencies can best work to help deter domestic violence and provide critical life saving assistance to domestic violence victims. These multidisciplinary efforts include initiatives directed toward improving housing law and policies for victims of domestic violence. The American Bar Association is ideally situated to help further the effort to promote fairness in housing for domestic violence victims.

## V. Conclusion

Domestic violence continues to occur in epidemic proportions and adversely affects its victims in myriad ways. As previously recognized in American Bar Association policy,

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<sup>23</sup> Jill Davies & Robin Hammeal-Urban, *Federal Housing and Domestic Violence: Introduction to Programs, Policy, and Advocacy Opportunities*, (Oct., 1999).

<sup>24</sup> See *supra* note 7.

<sup>25</sup> H.R. 3995 IH, 107<sup>th</sup> Cong. (2002) (On September 17, 2002, the resolution was reported from the Committee on Financial Services with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed. The resolution includes an amendment to the U.S. Housing Act of 1937 that would exempt victims of domestic violence from eviction based on a family member's criminal activity, noting that such a victim "could not control or prevent the criminal activity relating to domestic violence or dating violence"); H.R. 3752 IH, *supra* note 5 (On March 4, 2002 Committee on Financial Services referred the resolution to Subcommittee on Housing and Community Opportunity of the House. The most recent draft includes findings: "(3) Housing can prevent domestic violence and mitigate its effects. The connection between domestic violence and housing is overwhelming. Of all homeless women and children, 50 percent are fleeing domestic violence... (7) Many women who flee violence are forced to return to their abusers because of inadequate shelter or lack of money. Even if they leave their abusers to go to a shelter, they often return home because the isolation from familiar surroundings, friends, and neighborhood resources makes them feel even more vulnerable... (9) Battered women and their children comprise an increasingly proportion of the emergency shelter population... (10) A stable, sustainable home base is crucial for women who have left situations of domestic violence and are learning new job skills, participating in educational programs, working full-time jobs, or searching for adequate child care in order to gain self-sufficiency").

<sup>26</sup> 2001 Nat'l Victim Assistance Academy (June 2001), available at <http://www.ojp.usdoj.gov/ovc/assist/nvaa2001/chapter9.html>

<sup>27</sup> See *INS memo on Revocation of VAWA-Based Self-Petitions/ Eligibility to Self-Petition as a Battered Spouse of a U.S. Citizen or Lawful Permanent Residence Within Two Years of Divorce* (Aug. 5, 2002 / Jan. 2, 2002), available at [http://www.ins.usdoj.gov/graphics/lawsregs/handbook/vawadv\\_pub.pdf](http://www.ins.usdoj.gov/graphics/lawsregs/handbook/vawadv_pub.pdf)

<sup>28</sup> *Fact Sheet*, Access to HHS-Funded Services for Immigrant Survivors of Domestic Violence (Jan 19, 2001), available at <http://www.hhs.gov/ocr/immigration/bifsltr.html>

combating domestic violence calls for a multidisciplinary approach that accounts for the many socioeconomic needs of victims of domestic violence. One critical need that is inadequately addressed is availability and assurance of affordable housing. Domestic violence victims remain at risk of losing their housing due to public housing “one-strike” provisions and discrimination in public and private housing. These injustices are one of the many that must be addressed if we, as a society, refuse to condone domestic violence.

The American Bar Association should support federal, state, local and territorial legislation to prohibit discrimination in housing against victims of domestic violence and urge all relevant federal, state, local and territorial administrative agencies to adopt and vigorously enforce regulations to combat such discrimination.

Accordingly, we urge adoption of the enclosed resolution.

Respectfully submitted,

ABA Young Lawyers Division  
Alan Olson, Chair

ABA Commission on Domestic Violence  
Laura Stein, Chair

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