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## Housing Preservation under VAWA: The Case for Treating Housing as an Immediate Safety Need

Olivia Alden

The Violence Against Women Act (“VAWA”) is a landmark piece of legislation passed by Congress in 1994.<sup>1</sup> VAWA provides a number of civil remedies for survivors of domestic violence, including the creation of a civil rights remedy that enabled a victim of gender-motivated violence to bring a civil cause of action against the perpetrator,<sup>2</sup> (although this remedy was later held unconstitutional in *United States v. Morrison*)<sup>3</sup> the creation of protections for immigrant victims of domestic violence,<sup>4</sup> and the establishment of stronger housing protections for survivors of gender-based violence and intimate partner violence.<sup>5</sup> This article will focus on the limited housing solutions VAWA provides for survivors of domestic violence, because as one advocate described, service providers often focus primarily on obtaining the family law remedies (i.e. protection orders, divorce, child custody, etc.) as the primary method of achieving both short and long-term safety for the survivor.<sup>6</sup> This article will address why housing should additionally be treated as a primary safety need for survivors of domestic violence. This article will further discuss how maintaining a safe and stable housing situation is a powerful tool that can be used to address the immediate safety of the survivor.

VAWA’s housing protections for survivors only apply to individuals living in public housing, housing subsidized by a federal Section 8 Voucher, or any building that receives a direct federal Section 8 subsidy.<sup>7</sup> A Section 8 or Housing Choice Voucher helps tenants pay rent in private housing, whereas public housing developments are constructed and financially operated through government subsidies.<sup>8</sup> Many states have enacted statutes to provide similar protections to survivors living in private housing; for example, Illinois passed the

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<sup>1</sup> Darold W. Killmer & Marni Newman, *VAWA: A Civil Rights Tool for Victims of Gender-Motivated Violence*, 77 COLO. L. 77, 77 (1999).

<sup>2</sup> Robin R. Runge, *The Evolution of a National Response to Violence Against Women*, 24 HASTINGS WOMEN’S L.J. 429, 437 (2013).

<sup>3</sup> See *United States v. Morrison*, 529 U.S. 598 (2000).

<sup>4</sup> Runge, *supra* note 2, at 440.

<sup>5</sup> Runge, *supra* note 2, at 441.

<sup>6</sup> Interview with Jaclyn Zarack Koriath, Staff Attorney, Legal Aid Chicago (Oct. 3, 2019).

<sup>7</sup> Runge, *supra* note 2, at 444.

<sup>8</sup> Interview with Jaclyn Zarack Koriath, *supra* note 6.

Safe Homes Act in 2007.<sup>9</sup> Domestic violence shelters and service providers are often familiar with state laws that provide protections to survivors in private housing, but it can be more difficult for survivors to access housing remedies in their public housing or Section 8 units.<sup>10</sup> Because survivors are uninformed about housing remedies available to them, which in turn makes housing less accessible, it is important to address why these remedies are necessary and what problems survivors face in housing related to their status as a survivor.

Many studies have been conducted on the link between homelessness and domestic violence, and most of these studies consistently conclude that at least fifty percent of homeless women and children are escaping from domestic violence.<sup>11</sup> Women are often penalized by their landlords because of their “zero-tolerance” violence policies.<sup>12</sup> This may result in the eviction of the survivor, who will then likely face additional challenges in securing housing due to having an eviction on her record.<sup>13</sup> A survivor may also face discrimination based on her status as a survivor. For example, Jaelyn Zarack Koriath, a Staff Attorney in Legal Aid Chicago’s Housing Practice Group, worked with a survivor who was denied an apartment after the prospective landlord discovered the applicant was a survivor of domestic violence.<sup>14</sup> The landlord claimed he “did not want any problems” coming into the complex.<sup>15</sup> Some municipalities also have “zero-tolerance” violence policies, meaning that a survivor may face eviction every time they call the police on their abuser.<sup>16</sup> This discourages survivors from calling the police on their abusers, which can be fatal.<sup>17</sup> When survivors find themselves unable to stay in their homes or find new housing based on their status as a survivor or because of a criminal or eviction record, they may be placed on waitlists for public housing units for years.<sup>18</sup>

<sup>9</sup> See Safe Homes Act 765 ILL. COMP. STAT. § 750/1 *et seq.* (2019).

<sup>10</sup> Interview with Jaelyn Zarack Koriath, *supra* note 6.

<sup>11</sup> Rebecca Licavoli Adams, *California Eviction Protections for Victims of Domestic Violence: Additional Protections or Additional Problems?*, 9 HASTINGS RACE & POVERTY L.J. 1, 10 (2012).

<sup>12</sup> *Id.*

<sup>13</sup> Interview with Jaelyn Zarack Koriath, *supra* note 6.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Adams, *supra* note 11; see generally MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2017).

<sup>17</sup> *Id.*

<sup>18</sup> Danielle Panizzi, *A Victim of Domestic Violence a “Nuisance” to Society?: How Chronic Nuisance Ordinances in Municipalities Impact Victims of Domestic Violence*, 39 WOMEN’S RTS. L. REP. 146, 153 (2018).

It is clear that housing is a key factor to a survivor's immediate safety and to her long-term stability. Problems arise when survivors do not know how to access housing remedies or service providers lack education on options for ensuring a survivor's housing stability.<sup>19</sup> Jaclyn Zarack Koriath finds that her most successful cases under VAWA are in maintaining the survivor's housing, often through ensuring the survivor is able to keep her housing voucher.<sup>20</sup> Other successful cases Ms. Koriath has brought under VAWA include defending a survivor from eviction and fighting against the termination of a survivor's housing subsidy based on her status as a survivor.<sup>21</sup> The biggest issues tend to develop when a survivor is trying to get an emergency transfer to a different public housing or Section 8 unit so that her abuser will not know where she is living, or to be closer to her support system.<sup>22</sup> Under VAWA, each landlord is required to adopt an emergency transfer plan based on the United States Department of Housing and Urban Development's ("HUD") model emergency transfer plan.<sup>23</sup> The covered housing provider is also supposed to bear the costs associated with any transfer where permissible under VAWA.<sup>24</sup> One problem with emergency transfers is when a victim of domestic violence lives with her abuser, it is more difficult to be released from the joint lease agreement or for the survivor to gather the resources to move out of the home.<sup>25</sup> Further, for survivors who are residents of public or subsidized housing, it can be difficult to be transferred to a new unit due to factors outside of their control, such as the availability of an appropriately sized unit.<sup>26</sup> Preference for transfers should therefore be given to survivors of domestic violence. Failure to do so may prolong abusive relationships, as survivors may need to wait for alternative housing before exiting the relationship.<sup>27</sup> This may lead to the survivor staying in the relationship and putting herself at risk of harm to prevent homelessness.<sup>28</sup> It is therefore imperative that public housing authorities prioritize emergency

<sup>19</sup> Interview with Jaclyn Zarack Koriath, *supra* note 6.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 24 C.F.R. § 5.2005(e).

<sup>24</sup> *Id.*

<sup>25</sup> Rasheedah Phillips, *Addressing Barriers to Housing for Women Survivors of Domestic Violence and Sexual Assault*, 24 TEMP. POL. & CIV. RTS. L. REV. 323, 332 (2015).

<sup>26</sup> *Id.*

<sup>27</sup> Elizabeth J. Thomas, *Building a Statutory Shelter for Victims of Domestic Violence: The United States Housing Act and Violence Against Women Act in Collaboration*, 16 WASH. U. J.L. & POL'Y 289, 311 (2004).

<sup>28</sup> *Id.*

transfers for survivors of domestic violence to ensure their safety in leaving the abusive relationship.<sup>29</sup>

Unique challenges also arise in the public housing context when the survivor is a victim of sexual assault. When a survivor is sexually assaulted in her public housing unit, the survivor may have no relationship to the assailant.<sup>30</sup> In these cases, the survivor will not be able to obtain an order of protection because the assailant is not considered family or a household member; this means that the family law remedies that advocates and service providers are familiar with will not apply to a survivor in this situation.<sup>31</sup> In many state statutes that provide housing protections to survivors of domestic or sexual violence in a private housing setting, survivors can often easily obtain a lock change or terminate a lease early based on the violence.<sup>32</sup> However, when a survivor does not know her attacker, it can be more difficult for them to access housing remedies that require an order of protection as proof of the abuse.<sup>33</sup> Furthermore, if a victim flees from the home out of fear for her safety, she will be at risk of losing her housing assistance.<sup>34</sup> Housing authorities therefore need to simplify the process for emergency transfers to make them actually accessible to survivors.

Addressing survivors' housing is an immediate safety need and should be treated as such.<sup>35</sup> It is the opinion of many advocates and judges that the immediate relief survivors need are injunctions and protective orders against their spouses.<sup>36</sup> Housing as an emergency need is often viewed as an afterthought, and even then the focus is on finding emergency shelter for the survivor rather than assisting them in staying in the housing she already has.<sup>37</sup> Housing preservation is often a need that is most difficult to address and is frequently misunderstood by service providers and the courts.<sup>38</sup> For instance, take the case of *Johnson v. Palumbo*.<sup>39</sup> In *Johnson*, the petitioner received notice that her Section 8 Housing Choice Voucher was being terminated due to al-

<sup>29</sup> Interview with Jaclyn Zarack Koriath, *supra* note 6.

<sup>30</sup> Phillips, *supra* note 25, at 334.

<sup>31</sup> *Id.* at 332.

<sup>32</sup> Interview with Jaclyn Zarack Koriath, *supra* note 6.

<sup>33</sup> *Id.*

<sup>34</sup> Phillips, *supra* note 23, at 332.

<sup>35</sup> Interview with Jaclyn Zarack Koriath, *supra* note 6.

<sup>36</sup> Christopher James Regan, *A Whole Lot of Nothing Going On: The Civil Rights 'Remedy' of the Violence Against Women Act*, 75 NOTRE DAME L. REV. 797, 807-08 (1999).

<sup>37</sup> Interview with Jaclyn Zarack Koriath, *supra* note 6; *see also* Regan, *supra* note 36.

<sup>38</sup> Interview with Jaclyn Zarack Koriath, *supra* note 6.

<sup>39</sup> *Johnson v. Palumbo*, 60 N.Y.S. 3d 472, 472 (N.Y. App. Div. 2017).

leged violations of the program rules.<sup>40</sup> The petitioner had lived in her unit with her five children for seven years.<sup>41</sup> In deciding to terminate the petitioner's voucher, HUD alleged that she had failed to disclose another household member and failed to request the Agency's approval to add another family member as an occupant.<sup>42</sup> The additional family member alleged to be living in the unit was the survivor's boyfriend, who had a pattern of abuse directed towards the petitioner.<sup>43</sup> After a hearing on the petitioner's voucher termination, HUD confirmed the termination of the petitioner's voucher and she appealed, arguing that the hearing officer erred in concluding VAWA did not prevent her tenancy from being terminated.<sup>44</sup> The court held that VAWA precluded her termination from the Housing Choice Voucher program, as her voucher was terminated as a result of the domestic violence perpetrated against her.<sup>45</sup> The court found that the petitioner had been subjected to escalating patterns of abuse and that the abuser's violent behavior included his unwanted presence in the unit, which is what initiated the proceedings to terminate her voucher.<sup>46</sup> In this case, termination of the petitioner's voucher was a direct result of her abuser's violence against her.<sup>47</sup>

Another case that provides guidance as to how courts interpret VAWA's protections for survivors in public housing is *Boston Hous. Auth. v. Y.A.*<sup>48</sup> In *Y.A.*, a survivor of domestic violence had entered into several agreements with the Boston Housing Authority ("BHA") to make monthly payments for use and occupancy and rent arrearages.<sup>49</sup> At a housing court hearing, the judge asked why the petitioner was unable to make the payments, and she said it was because of her abusive relationship.<sup>50</sup> The court held that the survivor was not barred from seeking protection from eviction under VAWA.<sup>51</sup> The court found that her failure to pay rent was chronic, but under VAWA, a "temporary failure to pay rent" is one of several potential adverse factors that may be a result of

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<sup>40</sup> *Id.* at 473.

<sup>41</sup> *Id.* at 475.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 476.

<sup>44</sup> *Id.* at 478.

<sup>45</sup> *Id.* at 482.

<sup>46</sup> *Id.* at 481-82.

<sup>47</sup> *Id.* at 482.

<sup>48</sup> *Boston Hous. Auth. v. Y.A.*, 482 Mass. 240, 242 (Mass. 2019).

<sup>49</sup> *Id.* at 243.

<sup>50</sup> *Id.* at 249.

<sup>51</sup> *Id.*

domestic violence.<sup>52</sup> However, the court ultimately held that reporting the domestic violence and experiencing the adverse factors that might be a direct result of the domestic violence are not preconditions to receiving VAWA protections.<sup>53</sup>

Other than *Johnson* and *Y.A.*, few cases have been brought challenging voucher termination and other methods to preserve housing under VAWA. *Y.A.* was decided in May 2019, so it remains to be seen what long-term impact its holding will have and if other courts will follow the Massachusetts Supreme Judicial Court's reasoning.

It is clear that housing is a fundamental need that must be addressed quickly to facilitate the survivor's exit from the relationship and put them on a path to safety. It is crucial that when exiting an abusive relationship, survivors residing in public housing receive special considerations in order to preserve their housing and to maintain stability in at least one aspect of their lives.<sup>54</sup> While family law remedies are crucial to the survivors' safety in their departure from the relationship, housing considerations for survivors in public housing are also a crucial tool for maintaining the survivors' immediate and long-term safety and should be treated as such by courts and domestic violence service providers.<sup>55</sup>

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Interview with Jaclyn Zarack Koriath, *supra* note 6.

<sup>55</sup> *Id.*