HOME SAFE: THE CASE FOR DECOUPLING SURVIVOR EVICTION PROTECTIONS FROM THE CRIMINAL LEGAL SYSTEM

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This Article argues that the decoupling of eviction protections from contact with law enforcement is necessary to prevent homelessness and increase the safety of adults and children who experience abuse in their most intimate relationships. Safe housing is the primary unmet material need for survivors of gender-based violence. But many states make it hard for survivors to stay in their homes by placing law enforcement in a gatekeeper role for eviction protections. Until now, no legal scholar or practitioner has examined the problem of state laws forcing survivors to engage with the criminal legal system as a prerequisite to qualify for housing protections.

Part I of the Article explains the link between gender-based violence and housing instability. Part II is a state law analysis showing that, in the United States, sixteen states have no eviction protections at all for survivors, and twelve states plus the District of Columbia make eviction protections contingent on the survivor calling the police or obtaining a restraining order. In Part III, the Article documents how carceral feminism took root in the anti-violence movement and pushed social and legal responses to gender-based violence toward criminal legal remedies. This history, and its continuing legacy of carceral system funding and program priorities, helps explain why so many states continue to require survivors to call the police or obtain a restraining order to keep the roof over their heads. Part IV explores why requiring survivors to have contact with the criminal legal system causes survivors who cannot call law enforcement to be locked out of vital housing protections.

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Part V of the Article offers several examples of eviction prevention policies that are truly responsive to the needs of survivors. It argues that all states should adopt the standard set forth in the federal Violence Against Women Act, which allows survivors to prove eligibility for eviction protection through non-law enforcement third-party verification or self-certification. The Article envisions a regime of state eviction prevention laws that ensure that survivors have access to safe, stable homes regardless of whether they call on law enforcement or the courts for help.

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INTRODUCTION

Ana[1] *survived nine years in an abusive relationship with the father of her two children. He physically battered her throughout their time together, including while she was pregnant. He psychologically tormented her, convincing her that she would not be able to live without him. The relationship and its daily torture began when she was fifteen years old, and she had no family or financial resources to help her escape. She lived in constant fear and was too afraid of him to call the police—or anyone—for help. After years of abuse, he abandoned the family, and Ana and her children were finally free. But just a few weeks after he left, the family's landlord gave them an eviction notice, citing numerous complaints from neighbors about "noisy arguments" in the home. The eviction notice alleged that the abuse Ana had experienced violated her neighbors' right to enjoy their homes. In Massachusetts, where Ana lives, there are no state laws prohibiting landlords from evicting victims of domestic violence—unless they have called the police or obtained a restraining order against their abuser. So, Ana faced eviction because she was abused. The legal tools at Ana's disposal to defend herself in Massachusetts—like in twenty-seven other states and the District of Columbia—were inadequate to keep her and her children in their home.*

1. The Housing Justice for Survivors Project within the Housing Law Clinic at the Legal Services Center of Harvard Law School represents individual survivors of gender-based violence in the Boston area. Housing Justice for Survivors Project client narratives are presented throughout this Article using pseudonyms and without footnotes. Any survivor stories from other sources are indicated as such. This Article centers these stories because survivor lived experiences are the best illustrations of the harm caused by laws that compel survivors to contact law enforcement in order to access life-saving housing protections.

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The link between gender-based violence[2] and housing instability is undeniable; survivors[3] often face housing loss as a direct result of abuse or find themselves homeless after fleeing violence. Domestic violence is one of the leading causes of housing instability and homelessness, particularly for women and children.[4] Some states have worked with survivors and advocates to establish housing protections for survivors as a way of mitigating the collateral consequences of abuse. These protections include prohibiting evicting survivors; allowing survivors to change their locks, break their leases, or transfer to a safer apartment; and keeping victims' housing records and addresses confidential. Twenty-two states across the country have enacted laws aimed directly at preventing homelessness by prohibiting eviction for reasons related

2. The term "gender-based violence" is used in this Article to encompass domestic violence, sexual violence, and stalking. The terms "domestic violence," "domestic abuse," and "intimate partner abuse" are used interchangeably to describe "a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions . . . that influence another person within an intimate partner relationship. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone." *Domestic Violence*, Dep't of Just., Off. on Violence Against Women (Jan. 25, 2025), https://www.justice.gov/ovw/domestic-violence [https://perma.cc/RJ4G-EVZF]; *see also* Fran S. Danis & Shreya Bhandari, *Understanding Domestic Violence*, *in* Domestic Violence, Intersectionality and Culturally Competent Practice 29 (Lettie Lockhart & Fran S. Danis eds., 2010) (outlining research documenting various tactics of intimate partner abuse and acknowledging that a survivor's race, economic status, religion, age, ethnicity, immigration status, disability, military involvement, and geographic location are among the factors that impact an individual survivor's experience of abuse); Jill Davies & Eleanor Lyon, Domestic Violence Advocacy: Complex Lives/Difficult Choices 5 (2d ed. 2014) (distinguishing between battering intimate partner violence, which involves physical and sexual violence, and non-battering intimate partner violence, which can include psychological abuse, threats, intimidation, economic control, social isolation, and deprivation).

3. This Article predominantly refers to people who have experienced gender-based violence as "survivors." Some contexts call for the term "victim," but anyone who has experienced abuse and lived is surviving it, and a preference for the term "survivor" is intended to honor the daily courage and resilience required to do so.

4. *Five Facts About Domestic & Sexual Violence and Homelessness*, Am. Bar Ass'n., https://www.americanbar.org/groups/domestic_violence/Initiatives/five-for-five/five-facts-homelessness/ [https://perma.cc/6P4B-B4H6] ("38 percent of all domestic violence victims become homeless at some point in their lifetime. In addition, more than 90 percent of homeless women have experienced severe physical or sexual abuse at some point in their lives."); *id.* ("Domestic violence is one of the leading causes of homelessness for children in the United States, with one quarter of homeless children having witnessed violence."); *see also* Michaela E. Benson-Goldsmith et al., *An Exploratory Analysis of Domestic and Intimate Partner Violence Victimization Among Persons Experiencing Eviction*, 31 Violence Against Women 1104, 1104 (2025) ("20% of evicted persons experienced DV/IPV victimization, and DV/IPV often preceded the first eviction.").

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to experiencing domestic violence. These protections can be lifelines for some survivors. But in twelve states, including Massachusetts, and the District of Columbia, local law inextricably binds housing protections to engagement with law enforcement, ensuring that survivors who cannot call the police will be locked out of vital protections. Sixteen states have no housing protections for survivor tenants at all.

Many survivors do not seek assistance from law enforcement because doing so would increase the risk of violence from their abuser or because the police are not a reliable source of safety for that survivor or their community. For many, the rational, safe choice is not to engage with law enforcement and instead to find community-based coping mechanisms, harm mitigation strategies, and strategic escape routes. But in the states that predicate housing protections on contact with the police or courts, choosing to avoid the police and courts disqualifies survivors from protection against eviction. For example, in Massachusetts, an eviction defense protects a survivor's housing, but only if they[5] called the police or got a restraining order prior to the eviction action.[6] Ana, the survivor mentioned above and who will be referred to throughout this Article, never called the police or sought a restraining order against her abuser. Therefore, she could not bring up the anti-retaliation defense she might have been able to use to keep herself and her family housed while working to heal and recover from years of abuse. She was excluded from a protection clearly intended to help people in her precise situation.

The decoupling of eviction protections from contact with law enforcement is necessary to prevent homelessness and increase the safety and well-being of people experiencing abuse in their most intimate relationships. State eviction laws should support the safety of as many survivors as possible by allowing them to self-identify as survivors in need of housing rights, as the federal Violence Against Women Act ("VAWA") already does. However, because VAWA only applies to federally subsidized housing, which represents a comparatively small portion of the rental housing stock, many survivors are not protected by it.

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5. Research shows that most domestic violence and sexual assault involves cisgender female victims. Sharon G. Smith et al., Ctrs. for Disease Control & Prevention, Nat'l Intimate Partner and Sexual Violence Survey: 2015 Data Brief—Updated Release (2018) (finding that one in four women in the United States have experienced intimate partner violence and reported an IPV-related impact during their lifetime, compared to one in ten men). However, men, transgender individuals, and non-binary individuals also experience gender-based violence. To be intentionally inclusive of those experiences, this Article uses gender-neutral pronouns to describe victims and survivors except when referring to a specific person.

6. *See infra* Part II.

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This Article begins by reviewing the deep causal connection between intimate partner violence and homelessness among survivors, and the role that evictions play in punishing survivors for experiencing abuse. In Part II, the Article reviews how twenty-eight states and the District of Columbia fail survivors, either by requiring them to have contact with law enforcement to qualify for housing protections or by failing to have any protections against eviction at all. In Part III, the Article delves into how carceral feminism took root in the anti-violence movement, focusing energy and resources on criminal legal responses to gender-based violence rather than on survivors' material needs. It argues that this evolution is responsible for state laws that push survivors toward law enforcement. In Part IV, the Article outlines the many ways that contacting law enforcement can undermine safety for survivors. Finally, in Part V, the Article examines several examples of eviction prevention policies that are responsive to the needs of survivors. It argues that all states should adopt the standard set forth in VAWA's housing section, which allows survivors to prove eligibility for protection through third-party verification—such as from a therapist, medical doctor, or social worker—or self-certification.

This Article is rooted in over ten years of experience representing Boston-area survivors in their housing matters at the Legal Services Center of Harvard Law School's Housing Justice for Survivors Project. In the Housing Justice for Survivors Project, attorneys and law students represent survivors of domestic violence who are facing housing instability as a direct result of gender-based violence. As the founding director of the project, I am privileged to represent survivors of domestic and sexual violence in a wide range of housing cases, including evictions, subsidy terminations,[7] lease breaking,[8] emergency transfers,[9]

7. Housing subsidies help make housing affordable for low-income Americans, but continued participation in these programs can be jeopardized by gender-based violence. For example, a survivor who falls behind on rent and faces a non-payment of rent eviction due to economic abuse by a partner is in violation of subsidy program rules. Thus, an eviction action can trigger a separate administrative procedure that could result in termination of an otherwise life-long housing benefit. Our work in the Housing Justice for Survivors Project often involves advocating for survivors in both their eviction cases in housing court, as well as subsidy termination proceedings in administrative housing authority hearings.

8. Survivors of gender-based violence may find themselves in housing that is unsafe to remain in due to ongoing risk of harm and, therefore, need to terminate their tenancies on short notice. Our work in the Housing Justice for Survivors Project sometimes involves representing survivors in their efforts to terminate a tenancy to relocate to safe housing.

9. Federally subsidized housing providers are obligated by VAWA to have policies that allow survivors to relocate for safety reasons. 34 U.S.C. § 12491(e). A portion of our work in the Housing Justice for Survivors Project is devoted to advocating for

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and lock changes.[10] The Housing Justice for Survivors Project's eviction defense practice gives us unique insight into the domino effect of abuse that leads to eviction, which in turn places a survivor and their family at risk of homelessness. We have worked on cases in which evictions were filed against survivors for the following abuse-related allegations: calling the police after being locked in her home by her former partner for forty-eight hours while being physically and sexually tortured by him; defending herself with a knife when her abusive former partner became intoxicated and started to threaten her; being an "unauthorized occupant" in her home when her abusive partner refused to put her on the lease as a means of controlling her; falling behind on rent due to her abusive boyfriend stealing her earnings every time she got her paycheck; damage to the apartment caused by a violent attack by an abusive husband; and noise from physical and verbal attacks disturbing neighbors. Other clients have faced eviction for pretextual reasons cited to cover up a retaliatory eviction. In each of these cases, advocates deploy every possible legal defense to prevent the forced removal of the survivor from their home.

We know from representing thousands of survivors over the years that housing is the most pressing material and safety need of survivors of gender-based violence. Lack of access to safe housing exacerbates the harm of intimate partner violence and can force survivors to stay in dangerous relationships longer than they want to. To prevent unjust evictions, state eviction protections should be consistent with the lived experience of abuse and flexible enough to ensure that survivors can keep safe, stable homes regardless of whether they call law enforcement for help.

I. Gender-Based Violence: A Driving Force Behind Survivor Eviction and Homelessness

Housing instability is a reality for many survivors of intimate partner violence and their families. On the one hand, lack of affordable housing alternatives can trap survivors in violent relationships,[11] and on

survivors who are eligible for emergency transfers but have been unlawfully denied that relief.

10. Advocates in the Housing Justice for Survivors Project represent survivors who seek lock changes for safety reasons.

11. Brian Pittman et al., Homelessness in Minnesota: Detailed Findings from the 2018 Minnesota Homeless Study 27 (2020) (finding that 53% of surveyed homeless women reported staying in an abusive relationship because they did not have any other housing options); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color*, 43 Stan. L. Rev. 1241, 1246 n.13 (1991) (explaining that a shelter provider reported nearly 85% of

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the other, abuse can be a direct cause of eviction and homelessness.[12] This unjust cycle of abuse leading to housing instability has been referred to as "double victimization."[13]

This reality is brought into sharp relief when the National Network to End Domestic Violence ("NNEDV") publishes its annual report summarizing the needs of survivors across the United States. On September 4, 2024, domestic violence programs across the country reported data on calls for help and services provided during the twenty-four-hour survey period.[14] On that day, there were 50,188 adult and child survivors staying in shelters or other housing provided by domestic violence programs.[15] There were also 14,095 unmet requests for help, 60 percent of which were for housing or emergency shelter.[16] The gap between the demand for safe, affordable housing options and the resources available has been a longstanding area of unmet need, trapping survivors in homes with their abusive partners.[17] If their

clients returned to abusive relationships because of their difficulties finding housing and employment).

12. *See* Memorandum from Sara K. Pratt, Deputy Assistant Sec'y for Enf't & Programs, U.S. Dep't of Hous. & Urb. Dev., to FHEO Off. & Reg'l Dirs., Assessing Claims of Housing Discrimination Against Victims of Domestic Violence Under the Fair Housing Act and the Violence Against Women Act 1–2 (Feb. 9, 2011), https://www.hud.gov/sites/documents/11-domestic-violence-memo.pdf [https://perma.cc/E5HW-XY4R] ("Housing authorities and landlords evict victims under zero-tolerance crime policies, citing the violence of a household member, guest, or other person under the victim's 'control.' Victims are often evicted after repeated calls to the police for domestic violence incidents because of allegations of disturbance to other tenants. Victims are also evicted because of property damage caused by their abusers. In many of these cases, adverse housing action punishes victims for the violence inflicted upon them."); *Domestic Violence and Homelessness Statistics (2016)*, Off. of Fam. Violence Prevention & Servs., U.S. Dep't of Health & Hum. Servs. (2016), https://acf.gov/ofvps/fact-sheet/domestic-violence-and-homelessness-statistics-2016 [https://perma.cc/L55Z-Y5TM] ("Between 22% and 57% of all homeless women report that domestic violence was the immediate cause of their homelessness.").

13. *See generally* Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 Am. U. J. Gender Soc. Pol'y & L. 377 (2003) (discussing how housing discrimination against domestic violence victims doubly victimizes them).

14. Nat'l Network to End Domestic Violence, 19th Annual Domestic Violence Counts Report 1 (2025) (summarizing the unduplicated count of domestic violence services requested and received from 1,741 domestic violence programs and shelters (86% of all such organizations in the United States) within a twenty-four-hour period).

15. *Id.* at 2.

16. *Id.*

17. A review of eight years of NNEDV annual Domestic Violence Census reports demonstrates that housing is consistently the highest unmet survivor need recorded by domestic violence service providers. In 2018, 76% of unmet needs were housing-related; in 2019 it was 68%; in 2020 it was 57%; in 2021 it was 64%; in 2022 it was 53%; in 2023 it was 54%; in 2024 it was 60%; and in 2025 it was 58%. *See* Nat'l Network to End Domestic Violence, 13th Annual Domestic Violence Counts

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choice is between fleeing abuse and becoming homeless or staying in an abusive relationship to keep the family housed, many survivors will decide staying is the better of two impossible choices.[18] Others will not have a choice at all if they face eviction and subsequent homelessness because of the abuse they are enduring.

Evictions themselves are violent experiences that can leave lasting impacts on adults and children.[19] In most jurisdictions, eviction involves a written notice to the tenant, a judicial proceeding in which the tenant is likely unrepresented by counsel, and then, assuming the landlord has won the right to evict, the forced removal of the tenant by law enforcement, which includes emptying all private property from the dwelling and changing the locks on the door.[20] The final day in this process is a profound rupture for any adult or child, especially if the result is immediate homelessness.

Report: National Summary (2019); Nat'l Network to End Domestic Violence, 14th Annual Domestic Violence Counts Report: National Summary (2020); Nat'l Network to End Domestic Violence, 15th Annual Domestic Violence Counts Report: National Summary (2021); Nat'l Network to End Domestic Violence, 16th Annual Domestic Violence Counts Report: National Summary (2022); Nat'l Network to End Domestic Violence, 17th Annual Domestic Violence Counts Report: National Summary (2023); Nat'l Network to End Domestic Violence, 18th Annual Domestic Violence Counts Report: National Summary (2024); Nat'l Network to End Domestic Violence, 19th Annual Domestic Violence Counts Report: National Summary (2025); Nat'l Network to End Domestic Violence, 20th Annual Domestic Violence Counts Report: National Summary (2026) (on file with author).

18. *See* Davies & Lyon, *supra* note 2, at 6 ("Safety requires more than the absence of physical violence. A victim who is no longer hit by a partner but has no way to feed her children or pay the rent is not safe . . . . Victims are safe when there is no violence, their basic human needs are met, and they experience social and emotional well-being.").

19. *See generally* Bruce Ramphal et al., *Evictions and Infant and Child Health Outcomes: A Systematic Review*, 6 JAMA Network Open (2023) (reviewing eleven peer-reviewed quantitative studies that examine an association between exposure to eviction and infant and child health outcomes and finding that direct experience of eviction or residence in a neighborhood with more evictions was associated with adverse perinatal outcomes in six studies, higher neurodevelopmental risk in two studies, and worse parent-rated child health in two studies); Patrick D. Smith et al., *Eviction from Rental Housing and Its Links to Health: A Scoping Review*, 86 Health & Place (2024) (building on the Ramphal study through a systematic review of fifty-nine studies on the impact of eviction on the health of children and adults, finding that studies examining adverse birth outcomes consistently associated eviction with an increased risk of prematurity, low birthweight, and infant mortality; that studies examining the relationship between eviction and child health outcomes suggest that eviction during childhood adversely impacts child health and development in numerous pathways; and that eviction was associated with significantly higher odds of reporting a hospital admission for a child).

20. *See* Ashley Gromis et al., Princeton Univ. Eviction Lab, Estimating Eviction Prevalence Across the United States: Supplementary Information S-3 (2022).

Eviction defenses that keep survivors housed are crucial not only to prevent the worst possible immediate outcome of eviction (i.e., forced displacement and homelessness), but also to blunt the downstream impact of eviction on their future housing prospects. In addition to losing the roof over one's head, eviction is correlated with a host of negative collateral consequences including loss of capital and private property; lower credit; barriers to future subsidized and market rate housing opportunities; dislocation from employment, school, and healthcare; and the lasting trauma of being physically removed from one's home.[21] Additionally, for-profit tenant screening companies aggregate public eviction records, which are then used as free tenant screening tools by landlords.[22] In this way, public eviction records create a tenant blacklist that systematically excludes people who have faced eviction in the past from securing housing in the future.[23] The result is that anyone who has had an eviction filed against them is pushed into poorer and poorer quality housing. This weaponization of public eviction records deepens poverty, given the disproportionate use of

21. *See generally* Matthew Desmond & Carl Gershenson, *Who Gets Evicted? Assessing Individual, Neighborhood and Network Factors*, 62 Soc. Sci. Rsch. 362, 362 (2016) (discussing the collateral consequences of eviction and noting that tenants who are evicted end up in poorer quality housing in less safe neighborhoods); Rasheedah Phillips, *Addressing Barriers to Housing for Women Survivors of Domestic Violence and Sexual Assault*, 24 Temp. Pol. & C. R. L. Rev. 323 (2015) (discussing the collateral consequences of domestic violence in the housing context); Gabriel L. Schwartz et al., *Eviction as a Community Health Exposure*, 340 Soc. Sci. & Med. 1, 2 (2024) (describing links between eviction risk and infectious diseases, health outcomes, disruption of neighborhood social cohesion, and social network strain).

22. *See, e.g.*, Annette Duke & Andrea Park, Mass. L. Reform Inst., Evicted for Life: How Eviction Court Records Are Creating a New Barrier to Housing 4, 10 (2019) (describing how tenant screening companies access free online eviction records, like MassCourts).

23. *See* Sandra Park, *Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women*, ACLU (Mar. 30, 2017), https://www.aclu.org/news/womens-rights/unfair-eviction-screening-policies-are-disproportionately [https://perma.cc/24XU-C4AF] (revealing how tenant screening companies provide court data to landlords, creating a tenant blacklist that disproportionately locks Black women out of housing opportunities); Duke & Park, *supra* note 22, at 9–10 (finding that tenants' housing applications were rejected solely because an eviction had been filed against them, regardless of the reason or outcome of the case); *see also* Kaveh Waddell, *How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times*, Consumer Reps. (Mar. 11, 2021), https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/ [https://perma.cc/3YBR-X2WP] (explaining that just having an eviction case filed against a renter could cause a housing application to be denied regardless of the outcome of a case).

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eviction against female tenants of color,[24] and worsens lifelong mental and physical health outcomes for renters.[25]

Survivors of gender-based violence are particularly vulnerable to eviction and therefore are more likely to be saddled with the harmful collateral consequences of forced displacement. The harm caused by the violence of forced displacement compounded with that of intimate partner violence is devastating across every measure of human well-being, which is why housing protections are so crucial to survivors.

For survivors who live in federally subsidized housing, which only accounts for roughly 11 percent of renter households nationally,[26] VAWA provides a comprehensive set of housing protections. These protections include an affirmative defense to prevent eviction, a prohibition on discrimination against survivors, a right to relocate to safe housing, and a right to report abuse without facing retaliation by the landlord.[27] However, VAWA does not apply to survivors living in state-subsidized housing or private market rental housing. This two-tiered system of housing protections is uneven and complex to navigate, excluding many tenants from the robust housing protections codified in VAWA.

If VAWA does not apply to a survivor's case, survivors and their advocates must use state and local law to stabilize their housing. In Massachusetts, for example, an anti-retaliation defense can be asserted to fight an eviction.[28] But if the survivor has not had contact with the criminal legal system (as in Ana's case), they do not qualify for the

24. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Socio. 88, 91 (2012) (documenting the disproportionate use of eviction against women of color, and Black women in particular, and positing that eviction is both caused by poverty and often impoverishes tenants further by stripping them of capital and property and causing loss of employment).

25. *See, e.g.*, Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 Soc. Forces 295, 299–300 (2015) (finding that eviction is associated with a decrease in income, an increase in psychological distress, a spike in mental health challenges, and illness for both mothers and children); Katherine A. Sabbeth, *(Under)Enforcement of Poor Tenants' Rights*, 27 Geo. J. on Poverty L. & Pol'y 97, 119–34 (2019) (documenting the gap between the right to live in safe and sanitary housing and the enforcement of those rights on behalf of low-income tenants, resulting in long term exposure to hazardous living conditions); Gracie Himmelstein & Matthew Desmond, *Association of Eviction with Adverse Birth Outcomes Among Women in Georgia, 2000 to 2016*, 175 JAMA Pediatrics 494, 497 (2021) (finding a correlation between eviction filings against women in their second and third trimesters of pregnancy and low birth weights and higher rates of premature birth).

26. 10.1 million people in 5.2 million households receive federal housing assistance. Ctr. on Budget & Pol'y Priorities, United States Federal Rental Assistance Fact Sheet (2025). There are forty-four million renter households in the United States. Joint Ctr. for Hous. Stud. of Harv. Univ., America's Rental Housing 9 (2022).

27. *See infra* Section V.D.

28. Mass. Gen. Laws ch. 239, § 2A (2026).

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protection, and a landlord is not prohibited from evicting them.[29] This defense, which was statutorily enacted with the intention of protecting the housing of as many survivors as possible,[30] forces survivors to interact with law enforcement in order to get housing protections, even if it is not beneficial to their safety or well-being to do so.

II. Twenty-Eight States and the District of Columbia Fail to Meaningfully Support Survivor Housing Stability

Twenty-eight states and the District of Columbia have inadequate eviction protections for survivors who need them. Sixteen of these jurisdictions have no protection on the books at all, and thirteen have protections that make law enforcement the gatekeeper of eviction protections, rendering them inaccessible for many survivors.

These twenty-nine jurisdictions are out of step with the needs of many survivors. Their laws are also inconsistent with the Revised Uniform Residential Landlord and Tenant Act, a model law developed by a non-partisan group of practitioners, law professors, and judges in consultation with the American Bar Association and the American Law Institute. The model law contains a retaliation defense that prohibits eviction when gender-based violence caused a lease violation and allows survivors to qualify for housing protections by providing third-party or self-verification signed under a penalty of perjury.[31]

Notwithstanding the well-documented link between gender-based violence and homelessness, sixteen of these jurisdictions have not

29. In cases where a state's anti-retaliation defense does not help a Housing Justice for Survivors Project client, and in the absence of an affirmative defense, we can make Fair Housing Act and state law-based discrimination arguments to defend against the eviction.

30. Press Release, Off. of Governor Deval Patrick, Governor Patrick Signs Legislation to Provide Housing Rights and Protections for Victims of Sexual Assault and Domestic Violence (Jan. 3, 2013), http://archives.lib.state.ma.us/bitstream/handle/2452/200572/ocn795183245-2013-01-03b.PDF?sequence=1 [https://perma.cc/Z9ZV-EZZS] (quoting Lieutenant Governor Murray, chair of the Governor's Council to Address Sexual and Domestic Violence, "After facing the emotional and physical trauma of abuse or assault, victims of sexual and domestic violence often struggle with ongoing concern for personal safety, housing instability or potential homelessness if they need to leave their residence . . . . By partnering with the legislature and community based advocates, we are helping to improve the safety of victims in their own home and providing opportunities to improve their safety without further financial penalties.").

31. Revised Uniform Residential Landlord and Tenant Act §§ 1101, 1104, 1109 (Unif. L. Comm'n 2015). RULTA was developed by the Uniform Law Commission with the goal of providing "states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law." *Id.* at "About ULC."

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enacted survivor eviction protections.[32] Many of these states do have other housing protections, such as lock changing and lease breaking statutes, or address confidentiality protections. However, eviction, the gateway to homelessness, is ignored, leaving survivors exposed to the injustice of being evicted because of abuse.

The remaining thirteen jurisdictions, including Massachusetts, have survivor eviction protections but require contact with law enforcement or the criminal legal system in order to qualify for them. For example, in Massachusetts, there is no prohibition on evicting a survivor for reasons related to their experience of abuse unless they call the police for help or go to court to get a restraining order prior to an eviction being filed against them. If they call the police or go to court, they are protected against their landlord filing a retaliatory eviction.[33] But if they cannot, they could be evicted if their abuse disturbs their neighbors. A possible reason for requiring contact with law enforcement is that landlords are not equipped to evaluate a survivor's request for protection without third-party confirmation of the survivor's victim status from a credible source. The survivor's word on its own is not seen as sufficient to support a request for protection from eviction.

These thirteen jurisdictions' laws can be roughly grouped into two categories. First, there are anti-retaliation and anti-discrimination defenses that prevent landlords from evicting survivors due to their experience of abuse.[34] In these states, a survivor must demonstrate that they have called the police or gotten a restraining order as a prerequisite

32. These states are Alabama, Alaska, Arizona, Connecticut, Florida, Georgia, Hawaii, Idaho, Michigan, Mississippi, Montana, New Jersey, North Dakota, Ohio, South Carolina, and West Virginia.

33. Mass. Gen. Laws ch. 239, § 2A (2026).

34. *See, e.g.*, Ark. Code Ann. § 18-16-112 (2025) (landlord cannot terminate or retaliate because of domestic violence but only if survivor can verify through a court order); Ind. Code §§ 32-31-8-1 to 32-31-9-15 (2025) (landlord cannot discriminate or retaliate against tenants with a protected status, but to be eligible for protected status, a survivor must have a civil protection order or a criminal no contact order); Mass. Gen. Laws ch. 239, § 2A (2026) (landlord cannot retaliate but only if survivor called the police or obtained a restraining order); 53 Pa. Cons. Stat. § 304 (2025) (prohibiting municipalities from enforcing nuisance ordinances that would require landlords to evict survivors who call law enforcement or emergency services for help); Tex. Prop. Code Ann. § 92.015 (2025) (landlord cannot retaliate against survivor but only if they called the police or emergency services and if survivor had a reasonable belief that there was a need for those services); Utah Code Ann. § 57-22-5.1(10) (2025) (landlord cannot penalize or evict survivor but only if they have made reasonable requests for assistance from a public safety agency); Va. Code Ann. § 55.1-1245(D) (2026) (landlord cannot terminate tenancy solely because of an incident of domestic violence but only if survivor bars perpetrator of abuse from the premises via a court order, or collaborates with the landlord to bar perpetrator from the property via no trespass action, or obtains a restraining order).

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for making out such an anti-retaliation or anti-discrimination defense. Second, there are affirmative defenses to eviction that are triggered when a survivor has called the police or obtained a restraining order.[35]

In many ways these protections represent important advancements in the movement toward safe, stable housing for survivors, and they certainly go farther than the sixteen jurisdictions that have no eviction protections for survivors. However, predicating a survivor's access to housing protections on them calling the police fails to keep the most marginalized survivors housed. Many survivors cannot call the police because it is not safe to, either because doing so will escalate abuse or because of biased policing that perpetuates violence on survivors and their communities.[36]

III. How We Got Here: The Role of Carceral Feminism

Over the past fifty years, advocates concerned with intimate partner violence in the United States have coalesced into an impactful social and political movement. I refer to this movement as the "anti-violence movement" throughout this Article. A robust literature already exists chronicling the history and problems of the anti-violence movement's embrace of law enforcement as the primary government-sponsored response to gender-based violence.[37] That history, and its implications

35. *See, e.g.*, Iowa Code Ann. § 562A.27A (West 2025) (landlord can evict tenant who causes a clear and present danger to the health or safety of the community but exempts survivors who have obtained a restraining order or reported to the police); Colo. Rev. Stat. § 13-40-104 (West 2025) (eviction defense available only if domestic violence is documented by a police report or restraining order); D.C. Code § 42-3505.01(c-1) (2026) (eviction defense available only if survivor produces a restraining order or a police report written within the last 60 days); Ky. Rev. Stat. Ann. § 383.300(3) (West 2025) (eviction defense and anti-retaliation defense available only if survivor obtained a no contact or restraining order); N.M. Stat. Ann. § 47-8-33(J) (West 2025) (eviction defense available only if survivor obtained restraining order); Tenn. Code Ann. § 66-28-517 (West 2025) (landlords can terminate tenancies for violence-related incidents but not for survivors who have obtained a restraining order).

36. *See infra* Part IV.

37. *See, e.g.*, Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 Buff. Crim. L. Rev. 801 (2001); Elizabeth Bernstein, *The Sexual Politics of the "New Abolitionism"*, *in* 18 Differences 128, 143 (Elizabeth Castelli ed., 2007); Leigh Goodmark, A Troubled Marriage: Domestic Violence and the Legal System (2012); Beth Richie, Arrested Justice: Black Women, Violence, and America's Prison Nation (2012); Mimi E. Kim, Dancing the Carceral Creep: The Anti-Domestic Violence Movement and the Paradoxical Pursuit of Criminalization, 1973–1986 (Fall 2014) (Ph.D. dissertation, University of California, Berkeley) (ProQuest); Leigh Goodmark, Decriminalizing Domestic Violence: A Balanced Policy Approach to Eliminating Intimate Partner Violence (2018) [hereinafter Goodmark, Decriminalizing Domestic Violence]; Aya Gruber, The Feminist War on Crime: The Unexpected Role of Women's Liberation in

for current policies, provide important context for analyzing the problem of survivor housing protections that require contact with law enforcement.

Elizabeth Bernstein coined the phrase "carceral feminism" to describe the "drift from the welfare state to the carceral state as the enforcement apparatus for feminist goals."[38] In other words, the mainstream anti-violence movement came to view gender-based violence as a criminal issue rather than "a civil rights, human rights, or public health issue," narrowing the available remedies to the problem.[39]

A. The Radical Mutual Aid of Early Shelters

In the 1970s, the anti-violence movement began to shine a light on the theretofore culturally accepted private experience of domestic violence in the United States.[40] Feminist anti-violence activists established the first legal hotlines and emergency shelters at the beginning of the decade in places like St. Paul, Minnesota,[41] and Somerville, Massachusetts.[42] These early anti-violence responses were the embodiment of radical mutual aid.

Women's Advocates in St. Paul, which is considered the first domestic violence shelter in the nation, was started by legal hotline workers who answered calls from survivors seeking help with family law-related matters.[43] They received a number of calls from women seeking refuge from their violent homes and realized there was no place for women in crisis to go.[44] They created Women's Advocates to fill that void, guided by the idea that those in need of shelter were not "clients" but advocates for themselves, their children, and other survivors.[45]

Mass Incarceration (2020); Leigh Goodmark, Imperfect Victims: Criminalized Survivors and the Promise of Abolitionist Feminism (2023).

38. Bernstein, *supra* note 37, at 143.

39. Donna Coker & Ahjané D. Macquoid, *Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement*, 5 U. Mia. Race & Soc. Just. L. Rev. 585, 593 (2015).

40. Mimi E. Kim, *The Coupling and Decoupling of Safety and Crime Control: An Anti-Violence Movement Timeline*, *in* The Politicization of Safety: Critical Perspectives on Domestic Violence Responses 15, 17–18 (Jane K. Stoever ed., 2020) [hereinafter Kim, *Coupling and Decoupling*].

41. *See* Kim, *supra* note 37, at 52–53, 111.

42. *About RESPOND Inc.*, RESPOND, https://www.respondinc.org/about/ [https://perma.cc/VQK3-JAXG].

43. Nina Moini & Alanna Elder, *St. Paul Is Home to the First Domestic Violence Shelter in the Country. They Just Celebrated 50 Years*, Minn. Now (Apr. 25, 2024), https://www.mprnews.org/episode/2024/04/25/after-50-years-of-the-countrys-first-domestic-violence-shelter [https://perma.cc/XEM6-GL2V].

44. *Id.*

45. *Id.*

Today, the program still operates a shelter that serves fifty survivors and their children daily.[46]

In Somerville, four local women banded together and began sheltering survivors in their homes through an informal, secret shelter network where they used porch lights to signal to one another about the safety of those they were harboring.[47] These "founding mothers" established RESPOND Inc. as a non-profit in 1974, making it New England's first domestic violence agency and the second in the nation.[48] More than fifty years later, RESPOND continues to shelter up to twenty-one survivors and their children every day.[49]

These early responses to the scourge of intimate partner violence were survivor-centered, pragmatic, and focused on survivor safety above all else. The emergency shelter model began to spread, with advocates seeking to provide what survivors needed most when they needed it, and by 1980, every major city in the United States had at least one shelter.[50] In many cases, these early shelter advocates recognized the intersectional nature of domestic violence and saw intimate partner violence as a product of "patriarchy, exploitative capitalism, and race- and class-based subordination."[51] These programs were private by necessity, and emergency-based, as opposed to affirmative campaigns to change cultural attitudes or expand access to rights and resources.

B. Law Enforcement Assistance Administration Funding and a New Feminist Legal Strategy

By the late 1970s, two related developments in the anti-violence movement emerged and coalesced to shift the focus of the movement's response to domestic violence away from the basic material needs and safety of survivors to the criminalization of abusers. The first change was the introduction of federal government funding to address domestic violence through the Law Enforcement Assistance Administration ("LEAA").[52] The second was a cutting-edge legal strategy employed

46. *Shelter & Healing*, Women's Advocates: Our Services, https://wadvocates.org/our-services/shelter-healing/ [https://perma.cc/N8ZT-N5MG].

47. *About RESPOND Inc.*, *supra* note 42; Heather Minty, *Leave a Light On for RESPOND*, RESPOND (Oct. 8, 2020), https://www.respondinc.org/events/leave-a-light-on-for-respond-2/ [https://perma.cc/UMY5-DQVQ].

48. *About RESPOND Inc.*, *supra* note 42.

49. *Residential Services Program*, RESPOND, https://www.respondinc.org/residential-services-program/ [https://perma.cc/96RX-SYWC].

50. Leigh Goodmark, *Assessing the Impact of the Violence Against Women Act*, 5 Ann. Rev. Criminology 115, 117 (2022) [hereinafter Goodmark, *Assessing the Impact of the Violence Against Women Act*].

51. Gruber, *supra* note 37, at 43.

52. Goodmark, Decriminalizing Domestic Violence, *supra* note 37, at 12–13.

by the anti-violence movement, which involved filing litigation against police departments that failed to enforce criminal laws against perpetrators of domestic violence.[53]

The federal LEAA funding for domestic violence services focused on training local police departments on how to respond to domestic abuse in the field.[54] Existing criminal laws that applied to physically abusive conduct were not previously enforced by police or prosecutors in the context of family violence,[55] and LEAA funding became a pathway for addressing the existing "arrest avoidance" policy employed by many police departments.[56] LEAA was the first time that federal funding for anti-violence efforts predominantly supported law enforcement, which was later explicitly expressed as the federal preference in VAWA.[57]

At the same time LEAA funding started to flow in the late 1970s, lawyers in the anti-violence movement crafted a legal strategy to establish tort liability for police departments that failed to protect survivors from their abusers.[58] Underpinning this strategy was the idea that law enforcement's failure to protect survivors reflected a wider societal attitude—informed by sexist stereotypes—that gender-based violence was acceptable and unworthy of public concern.[59] Advocates also saw this "failure to protect" litigation as a way to engage the law enforcement and criminal legal system in an effort to outmuscle abusers who had long benefited from a patriarchal society's inaction towards gender-based violence.[60] Three seminal lawsuits were filed—one in Oakland, California (*Scott v. Hart*),[61] one in New York City

53. Leigh Goodmark, *The Unintended Consequences of Domestic Violence Criminalization*, *in* Governance Feminism: Notes from the Field 124, 128 (Janet Halley et al. eds., 2019).

54. Goodmark, Decriminalizing Domestic Violence, *supra* note 37, at 12–13.

55. *Id.* at 13.

56. *Id.*

57. *Id.*

58. *Id.*

59. Sandra S. Park*, Equal Protection for Survivors of Gender-Based Violence: From Criminalization to Law Enforcement Accountability*, 5 U. Mia. Race & Soc. Just. L. Rev. 401, 403 (2015).

60. *See* Claire Houston, *How Feminist Theory Became (Criminal) Law: Tracing the Path to Mandatory Criminal Intervention in Domestic Violence Cases*, 21 Mich. J. Gender & L. 217, 259 (2014) (referencing Pauline Gee, who litigated the *Scott v. Hart* failure to protect case, "In Gee's configuration, men have power and women do not. Domestic violence exacerbates this inequality; [Gee] noted the 'overwhelming *powerlessness* of women who are physically abused by men.' By punishing batterers, the state neutralizes this difference. In this arrangement, the state is not 'male'; it is aligned with women. The state, through its criminal law, exercises power to limit men's dominance over women. Criminal justice intervention again becomes a path to women's liberation.").

61. Complaint, No. C-76-2395 (N.D. Cal. Oct. 28, 1976).

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(*Bruno v. Codd*),[62] and one in Torrington, Connecticut (*Thurman v. City of Torrington*)[63]—to challenge inaction by police departments who failed to meaningfully intervene in domestic violence incidents. These cases were filed to harness the force of the carceral system against abusers; to protect survivors and rebuke the legal system's acquiescence toward intimate partner violence; and to enlighten the public about the problem of domestic violence.[64] Through these lawsuits, advocates won millions of dollars in damages,[65] as well as commitments to respond to intimate partner violence just like other crimes.[66] Other municipalities began to follow suit in crafting police policy that more directly addressed domestic violence.[67]

C. Mandatory Arrest Policies and the United States Attorney General's Task Force on Family Violence

In 1977, Oregon passed the nation's first mandatory arrest law that required police to arrest when there was probable cause to believe that someone had committed domestic violence.[68] The domestic violence advocacy coalition responsible for the passage of this legislation was motivated both by the well-documented harm experienced by survivors

62. 393 N.E.2d 976 (N.Y. 1979).

63. 595 F. Supp. 1521 (D. Conn. 1984).

64. Pauline W. Gee, *Ensuring Police Protection for Battered Women: The* Scott v. Hart *Suit*, 8 WOMEN & VIOLENCE 554, 554 (1983) ("*Scott v. Hart* was filed in 1976 with two primary goals: to obtain effective police protection for battered women by reversing the department's arrest-avoidance policy and to educate not only the criminal justice system, but also the public, about the problem of domestic violence.").

65. *See, e.g.*, *Officers Must Pay $2.3 Million to Wife Maimed by Husband*, N.Y. TIMES (June 26, 1985), https://www.nytimes.com/1985/06/26/nyregion/officers-must-pay-2.3-million-to-wife-maimed-by-husband.html [https://perma.cc/8H46-SFRE].

66. Bruno v. Codd, 393 N.E.2d 976, 980 (N.Y. 1979) ("By its terms the police have agreed hereafter to respond swiftly to every request for protection and, as in an ordinary criminal case, to arrest the husband whenever there is reasonable cause to believe that a felony has been committed against the wife or that an order of protection or temporary order of protection has been violated. Moreover, officers are to remain at the scene of the alleged crime or violation in order to terminate or prevent the commission of further offenses and to provide the wife with other assistance.").

67. GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE, *supra* note 37, at 13–14 ("Concerned about similar litigation, jurisdictions throughout the United States looked for innovative police practices that would shield them from liability," eventually landing on mandatory arrest policies).

68. OR. REV. STAT. § 133.055(2) (1977); Ruth Gundle, *Civil Liability for Police Failure to Arrest:* Nearing v. Weaver, 9 WOMEN'S RTS. L. REP. 259, 261 (1986) (In *Scott v. Hart*, "[a] settlement decree approved by the court in 1979 provided that no arrest-avoidance policy would be used and that domestic violence would be treated as any other criminal behavior.").

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who call police for help and are ignored and by the *Scott* and *Bruno* cases, which had led to pro-arrest policies in two major American cities.[69]

By the 1980s, the anti-violence movement had embraced law enforcement as a primary response to domestic violence.[70] This enmeshing was bolstered by a now-famous 1984 study by Lawrence Sherman and Richard Berk that examined the Minneapolis Domestic Violence Experiment.[71] The study found that men who were arrested for abusing their partners had a lower rate of recidivism than men who were not arrested.[72] These results were accompanied by the authors' caveat that "[t]he findings, standing alone as the result of one experiment, do not necessarily imply that all suspected assailants in domestic violence incidents should be arrested. Other experiments in other settings are needed to learn more."[73] Subsequent research on the impact of mandatory arrest policies has been mixed, with findings that, in some jurisdictions, these policies have a deterrent effect and, in others, have no impact at all, in some cases even contributing to an increase in violence.[74] Notwithstanding the authors' admonition, the Minneapolis Domestic Violence Experiment became an important tool for advocates seeking to expand mandatory arrest policies like Oregon's across the country.[75]

The anti-violence movement's focus on law enforcement found common cause in the Ronald Reagan Administration, which embraced

69. Gundle, *supra* note 68, at 261.

70. Gruber, *supra* note 37, at 43 (citing a 1984 article by movement leader Lisa Lerman, who wrote that the law enforcement model is espoused by both grass roots advocates and legal system stakeholders in order to punish or rehabilitate abusers, to ensure the safety of victims, and to give abusers "a clear message that society will not tolerate his continued violence against his mate"); Lisa G. Lerman, *Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women*, 7 Harv. Women's L.J. 57, 70 (1984) ("The 'law enforcement' model, in contrast [to mediation], is espoused both by grass roots advocates working with battered women, and by an increasing number of court officials, police officers, and others who provide services to battered women.").

71. Lawrence W. Sherman & Richard A. Berk, Nat'l Policing Inst., Police Foundation Reports: The Minneapolis Domestic Violence Experiment 1 (1984).

72. *Id.*

73. *Id.*

74. Goodmark, Decriminalizing Domestic Violence, *supra* note 37, at 14 ("Replication studies found that mandatory arrest laws had deterrent effects in some locations, no effect in other locations, and contributed to increases in violence in others."); *see also* Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. Davis L. Rev. 1009, 1034–37 (2000) (explaining that the National Institute of Justice commissioned studies in six cities and found that the Minneapolis study's results were only replicated in one city across all measures—Miami-Dade, Florida—but that in the other locations arrest was no better on average at deterring repeat violence than other police actions).

75. *See* Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 Harv. Women's L.J. 53, 63 (2017).

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"crime control" as a response to economic, racial, and gender inequality in America.[76] The 1984 United States Attorney General's Task Force on Family Violence issued a report that documented family violence in America based on powerful testimony given directly by survivors, as well as testimony from advocates, medical professionals, law enforcement, and stakeholders in the judicial system, during four Task Force hearings across the United States.[77] The report's preface demonstrates that members of the Task Force understood the complexity of family-based violence:

> To be abused by a spouse . . . carries with it a particular agony. Victims wrestle with feelings of fear, loyalty, love, guilt and shame . . . . Adults will be torn between the desire to shield and help a loved one and their responsibility toward their own safety or others in the household. Children often face alone the terrible truth that those who should protect them are, in fact, a source of harm. Anyone who lives in a violent home experiences an essential loss. The one place on earth where they should feel safe and secure has become instead a place of danger.[78]

Despite this nuanced view of the problem, which could have invited creative and multidisciplinary solutions, the Task Force found that the most important response to family violence that society could provide was one rooted in policing and prosecution.[79] Ultimately, the report concluded that communities must condemn family violence and that, while individuals, service agencies, educators, faith leaders, and others have a role to play in establishing norms, the justice system has primary responsibility for leading this shift in values.[80]

D. The Passage of VAWA

Congress did not pass new legislation or policy addressing domestic violence until the Violent Crime Control and Law Enforcement Act of 1994 (known as the "Crime Bill"), under then-President Bill Clinton.[81] The Crime Bill has since been acknowledged as a significant driver of mass incarceration in the United States, including by President Clinton himself.[82] Among other things, the sweeping legislation created a vast regime of expanded penalties and new crimes, established mandatory

76. Kim, *Coupling and Decoupling*, *supra* note 40, at 20–21.
77. U.S. Dep't of Just., Attorney General's Task Force on Family Violence: Final Report (1984).
78. *Id.* at iii.
79. *Id.* at 10 ("Progress against the problem of family violence must begin with the criminal justice system.").
80. *Id.*
81. Kim, *Coupling and Decoupling*, *supra* note 40, at 22.
82. Gruber, *supra* note 37, at 148.

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minimum sentences, and applied the federal death penalty to sixty offenses.[83] By the end of President Clinton's administration, the prison population in the United States had doubled.[84]

Title IV of the Crime Bill included VAWA, the single most consequential piece of legislation addressing domestic violence in the United States. VAWA's passage as part of the Crime Bill was significant and signaled for some the "concretization of carceral feminism" as a core value in the anti-violence movement.[85] Indeed, VAWA itself contained overtly carceral components—creating new crimes,[86] creating federal penalties for gender-based violence crimes,[87] and appropriating millions of dollars for law enforcement and prosecution of gender-based violence.[88] The Office on Violence Against Women was created within the Department of Justice to administer financial and technical assistance related to VAWA implementation.[89] It also defined domestic violence as "felony or misdemeanor crimes of violence,"[90] thereby tying eligibility for relief under the statute to local criminal code definitions of abuse. In 1994, approximately 62 percent of VAWA funding was allocated to the criminal legal system, a proportion that continues to grow with each reauthorization of VAWA.[91]

In addition to doubling down on criminalization and a law enforcement strategy to combat domestic violence, VAWA has been the most important source of federal rights, funding, and support for survivors of gender-based violence. Over the course of four reauthorizations, VAWA has established significant resources for survivors, including: the Legal Assistance for Victims program, which provides legal help to survivors; transitional housing funding; resources for sexual violence prevention; funding for various public health programs intended for survivors; and

83. *Id.* at 147–48.

84. *Id.* at 148.

85. Kim, *Coupling and Decoupling*, *supra* note 40, at 22.

86. Leigh Goodmark, *Reimagining VAWA: Why Criminalization Is a Failed Policy and What a Non-Carceral VAWA Could Look Like*, 27 VIOLENCE AGAINST WOMEN 84, 87 (2021) [hereinafter Goodmark, *Reimagining VAWA*] ("including interstate travel to commit intimate partner violence, interstate violation of a protective order, and interstate stalking. Other crimes instituted under VAWA include possession of a firearm while subject to a protective order or after a misdemeanor conviction of domestic violence, and causing someone to cross state lines by force, fraud, coercion, or distress, causing injury because of that conduct.").

87. *Id.*

88. GRUBER, *supra* note 37, at 148.

89. *The History of the Office on Violence Against Women*, OFF. ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUST. (Aug. 29, 2024), https://www.justice.gov/ovw/history [https://perma.cc/QN7D-CZTL].

90. Goodmark, *Reimagining VAWA*, *supra* note 86, at 87.

91. *Id.*

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immigration protections.[92] Most importantly for the purposes of this Article, starting in 2005, VAWA established a robust framework of housing protections for survivors who live in federally subsidized housing.[93]

Over time, VAWA's housing protections have expanded in scope and depth, and today VAWA does more to stabilize survivor housing than any state law in the nation. These protections include: an affirmative defense to eviction for any reason that is a direct result of domestic violence, sexual assault, or stalking;[94] a right not to be denied housing for reasons that are a direct result of gender-based violence;[95] a right to transfer to safe housing;[96] a right to break a lease if needed for safety reasons without jeopardizing a housing benefit;[97] a right to call emergency services for help without reprisal;[98] an opportunity to remove an abuser from the lease without facing eviction;[99] and a right to prove eligibility for these life-saving protections through any one of three acceptable forms of documentation, including third-party verification and self-certification.[100] The significance of these protections will be explored further in Part V.D.

VAWA is the gold standard of housing protections for survivors. Yet, it only applies to federally subsidized housing, leaving many survivors with only state-level housing protections. Additionally, it embraces criminalization as the primary response to gender-based violence. Both of these principles—affirming survivor rights and expansion of criminalization—can be true at the same time. And yet the continued commitment to criminalization versus affirmative access to housing continues to be a disservice to survivors. These conflicting approaches are also evident in the thirteen jurisdictions that continue to require contact with law enforcement and the criminal justice system in order for survivors to qualify for eviction protections.[101] However,

92. Goodmark, *Assessing the Impact of the Violence Against Women Act*, *supra* note 50, at 119. The most recent reauthorization took place in 2022. *See The History of the Office on Violence Against Women*, *supra* note 89.

93. 42 U.S.C. § 14043e-11.

94. 34 U.S.C. § 12491(b)(1), (3); 24 C.F.R. § 5.2005(b). This includes criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking. *See* 34 U.S.C. § 12491(b)(3)(A).

95. 34 U.S.C. § 12491(b)(1) (prohibiting denial, eviction, or termination from covered housing on the basis that the survivor is or has been a victim of abuse); 24 C.F.R. § 5.2005(b)(1) (clarifying that any basis for denial, termination, or eviction that is a direct result of abuse cannot be used to evict a survivor).

96. 34 U.S.C. § 12491(e) (granting victims a right to emergency transfers if actual or imminent threat); 24 C.F.R. § 5.2005(e) (defining actual and imminent threat).

97. 42 U.S.C. § 1437f(r)(5).

98. 34 U.S.C. § 12495.

99. *Id.* § 12491(b)(3)(B)(i).

100. *Id.* § 12491(c)(3).

101. *See supra* Part II.

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there are numerous rational reasons for survivors to distrust the police and courts, including a higher risk for significant harm with law enforcement involvement. Even for those who do want law enforcement involvement, their interventions offer uneven results in reducing gender-based violence at a very high cost to society.[102]

IV. Why Many Survivors Are Unable to Call the Police or Obtain a Restraining Order

Survivors perform constant risk analysis in their daily battle to stay alive, protect their children, and maintain dignity.[103] They are in the best position to know what actions—even the most micro protective measures—will trigger an increase in violence in their lives.[104] A survivor-centered approach to addressing domestic violence centers a survivor's own intimate knowledge of the dangers they face and the resources available to them to mitigate those dangers.[105] Decision making about coping with domestic violence or taking steps to terminate a violent relationship should be completely vested in the person experiencing abuse, and laws that are meant to protect the well-being of survivors should avoid prescribing any one path toward safety. This is especially true for weighing whether to contact law enforcement or seek a court order to try to prevent future abuse given the possibly dire consequences of contacting the police.

Survivors hesitate to report gender-based violence to law enforcement for a variety of reasons. In one study by the National Domestic Violence Hotline that surveyed roughly 1,500 survivors, 39 percent felt less safe after calling and 77 percent said they were afraid to call again.[106] The most commonly cited deterrents for calling the police are fear of being blamed or not believed (75 percent), fear of police doing nothing (71 percent), shame or a desire for privacy

102. Goodmark, *Assessing the Impact of the Violence Against Women Act*, *supra* note 50, at 124.

103. *See* Davies & Lyon, *supra* note 2, at 10–11, 17–20 (explaining that survivors are often weighing and evaluating multiple factors all at once when making decisions about themselves and their families, including: abuser-generated risks (e.g., injury to self and children, substance abuse, or mental health disabilities); life-generated risks (e.g., lack of financial resources, racism, other biases and circumstances that the survivor does not control, and challenges of parental and other familial responsibilities); cultural and religious factors; past efforts to escape and the outcome of those plans; highest priority goals; and the most urgent risks that need to be addressed).

104. *Id.* at 3.

105. *Id.* at 19–88.

106. Leigh Goodmark, Nat'l Domestic Violence Hotline, Law Enforcement Experience Report: Domestic Violence Survivors' Survey Regarding Interaction with Law Enforcement 3 (2022).

(52 percent), and escalation of abuse (49 percent).[107] Seventy-one percent of survivors said that, if other resources had been available to them when they needed help, they would have chosen to use those services over calling the police.[108] Survivors listed social workers, mediators, alternative housing, faith communities, emergency shelters, financial help, legal help, and mental health services, among others, as the emergency responses they wish they had access to.[109]

This survey's results are consistent with what I have learned anecdotally from my clients in the Housing Justice for Survivors Project. Some of my clients have called the police seeking protection and have obtained restraining orders against their abusers, but many more cite powerful and rational reasons for not seeking safety from police or courts. Some—not all—of those reasons are explored below.

A. Increased Risk of Lethality

> *Even though AY was experiencing significant physical abuse by her partner, she never believed that getting a restraining order would make her safer because her cousin was killed by her abuser despite having an active restraining order against him.*

Survivors hesitate to call the police in part because doing so may jeopardize their physical and psychological well-being. Calling the police or seeking a restraining order, which requires a survivor to describe abuse under oath both in writing and in court,[110] are attempts to stop violence and to report it to an authority that purports to be more powerful than the abuser. But police may respond to a call for help with no action at all,[111] or a court may deny a restraining order,[112] leaving the

107. *Id.* at 4.
108. *Id.* at 11.
109. *Id.*
110. Opposing parties usually have access to these oaths, which can expose the survivor to retaliation and can be used against the survivor in the future.
111. Jane Aiken & Katherine Goldwasser, *The Perils of Empowerment*, 20 CORNELL J.L. & PUB. POL'Y 139, 154 n.89 (2010) (quoting WOMEN'S RTS. PROJECT, ACLU, DOMESTIC VIOLENCE: PROTECTIVE ORDERS AND THE ROLE OF POLICE ENFORCEMENT (2007)) ("[S]tudies show that often police do not make domestic violence arrests, even in states with laws that require an arrest when there is reasonable cause to believe a protective order has been violated. Nationally, one study found domestic violence assailants were arrested or detained by the police less than half the time—in 47 percent of rape cases, 36 percent of physical assault cases and 28 percent of stalking cases. Another study found that only 20 percent of domestic violence cases resulted in the police arresting the assailant.").
112. *See* Emily M. Poor, *Disentangling the Civil-Carceral State: An Abolitionist Framework for the Non-Criminal Response to Intimate Partner Violence*, 47 N.Y.U.

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victim with an abuser who may be more likely to lash out violently as a result of the survivor's attempt to report abuse.

"Separation assault" is a well-documented phenomenon where violence in an abusive relationship escalates after a survivor takes steps to end the relationship.[113] In a recent study of domestic violence homicides in the state of New York, investigators found that twenty-three out of twenty-five victims had contact with law enforcement prior to being killed by their abuser.[114] This startling statistic highlights how contact with law enforcement does not necessarily increase survivors' safety. Survivors also report acute violence from abusers actively preventing them from calling law enforcement for help during an incident of violence. Survivor said: "He just flipped . . . it started with him pulling my hair, I tried to call the police, he wouldn't let me call them, kept pulling my hair, had me on the couch, hit me on the head . . . ."[115] Contrary to the common perception that trying to leave or reporting abuse to law enforcement is a step toward empowerment and safety, those moments may be the most dangerous in an abusive relationship.

Even if the police do respond to the call for help and arrest the abuser, the survivor still faces safety challenges. The survivor is trapped in a legal process that they do not control. The prosecutor and other stakeholders in the criminal legal system determine the next steps in the case, which may be protracted, usually require the survivor's participation—whether or not they want to or feel safe testifying in court—and may not keep the survivor safe from future abuse or meaningfully address the harm they have experienced.[116] Furthermore, a survivor may be exposed to a heightened risk of retaliatory violence

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Rev. L. & Soc. Change 273, 284 (2023) ("[P]etitioners are not guaranteed a [civil protective order] merely because they apply for one.").

113. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1, 65–66 (1991) ("Separation assault is the attack on the woman's body and volition in which her partner seeks to prevent her from leaving, retaliate for the separation, or force her to return. It aims at overbearing her will as to where and with whom she will live, and coercing her in order to enforce connection in a relationship. It is an attempt to gain, retain, or regain power in a relationship, or to punish the woman for ending the relationship.").

114. N.Y. State Off. for the Prevention of Domestic Violence, NYS Domestic Violence Fatality Review: Report to the Governor and Legislature 5 (2021).

115. Marsha E. Wolf et al., *Barriers to Seeking Police Help for Intimate Partner Violence*, 18 J. Fam. Violence 121, 124 (2003).

116. *See* Lisa A. Goodman & Deborah Epstein, Listening to Battered Women: A Survivor-Centered Approach to Advocacy, Mental Health, and Justice 75 (2008) [hereinafter Goodman & Epstein, Listening to Battered Women] (citing studies that found that 20–30% "of arrested offenders reassault their partners before the court process has concluded" and that increased prosecution rates for domestic assault were associated with increased levels of homicides).

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from an abuser who experiences life-changing adverse consequences as a result of a criminal legal process initiated by the survivor, such as a criminal record, possible jail time, and loss of employment and housing. For many survivors, all of these potential consequences cut against making the decision to call the police.

B. Victim Blaming and Credibility Attacks

> *AS survived years of abuse and never called the police for help because she feared she would not be able to explain what was happening due to her limited English proficiency. To malign and subjugate her further, her abuser called the police and alleged that she threw a cup at him and that he was injured and in fear of her. She was arrested and subsequently lost her federal housing assistance based on a statement she made to the police in English about her abuser's presence in her home.*

Victim-blaming and minimization of harm are still standard cultural and community responses to survivors who disclose abuse. A survivor's credibility is routinely called into question by their community and by the people and systems they seek help from.[117] Survivor credibility is discounted because the dynamics of intimate partner violence are so poorly understood by the institutions and individuals who have power over survivors within the legal system.[118] Survivors are not believed because their stories are routinely viewed through a lens that ignores the impact of neurological trauma and post-traumatic stress disorder caused by abuse.[119] For example, trauma sometimes causes survivors to recount disjointed narratives based on fragmented memories or to relive traumatic events in an emotionally erratic manner.[120] While these responses make sense to a trauma expert, and may even enhance a survivor's credibility, to an untrained observer, the survivor appears inconsistent and unreliable.[121] Additionally, the impact of abuse on a survivor's mental health; a survivor's perceived motives in reporting abuse, such as trying to qualify for services or gain a litigation

117. Deborah Epstein & Lisa Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. Pa. L. Rev. 399, 402 (2019) ("And, perhaps even more important, the pronounced, nearly instinctive penchant for devaluing women's testimony is so deeply embedded within women's experience that it constitutes its own distinct obstacle to their ability to obtain safety and justice.").
118. *Id.*
119. *Id.* at 406.
120. *Id.* at 409.
121. *Id.* at 410.

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advantage; and a survivor's membership in a marginalized group can all cause decision-makers to discriminate against a survivor and deem them untrustworthy.[122]

The skepticism survivors encounter affirms the abusive messaging they may have received from a violent partner (e.g., "no one will believe you") and reinforces uninformed tropes about abusive relationships that prevent individuals and institutions from responding to disclosures with the appropriate urgency (e.g., "if it was really that bad they would have left by now").[123] Law enforcement attitudes continue to reflect these societal biases,[124] further discouraging trust and decreasing the likelihood that survivors will call the police.

Abusers are often adept at weaponizing law enforcement against survivors. Dual arrests, where the police arrest both parties in a domestic violence incident even when there is evidence that one party is the victim acting in self-defense and the other the aggressor, have increased in domestic violence cases.[125] One in four women surveyed by the National Domestic Violence Hotline reported that they had been arrested or threatened with arrest during a partner abuse incident or while reporting a sexual assault to the police.[126] Studies show that when the police respond to a domestic violence incident involving people of color, people with disabilities, or members of the LGBTQ+ community, they frequently misidentify the "primary aggressor" in the situation, exposing the survivor to arrest or an unfavorable narrative in the incident report.[127]

Savvy abusers retaliate against survivors who call the police and file their own post-incident police reports or seek cross-restraining orders

122. *Id.* at 420–38.

123. *Id.* at 446 ("Institution-based discounting closely replicates the dynamics of abuse she endures at home. Perpetrators of intimate partner violence, like system actors, often discredit both the plausibility of a survivor's story and her trustworthiness as a truth teller.").

124. *See* Donna Coker et al., ACLU, Responses from the Field: Sexual Assault, Domestic Violence and Policing 1 (2015) (88% of respondents reported that police "sometimes" or "often" do not believe survivors or blame survivors for violence).

125. Goodmark, Decriminalizing Domestic Violence, *supra* note 37, at 19.

126. TK Logan & Rob Valente, Nat'l Domestic Violence Hotline, Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses 8 (2015).

127. Emily M. Poor, *Police Gatekeeping*, 30 Mich. J. Race & L. 49, 55 (2025); Jenna M. Calton, Lauren Bennett Cattaneo & Kris T. Gebhard, *Barriers to Help Seeking for Lesbian, Gay, Bisexual, Transgender, and Queer Survivors of Intimate Partner Violence*, 17 Trauma, Violence & Abuse 585, 592 (2016) (citing a study finding that in "LGBTQ-specific cases that were reported to police in 2012, the police arrested the survivor 29.7% of the time").

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alleging abuse by the survivor.[128] Survivors report that their abusers know exactly what to say to make them look unreliable and exploit their vulnerabilities to undermine them in front of the police and judges.[129]

Many survivors avoid calling law enforcement for help because of concerns that they will not be believed or that they could be harmed when the police arrive at the scene.[130] Survivors' own accounts of contact with the police and their reasons for hesitating to call them for help are chilling examples of these intersecting concerns:[131]

> "They believed him every time because he didn't leave marks, but this time he did and they accused me of hitting myself in the face. Before they would tell me I need[ed] to leave, and since I had nowhere else to go, I should sleep in my car. He had cuts on his knuckles from hitting me and they said I could be charged with assault."
>
> "I felt the police were buddy-buddy with my partner and ignored what I had to say and the reality of the situation. I was scared and they ignored me."
>
> "[I am afraid] they will take my daughter because of his lies. Everyone believes him because he's so nice, sweet and respectful to them, but it's different. He will say it's me, and the police will believe him."
>
> "I'm terrified that they would not do anything, and it would only make matters worse. No protection for me or my children."
>
> "Because he is [in the military] and several convictions about abuse [have] been brought against him in the past, nothing is going to happen now except more anger towards me."
>
> "Police shoot people of different races or those who are mentally ill, of which my family has both."

C. Nuisance Ordinances

Some cities and towns have local ordinances, referred to collectively as "nuisance ordinances," that require property owners to take action to abate nuisance conduct from tenants.[132] Nuisance

128. Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1682 (2006).
129. Epstein & Goodman, *supra* note 117, at 446–51.
130. *See* LOGAN & VALENTE, *supra* note 126, at 2 (finding that more than half of surveyed survivors said calling the police would make things worse and that more than two-thirds said they were afraid the police would not believe them).
131. *Id.* at 4–8.
132. Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOCIO. REV. 117, 117–20 (2013).

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conduct is often very broadly defined by these laws and can include things like calls to the police or emergency medical care.[133] Nuisance ordinances require landlords to evict tenants engaged in nuisance conduct or face fines, condemnation, or other local sanctions.[134] Enforcement of these ordinances disproportionately harms Black survivors who live in over-policed neighborhoods.[135] These ordinances also harm survivors by explicitly punishing those who do reach out to the police for help. In other words, nuisance ordinances may require choosing between calling for help and taking an action that could cause their eviction.

Lakisha Briggs's case illustrates both the damage these ordinances inflict on survivors and how they operate to deter survivors from calling emergency services during a violent attack.[136] Ms. Briggs was threatened with eviction by her landlord in Norristown, Pennsylvania, because of a local ordinance that penalized landlords who did not evict tenants when the police were called to a property three times in a four-month period.[137] Ms. Briggs feared losing her home so much that she stopped calling the police to report the abuse she was experiencing, even though the violence was escalating and her ex-boyfriend had stabbed her in the neck and attacked her with a brick.[138] Her neighbors eventually called the police, and she had to be airlifted from her home to a hospital for care.[139] As a result of needing emergency services, Ms. Briggs faced eviction due to the police being called to her home for "disorderly behavior" three times in four months.[140]

In 2013, the American Civil Liberties Union ("ACLU") filed a federal lawsuit on behalf of Ms. Briggs, challenging the ordinance on constitutional grounds.[141] Specifically, Ms. Briggs argued that

133. *Id.* at 120.

134. *See Nuisance and Crime-Free Ordinances Initiative*, Nat'l Hous. L. Project (Dec. 2024), https://www.nhlp.org/initiatives/nuisance/ [https://perma.cc/S9G6-L4AU].

135. Desmond & Valdez, *supra* note 132, at 117 (finding that domestic violence was the third most common basis for receiving a nuisance citation and that Milwaukee's nuisance ordinance was disproportionately enforced in African American communities).

136. Briggs v. Norristown, No. 2:13-cv-02191-ER (E.D. Pa. Apr. 24, 2013).

137. Complaint ¶¶ 8–11, Briggs v. Norristown, No. 2:13-cv-02191-ER (E.D. Pa. Apr. 24, 2013); *see also ACLU Challenges Norristown Ordinance that Unfairly Impacts Domestic Violence Victims*, ACLU of Pa. (Apr. 24, 2013, 12:00 ET), https://www.aclupa.org/press-releases/aclu-challenges-norristown-ordinance-unfairly-impacts-domestic-violence-victims/ [https://perma.cc/ZY5B-JMGM] [hereinafter *ACLU Challenges Norristown Ordinance*].

138. Park, *supra* note 59, at 407; *ACLU Challenges Norristown Ordinance*, *supra* note 137.

139. *ACLU Challenges Norristown Ordinance*, *supra* note 137.

140. Complaint ¶¶ 75, 172, *Briggs*, No. 2:13-cv-02191-ER.

141. *Id.*

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the ordinance violated her First Amendment right to petition the government for redress of grievances by impeding her ability to contact law enforcement, her Fourth Amendment right to be secure against unreasonable seizure by depriving her of her tenancy, her right to procedural due process under the Fourteenth Amendment by threatening to deprive her of her tenancy without adequate procedural protections, her right to substantive due process by subjecting her to state-created danger, and her Fourteenth Amendment right to equal protection under the law as a woman who experienced domestic violence.[142] Ms. Briggs also argued that the ordinance violated VAWA and the Fair Housing Act by intentionally discriminating on the basis of sex since the majority of domestic violence survivors are women.[143] A little over a year after the case was filed, Norristown agreed to repeal the ordinance and pay Ms. Briggs's attorney's fees and damages.[144]

While nuisance ordinances are vulnerable to numerous constitutional challenges and may run afoul of the Fair Housing Act and VAWA, thousands of municipalities nationwide have adopted these laws.[145] The ACLU has spearheaded a national campaign to combat some of the nuisance ordinances most harmful to survivors.[146] However, the prevalence of these laws nonetheless deters survivors from calling the police for help, even if they want to.[147] Crucially, in the thirteen

142. *Id.* Counts I–V.

143. *Id.* Counts VII, VIII.

144. *Norristown Agrees to Repeal Law that Jeopardizes Safety of Domestic Violence Survivors*, ACLU of Pa. (Sep. 8, 2014, 12:00 ET), https://www.aclupa.org/en/press-releases/norristown-agrees-repeal-law-jeopardizes-safety-domestic-violence-survivors [https://perma.cc/A9Y7-LP5N].

145. Nat'l L. Ctr. on Homelessness & Poverty, Protect Tenants, Prevent Homelessness 28 (2018).

146. *I Am Not a Nuisance: Local Ordinances Punish Victims of Crime*, ACLU (Oct. 6, 2020), https://www.aclu.org/documents/i-am-not-nuisance-local-ordinances-punish-victims-crime [https://perma.cc/NTS9-BT79]; *see, e.g.*, Settlement Agreement, Somai v. City of Bedford, No. 1:19CV373 (N.D. Ohio Sep. 17, 2020) (in which Bedford, Ohio, agreed to repeal its ordinance); Bd. of Trs. of Vill. of Groton v. Pirro, 152 A.D.3d 149 (N.Y. App. Div. 2017) (holding that a Groton, New York, nuisance ordinance violated the First Amendment); Settlement Agreement, Watson v. City of Maplewood, No. 4:17CV1268 JCH (E.D. Mo. Sep. 12, 2018) (in which Maplewood, Missouri, agreed to rewrite its ordinance and to not enforce it against victims of crime or those who call police or emergency services); Settlement Agreement, Markham v. City of Surprise, No. 2:15-cv-01696-SRB (D. Ariz. Mar. 21, 2016) (in which Surprise, Arizona, agreed to repeal its ordinance and to not enact similar ordinances in the future).

147. Pam Fessler, *For Low-Income Victims, Nuisance Laws Force Ultimatum: Silence or Eviction*, NPR (June 29, 2016, 16:28 ET), https://www.npr.org/2016/06/29/482615176/for-low-income-victims-nuisance-laws-force-ultimatum-silence-or-eviction [https://perma.cc/GWB8-CA4V] ("[T]he ordinances can have a chilling effect on tenants, especially those who are low-income with nowhere else to go. Some abusers even use the threat of eviction against their victims, which is what happened to Briggs.").

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jurisdictions that predicate survivor eviction protections on a survivor contacting law enforcement, a survivor who decides not to call the police because they fear losing their housing due to a nuisance ordinance may be ineligible for such eviction protections. Tying housing protections to calls for help to law enforcement in these jurisdictions puts survivors in an impossible position—requiring them to call the police to qualify for an eviction defense but exposing them to a nuisance eviction if they do so.

D. Law Enforcement Violence Against Marginalized Communities

1. Survivors of Color

> *BR, who is a Black woman, called* 911 *while being attacked by her abuser and was placed under arrest when the police arrived at the scene. She was separated from her minor daughter for more than an hour. Officers arrested her former partner but also filed a report with the Department of Children and Families against her, alleging that she failed to keep her daughter safe.*

Black and brown communities have been subjected to biased policing and police violence since the inception of this nation.[148] Modern-day policing, licensed by the federal War on Drugs and facilitated by a criminal legal system singularly focused on punishment through detention, has fed a system of mass incarceration that devastates Black and brown communities across the United States.[149] American law enforcement continues to kill people of color at shocking rates.[150]

Survivors of color are, therefore, forced to choose between calling for help to try to protect themselves from intimate partner violence and protecting their communities from a force that feeds the system of mass incarceration.[151] Given the choice between their own safety and

148. Brandon Hasbrouck, *Abolishing Racist Policing with the Thirteenth Amendment*, 67 UCLA L. Rev. 1108, 1110 (2020).

149. Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness 53–58 (2012).

150. On average, police in the United States kill more than 1,000 people every year, and Black and Latinx people are disproportionately the victims of fatal police violence. *Fatal Force*, Wash. Post (Dec. 31, 2024), https://www.washingtonpost.com/graphics/investigations/police-shootings-database/ [https://perma.cc/LB8G-CBLR].

151. Beth E. Richie, *A Black Feminist Reflection on the Antiviolence Movement*, *in* Domestic Violence at the Margins: Readings on Race, Class, Gender, and Culture 50, 52–53 (Natalie J. Sokoloff ed., 2005); *see also* Michele R. Decker et al., *"You Do Not Think of Me as a Human Being": Race and Gender Inequities Intersect to Discourage Police Reporting of Violence Against Women*, 96 J. Urb. Health 772, 772 (2019) ("The intersectional lens contextualizes a unique paradox for Black women: the fear of unjust harm to their partners through an overzealous and racially motivated

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inflicting state violence on their community, many survivors of color avoid calling the police for help.[152]

Moreover, there is little reason for survivors in communities of color to have faith that law enforcement will protect them if they call for help. Compared to white women, women of color are disproportionately impacted by biased policing and mass incarceration.[153] Black women are 6.9 times more likely than white women to be pulled into the criminal legal system,[154] and Black women are killed by police at alarming rates.[155]

Numerous individual stories from women of color document how they called the police for protection from gender-based violence only to be harmed by the police who responded. In 2000, Cherae Williams, a Black woman, called the New York Police Department for help after being beaten by her boyfriend.[156] Instead of helping Ms. Williams, officers handcuffed her, drove her to an abandoned parking lot, pepper sprayed her, pulled her out of the car by her hair, and then slammed her against the police car.[157] The officers broke her nose, burst her spleen, fractured her jaw, and threatened to kill her if they saw her on the street.[158] There are many other chilling accounts of physical and

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police response and the simultaneous sense of futility in a justice system that may not sufficiently prioritize IPV/SV.").

152. *See* Richie, *supra* note 37, at 119–20 ("Community rhetoric regarding the vulnerability of Black men supersedes the needs that Black women face. This is furthered by the anti-violence movement's over-reliance on the criminal legal system that targets young African American men . . . leav[ing] these young women unprotected, and easy prey for the men in their lives."); Decker et al., *supra* note 151, at 772 (finding that community norms of police avoidance rooted in historic experiences of racial discrimination were potent deterrents to Black women contacting the police, and also finding that police harassment and abuse undermine women with multiple marginalized identities' engagement with the police).

153. Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59 UCLA L. Rev. 1418, 1435–38 (2012).

154. *Id.* at 1437–38.

155. Alisha Haridasani Gupta, *Since 2015: 48 Black Women Killed by the Police. And Only* 2 *Charges*, N.Y. Times (Sep. 24, 2020), https://www.nytimes.com/2020/09/24/us/breonna-taylor-grand-jury-black-women.html [https://perma.cc/7CSM-7Y74] (reporting that 20% of women killed by police since 2015 are Black); *see also* Andrea J. Ritchie, Invisible No More: Police Violence Against Black Women and Women of Color 67–74 (2017) (describing how "Broken Windows" policing increases the likelihood women of color will interact with the police, "sometimes with deadly consequences").

156. Ritchie, *supra* note 155, at 193–94.

157. *Id.*; Juan Forero*, Two Officers Are Accused of Beating Woman Who Asked for Their Names and Badge Numbers*, N.Y. Times (Mar. 2, 2000), https://www.nytimes.com/2000/03/02/nyregion/2-officers-are-accused-beating-woman-who-asked-for-their-names-badge-numbers.html [https://perma.cc/VT3U-JQ3V].

158. Ritchie, *supra* note 155, at 193–94.

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sexual violence perpetrated by law enforcement against survivors of color from across the country.[159]

For some survivors of color, the short-term reprieve associated with the arrest and detainment of an abuser is not desirable because it does not end intimate partner violence or restore their autonomy. In fact, often the opposite occurs when the criminal legal system supplants a survivor's self-determination by monopolizing decision-making, giving prosecutors sole discretion about how to handle the case.[160]

2. *Immigrant Survivors*

> *M is a mother of two children with limited English proficiency and undocumented legal status who experienced physical and psychological abuse by her husband. She was forced into silence for several years by her abuser's threats that if she said anything he would have her deported and she would never see her children again. When she attempted to leave, her husband locked himself in the bathroom with a gun, screaming that he was going to shoot and drown himself. M called a friend who came to pick her and her baby up and helped her call 911. Instead of responding to the abuse, the police questioned why M was not using a car seat for the baby and made no attempt to contact the language line while doing so.*[161]

Abusers can leverage a survivor's immigration status and limited English proficiency to isolate and disempower them. Likewise, that status can be a barrier to calling law enforcement or seeking protection from courts.[162] Rates of intimate partner violence may be as high as

159. *See id.* at 196 (describing survey results documenting police violence on survivors).

160. Angela Y. Davis et al., Abolition. Feminism. Now. 116 (2022) ("[T]he short-term relief associated with state arrest and punishment is not always (or even usually) what survivors of violence want; it does not involve them in decision-making as to what they need and seldom restores what they lost. Slightly less than half of all incidents of intimate partner violence are reported to the police; there are even fewer sexual assaults reported.").

161. This survivor story is a minorly edited story from Filomena Critelli & Asli Cennet Yalim, *Improving Access to Domestic Violence Services for Women of Immigrant and Refugee Status: A Trauma-Informed Perspective*, 29 J. Ethnic & Cultural Diversity in Soc. Work 95, 101–02 (2020).

162. *See* Sheetal Rana, Nat'l Online Resource Ctr. on Violence Against Women, Addressing Domestic Violence in Immigrant Communities: Critical Issues for Culturally Competent Services 2 (2016) (explaining that abusers can control survivors by threatening them with deportation). *See generally* Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 Geo. J. on Poverty L. & Pol'y 245, 269 (2000) (finding that few of surveyed Latina immigrants had sought

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40–50 percent among immigrant women and as high as 59.5 percent among immigrant women married or formerly married to a U.S. citizen.[163]

Studies have documented that, historically, some immigrant survivors do not call law enforcement out of fear that they may be subject to removal from the United States if they do.[164] Undocumented survivors often live in fear of encountering law enforcement and, therefore, avoid calling the police for help at all costs.[165] Since January 2025, both the highly publicized collaboration between law enforcement and immigration enforcement authorities and the use of excessive force toward immigrant communities have made calling the police for help a dangerous prospect for many immigrant survivors, regardless of their immigration status.[166]

Immigrant survivors must also contend with an anti-immigrant culture and legal system in the United States, making extrication from an abusive relationship even more difficult than it can be for other survivors.[167] When these anti-immigrant stereotypes are applied to survivors, they reinforce the idea that "other cultures" accept intimate

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help from services like legal assistance, law enforcement, community-based services for survivors, or crisis hotlines).

163. Nadine Shaanta Murshid & Elizabeth A. Bowen, *A Trauma-Informed Analysis of the Violence Against Women Act's Provisions for Undocumented Immigrant Women*, 24 Violence Against Women 1540, 1541 (2018).

164. *Id.*

165. Rebecca Rodriguez et al., *Action Research at the Intersection of Structural and Family Violence in an Immigrant Latino Community: A Youth-Led Study*, 33 J. Fam. Violence 587, 590 (2018) ("Monica . . . touched on the collective experience of fear felt by her family and provoked by unsafe cues in the environment: 'We don't go out as much. We try not to. We try to get home as early as possible - not late. . . . it's been scary for us as a family; we are always scared of seeing two or three cop cars. For us that's a nightmare.' For this mother, police vehicles, rather than being a sign of safety and security, represented a legitimate threat to family wellness and cohesion.").

166. *See* Meg Anderson, *Police Say ICE Tactics Are Eroding Public Trust in Local Law Enforcement*, NPR (Mar. 30, 2025), https://www.npr.org/2025/03/30/nx-s1-5304236/police-say-ice-tactics-are-eroding-public-trust-in-local-law-enforcement [https://perma.cc/S3E2-YBH8]; *see also* Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. Third World L.J. 231, 246 (1994) (explaining the acrimonious relationship between law enforcement and immigrants in the United States even before the current enforcement crisis: "The history of racism and current racial tensions affects the success of any domestic violence enforcement strategy. For example, Latinas are suspicious of police who have acted in a violent and repressive manner toward the community at large. In addition, a Latina must decide whether to invoke assistance from an outsider who may not look like her, sound like her, speak her language, or share any of her cultural values.").

167. *See* Shamita Das Dasgupta, *Women's Realities: Defining Violence Against Women by Immigration, Race, and Class*, *in* Domestic Violence at the Margins: Readings on Race, Class, Gender, and Culture 56, 58 (Natalie J. Sokoloff ed., 2005) ("Such attitudes emanate from, and in turn reinforce, the fundamental belief

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partner violence and that immigrant survivors are passive, meek, or overly dependent on their partners.[168] Victim-blaming attitudes, immigration protections that are difficult to access, language access challenges, and vulnerability to forced removal proceedings and family separation are all powerful deterrents to calling law enforcement for immigrant survivors. These deterrents are even more powerful when an abusive partner has an immigration status or language skills that can be leveraged to disempower and imperil survivors during police interactions.[169]

3. LGBTQ+ Survivors

> *"I mean I was in mid transition . . . I am still a man on record and my ID and stuff and I'm black. I'm black in [southern state]. It's like first they're going to see I'm this black dude that got beat up by a white man, think we're gay, then see that I'm trans and I'm mid transition and it would be a disaster having to explain all of that and you know the police have a certain way of looking at trans people."*[170]

Intimate partner violence occurs in same-sex relationships at the same rate as heterosexual relationships,[171] and transgender people are substantially more likely to experience abuse than cisgender people.[172] But when members of the LGBTQ+ community call law enforcement for help or seek relief from courts, they face homophobia, transphobia,

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that women of 'other' cultures are inferior to their American counterparts and perhaps contribute to their own victimization.").

168. *See id.*

169. Rana, *supra* note 162, at 2–3; Wolf et al., *supra* note 115, at 125 ("Limited knowledge of English or an inability to speak English was an evident barrier for victims to communicate their experience to the police. Some non-English-speaking women felt very disadvantaged by their language skills and felt that because of this the police dismissed them. Their sense of alienation and despair was worsened when police would speak only to the batterer, who is often the only one to speak English.").

170. Kae Greenberg, *Best Practices in Policing*, *in* Transgender Intimate Partner Violence: A Comprehensive Introduction 224, 231–32 (Adam M. Messinger & Xavier L. Guadalupe-Diaz eds., 2020) (citing a survivor account documented in Xavier L. Guadalupe-Diaz & Jana Jasinski, *"I Wasn't a Priority, I Wasn't a Victim": Challenges in Help Seeking for Transgender Survivors of Intimate Partner Violence*, 23 Violence Against Women 772, 786 (2017)).

171. Xavier Guadalupe-Diaz, *Disclosure of Same-Sex Intimate Partner Violence to Police Among Lesbians, Gays, and Bisexuals*, 3 Soc. Currents 160, 162 (2016).

172. Sarah M. Peitzmeier et al., *Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-Analysis of Prevalence and Correlates*, 110 Am. J. Pub. Health e1, e1 (2020) (finding that transgender people are 2.2 times more likely than cisgender people to experience physical intimate partner violence).

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and gender-role stereotypes.[173] These factors lead to ineffective interventions, exposure to harassment, arrest of the wrong individual, and, sometimes, law enforcement misconduct, all of which revictimize the survivor.[174] These factors, in addition to fear of reprisal, disclosure of sexual orientation, disclosure of gender identity, disclosure of immigration status, and harm from law enforcement, as well as worry that the abuse will not be taken seriously, lead LGBTQ+ survivors to underreport gender-based violence to law enforcement.[175] LGBTQ+ survivors with multiple marginalized identities are even more likely to experience poor and sometimes violent outcomes during encounters with law enforcement.[176] Indeed, gender, sexuality, race, and class are all crucial factors in how LGBTQ+ people experience the criminal legal system and law enforcement.[177]

In addition to the persistent inequities LGBTQ+ people face today in their interactions with the police, the police have also played a historical role in enforcing laws that made LGBTQ+ relationships, sex, and gender expression illegal in this country until relatively recently.[178] Over the course of the twentieth century, police raids on gathering places for the LGBTQ+ community were common and often resulted in mass arrests.[179] Tension with law enforcement has been at the center of the struggle for LGBTQ+ rights for more than a generation.[180] Ultimately,

173. Xavier L. Guadalupe-Diaz & Jana Jasinski, *"I Wasn't a Priority, I Wasn't a Victim": Challenges in Help Seeking for Transgender Survivors of Intimate Partner Violence*, 23 Violence Against Women 772, 775–76 (2017).

174. *Id.*

175. *See* Joey L. Mogul, Andrea J. Ritchie & Kay Whitlock, Queer (In) Justice: The Criminalization of LGBT People in the United States 121 (2011) (detailing a pattern of police discrimination against transgender survivors that leads those survivors to report intimate partner violence to police at lower rates than all others in the LGBTQ+ community); Leigh Goodmark, *Legal System Reform*, *in* Transgender Intimate Partner Violence: A Comprehensive Introduction 258, 258 (Adam M. Messinger & Xavier L. Guadalupe-Diaz eds., 2020) (explaining that only 39% of LGBTQ+ survivors interact with law enforcement in some way and that only 33% seek a protective order).

176. Jordan Grasso et al., ACLU, Policing Progress: Findings from a National Survey of LGBTQ People's Experiences with Law Enforcement 5 (2024).

177. Mogul, Ritchie & Whitlock, *supra* note 175, at xviii ("Queer engagement with law enforcement cannot be accurately described, much less analyzed, as a stand-alone, generic 'gay' experience because race, class, and gender are crucial factors in determining how and which queers will bear the brunt of violence at the hands of the criminal legal system.").

178. *Id.* at 1–19 (chronicling the enforcement of laws that regulated sex, sexual orientation, and gender expression in the United States from its founding to the latter half of the nineteenth century).

179. Grasso et al., *supra* note 176, at 8.

180. *Id.*

the legacy of generational harm, along with contemporary forms of discrimination by police, leads LGBTQ+ survivors to mistrust the police.[181] This lack of trust translates into a lower likelihood of calling the police for help when experiencing intimate partner violence.[182]

4. Native Survivors

> *One Native survivor recalls calling the police for help and the officer's response. "'Lady, if we come out here one more time for this domestic violence situation, we're calling CPS.' So it was like, every time it (violence) would happen, I'm like, oh no, if I call the police, then they're going to report me to CPS . . . I sat there and took the beating instead of calling the police because I was afraid they would take my child . . . ."*[183]

Native women face gender-based violence at devastating rates: the risk of rape or sexual assault is 2.5 times higher for Native women than for the rest of the country; murder is the third leading cause of death for Native women;[184] and Native women experience intimate partner violence at a rate approximately 10 percent higher than women in the general U.S. population.[185] There is also a crisis of "Missing and Murdered Indigenous Women and Girls" in the United States, although the lack of reliable data makes it impossible to know precisely how many Native women have gone missing or been murdered nationally.[186]

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181. *Id.* at 30–32.

182. *Id.* at 32–33 (finding that LGBTQ+ people are less likely than non-LGBTQ+ people to call the police to report victimization). Additionally, laws criminalizing sex work and poverty, such as street homelessness, and a new wave of anti-transgender laws, ranging from bans on providing gender-affirming care to bathroom bans, book bans, and sports participation bans, create a hostile environment for transgender people seeking safety from law enforcement. *Id.* at 8–10.

183. Wolf et al., *supra* note 115, at 126 (excerpt from interview with a Native survivor).

184. Catherine E. McKinley & Hannah Knipp, *"You Can Get Away with Anything Here… No Justice at All"—Sexual Violence Against U.S. Indigenous Females and Its Consequences*, 39 Gender Issues 291, 292 (2022); Urb. Indian Health Inst., Missing and Murdered Indigenous Women & Girls: A Snapshot of Data from 71 Urban Cities in the United States 2 (2019).

185. Brittany Wenniserí:iostha Jock et al., *"We've Already Endured the Trauma, Who Is Going to Either End That Cycle or Continue to Feed It?": The Influence of Family and Legal Systems on Native American Women's Intimate Partner Violence Experiences*, 37 J. Interpersonal Violence 1, 2–3 (2022).

186. Urb. Indian Health Inst., *supra* note 184, at 2. The report identifies several reasons for inaccurate data collection on missing and murdered Native women and girls: "underreporting, racial misclassification, poor relationships between law enforcement and American Indian and Alaska Native communities, poor record-keeping protocols,

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Police violence against Native American communities is deeply rooted,[187] and such violence continues to be pervasive.[188] The lethal mix of excessive force against Native men,[189] as well as the chronic under-investigation of violence against Native women,[190] creates a dynamic of profound distrust of law enforcement among many Native survivors.[191] Law enforcement is not associated with safety for many Native women who find that overlapping law enforcement jurisdictions, negative stereotyping, and victim-blaming drive chronic inaction on the part of police and prosecutors.[192] Discrimination and law enforcement failure to act are even more prevalent when a victim of abuse is Native and the alleged perpetrator is non-Native.[193] This uneven distribution of justice is particularly concerning given that Native women are raped or sexually assaulted by a non-Native perpetrator around two-thirds of the time and over five times as likely to experience intimate partner violence from a non-Native partner as white women are from a white partner.[194]

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institutional racism in the media, and a lack of substantive relationships between journalists and American Indian and Alaska Native communities." *Id.* at 4.

187. *See, e.g.*, Ann E. Tweedy, *Tribes, Firearm Regulation, and the Public Square*, 55 U.C. Davis L. Rev. 2625, 2646–50 (2022).

188. *See, e.g.*, Mike Males, *Who Are Police Killing?*, Ctr. Juv. & Crim. Just. (Aug. 26, 2014), http://www.cjcj.org/news/8113 [https://perma.cc/E7AT-BZ35] (finding that Native Americans comprise 1.9% of police killings despite being 0.8% of the population).

189. *See generally* Barbara Perry, *Nobody Trusts Them! Under- and Over-Policing Native American Communities*, 14 Critical Criminology 411, 411 (2006) (finding that policing of Native American people "simultaneously represent[s] both [] under-enforcement and over-enforcement" and that "[p]articipants have reported activities ranging from willful blindness toward Native American victimization at one extreme, to police brutality at the other").

190. *Id.* at 416.

191. Amnesty Int'l, Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA 4 (2007) ("Violence against [Native] women is characteristically underreported. Barriers to reporting include fear of breaches in confidentiality, fear of retaliation and a lack of confidence that reports will be taken seriously and result in perpetrators being brought to justice. For Native American and Alaska Native women, historical relations with federal and state government agencies also affect the level of reporting of sexual violence.").

192. *Id.* at 41–51 (detailing problems in police responses to gender-based violence against Native survivors); Sarah Deer, *Bystander No More? Improving the Federal Response to Sexual Violence in Indian Country*, 2017 Utah L. Rev. 771, 772 (2017) (describing the United States government, including law enforcement, "as a culpable bystander to the high rates of sexual violence perpetrated against Native women and children," through developing a policy of "official indifference" over time).

193. Jock et al., *supra* note 185, at 14 (identifying racism on the part of law enforcement as a reason for under-enforcement of violence by non-Native abusers against Native survivors).

194. Ronet Bachman et al., U.S. Dep't of Just., No. 223691, Violence Against American Indian and Alaska Native Women and the Criminal Justice

Native survivors may also hesitate to call the police for help in situations of violence because they fear that the police will contact child protective services and the state will take their children, tapping into the generational trauma from the United States government's kidnapping of Native children and confining of them in boarding schools.[195] While Native women often have strong familial and community resources to draw upon when coping with gender-based violence,[196] they continue to experience significant barriers to receiving reliable help from law enforcement.

5. Survivors with Disabilities

> *"The police said, 'What do you want to happen to him?' and I said, 'I want him to stop hurting me, I want him to leave me alone.' And they said, 'Well, we can get it over if we lower the charges' but they didn't tell me anything about what that would look like or how that could be manipulated against me. Because I didn't know how the system worked, I trusted the system and it betrayed me, and that betrayal in its own way was worse than the crime itself, and that's pretty horrific."*[197]

Response: What Is Known 38 (2008); André B. Rosay, Nat'l Inst. of Just., Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey 26 (2016).

195. *See* Theresa Rocha Beardall & Frank Edwards, *Abolition, Settler Colonialism, and the Persistent Threat of Indian Child Welfare*, 11 Colum. J. Race & L. 533, 538 (2021) ("Native family separation is an outcome of U.S. colonialism and settlement, made possible by the state's long-standing carceral commitments to surveillance, containment, and the coercive control of Native lands, families, and resources. Three key Congressional measures illustrate these commitments via forced assimilation and Indigenous land dispossession: the Civilization Fund Act of 1819, the Indian Removal Act of 1830, and the General Allotment Act of 1887. Taken together, these laws demonstrate governmental efforts to break up Native lands and families and fundamentally limit tribal sovereignty. This Congressional legacy provides critical context to current data on Native child removal, linking early histories of settler violence with later assimilationist programs including boarding schools and the adoption of Native children into non-Native homes.").

196. Loring Jones, *The Distinctive Characteristics and Needs of Domestic Violence Victims in a Native American Community*, 23 J. Fam. Violence 113, 115–16 (2008) (noting that family and community support can help people survive abusive relationships but that these same tight-knit communities can also direct blame on survivors and pressure them to remain in the relationship).

197. Brontë Walter et al., *Exploring Lived Experience of Family and Domestic Violence Against Women with Disability: A Scoping Review*, 25 Trauma, Violence, & Abuse 1925, 1932 (2024) (citing J.M. Maher et al., Austl.'s Nat'l Rsch. Org. for Women's Safety, Women, Disability, and Violence: Barriers to Accessing Justice: Final Report 51 (2018)).

People with disabilities experience domestic violence at five times the rate of those without disabilities.[198] People whose disabilities impact their cognitive functioning are at a greater risk of experiencing abuse.[199] Gender-based violence can also lead to lifelong physical, cognitive, and mental health disabilities for survivors who were not born with disabilities.[200] Survivors with disabilities can be vulnerable to gender-based violence due to their dependence on an abuser for day-to-day care, communication challenges, stereotypes and assumptions about capacity and credibility, and the absence of safe, accessible alternatives for care.[201]

Survivors with disabilities experience unique barriers to seeking protection.[202] People with disabilities are arrested, prosecuted, and punished for behaviors linked to or caused by their disabilities.[203] They are also subjected to police violence at astronomical rates.[204] In fact, one in five people who are fatally shot by police are experiencing a non-suicidal mental health crisis at the time of their death.[205] This fear of harm from law enforcement may decrease the probability that survivors with disabilities will turn to the police for help.[206]

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198. Gov't Accountability Off., GAO-24-106366, Federal Domestic Violence Assistance: HHS Should Assess Accessibility-Related Technical Assistance for Local Centers 9 (2024).

199. Ráchael A. Powers & Brittany E. Hayes, *Victim and Third-Party Reporting of Violent Victimization to the Police in Incidents Involving Victims with Disabilities*, 61 J. Res. Crime & Delinq. 268, 271 (2022).

200. *Domestic Violence*, Am. Psychiatric. Ass'n, https://www.psychiatry.org/patients-families/domestic-violence [https://perma.cc/67XN-BKLQ] (listing a range of mental health conditions associated with experiencing intimate partner violence, including posttraumatic stress disorder, depression, and suicide, as well as physical health consequences, such as bodily injuries, headaches, insomnia, chronic pain, gastrointestinal symptoms, chest pain, back pain, pelvic pain, and traumatic brain injuries).

201. Powers & Hayes, *supra* note 199, at 274.

202. *See generally* Mary Ann Curry et al., *Facilitators and Barriers to Disclosing Abuse Among Women with Disabilities*, 26 Violence & Victims 430 (2011) (assessing barriers to reporting abuse for survivors with disabilities). In addition to the types of abuse other survivors experience, survivors with disabilities are also subjected to disability-specific abuse, for example, refusal to provide personal care, such as hygiene. *Id.* at 431.

203. *See* Samantha Santoro & Jamelia N. Morgan, *Disability Criminalization: A Primer*, 62 Am. Crim. L. Rev. 1127, 1128–29 (2025) (providing an overview of how individuals with disabilities are criminalized at every juncture in the criminal legal system based on conduct caused by disabilities).

204. *See id.* at 1134; Jamelia N. Morgan, *Policing Under Disability Law*, 73 Stan. L. Rev. 1401, 1404 (2021).

205. Harun Khan et al., *Fatal Police Shootings of Victims with Mental Health Crises: A Descriptive Analysis of Data from the 2014–2015 National Violent Death Reporting System*, 101 J. Urb. Health 262, 265 (2024).

206. *See* Powers & Hayes, *supra* note 199, at 270.

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E. Increased Risk of Family Policing

> *"Well, I'm not calling the police if they gonna try come take my kids, you know? I'm not gonna call the police anymore."*[207]

One of the most powerful deterrents to survivors calling the police or seeking protection from courts is fear of the child welfare state taking custody of their children.[208] Reporting domestic violence to law enforcement frequently results in the survivor's involvement with child protective services. In one study, 89 percent of survivor advocates reported that contact with police resulted in involvement with child protective services.[209] This involvement stems from laws in most jurisdictions that designate police officers as mandated reporters required to report to child protective services when they respond to a violent incident in a home with children.[210]

Advocates for families have documented that the family policing system in the United States removes children from their parents at alarmingly high rates in response to conditions attendant to poverty and usually not because children are being abused or at risk of abuse.[211] Family policing is "most intense in communities that exist at the intersection of structural racism and poverty."[212] Black and Indigenous families, in particular, are targeted by the family policing system.[213] For survivors in these marginalized communities, contact with law enforcement can lead to an even greater risk of family separation by the family policing system. In light of this reality, survivors—particularly those disproportionately impacted by the family policing system—must weigh the benefits of calling for help against the risk that doing so could

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207. Karin V. Rhodes et al., *"I Didn't Want to Put Them Through That": The Influence of Children on Victim Decision-Making in Intimate Partner Violence Cases*, 25 J. Fam. Violence 485, 490 (2010) (detailing conversation with survivor about how the threat of child protective services caused her to avoid calling the police).

208. *See* Davies & Lyon, *supra* note 2, at 75.

209. Coker et al., *supra* note 124, at 1.

210. Rhodes et al., *supra* note 207, at 486 ("Nationally, legislation often encourages or mandates police and prosecutors to report IPV to Child Protective Services (CPS) upon police calls for service to homes. In the absence of such legislation, some communities have adopted local policies which encourage the same actions.").

211. Hum. Rts. Watch, "If I Wasn't Poor, I Wouldn't Be Unfit": The Family Separation Crisis in the US Child Welfare System 3 (2022).

212. Dorothy Roberts, Torn Apart: How the Child Welfare System Destroys Black Families—And How Abolition Can Build a Safer World 36 (2022).

213. *See generally id.* (revealing how the child welfare system, better understood as the "family policing system," is designed to punish Black families); Dorothy Roberts, Shattered Bonds: The Color of Child Welfare (2001) (exposing the racial politics of child welfare).

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lead to the termination of their parental rights. In many cases, they judge the imperative of keeping their family together as far greater than the possibility of stopping the abuse in that moment.

Some jurisdictions have "failure to protect" laws that subject caregivers to criminal prosecution if they fail to report child abuse to police, even if they themselves are the victim of abuse.[214] In Oklahoma, Missouri, Nebraska, Nevada, South Carolina, and West Virginia, parents who are not abusive to their children can face potential life sentences for failure to protect charges if they do not call the police to report abuse.[215] The horrifying case of Tondalao Hall illustrates how these laws distort justice. Ms. Hall was sentenced to thirty years in prison and served fifteen of them for failing to call the police to report the abuse of her children, while the father who pleaded guilty to the abuse only served two years in jail while awaiting sentencing and was then released.[216] The risk of being arrested and later prosecuted for experiencing abuse and not calling the police further frays trust between survivors and law enforcement in these six states.[217]

F. Economic Subjugation

Economic abuse is a powerful tool abusive partners use to gain and maintain the subordination of their partner. As a result of abuse, and potentially other forms of systemic disadvantage, some survivors lack the economic resources to survive without their abuser.[218] Increased economic dependence on an abusive partner is both a significant predictor of severe violence and a primary reason survivors return to abusive relationships.[219]

Abuse can distance survivors from their sources of material power, including by capturing income, causing job loss, ruining credit, and

214. Amanda Mahoney, *How Failure to Protect Laws Punish the Vulnerable*, 29 Health Matrix 429, 431 (2019).

215. Elizabeth Brico, *State Laws Can Punish Parents Living in Abusive Households*, Talk Poverty (Oct. 25, 2019), https://talkpoverty.org/2019/10/25/failure-protect-child-welfare/index.html [https://perma.cc/5R44-FRJF].

216. Mahoney, *supra* note 214, at 430–33; Aimee Ortiz, *Mother Is Freed After 15 Years in Prison for Father's Abuse*, N.Y. Times (Nov. 8, 2019), https://www.nytimes.com/2019/11/08/us/tondalao-hall-oklahoma-commutation.html [https://perma.cc/CQG2-GXSC].

217. Brico, *supra* note 215 ("[A]s long as failure to protect charges exist, the child welfare system will continue to promote a culture of secrecy surrounding intimate partner violence, thus validating the very abuse it claims to condemn.").

218. *See* Goodman & Epstein, Listening to Battered Women, *supra* note 116, at 76; Deborah M. Weissman, *Gender Violence as a Penalty of Poverty*, 54 U. Mia. Inter-Am. L. Rev. 39, 61–64 (2023).

219. Coker, *supra* note 74, at 1024.

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reducing earning capacity.[220] Intimate partner violence also isolates survivors from family, friends, and other positive relationships that might provide support or intervention.[221] When a survivor lacks sufficient independent income, assets, or resources, the financial support of an abuser can be critical to keeping a survivor's family housed, meeting their nutritional and material needs, and ensuring access to medical care and reliable transportation.[222] This economic dependence binds survivors of limited means to their abusers long after they would choose to end the relationship and helps explain why reporting abuse to police may not appropriately meet the family's safety needs.

G. Misalignment Between Survivor Needs and the Criminal Legal Response

JP wanted the violence to stop and to be allowed to live free from abuse with her kids, but she had no desire to punish her abuser by calling the police and having him prosecuted for the abuse inflicted on her. She just wanted to move on with her life.

Some survivors want the abuse to end but do not want to harm or punish their abusers. One study based on in-depth interviews with survivors over the course of a year found that many survivors favored restorative approaches to intimate partner violence rather than retributive ones.[223] In some cases, survivors seek ways to stay safe in a relationship that they are trying to preserve,[224] and in other cases, survivors seek to end abusive relationships without an escalation or confrontation based on their own reasoned safety assessment.[225]

220. *About Financial Abuse*, Nat'l Network to End Domestic Violence, https://nnedv.org/content/about-financial-abuse/ [https://perma.cc/SBL6-7Y7Z]; Deborah M. Weissman, *In Pursuit of Economic Justice: The Political Economy of Domestic Violence Laws and Policies*, 2020 Utah L. Rev. 1, 3 (2020).

221. Coker, *supra* note 74, at 1022.

222. *See, e.g.*, Margo Lindauer, *"Please Stop Telling Her to Leave." Where Is the Money: Reclaiming Economic Power to Address Domestic Violence*, 39 Seattle U. L. Rev. 1263, 1265–67 (2016).

223. *See generally* Michelle R. Decker et al., *Defining Justice: Restorative and Retributive Justice Goals Among Intimate Partner Violence Survivors*, 37 J. Interpersonal Violence NP2844 (2022) (finding restorative preferences and priorities amongst survivors).

224. Davies & Lyon, *supra* note 2, at 147.

225. *See* Goodman & Epstein, Listening to Battered Women, *supra* note 116, at 76–78 (citing various reasons survivors may not want to involve the criminal legal system in their lives, including concerns about separation violence, retaliation, economic dependence, immigration enforcement, and past violent experiences with law enforcement, all depending on survivors' particular situations and identities).

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Survivors also have goals that the criminal legal system does not attempt to address, such as restoring respect, addressing humiliation, and healing moral injury.[226] Surveyed survivor advocates responded that the criminal legal system's goals were often at odds with the goals of survivors, especially because some survivors look for options other than punishment for or permanent separation from the abuser.[227]

V. Models for Responsive Housing Protections

Twenty-two states have eviction protections for survivors regardless of whether they had contact with law enforcement.[228] These policies recognize the causal link between abuse and housing instability and thus craft eviction defenses that keep tenants housed without pushing them through a problematic criminal legal system to gain access to housing rights. These eviction protection laws include general affirmative defenses, anti-retaliation and anti-discrimination defenses without specific requirements of law enforcement contact, and defenses that allow survivors to provide a variety of non-law enforcement documents to prove eligibility. These laws let survivors bring domestic violence to a court's attention as a legally relevant basis for defending against eviction without first showing that they previously contacted law enforcement. These laws stand out as progressive housing protections for survivors of intimate partner violence.

At the federal level, VAWA similarly gives federally subsidized housing tenants a right to remain housed despite abuse. While prior versions of the law required a police report or restraining order as proof of eligibility for VAWA housing protections, the law has evolved over time to allow survivors to choose how they document their eligibility for protection, including through self-certification.[229] VAWA's combination of a forceful affirmative defense and a flexible documentation

226. Gillian M. Pinchevsky, Susan L. Miller & Leigh Goodmark, *"Stop Giving Us What You Think We Need. Come to Us and Ask Us What We Need": Justice Perceptions Among Survivors of Domestic Abuse*, 31 Violence Against Women 2661, 2664 (2024).

227. Coker et al., *supra* note 124, at 3.

228. These twenty-two states are: California, Delaware, Illinois, Kansas, Louisiana, Maine, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Vermont, Washington, Wisconsin, and Wyoming. *See infra* Appendix A (detailing each state's provisions).

229. 34 U.S.C. § 12491(c)(3) (granting victims a right to prove eligibility through any one of three acceptable forms of documentation, including third-party verification and self-certification); U.S. Dep't of Hous. & Urb. Dev., Form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking [hereinafter Form HUD-5382] (HUD-approved self-certification form).

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requirement makes it the gold standard for domestic violence eviction protection.

Strong eviction defenses alone are not a panacea for the homelessness crisis among survivors. They still need trauma-informed counsel, thoughtful and fair courts, rational opposing parties and counsel, access to affordable housing, and enormous personal fortitude to fight an eviction and prevail. But protections that do not force contact with biased law enforcement and criminal legal systems, such as those in Delaware and New York state law and in VAWA, are a significant step toward justice and are models for how other states should reform eviction protections.

A. Delaware: Seeking Medical Treatment Makes Survivors Eligible for Eviction Protections

Delaware has a statutory affirmative defense to eviction for survivors if they have obtained or sought assistance for domestic abuse, sexual offenses, or stalking from any court, police, or medical emergency, domestic violence, or sexual offenses program or service.[230] Instead of tying this protection exclusively to law enforcement intervention, Delaware's policy acknowledges that, for some survivors, a medical provider or domestic violence advocate is a safer source of verification. According to the NNEDV's 2024 survey, Delaware has a lower percentage of unmet housing needs among survivors: 43 percent of unmet needs were housing-related, compared to the national average of 60 percent.[231]

B. New York: Permits Survivors to Assert Eviction Defense Regardless of Contact with Law Enforcement

Like Delaware, the state of New York's eviction protection for survivors does not require survivors to engage with law enforcement in order to stay in their homes.[232] The statutory defense can be asserted if the survivor can show that the eviction is based on their "domestic violence status."[233] A tenant has domestic violence status if they are or have been the victim of an act that would constitute a violent felony offense or a family offense by a member of the same family or

230. Del. Code Ann. tit. 25, § 5316 (2022).
231. *Compare* Nat'l Network to End Domestic Violence, 19th Annual Domestic Violence Counts Report: Delaware Summary (2025), *with* Nat'l Network to End Domestic Violence, 19th Annual Domestic Violence Counts Report 2 (2025).
232. N.Y. Real Prop. Acts. Law § 744 (2025).
233. *Id.*

household.[234] While the state's definition of domestic violence is rooted in criminal law, the eviction defense does not require the survivor to have called the police or obtained a restraining order or the abuser to have been convicted for the survivor to prevail on the defense. Instead, New York's lease termination statute allows for third-party verification,[235] which establishes that, as a matter of state law, professionals outside of law enforcement are qualified to verify survivor status.

C. Los Angeles's COVID-Era Low-Barrier Transfer Plan: Permits Survivors to Assert Eviction Defense Without Eligibility Documentation

While this Article primarily discusses state law protections, there is a role for municipal ones as well. The Los Angeles Homeless Services Authority ("LAHSA") implemented a COVID-era low-barrier emergency transfer plan for survivors of domestic violence and sexual assault, which can serve as a model for local housing policies that are truly responsive to survivors' experiences. LAHSA shelter residents and tenants, including those in LAHSA-contracted programs, were eligible for an emergency transfer to a safe alternative unit if they reasonably believed that there was a threat of imminent harm from further violence if they stayed where they were.[236] The policy allowed survivors to apply for and obtain an emergency transfer to safe housing without having to provide documentation to support their need for the transfer.[237] The policy's choice to not require documentation acknowledges that many survivors do not have third-party documentation to verify their experiences of abuse. It also emphasizes LAHSA's obligation to help survivors in need rather than to seek reasons to exclude them from life-saving housing protections.

D. VAWA: Grants Survivors an Eviction Defense and Permits Them to Self-Certify Eligibility

The housing protections in VAWA provide powerful protection for survivors in federally subsidized housing. Two elements of VAWA

234. N.Y. Real Prop. Law § 227-d; N.Y. Penal Law § 70.02; N.Y. Fam. Ct. Act § 812.

235. N.Y. Real Prop. Law § 227-c.

236. *See Interim Los Angeles Homeless Services Authority Emergency Transfer Plan under the Violence Against Women Act*, L.A. Homeless Servs. Auth. 3 (Feb. 2021), https://www.lahsa.org/documents?id=5134-vawa-ietp.pdf [https://perma.cc/UN7U-SEQF].

237. *Id.* ("There is no documentation requirement under the IETP. Covered Programs and LAHSA will not request documentation, other than the Release of Information . . . .").

have the greatest impact on survivor housing stability. First, VAWA has an affirmative defense to eviction for survivors, stating plainly that an individual cannot be evicted from housing on the basis that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.[238] Second, VAWA explicitly allows survivors to choose the type of verification that is safest for them from a menu of acceptable ways to prove eligibility, including self-certification.[239] Federally subsidized housing providers cannot require a police report or restraining order from survivors seeking help.[240]

1. Eviction Defense

Congress made clear in VAWA that survivors should not lose their housing as a result of being in an abusive relationship. Covered housing providers cannot evict or terminate assistance to a survivor on the basis that the person is or was a victim,[241] and United States Department of Housing and Urban Development ("HUD") regulations clarify that this prohibition includes any reason that is a direct result of domestic violence.[242] If established, this defense stops an eviction and saves the survivor's housing. VAWA also clarifies that an incident of actual or threatened domestic violence is not considered a serious lease violation for purposes of terminating participation in federally subsidized housing.[243] The law creates an exception to the "one-strike rule," which would normally require eviction for certain drug-related

238. 34 U.S.C. § 12491(b)(1).
239. *Id.* § 12491(c)(3).
240. This issue arose in a case the Housing Justice for Survivors Project litigated at the Supreme Judicial Court of Massachusetts, *Boston Housing Authority v. YA*, 121 N.E.3d 1237 (Mass. 2019). Our client, a public housing tenant being evicted for non-payment of rent caused by her abuser stealing her earnings, tried to get VAWA protection by telling her property manager about the economic and physical abuse she was experiencing at home. The property manager falsely told her that there was nothing the housing authority could do to help unless she got a restraining order against her abuser. Our client was too afraid of her abuser to get a restraining order, and she never did. The housing authority pushed forward with its eviction against her. We met her and took her case after the housing court judge had granted the housing authority's motion seeking her eviction. Our client prevailed at the Supreme Judicial Court, which held that evicting a survivor for non-payment of rent caused by domestic violence violated VAWA. The Court's opinion included a critical footnote that affirms that, under VAWA, a survivor may choose between a self-certification, a letter from a qualified third party, or a police report or record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency to prove VAWA eligibility. Bos. Hous. Auth. v. YA, 121 N.E.3d 1237, 1242 n.13 (Mass. 2019).
241. 34 U.S.C. § 12491(b)(1). Nearly all federally subsidized housing programs are covered by VAWA. For a list of all covered programs, see *id.* § 12491(a)(3).
242. 24 C.F.R. § 5.2005(b)(1).
243. 34 U.S.C. § 12491(b)(2)(A)–(B).

or other criminal activity by a household member.[244] HUD regulations require housing providers to notify tenants of their VAWA rights at specific points in their tenancy,[245] and providers are "encouraged to undertake whatever actions permissible and feasible under their respective programs to assist individuals residing in their units who are victims . . . to remain in their units . . . ."[246] This combination of affirmative rights, procedural protections, and survivor-centered policy gives survivors meaningful legal tools to protect their housing.[247]

2. Self-Certification of Eligibility

VAWA has a flexible documentation policy that offers a variety of ways for survivors to demonstrate eligibility for eviction protection. First, housing providers are permitted to have policies that do not require any documentation certifying the domestic violence or stalking.[248] If a housing provider does decide to require documentation, it must allow the survivor to choose from one of several approved forms,[249] including a HUD-approved self-certification that the survivor signs under the pains and penalties of perjury.[250] This attestation is crucial for survivors who have privately endured abuse and have not disclosed it to anyone in an official capacity before asking for housing protection. Survivors may also choose to provide a letter from a qualified third party, such

244. *Id.* § 12491(b)(3)(A).
245. *Id.* § 12491(d)(2)(C).
246. 24 C.F.R. § 5.2009(c).
247. *See, e.g.*, Bouley v. Young-Sabourin, 394 F. Supp. 2d 675, 678 (D. Vt. 2005) (survivor made out a prima facie case for her Fair Housing Act claim based on landlord's eviction action within seventy-two hours of a domestic violence incident); Beacon Residential Mgmt., L.P. v. Pipkin, 81 N.E.3d 714, 720 (Mass. 2017) (survivor had a basis to intervene in an eviction on her own behalf and on behalf of her children where her abuser had previously prohibited her from being added to the lease, which could form the basis of a VAWA-based defense to eviction); Johnson v. Palumbo, 154 A.D.3d 231, 244 (N.Y. App. Div. 2017) (holding that a survivor's own testimony is sufficient to establish eligibility for VAWA protection); Bos. Hous. Auth. v. YA, 121 N.E.3d 1237, 1243–45 (Mass. 2019) (survivor may raise a VAWA defense at any stage of an eviction, including post-judgment, and if the basis for eviction is a direct result of abuse, the eviction is prohibited under VAWA); DHI Cherry Glen Assocs., L.P. v. Gutierrez, 259 Cal. Rptr. 3d 410, 416–17 (Cal. App. Dep't Super. Ct. 2019) (eviction action dismissed for landlord's failure to provide the tenant with a mandatory VAWA Notice of Occupancy Rights with eviction notice); Sea Park E., L.P. v. Thompson, 223 N.Y.S.3d 494, 496–97 (Civ. Ct. 2024) (tenant entitled to a vacatur of settlement agreement where she paid all outstanding rent and had not been served with a VAWA Notice of Occupancy Rights with the eviction notice).
248. 34 U.S.C. § 12491(c)(1).
249. *Id.* § 12491(c)(1), (3); 24 C.F.R. § 5.2005(a)(1)(ii).
250. 34 U.S.C. § 12491(c)(3)(B)(i)(II) (granting victims a right to prove eligibility through self-certification); Form HUD-5382, *supra* note 229.

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as a domestic violence counselor, attorney, or medical provider.[251] The letter must attest that the survivor is eligible for VAWA and be signed under the pains and penalties of perjury.[252] Finally, a survivor may also provide a court or law enforcement record to prove abuse.[253] VAWA's statutory text does not privilege police reports or restraining orders over the survivor's own attestation or documentation from a trusted provider.[254] This policy acknowledges that survivors are in the best position to evaluate the safest method of documentation, and it accords survivors and their advocates the same credibility as law enforcement in verifying eligibility for housing protections. As such, VAWA continues to be a model for survivor-centered housing protections.

Conclusion

Access to safe, stable housing is a powerful tool in combatting gender-based violence. Without the threat of eviction, survivors can ensure their family's safety, reclaim self-determination, and rebuild their lives. However, the majority of states and the District of Columbia miss the opportunity to address gender-based violence through effective and inclusive eviction protections. These jurisdictions either have no eviction protections at all or require survivors to call the police or obtain a restraining order, reflecting the anti-violence movement's commitment to a criminal legal response to abuse. Many survivors—particularly those in high-risk relationships and those from marginalized communities—cannot and do not seek help from the criminal legal system. By requiring contact with the criminal legal system to qualify for an eviction defense, many state laws exclude survivors, pushing them towards homelessness as a collateral consequence of abuse.

Many state housing protections have evolved to reflect the mainstream anti-violence movement's commitment to a criminal legal response to abuse. As a result, these jurisdictions fail to provide survivors with the material resources they need to break free from abuse and move forward. It is time to divest from the criminal legal system as the primary means of legitimizing and protecting survivors. Housing protections are a critical place to begin that disentanglement.

The majority of states without adequate survivor housing protections should reform their laws to incorporate VAWA's robust affirmative defense and flexible approach to documenting eligibility,

251. 34 U.S.C. § 12491(c)(3)(B)(i)(I).
252. *Id.* § 12491(c)(3)(B)(ii).
253. *Id.* § 12491(c)(3)(C).
254. *See generally id.* § 12491(c)(3) (outlining the various acceptable forms of documentation).

or the third-party verification or self-certification options already used in places like Delaware, New York, and Los Angeles. These changes would revolutionize housing stability for survivors, who would be able to protect themselves from housing loss regardless of whether they called the police or obtained a restraining order. They would also be able to substantiate their experience of abuse through whatever means is safest for them. All survivors, like Ana, deserve a fighting chance to overcome eviction and keep their families housed in the face of intimate partner violence.

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APPENDIX A: STATE EVICTION PROTECTIONS THAT DO NOT RELY SOLELY ON CONTACT WITH LAW ENFORCEMENT

State	Code Provision	Summary of Eviction Protection	Permissible Verification Documentation
California	CAL. CIV. CODE § 1174.27 CAL. CIV. CODE § 1946.8(c)	A landlord may not terminate or fail to renew a tenancy based on abuse against a household or family member. A landlord may not retaliate against a tenant for calling emergency services if tenant believes contacting emergency services is necessary.	Eviction defense statute does not specifically discuss how to verify eligibility, but CAL. CIV. CODE § 1946.7(b) (governing lease breaking) allows survivors to document abuse through a restraining order, police report, or a letter from a qualified third party (e.g., medical provider, victim of violent crime advocate, human trafficking caseworker, domestic violence counselor, sexual assault counselor).
Delaware	DEL. CODE ANN. tit. 25, § 5316	A landlord may not pursue an action for summary possession (eviction) where the tenant is a victim of domestic abuse, sexual offenses, or stalking.	Survivor may verify if they sought assistance from any court, police, medical emergency, domestic violence, or sexual offenses program or service.

State	Code Provision	Summary of Eviction Protection	Permissible Verification Documentation
Illinois	735 ILL. COMP. STAT. ANN. 5/9-106.2(a)–(b)	Tenants have an affirmative defense to eviction if the court makes a finding that eviction is based solely on the tenant's status or experience of abuse.	When asserting the affirmative defense, the tenant must present one form of evidence, such as medical, court, or police records documenting the violence, or a statement from an employee of a victim service organization or from a medical professional.
Kansas	KAN. STAT. ANN. § 58-25, 137(c)	A tenant is eligible for an eviction defense if they provide a statement regarding domestic violence, sexual assault, human trafficking, or stalking to the landlord or property owner so long as they otherwise qualify for the tenancy.	Proof can include a document signed by both the victim and a licensed medical professional, signed under penalty of perjury, that they believe the abuse occurred, or a restraining order.

State	Code Provision	Summary of Eviction Protection	Permissible Verification Documentation
Louisiana	LA. REV. STAT. ANN. §§ 40:506(D), 9:3261.1	Housing authorities and certain larger residential dwellings may not terminate the tenancy of a resident because of domestic abuse, dating violence, or family violence committed against the resident. Note: This protection applies to public housing authorities and dwellings of a certain size and number of units.	Someone seeking the statute's protection must produce a completed Certification of Domestic Abuse form, signed under oath by a qualified third party (such as an employee of a community-based shelter that contracts with the state) or an abuse prevention order.
Maine	ME. REV. STAT. ANN. tit. 5, § 4581-A ME. REV. STAT. ANN. tit. 14, § 6001(6)	It is unlawful to discriminate, including by attempting to evict, against any person because they have sought and received an order of protection. A tenant may not be evicted solely based on an incident of actual or threatened abuse or for reporting abuse.	Verification can be through a statement signed by a Maine-based sexual assault counselor, a domestic violence advocate, a victim witness advocate, a licensed health care provider, a mental health care provider, or a law enforcement officer; court order; police report; or criminal complaint.

State	Code Provision	Summary of Eviction Protection	Permissible Verification Documentation
Maryland	MD. CODE ANN., REAL PROP. § 8-5A-04	Abuse can be raised as a defense in an eviction. Proof of abuse creates a rebuttable presumption that the alleged lease breach does not warrant eviction.	Verification may include a copy of a protective order or peace order documenting the abuse or a report by a qualified third party. A "qualified third party" means physician, psychologist, social worker, caseworker, or advocate from a domestic violence or sexual assault program. MD. CODE ANN., REAL PROP. § 8-5A-01(g).
Minnesota	MINN. STAT. ANN. §§ 504B.285, .205, .206	A landlord may not commence an eviction action against a tenant or occupant solely because that person has been a victim of domestic abuse, criminal sexual conduct, or harassment. A landlord may not retaliate against a tenant who seeks to secure their rights under the laws of the state, including by calling emergency services.	Eviction defense statute does not specifically discuss how to verify eligibility, but MINN. STAT. ANN. § 504B.206 (governing lease breaking) allows qualified third-party verification, including by domestic abuse advocates, sexual assault counselors, and licensed health care professionals.

State	Code Provision	Summary of Eviction Protection	Permissible Verification Documentation
Missouri	MO. REV. STAT. § 441.920	A landlord cannot evict a tenant based on, or as a direct result of, the tenant being, having been, or being in immediate danger of becoming a victim of domestic violence, except where the tenant willingly allows the perpetrator into the premises and the landlord reasonably believes the abuser poses a threat to other residents.	Verification may be through a statement under penalty of perjury by both the victim and a victim service provider, health care provider, or mental health care provider; or a police, court, or administrative agency report.
Nebraska	NEB. REV. STAT. § 76-1431	Provides an affirmative defense to eviction based on violent criminal activity, illegal drug activity, or activity threatening health or safety, if the activity is domestic violence and the tenant provides third-party verification of abuse.	Verification can include any type of third-party documentation allowed under VAWA.

State	Code Provision	Summary of Eviction Protection	Permissible Verification Documentation
Nevada	NEV. REV. STAT. ANN. § 118A.510(h)	Prohibits retaliation against tenants for being a victim of domestic violence, harassment, sexual assault, or stalking, or for breaking a lease under NEV. REV. STAT. ANN. § 118A.345.	Anti-retaliation statute does not specifically discuss how to verify eligibility, but NEV. REV. STAT. ANN. § 118A.345 (governing lease breaking) allows survivors to provide an affidavit by a qualified third party, including physicians, mental health professionals, social workers, nurses, marriage or family therapists, domestic violence agency employees, and clergy; court protection orders; and police reports.
New Hampshire	N.H. REV. STAT. ANN. § 540:2(VII)(a)	A property owner may not terminate a lease solely based on a person's status as a victim of domestic violence, sexual assault, or stalking.	Verification may include written verification from certain professionals, including a victim's advocate or health care provider, or a signed self-certification form.

State	Code Provision	Summary of Eviction Protection	Permissible Verification Documentation
New York	N.Y. Real Prop. Acts. Law § 744 N.Y. Civ. Rights Law §§ 91–98	A tenant may not be removed from a residential unit because of that person's status as a victim of domestic violence. Retaliation for calling emergency services is prohibited.	Eviction defense statute does not specifically discuss how to verify eligibility, but N.Y. Real Prop. Law § 227-c (governing lease breaking by victims of domestic violence) allows survivors to provide qualified third-party verification.
North Carolina	N.C. Gen. Stat. Ann. § 42-42.2	A landlord may not terminate a tenancy based substantially on a tenant's status as a victim of domestic violence, sexual assault, or stalking.	Verification of abuse may include documentation from domestic violence and sexual assault programs; documentation from religious, medical, or other professionals; and law enforcement, court, or federal agency records.
Oklahoma	Okla. Stat. tit. 41, § 113.3	A landlord may not terminate a tenancy because a tenant is a victim of domestic violence, sexual violence, or stalking, regardless of whether there is a current protective order in place.	Eviction defense statute does not specifically discuss how to verify eligibility other than to say that a protective order is not required.

State	Code Provision	Summary of Eviction Protection	Permissible Verification Documentation
Oregon	Or. Rev. Stat. Ann. § 90.449	A landlord may not evict or fail to renew a tenancy because a tenant or applicant is, or has been, a victim of domestic violence, sexual assault, or stalking, except if the tenant allows the perpetrator on the premises and the perpetrator poses an actual or imminent threat to the safety of others or if the tenant allows the perpetrator to live in the dwelling as an unauthorized occupant.	Eviction defense statute does not specifically discuss how to verify eligibility, but Or. Rev. Stat. Ann. § 90.453 (governing lease breaking by victims of domestic violence) allows survivors to provide qualified third-party verification, such as from a licensed health care professional or an advocate with a victim's services provider.
Rhode Island	R.I. Gen. Laws § 34-37-2	Survivors are protected from discrimination based on their status as a domestic violence survivor or because they have obtained a restraining order. This prohibition on discrimination applies generally and not just to housing.	Eviction defense statute does not discuss how to verify eligibility.

State	Code Provision	Summary of Eviction Protection	Permissible Verification Documentation
South Dakota	S.D. CODIFIED LAWS § 43-32-18.1	Eviction of a tenant solely because the tenant or a household member is a victim of alleged domestic abuse, unlawful sexual behavior, or stalking is prohibited.	Eviction defense statute does not discuss how to verify eligibility, but S.D. CODIFIED LAWS § 43-32-19.1 (governing lease breaking by victims of domestic violence) allows for verification through qualified third parties, such as health care providers.
Vermont	VT. STAT. ANN. tit. 9, § 4503	It is unlawful to discriminate against or harass any person in the terms, conditions, privileges, and protections of rental of a dwelling because the person is a victim of abuse, sexual assault, or stalking.	Eviction defense statute does not discuss how to verify eligibility, but VT. STAT. ANN. tit. 9, § 4472 (governing lease breaking) allows for third-party verification and self-certification.
Washington	WASH. REV. CODE ANN. § 59.18.580	A landlord may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant's status as a victim of domestic violence, sexual assault, or stalking.	Eviction defense statute does not discuss how to verify eligibility, but WASH. REV. CODE ANN. §§ 59.18.570(5), 59.18.575 (governing lease breaking by victims of domestic violence) allow for third-party verification, such as clergy, mental health professionals, crime victim/witness program employees, etc.

State	Code Provision	Summary of Eviction Protection	Permissible Verification Documentation
Wisconsin	Wis. Stat. Ann. § 106.50(5m)(dm)	It is unlawful discrimination to evict a tenant because of their status as a victim of domestic abuse, sexual assault, or stalking if the survivor can prove that the landlord knew or should have known the tenant's victim status and that the basis for the eviction is related to an abusive individual, among other requirements.	Eviction defense statute does not discuss how to verify eligibility. Status as a survivor is defined only as a person who is seeking to rent housing (or a member of their family) who has been or is believed to be a victim of domestic abuse, sexual assault, or stalking.
	Wis. Stat. Ann. § 704.44	It is also unlawful for a landlord to bring an eviction because the tenant contacted emergency services or based on a crime where the tenant was the victim.	

State	Code Provision	Summary of Eviction Protection	Permissible Verification Documentation
Wyoming	WYO. STAT. ANN. § 1-21-1303	A landlord may not terminate a tenancy based solely on the tenant's status as a victim of domestic abuse or sexual violence.	Eviction defense statute does not discuss how to verify eligibility, but WYO. STAT. ANN. § 1-21-1303(a) (governing lease breaking) allows survivors to verify their status through medical evidence, court evidence, or police evidence.

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