



The Association of the Bar of the City of New York

Report on New York City Council Int. No. 305

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting housing discrimination against actual or perceived victims of domestic violence, sex offenses or stalking.

The Association of the Bar of the City of New York strongly urges the City Council to enact Int. No. 305, which would amend the City's Human Rights Law to prohibit housing discrimination against actual or perceived victims of domestic violence, sex offenses, or stalking. It would also permit these victims to terminate their current lease, allowing them to flee violence and move to a confidential location.

Statistics on Domestic Violence, Sex Offenses, and Stalking

The need for Int. No. 305 is illustrated by the staggering statistics relating to domestic violence, sex offenses, and stalking that have been compiled over the last few years. Each year, approximately one million violent crimes are committed against individuals by their current or former spouses, girlfriends, or boyfriends.¹ These acts of domestic violence are estimated to occur once every 15 seconds in the United States.² Nationally, one in every six women and one in every thirty-five men has been the victim of rape or attempted rape.³ In addition, approximately 10,200,000 people have been stalked at some point during their lives.⁴

The numbers in New York City are just as sobering. In 2001, the New York City Police Department responded to more than 230,000 domestic violence incidents.⁵ In

¹ Callie Marie Rennison and Sarah Welchans, *Intimate Partner Violence: Bureau of Justice Special Report*, U.S. Dep't of Justice, May 2000, at 1. See also P. Tjaden & N. Thoennes, U.S. Dep't of Justice, Nat'l Inst. of Justice, U.S. Dep't of Health & Human Services, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey* (NCJ 181867), 2000 (finding that nearly one fourth of surveyed women and one tenth of surveyed men had been raped and/or physically assaulted by a current or former spouse, cohabiting partner, or date at some time in their lifetime); New York City's Mayor's Office to Combat Domestic Violence, *What to Do If You Have Been Sexually Assaulted* (2001) (reporting that one in four women in the United States are physically or sexually abused by an intimate partner at some point in her life), available at <http://www.nyc.gov/html/ocdv/downloads/pdf/sahelp.pdf> (last visited Jan. 20, 2005).

² Charter Lakeside Behavioral Health System, *Domestic Violence: Take a Look at the Statistics*, available at <http://www.angelfire.com/tn/sistersforlife/stat.html> (last visited Jan. 20, 2005).

³ Nat'l Inst. Of Justice Ctr. for Disease Control and Prevention, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the Nat'l Violence Against Women Survey*, Nov. 1998.

⁴ *Id.*

⁵ Kirsten Dannis, *NYPD Plans for Victims of Abuse*, N.Y. POST, May 10, 2002, available at 2002 WL 19330134.

2003, the Mayor's Office to Combat Domestic Violence reported that a total of 147,169 phone calls were made to the New York City Domestic Violence Hotline, an average of more than 400 calls per day.⁶ The Mayor's Office also reported that the New York City Police Department received 4,068 domestic violence felony assault complaints and 6,831 complaints of individuals violating orders of protection in 2003 alone.⁷

Discrimination against Domestic Violence Victims

Victims of domestic violence, sexual offenses, and stalking suffer not only due to actions of their abusers. Often when they report these abuses -- or others learn of the violence -- victims suffer discrimination. New York State and New York City have been leaders in the nationwide fight to prevent discrimination against victims of domestic violence, sex offenses, and stalking. For instance, in 2001 the New York City Council, recognizing the importance of economic security for victims of domestic violence, enacted Local Law 1 to prohibit employers from discriminating against an actual or perceived victim of domestic violence. In addition, under Penal Law § 215.14, New York State prohibits employers from discharging or penalizing victims of domestic violence, sex offenses, or stalking who take time off from work to obtain orders of protection against their abusers, to appear in court as witnesses, or to consult with the district attorney about the criminal charges against their abusers. Most recently, the City Council enacted Int. No. 107A, which expands the city's existing law prohibiting employment discrimination against domestic violence victims to cover victims of sexual assault and stalking and requires employers to make reasonable accommodations to victims of domestic violence, sexual assault, and stalking.

The Specific Need for Housing Discrimination Legislation

To fill a gap in the law that continues to endanger women's safety and their lives, New York City needs to go a step further by prohibiting housing discrimination against victims of domestic violence, sex offenses, and stalking.

Victims of domestic violence, sex offenses, and stalking often must break away from the dangerous situation or relationship to find safety. Initiatives to assist victims keep or obtain safe housing in the face of such danger, therefore, are key to facilitating this transition. Victims of domestic violence, sex offenses and stalking often face discrimination by landlords as a result of the abuse they suffer, and either lose their existing housing or are unable to find new housing as a result. Frequently, such victims are evicted by landlords who claim they do not allow "criminal activity" on their premises, even though the victim is not the perpetrator of the domestic violence, sex offenses, or stalking. Other landlords may refuse to rent to domestic or sexual violence victims in the first place. Under these circumstances, many victims face homelessness and are forced, at the risk of their safety, to return to their abusers. Recent studies have

⁶ Mayor's Office to Combat Domestic Violence, *Domestic Violence Fact Sheet* (Sept. 2004), available at http://www.nyc.gov/html/ocdv/html/services/fact_sheet.shtm (last visited Jan. 20, 2005).

⁷ *Id.*

confirmed the strong connection between domestic violence and homelessness.⁸ One such study showed that in New York City in 2002 almost half of all homeless parents have been abused and one quarter of all homeless parents were homeless as a direct result of domestic violence.⁹

In recognition of the critical need for legislation protecting domestic violence victims from housing discrimination, in February 2003 the American Bar Association urged lawmakers to “adopt and vigorously enforce regulations” that prohibit discrimination in housing against victims of domestic violence.¹⁰ A number of states have passed laws prohibiting such housing discrimination against victims of domestic violence, sex offenses, and stalking.¹¹ Existing laws in New York, however, do not effectively prohibit housing discrimination against victims of domestic violence, sex offenses, or stalking.¹²

The enactment of Int. No. 305 would fill this gap by ensuring that these victims are not subjected to housing discrimination due to their status as victims. Because landlords would be prohibited from evicting or refusing to rent to women just because they are victims, victims would be more likely to obtain and retain adequate housing. Thus, by enacting Int. No. 305, the City would reduce the number of homeless victims of domestic violence, sex offense, and stalking. Victims of domestic violence and other gender-related abuses would also be more willing to report abuse and seek assistance if they knew they could not be discriminated against. Int. No. 305’s prohibitions and requirements would enable victims of domestic violence, sex offenses and stalking to

⁸ See ACLU Women’s Rights Project, *Domestic Violence and Homelessness* (Oct. 2004) (surveying numerous recent studies), available at <http://www.aclu.org/WomensRights/WomensRightsmain.cfm?ContentStyle=17> (last visited Jan. 20, 2005).

⁹ See Institute for Children and Poverty, *The Hidden Migration: Why New York City Shelters are Overflowing with Families*, April 2002.

¹⁰ American Bar Association, *Recommendation and Report* (Feb. 2003), available at <http://www.legalmomentum.org/issues/vio/abahousingreport.shtm> (last visited Jan. 20, 2005).

¹¹ See, e.g., ARIZ. REV. STAT. ANN. § 33-1315 (West 2004); CAL. HEALTH & SAFETY CODE § 34328.1 (West 2004); COLO. REV. STAT. ANN. §§ 13-40-107.5(5)(b), 38-12-401 (West 2004); IOWA CODE ANN. §§ 562A.27A, 562B.25A(3) (West 2003); LA. REV. STAT. ANN. §§ 40:506(D), 46:2136(A)(2) (West 2004); MINN. STAT. ANN. § 504B.205 (West 2004); N.M. STAT. ANN. § 47-8-33(J) (Michie 2004); OR. REV. STAT. § 90.453 (2004); R.I. GEN. LAWS §§ 34-37-1, 34-37-2, 34-37-2.4, 34-37-3, 34-37-4 (2004); TEX. PROP. CODE ANN. § 92.015 (Vernon 2004); WASH. LEGIS. SERV. 1645 (West 2004); WASH. REV. CODE ANN. §§ 59.18.352, 59.18.130(8)(b)(ii) (West 2004); WIS. STAT. ANN. § 106.50(5m)(d) (West 2004). For a summary of other state laws, see Legal Momentum, *Housing Laws Protecting Victims Of Domestic And Sexual Violence* (Aug. 2004), available at <http://www.legalmomentum.org/issues/vio/index.shtm> (last visited Jan. 20, 2005).

¹² The passage of this bill, however, will help clarify the law by informing landlords clearly of their obligations. The New York State Attorney General has advised that discrimination against domestic violence victims violates state fair housing law. 1985 Op. N.Y. Att’y Gen. 45 (Nov. 22, 1985). The United States Department of Housing and Urban Development (HUD) has charged a landlord with discrimination on the basis of sex in violation of the Fair Housing Act for evicting a tenant solely because she had been the victim of domestic violence. UNITED STATES & ALVERA V. CBM GROUP, INC., HUD ALJ 10-99-0538-8 (2001) (Charge of Discrimination). A federal court also recently found that discrimination against domestic violence victims is discrimination on the basis of sex in violation of the Fair Housing Act. BOULEY V. YOUNG-SABOURIN, No. 1:03CV320 (D. Vt. March 10, 2005); see also WINSOR V. REGENCY PROP. MGMT., No. 94 CV 2349 (Wisc. Cir. Ct. Oct. 2, 1995) (holding discrimination against domestic violence victims to be unlawful under Wisconsin fair housing law).

regain their safety and security so that they can escape violence and will not need to return to an abusive relationship.

Int. No. 305 Does Not Create an Undue Burden

Int. No. 305's anti-discrimination provisions will not impose an undue burden on landlords. Like other anti-discrimination laws, Int. No. 305 prohibits adverse actions against tenants only when those actions are based on impermissible, discriminatory reasons. New York City's Human Rights Law already protects persons against housing discrimination based on characteristics such as age, race, religion, color, national origin, gender, disability, marital status, familial status, and sexual orientation. N.Y.C. ADMIN. CODE § 8-107(5)(a). And victims of domestic violence, stalking, and sexual assault are already a protected class under the City's employment law. Int. No. 305 merely extends vital and established housing protection to this already-protected class of victims of domestic violence, sex offenses, and stalking.

Furthermore, landlords should not be concerned that they will be liable for discriminating against someone who they did not know was a victim of domestic violence, sexual assault, or stalking. The bill prohibits landlords from discriminating "because of the actual or perceived status of that person as a victim of domestic violence, sexual assault, or stalking." Consequently, landlords cannot be held liable unless they have been informed that the individual is a victim or unless they otherwise have knowledge of such victimization and refuse to rent to or evict an individual due to this knowledge.

The provision of Int. No. 305 requiring landlords to release a tenant who is a victim of domestic violence, sexual assault, or stalking from a rental agreement also will not impose an undue burden on landlords.¹³ While the initial bill required landlords to provide any reasonable accommodations that do not cause undue burdens, this lease release provision is the only reasonable accommodation required of landlords in the current bill. Employers, on the other hand, are required to make any reasonable accommodation that does not cause an undue hardship. As with the non-discrimination provisions, landlords cannot be liable for refusing to release someone from a lease unless they know they are a victim of domestic violence, sexual assault, and stalking. The lease release provision should therefore be read to require notice to the landlord. If a landlord doubts that the individual is a victim, the bill specifically allows the landlord to require the individual to provide written certification that she is a victim. We recommend, however, that the bill be amended so that the lease release certification requirement can be satisfied only by a police or court record or a notarized letter from an employee of a victim services organization, an attorney, or a medical or other professional service provider. We also recommend that the lease release provision be amended to clarify that a coop corporation is not required by this bill to release a shareholder from ownership of his or shares, any maintenance obligation, or any other requirement of the coop corporation. If a coop shareholder rents his or her apartment to a lessee, the lessee must be released from the rental agreement if proper notice and certification is provided and

¹³ Washington recently enacted a similar law enabling victims of domestic violence, sexual assault, and stalking to terminate their leases and leave the apartments without any further obligation under the lease. WASH. LEGIS. SERV. 1645 (West 2004).

releasing such lessee would not cause an undue hardship to the shareholder or the coop corporation.

Furthermore, since the bill provides that victims may “terminate a rental agreement *and* quit the premises without *further* obligation under the rental agreement” (emphasis added), landlords should not fear that they will be unable to collect past due rental arrears. The bill does not release victims of any *prior* obligations; it only frees them from paying future rent after they quit the premises *and* inform their landlord that they are a covered victim who wishes to be released from the rental agreement. Given the tight rental market in this city, landlords should be able to then quickly re-rent the apartments. In any event, landlords have the right to refuse to release a victim from a lease if they can show that to do so would constitute an undue hardship.

Conclusion

As laws protecting victims of domestic violence, sex offenses and stalking improve, housing protections should also expand, thereby increasing victims’ chances of staying safe. As the American Bar Association report on housing discrimination against domestic violence victims explains, “Until we stop asking women to choose between being beaten and being able to feed and shelter their children, we cannot expect to rid our society of domestic violence.”¹⁴ Based on the foregoing, the Association of the Bar of the City of New York and its Civil Rights, Domestic Violence, and Sex and Law Committees urges the enactment of Int. No. 305.

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¹⁴ American Bar Association, *Recommendation and Report* (February 2003), available at <http://www.legalmomentum.org/issues/vio/abahousingreport.shtm> (last visited Jan. 20, 2005).