

9-1-2012

Eenie, Meenie, Miney, Mo: The Cost of Not Including Domestic Violence Shelters Within the Definition of Dwelling

Arielle Denis

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Suggested Citation

Arielle Denis, Comment, *Eenie, Meenie, Miney, Mo: The Cost of Not Including Domestic Violence Shelters Within the Definition of Dwelling*, 33 N. Ill. U. L. Rev. 157 (2012).

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Eenie, Meenie, Miney, Mo: The Cost of Not Including Domestic Violence Shelters Within the Definition of “Dwelling”

I. INTRODUCTION	160
II. HISTORICAL BACKGROUND ON FEDERAL STATUTES	163
A. THE CIVIL RIGHTS ACT OF 1968: TITLE VIII	163
B. THE VIOLENCE AGAINST WOMEN ACT OF 1994 (VAWA)	165
C. THE ILLINOIS HUMAN RIGHTS ACT (IHRA)	165
D. THE ILLINOIS DOMESTIC VIOLENCE ACT OF 1986 (IDVA)	166
III. WHAT CONSTITUTES A “DWELLING”	167
A. <i>WOODS V. FOSTER</i>	168
IV. STATUTES OF THE INDIVIDUAL STATES AND CASE LAW PRIOR TO JANUARY 1, 2010	169
A. STATE STATUTES	169
B. CASE LAW: “POLICIES”	170
1. <i>Oregon: The “One Strike and You’re Out” Policy</i>	170
2. <i>Sex Discrimination</i>	172
i. <i>Illinois: Ms. McCauley</i>	172
ii. <i>Vermont: Ms. Bouley</i>	174
3. <i>Michigan: Evicted for Actions of an Abuser</i>	174
C. DOMESTIC VIOLENCE SHELTERS: TO ACCEPT MEN OR DENY ACCESS?	175
1. <i>Why Men and Women Often Do Not Bring Claims</i>	175
2. <i>Domestic Violence Where the Man Is the Victim and the Woman Is the Abuser</i>	176
i. <i>Balilaj v. Karagiozi</i>	176
ii. <i>Woods v. Horton</i>	177
V. HOW ILLINOIS COURTS SHOULD APPLY SECTION 1-102(A) AND SECTION 1-103(K-5)	179
A. TO WHOM “ORDER OF PROTECTION STATUS” APPLIES	180
1. <i>The Fair Housing Act: Familial Status</i>	181
B. STATE STATUTES	182
1. <i>Strike Down the Zero-Tolerance Eviction Policy</i>	182
2. <i>Order of Protection Status v. Sex Status</i>	183
C. DOMESTIC VIOLENCE SHELTERS	184
1. <i>Current Status of Domestic Violence Shelters</i>	184
2. <i>Woods v. Foster</i>	185

3.	<i>Treating Domestic Violence Shelters as Dwellings Furthers the Purposes of the IHRA</i>	185
4.	<i>Domestic Violence Shelters Should Accept Men</i>	186
VI.	CONCLUSION	187

I. INTRODUCTION

Housing is a basic human need. The dual purpose of Title VIII of the Civil Rights Act of 1968, which is also known as the Fair Housing Act (FHA), is to maximize choice in housing for everyone and create integrated communities.¹ In theory, a person should only be limited in their choice of housing by their pocketbook. The FHA applies to dwellings. A “dwelling” is defined as “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families”² A domestic violence shelter is not within the definition of “dwelling.”³ Often, individuals who are victims of domestic abuse are victimized thrice: once when they are the victim of domestic abuse, a second time when a housing provider evicts them due to their order of protection status,⁴ and a third time by the FHA not including domestic violence shelters within the definition of “dwelling.”⁵

The Illinois legislature passed House Bill 721,⁶ which added order of protection status as a protected class to the Illinois Human Rights Act (IHRA).⁷ Representative Fortner, from the 95th District of Illinois, explained how victims of domestic abuse had no protection from employers and housing providers that discriminate against victims who have obtained an order of protection.⁸ Representative Fortner further explained that an individual (a victim) might need to explain to a future employer that he or

1. See Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 (2006) (“It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”).

2. 42 U.S.C. § 3602(b) (2006).

3. See 42 U.S.C. § 3602(b) (2006).

4. See *infra* Part V (defining and discussing “order of protection status”).

5. See generally 42 U.S.C. § 3602(b) (2006).

6. Act of May 27, 2005, Pub. Act 96-0447, 2009 Ill. Laws 3377 (codified at 775 ILL. COMP. STAT. 5/1-102(A) (2010 State Bar Edition) and 775 ILL. COMP. STAT. 5/1-103(K-5) (2010 State Bar Edition & Supp. 2012)).

7. See 775 ILL. COMP. STAT. 5/1-102(A) (2010 State Bar Edition); 775 ILL. COMP. STAT. 5/1-103(K-5) (2010 State Bar Edition & Supp. 2012).

8. Transcript of debate, H.B. 721, 96th Gen. Assemb., Reg. Sess., 190 (Apr. 2, 2009), available at <http://ilga.gov/house/transcripts/htrans96/09600038.pdf>.

she had been to court to obtain an order of protection.⁹ The purpose of House Bill 721 was to prevent an employer from discriminating against a person because of his or her order of protection status.¹⁰ For example, in deciding whether to hire an applicant, an employer could not take into consideration the applicant's order of protection status.¹¹ Furthermore, the IHRA also prohibits a landlord from discriminating against an individual "in that position,"¹² which is interpreted to mean a man or a woman with an order of protection.¹³ Thus, order of protection status was added,¹⁴ and defined,¹⁵ in the Illinois Human Rights Act in 2009 and became effective January 1, 2010.¹⁶

An order of protection is a legal injunction arising from a relationship between two people.¹⁷ It provides immediate protection for a victim of a

9. *Id.* For example, employers may require applicants to disclose whether or not they are involved in a legal dispute. This could result in a victim having to explain to a potential employer that they went to court to obtain an order of protection. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. In response, Representative Rose said, "I've never heard of anyone being discriminated against in being able to get an apartment because they . . . an order of protection are usually . . . I mean, nobody knows about it." Transcript of debate, Ill. House, 96th Gen. Assemb., 1st Sess., 190 (Apr. 2, 2009), found at <http://ilga.gov/house/transcripts/htrans96/09600038.pdf>. (ellipses in original). If an educated representative of the House seems confused on this issue, query whether an individual will bring a housing claim when he or she is evicted as a result of their housing provider learning of their order of protection or their perpetrator causing criminal activity on the housing premises.

14. The Illinois Human Rights Act now states:

[t]o secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her race, color, religion, sex, national origin, ancestry, age, *order of protection status*, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations.

775 ILL. COMP. STAT. 5/1-102(A) (2010 State Bar Edition) (emphasis added).

15. "'Order of protection status' means a person's status as being a person protected under an order of protection issued pursuant to the Illinois Domestic Violence Act of 1986 or an order of protection issued by a court of another state." 775 ILL. COMP. STAT. 5/1-103(K-5) (2010 State Bar Edition & Supp. 2012).

16. 775 ILL. COMP. STAT. 5/1-102 (2010 State Bar Edition).

17. The relationship need not be romantic, but the two people cannot be strangers. See *Illinois Domestic Violence Act: Information for Victims*, ILLINOISATTORNEYGENERAL.GOV, <http://www.illinoisattorneygeneral.gov/women/victims.html> (last visited Aug. 25, 2012); see also *Order of Protection Frequently Asked Questions by Plaintiffs*, THE JUD. BRANCH OF ARIZ., <http://www.mohavecourts.com/Court%20Forms/Justice%20Courts%20SS/Order%20of%20Protection/OP%20FAQS%20by%20Plaintiffs.pdf> (last visited Jan. 8, 2013).

family or household member from abuse, neglect, or exploitation.¹⁸ The IHRA amendments protect a victim against eviction when an abuser violates his or her order of protection and causes problems or engages in criminal activity on the housing premises.¹⁹ To date, there is no case law in Illinois regarding a person bringing a housing claim as a result of eviction because of their order of protection status.²⁰ Furthermore, to date, Illinois courts have not applied the amended “Declaration of Policy . . . Freedom from Unlawful Discrimination” section,²¹ nor the additional “General Definitions” section defining “order of protection status”²² of the IHRA.

The first focus of this Comment is to identify how states²³ have dealt with order of protection status as a protected class, and the definition of “dwelling” under the Fair Housing Act.²⁴ The second focus of this Comment is to propose how Illinois courts should approach these concepts so that a victim of domestic abuse can receive the civil rights protections he or she is entitled to, along with all other protected classes under the IHRA.

To provide a background on housing and protected classes, Part II of this Comment briefly reviews Title VIII of the Civil Rights Act of 1968

18. See 750 ILL. COMP. STAT. 60/214(a) (2010 State Bar Edition & Supp. 2012). It is a mistake to equate having an order of protection with being a victim of domestic violence. An individual may obtain an order of protection for many reasons, including a parent obtaining an order of protection on behalf of their child or any person obtaining an order of protection on behalf of a high-risk adult with disabilities who has been abused by a family member. See *id.* § 201(b).

19. See *Illinois Domestic Violence Act: Information for Victims*, ILLINOISATTORNEYGENERAL.GOV, <http://www.illinoisattorneygeneral.gov/women/victims.html> (last visited Aug. 25, 2012).

20. This is true as of August 25, 2012. There is case law that mentions the IHRA and protected classes, but only in the context of employment claims. In these cases, order of protection status is not the issue—it is only mentioned when the court quotes the IHRA. See, e.g., *Peterson v. Bay Valley Foods, LLC*, No. 11 C 50309, 2012 WL 195036, at *3 (N.D. Ill. Jan. 23, 2012).

21. See generally 775 ILL. COMP. STAT. 5/1-102(A) (2010 State Bar Edition).

22. See generally 775 ILL. COMP. STAT. 5/1-103(K-5) (2010 State Bar Edition & Supp. 2012). The reason for the lack of order of protection claims under the IHRA is unknown, though it may be due to its novelty. As of 2009, there were a total of 50,451 order of protection cases filed in Illinois circuit courts. *Illinois Circuit Court Statistics*, ILL. CTS., www.state.il.us/court/CircuitCourt/CCStats.asp (last visited Aug. 25, 2012).

23. The laws or policies of the following states are mentioned or discussed below: California, Colorado, the District of Columbia, Illinois, Michigan, New Jersey, North Carolina, Oregon, Rhode Island, Texas, Vermont, Washington, and Wisconsin.

24. See 42 U.S.C. § 3602(b) (2006). Courts have inconsistently held that one building is a dwelling where another is not. Compare *Baxter v. City of Belleville, Ill.*, 720 F. Supp. 720, 731 (S.D. Ill. 1989) (holding that a converted office building used as a hospice for those affected by AIDS is a “dwelling”), with *United States v. Mintzes*, 304 F. Supp. 1305 (D. Md. 1969) (finding that vacant land managed for commercial use is not a “dwelling”).

(the FHA),²⁵ the Violence Against Women Act of 1995 (VAWA),²⁶ the IHRA,²⁷ and the Illinois Domestic Violence Act of 1986 (IDVA).²⁸ Next, Part III summarizes what constitutes a “dwelling” under the FHA²⁹ and provides an example of a court ruling where a homeless shelter was found to constitute a “dwelling.”³⁰ Part IV discusses state court cases decided prior to January 1, 2010, applying decisions to individual facts—that is, case law before the amendment to the IHRA that made “order of protection status” a protected class.³¹ Next, Part V discusses how Illinois courts should apply the amended “Declaration of Policy . . . Freedom from Unlawful Discrimination” section,³² and the general definition section defining “order of protection status”³³ of the IHRA. Lastly, this Comment concludes in Part VI by explaining that, in order to apply the amendment of³⁴ and addition to³⁵ the IHRA broadly, Illinois courts should take another action to protect victims of domestic violence. That is, Illinois courts should broaden the scope of “dwelling” to include domestic violence shelters so that victims are not turned away at the moment they are most in need of protection.

II. HISTORICAL BACKGROUND ON FEDERAL STATUTES

A. THE CIVIL RIGHTS ACT OF 1968: TITLE VIII

The FHA prohibits discrimination against individuals in the sale, rental, and financing of dwellings because of their being a member of any of the specific protected classes, including race, color, religion,³⁶ sex, and national origin. For instance, a housing provider is entitled to turn away an individual because of bad credit, because bad credit is not a protected class.

25. See generally 42 U.S.C. § 3603 (2006).

26. See generally 42 U.S.C. § 13981 (2006), *invalidated* by United States v. Morrison, 529 U.S. 598 (2000).

27. See generally 775 ILL. COMP. STAT. 5 (2010 State Bar Edition & Supp. 2012).

28. 750 ILL. COMP. STAT. 60 (2011).

29. See 42 U.S.C. § 3603(a)(1)(A)-(D).

30. See, e.g., Woods v. Foster, 884 F. Supp. 1169 (N.D. Ill. 1995).

31. See Balilaj v. Karagjozi, No. FV-13-1708-08, 2009 WL 971945, at *6 (N.J. Super. Ct. App. Div. Apr. 13, 2009); Woods v. Horton, 84 Cal. Rptr. 3d 332 (Ct. App. 2008); Complaint at 1, Lewis v. N. End Vill., No. 2:07-cv-10757 (E.D. Mich. Feb. 26, 2008), *available at* www.aclu.org/files/images/asset_upload_file733_34211.pdf; McCauley v. City of Chicago, No. 09 C 2604, 2009 WL 3055312, at *1 (N.D. Ill. Sept. 18, 2009); Bouley v. Young-Sabourin, 394 F. Supp. 2d 675 (D. Vt. 2005).

32. See generally 775 ILL. COMP. STAT. 5/1-102(A) (2010 State Bar Edition).

33. See generally 775 ILL. COMP. STAT. 5/1-103(K-5) (2010 State Bar Edition & Supp. 2012).

34. See generally 775 ILL. COMP. STAT. 5/1-102(A).

35. See generally 775 ILL. COMP. STAT. 5/1-103(K-5).

36. Religion refers to the religion of the housing provider as well as the religion of the tenant or applicant. 42 U.S.C. § 3604(a) (2006).

In contrast, if a housing provider turns away an individual because of his or her protected class (e.g., sex), then the housing provider is in violation of the FHA. It is then *because of* this individual's protected class that the housing provider refused to sell or rent to the individual. The FHA was amended in 1988 to expand its coverage to prohibit discrimination based on disability (also known as "handicap")³⁷ and familial status.³⁸

The FHA covers all actions that constitute unlawful discrimination in housing,³⁹ including refusing to sell or rent; discriminatory advertising;⁴⁰ making housing more difficult to obtain or keep; discriminating in terms or conditions of sale or rental; making false statements about availability of housing; refusing to negotiate; discriminating in privileges, services, or facilities; blockbusting;⁴¹ retaliating or interfering; sexually harassing; and steering.⁴²

37. See 42 U.S.C. § 3602(h) (2006). To be a protected class under "disability," a person (1) must (i) have "a physical or mental impairment" that (ii) "substantially limits" (iii) "one or more . . . major life activities"; (2) must have "a record of having such an impairment"; or (3) must be "regarded as having such an impairment." *Id.*

38. See 42 U.S.C. § 3602(c) (2006) ("'Family' includes a single individual."); 42 U.S.C. § 3602(k) (2006). Discrimination based on familial status refers to discrimination against a person because of the presence of children under the age of eighteen in his or her family. It includes discrimination against a person because of the number of children they have or the age of the children they have. It also includes discrimination against a pregnant woman, a woman trying to become pregnant, and a woman or a man seeking custody of one or more children. There is an exemption for older persons, such as those in nursing homes. See 42 U.S.C. § 3607(b)(2)-(3); 775 ILL. COMP. STAT. 5/3-106(I)(1)(a)-(c) (2010 State Bar Edition). Reasonable occupancy standards apply, where a dwelling may be limited by the square footage or number of bedrooms.

39. See 42 U.S.C. § 3604(a)-(e) (2006).

40. *Conduct* is different from *speech*. A housing provider can think whatever they wish, but statements are interpreted by a reasonable person standard. A housing provider can dismiss a family with children if they do not want children on their premises and provide absolutely no reason for dismissing the family—the housing provider would virtually never get in legal trouble for this due to lack of evidence that they dismissed the family for illicit reasons. But the housing provider cannot *state* that he or she does not want a family with children—this would be clear evidence of illicit discrimination.

41. See 775 ILL. COMP. STAT. 5/3-103 (2010 State Bar Edition). Blockbusting is also known as "panic peddling." See *City of Chicago v. Prus*, 453 N.E.2d 776, 779 (Ill. App. Ct. 1983) ("[The plaintiff's expert witness] defined 'panic peddling' as an effort to frighten homeowners into selling in an area which may be undergoing racial or ethnic change. The practice usually involves real estate brokers who create fear or exploit prejudices to obtain property listings.").

42. See *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 366 n.1 (1982) ("As defined in the complaint, racial steering is a practice by which real estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups." (internal quotation marks omitted)).

B. THE VIOLENCE AGAINST WOMEN ACT OF 1994 (VAWA)

In *United States v. Morrison*, the United States Supreme Court held that 42 U.S.C. § 13981 was unconstitutional under the Commerce Clause and the Fourteenth Amendment.⁴³ Before its amendment on February 1, 2010, 42 U.S.C. § 13981 was enacted to protect the civil rights of a person who had experienced gender motivated violence; that is, one or more acts that would result in a felony against a person because of their gender.⁴⁴ Though an important enactment, the VAWA is not discussed in this Comment, regardless of its legal standing.

C. THE ILLINOIS HUMAN RIGHTS ACT (IHRA)

Article 3 of the Illinois Human Rights Act (IHRA)⁴⁵ forbids discrimination in real estate transactions.⁴⁶ Persons employed within various areas of real estate are subject to fair housing laws⁴⁷ under the real estate transactions section of the IHRA.⁴⁸ It is implied in the Tenth Amendment that the federal legal system enacts laws at the floor level, and then allows the states to carve out additional laws, reaching towards the ceiling.⁴⁹ As such, the IHRA adds additional protected classes, including ancestry, age, marital status, military status, unfavorable discharge from military, sexual orientation, and order of protection status.⁵⁰

43. See *United States v. Morrison*, 529 U.S. 598 (2000).

44. See 42 U.S.C. § 13981 (2006), *invalidated by Morrison*, 529 U.S. 598.

45. See generally 775 ILL. COMP. STAT. 5/3-101 to 3-106 (2010 State Bar Edition & Supp. 2012).

46. 775 ILL. COMP. STAT. 5/1-102 (2010 State Bar Edition).

47. This includes owners of real estate, brokers, salespersons, managers, rental agents, advertisers, mortgage lenders, builders, and appraisers. Additionally, houses, apartments, mobile home parks, vacant land, condominiums, and other types of residential property are covered under federal and state fair housing laws. 775 ILL. COMP. STAT. 5/3-101 (2010 State Bar Edition).

48. See 775 ILL. COMP. STAT. 5/3-101 to 3-106 (2010 State Bar Edition & Supp. 2012). The actual term “dwelling” does not appear in the IHRA under its article on “Real Estate Transactions” except under the disability section. Rather, it is implied that the sections of this article relate to dwellings. Thus, the protected classes under the IHRA relate to dwellings.

49. See U.S. CONST. amend. X.

50. See 775 ILL. COMP. STAT. 5/102(A) (2010 State Bar Edition).

D. THE ILLINOIS DOMESTIC VIOLENCE ACT OF 1986 (IDVA)

The Illinois Domestic Violence Act (IDVA) of 1986⁵¹ promotes various underlying purposes, including recognition (1) of domestic violence as “a serious crime against the individual and society;”⁵² (2) that, regardless of recently amended laws, the legal system has failed to protect and assist victims of family violence in an appropriate manner;⁵³ and (3) of the need to expand a victim’s civil and criminal remedies, including physical separation to avoid further abuse⁵⁴ and other measures to keep victims from becoming trapped in abusive situations due to “fear of retaliation, loss of a child, financial dependence, or loss of accessible housing or services.”⁵⁵

The IDVA defines “abuse,”⁵⁶ “family or household members,”⁵⁷ “harassment,”⁵⁸ “interference with personal liberty,”⁵⁹ and “intimidation of a dependent”⁶⁰ to further explain domestic violence. Additionally, there are several remedies under the IDVA.⁶¹ There is relief regarding minor chil-

51. See generally 750 ILL. COMP. STAT. 60 (2010 State Bar Edition & Supp. 2012). Facts contained in this Comment are from the revised version of the IDVA (revised as of January 2009).

52. 750 ILL. COMP. STAT. 60/102(1) (2010 State Bar Edition).

53. *Id.* § 102(3).

54. *Id.* § 102(6).

55. *Id.* § 102(4).

56. See *id.* § 103(1) (“‘Abuse’ means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis.”).

57. See 750 ILL. COMP. STAT. 60/103(6) (2010 State Bar Edition) (“‘Family or household members’ include . . . persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling . . . persons who have or have had a dating or engagement relationship . . .”).

58. See *id.* § 103(7). The IDVA defines “harassment” to mean “knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would [and does] cause a reasonable person emotional distress.” *Id.* This includes creating a disturbance, repeatedly telephoning, repeatedly keeping an individual under surveillance, improperly concealing a minor child from another person, and/or threatening physical force. *Id.*

59. See *id.* § 103(9) (“‘Interference with personal liberty’ means committing or threatening physical abuse, harassment, intimidation or willful deprivation so as to compel another to engage in conduct from which she or he has a right to abstain or to refrain from conduct in which she or he has a right to engage.”).

60. See *id.* § 103(10) (“‘Intimidation of a dependent’ means subjecting a person who is dependent because of age, health or disability to participation in or the witnessing of: physical force against another or physical confinement or restraint of another which constitutes physical abuse . . . regardless of whether the abused person is a family or household member.”).

61. See generally 750 ILL. COMP. STAT. 60/214(a), (b)(3)-(17) (State Bar Edition Supp. 2012).

dren,⁶² prohibitions to the abuser,⁶³ orders to pay,⁶⁴ and relief regarding property.⁶⁵

III. WHAT CONSTITUTES A “DWELLING”

The FHA prohibits housing discrimination in the sale or rental of a “dwelling.”⁶⁶ A dwelling includes “any building . . . or portion thereof which is occupied as, or designed or intended for occupancy as, a residence.”⁶⁷ The FHA does not define a “residence.”⁶⁸ Most courts cite to the case of *United States v. Hughes Memorial Home*, which defined residence as “a temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit.”⁶⁹ A dwelling may be publicly or privately owned, and there are few exemptions.⁷⁰ FHA does not apply to any housing that is not a “dwelling,” such as public accommodations,⁷¹ nor does the definition of a “dwelling” include transient housing.⁷² Courts are more likely to regard domestic violence shelters as transient housing rather than a dwelling because of transient populations.⁷³ Yet, in applying inconsistent tests, a court

62. *See id.* § 214(b)(5)-(8), (12).

63. *See id.* § 214(b)(1), (14)-(15).

64. *See id.* § 214(b)(3), (13), (16)-(17).

65. *See id.* § 214(b)(2), (10)-(11).

66. 42 U.S.C. § 3603(a)(1)(A)-(D) (2006).

67. 42 U.S.C. § 3602(b) (2006).

68. *See United States v. Hughes Mem’l Home*, 396 F. Supp. 544, 549 (W.D. Va. 1975); *see generally* 42 U.S.C. § 3602(b) (2006).

69. *United States v. Hughes Mem’l Home*, 396 F. Supp. 544, 549 (W.D. Va. 1975).

70. *See* 42 U.S.C. §§ 3603(a)(2), (b), 3607(a) (2006). Exemptions include (a) single family housing for owners of three or fewer single family houses selling or renting without using an agent; (b) rooming of a house or small apartment with living quarters occupied by no more than four independent families, and the owner lives on the premises; and (c) religious organizations or private clubs that provide lodgings (which are not dwellings and non-commercial) that are allowed to prefer their own members. *See id.*

71. Title II, Section 201 of the FHA defines what a public accommodation is—it includes a “hotel, motel, or other establishment which provides lodging to transient guests.” If a publicly or privately owned property does not meet an exemption, then, regardless of whether there are private monies invested, the property qualifies as a “dwelling.” *See infra* note 74.

72. 42 U.S.C. § 3602(b) (2006).

73. *See Questions & Answers: Domestic Violence Shelters and Civil Rights Statutes*, NAT’L L. CENTER ON HOMELESSNESS & POVERTY, 9-10, http://www.nlchp.org/content/pubs/Q&A_DV_CivilRightsJuly%2020091.pdf (last visited Aug. 24, 2011) (“Nontraditional housing, such as a domestic violence shelter, is considered a dwelling in some circumstances. Courts typically look at factors such as whether a person sees the shelter as his [or] her residence for a period of time, whether [he or she] intends to stay, whether [he or she] keeps [his or her] belongings there, whether [he or she] has another

may hold that a domestic violence shelter is a dwelling.⁷⁴ As the law currently stands, domestic violence shelters are not dwellings.⁷⁵ Given that domestic violence shelters are not dwellings, and only dwellings are subject to the FHA, domestic violence shelters are not currently subject to the FHA.

A. *WOODS V. FOSTER*

In *Woods v. Foster*, the court held that a homeless shelter was a “dwelling” for purposes of the FHA.⁷⁶ In *Foster*, former residents of a shelter for homeless families claimed sexual harassment in violation of the FHA by the executive director and chairman of the board of directors.⁷⁷ The defendants argued that the shelter was a form of public accommodation, rather than a dwelling, because of the limited transient stay of 120 days.⁷⁸ The court disagreed, stating that the building in question was a “dwelling” for purposes of the FHA because “[a]lthough the [s]helter [was] not designed to be a place of permanent residence, it cannot be said that the people who live there do not intend to return—they have nowhere else to go.”⁷⁹ The plaintiffs, having no other place to return to, led the court to conclude that they resided at the shelter and, therefore, the shelter was a dwelling for the purposes of the FHA.⁸⁰

residence, and how long individuals typically stay at the shelter. The more ‘transient’ its population is, the less likely a shelter is to be deemed a dwelling”).

74. Compare *South Carolina v. Evans*, 656 S.E.2d 782, 784 (S.C. Ct. App. 2008) (asserting, in a burglary case, that the test to consider a building a dwelling turns on whether the occupant left with the intention to return), with *McKenzie v. Maryland*, 962 A.2d 998, 1007 (Md. 2008) (“[A]n unoccupied apartment that is between rentals, but is suitable for occupancy, is a ‘dwelling’ for [the] purpose of statutory burglary.”).

75. Courts accept or deny properties as dwellings on a case-by-case basis. See, e.g., *Evans*, 656 S.E.2d at 783-84.

76. See *Woods v. Foster*, 884 F. Supp. 1169, 1173-74 (N.D. Ill. 1995).

77. *Id.* at 1170. The court noted that prior to *Woods v. Foster* the Seventh Circuit had not addressed whether a shelter for homeless people was a residence. *Id.*

78. *Foster*, 884 F. Supp. at 1174.

79. *Id.* at 1173.

80. *Id.* at 1173-74. Compare *Jenkins v. N.Y. City Dept. of Homeless Servs.*, 643 F. Supp. 2d 507, 519 (S.D.N.Y. 2009) (holding that a homeless shelter fell within the definition of dwelling under the FHA because the plaintiff had no other home to go to), with *Intermountain Fair Hous. Council v. Boise Rescue Mission Ministries*, 717 F. Supp. 2d 1101, 1111-12 (D. Idaho 2010) (stating that the homeless shelter in question was not a “dwelling” subject to the FHA because it was neither intended nor designed for occupants to remain there for any significant period of time).

IV. STATUTES OF THE INDIVIDUAL STATES AND CASE LAW PRIOR TO JANUARY 1, 2010

The following statutes and cases are reviewed to provide a background for how Illinois courts should approach two sections of the Illinois Compiled Statutes: chapter 775, act 5, section 1-102A (section 1-102A) and chapter 775, act 5, section 1-103(K-5) (section 1-103(K-5)). Several issues are mentioned, including the “[o]ne strike, and you’re out” policy issued by President Clinton,⁸¹ a sex discrimination claim,⁸² an equal protection claim,⁸³ and a victim of domestic violence being held liable for damage caused by a “guest” who was the victim’s abuser.⁸⁴

A. STATE STATUTES

Colorado law states that where domestic violence was the cause of unlawful detention of real property, a domestic violence victim cannot be held liable.⁸⁵ Furthermore, a housing provider cannot include in a rental or lease agreement that they are allowed to terminate the agreement or impose a penalty if a tenant calls the police in response to a domestic violence situation.⁸⁶ Colorado law states that abusive behavior cannot be considered a violation of a lease by the victim of that abuse, and that the victim cannot be punished for their status.⁸⁷ Moreover, Colorado law allows victims to break their leases by written notice to landlords.⁸⁸

In Rhode Island, it is in violation of the law to discriminate against an applicant or tenant solely on the basis that the applicant or tenant is a victim of domestic abuse.⁸⁹ The statute clearly states that a housing provider cannot discriminate because of the status of a domestic abuse victim.⁹⁰ Similar-

81. See Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 35 CLEARINGHOUSE REV. 708, 717-718 (2002); *Clinton Acts to Stem Public Housing Crime*, N.Y. TIMES (Mar. 29, 1996), www.nytimes.com/1996/03/29/us/clinton-acts-to-stem-public-housing-crime.html.

82. See *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005).

83. See *McCauley v. City of Chicago*, No. 09 C 2604, 2009 WL 3055312, at *3 (N.D. Ill. Sept. 18, 2009).

84. See Complaint, *Lewis v. N. End Vill.*, No. 2:07-cv-10757 (E.D. Mich. Feb. 26, 2008), available at www.aclu.org/files/images/asset_upload_file733_34211.pdf.

85. COLO. REV. STAT. § 13-40-104(4)(a) (Supp. 2005).

86. COLO. REV. STAT. § 38-12-402(1) (Supp. 2004).

87. *Id.*; COLO. REV. STAT. § 38-12-402(2)(a) (Supp. 2004).

88. *Id.*

89. R.I. GEN. LAWS. § 34-37-2.4 (Supp. 2005).

90. Anique Drouin, Comment, *Who Turned Out the Lights?: How Maryland Laws Fail to Protect Victims of Domestic Violence from Third-Party Abuse*, 36 U. BALT. L. REV. 105, 117 (2006).

ly, Wisconsin law provides that all people shall have an equal opportunity for housing, regardless of their status as a victim of domestic abuse.⁹¹

Colorado, the District of Columbia, Illinois, North Carolina, Oregon, Texas, and Washington permit a battered tenant, upon providing specified documentation, to terminate his or her lease early without financial penalty.⁹² The District of Columbia, North Carolina, Rhode Island, and Washington all prohibit housing discrimination against victims of domestic violence.⁹³

B. CASE LAW: "POLICIES"

1. Oregon: The "One Strike and You're Out" Policy

In 1996, President Clinton introduced the "[o]ne strike, and you're out" policy.⁹⁴ The purpose was to "restore the rule of law to public housing."⁹⁵ As a result, housing providers were penalized for not combating crime by enforcing the "one-strike" policy on housing premises.⁹⁶ Additionally, housing providers were given discretion to interpret and apply specific language in Section 1437d(1)(6) in a way that could include victims of domestic violence, due to the absence of an explicit standard of liability.⁹⁷

One instance of the "one-strike" policy is that of Ms. Tiffanie Alvera.⁹⁸ Ms. Alvera obtained a temporary restraining order against her

91. *Id.*

92. *Id.*

93. *Id.*

94. See *Clinton Acts to Stem Public Housing Crime*, N.Y. TIMES (Mar. 29, 1996), www.nytimes.com/1996/03/29/us/clinton-acts-to-stem-public-housing-crime.html; 42 U.S.C. § 1437d(1)(6) (2006) ("[A]ny criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants . . . engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy."). See generally 42 U.S.C. § 1437d(1)(6) (2006).

95. See *Clinton Acts to Stem Public Housing Crime*, N.Y. TIMES (Mar. 29, 1996), www.nytimes.com/1996/03/29/us/clinton-acts-to-stem-public-housing-crime.html.

96. Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 35 CLEARINGHOUSE REV. 708, 717-718 (2002).

97. See Tara M. Vrettos, Note, *Victimizing the Victim: Evicting Domestic Violence Victims from Public Housing Based on the Zero-Tolerance Policy*, 9 CARDOZO WOMEN'S L.J. 97, 106 (2002) ("Congress enacted § 1437d(1)(6) without specifying a standard of liability for its enforcement."). Furthermore, the regulation provides that Public Housing Authorities (PHAs) have discretion in deciding whether to take into consideration extraordinary or mitigating circumstances when applying 1437d(1)(6) evictions. This may cause a chilling effect upon PHAs who are unfamiliar with the legal system.

98. See Complaint, *Alvera v. C.B.M. Grp., Inc.*, No. 01-857-PA (D. Or. Jul. 10, 2001), available at http://www.aclu.org/files/images/asset_upload_file457_33995.pdf.

husband after he physically assaulted her on August 2, 1999.⁹⁹ The order required him to move from their shared Oregon apartment, and prohibited him from returning to the apartment, contacting Ms. Alvera, or coming within 100 feet of Ms. Alvera.¹⁰⁰ Two days after she provided a copy of her order of protection to the manager of her housing development, Ms. Alvera was served “with a 24-hour [eviction] notice . . . terminating her tenancy at the [housing complex].”¹⁰¹ The eviction notice stated, “You, [or] someone in your control . . . has seriously threatened immediately to inflict personal injury . . . upon the landlord or other tenants.”¹⁰² The eviction notice specifically noted the August 2 incident.¹⁰³ The basis for Ms. Alvera’s eviction was the zero-tolerance policy that the Oregon Housing Authority had adopted.¹⁰⁴ Nothing in her lease agreement stipulated authority by her landlord or property manager to evict a tenant based on his or her status as a victim of domestic abuse.¹⁰⁵

Ms. Alvera responded to the eviction notice.¹⁰⁶ Her initial request for a smaller apartment was denied. When she resubmitted an application two months later, her request was accepted based upon conditions not imposed on other tenants of the housing complex.¹⁰⁷

Public Housing Authorities (PHAs) across the United States have similar zero-tolerance policies to that of Oregon.¹⁰⁸ These policies mandate the eviction of entire families if a single member of the household commits

99. *Id.* Ms. Alvera sustained injuries from the physical assault by her then-husband. Complaint at 5, *Alvera v. C.B.M. Grp., Inc.*, No. 01-857-PA (D. Or. Jul. 10, 2001), available at http://www.aclu.org/files/images/asset_upload_file457_33995.pdf.

100. *Id.*

101. *Id.* at 6.

102. *Id.*

103. *Id.*

104. *See* Complaint at 6, 11, 13, *Alvera v. C.B.M. Grp., Inc.*, No. 01-857-PA (D. Or. Jul. 10, 2001), available at http://www.aclu.org/files/images/asset_upload_file457_33995.pdf (“The C.B.M. Group illegally discriminated against her on the basis of sex.”).

105. *Id.* at 1-15.

106. *Id.* at 7 (stating that Ms. Alvera attempted to pay rent for the next two months, removed her husband’s name from the lease, and submitted an application to move to a smaller apartment).

107. Landlords often demand conditions that are not imposed on other residents and, therefore, the conditions “punish” victims of domestic abuse. *See* Elizabeth J. Thomas, *Building a Statutory Shelter for Victims of Domestic Violence: The United States Housing Act and Violence Against Women Act in Collaboration*, 16 WASH. U. J.L. & POL’Y 289, 292 (2004).

108. *See* Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 35 CLEARINGHOUSE REV. 708 (2002), available at http://www.idaholegalaid.org/files/HousingDiscrimination_DomVioVict.pdf.

a violent offense during the term of the lease.¹⁰⁹ As a result, victims of domestic violence have lost their homes and have been denied housing opportunities based upon the actions of their abusers.¹¹⁰ One can understand that, from the housing provider's perspective, evictions of families causing violence on the premises protect the living environment of other tenants.¹¹¹ Where Ms. Alvera's claim contributes in the struggle against zero-tolerance evictions, it only acts as a deterrent to housing providers because the parties settled;¹¹² the decision is not binding on public housing providers not named parties to the suit.¹¹³

2. Sex Discrimination

i. Illinois: Ms. McCauley

Many women try to bring sex discrimination cases under the FHA when they are the victims of domestic abuse.¹¹⁴ The reason the claim is regularly rejected, as shown in *McCauley v. City of Chicago*,¹¹⁵ is that a housing provider is not discriminating against a woman because of her sex, but for another reason: her order of protection status.

In *McCauley*, Glenford J. Martinez¹¹⁶ was arrested on November 3, 2007, for domestic violence battery after choking Ms. Mersaides McCauley until she lost consciousness.¹¹⁷ Two days after the incident, Ms. McCauley obtained an emergency order of protection against Martinez; Ms. McCauley then received a plenary order of protection effective until February 25,

109. *Id.*; *Clinton Acts to Stem Public Housing Crime*, N.Y. TIMES (Mar. 29, 1996), www.nytimes.com/1996/03/29/us/clinton-acts-to-stem-public-housing-crime.html.

110. *See generally* Weiser & Boehm, *supra* note 108.

111. *Id.*

112. *See id.* at 718.

113. *See* Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 35 CLEARINGHOUSE REV. 708, 718 (2002), available at http://www.idaholegalaid.org/files/HousingDiscrimination_DomVioVict.pdf.

114. *See, e.g.*, *McCauley v. City of Chicago*, No. 09 C 2604, 2009 WL 3055312, at *1 (N.D. Ill. Sept. 18, 2009).

115. *Id.*

116. "Glenford J. Martinez was found guilty of murder and attempted murder based on a 1992 drug-related incident." Though sentenced to twenty-eight and fourteen years imprisonment, "[o]n or about May 25, 2006, the [Illinois Department of Corrections] released Martinez from his incarceration [contingent upon his participation in anger management counseling] . . . to mandatory supervised release." *Id.* at *2.

117. *Id.*

2008, from the circuit court.¹¹⁸ Regardless, Martinez continued to harass Ms. McCauley.¹¹⁹ Though made aware of Martinez's actions, the Chicago Police Department never arrested Martinez for violating the order of protection. On April 6, 2008, Ms. McCauley was shot and killed by Martinez.¹²⁰

In *McCauley*, the plaintiff's¹²¹ equal protection, sex discrimination claim failed because the plaintiff argued that the City of Chicago intentionally treated all victims of domestic abuse differently, not only Ms. McCauley.¹²² The plaintiff's equal protection claim ultimately failed because Ms. McCauley was not a member of a suspect or protected class, and the plaintiff's allegations defeated any equal protection "class of one" claim.¹²³ Furthermore, in arguing that Ms. McCauley was a female domestic violence victim, and therefore within a suspect class, the plaintiff failed to support her argument with any legal authority other than the *Massachusetts Board of Retirement v. Murgia* decision.¹²⁴ The court concluded that the decedent was not a member of a suspect class because the court did not

118. *Id.* Ms. McCauley's emergency order of protection against Martinez prohibited him from committing any physical abuse, harassment, interference with personal liberty, or stalking, and from contacting Ms. McCauley.

119. *McCauley v. City of Chicago*, No. 09 C 2604, 2009 WL 3055312, at *1 (N.D. Ill. Sept. 18, 2009). Arizona, Colorado, the District of Columbia, Minnesota, and Texas explicitly guarantee a victim's right to call the police. See *State Laws and Legislation to Ensure Housing Rights for Survivors of Domestic and Sexual Violence*, NAT'L L. CENTER ON HOMELESSNESS & POVERTY, http://www.nlchp.org/content/pubs/DV_Housing_State_Laws_Feb%20_20081.pdf (last visited Aug. 24, 2011).

120. *McCauley v. City of Chicago*, No. 09 C 2604, 2009 WL 3055312, at *2 (N.D. Ill. Sept. 18, 2009). Martinez approached Ms. McCauley in a parking lot. Both were in their respective vehicles, and Ms. McCauley's friend was a passenger in her car. Martinez used his vehicle to block Ms. McCauley's vehicle, thereby obstructing her exit. Martinez shot Ms. McCauley several times. "Shortly thereafter, McCauley was pronounced dead at Northwestern Memorial Hospital due to multiple gunshot wounds. Later that evening, Martinez shot and killed himself." *Id.*

121. *Id.* at *1. The plaintiff, Brewster McCauley, was the special administrator of Mersaides McCauley's estate.

122. *Id.* at *4. The plaintiff alleged that the city discriminated against Ms. McCauley based on her group affiliation as a domestic abuse victim. The plaintiff had to show that Ms. McCauley was "intentionally treated differently from others similarly situated." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

123. *McCauley*, 2009 WL 3055312, at *4.

124. The court stated that "[w]hile McCauley's class is certainly sympathetic, [the] [p]laintiff must establish that it is suspect." *Id.* at *3. A suspect "class is one 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'" *McCauley*, 2009 WL 3055312, at *3 (quoting *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976) (holding that age is not a suspect class under the Equal Protection Clause)).

have controlling legal authority to find “that victims of domestic violence are a suspect class for equal protection purposes.”¹²⁵

ii. Vermont: Ms. Bouley

On October 15, 2003, Ms. Jacqueline Bouley’s husband criminally attacked her.¹²⁶ She called the police and fled the apartment.¹²⁷ Her husband was arrested, and she applied for a restraining order that night.¹²⁸ Following a discussion with her landlord the next morning,¹²⁹ Ms. Bouley received a letter requesting she leave the premises in a little over one month.¹³⁰ The court held that Ms. Bouley demonstrated a prima facie case for sex discrimination, as, less than seventy-two hours after her husband assaulted her, her landlord tried to evict her.¹³¹ Essentially, the District Court of Vermont allowed Ms. Bouley’s claim of disparate treatment as a prima facie case of sex discrimination under the FHA.¹³² The court held that discriminating against victims of domestic violence could constitute sex discrimination under the FHA.¹³³

3. Michigan: Evicted for Actions of an Abuser

In 2005, due to severe harassment and stalking by her ex-boyfriend, Tanica Lewis obtained an order of protection against him.¹³⁴ In the following year, Lewis received a thirty-day notice of eviction when her ex-boyfriend broke the windows of her home and kicked in the door.¹³⁵ Lewis

125. *McCauley*, 2009 WL 3055312, at *3.

126. *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 677 (D. Vt. 2005).

127. *Id.*

128. *Id.*

129. *Id.* Ms. Bouley’s landlord tried unsuccessfully to discuss “religion” with Ms. Bouley. Ms. Bouley resisted discussing the subject.

130. *Id.*

131. *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 678 (D. Vt. 2005).

132. Danielle Pelfrey Duryea, *Court Recognizes Domestic Violence Survivor’s Fair Housing Challenge to Eviction*, 35 HOUSING L. BULL. 181, 181 (2005), available at <http://nhlp.org/files/NHLP%20Bull%20Jul-Aug%20final.pdf>.

133. *Bouley*, 394 F. Supp. 2d at 678.

134. *Lewis v. North End Village, et al.*, ACLU.ORG (Oct. 28, 2010), www.aclu.org/womens-rights/lewis-v-north-end-village-et-al; see Complaint, *Lewis v. N. End Vill.*, No. 2:07-cv-10757 (E.D. Mich. Feb. 26, 2008), available at www.aclu.org/files/images/asset_upload_file733_34211.pdf.

135. *Lewis v. North End Village, et al.*, ACLU.ORG (Oct. 28, 2010), www.aclu.org/womens-rights/lewis-v-north-end-village-et-al; see Complaint, *Lewis v. N. End Vill.*, No. 2:07-cv-10757 (E.D. Mich. Feb. 26, 2008), available at www.aclu.org/files/images/asset_upload_file733_34211.pdf.

and her two young daughters lived in a shelter as a result.¹³⁶ In 2007, the Women's Rights Project and the American Civil Liberties Union of Michigan filed a federal lawsuit on behalf of Lewis alleging sex discrimination.¹³⁷ Under a February 2008 settlement agreement, Lewis's former housing providers, North End Village and Management Systems, Inc., were prohibited from "evict[ing] or discriminat[ing] against individuals in the terms, conditions, or privileges of their tenancy because they have been the victims of domestic violence, dating violence, sexual assault, or stalking, whether or not the abuser is residing in the tenant's household."¹³⁸ The housing providers were also required to offer early lease termination and relocation to victims of domestic violence requiring safety after leaving their homes.¹³⁹

C. DOMESTIC VIOLENCE SHELTERS: TO ACCEPT MEN OR DENY ACCESS?

1. *Why Men and Women Often Do Not Bring Claims*

A man or woman evicted from their housing is often victimized twice: first by his or her abuser, then by his or her housing provider.¹⁴⁰ While there is a disparate impact for women, who are often the victims of these crimes, men are victims too. Survivors are most commonly referred to as women because women disproportionately experience the violence. Landlords often have an unintentionally easier time evicting or denying a woman housing because she has been a victim of domestic abuse than they do evicting or

136. *Lewis v. North End Village, et al.*, ACLU.ORG (Oct. 28, 2010), www.aclu.org/womens-rights/lewis-v-north-end-village-et-al. The article does not specify whether the shelter was a homeless shelter or a domestic violence shelter. See Complaint, *Lewis v. N. End Vill.*, No. 2:07-cv-10757 (E.D. Mich. Feb. 26, 2008), available at www.aclu.org/files/images/asset_upload_file733_34211.pdf.

137. *Lewis v. North End Village, et al.*, ACLU.ORG (Oct. 28, 2010), www.aclu.org/womens-rights/lewis-v-north-end-village-et-al; see Complaint, *Lewis v. N. End Vill.*, No. 2:07-cv-10757 (E.D. Mich. Feb. 26, 2008), available at www.aclu.org/files/images/asset_upload_file733_34211.pdf.

138. Complaint at 2, *Lewis v. N. End Vill.*, No. 2:07-cv-10757 (E.D. Mich. Feb. 26, 2008), available at www.aclu.org/files/images/asset_upload_file733_34211.pdf; *ACLU Fights Eviction of Domestic Abuse Victim in Michigan*, ACLU.ORG (Jan. 17, 2007), <http://www.aclu.org/womensrights/violence/28143prs20070117.html>.

139. Complaint at 3, *Lewis v. N. End Vill.*, No. 2:07-cv-10757 (E.D. Mich. Feb. 26, 2008), available at www.aclu.org/files/images/asset_upload_file733_34211.pdf. Additionally, the ACLU had the housing providers reimburse Lewis and her children for financial damages incurred by having to move homes, and make an apartment available for Lewis's family that was comparable in cost, amenities, and location to the unit from which the family was evicted. *Private Housing Company Won't Evict Domestic Violence Victims After ACLU Lawsuit*, ACLU.ORG (Feb. 26, 2008), <http://www.aclu.org/womens-rights/private-housing-company-won-t-evict-domestic-violence-victims-after-aclu-lawsuit>.

140. *ACLU Fights Eviction of Domestic Abuse Victim in Michigan*, ACLU.ORG (Jan. 17, 2007), <http://www.aclu.org/womensrights/violence/28143prs20070117.html>.

denying housing to tenants who are victims of other types of crimes.¹⁴¹ Men and women usually will not bring complaints because of fear: fear of retaliation, fear of losing custody of children, fear of economic deprivation and fiscal dependence, and fear of losing housing.¹⁴² Men and women may be embarrassed to bring claims because society is unaware of legal protections. For men or women living in public housing, the risk of losing their home and income on which they depend provides a “further disincentive from leaving an abusive relationship.”¹⁴³

2. *Domestic Violence Where the Man Is the Victim and the Woman Is the Abuser*

Case law provides evidence that men are not the sole abusers in domestic abuse cases.¹⁴⁴ In 2009, the Superior Court of New Jersey in *Balilaj v. Karagojozi* granted a restraining order to a man after his wife’s assault of him was found to be “sufficiently egregious” to constitute domestic violence.¹⁴⁵ In 2008, the court of appeals in *Woods v. Horton* held that domestic violence shelters must allow women *and men* because “male domestic violence victims are similarly situated to female victims as to the need for domestic violence services.”¹⁴⁶

i. *Balilaj v. Karagojozi*

In *Balilaj v. Karagojozi*, the trial judge granted a restraining order based on the defendant’s single assault on her husband by finding that the domestic assault was “sufficiently egregious” to constitute domestic violence.¹⁴⁷ A videotape of the parties showed the defendant repeatedly striking the plaintiff on the chest while yelling and cursing.¹⁴⁸ Throughout the tape, the cou-

141. See *Victimized Twice: Abused Women and Housing Discrimination*, FAIR HOUSING RTS. CENTER, http://www.fairhousingrights.org/Resources/Highlights/15_DV.pdf (last visited Aug. 25, 2012).

142. This list is not exhaustive. Symposium, *A Leadership Summit: The Link Between Violence and Poverty in the Lives of Women and Their Children*, 3 GEO. J. ON FIGHTING POVERTY 5, 6 (1995) (“Violence not only makes women poor, it keeps women poor.”).

143. Thomas, *supra* note 107, at 310.

144. See, e.g., *Balilaj v. Karagojozi*, No. FV-13-1708-08, 2009 WL 971945, at *6 (N.J. Super. Ct. App. Div. Apr. 3, 2009); *Woods v. Horton*, 84 Cal. Rptr. 3d 332 (Ct. App. 2008).

145. *Balilaj*, 2009 WL 971945, at *6.

146. *Horton*, 84 Cal. Rptr. 3d at 344, 347-50.

147. *Balilaj*, 2009 WL 971945, at *6.

148. *Id.* at *2. The defendant referred to the plaintiff as “prostitute,” “monster,” “sh*tty dog,” “pig,” and “a waste.” *Id.* The plaintiff claimed he purchased the video camera due to prior acts of domestic violence by the defendant. *Id.*

ple's four-year-old daughter was seen moving in and out of the room, watching the incident and pleading with her mother to stop hitting her father.¹⁴⁹ The judge found the assault "most disturbing" since the defendant's tone and language showed her anger and the act was committed in front of the daughter.¹⁵⁰

ii. *Woods v. Horton*

In *Woods v. Horton*, four men, and the daughter of one of the men, challenged several statutes administered by the defendants¹⁵¹ relating to domestic violence programs.¹⁵² The first plaintiff, David Woods, alleged that his wife repeatedly hit him and attacked him with weapons and objects.¹⁵³ When Mr. Woods called a domestic violence service provider, he was told the provider did not accept men.¹⁵⁴ As a result, Mr. Woods and his daughter returned to live in the same house as Mrs. Woods.¹⁵⁵ The violence continued.¹⁵⁶ Mr. Woods alleged in his complaint that the violence might still continue and that he still needed services.¹⁵⁷ His daughter alleged she was injured because of services denied to her father, which forced her to witness, and be subject to, continued violence.¹⁵⁸ The second plaintiff, Gregory Bowman, alleged that his former girlfriend repeatedly assaulted him.¹⁵⁹ Mr. Bowman was frequently denied domestic violence services because he was a man.¹⁶⁰ A representative of the National Coalition of Free Men contacted the Women's Health Center of Excellence on behalf of Mr.

149. *Id.* at *6.

150. *Id.* at *5.

151. The defendants were the State of California, the Department of Health Services, the Office of Emergency Services, the Department of Corrections (now the Department of Corrections and Rehabilitation), and the directors of each of these agencies. *Horton*, 84 Cal. Rptr. 3d at 338.

152. *Id.* The plaintiffs either suffered domestic violence, or were taxpayers alleging that the defendants were illegally spending state money by administering programs according to gender classifications. *Id.* at 337-38.

153. *Horton*, 84 Cal. Rptr. 3d at 337.

154. Mr. Woods sought help from WEAVE (Women Escaping A Violent Environment). *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Horton*, 84 Cal. Rptr. 3d at 337.

159. *Horton*, 84 Cal. Rptr. 3d at 338. Mr. Bowman's girlfriend gave him a black eye and threatened him. *Id.* She was arrested and charged with assault with a deadly weapon and domestic assault after stabbing Mr. Bowman. *Id.* Mr. Bowman's girlfriend "and others continued to threaten and harass [him], including smashing his windshield, stealing his license plates[,] and leaving a suspicious package in his car." *Id.* Still, Mr. Bowman was denied services based on his gender. *Id.*

160. *Horton*, 84 Cal. Rptr. 3d at 338.

Bowman and was told services were offered only to women.¹⁶¹ The third plaintiff, Patrick Neff, alleged that his former girlfriend repeatedly assaulted him for three years.¹⁶² He sought to get out of the house and receive counseling and legal advice.¹⁶³ Though Mr. Neff had no money of his own, he was told repeatedly by the Domestic Violence and Sexual Assault Coalition that it did not help men.¹⁶⁴

The plaintiffs in *Woods v. Horton* challenged two domestic violence programs that provided benefits for women and their children, but not men and their children, as a violation of equal protection on grounds of gender-based classifications.¹⁶⁵ The first challenged domestic violence program was a comprehensive shelter-based grant program for women's shelters,¹⁶⁶ where the statute clearly stated that it applied to "adolescent females" and a "woman with their children."¹⁶⁷ The second challenged domestic violence program¹⁶⁸ was gender neutral in the main section,¹⁶⁹ but gender specific in subdivision (f), which included the terms "adolescent female" and "woman."¹⁷⁰ The plaintiffs also challenged California Government Code section 11139 for gender classification where it stated, in part, that the article "shall not be interpreted in a manner that would adversely affect lawful programs which benefit . . . women."¹⁷¹

The Court of Appeals for the Third District of California held that the Department of Public Health¹⁷² had to provide services to victims of domes-

161. *Id.*

162. *Id.*

163. *Horton*, 84 Cal. Rptr. 3d at 338.

164. *Id.* at 338.

165. *Id.* at 338. The plaintiffs challenged sections of the California Health and Safety Code, the California Penal Code, and the California Government Code. *See* CAL. HEALTH & SAFETY CODE § 124250 (West 2005); CAL. PENAL CODE § 13823.15 (West 2010); CAL. GOV'T CODE § 11135 (West 2010).

166. *Horton*, 84 Cal. Rptr. 3d at 339. The grant is administered by the Material and Child Health Branch of the California Department of Health Services. *Id.*

167. HEALTH & SAFETY § 124250(a)(1), (a)(2), (a)(3), (c)(1), (d)(1), (g)(1) (West 2005).

168. The second challenged program was the Comprehensive Statewide Domestic Violence Program administered by the Office of Emergency Services. PENAL § 13823.15.

169. *See Horton*, 84 Cal. Rptr. 3d at 339.

170. PENAL § 13823.15; *see Horton*, 84 Cal. Rptr. 3d at 339 (discussing how subdivision (f) is not gender neutral).

171. CAL. GOV'T CODE § 11139 (West 2010); *Horton*, 84 Cal. Rptr. 3d at 340. *See* GOV'T CODE § 11135 ("No person in the State of California shall, on the basis of . . . sex . . . be unlawfully denied full and equal access to the benefits of . . . any program or activity that is conducted, operated or administered by the state . . . is funded directly by the state, or receives any financial assistance from the state.").

172. This holding refers to services rendered under section 124250 of the California Health and Safety Code. *See Horton*, 84 Cal. Rptr. 3d at 349-50.

tic violence, regardless of their gender, and that the Office of Emergency Services had to provide grants¹⁷³ regardless of gender.¹⁷⁴

V. HOW ILLINOIS COURTS SHOULD APPLY SECTION 1-102(A) AND SECTION 1-103(K-5)

There needs to be more leniencies in the law for domestic violence victims. Various state laws turn against a victim when the individual is most in need of protection. Acting in accordance with the law, a landlord may bill a victim for rent after she has to flee her apartment in the midst of a lease.¹⁷⁵ A police officer must notify a tenant that a third call for police service within one evening will result in her eviction, regardless of her being a victim of domestic violence.¹⁷⁶ Unfortunately, not all of these problems can be fixed in the next twenty-four hours; however, a starting place is broadening the law to include domestic violence shelters as dwellings. For, when an individual must flee his or her housing, it is not always the case that the individual is billed for rent, or that the individual calls the police too many times within one evening; but, what is consistent is that a person loses his or her home and must turn to an alternative form of shelter. Oftentimes, the place to turn to is a domestic violence shelter, where an individual can seek protection from his or her abuser. Whether that abuser is the man or woman that harassed or physically injured them, the landlord who evicted them, or the police that are victimizing them a second time because the police are trying to act in accordance with the law, a domestic violence victim should not be turned away from a domestic violence shelter.¹⁷⁷ The purpose of a domestic violence shelter is to protect victims of domestic abuse, which is why a domestic violence shelter should not be able to turn away victims of domestic abuse.

173. This holding refers to grants to organizations that provide services to victims of domestic violence rendered under section 13823.15 of the California Penal Code. *Horton*, 84 Cal. Rptr. 3d at 349-50.

174. *Id.*

175. See generally Ann C. Johnson, *From House to Home: Creating a Right to Early Lease Termination for Domestic Violence Victims*, 90 MINN. L. REV. 1859 (2006).

176. See generally Second Amended Complaint at 7-8, *Grape v. Town/Vill. of E. Rochester*, No. 07 CV 6075 CJS (F) (W.D.N.Y. July 6, 2007), available at <http://www.nhlp.org/files/Grape%20WDNY%20nuisance%202d%20compl.pdf>.

177. This is not to assume there would not be exceptions. See 42 U.S.C. § 3604(f)(9) (2006) (“Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”). The arguments regarding the acceptance of men in domestic violence shelters are only applicable if a domestic violence shelter is included under the definition of “dwelling.”

A. TO WHOM “ORDER OF PROTECTION STATUS” APPLIES

Order of protection status should apply equally to men and women, regardless of evidence that women are more likely to be the victims of domestic abuse.¹⁷⁸ The IHRA states “*all* individuals,” “*any* individual” and “because of *his or her*.”¹⁷⁹ These emphasized words make clear that the statute should apply equally to men and women. Furthermore, the IHRA does not state “her status,” but “a *person’s* status.”¹⁸⁰ These specific words, again, make clear that the statute should not apply solely to women.

The legislature focused more on Title VII of the Civil Rights Act of 1968 (employment) rather than Title VIII (housing) when discussing House Bill 721.¹⁸¹ In this way, the legislature did not define who has order of protection status. In focusing on Title VII, order of protection status seems to only apply to an individual with a current order of protection. This is misleading because there should be three types of individuals who have order of protection status: individuals who (1) have a current order of protection, (2) had an order of protection in the past but the order has since expired, and (3) do not have a current order of protection. One may argue that this is overinclusive and opens the door to all individuals to bring an order of protection status discrimination claim. However, as shown in *McCauley*, a plaintiff needs to bring the correct claim in order to prevail. In *McCauley* the plaintiff’s sex discrimination claim failed because she was not discriminated against because of her sex. To avoid this kind of situation, Illinois courts should apply the IHRA statutes¹⁸² broadly to ensure protection for all three types of individuals who have order of protection status. This notion is consistent with the FHA’s laws regarding familial status.¹⁸³

178. Women account for eighty-five percent of the victims of intimate partner violence. Callie Marie Rennison, *Crime Data Brief: Intimate Partner Violence, 1993-2001*, BUREAU OF JUST. STAT. (Feb. 2003), <http://www.bjs.gov/content/pub/pdf/ipv01.pdf>. Men are less willing to admit to fear of any kind, persuaded by cultural norms that they should maintain a strong façade. *Id.* Men and women engage in comparable levels of abuse and control, isolation and jealousy, using children against the other, and economic abuse, yet, men more often physically intimidate. Ann L. Coker, et al., *Physical and Mental Health Effects of Intimate Partner Violence for Men and Women*, 23(4) AM. J. OF PREVENTATIVE MED. 260, 260-268 (2002).

179. 775 ILL. COMP. STAT. 5/1-102(A) (2010 State Bar Edition & Supp. 2012) (emphasis added).

180. *Id.* § 1-103(K-5) (emphasis added).

181. See H.B. 721, 96th Gen. Assemb., Reg. Sess. (Ill. 2009); *supra* notes 6-11 and accompanying text.

182. See 775 ILL. COMP. STAT. 5/1-102(A) (2010 State Bar Edition); 775 ILL. COMP. STAT. 5/1-103(K-5) (2010 State Bar Edition & Supp. 2012).

183. See 42 U.S.C. § 3602(c) (2006).

1. *The Fair Housing Act: Familial Status*

Under the FHA, familial status is a protected class, meaning a housing provider cannot discriminate because of the presence of children.¹⁸⁴ Discrimination because of the presence of children includes discrimination against someone based on (a) the number of children he or she has, (b) the age of his or her children, (c) the fact that a he or she is trying to gain custody of a child or children, (d) the fact that she is trying to become pregnant, or (e) the fact that she is already pregnant.¹⁸⁵ Familial status does not protect someone without the presence of children. Comparing familial status to order of protection status, it may seem as though a person with an order of protection is protected under the statute while a person without an order of protection is not protected under the statute. In other words, in comparing familial status to order of protection status, it seems that having an order of protection is similar to the presence of children in a family, whereas not having an order of protection is similar to not having the presence of children in a family. This is misleading. A victim of domestic violence should have order of protection status with or without an order of protection.¹⁸⁶

A housing provider should not be able to refuse to rent to a victim of domestic abuse because of his or her failure to obtain order of protection status, as that should be considered discriminating against an individual because of his or her order of protection status.¹⁸⁷ Reviewing the legislative history, the legislature discussed more about employment issues than housing. When housing did come up, it was assumed that an individual needing protection from housing discrimination would already have obtained a current order of protection.¹⁸⁸ But, this is not how the statute should be applied. Just as a housing provider cannot express a preference for African Americans, a housing provider cannot discriminate against them. It should work the same way with orders of protection—a housing provider should not be able to express a preference for people with orders of protection, nor should a housing provider be able to discriminate against them. Moreover, though the familial status statute,¹⁸⁹ on its face, seems only to include someone

184. 42 U.S.C. § 3602 (2006).

185. 42 U.S.C. § 3602(k) (2006).

186. Again, this means that (1) an individual with a current order of protection should have order of protection status, (2) an individual who had an order of protection in the past that is no longer in effect should have order of protection status, and (3) an individual without a past order of protection or a current order of protection should have order of protection status. *See supra* Part V.A.

187. *See* 42 U.S.C. § 3601 (2006).

188. *See* H.B. 721, 96th Gen. Assemb., Reg. Sess. (Ill. 2009); *supra* notes 6-11 and accompanying text.

189. *See* 775 ILL. COMP. STAT. 5/1-102(A) (2010 State Bar Edition).

with the presence of children, “family” under the FHA includes a single individual.¹⁹⁰ Therefore, an individual should have order of protection status whether an individual has a current order of protection or had one in the past that is no longer in effect, and a victim of domestic abuse should have order of protection status even if he or she does not have a current or past order of protection.

B. STATE STATUTES

The current Illinois law on order of protection status under the IHRA¹⁹¹ is comparable to the Colorado law that states that victims of domestic abuse cannot be punished for their status.¹⁹² Illinois should also adopt the Colorado law stating that a housing provider cannot include in a rental or lease agreement terms of penalty for calling the police in response to a domestic violence situation.¹⁹³ This would prevent victims of domestic abuse from being victimized a second or third time.

Similar to Rhode Island’s statute prohibiting discrimination against victims of domestic abuse, Illinois’s statute is clearly worded in expressing that a housing provider cannot discriminate because of the status of a domestic abuse victim.¹⁹⁴ Most importantly, Illinois has the same idea as Wisconsin in providing that all people shall have an equal opportunity for housing, regardless of their status as victims of domestic abuse.¹⁹⁵

1. *Strike Down the Zero-Tolerance Eviction Policy*

Ms. Alvera’s former housing authority received a reprimand and had to pay damages pursuant to a settlement agreement when it applied a zero-tolerance eviction policy against her.¹⁹⁶ The Oregon court should have expressly created an exception to its zero-tolerance eviction policy for victims of domestic violence. As a result of a strict zero-tolerance eviction policy, housing providers are still able to evict a victim of domestic abuse. The

190. See 42 U.S.C. § 3602(c) (2006).

191. See 775 ILL. COMP. STAT. 5/1-102(A).

192. See COLO. REV. STAT. § 38-12-402(2)(a) (Supp. 2004).

193. See COLO. REV. STAT. § 38-12-402(1) (Supp. 2004).

194. See Anique Drouin, *Who Turned Out the Lights?: How Maryland Laws Fail to Protect Victims of Domestic Violence from Third-Party Abuse*, 36 U. BALT. L. REV. 105, 117 (2006).

195. *Id.*

196. See Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 35 CLEARINGHOUSE REV. 708, 708, 717-18 (2002), available at http://www.idaholegalaid.org/files/HousingDiscrimination_DomVioVict.pdf.

same instance occurred with Ms. Lewis in Michigan.¹⁹⁷ The order of protection status under the IHRA should be a tool for Illinois courts to use to create an exception within the zero-tolerance eviction policy. In essence, if there is criminal conduct by no fault of a victim, and the victim is evicted because of a zero-tolerance eviction policy, he or she should be able to file a claim of order of protection status discrimination. Then, the IHRA policy would prevent a victim from being discriminated against, especially in cases where the abuser came to the victim's home uninvited.¹⁹⁸

2. *Order of Protection Status v. Sex Status*

Comparable with Ms. Alvera's situation, Ms. McCauley's situation can be better dealt with in the future by Illinois courts applying the order of protection status instead of sex status. The legislative history of House Bill 721 suggests that representatives assumed that most claims would be employment discrimination claims made by men and women with an order of protection (court order), or by men and women who had previously been party to a lawsuit because of domestic abuse, stalking, harassment, and so on.¹⁹⁹ It was suggested that housing discrimination against victims of domestic violence was virtually unheard of.²⁰⁰ The representatives failed to note that there have been a number of documented cases of men and women bringing sex discrimination claims after being denied housing because of their status as victims of domestic abuse, and these claims have often failed because the claims should have been brought under a different action: order of protection status discrimination. For instance, Brewster McCauley's claim failed in Illinois because it was a claim of sex status discrimination when it should have been a claim of order of protection status discrimination.²⁰¹ Ms. McCauley could have prevailed by claiming discrimination against her because of her order of protection status, if she had filed her claim four months later when order of protection status was in the IHRA and in effect, and if courts were willing to apply IHRA order of protection status to protect victims who have suffered housing discrimination. Thus,

197. See Complaint, *Lewis v. N. End Vill.*, No. 2:07-cv-10757 (E.D. Mich. Feb. 26, 2008), available at www.aclu.org/files/images/asset_upload_file733_34211.pdf.

198. This is not to suggest that a victim who does invite his or her abuser into his or her home, despite having an order of protection against the abuser, should not be entitled to IHRA protection. Rather, this should only be interpreted to mean that the argument is stronger for a victim that never invited his or her abuser into his or her home and was evicted due to the zero-tolerance policy because, in such a case, the victim would not have been a cause of having the abuser on the premises.

199. See H.B. 721, 96th Gen. Assemb., Reg. Sess. (Ill. 2009).

200. *Id.*

201. See *McCauley v. City of Chicago*, No. 09 C 2604, 2009 WL 3055312, at *7 (N.D. Ill. Sept. 18, 2009).

where a housing provider does not discriminate because of an individual's sex, order of protection status provides an opportunity to make a prima facie case of discrimination. It broadens the opportunity for an individual to succeed on his or her claim of discrimination.

In contrast to *McCauley*, as with Ms. Bouley's case, a court here or there may allow an instance of disparate treatment to satisfy the requirements to state a prima facie case for sex discrimination under the FHA.²⁰² However, if a victim makes this low-percentage argument and loses their claim, then he or she is out the basic need of housing. Instead, Illinois courts should now apply the order of protection status, which goes a step further to protect victims of domestic abuse where sex status will not fulfill a claim. Order of protection status can be a more specific claim than sex status and can help numerous individuals seeking protection. Illinois courts should now consider the claim in light of the fact that order of protection status is now a protected class under the IHRA.

C. DOMESTIC VIOLENCE SHELTERS

1. *Current Status of Domestic Violence Shelters*

Just as housing providers have been allowed to discriminate against victims of domestic abuse, domestic violence shelters have been allowed to discriminate against victims of domestic abuse because of their sex.²⁰³ In this manner, a man has a higher burden in trying to seek entrance to a domestic violence shelter than an individual bringing a sex discrimination claim under the FHA against their housing provider. Yet, the focus of broadening the definition of "dwelling" is not only to protect men. If domestic violence shelters are not "dwellings," then domestic violence shelters are not subject to the FHA because only "dwellings" are subject to FHA protections. Thus, it seems to follow that domestic violence shelters, if not considered "dwellings," can discriminate on any other basis, including race, color, religion, sex, and national origin, though the law is unclear on this subject. Thus, it seems that the definition of a "dwelling" is too narrow for any one of the protected statuses under the FHA. Therefore, "dwelling" should be amended to include domestic violence shelters. The alternative is an overall devaluing of protection by allowing domestic violence shelters to pick and choose who they allow through their doors.

202. See *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005).

203. See *Balilaj v. Karagjozi*, No. FV-13-1708-08, 2009 WL 971945, at *6 (N.J. Super. Ct. App. Div. Apr. 3, 2009); see *Woods v. Horton*, 84 Cal. Rptr. 3d 332 (Ct. App. 2008).

2. Woods v. Foster

Just as the *Woods v. Foster* court held that a homeless shelter was a “dwelling” for purposes of the FHA,²⁰⁴ the Illinois General Assembly should include domestic violence shelters under the definition of “dwelling.” In *Foster* the defendants argued that a homeless shelter was a form of public accommodation, rather than a dwelling, because of its limited transient stay of 120 days²⁰⁵—the court appropriately disagreed. The court stated that the homeless shelter was not designed as a place of permanent residence but as a place where an individual could go when he or she had nowhere else to turn.²⁰⁶ For the same reason the *Foster* court provided, the Illinois legislature should include domestic violence shelters under the definition of “dwelling.”²⁰⁷ The notion that the people who live in a homeless shelter have nowhere else to go is consistent with the idea behind a domestic violence shelter—a victim of domestic abuse turns to a domestic violence shelter because he or she has no other place to return.²⁰⁸ Although returning to an abusive household may provide housing, it is most likely not the type of housing the legislature intended for an individual to endure. Therefore, domestic violence shelters should be included in the definition of “dwelling,” or some victims of domestic abuse will have no place to return.

3. *Treating Domestic Violence Shelters as Dwellings Furthers the Purposes of the IHRA*

Evicting an individual may lead to that individual becoming homeless if he or she cannot find or afford other housing. Often, an individual turns to a domestic violence shelter.²⁰⁹ By including domestic violence shelters as dwellings, the purposes of the IHRA will be further promoted. First, the IDVA recognizes that, despite some recent improvements in the law, the legal system has failed to protect and assist victims of family violence in an appropriate manner.²¹⁰ If shelters were included in the definition of “dwelling,” the amended law would aid the legal system in an efficient and appropriate manner by protecting and assisting victims dealing with family vio-

204. *Woods v. Foster*, 884 F. Supp. 1169, 1174 (N.D. Ill. 1995).

205. *Id.* at 1173-74.

206. *Id.*

207. *See id.*

208. *Woods v. Horton* is an example of how a victim of domestic abuse will return home to an abuser when the victim has no other place to return. *See supra* notes 153-58 and accompanying text.

209. *See supra* notes 153-64 and accompanying text.

210. 750 ILL. COMP. STAT. 60/102(3) (2010 State Bar Edition).

lence. Whereas now a shelter can legally discriminate against an individual because shelters do not constitute a dwelling, including shelters within the definition of “dwelling” would make it illegal for a shelter to refuse an individual because of the individual’s protected class. Hence, the result would be that the legal system would protect the victim’s right to enter and receive assistance from the shelter.

Second, the IDVA recognizes the need to expand a victim’s civil and criminal remedies, including physical separation to help victims avoid further abuse and to keep victims from becoming trapped in abusive situations due to “fear of retaliation, loss of a child, financial dependence, or loss of accessible housing or services.”²¹¹ Including shelters within the definition of “dwelling,” would further this second IDVA purpose by facilitating the remedy of physical separation to avoid further abuse and to keep victims from becoming trapped in abusive situations. Increased physical separation would result because shelters would not be allowed to discriminate against victims,²¹² which would allow an individual to achieve physical separation by going to a shelter, where security measures to ensure such separation would be enforced.²¹³ Furthermore, a shelter could have the right to deny an abuser (mother or father) access to the property even though his or her children were staying at the shelter.²¹⁴ Therefore, by including domestic violence shelters within the definition of “dwelling,” the legal system would become more efficient in protecting and assisting victims of family violence in an appropriate manner and in providing the remedy of physical separation.

4. *Domestic Violence Shelters Should Accept Men*

The first issue to address is that domestic violence shelters be included under the FHA’s definition of “dwelling,” otherwise shelters are not in violation of the law in not accepting men. *Balilaj*²¹⁵ and *Woods v. Horton*²¹⁶ are but two instances where men have been the victims of domestic abuse.

211. 750 ILL. COMP. STAT. 60/102(4) (2010 State Bar Edition).

212. To suggest that a domestic violence shelter cannot discriminate against victims of domestic abuse is not to suggest that there are no legal reasons to turn an individual away. *See supra* note 177.

213. Many shelters keep their addresses confidential, and shelters with available funding often install electronic security systems. *See Shelters and Safehouses*, MINN. ADVOC. FOR HUM. RTS., <http://www1.umn.edu/humanrts/svaw/domestic/link/shelters.htm> (last visited Aug. 24, 2012).

214. *Id.* This could be accomplished under an agreement between the town or city and the shelter.

215. *See Balilaj v. Karagiozi*, No. FV-13-1708-08, 2009 WL 971945, at *6 (N.J. Super. Ct. App. Div. Apr. 3, 2009).

216. *See Woods v. Horton*, 84 Cal. Rptr. 3d 332 (Ct. App. 2008).

While the *Balilaj* court granted a restraining order to a man after his wife domestically assaulted him, he may have turned to a shelter if there had been no restraining order. A shelter would have prohibited the wife from entering and protected the husband. If a shelter can turn away whomever it desires, then a victim is not only victimized for a second time, but the victim may have nowhere else to turn. The court in *Woods v. Horton* effectively held that shelters are to allow women and men because male domestic violence victims need domestic violence services as well as female victims.²¹⁷ *Woods v. Horton* provides proof that a victim of domestic abuse will return home to an abuser when the victim has nowhere else to go. Returning often results in further abuse, not only to the individual who is physically or emotionally abused, but to others residing in the household.²¹⁸ The fact that victims may return to a situation of abuse when shelters turn them away is another reason that shelters should be included in the FHA's definition of "dwelling" and, further, why shelters should accept men. The *Woods v. Horton* decision only applied to the California Department of Public Health and to the California Office of Emergency Services.²¹⁹ However, an Illinois court could decide to include a domestic violence shelter within the definition of "dwelling" and thereby protect countless victims from further abuse. Such a decision would protect an individual who suffers discrimination based on their status as a member of any protected class under the IHRA. Applying the IHRA is the best chance for a victim's claim to survive, as evidenced by *McCauley*. It would be a great victory for the FHA to be amended to include domestic violence shelters within the definition of "dwelling," but it would be a victory, nonetheless, for the IHRA to do the same.

VI. CONCLUSION

It has been over two years since the amendments²²⁰ were made to the Illinois Human Rights Act, and, to date, the amendments have not been applied by an Illinois court.²²¹ While the order of protection status broadens the law, the law is still too narrow because a domestic violence shelter can

217. See *Horton*, 84 Cal. Rptr. 3d at 344, 347-50.

218. See *Balilaj*, , 2009 WL 971945, at *6 (explaining that the four-year-old daughter of the victim and abuser watched the abusive incident and asked her mother to stop hitting her father); see also *Horton*, 84 Cal. Rptr. 3d at 337 (Ct. App. 2008) (stating that the daughter of an abused man alleged she was injured because of services denied her father, which forced her to witness and be subject to continued violence).

219. See *Horton*, 84 Cal. Rptr. at 349.

220. See 775 ILL. COMP. STAT. 5/1-102(A) (2010 State Bar Edition); 775 ILL. COMP. STAT. 5/1-103(K-5) (2010 State Bar Edition & Supp. 2012).

221. "To date" here means as of August 24, 2012.

turn an individual away. The definition of “dwelling” should be broadened to include domestic violence shelters in order to protect victims of domestic violence when they are most vulnerable. First, decisions based on individual facts are not efficient to deter discrimination against protected classes. The zero-tolerance eviction policy should include an exception for victims of domestic violence when, by no fault of their own, their abuser causes criminal conduct on the housing premises at which the victim resides. In this way, housing providers would be deterred from evicting a victim of domestic abuse and an individual would keep his or her housing. Second, to have a better chance of prevailing on his or her claim, an individual should bring a claim under the IHRA order of protection status, instead of sex status. Third, Illinois courts should hold that: (1) an individual with a current order of protection has order of protection status, (2) an individual who had an order of protection in the past, which is currently not in effect, has order of protection status, and (3) an individual without a past order of protection or a current order of protection has order of protection status. Otherwise, if an individual must have a current order of protection to have order of protection status, the law would be too narrow and too few individuals would be protected.

If an individual is evicted and seeks the aid of a domestic violence shelter, the individual should not be turned away. That is why, when given the chance, an Illinois court should hold that a domestic violence shelter is a dwelling under the FHA, just as an Illinois court held that a homeless shelter is a dwelling under the FHA in *Woods v. Foster*.²²² This would provide more opportunities to protect victims of domestic abuse. For an important purpose of the Illinois Human Rights Act is to “secure for all individuals within Illinois the freedom from discrimination against an individual because of his or her . . . order of protection status.”²²³

ARIELLE DENIS*

222. See *Woods v. Foster*, 884 F. Supp. 1169, 1174 (N.D. Ill. 1995).

223. 775 ILL. COMP. STAT. 5/1-102(A) (2010 State Bar Edition).

* J.D. Candidate 2013. Thank you to the 2012-2013 *Northern Illinois University Law Review* staff for your thorough cite checks. Thank you to my family and friends for your support throughout this process. Thank you to Professor Therese Clarke Arado, Professor Benjamin Carlson, and Professor John Austin for answering every single question with a smile. Thank you Tristan Bullington for helping me develop my arguments, and Jennifer Gelman for greatly influencing my article topic and developing my interest in fair housing.