SENATE DOCKET, NO. 1497 FILED ON: 1/12/2009

SENATE . . . . . No. 627

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to housing rights for victims of domestic violence.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia Stone Creem	First Middlesex and Norfolk
Susan C. Tucker	Second Essex and Middlesex
James B. Eldridge	Middlesex and Worcester
Bruce E. Tarr	First Essex and Middlesex
Martha M. Walz	8th Suffolk
Barbara A. L'Italien	18th Essex
Frank I. Smizik	15th Norfolk
Elizabeth A. Malia	11th Suffolk
Jennifer M. Callahan	18th Worcester
Kay Khan	11th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S02574 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO HOUSING RIGHTS FOR VICTIMS OF DOMESTIC VIOLENCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 186 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding after section 22 the following new section;-

Section 23. 1. For the purposes of this section the following words shall have the following meanings:
"domestic violence" shall have the same meaning as "abuse" as set forth in section 1 of chapter 209A
"occupant" a person living or sleeping in a dwelling provided that an occupant temporarily absent from the dwelling for safety reasons, shall be considered an occupant.
"owner" shall have the same meaning as "owner" as set forth at 105 C.M.R. 410.036
"rape" shall mean the commission of any act as set forth in section 22, 22A, 23, 24 or 24B of chapter 265 or sections 2, 3 or 17 of chapter 272.
"sexual assault" shall mean the commission of any act as set forth in sections 13B, 13F, 13H of chapter 265 or section 35A of chapter 272.
"stalking" shall mean the commission of any act as set forth in section 43 of chapter 265.
"qualified third party" shall mean a police officer, licensed medical care provider, an employee of a court of the state acting in the course of his or her duties, member of the clergy, attorney, social worker, licensed mental health professional or other licensed counselor, or advocate working at an agency that assists victims of domestic violence, rape, sexual assault, or stalking.

"Quitting date" shall mean the date upon which the tenant or occupant actually vacates the unit and removes all her or his belongings and/or vacates the unit and notifies the owner that she or he is abandoning the unit.
2.(a) If a tenant or occupant notifies the owner in writing that he or she or a member of her or his household is a victim of domestic violence, rape, sexual assault or stalking, and any one of the following applies, then subsection (3) of this subsection applies:
i. The tenant or occupant or a member of her or his household has a valid order for protection under chapter 209A;
ii. The tenant or occupant or a member of her or his household has notified a law enforcement officer of an act or acts of domestic violence, rape, sexual assault or stalking; or
iii. The tenant or occupant or member of her or his household has consulted with a qualified third

party and reported the domestic violence, rape, sexual assault or stalking to the qualified third party.
(b) When a copy of the order for protection, police report, or verification of consultation with or report to a qualified third party as provided by herein, is made available to the owner, the tenant or occupant may terminate the rental agreement as provided in section 3 and quit the premises. However, the request to terminate the rental agreement must occur within six months of the most recent acts, events, or circumstances that gave rise to the protective order, report to a law enforcement officer, or consultation with or report to a qualified third party.

Verification of consultation with or reporting to a qualified third party may consist of a signed statement of the qualified third party or a form routinely provided by the qualified third party for completion by clients. This form must be in substantially the following form:

. . . . . .

[Name of organization, agency, clinic, professional service provider]
I am or a member of my household is a victim of:
. . . domestic violence as provided by Massachusetts General Laws section 1 of chapter 209A.
. . . rape as provided by M.G.L. section 22, 22A, 23, 24 or 24B of chapter 265 or section 2, 3 or 17 of chapter 272.
. . . sexual assault as provided by M.G.L. section 13B, 13F, or 13H of chapter 265 or section 35A of chapter 272.
. . . stalking as provided by M.G.L. section 43 of chapter 265.

. . . . . .

Signature

The incident(s) that I rely on in support of this declaration occurred on the following date(s): . . .
. . . .
I state under penalty of perjury under the laws of the state of Massachusetts that the foregoing is true and correct. Dated at. . . . . .(city). ., Massachusetts, this . . . day of . . . ., 20. ... .

Signature

I verify that theindividual whose signature appears aboveinformed me of his or her status as a victim of domestic violence, rape, sexual assault or stalking or of said status of a member of his/her household on this . . . day of . . . ., 20. ... .

Signature of authorized officer/employee of (Organization, agency, clinic, professional service provider)

3. A tenant or occupant who terminates a rental agreement under this section is discharged from the payment of rent for any period following the month of the quitting date, and is entitled to a refund of any prepaid rent for any period following the month of the quitting date, and shall receive a full and specific statement of the basis for retaining any of security deposit together with any refund due in compliance with G.L. c. 186 section 15B. Other tenants who are parties to the rental agreement are not released from their obligations under the rental agreement or other obligations under this chapter.
4. (a) An owner may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant or occupant's or applicant's or a member of his or her household's status as a victim of domestic violence, rape, sexual assault or stalking, or based upon actions or failure to act that resulted from domestic violence, rape, sexual assault or stalking directed at the tenant's or a member of his or her household. . An owner shall not terminate a tenancy of a tenant who has provided temporary shelter to a victim of domestic violence, rape, sexual assault or stalking based upon alleged unauthorized occupants. An owner may not refuse to enter into a rental agreement based on the tenant or applicant having terminated or having a history of having terminated a rental agreement under subsection 2 of this section nor shall an owner cause to be made any written or oral inquiry or record concerning an applicant's status as a victim of domestic violence, rape, sexual assault or stalking or history of such status provided that if an applicant seeks a priority or preference from a housing provider based upon the applicant's status as a victim of domestic violence, rape, sexual assault, or stalking , or, if an occupant seeks assistance from a housing provider based upon the preceding status, the provider may request documentation of the domestic violence, rape, sexual assault, or stalking..
(b) An owner who refuses to enter into a rental agreement or who terminates a tenancy or refuses to enter into a new tenancy or who makes inquiry into an applicant's status as a victim of domestic violence, rape, sexual assault or stalking or history of such status in violation of this section shall be liable to the tenant or applicant in a civil action for damages sustained by the tenant or applicant. The tenant or applicant may also recover court costs and reasonable attorneys' fees incurred in association with actions resulting from this section..
(c) This section does not prohibit adverse housing decisions based upon other lawful factors within the owner's knowledge.
5. In any new action brought for possession of premises occupied for dwelling purposes involving domestic violence, rape, sexual assault, or stalking, the court, consistent with its existing equitable authority, shall have the authority to craft an equitable solution which protects the legitimate concerns of all parties.
6.(a) Neither a tenant screening service provider nor an owner may include information in a written or oral report to an owner pertaining to domestic violence, rape, sexual assault or stalking; pertaining to the fact that the subject of the report is a victim of domestic violence, rape, sexual assault or stalking; or that the subject of the report has terminated a rental agreement under subsection 2 of this section.
(b) A tenant screening service provider or an owner who violates this section shall be liable in a civil action for damages sustained by the subject of the report. The subject of the report may recover court costs and reasonable attorneys' fees incurred as a result of violations of this section.
7. (a) An owner shall, upon the request of a tenant or occupant of a residential dwelling unit, change the exterior locks of the dwelling unit in which the tenant or occupant lives if one or more of the tenants or occupants reasonably believes that one of the tenants or occupants or a member of the tenant or occupant's household is under a credible imminent threat of domestic violence, rape, sexual assault, or stalking at the premises. The owner shall have the right to request, in good faith, evidence to support a claim of domestic violence, rape, sexual assault or stalking. However, no owner is required to request such evidence and can change the locks as requested upon receipt of the written request of the tenant or occupant alone.

If the threat of domestic violence, rape, sexual assault or stalking is from a person who is also a tenant or occupant of the leased dwelling unit, notice to the owner requesting a change of exterior locks shall be accompanied by evidence to support a claim of domestic violence, rape, sexual assault, or stalking including but not limited to orders pursuant to G.L.c. 209A, police reports, or court records indicating which tenant or occupant is posing the threat of domestic violence, rape, sexual assault, or stalking. The tenant or occupant requesting a change of exterior locks shall not be required to obtain written notice from or give notice to the person posing a threat regardless of which tenant is the lessee or head of household under a written lease or tenancy at will.

Notwithstanding the preceding two paragraphs, where a court of the Commonwealth has issued an order pursuant to G.L. c. 209A or any other provision of law, vacating a tenant or occupant from the dwelling unit, the owner shall do nothing to interfere with this order and upon a request to change the exterior locks as described in this section, shall comply with this request.

An owner complying with this section or with the requirements of a G.L. c. 209A or other order, shall be relieved of any liability to the vacated tenant or occupant or to any other third party on account of the owner's good faith compliance with the court order and/or the owner's good faith changing the exterior locks as provided in this section.

(b) An owner who has received notice of a request for change of exterior locks as provided in paragraph a. above, shall, within 48 hours, change the exterior locks or give the tenant or occupant the permission to change the exterior locks. If the owner changes the exterior locks, the owner shall give a key to the new exterior locks to the tenant or occupant requesting the exterior lock change as soon as possible or not more than 48 hours of the exterior locks being changed.

(c) An owner may charge a fee for the expense of changing the exterior locks. That fee must not exceed the reasonable price customarily charged for changing an exterior lock in that community.

(d) If an owner fails to change the exterior locks within 48 hours after being provided with the notice described in paragraph a. above, along with evidence if required by paragraph a. above, the tenant or occupant may change the exterior locks without the owner's permission. Where the lease or tenancy agreement requires that the owner retain a key to the leased residential premises, where the tenant or occupant changes the exterior locks, the tenant or occupant shall make a good faith effort to give a key to the new exterior locks to the owner within 48 hours of the exterior locks being changed. In the case where a tenant or occupant changes the exterior locks without the owner's permission, the tenant or occupant shall do so in a workmanlike manner with exterior locks of similar or better quality than the original exterior locks.

(e) Any owner who takes action to prevent the tenant or occupant who has complied with paragraph a, above from changing his or her exterior locks or any owner who changes the exterior locks and does not make a good faith effort to provide a key to the tenant or occupant as provided in paragraph b above, shall be liable for actual and consequential damages or three months' rent, whichever is greater, and the costs of the action including a reasonable attorney's fee, all of which may be applied in setoff or recoupment against any claim for rent owed or owing for use and occupancy. The superior and district courts shall have jurisdiction in equity to restrain violations of this section. The provisions of section 18 of chapter 186 and section 2A of chapter 239 shall apply to any act taken as a reprisal against any person for requesting the exterior locks be changed in accordance with this section and/or for proceeding against violations of this section. Any waiver of this provision in any lease or other rental agreement, except with respect to any restriction specified or imposed by the United States or any agency thereof or the commonwealth or any agency or political division, shall be void and unenforceable.

8. No owner shall refuse to sell or negotiate for sale or lease or otherwise to deny or withhold

from any person or group of persons accommodations or land because of the person or group or persons status as a victims of domestic violence, rape, sexual assault or stalking or history of such status.

SECTION 2. Section 2A of chapter 239 of the General laws, as appearing in the 2006 Official Edition is hereby amended by inserting in line 14, after the words, "eighty-three A" the following :
, or the tenant or a member of her or his household's taking any action pursuant to section 3 of chapter 209A or taking any action pursuant to section 23 of chapter 186, or reporting to any law enforcement official or court official any incident of domestic violence, rape, sexual assault or stalking against the tenant or occupant or member of her or his household, or reporting to any law enforcement official or court official the violation of any order issued pursuant to section 3 of chapter 209A or 23 of chapter 186, or any act of abuse as set forth in section 8 of chapter 209A directed against him or her

SECTION 3. Section 3 of chapter 258C of the General laws, as appearing in the 2006 Official Edition is hereby amended by adding, at the end, the following new section:
(G) Victim Compensation: In order to protect the health and safety of victims as defined in Section 1 of Chapter 258C, expenses incurred by the victim for changing locks to a residential dwelling unit shall be compensable in accordance with this chapter; provided however that when claiming compensation for such expenses the claimant must demonstrate an out - of - pocket loss or a legal liability for payment of said expenses. No expenses for lock changes shall be paid for the expenses or the portion of expenses which are reimbursable by an insurance policy which covers these costs.

SECTION 4. This act takes effect immediately upon becoming law and applies to all tenancies existing at the time this act becomes law in addition to all tenancies coming into effect thereafter.

March 2, 2010

Sen. Steven C. Panagiotakos, Chair
Senate Committee on Ways and Means
State House
Room 212
Boston, MA 02133

Re: Senate Bill No. 627 / Act Relative to Housing Rights For Victims of Domestic Violence

Dear Senator Panagiotakos and Committee on Ways and Means,

I am writing in regards to Senate Bill 627. I represent a large number of landlords in Amherst and the greater Pioneer Valley, in addition to some landlords in the other counties of Massachusetts. We appreciate the concerns and issues raised in S627. No one should be the victim of domestic violence. We understand that domestic violence creates unique issues and problems for the victims of domestic violence. However, landlords have to be concerned with not only the victim of domestic violence, but also with the significant impact that domestic violence can have on the surrounding tenants and families exposed to that terrible situation. We believe that the sentiments and concerns raised in S627, although well intentioned, need to be modified to address other issues they create for landlords and the community at large. We believe there are several areas where the bill should be changed to ensure it accomplishes both the needs of the victims of domestic violence and of the community at large.

The first and most significant concern raised in our review of this proposed legislation is the absence of a requirement that the victim of domestic violence, in order to receive the protections contained within the statute, must agree to preclude the perpetrator of domestic violence from his/her continued presence at the subject premises. Unfortunately, in many instances, the victim of domestic violence after some time has passed, changes his/her mind and attempts to reconcile with the perpetrator. In these circumstances, although the victim of domestic violence has a right to determine who they want in their life, it has a significant impact on the neighbors and families who live next door and in the community. Living next door to an apartment that frequently has sounds of domestic violence emanating from it is extremely disturbing to the people abutting that unit. This is especially true when those neighbors have small children who are awoken at night to the sounds of yelling and disturbances. Again, we stress that no person should be the victim of domestic violence. However, to enjoy the protections that are outlined in the statute, there should contain a line stating, "In order for an occupant to receive the benefits of this statute, that occupant must agree to continue to preclude the perpetrator of the domestic violence from the subject premises."

A second concern that landlords have is over the length of time in which the victim of domestic violence is allowed to exercise his/her decision to terminate a tenancy. Six months from the most recent incident is a considerable period of time between the act and the decision to move from the subject premises. We understand the concern raised in this section is that the victim of domestic violence may need to move to another location so that the perpetrator does not know where they live. However, if that perpetrator is continuing to stalk or abuse the victim, that would be a "recent act, event or circumstance." Within a short period of time after that circumstance occurred, it is reasonable to assume that the victim of domestic violence would want to move as soon as possible from the premises. Landlords do not object to allowing tenants to terminate the
tenancy when the individual is the victim of domestic violence. However, landlords are concerned that this provision would be used in circumstances which do not relate to continued concerns of domestic violence. This would be especially true for students who might want to try to avoid leases that run through the summer. Traditionally, students do not want to have to pay for that period of time. A 90-day period to vacate would seem to be a reasonable amount of time to enable a victim of domestic violence to decide and effectuate a move to a new premises.

Of equal concern is the possibility that some individuals will use this statute to avoid the possibility of eviction for serious violations of the lease with individuals who are not real victims of domestic violence. Presently, the proposed legislation only includes the language, "4(c) This section does not prohibit adverse decisions based upon other lawful factors within the owner's knowledge." This language is not strong enough. Instead, there should be a separate section that states, "Nothing in this statute prohibits a landlord from terminating a tenant's tenancy because of excessive noise, disturbances of others' quiet enjoyment, or other improper behavior that is not the result of domestic violence." Also, domestic violence should be limited to violence between parties in a romantic or family relationship. The broader definition in G.L.c. 209A which includes those living in the same household appears to be too broad. The concern of landlords is that uninvolved roommates would use this provision as a means of terminating a lease when they wish to move. An alternative way to handle that problem is to require that the right to terminate a tenancy should only occur when the requesting party has been awarded a restraining order from a Massachusetts court of competent jurisdiction.

Another very significant concern raised in this statute is over the present wording used in respect to requests for changing the locks. Landlords always wish that all of the tenants are safe and secure in their premises. However, frequently the perpetrator of domestic violence is in a relationship with the victim. Further, the perpetrator is frequently a co-tenant with the victim. The language in the proposed statute states, "if the threat of domestic violence, rape, sexual assault or stalking is from a person who is also a tenant or occupant of the leased dwelling unit, notice to the owner requesting a change of exterior locks shall be accompanied by evidence to support a claim of domestic violence, rape, sexual assault, or stalking including but not limited to orders pursuant to G.L.c. 209A, police reports, or court records indicating which tenant or occupant is posing the threat of domestic violence, rape, sexual assault or stalking." The problem posed by this section of the proposed legislation is the word "evidence." It creates a due process question of requiring landlords to act as judges in determining when sufficient evidence exists to grant a request for changing of locks against an existing tenant. Instead, the statute

should limit a landlord's requirement of changing locks to any time the landlord is presented with a court order precluding the perpetrator, i.e. the co-tenant, from the property including, 209A petitions. Not only are landlords concerned about having to evaluate evidence that they are not trained to evaluate, but a question is raised as to the legality of this provision of the statute.

Another very troubling provision, as presently written, concerns the proposed civil liability of a landlord based on a claim of discrimination against a victim of domestic violence. Once again, I must stress that landlords should not be allowed to discriminate against an individual as a result of he/she being a victim of such domestic violence. However, frequently a prospective tenant who has been the victim of domestic violence during a prior tenancy has had noise complaints made against them by neighbors. Under the present proposed statute, neither the tenant-screening provider nor an owner may include information in a written or oral report to a prospective landlord pertaining to the domestic violence, etc. This creates a Catch-22. If the previous landlord cannot inform the prospective landlord that the applicant was the victim of domestic violence, how does that previous landlord explain away any prior noise complaints? Similarly, a previous landlord may not even raise the issue that noise disturbances occurred during the prior tenancy. This is especially troubling given that some of the noise may not have been related directly to domestic violence, but related to the increased tension that exists in a household that has domestic violence. Since a prospective landlord or a present landlord may not discriminate against someone as a result of their being a victim of domestic violence, it would seem reasonable for the landlord to discuss the situation in the limited context of a reference discussion with a prospective landlord. Otherwise, it would defeat the purpose of a reference if they are not allowed to explain how the domestic violence situation may have contributed to any excessive noise. This contradiction is especially a concern if the perpetrator is not precluded from being in the presence of the victim through a 209A petition or similar restraining or court order. The previous landlord could explain that the prospective tenant is not likely to repeat noise disturbances because of the change in circumstance. This provision once again raises the need for the victim to agree to preclude the perpetrator from being a member of their household or an invited guest. Although no one should be the victim of domestic violence, the victim needs to take certain steps and responsibilities on their own behalf so that they do not create disturbances that disturb the quiet enjoyment of their neighbors. The most important of those steps is to agree to preclude the perpetrator from their residence.

If the above issues were addressed, landlords could wholly support this proposed legislation. Furthermore, it is most landlords' belief that these changes will increase greater domestic tranquility for the whole community, while increasing the rights of victims of domestic violence.

Thank you for your consideration of these concerns. If you wish to discuss them further, you may contact me at my office.

Very Truly Yours,

Lawrence J. Farber