

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

SB 1017 (Eggman)  
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TSG

**SUBJECT**

Leases: termination of tenancy: abuse or violence

**DIGEST**

This bill strengthens rental housing-related protections for survivors of domestic violence, abuse, and other serious crimes.

**EXECUTIVE SUMMARY**

In addition to everything else they must overcome, survivors<sup>1</sup> of domestic violence, abuse, and other crimes frequently have to navigate complex rental housing scenarios. Some may need to move quickly for safety. Others may want or need to stay put, but find that the very same violence, abuse, and crime that they have had to endure puts them at risk of losing their homes as well. Two provisions in existing California law are intended to aid survivors in these scenarios. The first allows survivors of domestic violence, abuse, or other serious crimes to break their lease without the usual penalties. The second prohibits landlords from evicting tenants for nuisance if the basis for that nuisance is a specified type of violence or abuse and the tenant was the victim. The author and sponsors of this bill contend that these existing protections have shortcomings and too often fail the survivors they are intended to help. This bill seeks to strengthen both provisions by: (1) enabling survivors to use a broader range of evidence to document what they have endured; (2) clarifying the circumstances in which a landlord can evict a survivor based on the presence of the perpetrator on the property; (3) establishing a mechanism for a court to evict a resident perpetrator of abuse without forcing the survivor out in the process; and (4) empowering survivors with legal remedies when landlords violate specified aspects of these protections.

The bill is sponsored by the California Partnership to End Domestic Violence; Crime Survivors for Safety and Justice; Family Violence Appellate Project; Western Center on Law and Poverty; and the Women's Foundation California, Solis Policy Institute.

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<sup>1</sup> The target of violence or abuse is certainly a victim of it, in the sense that the target bears no culpability for what has occurred. However, the term "victim" of abuse or violence can be taken to imply passivity or weakness in the face of what has occurred. To emphasize the strength and resiliency involved, advocates for those who have endured violence or abuse often prefer the term "survivor." Respecting that preference, this analysis uses the term survivor predominantly. Where the term victim is used instead, no distinction in meaning is intended.

Support comes from a broad spectrum of advocates for survivors of domestic violence and other crimes who believe the bill will prevent survivors from being further victimized through the loss of their home. Opposition comes from landlord associations who contend that the bill will make it even more challenging for landlords to respond to difficult, high-conflict scenarios. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that a tenant who maintains, commits, or permits the maintenance or commission of a nuisance on rental property thereby terminates the lease and may on that basis be subject to an unlawful detainer action seeking a court order for the eviction of the tenant if the tenant does not vacate within three days of receiving notice from the landlord about the nuisance. (Code Civ. Proc. § 1161(4).)
- 2) Gives tenants the option to terminate a lease early, without further penalty, if:
  - a) the tenant or a member of the tenant's household becomes a victim of violent crime, domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult; and
  - b) the tenant provides specified documentation of that violence or abuse to the landlord. (Civ. Code § 1946.7(a).)
- 3) Allows a tenant to terminate a lease early, without further penalty, if:
  - a) an immediate family member of the tenant, as defined, becomes a victim of violent crime, domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult;
  - b) the tenant provides specified documentation of that violence or abuse to the landlord; and
  - c) the tenant must move out in order to come to the aid of the family member as a result of the violence or abuse. (Civ. Code § 1946.7(c).)
- 4) Prohibits a landlord from terminating or failing to renew a tenancy on account of an act or acts against a tenant or a tenant's household member that constitute violence or abuse, as defined, if:
  - a) the tenant provides specified documentation about what occurred to the landlord or to the court in an eviction proceeding; and
  - b) the perpetrator of the abuse or violence is not a tenant of the same dwelling unit as the tenant or household member. (Code Civ. Proc. § 1161.3(a).)
- 5) Authorizes a landlord to proceed to terminate or decline to renew a tenancy after a tenant has invoked the protections in (5), above if:
  - a) the tenant allows the perpetrator onto the premise or the landlord reasonably believes that the presence of the perpetrator poses a physical threat to other

tenants, guests, invitees, or licensees, or to a tenant's right to quiet possession;  
and

- b) the landlord gave at least three days' notice to the tenant to correct a violation of (a). (Code Civ. Proc. § 1161.3(b).)
- 6) Prohibits a landlord from disclosing the information contained in the documentation provided to the landlord pursuant to (2), (3), and (4), above, except as specified. (Civ. Code § 1946.7(i); Code Civ. Proc. § 1161.3(d).)
- 7) Absolves a landlord of liability to any other tenants for any action that arises due to the landlord's compliance with (4), (5), or (6). (Code Civ. Proc. § 1161.3(c).)

This bill:

- 1) Provides that if a landlord refuses to allow a tenant to terminate a lease early after receiving specified notice and documentation verifying that the tenant, a member of the tenant's household, or an immediate family member of the tenant has been the victim of abuse or violence, as defined, or if the landlord makes an unauthorized disclosure of the information contained in the documentation of abuse or violence, then the landlord is liable to the tenant in a civil action for:
  - a) the actual damages sustained by the tenant;
  - b) punitive damages of not less than one hundred dollars (\$100) and not more than ten thousand dollars (\$10,000); and
  - c) any other remedy provided by law.
- 2) Expands the existing protections against eviction based upon specified acts of abuse or violence against the tenant or a member of the tenant's household, so that those protections also apply to:
  - a) violent crimes, as defined; and
  - b) circumstances in which an immediate family member of the tenant, as defined, was the victim of the abuse or violence.
- 3) Expands what a tenant can use as documentation to invoke protections against eviction for acts of violence or abuse where the tenant, a member of the tenant's household, or an immediate family member of the tenant was the victim of that abuse or violence so that a tenant may use any form of documentation or evidence that a court determines reasonably verifies that the abuse or violence occurred.
- 4) Alters the standard for when a landlord may proceed with an eviction based on an incident involving violence or abuse even after receiving documentation from the tenant that the tenant, a member of the tenant's household, or an immediate family member of the tenant was the victim of that violence or abuse so that the landlord may only proceed with that eviction if:
  - a) the survivor voluntarily permits or consents to the perpetrator's presence;

- b) the perpetrator has threatened to commit a crime that would result in death or great bodily injury to a person on the premises other than the tenant and that, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution of the threat that causes that person reasonably to be in sustained fear for their own safety or for their immediate family's safety; and
  - c) the landlord has given the tenant a three day notice to correct this violation within the past 90 days.
- 5) Establishes a procedure for unlawful detainer cases based on incidents of abuse or violence perpetrated by a tenant living in the unit through which, if the court find that a tenant is guilty of the unlawful detainer, but the tenant has provided specified documentation verifying that the tenant, a member of the tenant's household, or an immediate member of the tenant's family was the victim of the abuse or violence in question, then:
- a) the tenant shall not be named in the unlawful detainer judgment;
  - b) the tenant shall not owe the landlord any fees related to the unlawful detainer action; and
  - c) the tenant shall regain possession of the premises immediately after possession is returned to the landlord pursuant to a lease that has the same lease terms as the previous lease and if the landlord violates this provision, the court shall award reasonable attorney's fees to the prevailing party if either party requests them upon initiation of the action.
- 6) Directs courts to award reasonable attorney's fees to the prevailing party in an action seeking damages against a landlord for unauthorized disclosure of information about violence or abuse given to the landlord by the tenant to verify that the tenant, a member of the tenant's household, or an immediate family member of the tenant was the victim of that violence or abuse.
- 7) Provides that a landlord is liable to a tenant for violating specified components of existing law and this bill as follows:
- a) for the actual damages sustained by the tenant; and
  - b) for punitive damages of not less than one hundred dollars (\$100) and not more than ten thousand dollars (\$10,000).
- 8) Makes conforming changes to forms.
- 9) Defines pertinent terms.

## COMMENTS

### 1. Background on legislative efforts to protect tenant survivors of violence or abuse

Survivors of violent crime, domestic violence, sexual assault, stalking, human trafficking, and elder and dependent adult abuse face numerous challenges when seeking to regain control of their lives. The Legislature has recognized that survivors of these crimes who rent their homes face additional obstacles. In some cases the survivor may need to move away quickly to a safer location, but is subject to a lease that binds them to their current residence. In other scenarios, the survivor may want or need to stay in their home, but finds themselves at risk of eviction on account of the very violence or abuse that the survivor has endured. In order to aid survivors facing these scenarios, the Legislature has established two provisions in law. Civil Code Section 1946.7 gives survivors of violence and abuse the option of terminating a lease early and moving out. Code of Civil Procedure Section 1161.3 prevents a landlord from terminating a tenancy or evicting a tenant on account of specified forms of crime and abuse if the perpetrator of the crime or abuse is not another tenant of the unit and the tenant provides specified documentation verifying that the tenant was the victim of what occurred.

These two provisions have their origins in legislation enacted over a decade ago. Since then, both provisions have evolved to their present form through a series of additions and revisions. (*See Prior Legislation, below, for a detailed review of this evolution.*) Among other things, these changes have expanded the types of violence or abuse that give rise to the protections, authorized the use of a wider variety of evidence to document that the violence or abuse took place, and ensured the confidentiality of the documentation used.

This bill may be seen as the latest iteration in this evolutionary process. As detailed in Comments 2 and 3, below, the advocates for survivors of violence and abuse who are sponsoring this bill see shortcomings in the existing law that cause it to fail to protect survivors in many instances. The bill is intended to shore up those shortcomings, thus improving upon California's legal regime for aiding those who have endured violence or abuse.

In general, the establishment and evolution of these provisions has been typified by collaborative, if occasionally adversarial, conversations between the landlord community and advocates for survivors, fueled by a common conviction that survivors should not suffer additional harm related to their rental housing merely because they have endured violence and abuse, coupled with a recognition that these scenarios place landlords, neighbors, and households in often difficult and delicate positions through no fault of their own.

## 2. Facilitating survivors' move to safety

The first section of the bill addresses scenarios in which a tenant needs to move out urgently as the result of an incidence of violence or abuse but is bound to keep paying for the unit by the terms of the lease.

### *a. State of the existing law*

As it exists today, California law provides a tenant with the option to break a lease on a maximum of 14 days' notice, without penalty, if the tenant, a member of the tenant's household, or one of the tenant's immediate family members has been the victim of specified forms of violence or abuse. (Civ. Code § 1946.7(a).) If the early lease termination is based on violence or abuse that happened to a family member living elsewhere, the tenant may only terminate the lease early if the move-out is necessary for the tenant to come to the aid of the family member. (Civ. Code § 1946.7(c).) In order to exercise this early lease termination option, the tenant must provide the landlord with notice and one of an enumerated set of documents verifying that the violence or abuse took place. (Civ. Code § 1946.7(b).) Landlords must keep the information contained in that documentation confidential, with limited exceptions, to help ensure the privacy and safety of the survivor. (Civ. Code § 1946.7(i).)

### *b. Alleged shortcomings of the existing law*

The sponsors of this bill generally support the existing law on early lease termination in its present form, though the bill proposes a few uncontroversial, technical modifications. The sponsors' primary concern is that the existing law lacks an enforcement mechanism. When survivors or their advocates encounter recalcitrant landlords they have little leverage with which to ensure that the landlords let the tenant out of the lease as required.

### *c. Changes proposed by this bill*

To give the early lease termination option the teeth that advocates for survivors say is needed to make it fully effective, the bill proposes to add an enforcement mechanism. Specifically, the bill would subject a landlord who refuses to let a survivor out of their lease after receiving the proper notice and documentation to liability. That liability would include the tenant's actual damages resulting from the violation as well as punitive damages of anywhere from \$100 to \$10,000 and any other remedies that may be available to the tenant. The same penalties would apply for any other violation of the statute, including sharing the information contained in the documentation of the violence or abuse beyond the authorized parties without the survivor's consent. Maintaining that confidentiality is, of course, extremely important to the survivor's safety as well as their privacy.

The proponents of these new penalties argue that they are appropriate given what is at stake and in light of the fact that, in most scenarios, the landlord's duties under the statute will be quite clear based upon having received certain, very specific forms of documentation. However, the statute also allows survivors to demonstrate what has happened to them using "[a]ny other form of documentation that reasonably verifies that the crime or act [...] occurred." (Civ. Code § 1946.7(b)(4).) As public policy, allowing for the use of less formal evidence of violence or abuse is appropriate since survivors may have good reasons why they cannot obtain one of the other, more formal types of documentation that the statute allows. On the other hand, it seems harsh to subject a landlord to the possibility of punitive damages based upon the landlord's best guess as to whether a particular piece of evidence "reasonably verifies" that something took place.

With all of this in mind, the author proposes to offer amendments in Committee that would change the punitive damages to civil penalties, reduce the maximum amount of those penalties by half, and exempt a landlord from liability for those penalties where the documentation the tenant relied upon was something other than the formal third-party verifications authorized by the statute.

3. Protecting survivors from eviction because of the domestic violence, abuse, or other serious crime they have endured

The second section of the bill addresses scenarios in which a landlord is considering terminating a tenancy or pursuing an eviction based upon one or more specified types of crime or abuse that have taken place. The author and sponsors of the bill have identified a series of shortcomings in the existing law that applies to such scenarios and the bill proposes solutions to each.

Before going into these proposed changes, it may be useful to pause and highlight the narrow scope of the existing law and this bill. The protections afforded by the existing law – even as proposed to be strengthened by this bill – do *not* provide generalized immunity against eviction for survivors of violence or abuse. Survivors of violence or abuse, like any other tenant, remain fully responsible at law for paying the rent and otherwise abiding by the terms of the lease. If they do not, the landlord may proceed to evict them. (Code Civ. Proc. § 1161(2) and (3).) Like all other tenants, survivors of violence or abuse cannot commit waste on the property, engage in unlawful activity on the premises, or make a nuisance of themselves. If they do, the landlord may proceed to evict them. (Code Civ. Proc. § 1161(4).) *The only special protection against eviction that the existing law and this bill provide to survivors of abuse and violence is protection against being evicted on account of the very abuse or violence which they endured.*

To illustrate:

Suppose Jane's ex-boyfriend Richard gets drunk, comes to her rental apartment, smashes in the door, and hits Jane. The police respond. The noise and commotion wake

up everyone in the apartment building. Jane files a police report detailing what happened.

- Jane can still be evicted if she fails to pay her rent on time and in full. It does not matter that Jane was a victim of domestic abuse because the incident involving Richard is not the basis on which the landlord is seeking to evict Jane.
- Jane can still be evicted if she gets drunk, comes home to her apartment, smashes in the door, yells, and wakes up everyone in the apartment building. It makes no difference that Jane was a victim of domestic abuse because the incident involving Richard is not the basis on which the landlord is trying to evict Jane.
- Jane cannot be evicted for the incident involving Richard, so long as she provides the police report to her landlord or the court to verify that she was the victim in this incident. It matters that Jane was the victim of this incident because this incident forms the basis for the attempted eviction.

With this basic background in mind, here are the modifications that the bill proposes to make to the special protections against eviction for survivors of abuse and violence.

*a. Evidentiary requirements for securing protection against eviction*

The existing law requires a tenant to document that they have been the victim of specified crimes or abuse in order to obtain special legal protection against losing their home on account of that abuse or violence. (Code Civ. Proc. § 1161.3(a)(1).) Whether the tenant presents those documents to the landlord to prevent termination of the tenancy or to the court to prevent an eviction, the current law only allows that documentation to take one of the following forms:

- a temporary restraining order, emergency protective order, or protective order lawfully issued within the last 180 days (Code Civ. Proc. § 1151.3(a)(1)(A));
- a copy of a peace officer's report, written within the last 180 days (Code Civ. Proc. § 1151.3(a)(1)(B)); or
- a joint statement, as specified, about the incident by the tenant and a health practitioner, domestic violence counselor, sexual assault counselor, or a human trafficking caseworker, as defined (Code Civ. Proc. § 1151.3(a)(1)(C));

The purpose behind requiring these documents is to make it difficult for tenants to try to invoke the special protections against eviction in circumstances in which no violence or abuse has actually taken place or where the tenant was in fact the perpetrator of what happened. In other words, they prevent bogus claims of victimization. Each of the types of documentation required are formal and involve some verification of what happened by a trained professional acting as an independent third party.



As the sponsors of this bill point out, however, there are circumstances in which survivors will not be able to obtain documentation of what has happened to them in these more formal formats. The survivor may not trust peace officers (if, for example, the abuser is a peace officer themselves) and the survivor may not have the means or the opportunity to make contact with the sort of trained professionals that the existing statute requires.

To address such scenarios, the bill opens up a new, catchall category of documentation that would be sufficient to invoke the special protections against termination of tenancy or eviction. Specifically, the bill would allow tenants to rely on “any other form of documentation or evidence that a court determines reasonably verifies that the abuse or violence occurred.”

In support of this change, the author and sponsors point out that the Legislature has already approved the use of other reasonable forms of verification of abuse or violence in the context of survivors’ right to terminate a lease early. (*See* Civ. Code § 1146.7(b)(4).) They also add that the federal Violence Against Women Act permits survivors to rely on a broader range of documentation to show that violence or abuse has occurred. (34 U.S.C.A. § 12491(c)(3)(A).) Ultimately, they argue, what matters is not the exact source of the documentation but whether it is sufficiently reliable to ensure that an unscrupulous tenant cannot game the system in order to obtain special protections to which the tenant is not actually entitled.

As the proposed new provision appears in print, however, it is a bit confusing. Read within the context of the whole statute, the new provision tells landlords that they cannot terminate a tenancy or refuse to renew a lease if they have been presented with documentation or evidence that “a court determines” is a reasonable verification of what occurred. In the context of an unlawful detainer proceeding, this makes sense, but a landlord must decide whether to terminate or renew a tenancy long before an unlawful detainer proceeding has begun. (Indeed, no unlawful detain proceeding will ever take place unless, in response to termination or non-renewal of the tenancy, the tenant refuses to vacate.) The author therefore proposes to offer an amendment in Committee to clarify that the documentation only needs to be a reasonable verification of what took place, not evidence that a court has already ruled upon.

*b. Circumstances in which a landlord can evict a survivor based on the presence of the perpetrator on the property*

As previously discussed, a landlord can ordinarily evict a tenant for causing or permitting a nuisance on the premises. (Code Civ. Proc. 1161(4).) However, existing law prevents a landlord from terminating a tenant’s lease or evicting that tenant based on an act of violence or abuse if the tenant, or a tenant’s household member, was the victim of that abuse or violence and the tenant has provided specified documentation to the landlord or to the court verifying what occurred. (Civ. Code § 1161.3.)

It is not uncommon for the perpetrator of abuse or violence to continue to visit the premises after the survivor has invoked these protections. Sometimes the visits are malicious and take place against the survivor's will. Other times, however, these visits are for benign purposes, as when a couple has reconciled or where the perpetrator comes to visit children that the perpetrator has in common with the survivor. Under some joint custody or visitation orders, such visits may even be mandatory. Of course, visits begun for a benign purpose can become malevolent.

What happens in scenarios in which the survivor of an act of violence or abuse invokes the special protections against termination of the tenancy or eviction and then the perpetrator returns to the property? Subdivision (b) of Code of Civil Procedure Section 1161.3 addresses that issue:

- (b) A landlord may terminate or decline to renew a tenancy after the tenant has availed himself or herself of the protections afforded [...] if both of the following apply:
  - (1) Either of the following:
    - (A) The tenant allows the [perpetrator] to visit the property.
    - (B) The landlord reasonably believes that the presence of the [perpetrator] poses a physical threat to other tenants, guests, invitees, or licensees, or to a tenant's right to quiet possession [...].
  - (2) The landlord previously gave at least three days' notice to the tenant to correct a violation of paragraph (1).

The author and sponsors of this bill point out what in their experience are at least two flaws in this framework.

First, the rigid prohibition on "allowing" perpetrators to visit the property fails to adequately account for the reality that many survivors confront. The word "allow" assumes that the survivor can simply tell the perpetrator to leave, which ignores the very rational fear that many survivors have of the person perpetrating abuse and violence against them. Moreover, the framework does not account for the reality that many survivors may need to "allow" the perpetrator on the property for things like retrieving belongings, collecting mail, or visiting children. Indeed, a survivor may be under court order to allow the perpetrator to visit children over whom they share joint custody. As the sponsors of the bill express it, the use of the term "allow":

does not reflect the complexity of these familial crimes and the interpersonal dynamics of survivors and abusers. Namely, abusers are often family members – survivors share deep history, blood, and other relatives, including children with their abusers. Consequently, abusers sometimes return to these homes – to continue holding power and control over their victims, for required

matters, to collect their belongings, or for child visitation and custody exchanges.

Second, the component of the standard that allows a landlord to proceed to evict the survivor if the landlord reasonably believes that the perpetrator poses a threat to the physical safety or quiet enjoyment of those in proximity leaves a great deal to the discretion of the landlord. Though the standard is theoretically objective because of the inclusion of the phrase “reasonably believes,” the sponsors of the bill state that in their experience, landlords frequently determine that perpetrators pose a threat to everyone around, even where there is scant evidence on which to reach that conclusion. As a result, survivors frequently get removed from their homes based on the landlord’s generalized fear of the perpetrator.

To the proponent’s criticisms above, it can be added that the text of subdivision (b) is not a model of clarity. For example, paragraph (2) says that a landlord must give the tenant an opportunity to correct a violation of paragraph (1). Yet a landlord’s reasonable belief that the presence of the perpetrator is not really a “violation” of anything, so how is the survivor supposed to “correct” it? By changing the landlord’s mind? It would seem, logically, that the opportunity to correct a violation should apply to situations in which the survivor allows the perpetrator on the property and that presence can be reasonably viewed as a physical threat to others in proximity, but that is not what the text of the statute says.

To fix these problems, the bill in print proposes a different standard for when a landlord could still evict a survivor on account of an incident of violence or abuse even after receiving documentation that the tenant, a member of the tenant’s household, or an immediate family of the tenant was the victim of the abuse or violence. Under the bill in print, the landlord could proceed to evict the survivor if: (1) the survivor “voluntarily permits or consents” to the perpetrator’s presence; (2) the perpetrator has “threatened to commit a crime that would result in death or great bodily injury to a person on the premises other than the tenant and that, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution of the threat that causes that person reasonably to be in sustained fear for their own safety or for their immediate family’s safety;” and (3) the landlord has given the tenant a three day notice to correct this violation within the past 90 days.

While this proposed standard mitigates some of the shortcomings of the existing statute, the opponents of the bill contend that it goes way too far and essentially prevents the landlord from taking any action until the perpetrator has already caused harm to those in proximity. As the California Apartment Association puts it in their letter opposing the bill:

This standard puts the landlord and other tenants and workers at the property in serious danger while providing no rationale as to

why landlords must bear this higher - dangerous - standard. This new “actual and imminent threat” definition will give perpetrators of domestic violence more protection than any other tenant at the property. [...] Perpetrators of domestic violence not only hurt and kill immediate family members and children, they harm friends and neighbors. To invite the perpetrator back to the property is simply inviting violence. (Emphasis in the original.)

To respond to this concern while still addressing some of the shortcomings of the existing statute, the author proposes to offer amendments in Committee that strike more of a middle ground. The amendments largely revert to the existing standard for proceeding with the eviction based on the return of a perpetrator, but they focus on the perpetrator’s actual actions, rather than the landlord’s subjective mindset. They also ensure that the survivor can only be evicted for allowing the perpetrator back on the property if the perpetrator is actually causing a problem by being there, not if the perpetrator is doing ordinary things like dropping off or picking up children.

Under the proposed amendments, to evict a survivor based on the return of a perpetrator to the premises, two elements would be required: (1) the perpetrator’s words or actions have further threatened the physical safety of other tenants, guests, invitees, or licensees; and (2) after expiration of a three day notice requiring the tenant not to voluntarily permit or consent to the presence of the perpetrator of abuse or violence on the premises, the tenant continues to do so.

*c. Lack of a mechanism to deal with co-tenant perpetrators*

There is a hole in the existing law which protects survivors of certain types of crime and abuse from eviction on the basis of the very crime or abuse they have endured: it does not protect survivors against eviction if the perpetrator is a “tenant of the same dwelling unit.” (Code Civ. Proc. § 1161.3(a)(2).) Since violence and abuse frequently take place between people who live together, this hole is particularly problematic.

There is a reason for this hole, however. While everyone might agree that it would be ideal to protect survivors against eviction even when the perpetrator lives with the survivor, there are significant practical challenges to enforcing such protections. As a general matter, courts are not well-equipped to order the eviction of some, but not all of the tenants in a rental unit. (*But see* Civ. Code § 3485(b).) Sheriff’s deputies, who must carry out eviction orders, are accustomed to securing the entire property and restoring it to a landlord. They do not ordinarily carry out the eviction of a single occupant while leaving others behind. Finally, and most vexingly, there is the question of what to do if the perpetrator attempts to move right back in.

This bill makes an important and thoughtful attempt to wrestle with these challenges. It proposes a solution in which a court could find all defendants – including the survivor

– guilty<sup>2</sup> of an unlawful detainer, but notwithstanding that ruling, the survivor would not be named in the unlawful detainer judgment. The landlord would be restored to full possession of the rental unit, but immediately thereafter the survivor would have the right to return to the premises under the same terms as the prior lease but without the perpetrator as a co-tenant.

If enacted, the internal contradictions within this proposed framework would likely cause some consternation in unlawful detainer courts throughout the state. The tenant is both guilty of the thing alleged but not part of the judgment? The tenant is not part of the eviction judgment but is dispossessed of the property anyway? The landlord is fully restored to possession of the property, but not really?

Though there is still more to be worked out about this component of the bill, the public policy implications arguably support continuing that endeavor, given how important it could be to survivors to figure out a workable solution that would prevent them from losing their housing merely because the perpetrator of their abuse is a co-tenant.

The existing provisions for partial eviction set forth in Civil Code Section 3485 offer a good place to start. Section 3485 applies to circumstances involving “nuisance caused by illegal conduct involving an unlawful weapons or ammunition on real property,” but the partial eviction remedy it includes appears transferable to the context of this bill. Using the model of contingency judgments when a tenant prevails in an unlawful detainer case involving breach of the warranty of habitability (Code Civ. Proc. 1174.2) could help to ensure that judicial officers have a simple way to issue clear and manageable orders once they have determined that a survivor should be permitted to remain while the perpetrator must go.

The author proposes to offer amendments in Committee that advance the bill along these lines. Should the bill progress out of this Committee, the author may wish to seek further technical assistance from the Judicial Council and county sheriffs to aid in the endeavor to make this component of the bill workable for parties, the courts, and the sheriff’s deputies who will be carrying out these partial evictions. Those entities may be able to draw upon relevant experience handling partial evictions pursuant to Civil Code 3485 and move-out orders in the domestic violence restraining order context.

Even with further refinement, however, the idea of partial eviction in these scenarios is unlikely to find support from opponents. About this aspect of the bill, CAA writes:

[...] SB 1017 protects perpetrators of domestic violence by creating an eviction bifurcation (partial eviction) process. Notwithstanding the restraining order, the landlord must now proceed with an eviction to remove the perpetrator from the property. Because the

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<sup>2</sup> The unlawful detainer statutes use the word “guilty” (see Code Civ. Proc. § 1161) even though unlawful detainers are a civil, not a criminal proceeding.

court process takes months, the perpetrator is now protected, and, in many cases, can continue to create a nuisance. Then, after waiting months to evict the perpetrator, the owner could face a court ruling that allows the perpetrator to remain at the property: the perpetrator may have created a nuisance, but the actions did not rise to the level of “actual or immediate threat.” This is unnecessary and unacceptable.

*d. Enforcement*

There is no enforcement mechanism attached to the existing law preventing landlords from terminating or refusing to renew a tenancy based on acts of violence or abuse once a tenant has provided the requisite documentation that the tenant is the victim of that violence or abuse. As a result, survivors and their advocates have little recourse in the face of landlords who refuse to abide by the protections the law affords.

To provide some leverage to induce compliance with the law, the bill proposes to add an enforcement mechanism. Rather than apply the enforcement mechanism to all aspects of the proposed statute, however, the proposed new enforcement mechanism would cover only the most critical components of the bill in terms of safety and privacy. Landlords who divulged information about the violence or abuse outside of specified circumstances would face liability for the tenant’s actual damages, punitive damages ranging from \$100 to \$10,000, and the prospect of paying the survivor’s attorney’s fees and costs in the event the survivor prevails in a lawsuit. Landlords would also face these potential consequences if they failed to change locks or let the survivor retake possession of the property under a new lease after an eviction as required by the bill in print.

In the context of the other amendments that the author proposes to offer in Committee, however, the imposition of these penalties no longer makes as much sense. Most obviously, the proposed amendments make the landlord’s duties in an eviction scenario the subject of a court order. If the landlord failed to comply with that order, the landlord could be held in contempt of court and punished accordingly. In light of that mechanism for enforcement, the author proposes to offer amendments in Committee that would eliminate any other enforcement mechanism from this section of the bill.

*e. Inclusion of victims of violent crime*

Under existing law, only victims of domestic violence, human trafficking, sexual assault, stalking, or elder and dependent adult abuse can invoke the special protections against eviction for survivors of violence and abuse. The author and sponsors of this bill believe that victims of violent crime are equally deserving of these protections. With that in mind, this bill expands the protections to include them.

This change would reflect a parallel change made to the provisions relating to early lease termination two years ago. (SB 1190, Durazo, Ch. 205, Stats. 2020.)

*f. Inclusion of immediate family members*

The existing law, which provides tenants with special protection against termination of tenancy or eviction on account of specified types of crime or abuse, offers that protection only if the victim of the crime or abuse in question is the tenant or a member of the tenant's household. However, if a family member who does not live in the household is visiting the rental unit and that family member becomes a victim of violence or abuse, the landlord can still use the incident of crime or abuse as a basis to seek an order for the tenant's eviction. To address such a scenario, this bill extends the protections against eviction to any situation in which the victim of the crime or abuse that forms the impetus for the eviction was an immediate family member of the tenant.

4. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- revise and scale back the standard for when a landlord could evict a survivor based on the return of the perpetrator to the premises;
- replace the punitive damages award for refusal to allow a survivor to terminate a lease early with civil penalties, lower the amount, and narrow the circumstances in which they would apply;
- revise the provisions establishing protections for survivors in scenarios involving violence or abuse perpetrated by a co-tenant to make those protections an affirmative defense in an unlawful detainer which, if sustained by the court, leads to a court order removing the perpetrator while enabling the survivor to remain at the property; and
- recast provisions, add definitions, and make other minor changes.

A mock-up of the amendments in context is attached to this analysis.

5. Arguments in support of the bill

According to the author:

SB 1017 will protect survivors of abuse and crime by expanding eviction protections to all household members, closing loopholes in current statute concerning documentation of abuse and a victim's right to remain housed, and will ensure victims remain in their homes as they navigate complicated relationships and family obligations. This bill will extend protections to survivors, their household, and immediate family members who lived with the perpetrator, giving them the right to remain in the unit even if a landlord evicts a perpetrator of abuse or violence. Current law does

not protect survivors from eviction if the perpetrator returns to the property. This is true even if the perpetrator visits the property against the tenant's will, or is on the property without threat of imminent danger such as taking care of family obligations like picking up or dropping off children. This bill would also protect survivors and their families by providing a pathway to seek justice if a landlord does not allow them to end their lease early, or reveals their confidential information as prohibited under law - giving survivor tenants the tools they need to protect their right to shelter. This bill will help ensure that survivors will remain housed as they navigate and heal from abusive relationships.

As sponsors of the bill, the California Partnership to End Domestic Violence, the Crime Survivors for Safety and Justice, the Family Violence Appellate Project, Western Center on Law and Poverty, and the Women's Foundation California, Solis Policy Institute jointly write:

Too often survivors face evictions and homelessness due to the actions of their abusers. [...]California has already established eviction protections for survivors [...]. However, several gaps in the law leave survivors at risk and unable to access this protection. This bill will help ensure that no survivor can be evicted because of acts of abuse committed against them. [...] The reality is that without legal protections like SB 1017, survivors of abuse and their children will continue to face the compounded trauma of instability, housing insecurity, and homelessness.

In support, the American Association of Doctors of Behavioral Health writes:

Too often, our providers have seen the devastation that occurs when victims of violence are facing evictions, and homelessness due to their abusers' actions. Domestic violence is devastating to the victims involved. [We have] an understood commitment to improving the care of all individuals, including victims of violent crimes. Keeping victims housed, also increases their safety and overall well-being, and this is why our organization supports SB 1017.

## 6. Arguments in opposition to the bill

In opposition to the bill, the California Apartment Association writes:

SB 1017 gives perpetrators of domestic violence heightened protections, which can result in harm or death to the victim, family members, workers at the property, the property owner, and the



neighboring tenants. In the wake of a recent Sacramento tragedy that left a domestic violence perpetrator (the gunman), his three young daughters, and a church elder dead, lawmakers are working to provide new protections for victims. SB 1017 goes in the wrong direction.

In further opposition to the bill, the Southern California Rental Housing Association (SCRHA) writes:

These changes allow a perpetrator of domestic violence to engage in conduct that today warrants eviction of any other tenant; the perpetrator of domestic violence is protected above and far beyond other tenants in the building. This is a much higher bar than existing domestic violence law, which only requires the landlord to have a reasonable belief that a perpetrator poses a physical threat to other tenants or guests. [...] Given the current challenges when it comes to evictions, even under existing law, the perpetrator could be at the property creating problems for the victim and other residents for months before the case comes before the judge. If a judgment is entered, the sheriff will have to extract just the perpetrator and the perpetrator's possession from the property, rather than emptying the unit entirely. While well intentioned, SCRHA believes the bill will only complicate the issue at hand.

### SUPPORT

California Partnership to End Domestic Violence (sponsor)  
Crime Survivors for Safety and Justice (sponsor)  
Family Violence Appellate Project (sponsor)  
Western Center on Law and Poverty (sponsor)  
Women's Foundation California, Solis Policy Institute (sponsor)  
A Better Way  
American Civil Liberties Union California Action  
American Association of Doctors of Behavioral Health  
Asian Americans Advancing Justice - California  
Asian Americans for Community Involvement  
Chesa Boudin, District Attorney, City and County of San Francisco  
Broken by Violence  
California Latinas for Reproductive Justice  
California Rural Legal Assistance Foundation, Inc.  
California Women's Law Center  
California Work and Family Coalition  
Central Coast Alliance United for A Sustainable Economy  
Chinatown Community Development Center  
Coalition on Homelessness, San Francisco

Consumer Attorneys of California  
Crime Survivors for Safety and Justice  
Culturally Responsive Domestic Violence Network  
Downtown Women's Center  
Ella Baker Center for Human Rights  
Eviction Defense Network  
Faith in the Valley  
Futures Without Violence National Health Resource Center on Domestic Violence  
Gray's Trauma-Informed Care Services Corp  
Haven Women's Center of Stanislaus  
Healthy Alternatives to Violent Environments  
Housing and Economic Rights Advocates  
Housing California  
Housing Equality & Advocacy Resource Team, Los Angeles  
Housing Now!  
Human Options  
Initiate Justice  
Integral Community Solutions Institute  
Jewish Family Service Los Angeles  
Legal Aid of Marin  
Legal Aid of Sonoma County  
Los Angeles Center for Law and Justice  
Mixteco/Indígena Community Organizing Project  
Monterey County Renters United  
National Association of Social Workers, California Chapter  
National Center for Youth Law  
National Council of Jewish Women California  
National Housing Law Project  
Next Door Solutions to Domestic Violence  
Parent Voices California  
The People Concern  
Public Law Center  
San Francisco Anti-Displacement Coalition  
San Francisco Domestic Violence Consortium  
Sojourn  
The Unity Council  
Women Lawyers of Sacramento  
The Women's Center - Youth & Family Services

**OPPOSITION**

California Apartment Association  
California Association of Realtors  
Southern California Rental Housing Association

## RELATED LEGISLATION

Pending Legislation: None known

Prior Legislation:

SB 1190 (Durazo, Ch. 205, Stats. 2020) expanded upon the existing right for survivors of specified crimes or abuse to terminate a lease early without penalty by: (1) including victims of violent crime among those who may exercise that right; (2) enabling tenants to exercise that right in scenarios where an immediate family member, as defined, has been a victim of abuse or violent crime; and (3) allowing tenants to document the abuse or violent crime through any reasonable evidence.

AB 2413 (Chiu, Ch. 190, Stats. 2018), among other things, expanded the types of documentation that tenants may use to invoke protections against eviction on the basis of acts of domestic violence, sexual assault, human trafficking, stalking, or elder/dependent abuse by a non-tenant to include a statement from a qualified third party, as defined. The bill also prohibited landlords from disclosing information provided to them by a tenant invoking these protections.

AB 418 (Chiu, Ch. 70, Stats 2015) reduced a survivor's rent obligation after notice of termination of tenancy from 30 days to 14 days and made permanent the survivor's option, for purposes of early lease termination, of obtaining documentation of their circumstances from a qualified third party, as defined.

SB 612 (Leno, Ch. 130, Stats. 2013) authorized tenants to terminate a lease early, subject to specified documentation requirements, if they or their household members are victims of human trafficking. SB 612 also temporarily expanded the documentation that may be used to support early lease termination to include specified statements by the tenant and a health practitioner. Finally, SB 612 prohibited a landlord from disclosing information provided by a tenant to terminate a lease under this section except if consented to or otherwise required by law or court order.

SB 1403 (Yee, Ch. 516, Stats 2012) provided an option, subject to specified documentation requirements, for tenants to terminate a lease early if they or a household member are victims of elder or dependent adult abuse. The bill also expended the documentation that can be used to support early lease termination to include protective orders.

AB 588 (V. Manuel Pérez, Ch. 76, Stats. 2011) extended the deadline for giving notice to terminate a tenancy because the tenant or household member was a victim of specified crimes from 60 days to 180 days of the date of the protective order or report by a peace officer.

SB 782 (Yee, Ch. 636, Stats. 2010), among other things, established protections against termination of tenancy or eviction based on an act of domestic violence, sexual assault,

or stalking against a tenant or their household member by a non-tenant when that act or acts are documented by a restraining or protective order issued in the last 180 days or police report issued in the last 180 days.

AB 2052 (Lieu, Ch. 440, Stats. 2008) established a mechanism for tenants to terminate a lease early, subject to specified notice and documentation requirements, if the tenant or a household member was a victim of an act of domestic violence, sexual assault, or stalking.

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**Amended Mock-up for 2021-2022 SB-1017 (Eggman (S))**

**Mock-up based on Version Number 99 - Introduced 2/14/22**

Introduced by Senator Eggman  
**(Coauthors: Senator Skinner, Assemblymember Garcia)**

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 1946.7 of the Civil Code is amended to read:

**1946.7.** (a) A tenant may notify the landlord that the tenant intends to terminate the tenancy if the tenant, a household member, or an immediate family member was the victim of an act that constitutes any of the following:

- (1) Domestic violence as defined in Section 6211 of the Family Code.
- (2) Sexual assault as defined in Section 261, 261.5, 286, 287, or 289 of the Penal Code.
- (3) Stalking as defined in Section 1708.7.
- (4) Human trafficking as defined in Section 236.1 of the Penal Code.
- (5) Abuse of an elder or a dependent adult as defined in Section 15610.07 of the Welfare and Institutions Code.
- (6) A crime that caused bodily injury or death.
- (7) A crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument.
- (8) A crime that included the use of force against the victim or a threat of force against the victim.

(b) A notice to terminate a tenancy under this section shall be in writing, with one of the following attached to the notice:

- (1) A copy of a temporary restraining order, emergency protective order, or protective order lawfully issued pursuant to Part 3 (commencing with Section 6240) or Part 4 (commencing with Section 6300) of Division 10 of the Family Code, Section 136.2 of the Penal Code, Section 527.6 of the Code of Civil Procedure, or Section 213.5 or 15657.03 of the Welfare and Institutions Code that protects the tenant, household member, or immediate family member from further domestic violence, sexual assault, stalking,

human trafficking, abuse of an elder or a dependent adult, or any act or crime listed in subdivision (a).

(2) A copy of a written report by a peace officer employed by a state or local law enforcement agency acting in the peace officer's official capacity stating that the tenant, household member, or immediate family member has filed a report alleging that the tenant, the household member, or the immediate family member is a victim of an act or crime listed in subdivision (a).

(3) (A) Documentation from a qualified third party based on information received by that third party while acting in the third party's professional capacity to indicate that the tenant, household member, or immediate family member is seeking assistance for physical or mental injuries or abuse resulting from an act or crime listed in subdivision (a).

(B) The documentation shall contain, in substantially the same form, the following:

Tenant Statement and Qualified Third Party Statement  
under Civil Code Section 1946.7

Part I. Statement By Tenant

I, [insert name of tenant], state as follows:

I, or a member of my household or immediate family, have been a victim of:  
[insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, dependent adult abuse, or a crime that caused bodily injury or death, a crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or a crime that included the use of force against the victim or a threat of force against the victim.]

The most recent incident(s) happened on or about:  
[insert date or dates.]

The incident(s) was/were committed by the following person(s), with these physical description(s), if known and safe to provide:  
[if known and safe to provide, insert name(s) and physical description(s).]

(signature of tenant)(date)

Part II. Qualified Third Party Statement

I, [insert name of qualified third party], state as follows:

My business address and phone number are:  
[insert business address and phone number.]

Check and complete one of the following:

I meet the requirements for a sexual assault counselor provided in Section 1035.2

of the Evidence Code and I am either engaged in an office, hospital, institution, or center commonly known as a rape crisis center described in that section or employed by an organization providing the programs specified in Section 13835.2 of the Penal Code.

\_\_\_\_ I meet the requirements for a domestic violence counselor provided in Section 1037.1 of the Evidence Code and I am employed, whether financially compensated or not, by a domestic violence victim service organization, as defined in that section.

\_\_\_\_ I meet the requirements for a human trafficking caseworker provided in Section 1038.2 of the Evidence Code and I am employed, whether financially compensated or not, by an organization that provides programs specified in Section 18294 of the Welfare and Institutions Code or in Section 13835.2 of the Penal Code.

\_\_\_\_ I meet the definition of "victim of violent crime advocate" provided in Section 1947.6 of the Civil Code and I am employed, whether financially compensated or not, by a reputable agency or organization that has a documented record of providing services to victims of violent crime or provides those services under the auspices or supervision of a court or a law enforcement or prosecution agency.

\_\_\_\_ I am licensed by the State of California as a:

[insert one of the following: physician and surgeon, osteopathic physician and surgeon, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor.] and I am licensed by, and my license number is:

[insert name of state licensing entity and license number.]

The person who signed the Statement By Tenant above stated to me that the person, or a member of the person's household or immediate family, is a victim of:

[insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, dependent adult abuse, or a crime that caused physical injury, emotional injury and the threat of physical injury, or death.]

The person further stated to me the incident(s) occurred on or about the date(s) stated above.

I understand that the person who made the Statement By Tenant may use this document as a basis for terminating a lease with the person's landlord.

(signature of qualified third party)(date)

(C) The documentation may be signed by a person who meets the requirements for a sexual assault counselor, domestic violence counselor, a human trafficking caseworker, or a victim of violent crime advocate only if the documentation displays the letterhead of the office, hospital, institution, center, or organization, as appropriate, that engages or employs, whether financially compensated or not, this counselor, caseworker, or advocate.

(4) Any other form of documentation that reasonably verifies that the crime or act listed in subdivision (a) occurred.

(c) If the tenant is terminating tenancy pursuant to subdivision (a) because an immediate family member is a victim of an eligible act or crime listed in subdivision (a) and that tenant did not live in the same household as the immediate family member at the time of the act or crime, and no part of the act or crime occurred within the dwelling unit or within 1,000 feet of the dwelling unit of the tenant, the tenant shall attach to the notice and other documentation required by subdivision (b) a written statement stating all of the following:

(1) The tenant's immediate family member was a victim of an act or crime listed in subdivision (a).

(2) The tenant intends to relocate as a result of the tenant's immediate family member being a victim of an act or crime listed in subdivision (a).

(3) The tenant is relocating to increase the safety, physical well-being, emotional well-being, psychological well-being, or financial security of the tenant or of the tenant's immediate family member as a result of the act or crime.

(d) The notice to terminate the tenancy shall be given within 180 days of the date that any order described in paragraph (1) of subdivision (b) was issued, within 180 days of the date that any written report described in paragraph (2) of subdivision (b) was made, within 180 days of the date that an act or a crime described in subdivision (a) occurred, or within the time period described in Section 1946.

(e) If notice to terminate the tenancy is provided to the landlord under this section, the tenant shall be responsible for payment of rent for no more than 14 calendar days following the giving of the notice, or for any shorter appropriate period as described in Section 1946 or the lease or rental agreement. The tenant shall be released without penalty from any rent further rent or other payment obligation to the landlord under the lease or rental agreement ~~without penalty~~. If the premises are relet to another party prior to the end of the obligation to pay rent, the rent owed under this subdivision shall be prorated.

(f) Notwithstanding any law, a landlord shall not, due to the termination, require a tenant who terminates a lease or rental agreement pursuant to this section to forfeit any security deposit money or advance rent paid ~~due to that termination~~. A tenant who terminates a rental agreement pursuant to this section shall not be considered for any purpose, by reason of the termination, to have breached the lease or rental agreement. In all other respects, the Existing law governing the security deposit shall apply.

(g) This section does not relieve a tenant, other than the tenant who is, or who has a household member or immediate family member who is, a victim of an act or crime listed in subdivision (a) and members of that tenant's household, from their obligations under the lease or rental agreement.

(h) For purposes of this section, the following definitions apply:

(1) "Household member" means a member of the tenant's family who lives in the same household-residential unit as the tenant.



(2) "Health practitioner" means a physician and surgeon, osteopathic physician and surgeon, psychiatrist, psychologist, registered nurse, licensed clinical social worker, licensed marriage and family therapist, licensed professional clinical counselor, or a victim of violent crime advocate.

(3) "Immediate family member" means the parent, stepparent, spouse, child, child-in-law, stepchild, or sibling of the tenant, or any person living in the tenant's household at the time the crime or act listed in subdivision (a) occurred who has a relationship with the tenant that is substantially similar to that of a family member.

(4) "Qualified third party" means a health practitioner, domestic violence counselor, as defined in Section 1037.1 of the Evidence Code, a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, or a human trafficking caseworker, as defined in Section 1038.2 of the Evidence Code.

(5) "Victim of violent crime advocate" means a person who is employed, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of violent crimes for ~~an a reputable~~ agency or organization that has a documented record of providing services to victims of violent crime or provides those services under the auspices or supervision of a court or a law enforcement or prosecution agency.

(i) (1) A landlord shall not disclose any information provided by a tenant under this section to a third party unless the disclosure satisfies ~~any one~~ or more of the following:

(A) The tenant consents in writing to the disclosure.

(B) The disclosure is required by law or order of the court.

(2) A landlord's communication to a qualified third party who provides documentation under paragraph (3) of subdivision (b) to verify the contents of that documentation is not disclosure for purposes of this subdivision.

(j) An owner or an owner's agent shall not refuse to rent a dwelling unit to an otherwise qualified prospective tenant or refuse to continue to rent to an existing tenant solely on the basis that the tenant has previously exercised the tenant's rights under this section or has previously terminated a tenancy because of the circumstances described in subdivision (a).

(k) A landlord or agent of a landlord who violates this section shall be liable to the tenant in a civil action for both of the following:

(1) The actual damages sustained by the tenant.

(2) ~~(A) A civil penalty of Punitive damages~~ not less than one hundred dollars (\$100) and not more than ~~fiveen~~ thousand dollars (~~\$540,000~~).

(B) Notwithstanding subparagraph (A), a landlord or agent of a landlord who violates this section shall not be liable for civil penalties if the tenant provided documentation of the crime or act to the landlord or the agent of the landlord pursuant to paragraph (4) of subdivision (b) only.

(l) The remedies provided by this section shall be in addition to any other remedy provided by law.

**SEC. 2.** Section 1161.3 of the Code of Civil Procedure is amended to read:

**1161.3.** (a) For the purposes of this section:

(1) "Abuse or violence" means domestic violence as defined in Section 6211 of the Family Code, sexual assault as defined in Section 1219, stalking as defined in Section 1708.7 of the Civil Code or Section 646.9 of the Penal Code, human trafficking as defined in Section 236.1 of the Penal Code, abuse of an elder or a dependent adult as defined in Section 15610.07 of the Welfare and Institutions Code, or any act described in paragraphs (6) to (8), inclusive, of subdivision (a) of Section 1946.7 of the Civil Code.

(2) "Documentation evidencing abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member" means any of the following:

(A) A temporary restraining order, emergency protective order, or protective order lawfully issued within the last 180 days pursuant to Section 527.6, Part 3 (commencing with Section 6240), Part 4 (commencing with Section 6300), or Part 5 (commencing with Section 6400) of Division 10 of the Family Code, Section 136.2 of the Penal Code, or Section 213.5 or 15657.03 of the Welfare and Institutions Code that protects the tenant, the tenant's immediate family member, or the tenant's household member from abuse or violence.

(B) A copy of a written report, written within the last 180 days, by a peace officer employed by a state or local law enforcement agency acting in the officer's official capacity, stating that the tenant, the tenant's immediate family member, or the tenant's household member has filed a report alleging that they are a victim of abuse or violence.

(C) (i) Documentation from a qualified third party based on information received by that third party while acting in their professional capacity to indicate that the tenant, the tenant's immediate family member, or the tenant's household member is seeking assistance for physical or mental injuries or abuse resulting from an act of abuse or violence, which shall contain, in substantially the same form, the following:

Tenant Statement and Qualified Third Party Statement  
under Code of Civil Procedure Section 1161.3

Part I. Statement By Tenant

I, [insert name of tenant], state as follows:

I, my immediate family member, or a member of my household, have been a victim of: [insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, dependent adult abuse, a crime that caused bodily injury or death, a crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or a crime that included the use or threat of force against the victim.]

The most recent incident(s) happened on or about: [insert date or dates.]

The incident(s) was/were committed by the following person(s), with these physical description(s), if known and safe to provide: [if known and safe to provide, insert name(s) and physical description(s).]

(signature of tenant)(date)

## Part II. Qualified Third Party Statement

I, [insert name of qualified third party], state as follows:

My business address and phone number are: [insert business address and phone number.]

Check and complete one of the following:

I meet the requirements for a sexual assault counselor provided in Section 1035.2 of the Evidence Code and I am either engaged in an office, hospital, institution, or center commonly known as a rape crisis center described in that section or employed by an organization providing the programs specified in Section 13835.2 of the Penal Code.

I meet the requirements for a domestic violence counselor provided in Section 1037.1 of the Evidence Code and I am employed, whether financially compensated or not, by a domestic violence victim service organization, as defined in that section.

I meet the requirements for a human trafficking caseworker provided in Section 1038.2 of the Evidence Code and I am employed, whether financially compensated or not, by an organization that provides programs specified in Section 18294 of the Welfare and Institutions Code or in Section 13835.2 of the Penal Code.

I meet the definition of "victim of violent crime advocate" provided in Section 1946.7 of the Civil Code and I am employed, whether financially compensated or not, by a agency or organization that has a documented record of providing services to victims of violent crime or provides those services under the auspices or supervision of a court or a law enforcement or prosecution agency.

I am licensed by the State of California as a: [insert one of the following: physician and surgeon, osteopathic physician and surgeon, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor.] and I am licensed by, and my license number is: [insert name of state licensing entity and license number.]

The person who signed the Statement By Tenant above stated to me that they, a member of their immediate family, or a member of their household is a victim of: [insert one or more of the following: domestic violence, sexual assault, stalking, human bodily injury or death, a crime that included the exhibition, drawing, brandishing, or u included the use or threat of force against the victim.]

The person further stated to me the incident(s) occurred on or about the date(s) stated above.

(signature of qualified third party)(date)

(ii) The documentation may be signed by a person who meets the requirements for a sexual assault counselor, domestic violence counselor, a human trafficking caseworker, or a victim of violent crime advocate only if the documentation displays the letterhead of the office, hospital, institution, center, or organization, as appropriate, that engages or employs, whether financially compensated or not, this counselor, caseworker, or advocate.

(D) Any other form of documentation or evidence that reasonably verifies that the abuse or violence occurred.

(3) "Health practitioner" means a physician and surgeon, osteopathic physician and surgeon, psychiatrist, psychologist, registered nurse, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor.

(4) "Immediate family member" has the same meaning as defined in Section 1946.7 of the Civil Code.

(5) "Perpetrator of abuse or violence" means any of the following:

(A) The person against whom an order described in subparagraph (A) of paragraph (1) of subdivision (a) has been issued.

(B) The person who was named or referred to as causing the abuse or violence in the report described in subparagraph (B) of paragraph (1) of subdivision (a).

(C) The person who was named or referred to as causing the abuse or violence in the documentation described in subparagraph (C) of paragraph (1) of subdivision (a).

(D) The person who was named or referred to as causing the abuse or violence in the documentation described in subparagraph (D) of paragraph (1) of subdivision (a).

(6) "Qualified third party" means a health practitioner, domestic violence counselor, as defined in Section 1037.1 of the Evidence Code, a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, a human trafficking caseworker, as defined in Section 1038.2 of the Evidence Code, or a victim of violent crime advocate.

(7) "Tenant" means tenant, subtenant, lessee, or sublessee.

(8) "Tenant in residence" means a tenant who is currently residing in the unit and has full physical and legal access to the unit.

(9) "Victim of violent crime advocate" has the same meaning as defined in Section 1946.7 of the Civil Code.

~~(b)(1) Except as provided in subdivision (b), A~~ landlord shall not terminate a tenancy or fail to renew a tenancy based upon an act against a tenant, a tenant's immediate family member, or a tenant's household member that constitutes abuse or violence if ~~both of the following apply:~~

~~(1) The act of abuse or violence has been documented by one of the following: the landlord has received documentation evidencing abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member.~~

~~(A) A temporary restraining order, emergency protective order, or protective order lawfully issued within the last 180 days pursuant to Section 527.6, Part 3 (commencing with Section 6240), Part 4 (commencing with Section 6300), or Part 5 (commencing with Section 6400) of Division 10 of the Family Code, Section 136.2 of the Penal Code, or Section 213.5 or 15657.03 of the Welfare and Institutions Code that protects the tenant, the tenant's immediate family member, or the tenant's household member from abuse or violence.~~

~~(B) A copy of a written report, written within the last 180 days, by a peace officer employed by a state or local law enforcement agency acting in the officer's official capacity, stating that the tenant, the tenant's immediate family member, or the tenant's household member has filed a report alleging that they are a victim of abuse or violence.~~

~~(C) (i) Documentation from a qualified third party based on information received by that third party while acting in their professional capacity to indicate that the tenant, the tenant's immediate family member, or the tenant's household member is seeking assistance for physical or mental injuries or abuse resulting from an act of~~

~~abuse or violence, which shall contain, in substantially the same form, the following:~~

~~Tenant Statement and Qualified Third Party Statement  
under Code of Civil Procedure Section 1161.3~~

~~Part I. Statement By Tenant~~

~~-~~

~~I, [insert name of tenant], state as follows:~~

~~-~~

~~I, my immediate family member, or a member of my household, have been a victim of: [insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, dependent adult abuse, a crime that caused bodily injury or~~

~~death, a crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or a crime that included the use or threat of force against the victim.]~~

~~-~~

~~The most recent incident(s) happened on or about:~~

~~[insert date or dates.]~~

~~-~~

~~The incident(s) was/were committed by the following person(s), with these physical description(s), if known and safe to provide:~~

~~[if known and safe to provide, insert name(s) and physical description(s).]~~

~~(signature of tenant)(date)~~

## ~~Part II. Qualified Third Party Statement~~

~~I, [insert name of qualified third party], state as follows:~~

~~-~~

~~My business address and phone number are:~~

~~[insert business address and phone number.]~~

~~Check and complete one of the following:~~

~~\_\_\_\_ I meet the requirements for a sexual assault counselor provided in Section 1035.2 of the Evidence Code and I am either engaged in an office, hospital, institution, or center commonly known as a rape crisis center described in that section or employed by an organization providing the programs specified in Section 13835.2 of the Penal Code.~~

~~\_\_\_\_ I meet the requirements for a domestic violence counselor provided in Section 1037.1 of the Evidence Code and I am employed, whether financially compensated or not, by a domestic violence victim service organization, as defined in that section.~~

~~\_\_\_\_ I meet the requirements for a human trafficking caseworker provided in Section 1038.2 of the Evidence Code and I am employed, whether financially compensated or not, by an organization that provides programs specified in Section 18294 of the Welfare and Institutions Code or in Section 13835.2 of the Penal Code.~~

~~\_\_\_\_ I meet the definition of "victim of violent crime advocate" provided in Section 1946.7 of the Civil Code and I am employed, whether financially compensated or not, by a reputable agency or organization that has a documented record of providing services to victims of violent crime or provides those services under the auspices or supervision of a court or a law enforcement or prosecution agency.~~

~~\_\_\_\_ I am licensed by the State of California as a:~~

~~[insert one of the following: physician and surgeon, osteopathic physician and surgeon, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor.] and I am licensed by, and my license number is:~~

~~[insert name of state licensing entity and license number.]~~

~~The person who signed the Statement By Tenant above stated to me that they, a member of their immediate family, or a member of their household is a victim of:~~

~~[insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, dependent adult abuse, a crime that caused bodily injury or~~

~~death, a crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or a crime that included the use or threat of force against the victim.]~~

~~The person further stated to me the incident(s) occurred on or about the date(s) stated above.~~

~~(signature of qualified third party)(date)~~

~~(ii) The documentation may be signed by a person who meets the requirements for a sexual assault counselor, domestic violence counselor, a human trafficking caseworker, or a victim of violent crime advocate only if the documentation displays the letterhead of the office, hospital, institution, center, or organization, as appropriate, that engages or employs, whether financially compensated or not, this counselor, caseworker, or advocate.~~

~~(D) Any other form of documentation or evidence that a court determines reasonably verifies that the abuse or violence occurred. The tenant may request that the court examine the documentation or evidence provided in this subparagraph in camera.~~

~~(2) Notwithstanding paragraph (1), a landlord may terminate a tenancy or fail to renew a tenancy based upon an act against a tenant, a tenant's immediate family member, or a tenant's household member that constitutes abuse or violence even after receiving documentation of abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member, if either of the following apply:~~

~~(A) TThe perpetrator of abuse or violence is ~~not~~ a tenant in residence of the same dwelling unit as the tenant, the tenant's immediate family member, or household member.~~

~~(Bb) Both of the following apply:~~

~~(i) The perpetrator of abuse or violence's words or actions have further threatened the physical safety of other tenants, guests, invitees, or licensees.A landlord may terminate or decline to renew a tenancy after the tenant has availed themselves of the protections afforded by subdivision (a) if both of the following apply:~~

~~(ii4) After expiration of a three day notice requiring the tenant not to voluntarily permit or consent to the presence of the perpetrator of abuse or violence on the premises, the tenant continues to do so. The tenant voluntarily permits or consents to the presence of the perpetrator of abuse or violence on the premises and the perpetrator has threatened to commit a crime that would result in death or great bodily injury to a person on the premises other than the tenant and that, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution of the threat that causes that person reasonably to be in sustained fear for their own safety or for their immediate family's safety.~~

~~(2) The landlord gave at least three days' notice to the tenant to correct a violation of paragraph (1) in the last 90 days.~~

(c) Notwithstanding any provision in the lease to the contrary, the landlord shall not be liable to any other tenants for any action that arises due to the landlord's compliance with this section.

(d) A defendant may raise subdivision (b) as an affirmative defense to a cause of action for unlawful detainer that is based upon an act against a tenant, a tenant's immediate family member, or a tenant's household member that constitutes abuse or violence as follows:

(1) If the perpetrator of the abuse or violence is not a tenant in residence of the same dwelling unit as the tenant, the tenant's immediate family member, or household member, then the defendant shall have a complete defense as to that cause of action, unless each clause of subparagraph (B) of paragraph (1) of subdivision (b) applies.

(2) If the perpetrator of the abuse or violence is a tenant in residence of the same dwelling unit as the tenant, the tenant's immediate family member, or household member, the court shall proceed in accordance with Section 1174.27.

(3) It is immaterial to the affirmative defense pursuant to this subdivision whether the tenant provides the documentation evidencing abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member to the landlord or to the court.

(ed) (1) A landlord shall not disclose any information provided by a tenant under this section to a third party unless either of the following is true:

(A) The tenant has consented in writing to the disclosure.

(B) The disclosure is required by law or court order.

(2) A landlord's communication with the qualified third party who provides documentation in order to verify the contents of that documentation is not a disclosure for purposes of this subdivision.

~~(3) In an action involving a claim for damages arising from an alleged violation of this subdivision, the court shall award reasonable attorney's fees and costs to the prevailing party.~~

~~(e) The court shall make findings of whether a tenant is guilty of unlawful detainer because of an act of abuse or violence against them, their immediate family member, or their household member if both the following apply:~~

~~(1) A tenant claims that the landlord sought to terminate the tenancy based on an act of abuse against themselves, their immediate family member, or their household member by another tenant in residence.~~



~~(2) The act of abuse or violence have been documented as required under paragraph (1) of subdivision (a).~~

~~(f) If the court finds a tenant is guilty of unlawful detainer because of an act of abuse or violence against them, their immediate family member, or their household member by another tenant under subdivision (e), then all of the following apply to that tenant:~~

~~(1) The tenant shall not be named in the unlawful detainer judgment.~~

~~(2) The tenant shall not owe the landlord any fees related to the unlawful detainer action, including, but not limited to, attorney's fees, lease termination fees, or court costs.~~

~~(3) The tenant shall regain possession of the premises immediately after possession is returned to the landlord with a lease that has the same lease terms as their previous lease.~~

~~(g) For the purposes of this section:~~

~~(1) "Tenant" means tenant, subtenant, lessee, or sublessee.~~

~~(2) "Health practitioner" means a physician and surgeon, osteopathic physician and surgeon, psychiatrist, psychologist, registered nurse, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor.~~

~~(3) "Qualified third party" means a health practitioner, domestic violence counselor, as defined in Section 1037.1 of the Evidence Code, a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, a human trafficking caseworker, as defined in Section 1038.2 of the Evidence Code, or a victim of violent crime advocate.~~

~~(4) "Victim of violent crime advocate" has the same meaning as defined in Section 1946.7 of the Civil Code.~~

~~(5) "Abuse or violence" means domestic violence as defined in Section 6211 of the Family Code, sexual assault as defined in Section 1219, stalking as defined in Section 1708.7 of the Civil Code or Section 646.9 of the Penal Code, human trafficking as defined in Section 236.1 of the Penal Code, abuse of an elder or a dependent adult as defined in Section 15610.07 of the Welfare and Institutions Code, or any act described in paragraphs (6) to (8), inclusive, of subdivision (a) of Section 1946.7 of the Civil Code.~~

~~(6) "Perpetrator of abuse or violence" means any of the following:~~

~~(A) The person against whom an order described in subparagraph (A) of paragraph (1) of subdivision (a) has been issued.~~

~~(B) The person who was named or referred to as causing the abuse or violence in the report described in subparagraph (B) of paragraph (1) of subdivision (a).~~

~~(C) The person who was named or referred to as causing the abuse or violence in the documentation described in subparagraph (C) of paragraph (1) of subdivision (a).~~

~~(D) The person who was named or referred to as causing the abuse or violence in the documentation described in subparagraph (D) of paragraph (1) of subdivision (a).~~

~~(7) "Tenant in residence" means a tenant who is currently residing in the unit and has full physical and legal access to the unit.~~

~~(8) "Immediate family member" has the same meaning as defined in Section 1946.7 of the Civil Code.~~

~~(h) A landlord or agent of a landlord who violates subdivision (d) or (e) shall be liable to the tenant in a civil action for both of the following:~~

~~(1) The actual damages sustained by the tenant.~~

~~(2) Punitive damages not less than one hundred dollars (\$100) and not more than ten thousand dollars (\$10,000).~~

~~(i) In an action brought for damages for a violation of paragraph (3) of subdivision (f), the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.~~

~~(j) The Judicial Council shall review its, on or before January 1, 2024, develop a new form or revise an existing forms that may be used by a party to assert in the responsive pleading the grounds set forth in this section as an affirmative defense to an unlawful detainer action and, by no later than January 1, 2024, make any changes to those form that the Judicial Council deems necessary to conform them to this statute.~~

**SEC. 3. Section 1174.27 is added to the Code of Civil Procedure to read:**

(a) This section shall apply to an unlawful detainer proceeding in which all of the following are true:

(1) The proceeding involves residential premises.

(2) The complaint includes a cause of action based on an act against a tenant, a tenant's immediate family member, or a tenant's household member that constitutes abuse or violence.

(3) One or more of the defendants has invoked paragraph (2) of subdivision (d) of Section 1161.3 as an affirmative defense to the cause of action described in paragraph (2).

(b) For the purposes of this section, the definitions in subdivision (a) of Section 1161.3 apply.

(c) The court shall determine whether there is documentation evidencing abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member documentation evidencing the act of abuse or violence. The tenant may request that the court examine any documentation or evidence proffered for this purpose in camera.

(d) If the court determines there is not documentation evidencing abuse or violence against the tenant, the court shall deny the affirmative defense.

(e) If the court determines that there is documentation evidencing abuse or violence against the tenant, the tenant's immediate family member, or the tenant's household member, and the court does not find the defendant raising the affirmative defense guilty of an unlawful detainer on any other grounds, the court shall order all of the following:

(1) The defendant raising the affirmative defense shall not be named in any judgment in favor of the landlord.

(2) The defendant raising the affirmative defense shall not be held liable to the landlord for any amount related to the unlawful detainer, including, but not limited to, holdover damages, court costs, lease termination fees or attorney's fees.

(3) Upon a showing of good cause that any other defendant was the perpetrator of the violence or abuse on which the affirmative defense was based, the court shall issue a partial eviction ordering the removal of perpetrator of violence or abuse. The court shall order the perpetrator of violence or abuse be immediately removed and barred from the property, but the court shall not order the tenancy be terminated. The court shall order the landlord to change the locks and to provide the remaining occupants with the new key. The court may, in addition, permanently bar the defendant who was the perpetrator of the violence or abuse on which the affirmative defense was based from returning to or reentering any portion of the entire premises. The court may further order as an express condition of the tenancy that the remaining occupants shall not give permission to or invite any person who has been removed pursuant to this subdivision to return to or reenter any portion of the entire premises. In exercising its discretion under this subdivision, the court shall take into account custody or visitation orders or arrangements and any other factors that may necessitate the temporary reentry of any person ordered removed from the premises.

(f) The Judicial Council shall develop a judgment form for use in a ruling pursuant to subdivision (e).