



## ACLU Fact Sheet on “Nuisance” Ordinances

October 1, 2014

“Nuisance” ordinances – also known as “crime-free” or “disorderly behavior” ordinances – impose unconstitutional penalties on vulnerable people and housing owners based on the number of times police are called to a residence. The penalties – which often include fines, eviction, and loss of rental license – make victims of crime afraid to contact police, encourage discrimination by landlords, and result in homelessness. This proposal will not stop police from doing their job or landlords from evicting tenants who engage in criminal behavior.

### Policy issues

- **Disproportionately affects vulnerable people** who need help from police, including women, children, the elderly, low-income citizens, people with mental health conditions, and victims of crimes.
- **Particularly hurts victims of crimes like domestic violence and stalking**, who may be afraid to call police for help. The state should encourage people to work with the police and report crime, not allow for policies that result in crime victims fearing police.
- **Results in homelessness and job loss** for vulnerable people if they choose to report crimes rather than be victimized.
- **Sets arbitrary limit** on the number of police calls allowed to a residence before penalties apply.
- **Puts burden on landlords to do the job of the police**, and results in landlords relying on profiling (who is going to call police?)
- **Uniformity throughout the state is desirable** in this area; these ordinances just move “problems” from one city to another.
- Property owners can lose rental license and be fined, and **may be a money grab by cities**.
- **Results in expensive legal challenges** for cities.

### Legal issues

- **Conflicts with state laws** that prohibit cities from governing civil relationships and establish a process for landlords to evict tenants (Iowa Code §364.1 and §562A.27A). As such, they **violate Art. III, §38A of the Iowa Constitution, which allows for home rule as long as local ordinances are not inconsistent with state law**. A court struck down Cedar Rapids’ “nuisance” ordinance on these grounds.
- **May violate the Due Process Clauses of the Iowa and U.S. Constitutions**. Due process protects against arbitrary denial of life, liberty, and property by the government. Tenants have a property interest in their home, and as such are entitled to notice, an opportunity to be heard, and a chance to appeal, if the government seeks to evict them.
- **May be so vague as to be unconstitutional**. Don’t properly put people on notice of what is legal and what is not.
- **May violate the right to petition the government for redress of grievances** – to make a complaint to or seek the assistance of the government - under the Iowa and U.S. Constitutions.
- **May violate the Fair Housing Act**, which outlaws discrimination based on gender, and result in a loss of federal housing funds.
- **It is unfair and illegal to fine or otherwise punish landlords for tenant behavior**. Once a tenant rents property, he possesses that property. Landlords cannot enter except with notice, to do repair or maintenance, to show the unit, or in an emergency (Iowa Code §562A.19).

## Positive legislation and trends in other states to address the problem of cities passing crime nuisance ordinances:

### New York (A. 9056, approved by Assembly 130-0 on April 7, 2014)

- **Any person who is a victim of domestic violence...has the right to request such assistance** and to be free of any penalty or reprisal for accessing assistance.
- **No victim of conduct...shall be directly or indirectly penalized**, or otherwise subject to reprisal by application of such local law, including by termination or refusal to renew a tenancy or by eviction.
- **No residential occupant shall be required... to waive rights**. Such waiver is void and unenforceable.
- **This article doesn't prohibit a municipality from enforcing an ordinance or local law, nor restrict a landlord from terminating, evicting or refusing to renew a tenancy**, when action premised on grounds other than access of police or emergency assistance or conduct unrelated to the occupant's status as a target or victim of violence or harm.
- **No landlord or other property owner shall be subject to fines or loss of permits or licenses** by a municipality for failing to take steps to remove an occupant who has exercised rights under this article.

### Pennsylvania

- **Lakisha Briggs called the police after being assaulted by her ex-boyfriend, who was arrested. But Briggs was warned further calls would lead to her eviction**. She suffered additional violence, including being stabbed in the neck with a broken glass ashtray, and she and her daughter were threatened with eviction. **An ACLU challenge to the ordinance resulted in a \$495,000 settlement**, repeal of ordinance, and promise not to pass another.
- **The Secretary of HUD initiated a separate Fair Housing Act complaint against Norristown**, alleging that Norristown violated the law by discriminating against domestic violence survivors, the vast majority of whom are women.
- **No ordinance enacted by a municipality shall penalize a resident, tenant or landlord for a contact made for police or emergency assistance** by or on behalf of a victim of abuse... a victim of a crime... or an individual in an emergency... if the contact was made based upon the reasonable belief of the person making the contact that intervention or emergency assistance was necessary to prevent the perpetration or escalation of the abuse, crime or emergency or if the intervention or emergency assistance was actually needed. (House Bill No. 1796, approved 197-0 on March 11, 2014).

### Wisconsin

- **An analysis of every nuisance citation distributed in Milwaukee** over a two-year period showed properties in primarily black neighborhoods disproportionately received citations; nearly a third of all citations were generated by domestic violence, and most property owners abated this "nuisance" by evicting battered women; landlords took steps to discourage tenants from calling 911; and women were disproportionately affected.
- **Residential rental agreement is void and unenforceable** if it allows a landlord to increase rent, decrease services, bring an action for possession of the premises, or refuse to renew a rental agreement because a tenant has contacted an entity for law enforcement services, health services, or safety services; or allows the landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on the rental property if the tenant, or someone who lawfully resides with the tenant, is the victim of that crime (Wis. Code §704.44).

### Texas (Texas Pr. Code Ann. § 92.015)

- **A landlord may not prohibit or limit a residential tenant's right to summon police** or other emergency assistance in response to family violence; or impose monetary or other penalties in that circumstance.
- **A provision in a lease is void if the provision purports to waive a tenant's right to summon police** or other emergency assistance in response to family violence.
- **In addition to other remedies provided by law... a tenant is entitled to recover from or against the landlord** a civil penalty in an amount equal to one month's rent; actual damages suffered by the tenant; court costs; injunctive relief; and reasonable attorney's fees incurred by the tenant in seeking enforcement of this section.