



May 2019

Dear California Domestic Violence and Sexual Assault Survivor Advocates:

Nuisance and crime-free housing ordinances can jeopardize housing security for survivors of domestic and sexual violence, as well as other populations such as persons with disabilities and communities of color. Such local laws and policies often penalize landlords and tenants due to calls for police or emergency assistance, or in response to criminal activity at the property – oftentimes without regard for whether the caller was a victim of crime. Because survivors rely on police or emergency assistance, such laws can put survivors at greater risk by making them choose between their housing and their safety. Recent federal guidance, as well as the passage of a Right to a Safe Home Act in California, have tried to address the issue of survivors being at risk of losing their housing for simply calling for help.

This information packet provides a number of resources related to nuisance ordinances, as well as the new California law. This packet also contains resources that are available to share with local governments and law enforcement about this important issue. Also included is an updated *Know Your Rights* brochure for California tenants who are facing eviction for reasons related to domestic violence, sexual assault, and other forms of abuse. The National Housing Law Project is available to provide training and technical assistance to advocates who serve survivors of domestic and sexual violence.

For more information, please contact [nuisance@nhlp.org](mailto:nuisance@nhlp.org), or visit our website: <https://www.nhlp.org/initiatives/nuisance/>.

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# **Local Nuisance Ordinances: Impacts on Survivors of Domestic and Sexual Violence**

## **Information and Resource Packet for California Advocates**

### *General Information and Resources*

- NHLP, Getting Evicted for Calling the Police: Nuisance Ordinances and Their Impacts on Domestic Violence Survivors – Information for Local Advocates
- NHLP, Nuisance Ordinances and Their Impacts on Domestic Violence Survivors: An Introduction for Local Governments
- NHLP, Local Nuisance Ordinances and Their Impacts on Domestic Violence Survivors: An Introduction for Law Enforcement

### *Federal Resources*

- HUD, Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016)
- NHLP, HUD Guidance on Local Nuisance Ordinances and Crime-Free Housing Ordinances: A Summary

### *California Resources*

- Text of Assembly Bill 2413, “The Right to a Safe Home Act” (effective January 2019)
- The Right to a Safe Home Act: An Overview for California Advocates
- NHLP, *Know Your Rights! Eviction Protections for Victims of Domestic and Sexual Violence*
- Sample Letter for Advocates to Send to Jurisdictions About the Right to a Safe Home Act

# **Getting Evicted for Calling the Police: Nuisance Ordinances and Their Impacts on Domestic Violence Survivors**

## ***Information for Local Advocates***

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### **What are Nuisance Ordinances?**

Nuisance ordinances are local laws that often impose penalties (e.g., fines) on property owners for activity on their property that is considered to be “nuisance” activity. For example, failure to maintain one’s lawn is an example of a “nuisance.”

Such ordinances may also define nuisance activity as calling law enforcement or emergency assistance to a property a certain number of times within a certain timeframe. For example, if someone calls the police to their apartment complex too many times within a month or year, making such calls may be considered “nuisance” activity under local law. In response, property owners cited under nuisance ordinances may evict renters to avoid penalties.

### **How can Nuisance Ordinances Negatively Affect Domestic Violence Survivors and Other Populations?**

- Local nuisance ordinances may count incidents of domestic violence or calls to 911 for assistance as nuisance activity, subject to penalties.
- Nuisance ordinances discourage survivors from calling for police or emergency assistance out of fear of eviction or other penalties. This makes survivors choose between their homes and their safety.
- Nuisance ordinances have also been shown to negatively affect persons with disabilities and communities of color.

### **Are there Possible Protections Under the Law?**

Enforcement of nuisance ordinances against domestic violence survivors and other populations may violate laws such as:

- The Fair Housing Act and similar state laws that prohibit sex, race, and disability discrimination;
- The Violence Against Women Act, which protects survivors of domestic violence, dating violence, sexual assault, and stalking in federal housing programs;
- The U.S. Constitution, including one's First Amendment right to seek help from the government; and
- Any state laws prohibiting nuisance ordinances that adversely impact survivors or other populations.

### **Need More Information?**

To request training or technical assistance, please contact Renee Williams, [rwilliams@nhlp.org](mailto:rwilliams@nhlp.org).

*Please note that this fact sheet is provided for informational purposes only, and should not be considered legal advice.*

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# Nuisance Ordinances and Their Impacts on Domestic Violence Survivors

## *An Introduction for Local Governments*

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Nuisance ordinances are local laws that often impose penalties (e.g., fines) on property owners for activity on their property that is considered to be “nuisance” activity. While such laws are known for enforcing local rules such as lawn- upkeep, these ordinances may also capture other conduct -- such as making a certain number of calls for police or emergency assistance to a property within a particular time frame. In response to warnings or nuisance citations from a city or town, property owners often evict renters to avoid penalties.

### **How Can Nuisance Ordinances Negatively Affect Domestic Violence Survivors and Other Populations?**

Depending on how specific ordinances are written and enforced, these laws may:

- Count incidents of domestic violence or calls to 911 for assistance as nuisance activity, subject to penalties.
- Miscategorize incidents of domestic violence (e.g., counting incidents as “noise complaints” or “criminal activity”) that may count toward a nuisance designation.
- Discourage domestic violence survivors from calling for police or emergency assistance out of fear of eviction or other penalties, forcing a choice between one’s housing and personal safety.
- Negatively affect persons with mental health disabilities and communities of color.

### **Can Enforcement of Nuisance Ordinance Violate Other Laws?**

Yes -- again, depending on the specific ordinance or policy at issue, enforcement of nuisance ordinances against domestic violence survivors and other populations may violate laws such as:

- The Fair Housing Act and similar state laws that prohibit sex, race, and disability discrimination;
- The Violence Against Women Act, which protects survivors of domestic violence, dating violence, sexual assault, and stalking in federal housing programs;
- The U.S. Constitution, including one’s First Amendment right to seek help from the government; and
- Any state laws prohibiting nuisance ordinances that adversely impact survivors or other populations.

Questions about whether a policy violates the law should be referred to an attorney familiar with the specific facts.

### **What if a Local Nuisance Law Has an Exception So That Domestic Violence Incidents are Not Counted as “Nuisances”?**

An exception for domestic violence incidents does not guarantee that survivors are protected from the negative impacts of nuisance laws. As HUD pointed out in 2016 guidance, even in places where laws specifically exclude domestic violence survivors or other crime victims, these victims may still be considered to have engaged in nuisance conduct because “police and other emergency service providers may not log the call as domestic violence, instead categorizing it incorrectly as property damage, disturbing the peace or another type of nuisance conduct.”

### **Training and Technical Assistance Available for Local Governments**

To request training or technical assistance, please contact Renee Williams, [rwilliams@nhlp.org](mailto:rwilliams@nhlp.org).

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# Local Nuisance Ordinances and Their Impacts on Domestic Violence Survivors:

## *An Introduction for Law Enforcement*

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Nuisance ordinances are local laws that often impose fines or other penalties on property owners for activities occurring at their properties considered to be “nuisance” activity. While such laws exist to enforce local rules (e.g., property upkeep, controlling noise) these ordinances can also designate other conduct as “nuisance” activity, such as making a certain number of calls for police or emergency assistance within a particular timeframe.

What counts as a “nuisance” under local law matters because of the consequences of a nuisance designation – particularly for those who rely on law enforcement to protect them from harm, such as survivors of domestic violence. Fines charged as a result of nuisance ordinances may also negatively impact relationships between residents and law enforcement.

### **How Can Nuisance Ordinances Harm Survivors of Domestic Violence?**

Depending on how specific ordinances are written and enforced, these laws may:

- ***Result in survivors being evicted simply for being victims of abuse.*** Landlords who receive nuisance citations arising out of domestic violence incidents or related 911 calls may choose to evict the entire household, including the survivor, to avoid fines and other penalties.
- ***Endanger the lives of survivors.*** Nuisance ordinances discourage survivors from calling for police or emergency assistance out of fear of eviction. Instead of promoting public safety, nuisance ordinances can actually cause crimes to go unreported.

Research has also identified persons with disabilities and communities of color as populations who have been negatively impacted by the enforcement of nuisance ordinances.

### **What if My Jurisdiction’s Local Nuisance Law Has an Exception So That Domestic Violence Incidents Are Not Counted as “Nuisances”?**

An exception for domestic violence incidents does not guarantee that survivors are protected from the negative impacts of nuisance laws.

Even when nuisance laws specifically exclude domestic violence from a “nuisance” designation, incidents of domestic violence may be miscategorized. For example, if an incident of domestic violence is filed as a “noise complaint” or “criminal activity,” such a designation may trigger a

nuisance citation. In turn, property owners may face penalties for failing to address the nuisance (such as fines or loss of rental licenses).

Oftentimes, in the face of such penalties, landlords feel like they have no choice but to evict the household regardless of the circumstances.

### **Can a Jurisdiction's Enforcement of Nuisance Ordinances Violate Other Laws?**

Depending on the specific ordinance or policy at issue, enforcement of nuisance ordinances against domestic violence survivors may violate laws such as:

- The **Fair Housing Act** and similar state laws that prohibit sex discrimination;
- The **Violence Against Women Act**, which protects survivors of domestic violence, dating violence, sexual assault, and stalking in federal housing programs;
- The **U.S. Constitution**, including one's First Amendment right to seek help from the government; and
- Any **state laws** prohibiting nuisance ordinances that adversely impact survivors or other populations, or that protect someone's right to call 911.

Questions about whether a policy violates the law should be referred to an attorney familiar with the specific facts, such as a city attorney.

### **Where Can Law Enforcement Find More Information, or Request Training or Technical Assistance?**

The National Housing Law Project offers training and technical assistance on nuisance ordinances and their impacts on survivors of domestic violence. To make a request, please e-mail [nuisance@nhlp.org](mailto:nuisance@nhlp.org).

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**Office of General Counsel Guidance on  
Application of Fair Housing Act Standards to the  
Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims  
of Domestic Violence, Other Crime Victims, and Others Who Require Police or  
Emergency Services**

**I. Introduction**

The Fair Housing Act (or the Act) prohibits discrimination in the sale, rental or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin.<sup>1</sup> The Department of Housing and Urban Development's (HUD's) Office of General Counsel issues this guidance to explain how the Fair Housing Act applies to ensure that the growing number of local nuisance ordinances and crime-free housing ordinances do not lead to discrimination in violation of the Act.<sup>2</sup>

This guidance primarily focuses on the impact these ordinances may have on domestic violence victims, but the Act and the standards described herein apply equally to victims of domestic violence and other crimes and to those in need of emergency services who may be subjected to discrimination prohibited by the Act due to the operation of these ordinances. This guidance therefore addresses both the discriminatory effects and disparate treatment methods of proof under the Act, and briefly describes the obligation of HUD fund recipients to consider the impacts of these ordinances in assessing how they will fulfill their affirmative obligation to further fair housing.<sup>3</sup> HUD will issue subsequent guidance addressing more specifically how the Fair Housing Act applies to ensure that local nuisance or crime-free housing ordinances do not lead to housing discrimination because of disability.<sup>4</sup>

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<sup>1</sup> 42 U.S.C. §§ 3601-19.

<sup>2</sup> State and local governments use a variety of terms, including "nuisance," "chronic nuisance," "crime-free," or "disorderly behavior" to describe the types of ordinances addressed by this guidance.

<sup>3</sup> Local governments and landlords who receive federal funding may also violate the Violence Against Women Act, which, among other things, prohibits them from denying "assistance, tenancy, or occupancy" to any person because of domestic violence-related activity committed by a household member, guest or "other person in control" of the tenant if the tenant or an "affiliated individual" is the victim. 42 U.S.C. § 14043e-11(b)(3)(A).

<sup>4</sup> Discrimination prohibited by the Fair Housing Act includes "a refusal to make a reasonable accommodation in rules, policies, practices, and services, when such accommodation may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

## II. Background

### A. Nuisance Ordinances

A growing number of local governments are enacting a variety of nuisance ordinances that can affect housing in potentially discriminatory ways. For example, in Illinois alone, more than 100 such ordinances have been adopted.<sup>5</sup> These ordinances often label various types of conduct associated with a property—whether the conduct is by a resident, guest or other person—a “nuisance” and require the landlord or homeowner to abate the nuisance under the threat of a variety of penalties.<sup>6</sup> The conduct defined as a nuisance varies by ordinance and has ranged from conduct affecting the appearance of the property – such as littering,<sup>7</sup> failing to tend to one’s lawn<sup>8</sup> or abandoning a vehicle,<sup>9</sup> to general prohibitions related to the conduct of a tenant or guest – such as disorderly or disruptive conduct,<sup>10</sup> disrupting the quiet use and enjoyment of neighboring properties,<sup>11</sup> or any criminal conduct occurring on or near the property.<sup>12</sup> Nuisance conduct often

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<sup>5</sup> The Sargent Shriver National Center on Poverty Law noted that in August 2013, “more than 100 municipalities in the state of Illinois alone ha[d] adopted some kind of [nuisance or crime-free] ordinance,” with the number continuing to increase. Emily Werth, SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW, *The Cost of Being “Crime Free”: Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* 1 (2013), <http://povertylaw.org/sites/default/files/files/housing-justice/cost-of-being-crime-free.pdf>.

Other research has identified 37 nuisance ordinances in Pennsylvania. News Release, Pennsylvania Coalition Against Domestic Violence, *Executive Director Dierkers Praises Legislators for Shielding Domestic Violence Victims from Eviction* (Oct. 16, 2014) [hereinafter News Release], [http://www.pcadv.org/Resources/HB1796\\_PR\\_10162014.pdf](http://www.pcadv.org/Resources/HB1796_PR_10162014.pdf). Additionally, 59 nuisance ordinances have been identified across every region of the country, including in large metropolitan cities and small towns, 39 of which define domestic violence, assault, sexual abuse, or battery as nuisance activities. Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women* (online supplement), 78 AM. SOCIOLOGICAL REV. 2–3, 4–18 (2013) [hereinafter Desmond & Valdez (online supplement)], [http://scholar.harvard.edu/files/mdesmond/files/unpolicing.asr2013.online.supplement\\_0.pdf](http://scholar.harvard.edu/files/mdesmond/files/unpolicing.asr2013.online.supplement_0.pdf).

<sup>6</sup> Although nuisance ordinances have been enacted that apply to both owner-occupied and rental housing, this guidance focuses on the application of the Fair Housing Act to a local government’s enactment and enforcement of nuisance and crime-free ordinances against persons who reside in rental housing. Much of the legal analysis in this guidance applies equally to owner-occupied housing as well.

<sup>7</sup> See, e.g., PORTLAND, OR., CODE § 14.B.60.010(D)(9) (2013), <https://www.portlandoregon.gov/citycode/?c=28531>; CARSON CITY, NEV., CODE § 8.08.70 (2005), [https://www.municode.com/library/nv/carson\\_city/codes/code\\_of\\_ordinances?nodeId=TIT8PUPESAMO\\_CH8.08NU\\_8.08.110JUABUNVE#!](https://www.municode.com/library/nv/carson_city/codes/code_of_ordinances?nodeId=TIT8PUPESAMO_CH8.08NU_8.08.110JUABUNVE#!).

<sup>8</sup> See, e.g., JEFFERSON, WIS., CODE § 197-6(F) (2002), <http://ecode360.com/9781229>.

<sup>9</sup> See, e.g., ADAIR VILLAGE, OR. CODE § 40.610(5) (2012), <http://www.adairvillage.org/wordpress/wp-content/uploads/2012/06/Chapter-40-Public-Nuisance-2012.pdf>; CARSON CITY, NEV., CODE § 8.08.110 (2005), [https://www.municode.com/library/nv/carson\\_city/codes/code\\_of\\_ordinances?nodeId=TIT8PUPESAMO\\_CH8.08NU\\_8.08.110JUABUNVE#!](https://www.municode.com/library/nv/carson_city/codes/code_of_ordinances?nodeId=TIT8PUPESAMO_CH8.08NU_8.08.110JUABUNVE#!); see also Werth, *supra* note 5, at 17.

<sup>10</sup> See, e.g., WATERTOWN, WIS. CODE § 12.08(d)(ii) (2014), [http://www.ci.watertown.wi.us/document\\_center/Chapter\\_12.pdf](http://www.ci.watertown.wi.us/document_center/Chapter_12.pdf); WEST CHICAGO, ILL., CODE § 10-53 (2008), [https://www.municode.com/library/il/west\\_chicago/codes/code\\_of\\_ordinances?nodeId=COOR\\_CH10NU\\_ARTVII\\_CHNUPRAB\\_S10-52VI](https://www.municode.com/library/il/west_chicago/codes/code_of_ordinances?nodeId=COOR_CH10NU_ARTVII_CHNUPRAB_S10-52VI).

<sup>11</sup> See, e.g., ARIZ. REV. STAT. § 13-2917 (2006).

<sup>12</sup> See SPOKANE, WASH., CODE § 10.08A.20(H) (2016), <https://my.spokanecity.org/smc/?Section=10.08A.020>; see also ACLU WOMEN’S RIGHTS PROJECT & THE SOC. SCI. RESEARCH COUNCIL, *Silenced: How Nuisance Ordinances Punish Crime Victims in New York* 8 (2015) [hereinafter *Silenced*], <https://www.aclu.org/report/silenced-how-nuisance-ordinances-punish-crime-victims-new-york> (citing as examples of harmful nuisance ordinances PATTERSON, N.Y., CODE § 72-2(K) (2009),



includes what is characterized by the ordinance as an “excessive” number of calls for emergency police or ambulance services, typically defined as just a few calls within a specified period of time by a tenant, neighbor, or other third party, whether or not directly associated with the property.<sup>13</sup>

In some jurisdictions, an incident of domestic violence is defined as a nuisance without regard to whether the resident is the victim or the perpetrator of the domestic violence.<sup>14</sup> In other jurisdictions, incidents of domestic violence are not specifically defined as nuisances, but may still be categorized as such because the ordinance broadly defines nuisance activity as the violation of any federal, state or local law, or includes conduct such as disturbing the peace, excessive noise, disorderly conduct, or calls for emergency services that exceed a specified number within a given timeframe.<sup>15</sup> Some ordinances specifically define “excessive” calls for police or emergency services as nuisances, even when the person in need of services is a victim of domestic violence or another crime or otherwise in need of police, medical or other emergency assistance.<sup>16</sup> Even where ordinances expressly exclude victims of domestic violence or other crimes, victims are still frequently deemed to have committed nuisance conduct because police and other emergency service providers may not log the call as domestic violence, instead categorizing it incorrectly as property damage, disturbing the peace or another type of nuisance conduct.<sup>17</sup> Some victims also are hesitant or afraid to identify themselves as victims of abuse.<sup>18</sup>

The ordinances generally require housing providers either to abate the alleged nuisance or risk penalties, such as fines, loss of their rental permits, condemnation of their properties and, in some extreme instances, incarceration.<sup>19</sup> Some ordinances may require the housing provider to evict the resident and his or her household after a specified number of alleged nuisance

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[http://www.pattersonny.org/PDFs/Codes/Chapter72-Chronic\\_Public\\_Nuisance\\_Abatement.pdf](http://www.pattersonny.org/PDFs/Codes/Chapter72-Chronic_Public_Nuisance_Abatement.pdf); SCOTIA, N.Y., CODE § 196-12 (2009), <http://ecode360.com/13862484>; GLENS FALLS, N.Y., CODE § 146-2(C)(7) (2000), <http://ecode360.com/14410432>; AUBURN, N.Y., CODE § 213-3(D)(1) (1997), <http://ecode360.com/8969396>; ROCHESTER, N.Y., CHARTER § 3-15(B)(1)(w) (1984), <http://ecode360.com/28971339>; News Release, *supra* note 5.

<sup>13</sup> See Werth, *supra* note 5, at 4, 18 n.70.

<sup>14</sup> See, e.g., SPOKANE, WASH., CODE § 10.08A.20(H)(2)(q) (2016), <https://my.spokanecity.org/smc/?Section=10.08A.020>; see also Silenced, *supra* note 12, at 12; Anna Kastner, *The Other War at Home: Chronic Nuisance Laws and the Revictimization of Survivors of Domestic Violence*, 103 CALIF. L. REV. 1047, 1058 (2015); News Release, *supra* note 5.

<sup>15</sup> See Kastner, *supra* note 14, at 1058 (“Similarly, the ordinance could cause survivors to be evicted either because the 911 call was not coded as ‘domestic violence’ or because the landlord was not aware that domestic violence was occurring and could not create a plan to remediate the issue properly.”).

<sup>16</sup> See Gretchen Arnold & Megan Slusser, *Silencing Women's Voices: Nuisance Property Laws and Battered Women*, L. & SOC. INQ. 15-17 (2015), <http://nhlp.org/files/001.%20Silencing%20Women's%20Voices-%20Nuisance%20Property%20Laws%20and%20Battered%20Women%20-%20G%20Arnold%20and%20M%20Slusser.pdf>.

<sup>17</sup> See, e.g., BEACON, N.Y., CODE § 159-3(A)(20) (2011) (exempting domestic violence victims from being penalized under nuisance ordinance where a police officer properly “observes evidence that a domestic dispute occurred”).

<sup>18</sup> See, e.g., Arnold & Slusser, *supra* note 16, at 15–16.

<sup>19</sup> See, e.g., Desmond & Valdez (online supplement), *supra* note 5, at 4-18; Cari Fais, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 COLUM. L. REV. 1181, 1189 (2008).

violations—often quite low—within a specific timeframe.<sup>20</sup> For example, in at least one jurisdiction, three calls for emergency police or medical help within a 30-day period is considered to be a nuisance,<sup>21</sup> and in another jurisdiction, two calls for such services within one year qualify as a nuisance.<sup>22</sup> Even when nuisance ordinances do not explicitly require evictions, a number of landlords resort to evicting the household to avoid penalties.<sup>23</sup>

In many jurisdictions, domestic-violence-related calls are the largest category of calls received by police.<sup>24</sup> “Intimate partner violence, sexual violence, and stalking are widespread” and impact millions of Americans each year.<sup>25</sup> “On average, 24 people per minute are victims of rape, physical violence, or stalking by an intimate partner in the United States” – more than 12 million individuals over the course of a year.<sup>26</sup> From 1994 to 2010, approximately 80 percent of the victims of intimate partner violence in the nation were women.<sup>27</sup> Women with disabilities are more likely to be subjected to domestic violence than women without disabilities.<sup>28</sup>

Studies have found that victims of domestic violence often do not report their initial incident of domestic violence and instead suffer multiple assaults before contacting the police or seeking a protective order or other assistance.<sup>29</sup> Victims of domestic violence often are reluctant to

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<sup>20</sup> See Werth, *supra* note 5 at 4 n.9.

<sup>21</sup> See, e.g., CINCINNATI, OH. CODE § 761-3(a) (2013), <http://www.municode.com/resources/gateway.asp?pid=19996&sid=35>.

<sup>22</sup> See ST. LOUIS, MO., CODE § 15.42.020(G) (2014), [https://www.municode.com/library/mo/st.\\_louis/codes/code\\_of\\_ordinances?nodeId=TIT15PUPEMOWE\\_DIVIVOFAGPUPE\\_CH15.42PUNU#!](https://www.municode.com/library/mo/st._louis/codes/code_of_ordinances?nodeId=TIT15PUPEMOWE_DIVIVOFAGPUPE_CH15.42PUNU#!).

<sup>23</sup> See Arnold & Slusser, *supra* note 16, at 13–15 (2015), <http://nhlp.org/files/001.%20Silencing%20Women's%20Voices-%20Nuisance%20Property%20Laws%20and%20Battered%20Women%20-%20G%20Arnold%20and%20M%20Slusser.pdf>. While local governments might not explicitly require eviction as the primary nuisance abatement method in their ordinances, in practice, governments may indicate to landlords that eviction is the only acceptable nuisance abatement method. See, e.g., Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. REV. 117, 135 (2013), [http://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr\\_0.pdf](http://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr_0.pdf) (“[T]he [Milwaukee Police Department] cleared landlords who evicted domestic violence victims—‘Plan Accepted!’—but pressured those who refused to do so.”).

<sup>24</sup> Andrew R. Klein, NATIONAL INST. OF JUSTICE, U.S. DEP’T. OF JUSTICE, *Practical Implications of Current Domestic Violence Research* 1 (2009), <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>.

<sup>25</sup> CTRS. FOR DISEASE CONTROL AND PREVENTION, U.S. DEP’T. OF HEALTH & HUMAN SERV., *Injury Prevention & Control* (last updated Sep. 8, 2014), <http://www.cdc.gov/violenceprevention/nisvs/infographic.html>.

<sup>26</sup> CTRS. FOR DISEASE CONTROL AND PREVENTION, U.S. DEP’T. OF HEALTH & HUMAN SERV., UNDERSTANDING INTIMATE PARTNER VIOLENCE (2014), <https://www.cdc.gov/violenceprevention/pdf/ipv-factsheet.pdf>.

<sup>27</sup> See SUSAN CASTALANO, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T. OF JUSTICE, *Intimate Partner Violence, 1993–2010* 1 (2015), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>. See also NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *There’s No Place Like Home: State Laws that Protect Housing Rights for Survivors of Domestic and Sexual Violence* 5 (2012) [hereinafter *No Place Like Home*], [https://www.nlchp.org/Theres\\_No\\_Place\\_Like\\_Home](https://www.nlchp.org/Theres_No_Place_Like_Home) (“In some areas of the country 1 in 4 homeless adults reported that domestic violence was a cause of their homelessness, and between 50% and 100% of homeless women have experienced domestic or sexual violence at some point in their lives.”).

<sup>28</sup> OFFICE ON WOMEN’S HEALTH, U.S. DEP’T. OF HEALTH AND HUMAN SERV., *Violence Against Women With Disabilities* (last updated Sep. 4, 2015) [hereinafter WOMEN’S HEALTH], <http://www.womenshealth.gov/violence-against-women/types-of-violence/violence-against-women-with-disabilities.html>.

<sup>29</sup> KLEIN, *supra* note 24, at 6.

seek assistance because of, among other things, fear of reprisal from their attackers.<sup>30</sup> Nuisance ordinances (and crime-free housing ordinances) are becoming an additional factor that operates to discourage victims from reporting domestic violence and obtaining the emergency police and medical assistance they need.<sup>31</sup>

For example, a woman in Norristown, Pennsylvania who had been subjected to domestic violence by her ex-boyfriend was warned by police that if she made one more 911 call, she and her young daughter would be evicted from their home pursuant to the local nuisance ordinance.<sup>32</sup> The ordinance operated under a “three strike” policy, allowing her no more than two calls to 911 for help. As a result, the woman was too afraid to call the police when her ex-boyfriend returned to her home and stabbed her. Rather than call for an ambulance, she ran out of her house in the hope she would not lose her housing.<sup>33</sup> A neighbor called the police and, due to the serious nature of her injuries, the woman was airlifted to the hospital. A few days after she returned home from the hospital, she was served with eviction papers pursuant to the local nuisance ordinance.<sup>34</sup>

## B. Crime-Free Lease Ordinances and Crime-Free Housing Programs

A number of local governments enforce crime-free lease ordinances or promote crime-free housing programs that incorporate the use of crime-free lease addenda.<sup>35</sup> Some of these ordinances operate like nuisance ordinances and penalize housing providers who fail to evict tenants when a tenant, resident or other person has allegedly engaged in a violation of a federal, state and/or local law, regardless of whether the tenant or resident was the victim of the crime at issue.<sup>36</sup> Others mandate or strongly encourage housing providers to include lease provisions that require or permit housing providers to evict tenants where a tenant or resident has allegedly engaged in a single incident of criminal activity, regardless of whether the activity occurred on or off the property.<sup>37</sup>

These provisions often allow housing providers to evict tenants when a guest or other person allowed onto the property by the tenant or resident allegedly engages in criminal activity on

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<sup>30</sup> See Arnold & Slusser, *supra* note 16, at 15.

<sup>31</sup> *Id.* at 22; Fais, *supra* note 19, at 1202; Werth, *supra* note 5, at 8.

<sup>32</sup> Complaint at 9–17, *Briggs v. Borough of Norristown et al.*, No. 2013 C 2191 (E.D. Pa. Apr. 24, 2013) [hereinafter Complaint], [http://www.aclu.org/files/assets/norristown\\_complaint.pdf](http://www.aclu.org/files/assets/norristown_complaint.pdf).

<sup>33</sup> *Id.*; Lakisha Briggs, *I Was a Domestic Violence Victim. My Town Wanted Me Evicted for Calling 911*, GUARDIAN, (Sep. 11, 2015), <https://www.theguardian.com/commentisfree/2015/sep/11/domestic-violence-victim-town-wanted-me-evicted-calling-911>.

<sup>34</sup> *Id.* See also Press Release, U.S. Department of Housing and Urban Development, HUD and Philadelphia Area Borough Settle Allegations of Housing Discrimination Against Victims of Domestic Violence (Oct. 2, 2014), [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2014/HUDNo\\_14-121](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-121).

<sup>35</sup> See, e.g., HESPERIA, CAL., HEALTH AND SAFETY CODE § 8.20.50 (2015), [https://www.municode.com/library/ca/hesperia/codes/code\\_of\\_ordinances?nodeId=TIT8HESA\\_CH8.20CRFRREH\\_OPR\\_8.20.050CRFRREHOPR](https://www.municode.com/library/ca/hesperia/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.20CRFRREH_OPR_8.20.050CRFRREHOPR).

<sup>36</sup> See Werth, *supra* note 5, at 3 n.8.

<sup>37</sup> See, e.g., SAN BERNARDINO, CAL., HEALTH AND SAFETY CODE § 15.27.050 (2011), <https://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?blobid=19233>; City of San Bernardino Crime Free Multi-Housing Program Crime-Free Lease Addendum, <https://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?blobid=11259> (“A single violation of any of the provisions of this added addendum shall be deemed a serious violation and a material and irreparable non-compliance. It is understood that a single violation shall be good cause for termination of the lease.”).

or near the property, regardless of whether the resident was a victim of the criminal activity or a party to it.<sup>38</sup> The criminal activity that constitutes a lease violation is frequently broadly and ambiguously defined and may include any violation of federal, state or local laws, however minor.<sup>39</sup> Thus, disorderly conduct, excessive noise and similar activity may constitute a crime resulting in eviction.<sup>40</sup> Crime-free lease addenda often do not provide exceptions for cases where a resident or tenant is the victim of domestic violence or another crime.<sup>41</sup> And, as previously noted, even where exceptions do exist, victims of domestic violence and other crimes may be mistakenly categorized and face eviction despite the exception.<sup>42</sup> For example, police often arrest both the victim and the perpetrator under “dual arrest” policies when a victim has defended herself or himself from the perpetrator.<sup>43</sup>

Furthermore, some crime-free housing ordinances mandate or strongly encourage housing providers to implement lease provisions that require eviction based on an arrest alone, or do not require an arrest or conviction to evict a tenant, but rather allow housing providers to rely on a preponderance of the evidence standard while remaining silent on who is responsible for determining that this standard has been met.<sup>44</sup> The principles discussed in HUD’s “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions”<sup>45</sup> are instructive in

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<sup>38</sup> See, e.g., HESPERIA, CAL., HEALTH AND SAFETY CODE § 8.20.50 (2015), [https://www.municode.com/library/ca/hesperia/codes/code\\_of\\_ordinances?nodeId=TIT8HESA\\_CH8.20CRFRREHOPR\\_8.20.050CRFRREHOPR](https://www.municode.com/library/ca/hesperia/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.20CRFRREHOPR_8.20.050CRFRREHOPR) (mandating that all landlords include the Hesperia Crime-Free Lease Addendum, which requires that a single violation of the addendum, whether committed by resident, guest, or other person, provides good cause for termination of tenancy); Hesperia Crime-Free Lease Addendum, <http://www.cityofhesperia.us/DocumentCenter/View/13394>.

<sup>39</sup> See Werth, *supra* note 5, at 17.

<sup>40</sup> See, e.g., WATERTOWN, WIS. CODE § 12.08(d)(ii) (2014), [http://www.ci.watertown.wi.us/document\\_center/Chapter\\_12.pdf](http://www.ci.watertown.wi.us/document_center/Chapter_12.pdf).

<sup>41</sup> See Werth, *supra* note 5, at 8.

<sup>42</sup> See, e.g., OPEN COMMUNITIES & SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW, *Reducing the Cost of Being Crime Free: Alternative Strategies to Crime Free/Nuisance Property Ordinances in Illinois* 3 (2015) <http://povertylaw.org/sites/default/files/images/advocacy/housing/reducing-the-cost-of-crime-free.pdf>.

<sup>43</sup> See, e.g., Kastner, *supra* note 14, at 1065; see Werth, *supra* note 5, at 21.

<sup>44</sup> See, e.g., Werth, *supra* note 5, at 12 (noting that some ordinances allow evictions based on arrests or citations alone); LAS VEGAS, NEV., CODE § 6.09.20 (2012) (requiring landlords to complete training encouraging use of Crime-Free Addendum, which permits eviction based on single alleged violation, as shown by preponderance of evidence, rather than criminal conviction); Las Vegas Crime Free Multi-Housing Program Crime-Free Addendum (2014), [http://www.lvmpd.com/Portals/0/pdf/prevention/English\\_CFAAddendum01\\_2014.pdf](http://www.lvmpd.com/Portals/0/pdf/prevention/English_CFAAddendum01_2014.pdf); SAN BERNARDINO, CAL., HEALTH AND SAFETY CODE § 15.27.050 (2011), <https://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?blobid=19233> (requiring landlords to use Crime-Free Lease Addendum, which permits eviction based on single alleged violation of addendum as shown by preponderance of evidence, rather than criminal conviction); City of San Bernardino Crime Free Multi-Housing Program Crime-Free Lease Addendum, <https://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?blobid=11259>; Hesperia, Cal., Health and Safety Code § 8.20.50 (2015), [https://www.municode.com/library/ca/hesperia/codes/code\\_of\\_ordinances?nodeId=TIT8HESA\\_CH8.20CRFRREHOPR\\_8.20.050CRFRREHOPR](https://www.municode.com/library/ca/hesperia/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.20CRFRREHOPR_8.20.050CRFRREHOPR) (providing chief of police discretion as to whether or not to notify the landlord of the evidence or documents, if any, used to determine that a resident engaged in criminal activity); see also Werth, *supra* note 5, at 4.

<sup>45</sup> See HELEN R. KANOVSKY, GENERAL COUNSEL, U.S. DEP’T OF HOUS. & URBAN DEV., *Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (2016), [https://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHASandCR.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf).

evaluating the fair housing implications of crime-free lease ordinances and crime-free lease addenda mandated or encouraged by localities and enforced by housing providers.<sup>46</sup>

### **III. Discriminatory Effects Liability and Enforcement of Nuisance Ordinances and Crime-Free Housing Ordinances**

A local government's policies and practices to address nuisances, including enactment or enforcement of a nuisance or crime-free housing ordinance, violate the Fair Housing Act when they have an unjustified discriminatory effect, even when the local government had no intent to discriminate.<sup>47</sup> Under this standard, a facially-neutral policy or practice that has a discriminatory effect violates the Act if it is not supported by a legally sufficient justification.<sup>48</sup> Thus, where a policy or practice that restricts the availability of housing on the basis of nuisance conduct has a disparate impact on individuals of a particular protected class, the policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the local government, or if such interest could be served by another practice that has a less discriminatory effect.<sup>49</sup>

Discriminatory effects liability is assessed under a three-step, burden-shifting standard requiring a fact-specific analysis.<sup>50</sup> The following sections discuss the three steps used to analyze whether a local government's enforcement of a nuisance or crime-free housing ordinance results in a discriminatory effect in violation of the Act. As explained in Section IV, below, a different analytical framework is used to evaluate claims of intentional discrimination.

#### **A. Evaluating Whether the Challenged Nuisance Ordinance or Crime-Free Housing Ordinance Policy or Practice Has a Discriminatory Effect**

In the first step of the analysis, a plaintiff (or HUD in an administrative enforcement action) has the burden to prove that a local government's enforcement of its nuisance or crime-free housing ordinance has a discriminatory effect, that is, that the local government's nuisance or crime-free housing ordinance policy or practice results or predictably will result in a disparate impact on a group of persons because of a protected characteristic.<sup>51</sup> This is also true for a local

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<sup>46</sup> In addition to being liable for their own discriminatory conduct, housing providers may have a cause of action under the Fair Housing Act against a locality if a locality's ordinance requires housing providers to discriminate based on a protected characteristic. *See, e.g., Waterhouse v. City of Am. Canyon*, 2011 U.S. Dist. LEXIS 60065, \*1, 13–15 (N.D. Cal. 2011) (concluding that “forcing the owners of a mobile-home park to discriminate on the basis of familial status through a series of city ordinances . . . violates the federal Fair Housing Act.”).

<sup>47</sup> 24 C.F.R. § 100.500; *accord Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2507, 2511 (2015).

<sup>48</sup> For purposes of this guidance, the term “policy or practice” encompasses governments' nuisance and crime-free ordinances as well as their enforcement of the ordinances. It also includes government activities related to crime-free housing programs that may not be specified by ordinance.

<sup>49</sup> 24 C.F.R. § 100.500; *see also Inclusive Cmty. Project*, 135 S. Ct. at 2514–15 (summarizing HUD's Discriminatory Effects Standard in 24 C.F.R. § 100.500).

<sup>50</sup> *See* 24 C.F.R. § 100.500.

<sup>51</sup> 24 C.F.R. § 100.500(c)(1). A discriminatory effect can also be proven with evidence that the policy or practice creates, increases, reinforces, or perpetuates segregated housing patterns. *See* 24 C.F.R. § 100.500(a). This guidance addresses only the method for analyzing disparate impact claims, which in HUD's experience are more commonly asserted in this context.

government's policy or practice encouraging or incentivizing housing providers to adopt crime-free lease addenda (and the discussion throughout the guidance applies equally to such actions). This burden is satisfied by presenting evidence proving that the challenged policy or practice actually or predictably results in a disparate impact.

Different data sources may be available and useful to demonstrate that a government's ordinance actually or predictably results in a disparate impact, which is ultimately a fact-specific and case-specific inquiry. While state or local statistics typically are presented where available and appropriate based on the local government's jurisdiction or other facts particular to a given case, national statistics may be relevant and appropriate, depending on the specific case and the nature of the claim.

Local statistics are likely to be available for use in establishing whether a local government's enforcement of its nuisance or crime-free ordinance has a disparate impact. Other evidence – for example, resident data and files, demographic data, city and police records including data on enforcement of nuisance or crime-free ordinances, citations and correspondence between housing providers and city officials and court records regarding nuisance abatement – may also be relevant in determining whether a challenged nuisance or crime-free housing ordinance policy or practice causes a disparate impact.

Evidence of nationwide disparities in the enforcement of nuisance or crime-free ordinances based on protected characteristics may be relevant to consider, depending on the specific case and the nature of the claim.<sup>52</sup> Also, in some cases, national statistics may provide grounds for HUD to investigate complaints challenging the enforcement of nuisance ordinances. For example, nationally, women comprise approximately 80 percent of all individuals subjected to domestic violence each year,<sup>53</sup> which may provide grounds for HUD to investigate under the Fair Housing Act allegations that the adverse effects of a nuisance ordinance fall more heavily on victims of domestic violence.

Whether in the context of an investigation or administrative enforcement action by HUD or private litigation, a local government will have the opportunity to offer evidence to refute the claim that its nuisance ordinance causes a disparate impact on one or more protected classes.

#### B. Evaluating Whether the Challenged Nuisance Ordinance or Crime-Free Housing Ordinance is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest

In the second step of the discriminatory effects analysis, the burden shifts to the local government to prove that the challenged nuisance or crime-free housing ordinance is necessary

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<sup>52</sup> Compare *Dothard v. Rawlinson*, 433 U.S. 321, 330 (1977) (“[R]eliance on general population demographic data was not misplaced where there was no reason to suppose that physical height and weight characteristics of Alabama men and women differ markedly from those of the national population.”), with *Mountain Side Mobile Estates P’ship v. Sec’y of Hous. & Urban Dev.*, 56 F.3d 1243, 1253 (10th Cir. 1995) (“In some cases national statistics may be the appropriate comparable population. However, those cases are the rare exception and this case is not such an exception.”) (citation omitted).

<sup>53</sup> See CASTALANO, *supra* note 27, at 1.

to achieve a substantial, legitimate, nondiscriminatory interest of the local government.<sup>54</sup> The interest of the local government may not be hypothetical or speculative, meaning the local government must be able to prove with evidence what the government interest is, that its interest is legitimate, substantial and nondiscriminatory, and that the challenged practice is necessary to achieve that interest.<sup>55</sup> Assertions based on generalizations or stereotypes about persons deemed to engage in nuisance or criminal conduct are not sufficient to prove that an ordinance or its enforcement is necessary to achieve the local government's substantial, legitimate, nondiscriminatory interest.

As explained in the preamble to HUD's 2013 Discriminatory Effects Final Rule, a "substantial" interest is a core interest of the organization that has a direct relationship to the function of that organization.<sup>56</sup> The requirement that an interest be "legitimate" means that the local government's justification must be genuine and not false or fabricated.<sup>57</sup> A number of local governments have nuisance or crime-free ordinances that encourage, require or are likely to result in housing providers evicting or taking other adverse housing actions against residents, including victims of domestic violence and other crimes, because the residents requested police, medical or other emergency assistance, without regard to whether the calls were reasonable under the circumstances.<sup>58</sup> Where such a practice is challenged and proven to have a disparate impact, the local government would have the difficult burden to prove that cutting off access to emergency services for those in grave need of such services, including victims of domestic violence or other crimes, thereby potentially endangering their lives, safety and security,<sup>59</sup> in fact achieves a core interest of the local government and was not undertaken for discriminatory reasons or in a discriminatory manner. Similarly, if the local government's policy or practice requires or encourages housing providers to evict victims of domestic violence or other crimes or others in need of emergency services, the local government would have the burden to prove that such a policy or practice in fact is necessary to achieve the local government's substantial, legitimate, nondiscriminatory interest.

### C. Evaluating Whether There Is a Less Discriminatory Alternative

The third step of the discriminatory effects analysis is applicable only if a local government successfully proves that its nuisance or crime-free housing ordinance, policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. If the analysis reaches the third step, the burden shifts back to the plaintiff or HUD to prove that such interest could be served by another policy or practice that has a less discriminatory effect.<sup>60</sup>

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<sup>54</sup> 24 C.F.R. § 100.500(c)(2).

<sup>55</sup> Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460, 11471 (Feb. 15, 2013) (preamble to final rule codified at 24 C.F.R. pt. 100).

<sup>56</sup> 78 Fed. Reg. at 11470.

<sup>57</sup> *Id.*

<sup>58</sup> See Werth, *supra* note 5, at 8.

<sup>59</sup> When domestic violence victims are evicted on the basis of a nuisance citation, they may often lack alternative housing and experience homelessness. See, e.g., Amanda Gavin, *Chronic Nuisance Ordinances: Turning Victims of Domestic Violence into "Nuisances" in the Eyes of Municipalities*, 119 PENN ST. L. REV. 257, 260 ("on any given day, over 3000 people face homelessness because they are unable to find shelter away from their abusers . . . making domestic violence a leading cause of homelessness in the United States").

<sup>60</sup> 24 C.F.R. § 100.500(c)(3); accord *Inclusive Cmty's. Project*, 135 S. Ct. at 2515.

The identification of a less discriminatory alternative will depend on the particulars of the policy or practice at issue, as well as the specific nature of the underlying problem the ordinance seeks to address.

#### **IV. Intentional Discrimination and Enforcement of Nuisance Ordinances or Crime-Free Housing Ordinances**

A local government may also violate the Fair Housing Act if it intentionally discriminates in its adoption or enforcement of a nuisance or crime-free housing ordinance. This occurs when the local government treats a resident differently because of sex, race or another protected characteristic. The analysis is the same as is used to analyze whether any housing ordinance was enacted or enforced for intentionally discriminatory reasons.

Generally, two types of claims of intentional discrimination may arise. One type of intentional discrimination claim arises where a local government enacts a nuisance ordinance or crime-free housing ordinance for discriminatory reasons. Another type is where a government selectively enforces a nuisance or crime-free housing ordinance in a discriminatory manner. For the first type of claim, in determining whether a facially neutral ordinance was enacted for discriminatory reasons, courts generally look to certain factors. The factors, all of which need not be satisfied, include, but are not limited to: (1) the *impact* of the ordinance at issue, such as whether the ordinance disproportionately impacts women compared to men, minority residents compared to white residents, or residents with disabilities or a certain type of disability compared to residents without disabilities; (2) the *historical background* of the ordinance, such as whether there is a history of discriminatory conduct by the local government; (3) the *specific sequence of events*, such as whether the locality adopted the ordinance only after significant community opposition motivated by race or another protected characteristic; (4) *departures from the normal procedural sequence*, such as whether the locality deviated from normal procedures for enacting a nuisance ordinance; (5) *substantive departures*, such as whether the factors usually considered important suggest that a local government should have reached a different result; and (6) the *legislative or administrative record*, such as any statements by members of the local decision-making body.<sup>61</sup>

For the second type of intentional discrimination claim, selective enforcement, where there is no “smoking gun” proving that a local government is selectively enforcing a nuisance or crime-free housing ordinance in a discriminatory way, courts look for evidence from which such an inference can be drawn. The evidence might be direct or circumstantial. For example, courts have noted that an inference of intentional sex discrimination could arise directly from evidence

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<sup>61</sup> *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977). See also *Hidden Vill., LLC v. City of Lakewood*, 867 F. Supp. 2d 920, 942 (N.D. Ohio 2012) (utilizing *Arlington Heights* factors to analyze whether municipal action was motivated by discriminatory intent); see, e.g., *Valdez v. Town of Brookhaven*, 2005 U.S. Dist. LEXIS 36713, \*47 (E.D.N.Y. 2005) (explaining factors probative of discriminatory intent in case involving town’s alleged disproportionate enforcement of zoning and housing codes against Latinos).



that a housing providers seeks to evict female residents shortly after incidents of domestic violence.<sup>62</sup>

A common method of establishing intentional discrimination indirectly, through circumstantial evidence, is through the familiar burden-shifting method of proving intentional discrimination originally established by the Supreme Court in the employment context.<sup>63</sup> In the standard complaint alleging selective enforcement of a nuisance or crime-free ordinance for discriminatory reasons, the plaintiff first must produce evidence to establish a prima facie case of disparate treatment. This may be shown, for example, by evidence that: (1) the plaintiff (or complainant in an administrative enforcement action) is a member of a protected class; (2) a local government official (or housing provider, depending on the circumstances) took action to enforce the nuisance or crime-free ordinance or lease addendum against the plaintiff or complainant because the plaintiff or complainant allegedly engaged in nuisance or criminal conduct; (3) the local government official or housing provider did not take action to enforce the nuisance or crime-free ordinance or lease addendum against a similarly-situated resident not of the plaintiff or complainant's protected class who engaged in comparable conduct; and (4) the local government or housing provider subjected the plaintiff or complainant to an adverse housing action as a result of the enforcement of the nuisance or crime-free ordinance or lease addendum. It is then the burden of the local government and/or housing provider, depending on the circumstances, to offer evidence of a legitimate, nondiscriminatory reason for the adverse housing action.<sup>64</sup> The proffered nondiscriminatory reason for the challenged decision must be clear, reasonably specific and supported by admissible evidence.<sup>65</sup> Purely subjective or arbitrary reasons will not be sufficient to demonstrate a legitimate, nondiscriminatory basis for differential treatment.<sup>66</sup>

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<sup>62</sup> See *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 678 (D. Vt. 2005) (explaining that landlord's attempt to evict victim 72 hours after domestic violence incident could give rise to inference of discrimination on the basis of gender). See, e.g., *Dickinson v Zanesville Metro. Hous. Auth.*, 975 F. Supp. 2d 863, 872 (S.D. Ohio 2013) (articulating that a housing provider's failure to comply with the Violence Against Women Act and assignment of blame to the victim for the results of domestic violence could give rise to an inference of sex discrimination); *Meister v. Kansas City*, 2011 U.S. Dist. LEXIS 19166, \*19–20 (D. Kan. 2011) (“[E]vidence that defendant knew that domestic violence caused damage to plaintiff's housing unit would help support a claim that she was evicted under circumstances giving rise to an inference of sex discrimination.”).

<sup>63</sup> See, generally, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (articulating burden-shifting standard of proving intentional discrimination under Title VII).

<sup>64</sup> See, e.g., *Lindsay v. Yates*, 578 F.3d at 415 (articulating that if plaintiff presents evidence from which a reasonable jury could conclude that there exists a prima facie case of housing discrimination, then the burden shifts to the defendant to offer evidence of a legitimate, nondiscriminatory reason for the adverse housing decision); *Bouley*, 394 F. Supp. 2d at 678 (explaining that once a plaintiff has established a prima facie case of discrimination, the burden then shifts to the defendant to assert a legitimate, nondiscriminatory rationale for the challenged decision).

<sup>65</sup> See, e.g., *Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1040 (2d Cir. 1979) (“A prima facie case having been established, a Fair Housing Act claim cannot be defeated by a defendant which relies on merely hypothetical reasons for the plaintiff's rejection.”).

<sup>66</sup> See, e.g., *Soules v. U.S. Dep't of Hous. and Urban Dev.*, 967 F.2d 817, 822 (2d Cir. 1992) (“In examining the defendant's reason, we view skeptically subjective rationales concerning why he denied housing to members or protected groups. Our reasoning, in part, is that ‘clever men may easily conceal their [discriminatory] motivations.’” (quoting *United States v. City of Black Jack*, 508 F.2d 1179, 1185 (8th Cir. 1974))).

If the defendant (or respondent in a HUD administrative enforcement action) establishes a legitimate, nondiscriminatory reason for the adverse housing action, a plaintiff or HUD may still prevail by showing that the proffered reason was not the true reason for the adverse housing decision, and was instead a mere pretext for unlawful discrimination.<sup>67</sup> For example, the fact that the defendant (or respondent) acted upon comparable nuisance or criminal conduct differently for one or more individuals of a different protected class than the plaintiff or complainant is strong evidence that the defendant (or respondent) was not considering such conduct uniformly. Additionally, shifting or inconsistent explanations offered by the defendant (or respondent) for the adverse housing action may provide evidence of pretext. Similarly, a local government's claim that its nuisance citations would not cause tenant evictions because the citations were issued to the housing provider and not the residents could be evidence of pretext.<sup>68</sup> Ultimately, the evidence that may be offered to show that defendant's or respondent's stated justification is pretext for intentional discrimination will depend on the facts of a particular case.

## **V. Assessment of Nuisance Ordinances and Crime-Free Housing Ordinances as Part of the Duty to Affirmatively Further Fair Housing**

In addition to prohibiting discrimination, the Fair Housing Act requires HUD to administer programs and activities relating to housing and urban development in a manner that affirmatively furthers the policies of the Act.<sup>69</sup> The purpose of the Act's affirmatively furthering fair housing (AFFH) mandate is to ensure that recipients of Federal housing and urban development funds do more than simply not discriminate: recipients also must take meaningful action to overcome fair housing issues and related barriers to fair housing choice and disparities in access to opportunity based on sex, race, national origin, disability, and other characteristics protected by the Act. Congress has repeatedly reaffirmed the AFFH mandate by requiring HUD program participants to certify that they will affirmatively further fair housing as a condition of receiving Federal funds.<sup>70</sup>

In 2015, HUD issued a rule on affirmatively furthering fair housing which requires grantees who receive Community Development Block Grant, HOME, Housing Opportunities for Persons with AIDS, or Emergency Solutions Grant funding to conduct an assessment of fair housing for purposes of setting goals to affirmatively further fair housing. In conducting their assessments of fair housing, state and local governments should assess their nuisance ordinances, crime-free housing ordinances and related policies or practices, including the processes by which nuisance ordinance and crime-free housing ordinances are enforced, and consider how these ordinances, policies or practices may affect access to housing and access to police, medical and other governmental services based on sex, race, national origin, disability, and other characteristics protected by the Act. One step a local government may take toward meeting its duty to affirmatively further fair housing is to eliminate disparities by repealing a nuisance or

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<sup>67</sup> See, e.g., *Bouley*, 394 F. Supp. 2d at 678.

<sup>68</sup> See *Hidden Vill.*, 867 F. Supp. 2d at 952 (noting that “[d]efendants appear blind to the possibility that repeatedly issuing citations to a landlord, based upon the actions of its tenants, would logically create an incentive for the landlord to evict his problem tenant . . . produc[ing] the same result—the eviction of [predominantly African American youth] but by different means.”).

<sup>69</sup> 42 U.S.C. § 3608(d), (e)(5).

<sup>70</sup> 42 U.S.C. §§ 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 1437C-1(d)(16).

crime-free ordinance that requires or encourages evictions for use of emergency services, including 911 calls, by domestic violence or other crime victims.

## **VI. Conclusion**

The Fair Housing Act prohibits both intentional housing discrimination and housing ordinances, policies or practices that have an unjustified discriminatory effect because of protected characteristics. While the Act does not prohibit local governments from appropriately considering nuisance or criminal conduct when enacting laws related to housing, governments should ensure that such ordinances and related policies or practices do not discriminate in violation of the Fair Housing Act.

Eighty percent of domestic violence victims are women, and in some communities, racial or ethnic minorities are disproportionately victimized by crime. Where the enforcement of a nuisance or crime-free ordinance penalizes individuals for use of emergency services or for being a victim of domestic violence or other crime, a local government bears the burden of proving that any discriminatory effect caused by such policy or practice is supported by a legally sufficient justification. Such a determination cannot be based on generalizations or stereotypes.

Selective use of nuisance or criminal conduct as a pretext for unequal treatment of individuals based on protected characteristics violates the Act. Repealing ordinances that deny access to housing by requiring or encouraging evictions or that create disparities in access to emergency services because of a protected characteristic is one step local governments can take to avoid Fair Housing Act violations and as part of a strategy to affirmatively further fair housing.

Helen R. Kanovsky, General Counsel

## **HUD Guidance on Local Nuisance Ordinances and Crime-Free Housing Ordinances: A Summary**

In September 2016, HUD issued guidance that examines how the enforcement of nuisance ordinances and crime-free housing ordinances could violate the Fair Housing Act, under certain circumstances. Since the overwhelming majority of domestic violence survivors are women, for example, any policies or practices that affect survivors may constitute sex discrimination under the Fair Housing Act. This HUD guidance focuses on the effect that the enforcement of nuisance and crime-free housing ordinances may have on survivors of domestic violence.

The guidance first discusses how nuisance and crime-free ordinances can have a disproportionate effect on certain groups, which may violate the Fair Housing Act, even when there was no intent to discriminate. The guidance notes that various data sources (including police records or resident data) can be used to show that such ordinances disproportionately affect groups protected by the Fair Housing Act, such as women. The guidance also states that local governments cannot rely upon stereotypes about persons who have been described as engaging in nuisance or criminal activities to defend such ordinances. The guidance also notes that it is not likely that a legitimate, core governmental interest can be served by preventing access to essential emergency services for those who have a significant need for such services, such as domestic violence survivors or other crime victims.

The guidance also discusses how jurisdictions can violate the Fair Housing Act by intentionally using the adoption or enforcement of a nuisance or crime-free ordinance to discriminate. For instance, jurisdictions can have discriminatory motives for adopting a nuisance ordinance. Factors that may indicate an intent to adopt a discriminatory ordinance include considerations such as historical context, the sequence of events leading up to the adoption of the ordinance, the administrative or legislative record, and the ordinance's impact. Another way a jurisdiction can use nuisance and crime-free ordinances is in selective enforcement. Selective enforcement has been shown by, for example, providing evidence that a housing provider sought eviction of female tenants shortly following domestic violence incidents. The guidance concludes by suggesting that local governments can further fair housing objectives by repealing nuisance or crime-free ordinances that penalize survivors or other crime victims for calling 911 or other emergency services.

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## **Assembly Bill No. 2413**

### **CHAPTER 190**

An act to add Section 1946.8 to the Civil Code, to amend Section 1161.3 of the Code of Civil Procedure, and to repeal and add Section 53165 of the Government Code, relating to tenancy.

[Approved by Governor August 24, 2018. Filed with Secretary of State August 24, 2018.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2413, Chiu. Tenancy: law enforcement and emergency assistance.

(1) Existing law authorizes a tenant to notify the landlord in writing that he or she or a household member, as defined, was a victim of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse and that the tenant intends to terminate the tenancy. If the tenant attaches to the notice a copy of a temporary restraining order or protective order, as specified, a report by a peace officer, as specified, or documentation from a qualified 3rd party, as specified, and satisfies other requirements, the tenant is released from paying rent and other obligations under the lease, subject to certain limitations.

This bill would declare void, as contrary to public policy, a provision in a rental or lease agreement that limits or prohibits, or threatens to limit or prohibit, a tenant's, resident's, or other person's right to summon law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency if the tenant, resident, or other person believes that the law enforcement assistance or emergency assistance is necessary to prevent or address the perpetration, escalation, or exacerbation of the abuse, crime, or emergency. The bill would also prohibit a landlord from imposing, or threatening to impose, penalties in this context as well. The bill would define various terms for these purposes. The bill would provide that a waiver of these provisions is contrary to public policy and is void and unenforceable. The bill would prescribe evidentiary presumptions in this connection to be applicable to unlawful detainer actions. The bill would authorize a tenant, resident, or other aggrieved person to seek an injunction for a violation of these provisions.

(2) Existing law, in connection with actions for unlawful detainer, prohibits a landlord from terminating or failing to renew a tenancy based upon an act or acts against a tenant or a tenant's household member that constitute domestic violence, sexual assault, stalking, human trafficking, or elder or a dependent adult abuse, if certain standards are met. In this regard, the acts must be documented by a copy of a temporary restraining order or protective order, as specified, or a report by a peace officer, as specified, and the person against whom the protection order has been issued, or who

was named in the police report, is not a tenant of the same dwelling unit as the tenant or household member.

This bill, for the purposes relating to unlawful detainer, described above, would authorize a tenant to document an act of domestic violence, sexual assault, stalking, human trafficking, or elder or a dependent adult abuse, by attaching a statement from a qualified 3rd party, as defined. The bill would require that this documentation be in substantially the same form as a statement that the bill would prescribe for this purpose. The bill would prohibit the landlord from disclosing information that a tenant has submitted in this context, except as specified. The bill would prescribe definitions for these purposes. The bill would require the Judicial Council, by September 1, 2019, to develop a new form or revise an existing form for use by a party to assert an affirmative defense to an unlawful detainer action, as specified.

(3) Existing law prohibits a local agency from requiring a landlord to terminate a tenancy or fail to renew a tenancy based upon an act against a tenant or a tenant's household member that constitutes domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse, if specified requirements relating to unlawful detainer actions are satisfied. Existing law prohibits a local agency from requiring a landlord to terminate a tenancy or fail to renew a tenancy based upon the number of calls made to the emergency telephone system relating to the tenant or a member of the tenant's household being a victim of these acts.

This bill would revise and recast these provisions. The bill would prohibit a local agency from promulgating, enforcing, or implementing any ordinance, rule, policy, or regulation, that authorizes, or requires the imposition or threatened imposition of, a penalty against a resident, owner, tenant, landlord, or other person as a consequence of law enforcement assistance or emergency assistance by, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency. The bill would prescribe definitions in this regard. The bill would preempt inconsistent local rules and regulations in this regard. The bill would prescribe remedies for a violation of these provisions. The bill would declare that the need to protect parties to whom these provisions of the bill apply is a matter of statewide concern, and not a municipal affair, and that charter cities and counties would be subject to the provisions of the bill.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1946.8 is added to the Civil Code, to read:

1946.8. (a) For purposes of this section:

(1) "Individual in an emergency" means a person who believes that immediate action is required to prevent or mitigate the loss or impairment of life, health, or property.

(2) "Occupant" means any person residing in a dwelling unit with the tenant. "Occupant" includes lodgers as defined in Section 1946.5.

(3) "Penalties" means the following:

- (A) The actual or threatened assessment of fees, fines, or penalties.
- (B) The actual or threatened termination of a tenancy or the actual or threatened failure to renew a tenancy.
- (C) Subjecting a tenant to inferior terms, privileges, and conditions of tenancy in comparison to tenants who have not sought law enforcement assistance or emergency assistance.
- (4) “Resident” means a member of the tenant’s household or any other occupant living in the dwelling unit with the consent of the tenant.
- (5) “Victim of abuse” includes:
  - (A) A victim of domestic violence as defined in Section 6211 of the Family Code.
  - (B) A victim of elder or dependent adult abuse as defined in Section 15610.07 of the Welfare and Institutions Code.
  - (C) A victim of human trafficking as described in Section 236.1 of the Penal Code.
  - (D) A victim of sexual assault means a victim of any act made punishable by Section 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code.
  - (E) A victim of stalking as described in Section 1708.7 of this code or Section 646.9 of the Penal Code.
- (6) “Victim of crime” means any victim of a misdemeanor or felony.
  - (b) Any provision in a rental or lease agreement for a dwelling unit that prohibits or limits, or threatens to prohibit or limit, a tenant’s, resident’s, or other person’s right to summon law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency, if the tenant, resident, or other person believes that the law enforcement assistance or emergency assistance is necessary to prevent or address the perpetration, escalation, or exacerbation of the abuse, crime, or emergency, shall be void as contrary to public policy.
  - (c) A landlord shall not impose, or threaten to impose, penalties on a tenant or resident who exercises the tenant’s or resident’s right to summon law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency, based on the person’s belief that the assistance is necessary, as described in subdivision (b). A landlord shall not impose, or threaten to impose, penalties on a tenant or resident as a consequence of a person who is not a resident or tenant summoning law enforcement assistance or emergency assistance on the tenant’s, resident’s, or other person’s behalf, based on the person’s belief that the assistance is necessary.
  - (d) Documentation is not required to establish belief for purposes of subdivision (b) or (c), but belief may be established by documents such as those described in Section 1161.3 of the Code of Civil Procedure.
  - (e) Any waiver of the provisions of this section is contrary to public policy and is void and unenforceable.
  - (f) (1) In an action for unlawful detainer, a tenant, resident, or occupant may raise, as an affirmative defense, that the landlord or owner violated this section.

(2) There is a rebuttable presumption that a tenant, resident, or occupant has established an affirmative defense under this subdivision if the landlord or owner files a complaint for unlawful detainer within 30 days of a resident, tenant, or other person summoning law enforcement assistance or emergency assistance and the complaint is based upon a notice that alleges that the act of summoning law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency constitutes a rental agreement violation, lease violation, or a nuisance. A reference to a person summoning law enforcement in a notice that is the basis for a complaint for unlawful detainer that is necessary to describe conduct that is alleged to constitute a violation of a rental agreement or lease is not, in itself, an allegation for purposes of this paragraph.

(3) A landlord or owner may rebut the presumption described in paragraph (2) by demonstrating that a reason other than the summoning of law enforcement or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency was a substantial motivating factor for filing the complaint.

(g) In addition to other remedies provided by law, a violation of this section entitles a tenant, a resident, or other aggrieved person to seek injunctive relief prohibiting the landlord from creating or enforcing policies in violation of this section, or from imposing or threatening to impose penalties against the tenant, resident, or other aggrieved person based on summoning law enforcement or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency.

(h) Nothing in this section shall be construed as permitting an injunction to be entered that would prohibit the filing of an unlawful detainer action.

(i) This section does not limit a landlord's exercise of the landlord's other rights under a lease or rental agreement, or under other law pertaining to the hiring of property, with regard to matters that are not addressed by this section.

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

1161.3. (a) Except as provided in subdivision (b), a landlord shall not terminate a tenancy or fail to renew a tenancy based upon an act or acts against a tenant or a tenant's household member that constitute 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, or abuse of an elder or a dependent adult as defined in Section 15610.07 of the Welfare and Institutions Code, if both of the following apply:

(1) The act or acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult have been documented by one 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 or household member from domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult.

(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 his or her official capacity, stating that the tenant or household member has filed a report alleging that he or she or the household member is a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult.

(C) Documentation from a qualified third party based on information received by that third party while acting in his or her professional capacity to indicate that the tenant or household member is seeking assistance for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse.

(D) The documentation 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, 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, or dependent adult abuse.]

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 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 he or she, or a member of his or her household, is a victim of:

[insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse.]

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

\_\_\_\_ (signature of qualified third party)    \_\_\_\_ (date)

(E) The documentation may be signed by a person who meets the requirements for a sexual assault counselor, domestic violence counselor, or a human trafficking caseworker 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 or caseworker.

(2) The person against whom the protection order has been issued or who was named in the police report or Tenant Statement and Qualified Third Party Statement regarding the act or acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult is not a tenant of the same dwelling unit as the tenant or household member.

(b) A landlord may terminate or decline to renew a tenancy after the tenant has availed himself or herself of the protections afforded by subdivision (a) if both of the following apply:

(1) Either of the following:

(A) The tenant allows the person against whom the protection order has been issued or who was named in the police report or Tenant Statement and Qualified Third Party Statement regarding the act or acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult to visit the property.

(B) The landlord reasonably believes that the presence of the person against whom the protection order has been issued or who was named in the police report or Tenant Statement and Qualified Third Party Statement regarding the act or acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult poses a physical threat to other tenants, guests, invitees, or licensees, or to a tenant's right to quiet possession pursuant to Section 1927 of the Civil Code.

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

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

(e) 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, or a human trafficking caseworker, as defined in Section 1038.2 of the Evidence Code.

(f) The Judicial Council shall, on or before September 1, 2019, develop a new form or revise an existing form 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.

SEC. 3. Section 53165 of the Government Code is repealed.

SEC. 4. Section 53165 is added to the Government Code, to read:

53165. (a) For purposes of this section:

(1) “Individual in an emergency” means a person who believes that immediate action is required to prevent or mitigate the loss or impairment of life, health, or property.

(2) “Local agency” means a county, city, whether general law or chartered, city and county, town, housing authority, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency.

(3) “Occupant” means any person residing in a dwelling unit with the tenant. “Occupant” includes a lodger as defined in Section 1946.5 of the Civil Code.

(4) “Penalty” means the following:

(A) The actual or threatened assessment of fees, fines, or penalties.

(B) The actual or threatened termination of a tenancy or the actual or threatened failure to renew a tenancy.

(C) The actual or threatened revocation, suspension, or nonrenewal of a rental certificate, license, or permit.

(D) The designation or threatened designation as a nuisance property or as a perpetrator of criminal activity under local law, or imposition or threatened imposition of a similar designation.

(E) Subjecting a tenant to inferior terms, privileges, and conditions of tenancy in comparison to tenants who have not sought law enforcement assistance or emergency assistance.

(5) “Resident” means a member of the tenant’s household or any other occupant living in the dwelling unit with the consent of the tenant.

(6) “Tenant” means tenant, subtenant, lessee, or sublessee.

(7) “Victim of abuse” includes:

(A) A victim of domestic violence as defined in Section 6211 of the Family Code.

(B) A victim of elder or dependent adult abuse as defined in Section 15610.07 of the Welfare and Institutions Code.

(C) A victim of human trafficking as described in Section 236.1 of the Penal Code.

(D) A victim of sexual assault means a victim of any act made punishable by Section 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code.

(E) A victim of stalking as described in Section 1708.7 of the Civil Code or Section 646.9 of the Penal Code.

(8) “Victim of crime” means any victim of a misdemeanor or felony.

(b) A local agency shall not promulgate, enforce, or implement any ordinance, rule, policy, or regulation, that authorizes, or requires the imposition, or threatened imposition, of a penalty against a resident, owner, tenant, landlord, or other person as a consequence of law enforcement assistance or emergency assistance being summoned by, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency.

(c) If a local agency violates this section, a resident, tenant, owner, landlord, or other person may obtain the following:

(1) A court order requiring the local agency to cease and desist the unlawful practice.

(2) A court order rendering null and void any ordinance, rule, policy, or regulation that violates this section.

(3) Other equitable relief as the court may deem appropriate.

(d) This section preempts any local ordinance, rule, policy, or regulation insofar as it is inconsistent with this section, irrespective of the effective date of the ordinance, rule, policy, or regulation.

SEC. 5. The Legislature finds and declares that the need to protect the parties referenced in Section 4 of this bill is a matter of statewide concern, and not merely a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to charter cities and counties.

# The *Right to a Safe Home Act*: An Overview for California Advocates

*Last Updated: December 2018*

Effective **January 1, 2019**, the *Right to a Safe Home Act*<sup>1</sup> protects California's victims of crime or abuse, as well as individuals in emergencies, from being evicted or otherwise penalized for calling law enforcement or emergency assistance.

The law also prohibits jurisdictions from penalizing landlords for calls for police or emergency assistance made by tenants at landlords' properties.

## Background

Nuisance ordinances (or "crime-free" ordinances) label a property as a "nuisance" due to a certain number of calls for police or alleged nuisance conduct. Such conduct can range from failing to maintain one's lawn to violent crimes occurring at the property. Violation of such laws can result in penalties for landlords and eviction for tenants.

Because such ordinances often do not distinguish between being a victim and a perpetrator of a crime, **these nuisance laws can result in crime victims—including survivors of domestic and sexual violence—being evicted simply for calling for police or emergency assistance due to the actions of an abuser.** Under such laws, groups such as single mothers, women of color, and members of the LGBTQ community (particularly transgender women) are at risk of eviction.

Nuisance ordinances can also jeopardize housing security for persons with disabilities experiencing mental health emergencies who similarly need to call for emergency assistance.

The *Right to a Safe Home Act* was introduced to address gaps in existing law. Governor Brown signed the Act into law in 2018.

## What Does the *Right to a Safe Home Act* Do?

The *Right to a Safe Home Act*:

- ✓ Ensures victims of crime, victims of abuse, and individuals in an emergency who call for police or emergency assistance are protected from eviction or other penalties due to such calls.
- ✓ Prohibits local jurisdictions from penalizing landlords and/or tenants because a person at a property called for police or emergency assistance.

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<sup>1</sup> The *Right to a Safe Home Act* was California Assembly Bill 2413 (2017-2018). To read the bill text, please see [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB2413](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2413).

- ✓ Gives landlords and tenants the ability to get a court to order local governments to stop punishing calls for police or emergency assistance.
- ✓ Establishes that state law overrides existing local ordinances that penalize tenants and landlords due to police calls or emergency assistance called to a property.
- ✓ Expands documentation options that survivors of domestic violence, sexual assault, stalking, human trafficking, and elder or dependent adult abuse may use to establish they are entitled to be protected from eviction.

## How Can Advocates Help Implement this New Law?

- ✓ Educate tenant clients about their right to call 911 or other emergency services without fear of eviction.
- ✓ Engage landlords, public housing authorities, property managers/management companies, and resident councils to educate these groups about the new law.
- ✓ Check with your local jurisdiction to ensure local officials are aware of what the new law requires.

## Where Can Advocates Get More Information?

Partners across California are available to provide information, training, resources, or technical assistance on how the *Right to a Safe Home Act* can impact your clients.

- ACLU of Southern California:  
Adrienna Wong, [awong@aclusocal.org](mailto:awong@aclusocal.org)
- California Partnership to End Domestic Violence:  
Krista Niemczyk, [krista@cpedv.org](mailto:krista@cpedv.org)
- JVS SoCal:  
Jodi Doane, [jdoane@jvs-socal.org](mailto:jdoane@jvs-socal.org)
- National Housing Law Project:  
Renee Williams, [rwilliams@nhlp.org](mailto:rwilliams@nhlp.org)
- Western Center on Law & Poverty:  
Alexander Harnden, [aharnden@wclp.org](mailto:aharnden@wclp.org)
- YWCA Silicon Valley:  
Linh Tran-Phuong, [Ltranphuong@ywca-sv.org](mailto:Ltranphuong@ywca-sv.org)
- Family Violence Appellate Project:  
Taylor Campion, [tcampion@fvapl.org](mailto:tcampion@fvapl.org)

Additionally, online information is available about the issue of nuisance ordinances and crime-free housing policies more generally:

- National Housing Law Project, Nuisance Ordinances and Crime-Free Housing Initiative: <https://www.nhlp.org/initiatives/nuisance/>
- American Civil Liberties Union, "I Am Not a Nuisance" Website: <https://www.aclu.org/other/i-am-not-a-nuisance-local-ordinances-punish-victims-crime>
- Emily Werth, Sargent Shriver National Center on Poverty Law, The Cost of Being "Crime Free": <http://povertylaw.org/files/docs/cost-of-being-crime-free.pdf>

- The abuser is a physical threat to other tenants or their use of the property.

If your landlord seeks to evict you for one of these reasons, the landlord must first notify you of the problem and give you three days to correct it.

### **8. What if I live with the abuser?**

Section 1161.3 does not apply to you if you live with the abuser. Ask a domestic violence agency, sexual assault agency, or legal aid to help you talk to your landlord about your options.

### **9. Can I be evicted for calling for police or emergency assistance?**

No. Under another state law, California Civil Code Section 1946.8, you cannot be evicted or otherwise penalized for calling 911 if you are a victim of abuse, a crime victim, or a person in an emergency.

### **10. My landlord says that my town is making him evict me**

### **because I called 911 too many times. Can my town do that?**

No. Under California Government Code Section 53165, cities, towns, or counties cannot force a landlord to evict or penalize a tenant because the tenant called police or emergency assistance.

### **11. What if I need help to use any of the laws mentioned in this flyer?**

While this flyer provides information about California laws, it is not legal advice. Contact a legal aid attorney, fair housing agency, or domestic violence or sexual assault agency to get help.

*Last Updated: May 2019*



# **Know Your Rights!**

## **Eviction Protections for Victims of Domestic and Sexual Violence**

Are you a victim of domestic violence, sexual assault, or another form of abuse?

Has your landlord tried to make you move out because of the crimes committed against you, or for calling 911?

**California law may protect you.**



## **Eviction Protections for Victims of Domestic Violence, Sexual Assault, and Other Crimes**

### **1. What is California Code of Civil Procedure Section 1161.3?**

Section 1161.3 is a state law that stops landlords from making tenants move out because they have been victims of domestic violence, sexual assault, human trafficking, stalking, or elder/dependent adult abuse.

### **2. What does Section 1161.3 do?**

A landlord may want to evict you because of noise complaints or fighting, even if these acts were related to violence against you.

However, Section 1161.3 stops landlords from evicting you based on acts of domestic violence, sexual assault, human trafficking, stalking, or elder/dependent abuse committed against you.

### **3. Who can use Section 1161.3?**

You can use the law if you:

- Rent your home;
- Have a restraining order, police report, or documentation from a professional (described in Question 5); and
- Do not live with the person who committed the abuse or violence against you.

### **4. What if my landlord tries to evict me because of the abuse or violence committed against me?**

If your landlord tries to evict you because of the abuse or violence committed against you, Section 1161.3 may protect you.

Ask a domestic violence agency, sexual assault agency, or legal aid attorney to help you right away if you receive an eviction notice.

### **5. What type of proof do I need to use Section 1161.3?**

You need one of the following:

- A **restraining order** issued within the last 180 days; OR
- A **police report** showing that you were the victim of domestic violence, sexual

assault, human trafficking, stalking, or elder/dependent adult abuse issued within the last 180 days; OR

- **Documentation from a professional** (such as a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist) stating that you are seeking assistance for physical or mental injuries resulting from domestic violence, sexual assault, stalking, human trafficking, or elder/dependent adult abuse.

### **6. What if I do not have this proof?**

Section 1161.3 requires that you have one of the types of proof listed in Question 5. If you don't have one of these documents, ask a domestic or sexual violence agency or legal aid office to help you.

### **7. Can my landlord ever make me move out because of the abuse or violence?**

Yes. Even if you are a victim, your landlord still can end your tenancy for two reasons:

- You allow the person named in the restraining order, police report, or professional documentation to visit the property, or

**SAMPLE LETTER FOR ADVOCATES TO SEND TO  
JURISDICTIONS ABOUT THE RIGHT TO A SAFE HOME ACT  
(AB 2413, EFFECTIVE JAN. 2019)**

[Organization Letterhead]

Re: Update to state law regarding local ordinances

Dear [Contact at Jurisdiction],

This letter is written on behalf of [Your Organization + Description of Mission]. [Organization] writes to inform you of an important state law that went into effect on January 1, 2019.

Under California Government Code § 53165, local governments shall not enforce or implement “any ordinance, rule, policy, or regulation, that authorizes, or requires the imposition, or threatened imposition, of a penalty against a resident, owner, tenant, landlord, or other person as a consequence of law enforcement assistance or emergency assistance being summoned by, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency.” This prohibition applies to ordinances that existed before January 1, 2019, as well as to future ordinances.

In short, this means that local laws that penalize tenants or their landlords for calls seeking police or emergency assistance can violate state law. Generally speaking, local “nuisance” ordinances have been shown in some cases to impose penalties on households that make a certain number of calls for police or emergency assistance within a certain time period. Such ordinances can potentially violate California Government Code § 53165.

Should you have questions about whether local law in [Jurisdiction] is impacted by the new state law, we encourage you to discuss this issue with [Jurisdiction’s] legal counsel. This letter is not intended to provide legal advice, but rather to provide information about this state law.

Furthermore, the National Housing Law Project is available to provide technical assistance regarding the new state law, as well as information about the potential negative impacts of nuisance ordinances on survivors of domestic violence and others who need to seek police or emergency assistance. Requests for technical assistance or training can be made through their website, available here:

<https://www.nhlp.org/initiatives/nuisance/>, or by e-mailing [nuisance@nhlp.org](mailto:nuisance@nhlp.org).

We are also happy to discuss this new law further with you, and look forward to supporting implementation of this important law.

Sincerely,

[Local Advocate]