

Crime Free Programs and Nuisance Property Ordinances

How Their Enforcement May Violate
Civil Rights and Other Laws & Harm
Survivors of Violence

What We Will Discuss Today.

- Legal and Practical Implications of these Laws and Programs;
- Some Examples of Problem Enforcement;
- HUD Action to Limit These Laws and Programs.

Who Is In the Audience Today?

- Domestic Violence Service Provider
- Attorney
- Transitional Housing Provider
- Local government official
- Policy Advocate
- Other

Domestic Violence and Homelessness

Barriers to Safety: Understanding the Intersection

As a direct result of the power and control dynamics related to their abuse, survivors often face unique barriers to accessing shelter and affordable housing.

Poor Credit & Ruined Rental Histories



Often caused by abusers running up credit card bills or lying about paying rent, utilities, childcare and other bills. This affects a survivors' ability to pass a landlord background check.

Lack of Steady Employment



Caused when victims are forced to miss work as a result of violence, or are fired as a result of stalking and harassment that occurs at the workplace.

Housing Discrimination



The most common cases of this occur when landlords evict victims from housing due to repeated calls to the police or property damage caused by the abuser.

Loss of Subsidized or Other Affordable Housing



Caused by lease or voucher policy violations committed by the abuser.

What Are Crime-Free Programs & Nuisance Property Ordinances?

Crime-Free Programs: typically require property owners to execute crime-free lease addendums w/ tenants; mandatory criminal background checks of tenants/applicants; mandatory landlord training; participation may be mandatory or voluntary.

What Are Crime-Free Programs & Nuisance Property Ordinances?

Nuisance Property Ordinances: broad definition of “nuisance” conduct; allegations of nuisance behavior obligates landlord to “abate the nuisance” or evict the entire household; potential fines, fees, condemnation, loss of rental property license.

Origin of Crime-Free Programs & Nuisance Property Ordinances

The **Crime Free Programs** are law enforcement based crime prevention solutions developed starting in 1992, by Timothy L. Zehring, while he was employed at the Mesa Arizona Police Department. The International Crime Free Programs have since spread out to more than 3,000 cities internationally.

Crime-Free Programs & Nuisance Property Ordinances – Their Impact

"Activities that can be defined as being a nuisance can range from having garbage on the property to being arrested regardless of whether the incident led to a conviction. These types of policies target immigrants, women and people of color and lead to housing insecurity."

Crime-Free Programs & Nuisance Property Ordinances Impact on Survivors

Survivors of domestic violence often must make a choice between seeking safety away from their abusers or remaining housed.

- Domestic violence is often life-threatening – survivors shouldn't be dissuaded from contacting law enforcement and emergency services
- Neighbors often call police in response to domestic violence
- Despite breaking up and barring perpetrator from home, including protective orders, abusers stalk, harass, coerce, break-in, etc. – *traditional consent to entry not applicable.*

Crime-Free Programs & Nuisance Property Ordinances Impact on Survivors

- Reinforces messaging and isolation from abuser;
- Lack of community-wide support for a personal and public safety issue;
- Lack of faith in criminal justice response to hold abuser accountable;
- A threat of homelessness has significant impact on survivors, especially those who are parents (fear of losing children);
- Eviction records cause long-term rental eligibility impacts;
- Wrongful arrest for the survivors;
- Basic human right that persons seeking emergency assistance are not penalized by the law.

Crime-Free Programs & Nuisance Property Ordinances – The Role of Race

Understanding the Jim Crow Effects of these laws:

- Give police unchecked discretion to reinforce racial boundaries and target Black & Brown communities for eviction and displacement.
- Permit white neighbors to directly control the behavior of their Black and Brown neighbors, by threatening their housing stability should they not behave in a way considered acceptable by white neighbors. White neighbors use their power to repeatedly call upon the police to target their Black and Brown neighbors.
- Discriminatory policing flourishes because the threshold for nuisance enforcement is so often low - a few calls to the police, even if they do not result in an arrest, charge, or conviction - can result in a person or household being labeled a “nuisance.”
- Resulting evictions destabilize Black and Brown families and make it increasingly more difficult for them to secure new housing.
- These ordinances serve as one of the most salient examples of the role law enforcement plays in further policing Black and Brown communities and in turn producing and sustaining racial segregation.

Poll Questions for the Audience

1. Do you live or work in a jurisdiction with a Crime-Free Program and/or Nuisance Property Ordinance?

(Yes, No, Don't Know)

Potential Liability For Local Governments

- First Amendment: the Right to Petition the Gov't
- Fourteenth Amendment: Due Process and Equal Protection
- Fourth Amendment: Search and Seizure
- The Federal Fair Housing Act
- The Federal Violence Against Women Act
- State Laws That May Limit or Preempt Local Programs and Ordinances.

Constitutional Claims

First Amendment: Right to Petition the Government

- Nuisance ordinances chill or burden crime victims' First Amendment rights.
- Chilling effect on landlords and tenants, particularly on victims of domestic violence/sexual assault, other crime victims, and persons with disabilities.
- Briggs v. Norristown* (2013)

Fourteenth Amendment: Due Process and Equal Protection

- Many nuisance ordinances provide insufficient notice of nuisance activity and penalties, as well as insufficient opportunity to challenge a citation.
- Ordinance enforcement can create danger for survivors, by empowering abusers to commit violence.
- Ordinances may deny equal protection to women domestic violence survivors and/or by intentionally treated people differently by race.
- Jones et al v. City of Faribault* (2018) & *Brumit v. Granite City, IL* (2019)

Fourth Amendment: Search and Seizure

- Ordinances that require condemnation or periodic property inspections may violate the Fourth Amendment if they do not provide adequate notice or process to contest these actions.

Fair Housing Act Implications

- Discriminatory Intent/Disparate Treatment
 - Intent is required.
 - Can be inferred from statements, including comments based upon stereotypes against protected classes.
 - “Domestic violence victims are responsible for the conduct of their perpetrators.”
 - “We are trying to address the influx of urban communities.”
 - Discriminatory Intent can also be established by **treating protected classes differently.**

Fair Housing Act Implications

Disparate Impact – no intent required.

- *Texas Dept. of Housing & Community Development v. Inclusive Communities Project, Inc.*, - **Disparate Impact upheld.**
 - **Facially neutral programs or laws that actually or predictably result in a discriminatory effect on a group of persons protected by the FHA.**
 - *City of Joliet v. Mid-City National Bank* - **local governments cannot use their police powers with discriminatory intent or effect.**
 - **Example: Nuisance Property Ordinance/CF program's strict liability standard that requires the entire household to be evicted could have a discriminatory effect on victims of domestic violence.**

Fair Housing Act Implications

- Perpetuation of Segregation – no intent required, decision or action reinforces pattern of segregation.
 - **Example: Nuisance Property Ordinance/CF program that forces Black renters via nuisance-related evictions or threats out of gentrifying or white neighborhoods.**

Fair Housing Act Implications

- Duty to Affirmatively Further Fair Housing – state or local governments who directly (entitlement) or indirectly (subrecipient) receive federal housing and community development funds (HOME, CDBG, HOPWA, and ESG);
 - § 109 of the Housing and Community Development Act.
 - § 3608(e)(5) of the Fair Housing Act.

Violence Against Women Act

Protections for victims of domestic violence, dating violence, sexual assault, and stalking in federally funded housing, including that which is privately owned.

- E.g. “An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. . .”
- Covers most federal housing programs.
- Example: Local government citing as a nuisance perpetrator’s assault of victim who has a Housing Choice Voucher. Victim threatened with eviction. ***Briggs v. Norristown.***

Poll Question #1:

Toon Town recently enacted a nuisance property ordinance. Under Toon Town's nuisance property ordinance, **3 calls to the police in a 365 day period qualify a property as a "nuisance property" and the landlord is then notified by Toon Town to "abate the nuisance."** In response, landlords evict tenants residing in nuisance properties, regardless of why the calls were made, including when calls to the police are made by or on behalf of crime victims or persons with disabilities who may have a disproportionate need to call the police.

Could Toon Town's ordinance violate the law? (Y, N, Don't Know)

If yes, which laws?

Poll Question #2:

Toon Town also enacted a crime-free program. Under Toon Town's crime free program, landlords with rental properties are required to use a crime-free lease addendum that requires the eviction of an entire household if there is any alleged criminal activity, including arrests that do not result in a conviction. Toon Town police also require that all adult tenants undergo a criminal background check and that anyone with a felony not be permitted to reside at a property.

Does Toon Town's crime-free program violate the law? (Y, N, Don't Know)
If yes, which laws?

HUD Response to CF Programs/NP Ordinances

- ***September 2016*** - 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 Victims, and Others Who Require Police or Emergency Services.
- ***April 2016*** - HUD 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.
- **Affirmatively Furthering Fair Housing Assessment Tool**
- **HUD Title VI Compliance Reviews – *Hemet, CA* Voluntary Compliance Agreement**
- **Secretary Initiated Complaints – *Norristown, PA***
- **Hesperia, CA – *United States v. Hesperia, CA***

State Law Regulations

Several states have enacted laws to curb or limit Crime-Free Programs and/or Nuisance Property Ordinances.

- **ILLINOIS**
- **CALIFORNIA**
- **NEW YORK**
- **IOWA**
- **PENNSYLVANIA**
- **MINNESOTA**

What if you have a CF Program/NP Ordinance?

- ✓ **Add information about the CF program/NP ordinance to policies and procedures;**
- ✓ **Collect data to determine if your program/ordinance impacts protected classes, including survivors of violence;**
- ✓ **Consider if your program evicts tenants for the acts of others, or on the basis of arrests alone;**
- ✓ **Consider if your program relies upon calls to the police to trigger nuisance enforcement;**
- ✓ **If you receive federal housing and community development funds, consider if the CF Program/NP ordinance conflicts with your jurisdiction's duty to affirmatively further fair housing;**
- ✓ **Reach out to DV/SA providers, local legal aid, and fair housing programs to understand the impact of your program/ordinance.**

Questions?



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