



Nuisance and Crime-Free Ordinances and their Impact on Housing Access for Survivors

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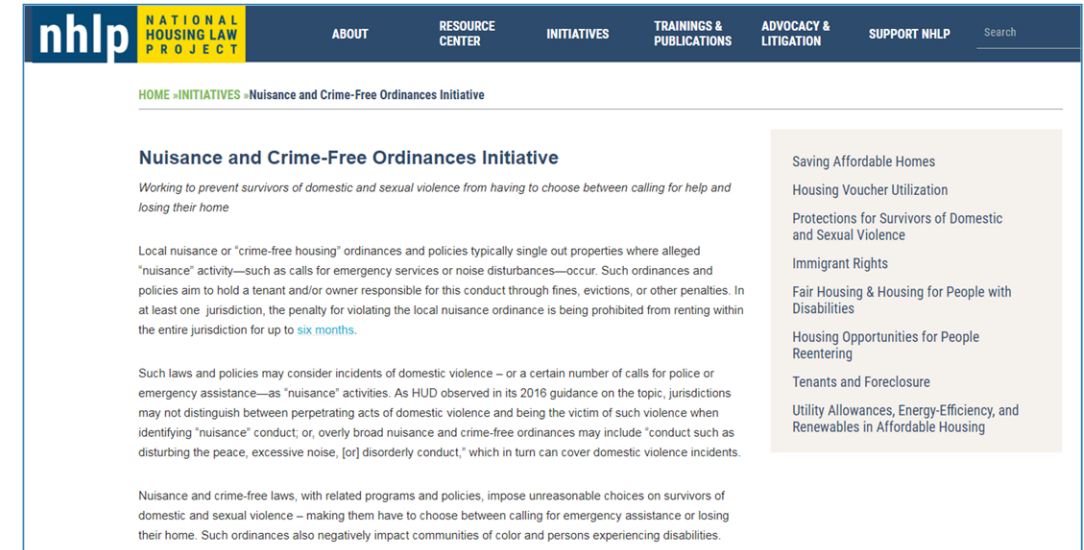
CPEDV Webinar

September 24, 2019

- Introduction to NHLP
- Nuisance Ordinance and Crime Free Housing Policies Basics
- Case Studies
- Legal Challenges

Our Initiative

- NHLP offers training and technical assistance on nuisance ordinances and crime-free housing policies
 - nuisance@nhlp.org
- Nuisance initiative website
 - Resources, including case summaries, info sheets, and articles



www.nhlp.org/initiatives/nuisance

What are Nuisance Ordinances?

- Local laws and policies that penalize landlords and tenants for certain activity that occurs at a given property.
- Such activity can include when police are called too many times to a property within a certain time period (e.g., a certain number of times in 3 months).

Example Nuisance Ordinance (2017)

In addition to any other act declared to be a nuisance by this Code or other ordinances of the city, nuisances are hereby defined and declared to be as follows:

[...]

(17) Any premises upon which any of the following acts or conditions have occurred or continue to occur, whether by the owner, occupants or persons frequenting or congregating about the property:

[...]

f. More than two instances within a 180-day period of incidents of peace disturbance or domestic violence resulting in calls...to the police;

-Maplewood, MO Code of Ordinances – Article III, Section 34-240 (2017)

What are Crime-Free Housing Policies?

- Local laws and policies that require landlords to screen potential tenants for past criminal activity, and penalize landlords for tenants that commit “criminal activity” at the property
- Often involve the use of a crime-free lease addendum

Example property management company blog post:

There's nothing in the [crime-free lease addendum] that can recognize the tenant's lack of culpability for the crime — the landlord gets fined for calls to the address, not calls *about an individual*, so what ends up happening here is that the woman who has been beaten...and probably worse is now also getting evicted because her boyfriend has too much control over her life and can't be excised from it.

Now, the argument certainly can be made that even though the situation isn't [a survivor's] fault, it's still an improvement to evict her and get someone else living there who won't disimprove the neighborhood — but that doesn't make it any easier on us landlords to take legal action against a person whose primary crime has been to suffer in a way that upsets her neighbors.

-Housing provider discussing local Michigan law requiring a crime-free lease addendum

Sample Crime-Free Housing Lease Addendum

Resident, any member of the resident's household, or a guest or another person under the resident's control shall not engage in

any illegal activity, including: prostitution as defined in Penal Code '647(b); criminal street gang

activity, as defined in Penal Code '186.22 et seq.; **assault and battery,** as prohibited in Penal Code '240/242; threatening or intimidating as prohibited in California Penal Code 422; burglary, as prohibited in Penal Code '459; the unlawful use and discharge of firearms, as prohibited in Penal Code '245, including but not limited to the unlawful discharge of a weapon, on or off the dwelling unit premises, **or any breach of the lease**

agreement that otherwise jeopardizes the health, safety and welfare of the landlord, his agent, or other tenant, or involving imminent or actual serious property damage, as

defined in California Civil Code.; **sexual offenses,** as prohibited in Penal Code '269 and 288, or any breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of the landlord, his agent or other tenant or involving imminent or actual serious property damage;

Nuisance and Crime-Free Housing Ordinances

- While nuisance and crime-free ordinances and policies vary by municipality, these laws can share a number of characteristics, such as:
 - Imposing fines and other penalties on non-compliant landlords and tenants
 - Requiring or pressuring landlords to evict non-compliant tenants
 - Requiring criminal background checks on potential tenants
 - Requiring that landlords use crime-free lease addenda
 - Rental licensing schemes – typically where a landlord or tenant's license can be revoked for non-compliance

Issues with these Laws and Policies

- These laws and policies can:
 - Harm and punish domestic violence survivors and persons with disabilities who seek help from the police or emergency services (e.g., calling 911).
 - Fail to make exceptions for 911 calls made by people who need police or emergency assistance (e.g., domestic violence survivors).
 - Fail to distinguish between victims and perpetrators of crime.
 - Impose penalties on owners, leading to evictions of tenants (or denial of admission of tenants) – even those who are actually *victims*.
 - Broadly define nuisance activities, ranging from disorderly conduct to violent crime.
 - Negatively impact communities of color.

Case Study: Norristown

- Norristown, PA had such an ordinance (called a “three strikes rule”).
 - No exceptions for domestic violence survivors calling the police.
- Lakisha Briggs, a domestic violence survivor, faced eviction because she called the police too many times over a certain time period.
- Ms. Briggs sustained serious injuries from her abuser because she was afraid to call the police out of fear of losing her housing.

Case Study: Norristown (cont.)

- The ACLU brought a lawsuit against Norristown, alleging violations of the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA).
- HUD subsequently initiated its own administrative complaint on the grounds that the ordinance violated the FHA due to its impact on survivors.
- Norristown settled both actions, and repealed the ordinance.

Case Study: Maplewood

- In 2017, the ACLU filed a lawsuit on behalf of Rosetta Watson, a domestic violence survivor, against Maplewood, MO.
- Maplewood had a nuisance ordinance with a rental licensing scheme.
 - Under Maplewood's nuisance ordinance, tenants could be penalized for making two or more calls for police assistance within 180 days.
 - Penalties not only included eviction, but went as far as **barring tenants from living in Maplewood for six-months**, by revoking their rental license.

Case Study: Maplewood (cont.)

- Ms. Watson, who after having made calls for police assistance when a former boyfriend attacked her on four separate occasions, had her rental license revoked by Maplewood and initially lost her Section 8 Voucher.
 - This meant she had to move out of her town.
- In September 2018, Maplewood settled the case.
 - Settlement includes **amendment of city's nuisance ordinance** such that survivors and persons seeking emergency assistance are not penalized by the law.

Nuisance & Crime-Free Housing Ordinances May Violate...

- Fair Housing Act
 - Relationship between sex discrimination and domestic violence
- Violence Against Women Act (VAWA)
 - Protects survivors of domestic violence, dating violence, sexual assault, or stalking who are applying to or accessing federally assisted housing programs
- U.S. Constitution
 - First amendment right to petition government; due process
- State & local laws

HUD 2016 Nuisance Ordinance Fair Housing Guidance

- Nuisance and crime-free ordinances can violate the Fair Housing Act by disproportionately impacting certain groups.
 - Each year, women comprise nearly **80 percent of persons** who are survivors of domestic violence.
 - Jurisdictions **cannot rely on stereotypes** about people engaging in nuisance or criminal activities to defend ordinances.
- Jurisdictions can also violate the Fair Housing Act by intentionally using the adoption or enforcement of a nuisance or crime-free housing ordinance to discriminate (e.g. selective enforcement).

HUD 2016 Nuisance Ordinance Fair Housing Guidance (cont.)

- Guidance suggests repealing ordinances that penalize survivors or other crime victims for calling 911 or other emergency services.



The Right to a Safe Home Act

Taylor Campion, Housing and Employment Justice Attorney

September 24, 2019 - CPEDV Webinar

Overview

- Introduce Family Violence Appellate Project
- The Right to a Safe Home Act
 - ▣ What it Does
 - ▣ Why it is Important
 - ▣ How it Works

FVAP: Who We Are

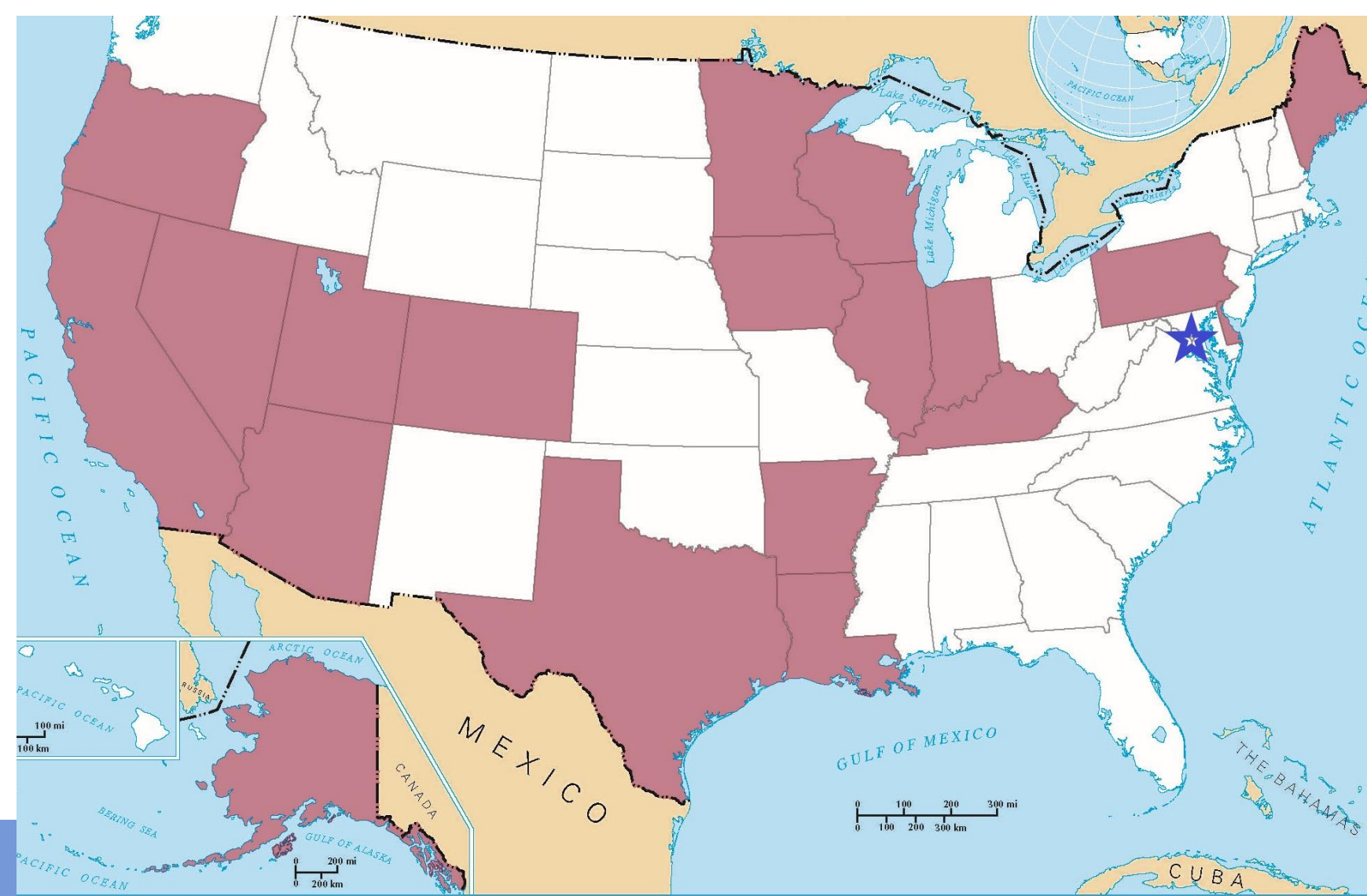
Family Violence Appellate Project (“FVAP”) is a legal aid non-profit dedicated to helping domestic violence survivors by:

- ❑ Providing free representation to low- and moderate-income survivors of domestic violence throughout California in family law and civil matters appeals, including housing and employment appeals related to domestic violence.
- ❑ Supporting domestic violence agencies and legal service providers working with survivors of domestic violence.

STATE PROTECTIONS

- 24 states and localities have eviction defense laws for survivors (2017)
- 19 states and DC include some protections for survivors (or people in general) to summon police or emergency assistance (2018)

STATES WITH PROTECTIONS



Alaska	Kentucky
Arkansas	Louisiana
Arizona	Maine
California	Minnesota
Colorado	Nevada
District of Columbia	Oregon
Delaware	Pennsylvania
Illinois	Texas
Indiana	Utah
Iowa	Wisconsin

TYPES OF STATE PROTECTIONS

- Protections differ by state.
- Protections for calling police/emergency services may include
 - Prohibition on leases requiring tenant to waive right to call
 - Eviction defense for tenants calling for assistance
 - Prohibition on landlords from penalizing tenants for calling for help
 - Prohibitions on localities from passing laws that penalize tenants and owners due to calls
 - Domestic violence incidents or reporting cannot be construed as “nuisance”

The Safe at Home Act: What it Does

AB 2413 was passed in 2018 and became effective January 1, 2019 and has three parts:

1. Prohibits landlords from evicting or otherwise penalizing tenants and residents for calls for law enforcement or other emergency services (example paramedics);
2. Prohibits cities, counties and other local agencies (example, Housing Authorities) from having laws or rules allowing or requiring landlords to penalize or evict tenants or residents for calls for law enforcement or emergency services; and
3. Allows qualified third parties, such as healthcare providers and domestic violence counselors, to verify a tenant or household member is a survivor, which can allow the survivor protection from eviction.

The Safe at Home Act: Why it is Important

Punishing Landlords or Tenants for Calls for Law Enforcement & Emergency Assistance:

1. Endangers survivors of abuse and crime victims.
2. Disproportionately affects women.
3. Disproportionately affects communities of color.
4. Disproportionately affects people with disabilities.

The Safe at Home Act: Why it is Important

Allowing 3rd Party Verification of Domestic Violence, Sexual Assault or Stalking

3rd Party Verification protects Survivors from eviction who were previously unable to defend against an eviction because:

1. They were unable or it is not in their best interests to obtain a protective order; or
2. They were unable or it is not in their best interests to obtain a police report.

The Safe at Home Act: How It Works

Morgan's Story



Morgan is a Survivor of Domestic Violence and Morgan recently left their abuser, Jordan. Unfortunately, Jordan keeps showing up at Morgan's apartment. Morgan and Morgan's neighbors call 911 to protect Morgan.

The Safe at Home Act: How It Works

30-Day Notice of Tenancy Termination

The landlord gives Morgan a 30-Day Notice, claiming there were too many 911 calls about Morgan's apartment.



The Safe at Home Act: How It Works

Because of the Safe At Home Act: Morgan has an “Affirmative Defense” to an Eviction

UD-105

CASE NUMBER:

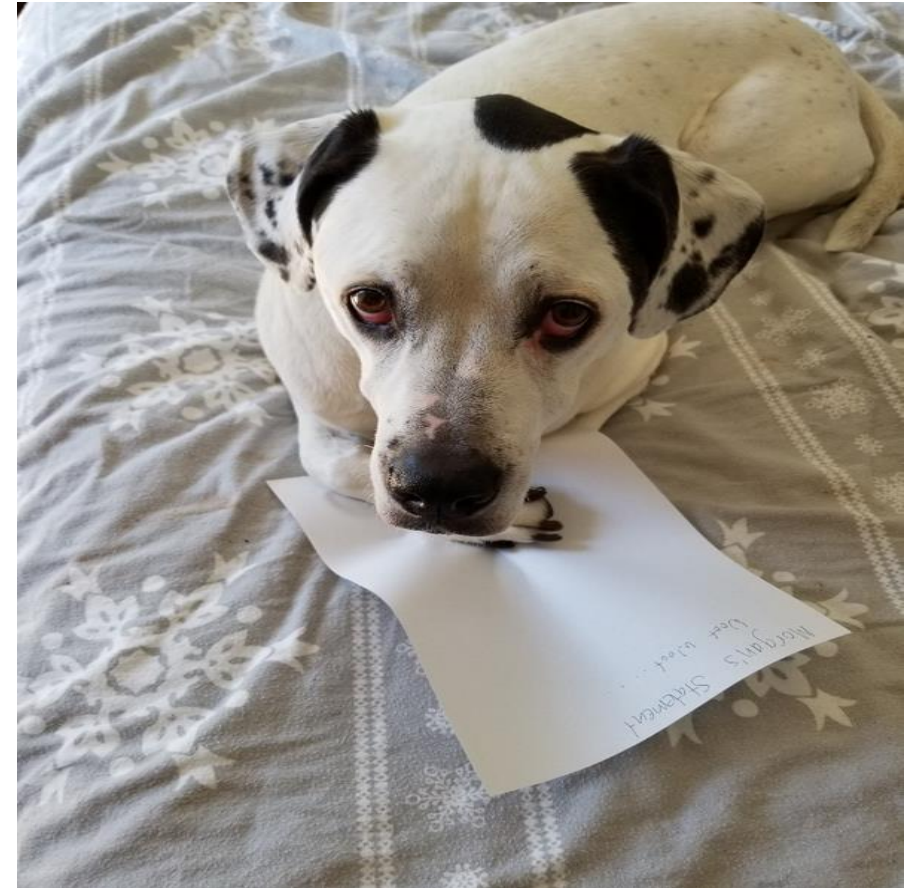
3. AFFIRMATIVE DEFENSES (cont'd.)

- j. ☒ Plaintiff seeks to evict defendant based on defendant or another person calling the police or emergency assistance (e.g., ambulance) by or on behalf of a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.

The Safe at Home Act: How It Works

Morgan:

- ❑ Informs the landlord of their right not to be evicted or punished because of calls to law enforcement.
- ❑ The landlord proceeds with the eviction, so Morgan asserts the affirmative defense that Morgan should not be evicted because the landlord is trying to evict Morgan for needing emergency assistance.



The Safe at Home Act: How It Works

Morgan Wins



At trial Morgan shows that the landlord served the 30-Day Notice because of the calls for emergency assistance. So, the judge rules in Morgan's favor and Morgan does not have to move.

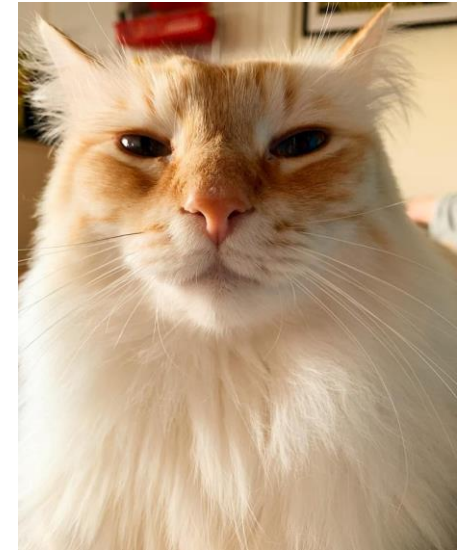
QUESTIONS?



Thank You!



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This project was supported by Grant No. 2017-TA-AX-K052, awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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