

# SILENCED

How Nuisance Ordinances Punish  
Crime Victims in New York



A report issued by the ACLU Women's Rights Project,  
in partnership with the Social Science Research Council

June 2015



# SILENCED

## How Nuisance Ordinances Punish Crime Victims in New York



American Civil Liberties Union  
125 Broad Street  
New York, NY 10004  
[www.aclu.org](http://www.aclu.org)

© 2015 ACLU Foundation

## **Silenced:**

### **How Nuisance Ordinances Punish Crime Victims in New York**

[www.aclu.org/notanuisance](http://www.aclu.org/notanuisance)

This report is issued by the ACLU Women's Rights Project, in partnership with the Social Science Research Council.

The **ACLU Women's Rights Project** pushes for change and systemic reform in institutions that perpetuate the unequal treatment of girls and women, including survivors of gender-based violence. Victims of gender-based violence too often face obstacles to obtaining and maintaining secure housing, such as evictions or housing denials based on the violence they have experienced or sexual harassment by landlords and housing managers. In many communities, they also experience police bias, when law enforcement systematically fails to investigate their complaints, blames them for the violence perpetrated against them, or otherwise engages in discriminatory policing. The ACLU works to address the harmful impact of discrimination against survivors of domestic and sexual violence through litigation, legislative and policy advocacy, and public education.

The ACLU Women's Rights Project is concerned that local nuisance ordinances – also called crime-free ordinances or disorderly house laws – exacerbate existing housing insecurity for survivors of domestic violence, penalize crime victims for violence perpetrated against them, and have negative consequences on public safety as a whole. We would like to hear from anyone who has been impacted by local nuisance ordinances. Please share your story with us at [www.aclu.org/nuisancesurvey](http://www.aclu.org/nuisancesurvey).

The **Social Science Research Council (SSRC)** is an independent, international, nonprofit organization founded in 1923. It fosters and generates innovative research, nurtures new generations of social scientists, deepens how inquiry is practiced within and across disciplines, and mobilizes necessary knowledge on important public issues.

## Table of Contents

1.	Introduction.....	1
	Key Findings of Analysis of Nuisance Ordinances in Binghamton, NY and Fulton, NY	
	Recommendations to State and Local Officials	
2.	Nuisance Ordinances Are a National Problem.....	3
	A. Nuisance Ordinances Imperil Crime Victims and Other Vulnerable Groups.....	4
	B. Nuisance Ordinances Raise Significant Legal Concerns .....	6
3.	The Prevalence and Impact of Nuisance Ordinances in New York State.....	7
	<i>Figure 1: Non-Exhaustive Map of Nuisance Ordinances in New York State</i> .....	9
	A. Examples of New York Ordinance Enforcement: Legal Challenges.....	10
	B. The Property and Building Nuisance Reform Law in Binghamton, New York.....	11
	1. Binghamton’s Ordinance.....	13
	2. Impact on Tenants and Their Families .....	13
	a. Impact on Victims of Domestic Violence .....	14
	<i>Table 1: Binghamton Police Incidents Ranked by Percentage of Points Received</i> .....	16
	<i>Figure 2: Percentage of All Incidents by Incident Type</i> .....	17
	<i>Figure 3: Incidents with Points by Incident Type</i> .....	17
	<i>Figure 4: Percentage of Points Received by Incident Type</i> .....	17
	b. Impact on Tenants Who Called 911 to Report a Crime or Seek Help .....	18
	3. Landlord Responses to Possible Enforcement Under the Ordinance .....	19
	C. The Nuisance Abatement Law in Fulton, New York.....	20
	1. Fulton’s Ordinance.....	21
	2. Impact on Tenants and Their Families .....	22
	a. Impact on Victims of Domestic Violence .....	22
	<i>Table 2: Incidents of Alleged Nuisance Conduct</i> .....	23
	<i>Figure 5: All Fulton Nuisance Incidents By Type</i> .....	23
	b. Impact on Tenants Who Called 911 to Report Crime .....	24
4.	Recommendations .....	24
5.	Data and Methods for Studies of Enforcement in Binghamton and Fulton.....	26
6.	Endnotes .....	28

# **Silenced:**

## **How Nuisance Ordinances Punish Crime Victims in New York**

### **1. Introduction**

Housing security and access to effective emergency and police assistance are fundamental elements of creating safe and vibrant communities. For victims of domestic violence, housing and police access can take on even more importance, as they are often integral to escaping life-threatening violence and living free from abuse. However, municipalities across the country are increasingly enacting laws that penalize tenants and property owners based on police response or criminal activity occurring on a property.<sup>1</sup> These laws – typically called nuisance ordinances, crime free ordinances, or disorderly house laws – deter crime victims from reporting crime and frequently lead to evictions or other harmful penalties for victims who do call 911 in an emergency.

For example, one tenant who was a victim of repeated domestic violence was subject to penalty pursuant to a local nuisance ordinance in Binghamton, NY. City officials designated two of these incidents as nuisance conduct and instructed her landlord to take action. In the first incident, neighbors called police when the tenant’s boyfriend threw her to the ground and began to choke her. Her boyfriend was arrested and the tenant obtained an order of protection against him. When the boyfriend returned, uninvited, to retrieve some clothes, he got in a fight with another person at the property and police responded. Although police arrested her abuser, first for assaulting her and then violating the order of protection, both incidents were cited as nuisance conduct under the City’s ordinance. Her landlord responded to a warning letter from the City by reassuring City officials that the “first order of action” was to evict the tenant.

Another tenant was the subject of nuisance ordinance enforcement in Binghamton when she called 911 to report a pit-bull running wild in her apartment complex. When responding officers used pepper spray to subdue the dog, it ran into another apartment but police could not locate the dog owner. Later, the tenant’s call for 911 assistance was identified as nuisance conduct in a letter sent to her property owner. The landlord responded and informed the City that he had “immediately remed[ied] the situation” by evicting or having the problematic tenants move out, including the tenant who reported the dog.

Unfortunately, these two examples are all too common, for nuisance ordinances are on the books in municipalities both small and large throughout New York. As our knowledge about their prevalence in the state has grown, two recent legal challenges on behalf of domestic violence survivors who were the subject of nuisance ordinance enforcement in New York revealed the devastating impact of these local laws on crime victims seeking police protection.

Concerned about the impact of these ordinances on crime victims and domestic violence victims in particular, the ACLU Women’s Rights Project worked in partnership with the nonpartisan, not-for-profit Social Science Research Council to investigate the enforcement of nuisance ordinances in the City of Binghamton and the City of Fulton. These two cities structured their ordinances differently, with Binghamton using a points-based system and Fulton a three-strikes



policy to identify nuisance properties. Despite these differences, analysis of records from each city revealed systemic enforcement of both ordinances against victims of domestic violence. The records also showed significant enforcement against victims of other crimes and persons seeking emergency assistance. In turn, available records from Binghamton indicated that the majority of landlords responded to warnings that their property would be designated a nuisance by removing the tenants who were the subject of police response, even when they were victims of the cited crime.

This report discusses the growing national trend of local nuisance ordinances, their often unintended consequences on both individuals and public safety as a whole, and the legal liability municipalities can face when enforcing them. It then provides an analysis of the impact of these ordinances in New York State, discussing the prevalence and form of nuisance ordinances in New York, recent legal challenges to ordinances brought by victims of domestic violence, and the findings from two case studies from the City of Binghamton and the City of Fulton. Finally, the report provides recommendations for state and local officials on how they can avoid the documented consequences of nuisance ordinances on victims of crime, domestic violence survivors, persons with disabilities, minority communities, and communities as a whole.

#### Key Findings of Analysis of Nuisance Ordinances in Binghamton, NY and Fulton, NY

- Officials routinely identified incidents of domestic violence as nuisance conduct and designated properties as nuisances under local ordinances on the basis of these incidents.
- Domestic violence was disproportionately identified and cited as nuisance conduct when compared to its occurrence at the cited properties and to enforcement against other categories of nuisance conduct.
- Domestic violence was the single largest category of enforcement under both Binghamton's points-based ordinance and Fulton's three-strike ordinance. Domestic violence accounted for 38% of all points imposed in Binghamton's ordinance enforcement actions. Domestic violence made up nearly half, or 48%, of incidents included in nuisance enforcement warnings issued by Fulton's police chief.
- While this study focused on domestic violence, the records showed significant enforcement against victims of other crimes and those who reported crime at their property or requested other emergency assistance. Both Fulton and Binghamton identified criminal activity perpetrated against tenants as nuisance conduct, including incidents of sexual assault, larceny, and assault.
- Landlords' most common response to a nuisance property warning in Binghamton was removing the tenants who were the subject of police response. More than half of the landlords in Binghamton who received nuisance warnings pursued formal eviction actions against tenants at or around the time they received a violation notice. Others pursued informal evictions or took negative action against all tenants at a property, such as informing them that they will be evicted or face higher rents if they call 911. Eviction records from properties receiving nuisance notifications in Fulton were not available for review at the time of publication.

## Recommendations to State and Local Officials

- To Local Officials: When enacting or implementing a local nuisance ordinance, municipalities should carefully analyze their goals and the impact of the ordinance on victims of crime, domestic violence survivors, persons with disabilities, minority communities, and other protected groups. Many municipalities have determined that their community is better served by repeal of a nuisance ordinance or declining to enact one in the first place.
- To State Officials: The New York State legislature and the Governor should enact legislation that protects landlords and residents from local nuisance ordinances that impose penalties based on access to emergency and police assistance.

## **2. Nuisance Ordinances Are a National Problem**

Housing security and access to effective emergency and police assistance are fundamental elements of creating safe and vibrant communities. For victims of domestic violence, housing and police access can take on even more importance, as they are often integral to escaping life-threatening violence and living free from abuse. However, municipalities across the country are increasingly enacting laws that penalize tenants and property owners based on police response or criminal activity occurring on a property.<sup>2</sup> When enforced, these ordinances frequently result in the eviction of the tenants who live at the property. These laws – typically called nuisance ordinances, crime free ordinances, or disorderly house laws – end up hurting residents who need emergency assistance and crime *victims*, especially domestic violence survivors and other vulnerable communities.

Local ordinances that raise these concerns typically identify certain conditions that make a property a “nuisance,” which can include a number of calls to the police or conduct like disorderly conduct, assault, harassment, and stalking. Others are extremely broad and can include any violation that occurs at a home. Troublingly, most nuisance ordinances apply regardless of whether the resident was a victim of the alleged nuisance conduct, had no way of controlling it, or accessed emergency assistance based on need or concern.

The mechanisms by which these ordinances identify nuisance properties differ – some impose penalties on the first instance of nuisance activity, others adopt a three-strike method, while still others are points-based, assigning different numbers of points to various types of conduct and a total point amount upon which a property will be cited. However, upon reaching an ordinance’s given threshold, the result is generally the same. The landlord or property owner is given a choice: either “abate” the nuisance or face penalties that can include fines, revocation of required licenses, property forfeiture, or even imprisonment. Landlords are thus pressured or even required to evict tenants after multiple police calls have been made to their apartment, even if the tenant was not engaged in any criminal activity.

There is no comprehensive list of nuisance ordinances throughout the country, for it is difficult to effectively canvass ordinances enacted at the local level. A study by scholars from

Harvard and Columbia included an appendix of fifty-nine nuisance ordinances from all regions of the United States.<sup>3</sup> While this appendix is national in scope, it is expressly under-representative, surveying the 20 most populous cities and then including additional ordinances as they appeared in a lengthy internet search.<sup>4</sup> The Sargent Shriver National Center on Poverty law issued a report that focused on a single state and uncovered over one hundred crime free and nuisance laws in Illinois.<sup>5</sup> Despite the difficulty of determining the precise number of nuisance ordinances throughout the country, their national prevalence and popularity are unmistakable, a fact that becomes increasingly alarming in light of their devastating impact on vulnerable communities.

#### **A. Nuisance Ordinances Imperil Crime Victims and Other Vulnerable Groups**

While some municipalities may enact nuisance ordinances in an effort to reduce crime, these laws can actually undermine public safety, deterring crime victims and their neighbors from calling 911 when they are in danger and displacing vulnerable people from their homes.<sup>6</sup>

Survivors of domestic violence can be particularly impacted by these policies, as they often have to call the police in the face of crimes that occur in their home and that they cannot control. In many communities, calls regarding domestic violence make up the largest category of calls a police department receives.<sup>7</sup> As a result, local nuisance laws have been found to penalize tenants and landlords based on incidents of domestic violence far more frequently than the offenses they are typically intended to target, such as those related to drugs, property damage, and weapons.<sup>8</sup> These laws cause significant harm to domestic violence survivors, impeding their access to safe and secure housing, deterring them from calling the police, increasing the risk of violence against them, and exacerbating the trauma of the domestic violence they face.<sup>9</sup>

Moreover, the typically broad scope of these ordinances can lead to nuisance citations against anyone whose home is the site of disturbances or who calls 911 in an emergency. The lack of comprehensive exceptions for those who call 911 out of fear or need can sweep up innocent victims of crime as well as persons who are blamed for activity outside their control, such as assaults occurring in other units<sup>10</sup> or a roommate's dispute with a neighbor.<sup>11</sup> Nuisance ordinances have even been enforced against individuals who called 911 seeking urgent medical assistance.<sup>12</sup>

---

The typically broad scope of nuisance ordinances can lead to nuisance citations against anyone whose home is the site of disturbances or who calls 911 in an emergency.

---

Nuisance ordinances also can disproportionately impact persons with mental disabilities. Persons with disabilities may need to access emergency medical assistance with some frequency, risking eviction under ordinances that include any 911 call as the basis for citation. Ordinances that include disorderly conduct as a nuisance offense can lead to citations of persons with psychiatric disabilities for non-criminal conduct, endangering their housing security. For example, in one low-income property in Iowa that houses a number of people with mental health disabilities, tenants



frequently called the police for assistance dealing with non-violent disagreements and noise, though these calls rarely led to criminal charges. Instead of recognizing and responding to the particular needs of these residents, police often designated these calls as “disturbing the peace” and cited the property for response services.<sup>13</sup>

Finally, nuisance ordinances have been found to disproportionately impact and be disparately enforced against minority communities. A study done by scholars at Harvard and Columbia of a nuisance ordinance in Milwaukee documented disproportionate enforcement against communities of color. City officials imposed citations on properties in minority communities significantly more frequently than properties in majority-white communities that also were eligible to trigger the nuisance ordinance.<sup>14</sup> African-American women can be particularly impacted by these policies.<sup>15</sup>

---

By imposing these penalties based on calls to the police, these laws deter the reporting of crime and place those who need emergency assistance and victims of crime in heightened danger.

---

Upon receipt of a citation or even a warning, landlords usually are required or pressured to evict the residents, including domestic violence victims who requested police protection from their abusers, because this is seen as the only sure way to “abate” the nuisance as required by the local ordinance. The Milwaukee study found that eviction, either formal or informal, was the most common abatement strategy in response to citation under the local nuisance ordinance.<sup>16</sup> Additionally, the overwhelming majority of landlords – 83% – relied on either eviction or the threat of the eviction to address future police calls.<sup>17</sup> Even where eviction is not expressly required or is prohibited in certain cases, landlords frequently pursue informal evictions to permanently address alleged nuisance conduct singled out by a local ordinance.<sup>18</sup> An eviction record, particularly one for nuisance conduct, makes it difficult for tenants to secure replacement housing, and an eviction can exacerbate a crime victim’s already vulnerable situation, putting her at heightened risk of becoming homeless.<sup>19</sup>

The existence of a nuisance ordinance in a community also deters landlords from renting to persons they believe will be victims of crime, and domestic violence victims in particular. For example, in Cedar Rapids, Iowa, a domestic violence survivor reported struggling to find a landlord that was willing to accept the financial assistance she received from a domestic violence support program. The landlords in that area considered renting to a domestic violence victim to be a risk because, in their eyes, domestic violence would lead to problems, police, and nuisance citations.<sup>20</sup>

By imposing these penalties based on calls to the police, these laws deter the reporting of crime and place those who need emergency assistance and victims of crime in heightened danger. In communities with nuisance ordinances, many domestic violence victims face the unenviable choice of enduring threats, harassment, or violence without police intervention, or calling for help, losing their home, and becoming homeless.<sup>21</sup> This was the case for Lakisha Briggs, a domestic violence

victim in Norristown, Pennsylvania, who called 911 after her boyfriend assaulted her in her home.<sup>22</sup> While police arrested her abuser, they also told her that, because of a local ordinance, more calls to police would result in her eviction. This warning led Ms. Briggs to endure escalating violence, even declining to call 911 after being stabbed in the neck. Despite these attempts to maintain her housing in the face of serious violence, Ms. Briggs' worst fears were realized when Norristown officials pressured her landlord to evict her and her young daughter because neighbors called for emergency assistance after brutal attacks against her. This chilling effect can extend to individuals facing other types of crimes, such as larceny and assault unrelated to domestic violence.

Municipalities across the country have turned to nuisance ordinances as the “quick fix” for addressing crime in their communities. Yet, there is no evidence that penalizing entire households or apartment buildings for calls to the police or activity on the property does anything to control crime or improve community well-being.

Instead, these policies impose penalties on innocent people and discourage calls to the police, ultimately undermining public safety.<sup>23</sup> These laws give perpetrators of abuse an additional tool with which to threaten and harass their victims.<sup>24</sup> They also increase housing instability for crime victims, including domestic violence survivors, and people with disabilities. Inability to maintain safe and secure homes can exacerbate the challenges that these individuals may already face,<sup>25</sup> leading to more violence and abuse, homelessness, and increased need of social services – all of which have ripple effects on the community and local economy.

### **B. Nuisance Ordinances Raise Significant Legal Concerns**

Nuisance ordinance enforcement against crime victims and their harmful impact on entire communities is not only counter-productive policy; it can also be unlawful. Local nuisance ordinances can violate a number of Constitutional and federal protections, opening municipalities and landlords up to liability. A number of federal lawsuits have been successfully litigated against municipalities challenging their enforcement of local nuisance ordinances.<sup>26</sup> These include a lawsuit against the Borough of Norristown, Pennsylvania on behalf of Ms. Briggs, whose story is described above. The lawsuit ultimately settled, with the Borough agreeing to completely repeal the ordinance and pay \$495,000 to Ms. Briggs and her attorneys.<sup>27</sup> The U.S. Department of Housing and Urban Development also has expressly recognized nuisance ordinances as a fair housing issue and a source of liability, pursuing action against municipalities in Pennsylvania and New Hampshire.<sup>28</sup>

---

Local nuisance ordinances can violate a number of Constitutional and federal protections, opening municipalities and landlords up to liability.

---

Municipalities have been subject to claims of Constitutional violations of the First Amendment right to petition the government, Fourteenth Amendment guarantees to due process and equal protection, and Fourth Amendment protections against unlawful search and seizure. Individuals have a First Amendment right to petition the government, including reporting criminal

activity or filing a complaint with law enforcement agencies.<sup>29</sup> Nuisance laws may chill, and outright burden, First Amendment rights when they impose or threaten penalties for tenants who need or seek police aid. Nuisance ordinances may violate constitutional due process and equal protection requirements by depriving a property owner or tenant of their property without adequate notice of or opportunity to challenge a nuisance determination, by increasing the risk of violence perpetrated by third parties, or by penalizing women or other protected classes for seeking police protection.<sup>30</sup> Finally, nuisance ordinances implicate Fourth Amendment protections against unlawful search and seizure when they authorize municipalities to impose property inspections or to condemn or otherwise prohibit use of a property for a certain time frame, and do so without giving tenants sufficient notice or process.<sup>31</sup>

Nuisance ordinances are likely to conflict with federal laws requiring nondiscrimination in housing. The federal Fair Housing Act (FHA) prohibits housing discrimination based on race, color, religion, sex, familial status, national origin, or disability. Municipalities may violate the FHA when they enforce a nuisance ordinance more harshly against incidents of domestic violence based on stereotypes against women, or incidents involving other protected classes.<sup>32</sup>

Municipalities also can violate federal law when they fail to affirmatively further fair housing, as federal law requires of all recipients of federal housing funds.<sup>33</sup> Because the majority of domestic violence survivors are women,<sup>34</sup> affirmatively furthering equal access to housing on the basis of gender requires municipalities to consider their policies' impact on domestic violence survivors' ability to access and maintain safe and secure housing. Municipalities that affirm their progress in this area while enforcing nuisance ordinances that imperil the housing security of domestic violence victims risk being found in violation of their AFFH obligations.<sup>35</sup>

Finally, nuisance ordinances may come into conflict with federal, state, and local protections for domestic violence survivors. The federal Violence Against Women Act (VAWA) provides affirmative protections for the housing rights and needs of survivors of domestic violence, dating violence, sexual assault or stalking.<sup>36</sup> Many states and counties also have laws that provide additional fair housing guidelines or protections for victims of domestic violence.<sup>37</sup> Nuisance ordinances may violate these and other housing protections when they lead those who operate federally-subsidized housing to evict or take other negative action against a tenant because of domestic violence or related crime that occurs at the home.<sup>38</sup>

### **3. The Prevalence and Impact of Nuisance Ordinances in New York State**

Although difficult to effectively and comprehensively track, nuisance ordinances are well established and multiplying in New York. The map in Figure 1 shows a non-exhaustive list of ordinances, which span the entirety of New York State.<sup>39</sup> As is the case nationally, New York nuisance ordinances cite a property as a nuisance when a certain number of listed criminal, municipal, or other offenses are the subject of police response to a property. Some use a “point system” to tabulate offenses, with a set number resulting in violation. Others cite a property as a nuisance when it is the subject of a certain number of 911 calls in a given time period.

Very few of New York’s nuisance ordinances distinguish or exempt from penalty any victims of the criminal behavior listed as nuisance offenses.<sup>40</sup> A few communities have ordinances with exceptions for crime victims, but these exceptions are very narrow; for instance, limiting the exception only to victims of domestic violence in situations where a responding police officer identifies the situation as such.<sup>41</sup> Such exceptions do not effectively address the concerns of overbroad enforcement against victims of other crimes, address their impact on other vulnerable groups, or guard against First Amendment violations.

---

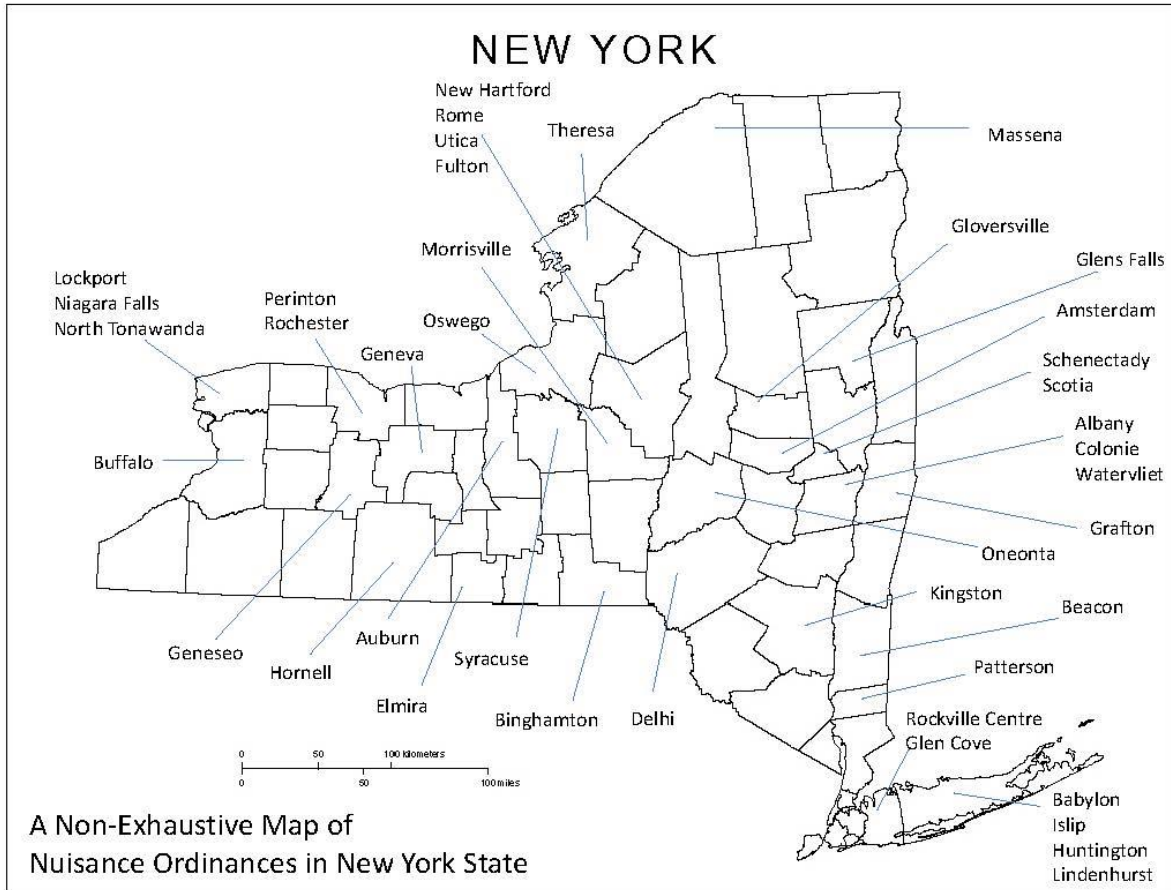
The vast majority of nuisance ordinances across New York penalize many activities that are likely to sweep up crime victims, regardless of whether the impacted tenant was the victim of or had any control over the cited criminal activity.

---

The vast majority of nuisance ordinances across New York penalize many activities that are likely to sweep up crime victims, regardless of whether the impacted tenant was the victim of or had any control over the cited criminal activity. Indeed, many ordinances specifically state that a “lack of knowledge of, acquiescence or participation in or responsibility for” a public nuisance is no defense.<sup>42</sup> These ordinances frequently list violent crimes like assault, harassment, stalking, and firearms offenses, which include criminal use or brandishing of a firearm.<sup>43</sup> They routinely include family offenses codified in Article 8 of the Family Court Act and Criminal Procedure Law §§530.11 and 530.12, the very offenses that are the basis in New York to provide protections and relief to victims of domestic and sexual violence.<sup>44</sup> Many also penalize disorderly conduct, which encompasses engaging “in fighting or in violent, tumultuous or threatening behavior” and is commonly cited following domestic violence incidents.<sup>45</sup> Others include behavior that has no legal definition, such as “suffering or permitting the premises to become disorderly, including suffering or permitting fighting,” “disruptive conduct,” or behavior “that detrimentally effects the quiet and reasonable use and enjoyment” of neighboring property.<sup>46</sup>

Ordinances also imperil tenant victims of crime when they impose sanctions that require or encourage landlords to evict. Penalties following an ordinance violation can directly lead to removal of tenants, for many provide for property closures,<sup>47</sup> revocation of permit,<sup>48</sup> orders to vacate,<sup>49</sup> or even eviction actions.<sup>50</sup> Ordinances also indirectly promote this result by exempting properties from sanction when the landlord can demonstrate there was a change of tenants, an eviction was commenced, or the nuisance was abated and will not continue (such as through eviction).<sup>51</sup>

Figure 1: Non-Exhaustive Map of Nuisance Ordinances in New York State



### **A. Examples of New York Ordinance Enforcement: Legal Challenges**

Recent lawsuits challenging enforcement of nuisance ordinances in the Town/Village of East Rochester and the City of Hornell reveal the devastating impact these laws have had on New Yorkers seeking police protection. Both cases were brought by domestic violence survivors who were punished for calling the police, and their experiences are described below based on their federal complaints. This nuisance ordinance enforcement chilled victims of domestic violence from calling 911 to report further violence and directly threatened their housing stability or led to their eviction.

#### ***Grape v. Town/Village of East Rochester***

East Rochester's nuisance ordinance required a landlord to evict any household for which three calls within a 12-month period had been made to the police.<sup>52</sup> Like many others, the ordinance made no exceptions for callers who are victims of violence. Two victims of domestic violence brought a lawsuit against the Town/Village after being warned that continued calls to the police could result in their eviction and facing increased violence and harassment as a result.

The first plaintiff, Laurie Grape, called 911 twice in the face of repeat physical assaults by her ex-boyfriend.<sup>53</sup> Despite her requests for assistance, police did not arrest her abusive ex-boyfriend. Instead, they warned Ms. Grape that, pursuant to East Rochester's ordinance, her third call for help would result in her eviction. Her ex-boyfriend used the ordinance to harass and stalk her with impunity, as he knew Ms. Grape could not call the police without losing the home she provided for herself and her children. Stripped of any real right to police protection, this family and their housing were placed in ongoing jeopardy simply because the tenant was a victim—both of her abuser and the local nuisance ordinance.

Darla Wilce, the second plaintiff, faced similar treatment under the law when her ex-husband regularly threatened her at her home.<sup>54</sup> Instead of taking action against the perpetrator, East Rochester officials addressed her repeat calls to the police by threatening her landlord with the revocation of his rental permit. When, in response, her landlord told Ms. Wilce to stop calling 911, she had no choice but to move in order to avoid eviction. Understanding the implications of the local ordinance, her ex-husband used it as a tool to further threaten and terrorize her, even calling the police himself. When officers arrived, Ms. Wilce's abuser held up three fingers, saying "that's one, two more and you're out." To avoid eviction, she eventually moved to another city, losing custody of her children in the process.

Given the likely eviction and risk of homelessness that would result from a citation, both victims were forced to endure escalating threats and violence without police intervention, because a call to police could lead to the loss of their homes. It was only by challenging the ordinance that Ms. Grape and Ms. Wilce were able to ensure their right to access police protection. East Rochester settled their case in 2010, amending the law to exempt crime victims from penalty and paying the plaintiffs \$100,000.<sup>55</sup>



### ***Peeso v. City of Hornell***

The City of Hornell's nuisance ordinance assessed points to tenants for a variety of offenses. If residents accumulated a certain number of points, the Board of Public Safety issued an eviction order.<sup>56</sup> The order is enforceable by Hornell City Police, and violation of the order is a misdemeanor offense.

Sheery Peeso rented a home in Hornell where she resided with her five children. In June 2011, Hornell's Board of Public Safety sent a notice to Ms. Peeso, alleging that Ms. Peeso had violated the local nuisance ordinance and ordering her to vacate her home within ten days.<sup>57</sup> Prior to this notice, Ms. Peeso did not receive any notification that points were being accumulated against her that would result in an eviction, that the city was meeting to consider her eviction, or of her right to a hearing. After posting the order to vacate, a code enforcement officer provided her with a list of her alleged nuisance violations. This list included an incident labeled "fighting," in which Ms. Peeso had called the police when a former boyfriend and his relatives forcefully entered her home and assaulted her with a metal rod.

The code enforcement officer orally informed Ms. Peeso that a hearing would be scheduled that week. Ms. Peeso was later given two days' written notice of her hearing, with no information about the procedure. At that hearing, the Board found that Ms. Peeso was a "public nuisance" without making specific findings as to which incidents merited receipt of points. It ordered her to vacate her home five days later.

After the city effectively stripped Ms. Peeso of any due process and sought her eviction based on domestic violence perpetrated against her, she filed a lawsuit alleging that their enforcement of the ordinance violated her rights under the constitution and federal law.<sup>58</sup> The City of Hornell subsequently settled the case, amending the local ordinance to provide notice and process in its implementation and to exempt domestic violence related incidents from enforcement.<sup>59</sup>

\* \* \*

While the challenges to both the East Rochester and Hornell ordinances resulted in successful settlements for the victims, the continued prevalence of similar ordinances throughout the state raises significant concerns that the nightmare scenarios endured by Ms. Grape, Ms. Wilce, and Ms. Peeso have been and will be experienced by others. Unfortunately, these concerns are more than borne out in the case studies below.

### **B. The Property and Building Nuisance Reform Law in Binghamton, New York**

In 1995, the Binghamton City Council adopted a nuisance ordinance, called the Property and Building Nuisance Reform Law, which was later amended in 2005.<sup>60</sup> In early 2014, Binghamton sent nuisance property notifications to a total of 16 multi-unit residential properties under the city's nuisance ordinance.

The stated goal of the ordinance is to protect the health and safety of Binghamton residents and to promote the city's general welfare. However, examination of records of the ordinance's enforcement, as well as the way the City levied points against properties based on alleged nuisance

conduct, reveals systemic, disproportionate enforcement of the ordinance against victims of domestic violence. The records also documented significant enforcement against victims of other crimes and persons seeking emergency assistance and medical attention. In turn, the majority of landlords responded to warnings that their property would be designated a nuisance by informing the City that they would remove the tenants who were the subject of police response, even when they were victims of the cited crime.

Key Findings:

- Binghamton officials routinely identified incidents of domestic violence as nuisance conduct and assigned points on this basis that contributed to nuisance property designations.
- Domestic violence was disproportionately cited as nuisance conduct when compared to its occurrence at the cited properties and to the distribution of points across other categories of nuisance conduct.
- Domestic violence was over-represented among the incidents that Binghamton designated as nuisance conduct. The category of domestic violence accounted for 21% of cited incidents while incidents of domestic violence were only 13% of reported incidents.
- Domestic violence received the single largest distribution of points under the ordinance as compared to all other categories of cited nuisance conduct. Domestic violence accounted for 38% of all points in ordinance enforcement actions, or nearly three times its 13% representation in the total police incidents at the cited properties.
- While this study focused on domestic violence, the records showed significant enforcement against victims of other crimes and those in need of emergency assistance. The city assigned points to other types of criminal activity perpetrated against tenants, including incidents of sexual assault, burglary, and assault. Binghamton also assigned points when tenants called 911 seeking emergency or medical aid.
- Landlords typically responded to warnings by removing the tenants who were the subject of police response from the property. Others took negative action against all tenants at a property, such as informing them they would be evicted or face higher rents if they call 911.
- More than half of the landlords from cited properties pursued formal eviction actions against tenants at or around the time they received a violation notice. It is not possible to determine whether all these evictions were the direct result of the City's enforcement of the ordinance. However, this number likely does not capture all of the evictions that resulted from enforcement, as many landlords also pursue informal evictions for which there are no records.

## 1. Binghamton's Ordinance

Binghamton's Property and Building Nuisance Reform Law is triggered by a broad array of "public nuisances" that occur at a property. The ordinance assigns a point value to each type of violation. Once a property has accrued twelve points within six months or eighteen points within twelve months, it is considered a "public nuisance." Relatively minor incidents such as littering or noise receive two points, disorderly conduct receives four points, drug offenses and weapons offenses receive six and ten points respectively, and major incidents such as murder, assault, and sex offenses receive the maximum of twelve points. These points can be accrued against a multi-family dwelling based on incidents at any of the apartments or units on the premises or on land adjacent to the building.

---

Despite the fact that possible nuisance conduct includes violent offenses and other crime, the ordinance makes no distinction for incidents in which the tenant is the victim of the cited conduct.

---

The selection of incidents that are cited for points at the properties in question is at the full discretion of Binghamton's Department of Corporation Counsel. Despite the fact that possible nuisance conduct includes violent offenses and other crime, the ordinance makes no distinction for incidents in which the tenant is the victim of the cited conduct.

Upon receipt of the triggering number of points, Binghamton's Department of Corporation Counsel may notify the owner of the property with a letter that describes each incident that contributed to nuisance points as well as the total number of other police activities on the property over the previous twelve months. The letter instructs the property owner to abate the nuisance or risk having the City of Binghamton close the property for up to a year. The City does not require any specific method of abatement but notes that "it is strongly suggested. . . that you take whatever steps necessary to ensure that all illegal activity at this address cease." The property owner is then responsible for scheduling a meeting with the City in which he or she must submit a written plan to abate the nuisance.

## 2. Impact on Tenants and Their Families

In citing nuisance conduct, Binghamton routinely failed to distinguish and instead imposed points on incidents where individuals sought police or emergency assistance because a tenant was the victim of the reported crime or urgently needed medical attention. In turn, landlords who were notified of nuisance conduct at their property typically responded to warnings by removing the tenants who were the subject of police response from the property, regardless of whether they were victims of the cited crime. Other landlords took action against everyone at a property, warning tenants not to call the police on pain of penalty.

This case study sought, through multiple open records requests, documentation of all incidents that were reported from January 2012 to July 2014 at the residential properties that were

subject to ordinance enforcement in the first half of 2014.<sup>61</sup> The following examples and analysis were taken from these records. Personally identifying details are not listed for privacy and other concerns.

### *a. Impact on Victims of Domestic Violence*

The broad scope and enforcement of Binghamton's ordinance has had an overwhelming impact on victims of domestic violence. Domestic violence victims are repeatedly the victims of crime in their home and make up the single largest category of calls to police;<sup>62</sup> thus, they are likely to be punished by nuisance laws. In 2014, Binghamton repeatedly cited victims with points because of abuse perpetrated against them, notifying their landlords that these incidents were nuisance conduct, and encouraging landlords to take action against them. The following examples come from information obtained from City records, including police reports and enforcement records:

- One survivor of domestic violence was the victim of cited nuisance activity when the police responded to her apartment after her boyfriend had threatened to kill her and threw her belongings out the window. Despite the fact that police arrested the boyfriend, the boyfriend was not a resident, and the tenant was the victim of the crime, Binghamton designated the incident as nuisance conduct and notified the tenant's landlord in a warning letter that described the incident. The landlord responded by informing the City that he had evicted the victim in order to remedy the situation.
- The City levied points against another tenant who was the victim of repeated domestic violence on two separate occasions. In the first incident, neighbors called police when the tenant's boyfriend threw her to the ground and began to choke her. Her boyfriend was arrested and the tenant obtained an order of protection. When the boyfriend returned, uninvited, to retrieve some clothes, he got in a fight with another person at the property and police responded. Although police arrested her abuser first for assaulting her and then violating the order of protection, both incidents were designated as nuisance conduct. Her landlord responded by reassuring the City that the "first order of action" was to evict the tenant.
- Binghamton again designated repeat instances of domestic violence as nuisance conduct where a tenant called 911, fearing for her life. The first time she called the police, the tenant had been sleeping at home when her boyfriend started screaming at her, threatening to get a gun and shoot her. When the tenant tried to leave the room, her boyfriend struck her in the face and kicked her. She eventually escaped and called the police who arrested him. A month later, the tenant's boyfriend again threatened her, saying "I'm going to kill you" and brandishing a knife. When she got her phone to call 911, her boyfriend pinned her to the wall and slapped her with such force that he broke one of her teeth. Binghamton assigned each incident the maximum 12 points. The tenant had called 911 only once before, also for domestic violence.
- Binghamton enforced its ordinance when police officers responded to the home of a highly distraught woman who told the officers that her boyfriend had severely beat and raped her. Her boyfriend woke her up in the middle of the night, held her down on the bed, struck her repeatedly, and raped her. When the victim tried to leave the apartment the next day, her

boyfriend told her “bitch you’re not leaving me, I’ll kill you first.” She then called for help but her boyfriend threw her down and began punching her in the head with a closed fist. The victim’s landlord then called another individual who forced his way into the apartment and got the boyfriend off of her. Binghamton police classified this incident as an assault and rape and assigned it the maximum number of points under the ordinance.

These same records established that Binghamton’s ordinance is systematically enforced against victims of domestic violence. A statistical analysis of Binghamton’s distribution of points across the 16 cited properties in 2014 revealed substantial and disproportionate enforcement based on incidents of domestic violence. Domestic violence was disproportionately cited as compared both to its rate of occurrence at the cited properties and to the distribution of points across other categories of nuisance conduct.

In order to determine patterns of enforcement, all reported incidents at the cited properties were coded into eight categories: noise, trash, fire, domestic violence, disputes, drugs, larceny, other. This allowed for analysis of a total of 535 incidents, of which 199 incidents (22%) were singled out by the City as contributing to a property’s designation as a nuisance.<sup>63</sup>

Analysis of the 533 reported incidents reveals that domestic violence was not the primary, or even in the top three quarters, of most frequent reasons for police response to a cited property in Binghamton. As illustrated in Figure 2, domestic violence (DV) was the fourth most common type of reported incident at the cited properties, making up 13% of reported incidents, while the three most frequent incidents – “other,” disputes, and noise – together made up 77%.<sup>64</sup> However, analysis of the 199 incidents that Binghamton designated as nuisance offenses reveals that incidents of domestic violence were cited with a frequency and percentage of points that is strikingly disproportionate to its occurrence.

---

Disproportionate enforcement against incidents of domestic violence suggests that bias against victims is a factor in the implementation of the ordinance.

---

Domestic violence was over-represented among the 199 incidents that Binghamton designated as nuisance conduct. Figure 3 displays the total incidents that received points at the cited properties, separated by incident type. Of these, the category of domestic violence accounted for 21% of incidents cited under the ordinance while incidents of domestic violence were only 13% of incidents reported to the police. Comparatively, disputes accounted for an equal 24% of cited incidents and 24% of reported incidents. Domestic violence was not the only category to be disproportionately represented in incidents cited under the ordinance: noise, drug, and trash incidents all made up approximately twice as large a percentage of cited incidents as they did in reported incidents.<sup>65</sup> However, because noise, drugs, and trash violations are offenses that nuisance

ordinances traditionally target, more robust enforcement against these categories of incidents might be expected. The inclusion of domestic violence in this group of targeted categories is disturbing. Disproportionate enforcement against incidents of domestic violence suggests that bias against victims is a factor in the implementation of the ordinance.

Domestic violence received the single largest distribution of points under Binghamton’s nuisance – it was the most likely category to count towards ordinance enforcement actions.

Domestic violence also received the single largest distribution of points under the ordinance as compared to all other categories of cited nuisance conduct. Figure 4 represents the percentage of points that were distributed to each category of incident. While domestic violence-related incidents only accounted for 13 percent of the total incidents, they accounted for 38 percent, or three times as many, of the points that contributed to ordinance enforcement actions. As such, incidents of domestic violence were the most likely category to be the source of points that counted towards ordinance enforcement actions.

***Table 1: Binghamton Police Incidents Ranked by Percentage of Points Received***

<b>INCIDENT TYPE</b>	<b>NUMBER OF INCIDENTS</b>	<b>PERCENTAGE OF INCIDENTS</b>	<b>PERCENTAGE OF INCIDENTS THAT RECEIVED POINTS</b>	<b>PERCENTAGE OF POINTS</b>
<b>Domestic Violence</b>	<b>71</b>	<b>13%</b>	<b>21%</b>	<b>38%</b>
Dispute	130	24%	24%	22%
Other	208	39%	16%	17%
Noise	77	14%	29%	12%
Drugs	15	3%	6%	7%
Larceny	28	5%	2%	2%
Trash	5	1%	2%	1%
Fire	1	<1%	1%	1%
<b>TOTAL</b>	<b>535</b>	<b>100%</b>	<b>101%*</b>	<b>100%</b>

\* Fourth column total does not sum exactly to 100 percent due to rounding.



Figure 2: Percentage of All Incidents by Incident Type

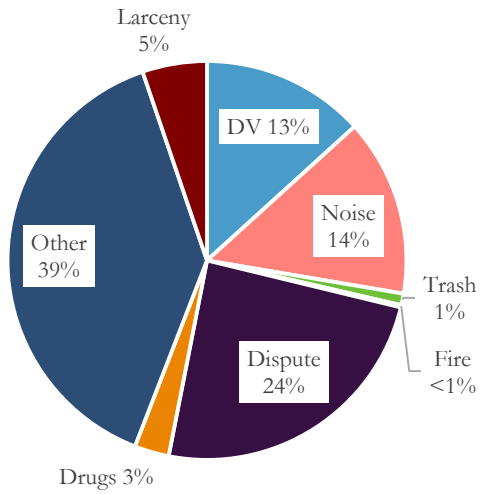


Figure 3: Incidents with Points by Incident Type

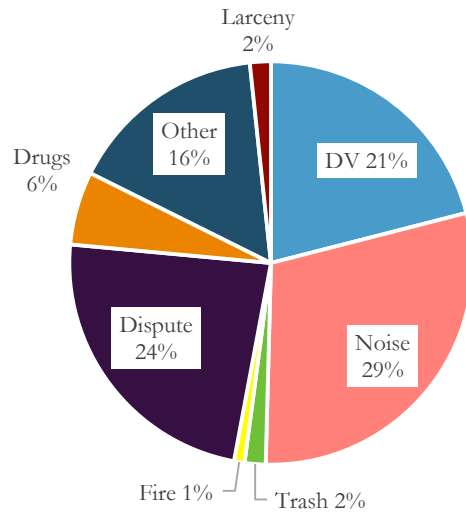
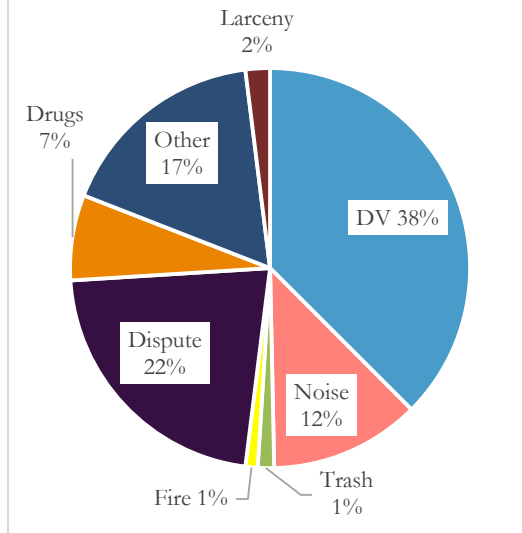


Figure 4: Percentage of Points Received by Incident Type



### ***b. Impact on Tenants Who Called 911 to Report a Crime or Seek Help***

Binghamton's ordinance was also enforced in situations where the tenants of the property had simply called 911. While the numerical analysis of Binghamton's enforcement records focused on the impact on survivors of domestic violence, a review of the records reveals many incidents of enforcement against tenants who were victims of other reported crime and tenants who sought assistance for medical emergencies. The following examples come from information obtained from City records, including police reports and enforcement records:

- One Binghamton woman called the police when her neighbor came to her door, visibly in pain and bleeding. This man had been the victim of a home invasion and burglary, in which he was assaulted, restrained, stabbed, and burned by other men. When police responded, he told them he was knocked out and when he came to, his house was ransacked with numerous items missing. This tenant stated he did not know who his assailants were or why he was targeted. Despite this, the City assigned twelve points to this episode of random violence and designated the property as a nuisance, ultimately leading the landlord to respond by assuring officials that all tenants in the building had been or would be evicted.
- Binghamton again cited a tenant with nuisance conduct on the basis of reporting crime committed against them when a tenant called to report an assault committed by a guest. The tenant was at her home with her brother and her brother's friend. The friend asked the tenant to sleep in his bed with him. When she refused, he slapped her in the face and pushed her down. She threatened to call the police but he continued to hit her. When her brother intervened to pull the friend off of her, the tenant called the police. The property was cited with twelve points.
- Another tenant called 911 to report a pit-bull running wild in her apartment complex. When responding officers used pepper spray to subdue the dog, it ran into another apartment. Police could not locate the dog owner and the call was assigned points in a letter sent to the property owner. The landlord responded and informed the City that he had "immediately remed[ied] the situation" by evicting or having the problematic tenants move out, including the tenant who reported the dog.
- Binghamton also imposed nuisance citations on the basis of tenants seeking emergency medical assistance. For example, the City levied nuisance points based on two different instances where a tenant called 911 because her son and his girlfriend had overdosed on heroin. There had been no illegal drug activity at the apartment reported at any time; records show that the resident had solely called to request medical aid.

Binghamton also classified reported sexual assaults as nuisance conduct. The City assigned the maximum 12 points against the tenant-victim on at least three different occasions in 2014, including those where police responded to the victim's home to interview her after the fact. For example:

- One tenant's call to police was cited as a nuisance offense when she reported a sexual assault that was committed by her landlord. Her landlord had arrived at her home to deliver some

appliances and propositioned her for sex. When the tenant said no, the landlord attempted to force himself on her, elbowing her in her stomach and thighs and causing extensive bruising. The tenant was able to fight him off and told him to leave or she would call the police. Her landlord told her “the police would never believe her” and left. The next day the tenant reported the crime. She told police that she had not called earlier because “she was afraid she would not be believed.” The police responded and took her statement, in which she also stated that another tenant had described a similar experience with the landlord. Instead of focusing on the landlord’s actions, Binghamton cited the victim’s call to the police as nuisance conduct, noting the conduct as “attempted rape” and levying the maximum number of points against her.

In short, Binghamton’s enforcement of the ordinance directly and actively undermines public safety. By penalizing the reporting of crime and medical emergencies, Binghamton punishes crime victims for calling the police, impairs efforts to hold the perpetrators of crime responsible, and reduces community security.

### **3. Landlord Responses to Possible Enforcement Under the Ordinance**

Landlord abatement plans in response to enforcement of a nuisance ordinance range in formality and scope. However, as evidenced in the stories above, landlords typically respond to warnings by removing the tenants who were the subject of police response from the property and do so regardless of whether they were victims of the cited crime.

The analysis of available eviction records in Binghamton reveals that more than half of the landlords from the cited properties pursued formal eviction actions against tenants at or around the time of receiving a violation notice. A total of 53 tenants in ten of the cited properties received formal eviction actions after the City sent a nuisance abatement notice to their landlords.

---

More than half of the landlords from cited properties in Binghamton pursued formal eviction actions against tenants at or around the time of receiving a violation notice.

---

This is an estimate of evictions following nuisance enforcement, as it is not possible from the records to ascertain if all of these evictions took place because of the ordinance or for other reasons in this same time period. However, this estimate is likely to also be under-inclusive, because many landlords pursue informal evictions against tenants, notifying them that they will be evicted unless they move out voluntarily. In response, tenants often feel forced to leave regardless of whether they were victims of the alleged nuisance conduct because the mere filing of an eviction case – whether ultimately successful or not – can make it extremely difficult to obtain rental housing in the future. Thus, tenants who lived at cited properties may have moved out without any official record documenting the action taken against them.

Additionally, other landlords took action against everyone at a property, affecting multiple units and families. One landlord sent a blanket warning to all tenants, stating that “if the Binghamton Police are called on a tenant at this property, the rent will be increased by \$500 a month followed by eviction.” Another informed the City that he had responded to the warning by ensuring that “all of the Tenants who were present on the property at that time have been evicted, or have left voluntarily, or are in the process of being evicted.”

Thus, the available records establish that Binghamton enforced its ordinance against domestic violence and other crime victims, as well as others in need of emergency assistance, and landlords then sought to evict tenants or to deter them from calling the police.

### **C. The Nuisance Abatement Law in Fulton, New York**

In 1998, the Common Council of the City of Fulton adopted a nuisance abatement law, determining that while existing laws could punish offensive conduct, they were not adequate to prevent these nuisances from continuing.<sup>66</sup> Like Binghamton, the stated goal of the ordinance was to improve the community of Fulton – specifically, to protect the city’s quality of life, commerce, property values, and the public health, safety, and welfare of its residents. Though Fulton’s nuisance is based on a three-strikes model and thus differs from Binghamton’s, it also was enforced against victims of crime. Examination of records of enforcement and the distribution of notices for public nuisances under the nuisance abatement law reveals overwhelming and systemic enforcement against victims of domestic violence. The records also documented enforcement against victims of other crimes and persons seeking emergency aid.

#### Key Findings:

- Enforcement of Fulton’s nuisance abatement law was overbroad. When sending notices to landlords that the property may be subject to a public nuisance action, city officials listed almost every police incident at a property, regardless of tenants’ culpability.
- Fulton officials routinely included incidents of domestic violence in the lists of offenses that contributed to the “high volume of calls for service at this location” and nuisance conduct that the city stated could subject a property to city action.
- Domestic violence was by far the most common type of nuisance conduct identified by Fulton city officials, accounting for almost half, or 48%, of incidents cited in nuisance enforcement warnings.
- While this study focused on domestic violence, the records showed significant enforcement against victims of other crimes and those in need of emergency assistance. The city cited many incidents of criminal activity perpetrated against tenants, including incidents of larceny and other assaults.

## 1. Fulton’s Ordinance

Fulton’s Nuisance Abatement Law is triggered by a broad array of “public nuisances” that occur at a property. The ordinance defines a property as a public nuisance upon the occurrence of one drug-related offense or three designated nuisance offenses that result in convictions within a twenty-four-month period. Designated nuisance offenses include both violent crimes such as homicide, assault, sex offenses, use of firearms, and non-violent crimes such as burglary, gambling, prostitution, and offenses against the public order and public sensibilities. Nuisance offenses can be counted against a property based on incidents at any of the apartments or units at a multi-family dwelling. The ordinance authorizes the Chief of Police to determine what incidents will be cited as offenses and to impose penalties for such public nuisances.

Fulton’s ordinance provides that, once a property has been the site of a sufficient number of nuisance offenses, the Chief of Police will notify the owner of the activities that have created the nuisance and possible penalties that may occur if the nuisance is not eliminated within thirty days of the notice. Penalties can include closure of the property for up to a year or an order requiring discontinuance of any nuisance activity at the property. Although, like Binghamton, the ordinance includes violent offenses and other crime as possible nuisance offenses, it makes no distinction for incidents in which the tenant is the victim of the alleged nuisance conduct.

---

Although like Binghamton, Fulton’s ordinance includes violent offenses and other crime as possible nuisance offenses, it makes no distinction for incidents in which the tenant is the victim of the cited conduct.

---

Fulton’s ordinance defines a public nuisance as being triggered by three convictions for nuisance offenses at the property. But in practice, the City notifies landlords of police responses that have occurred at the premises, many of which have not even resulted in arrests. The Chief of Police sends landlords a form letter with a description of “a series of offenses which have been reported to the police department, some of which have resulted in arrests of persons surrounding activities” at the property. This list typically includes all police responses that have been made to the property within a certain time period, although the letter warns that this is not a complete list of all calls, complaints, and arrests at the location.<sup>67</sup> The letter then warns landlords that “in light of the volume of calls for service at this location, and the appearance that the nuisance conduct is a direct and/or proximate result of activities occurring” at the property, the Chief of Police plans to initiate a nuisance abatement action, which could result in closure of the property, “unless there is some intervention to address the nuisance conduct occurring at this location.” In doing so, Fulton directs landlords’ attention to all police responses listed at the property, identifies them as nuisance conduct, and instructs landlords to take action or face penalty.<sup>68</sup>

Fulton’s ordinance does not require that the landlord submit a written abatement plan or response to the City. Thus, unlike in Binghamton, whether a landlord evicted or took other action

in response to a nuisance property warning or designation is not clear from the records associated with the enforcement action.

This case study sought, through multiple open records requests, documentation of all incidents that were reported from July 2011 to April 2014<sup>69</sup> at the residential properties that were subject to ordinance enforcement in the first half of 2014. The following examples and analysis were taken from these records. Personally identifying details are not listed for privacy and other concerns.

## **2. Impact on Tenants and Their Families**

In notifying landlords of nuisance conduct, Fulton routinely includes incidents where tenants sought police or emergency aid because they were victims of the reported crime. Because city officials provided landlords with a list of almost every police incident that occurred at the property and did so regardless of whether the tenants of that property were responsible for the cited nuisance conduct, this enforcement was strikingly overbroad. The series of offenses described in notices included both incidents where tenants were the victims of crime and where police had responded for other emergency situations in which no enumerated nuisance offense was alleged to have taken place.

Although it is not clear from the records what abatement methods a landlord used after being notified of a possible nuisance designation, it is likely that the overbroad lists of “offenses” described in the letters led them to take action against tenants who were victims of crime or who had committed no offense other than calling 911 in an emergency.

### ***a. Impact on Victims of Domestic Violence***

As it did in Binghamton, the similarly broad scope and enforcement of Fulton’s ordinance has overwhelmingly affected victims of domestic violence. Because calls from domestic violence victims or reporting domestic violence make up the single largest category of calls to police,<sup>70</sup> victims of domestic violence are very likely to be punished by nuisance laws. Indeed, Fulton routinely designated incidents of domestic violence as nuisance offenses, repeatedly notifying landlords that their property was the site of nuisance conduct when the tenant of that property was in fact the victim of cited domestic violence. The following examples come from information obtained from City records, including police reports and enforcement records:

- Fulton warned one landlord that he was in danger of penalty and listed repeated incidents of domestic violence against a tenant as nuisance offenses leading to this designation. In one incident, the tenant told police that her ex-boyfriend pushed her up against the kitchen cabinets, cutting her leg. She said she was afraid of her abuser but also feared having him arrested “because he was going to kill her when he got out.” Police arrested this man, charging him with multiple criminal offenses. Later, police responded to screaming and harassment against the tenant by her abuser and arrested him for violating an order of protection. Although the officers’ response was integral to enforcing the order of protection, the City nevertheless directed her landlord to abate this alleged nuisance conduct. This tenant had only called the police for help with domestic violence.



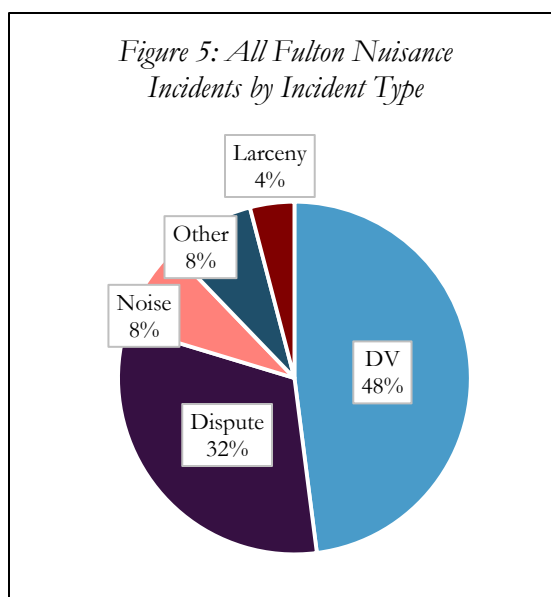
- Fulton again warned a property owner of a possible nuisance ordinance designation on the basis of, among other things, repeated domestic violence that was perpetrated against a tenant. These included an incident in which the tenant’s boyfriend was arrested for disorderly conduct when the tenant was packing her bags to leave and her boyfriend would not stop harassing her. In a later episode, the tenant called 911 and reported that her now ex-boyfriend had grabbed her by the wrist, brandished a knife, and threatened to cut her. The tenant was able to pull away from him and call the police, who then criminally charged her ex-boyfriend.

Statistical analysis of activity at the seven properties that Fulton designated as possible public nuisances shows that the ordinance was disproportionately enforced based on domestic violence. In order to determine patterns of enforcement, all reported incidents at the cited properties from July 2011 to April 2014 were coded into eight categories: noise, trash, fire, domestic violence, disputes, drugs, larceny, and other. This allowed for analysis of a total of 123 incidents that were included in reported nuisance offenses as contributing to a property’s possible designation as a nuisance.<sup>71</sup>

Of these incidents of alleged nuisance conduct, an overwhelming 48% were related to domestic violence. This made domestic violence the single largest category of alleged nuisance conduct by far. Comparatively, drug offenses, a traditionally targeted nuisance offense and a specific focus of Fulton’s ordinance, were never cited as a nuisance offense at the warned properties. Another often-claimed target of nuisance ordinances, noise, was similarly infrequent, making up only 8% of alleged nuisance offenses. Figure 5 represents the distribution of incidents of alleged nuisance conduct by category. Table 2 outlines the number of incidents by category and percentage.

*Table 2: Incidents of Alleged Nuisance Conduct*

INCIDENT TYPE	NUMBER OF INCIDENTS	PERCENTAGE OF INCIDENTS
Domestic Violence	<b>59</b>	<b>48%</b>
Dispute	39	32%
Noise	10	8%
Other	10	8%
Larceny	5	4%
TOTAL	123	100%



### ***b. Impact on Tenants Who Called 911 to Report Crime***

Fulton's ordinance was also enforced when tenants called to report crimes committed against them. While the analysis of enforcement focused on the prevalence of enforcement against domestic violence, the records also reveal numerous incidents of enforcement against tenants who were victims of other reported crime. For example:

- Fulton notified a landlord that his property had been the site of nuisance offenses when, among other things, a tenant reported to police that her boyfriend had been the victim of an assault at her home. Upon coming home with her boyfriend, the tenant found the front door unlocked. When her boyfriend went inside to investigate, an unknown male punched him in the face. The two men fell down the stairs and the stranger ran away. The tenant and her boyfriend then realized that a mutual friend had invited the unknown man into the apartment. The tenant called 911 to report the crime and the assailant was charged with assault. However, Fulton later characterized the incident as a nuisance, suggesting that somehow the landlord or tenant were responsible for the actions of an uninvited stranger to the property.
- In another incident, a tenant called police to report the larceny of personal property. The tenant told police that he believed a friend of his girlfriend was responsible for taking several video games from his home and that he had recently seen this person with what appeared to be a bag holding the games. Police responded and criminally charged the individual. Although the tenant aided the police in identifying ongoing crime and its perpetrator and although the tenant himself was the victim of that crime, Fulton subsequently notified his landlord this incident constituted a nuisance offense that must be abated.

Fulton's nuisance abatement law thereby swept up innocent parties in enforcement and penalized crime victims for calling the police.

## **4. Recommendations**

These many examples of nuisance ordinances' impact on crime victims and the statistical evidence of their disproportionate enforcement make clear that these policies do not further their often stated goals of crime reduction and community improvement, but instead punish crime victims and interfere with efforts to encourage the reporting of crime and safety issues. On the local level, municipalities should ensure that they avoid these documented consequences for victims of crime, domestic violence survivors, persons with disabilities, minority communities, and other protected groups. On the state level, New York legislators can and should provide a statewide solution to the problems posed by nuisance ordinances, both for crime victims and their communities, and enact legislation that affirmatively protects residents' rights to police and emergency assistance.

### **A. Nuisance Ordinances Conflict with Existing Law and Policy in New York**

Nuisance ordinances and their harmful consequences conflict with existing legal protections and well-established public policy in New York State. The many ways in which nuisance ordinances

may violate constitutional, federal, state, and local legal protections are detailed in section 2.B above. These ordinances are also incompatible with numerous policies that underlay New York State’s response to domestic violence and efforts to protect the rights of victims of crime.

New York State has been explicit about its commitment to addressing the impact of crime and domestic violence on its victims and on communities as a whole. The New York Crime Victims Bill of Rights provides protections to crime victims that enable and allow them to come forward, report, and cooperate in the prosecutions of crimes committed against them without penalty.<sup>72</sup> Similarly, an Executive Order establishing protections for domestic violence survivors states, “domestic violence is a serious public policy concern for the State of New York, requiring the State’s participation in the coordinated community response to support victims and hold abusers accountable.”<sup>73</sup> This is borne out in State policies that aim to protect victims of domestic violence from abuse, including policies supporting the enforcement of orders of protection and effective police response.<sup>74</sup> Finally, New York has worked to safeguard secure housing for domestic violence victims with a long-standing New York Attorney General opinion that explicitly states that discrimination against victims of domestic violence can violate state civil rights law.<sup>75</sup>

---

Municipalities undercut policies that seek to address and prevent crime when they impose citations on crime victims that call police to secure police protection and report crime.

---

Municipalities undercut these policies by imposing citations when victims call 911 to secure police protection and report crime. Indeed, many ordinances expressly designate nuisance conduct to include the very family offenses that have been designated as the basis for domestic violence-related relief, including orders of protection.<sup>76</sup> Accordingly, nuisance ordinances are incompatible with New York’s policies that seek to address and prevent crime.

### **B. A Local Solution: Pursue Targeted Implementation of Existing Law**

When considering the changes required for an ordinance to both avoid legal liability and realize the policy priorities detailed above, a number of municipalities have determined that their community is better served by a repeal of the ordinance or declining to enact one in the first place.<sup>77</sup> This leaves municipalities able to pursue targeted implementation of existing law to address problems they have identified in the community, while also ensuring the continued availability of police assistance to those who need it.

Municipalities typically already have tools to directly address the problems that are most often cited as the goals of nuisance ordinances, such as drugs, noise, and property damage. As compared to these existing zoning and penal laws, nuisance ordinances can be inefficient and unwieldy to enforce, and generally do not afford adequate due process to either landlords or tenants. Indeed, enforcement of nuisance ordinances can require many more resources and new systems than

lawmakers initially realize, making them by no means the silver bullet for cutting policing costs and reducing crime that many lawmakers envision.

### **C. A Statewide Solution: Affirmatively Protect Crime Victims Right to Call Police**

State legislatures have increasingly taken notice of the negative impact of local nuisance ordinances in their communities. Several states have responded by enacting or introducing legislation that recognizes an individual's right to request police and emergency services or prohibit nuisance ordinances to be enforced against victims of crime.<sup>78</sup> Some states expressly prohibit municipalities from imposing penalties for exercising this right. Minnesota "preempts any inconsistent local ordinance" that requires an eviction or penalizes a landlord in response to calls for police or emergency assistance.<sup>79</sup> Most recently, in 2014, Pennsylvania lawmakers responded to widespread attention on the perverse consequences of these ordinances and voted unanimously, on a bipartisan basis, to protect this right for all victims of crime and persons in an emergency.<sup>80</sup>

The New York State legislature has an opportunity to take similar action and ensure that no New Yorker must choose between calling the police and staying in their home. The New York State legislature should enact comprehensive state protections to residents who need to access emergency and police assistance.<sup>81</sup> Such a state law should prohibit municipalities and landlords from imposing penalties on this basis and provide due process and other protections for landlords and tenants who are the subject of nuisance ordinance enforcement. Notably, a state-wide solution could still allow municipalities and landlords to address the perpetration of crime at a property through penal and other laws. In doing so, a state-wide law could strike a critical balance between the safety needs of victims, the rights and duties of landlords, and the ability of municipalities to address neighborhood welfare.

## **5. Data and Methods for Studies of Enforcement in Binghamton and Fulton**

This study drew on the work of sociologists Matthew Desmond and Nicol Valdez<sup>82</sup> who looked into the enforcement of the nuisance ordinance in Milwaukee, Wisconsin and found that almost one third of all ordinance-related citations were a direct result of an incidence of domestic violence and the majority of property owners dealt with the issue by evicting the intimate partner violence survivors.

In analyzing the enforcement records from Binghamton and Fulton, domestic violence was defined as when a current or former partner sexually assaults or injures, stalks, threatens, or harasses an individual, makes them fear that they or someone else, such as their child, are in immediate physical danger or destroys their personal property. Because domestic violence is often a pattern of abuse rather than an isolated incident, serious disputes between current or former intimate partners were coded as domestic violence when the records indicated a history of domestic violence.

The data analysis was conducted by the Social Science Research Council, in partnership with the ACLU. The records on which this analysis was based are described below and are on file with the Social Science Research Council and the ACLU.

### **Data and Methods for Binghamton, New York**

The Binghamton case study sought, through multiple open records requests, documentation on all incidents that occurred at the 16 residential properties in Binghamton that were subject to ordinance enforcement from January 2012 to July 2014, July being the most recent date for which records were available at the time of the request. The following documents were obtained for these properties: letter from City of Binghamton Department of Corporation Counsel to property owner serving notice that the property is being accused of being a public nuisance; abatement plan from property owner, including eviction notices and other attachments; dispatcher records of 911 calls related to these properties; police department incident write-ups; all Domestic Incident Reports; and every eviction record in the 16 properties under study from Binghamton City Court. This allowed analysis of a total of 535 incidents, of which 199 incidents (22 percent) were singled out by the City as contributing to a property's designation as a nuisance.

The City letters identified the precise date and description for each incident that contributed to the points that resulted in a letter. The letters also cited the total number of other police activities on the property over the previous twelve months as additional evidence the property was a public nuisance. In order to determine patterns of enforcement, all of the incidents that required a police response to the cited properties were coded into eight categories: noise, trash, fire, domestic violence, disputes, drugs, larceny, other.

### **Data and Methods for Fulton, New York**

The Fulton case study sought, through multiple Freedom of Information law requests, documentation on all incidents that occurred at the seven residential properties in Fulton that were being subject to ordinance enforcement in the period from July 2011 to April 2014, April being the most recent date for which records were available at the time of the request. The following documents were obtained for these properties: letter from City of Fulton Police Department to property owner serving notice that the property is being accused of being a public nuisance; dispatcher records of 911 calls related to these properties, and police department incident write-ups. This allowed analysis of a total of 123 incidents.

The City letters identified the precise date and description for each incident that contributed to the designation of a property as a public nuisance. In order to determine patterns of enforcement, the 123 incidents were coded into eight categories: noise, trash, fire, intimate partner violence, disputes, drugs, larceny, other.

## 6. Endnotes

<sup>1</sup> See Emily Werth, Sargent Shriver Nat'l Ctr. On Poverty Law, *The Cost of Being Crime Free: Legal and Free Rental Housing and Nuisance Property Ordinances* 25 (Aug. 2013), available at <http://povertylaw.org/sites/default/files/files/housing-justice/cost-of-being-crime-free.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> Matthew Desmond & Nicol Valdez, Online supplement, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 Am. Sociological Rev. 4–18 (2013), available at [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>4</sup> *Id.* at 2.

<sup>5</sup> See Werth, *supra* note 1, at 6.

<sup>6</sup> Gretchen Arnold & Megan Slusser, *Silencing Women's Voices: Nuisance Property Laws and Battered Women*, 2015 Law and Soc. Inquiry (forthcoming 2015) (manuscript at 13–22) (discussing the diverging perspectives of law enforcement officials and domestic violence advocates on the efficacy of a local nuisance ordinance in St. Louis and the ways law enforcement officials are unaware of documented harms to survivors of domestic violence that flow from the ordinance).

<sup>7</sup> Andrew Klein, U.S. Dept. of Justice, *Practical Implications of Current Domestic Violence Research: Judges 7* (2008), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/222321.pdf>.

<sup>8</sup> See *infra* sections 3.B.2.a. and 3.C.2.a.; Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 Am. Sociological Rev. 117, 131 (2013), available at [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) (finding that domestic violence was the third most commonly cited offense under a nuisance ordinance in Milwaukee, Wisconsin).

<sup>9</sup> Gretchen Arnold, *Do Nuisance Property Laws Harm Battered Women?* (2015) (unpublished manuscript) (on file with author) (describing the ways in which nuisance property laws directly and indirectly harm battered women through “in-depth interviews with twenty-seven primarily low income African American battered women in order to gain detailed information about the mechanisms through which these laws impact women’s lives.”)

<sup>10</sup> Desmond & Valdez, *supra* note 8, at 136.

<sup>11</sup> Erik Eckholm, *Victims' Dilemma: 911 Calls Can Bring Eviction*, N.Y. Times, Aug. 17, 2013, at A1.

<sup>12</sup> See *infra* section 3.B.2.b.

<sup>13</sup> *Harms of Crime Nuisance Ordinances in Iowa Cities: Stories and Examples* (ACLU of Iowa, Des Moines, Iowa), Apr. 7, 2014, at 2.

<sup>14</sup> Desmond & Valdez, *supra* note 8, at 125-130.

<sup>15</sup> *Id.* at 138.

<sup>16</sup> *Id.* at 131–132.

<sup>17</sup> *Id.* at 133.

<sup>18</sup> Arnold & Slusser, *supra* note 6, at 13–15.

<sup>19</sup> *Id.* at 14–15.

<sup>20</sup> *Harms of Crime Nuisance Ordinances in Iowa Cities: Stories and Examples*, *supra* note 13, at 2.

<sup>21</sup> Arnold, *supra* note 9, at 4.

<sup>22</sup> Complaint, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D.P.A. Apr. 29, 2013), ECF No. 9 [hereinafter Briggs Complaint], available at [https://www.aclu.org/sites/default/files/field\\_document/2013.04.29\\_-\\_verified\\_first\\_amended\\_complaint.pdf](https://www.aclu.org/sites/default/files/field_document/2013.04.29_-_verified_first_amended_complaint.pdf).

<sup>23</sup> See Desmond & Valdez, *supra* note 8; see *infra* sections 3.B.2.b. and 3.C.2.b.

<sup>24</sup> See, e.g., Briggs Complaint, *supra* note 22, at ¶ 136.b; Second Amended Complaint, *Grape v. Town/Vill. of East Rochester*, No. 07- CV-6075-CJS (F) (W.D.N.Y. July 6, 2007) [hereinafter Grape Complaint], available at <http://www.nhlp.org/files/Grape%20WDNY%20nuisance%202d%20compl.pdf>.

<sup>25</sup> Carmela Decandia et al., Nat'l Ctr. on Family Homelessness, *Closing the Gap: Integrating Services For Survivors of Domestic Violence Experiencing Homelessness* 2 (2013), available at <http://www.familyhomelessness.org/media/371.pdf>; Nat'l Alliance on Mental Illness, *The High Costs of Cutting Mental Health: Homelessness* (2011), available at [http://www2.nami.org/Template.cfm?Section=About\\_the\\_Issue&Template=/ContentManagement/ContentDisplay.cfm&ContentID=114535](http://www2.nami.org/Template.cfm?Section=About_the_Issue&Template=/ContentManagement/ContentDisplay.cfm&ContentID=114535).

<sup>26</sup> See Briggs Complaint, *supra* note 22; Release and Settlement Agreement, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. Sept. 18, 2014) [hereinafter Briggs Release and Settlement], available at <https://www.aclu.org/womens-rights/briggs-v-borough-norristown-et-al>; Grape Complaint, *supra* note 24; See Anna Stolley Persky, *Ordinance That Evicts Tenants for Seeking Police Aid Is Putting Abused Women Out on the Street*, ABA

J. (Sept. 1, 2013, 8:50AM), [http://www.abajournal.com/magazine/article/ordinance\\_that\\_evicts\\_tenants\\_for\\_seeking\\_police\\_aid\\_is\\_putting\\_abused\\_wome/#\\_blank](http://www.abajournal.com/magazine/article/ordinance_that_evicts_tenants_for_seeking_police_aid_is_putting_abused_wome/#_blank) (describing settlement in *Grape v. Town/Village of East Rochester*); Complaint, *Peeso v. City of Hornell*, No. 6:11-cv-6306 (W.D.N.Y. filed June 17, 2011); Complaint, *Peeso v. City of Hornell*, No. 6:11-cv-6306 (W.D.N.Y. filed June 17, 2011)[hereinafter *Peeso Complaint*]; Stipulation of Settlement and Discontinuation, *Peeso v. City of Hornell*, No. 6:11-cv-06306 (W.D.N.Y. filed Nov. 14, 2011); Complaint, *Rizkalla v. Borough of Blakely*, No. 3:14-cv-02433 (M.D. Pa. Dec. 22, 2014); Complaint, *Hazelton v. Borough of Blakely*, No. 3:14-cv-02473 (M.D. Pa. Dec. 24, 2014); Terrie Morgan-Besecker, *Blakely settles disruptive ordinance lawsuit*, *The Times Tribune*, Feb. 14, 2015, available at <http://thetimes-tribune.com/news/blakely-settles-disruptive-conduct-ordinance-lawsuit-1.1832991>.

<sup>27</sup> Briggs Release and Settlement, *supra* note 26.

<sup>28</sup> Housing Discrimination Complaint, *Assistant Secretary for Fair Housing & Equal Opportunity v. Borough of Norristown*, No. 03-13-0277-8 (Dep't of Housing & Urban Dev. June 5, 2013), available at

[https://www.aclu.org/sites/default/files/field\\_document/hud\\_complaint.pdf](https://www.aclu.org/sites/default/files/field_document/hud_complaint.pdf); Conciliation Agreement between

Assistant Secretary of the Office of Fair Housing and Equal Opportunity and Municipality of Norristown, Nos. 03-13-0277-8 and 03-13-0277-9 (Dep't of Hous. & Urban Dev. Sept. 17, 2014), available at <https://www.aclu.org/legal-document/hud-v-norristown-hud-conciliation-agreement>; Conciliation Agreement between Assistant Secretary of the

Office of Fair Housing & Equal Opportunity and City of Berlin, New Hampshire, No. 01-15-0017-8 (Dep't of Hous. & Urban Dev., Jan. 29, 2015), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=TownBerlin.pdf>.

<sup>29</sup> See *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972); *McDonald v. Smith*, 472 U.S. 479, 482 (1985);

*Jackson v. State* 381 F. Supp. 2d 80 (N.D.N.Y. 2005) (holding that a plaintiff's actions in seeking enforcement of an order of protection was protected by the First Amendment); *Anderson v. City of N.Y.*, 2000 WL 1010984 at \*4 (E.D.N.Y. 2000)

(finding that the right to petition “arguably extends to . . . the right to lodge complaints with the police.”); *Meyer v. Bd. of Cnty. Comm'rs of Harper Cnty.*, 482 F.3d 1232, 1243 (10th Cir. 2007) (quoting *Morris v. Dapolito*, 297 F. Supp. 2d. 680, 692 (S.D.N.Y. 2004)) (finding that “filing a criminal complaint with law enforcement constitutes an exercise of the First

Amendment right to petition” . . . even an “attempt to report an alleged criminal offense was conduct protected by the First Amendment.”) (internal quotation marks omitted).

<sup>30</sup> *Mariemont Apartment Assn. v. Vill. of Mariemont*, 2007 WL 120727 at \*7–8 (Ohio Ct. App. Jan. 19, 2007) (finding a procedural due process violation because the ordinance did not provide for a pre-deprivation hearing, failed to establish a time frame for filing an appeal, and allowed for only a short stay of enforcement); *Cook v. City of Buena Park*, 126 Cal.

App. 4th 1, 9 (Cal. Ct. App. 2005) (finding that a nuisance ordinance violated procedural due process by not mandating descriptions of the observed criminal activity upon which tenants could be evicted, giving a landlord just ten days to

initiate an unlawful detainer action, and requiring the landlord to prevail in the unlawful detainer action).

<sup>31</sup> See, e.g., Complaint, *Peters v. City of Wilkes Barre*, No. 3:2015-cv-00152 (M.D. Pa., Jan. 22, 2015), available at [http://www.aclupa.org/download\\_file/view\\_inline/2185/886/](http://www.aclupa.org/download_file/view_inline/2185/886/).

<sup>32</sup> Memorandum from Sara K. Pratt, Deputy Sec'y for Enforcement and Programs, Office of Fair Housing & Equal Opportunity, U.S. Dep't of Housing & Urban Dev. to FHEO Office Directors and FHEO Reg'l Directors, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act and the Violence Against Women Act* 4–6 (Feb. 9, 2011) [hereinafter *FHEO Guidance on Housing Discrimination Against Domestic Violence*], available at <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>. See, e.g., *Desmond & Valdez*, *supra* note 8, at 139.

<sup>33</sup> 29 U.S.C. §§ 2918a(c)(3)(B)(xxi), 3226(c)(3)(B)(xxi); 42 U.S.C. §§ 3608(e), 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 12872(c)(2)(E), 12873(c)(2)(E), 12892(c)(2)(E), 12893(c)(2)(E), 1437aaa-2(d)(2)(M), 1437c-1(d)(16); 24 C.F.R. §§

91.225(a)(1), 91.235(c)(4), 91.325(a)(1), 91.425(a)(1)(i), 91.520(a), 570.487(b), 570.421(a)(1)(iv), 570.601(a)(2), 570.704(b)(8)(v), 570.904, 903.1, 903.2(d), 903.7(o), 905.308(b)(1), 960.103(b), 982.53(c).

<sup>34</sup> Shannan Catalano, U.S. Dep't of Justice, *Intimate Partner Violence, 1993-2010* 3 (2012), available at <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.

<sup>35</sup> If a federally-funded housing program refuses to comply with the AFFH requirement, the federal government may withhold funds from the noncompliant entity. Affirmatively Furthering Fair Housing Proposed Rule, 78 Fed. Reg. 43,710, 43,713 (proposed July 19, 2013) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903). The AFFH requirement also has been the basis for complaints brought by private citizens and organizations. See, e.g., Complaint, *U.S. ex rel. Lockey v. City of Dallas*, No. 3:11-CV-354-O (N.D. Tex. Jan. 23, 2013), 2013 WL 268371.

<sup>36</sup> 42 U.S.C. § 14043e-11(a)–(b).

<sup>37</sup> See, e.g., Nat'l Housing Law Project, *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium* (2014), available at <http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf>; Westchester Cty., N.Y., Code §§ 700.02, 700.05 & 700.21; Monroe Cty., N.Y., Code §§ 260-1 & 260-2.

<sup>38</sup> 42 U.S.C.A. § 14043e-11(b)(1).



---

<sup>39</sup> This is a significantly under-representative sample, as it was based off of an analysis of the state’s 62 cities, a random sampling of only 10% of the state’s towns and villages, and anecdotal discovery of ten additional nuisance ordinances.

<sup>40</sup> For example, following a 2008 federal lawsuit brought by two domestic violence victims who were cited under East Rochester’s ordinance, the town amended their law to clarify that it will not penalize “any request for police protection or any other police intervention in the face of a threat . . . or any request for the assistance of the police to enforce a court order.” East Rochester, N.Y., Code §144-2.

<sup>41</sup> Beacon, N.Y., Code § 159-3 (2011).

<sup>42</sup> *See, e.g.*, Auburn, N.Y., Code § 213-3 (1997); Binghamton, N.Y., Code § 315-3 (1995); Morrisville, N.Y., Code § 123-6 (1992); Rochester, N.Y., Charter § 3-15(C)(2)(b) (1995).

<sup>43</sup> *See, e.g.*, Albany, N.Y. § 255-44 (2001); Auburn, N.Y., Code § 213-3 (1997); Beacon, N.Y., Code § 159-3 (2011); Binghamton, N.Y., Code § 315-3 (1995); New Hartford; N.Y., Code § 86-2 (2008); Rochester, N.Y., Charter § 3-15(B) (1984); Rockville Centre, N.Y., Code § 263-2 (2007); Rome, N.Y., Code § 26-91 (1998); Utica, N.Y., Code § 2-17-1 (2013).

<sup>44</sup> N.Y. Fam. Ct. Act § 842 (2013); N.Y. Crim. Proc. Law §§ 530.11–530.12 (McKinney 2013).

<sup>45</sup> N.Y. Penal Law § 240.20 (2015); examples include: Amsterdam, N.Y., Code § 161-2 (2009); Binghamton, N.Y., Code § 315-3 (1995); Glen Falls, N.Y., Code § 146-2 (2000); Gloversville, N.Y., Code § 213-2 (2008); Morrisville, N.Y., Code § 123 (1992); New Hartford, N.Y., Code § 86-2 (2008); Rockville Centre, N.Y. Code § 263-2 (2007); Rome, N.Y., Code § 26-91 (2004); Watervliet, N.Y., Code § 202-3 (1972).

<sup>46</sup> *See, e.g.*, Auburn, N.Y., Code § 213-3(D)(1) (1997); Glens Falls, N.Y., Code § 146-2(C)(7) (2000); Patterson, N.Y., Code § 72-2(K) (2009); Rochester, N.Y., Charter § 3-15(B)(1)(w) (1984); Scotia, N.Y., Code § 196-12 (2009).

<sup>47</sup> *See, e.g.*, Albany, N.Y., Code § 255-45 (2001); Amsterdam City, N.Y., Code § 161-4 (2009); Auburn, N.Y., Code § 213-8 (1997); Babylon, N.Y., Code § 165-9 (1994); Beacon, N.Y., Code § 159-4 (2011); Binghamton, N.Y., Code § 315-14(A) (1995); Glens Falls, N.Y., Code § 146-4 (2000); Gloversville, N.Y., Code § 213-4 (2008); Messena, N.Y., Code § 218-9 (2013); Morrisville, N.Y., Code § 123-4 (1992); Rochester, N.Y., Charter § 3-15(C)(1) (1984); Rockville Centre, N.Y., Code § 263-10 (2007); Rome, N.Y., Code § 26.99 (1998); Utica, N.Y., Code § 2-17-9 (2002); Watervliet, N.Y., Code § 202-4 (2013).

<sup>48</sup> *See, e.g.*, Amsterdam City, N.Y., Code § 161-4 (2009); Auburn, N.Y., Code § 213-8 (1997); Binghamton, N.Y., Code § 315-14(A) (1995); East Rochester, N.Y., Code § 144-13 (1995); Glens Falls, N.Y., Code § 146-4 (2000); Gloversville, N.Y., § 213-4 (2008); Rochester, N.Y., Charter § 3-15(C)(1) (1984); Rome, N.Y., Code § 26.103 (1998); Watervliet, N.Y., Code § 202-12 (2013).

<sup>49</sup> *See, e.g.*, Amsterdam City, N.Y., Code § 161-4 (2009); Babylon, N.Y., Code § 165-9 (1994); Binghamton, N.Y., Code § 315-8 (1995); Glens Falls, N.Y., Code § 146-4 (2000); Gloversville, N.Y., § 213-4 (2008); Rockville Centre, N.Y., Code § 263-10 (2007).

<sup>50</sup> *See, e.g.*, East Rochester, N.Y., Code § 144-13 (1995); Watervliet, N.Y., Code § 202-4 (2013); Scotia, N.Y., Code § 196-16 (2009).

<sup>51</sup> *See, e.g.*, Binghamton, N.Y., Code § 315-14(E) (1995); Morrisville, N.Y., Code § 123-8 (1992); Rochester, N.Y., Charter § 3-15(C)(5) (1984).

<sup>52</sup> *See* Grape Complaint, *supra* note 24, at 5.

<sup>53</sup> *Id.* at 7–8.

<sup>54</sup> *Id.* at 13–15.

<sup>55</sup> *See* Persky, *supra* note 26.

<sup>56</sup> Peeso Complaint, *supra* note 27, at 1.

<sup>57</sup> *Id.* at 6–7.

<sup>58</sup> *Id.* at 8–10.

<sup>59</sup> Stipulation of Settlement and Discontinuation, *Peeso v. City of Hornell*, No. 6:11-cv-06306 (W.D.N.Y. filed Nov. 14, 2011).

<sup>60</sup> Binghamton, N.Y., Code § 315-14 (1995), available at <http://www.binghamton-ny.gov/ordinance/property-and-building-nuisance-reform>.

<sup>61</sup> July was the most recent date for which records were available at the time of the request.

<sup>62</sup> Klein, *supra* note 7, at 7.

<sup>63</sup> For more information on the data reviewed and the methodology of the study, see *infra* section 5 on data and methods.

<sup>64</sup> Of all incidents that occurred at the 16 cited properties, the category “other” made up the lion’s share of the incidents (39%), followed by disputes (24%), and noise (14%).



---

<sup>65</sup> Noise was the most cited type of incident, accounting for 29% of incidents cited with points, as compared to 14% of reported incidents. Drug offenses made up 6% of cited incidents and 3% of reported incidents. Finally, trash accounted for 2% of cited incidents and 1% of reported incidents.

<sup>66</sup> Fulton, N.Y., Code § 105 (1998), *available at* <http://ecode360.com/14072274>.

<sup>67</sup> This is confirmed by cross-referencing the letters with the police reports we received on police responses to the cited properties.

<sup>68</sup> Although Fulton officials may believe that landlords will only take action against incidents resulting in convictions, as these are the offenses that would trigger the nuisance according to the text of the ordinance, there is evidence that landlords are instead motivated to take action against all police responses to a property when notified of a nuisance ordinance. Arnold & Slusser, *supra* note 6, at 13. This is far more likely when, as in Fulton, the notification actually lists all the police responses and expressly states that these responses have led to the possibility of the City taking nuisance abatement action against the property.

<sup>69</sup> July was the most recent date for which records were available at the time of the request.

<sup>70</sup> Klein, *supra* note 7, at 7.

<sup>71</sup> For more information on the data reviewed and the methodology of the study, see *infra* section 5 on data and methods.

<sup>72</sup> N.Y. Office of the Att’y Gen., *Crime Victims Bill of Rights*, *available at* [https://www.ag.ny.gov/sites/default/files/pdfs/publications/Crime\\_Victims\\_Bill\\_of\\_Rights.pdf](https://www.ag.ny.gov/sites/default/files/pdfs/publications/Crime_Victims_Bill_of_Rights.pdf).

<sup>73</sup> N.Y. Exec. Order No. 19 (Oct. 22, 2007), <http://www.opdv.ny.gov/professionals/workplace/execorder19.pdf>.

<sup>74</sup> N.Y. Penal Law § 215.50(3) (2015); N.Y. Penal Law § 215.51 (2006); Office of Cmty. Oriented Policing Services (COPS), U.S. Dep’t of Justice, Problem Specific Guides Series: Domestic Violence (2007), *available at* [http://www.popcenter.org/problems/pdfs/domestic\\_violence.pdf](http://www.popcenter.org/problems/pdfs/domestic_violence.pdf) (stating that studies have found that, when police were called, domestic violence offenders are deterred from committing future violence and that therefore, police and other professionals are trained to encourage people to call the police if they experience or witness domestic violence).

<sup>75</sup> 1985 Op. Att’y Gen. N.Y. 45, Formal Op. No. 85-F15 (Nov. 22, 1985).

<sup>76</sup> N.Y. Fam. Ct. Act § 842 (McKinney 2013); N.Y. Crim. Proc. Law §§ 530.11–530.12 (2013).

<sup>77</sup> *See, e.g.*, Briggs Release and Settlement Agreement, *supra* note 27; Kyle Wind, *Vandling Council Scraps Sweeping Proposed Nuisance Law*, The Times Tribune (Jul. 30, 2015), <http://thetimes-tribune.com/news/vandling-council-scraps-sweeping-proposed-nuisance-law-1.1527957>.

<sup>78</sup> Minn. Stat. § 504B.205, Subd. 3 (1999); Alaska Stat. § 29.35.125(a) (2002); Wis. Stat. Ann. § 66.0627(7) (2012); Minn. Stat. § 504B.205, Subd. 2(a) (1999); D.C. Code § 2-1402.21(f)(C) (2009); Tex. Prop. Code Ann. § 92.015(a) (2003).

<sup>79</sup> Minn. Stat. § 504B.205, Subd. 3 (1999).

<sup>80</sup> 53 Pa. Cons. Stat. Ann. § 304 (2015).

<sup>81</sup> The New York Legislature is currently considering a bill that would address the harmful impact of nuisance ordinances across the state by providing comprehensive protections to crime victims and others who seek police or medical assistance in an emergency. H.R. 1322, 2015 Leg. (N.Y. 2015); S. 4955, 2015 Leg. (N.Y. 2015).

<sup>82</sup> Desmond & Valdez, *supra* note 8, at 117–141.



**Cities should provide support  
to crime victims, not penalize  
them for calling 911 or  
force their eviction.**

