

Keep Housing Safe and Fair

Nuisance Abatement, Crime-Free Housing Ordinances, Fair Housing, and Data

November 16, 2016



U.S. Department of Justice
OVW
Office on Violence Against Women
Working Together to End the Violence

Agenda

- **Welcome**

Allison Randall, Chief of Staff, OVW

- **Part 1: Overview**

Sandra Park, Senior Attorney, ACLU Women's Rights Project

- **Part 2: HUD's Guidance**

Jeanine Worden, Associate General Counsel for Fair Housing, HUD

- **Part 3: Norristown's Experience**

Mark Talbot, Chief of Police, Norristown (PA) Police Department



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Data on and Experiences with Nuisance Ordinances and Crime-Free Leases

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www.aclu.org/notanuisance

November 2016

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Norristown, Pennsylvania



“If I called the police to get him out of my house, I’d get evicted. If I physically tried to remove him, somebody would call 911 and I’d be evicted.” -Lakisha Briggs

Photo credit: Jessica Kourkounis for New York Times

Typical Nuisance Ordinances

- ❑ Target calls for police service or any criminal activity occurring at property
- ❑ Designate rental property as nuisance – no allowance for crime victims or need for emergency aid
- ❑ Penalties include criminal and civil fines, revocation of rental permit, condemnation unless landlord “abates” or evicts
- ❑ No notice to or process for tenants

Typical Crime-Free Leases

- Permit eviction upon commission of any one instance of criminal activity
- No exception for crime victims
- Do not require conviction
- Some cities mandate use, others incentivize

Surprise, Arizona ordinance

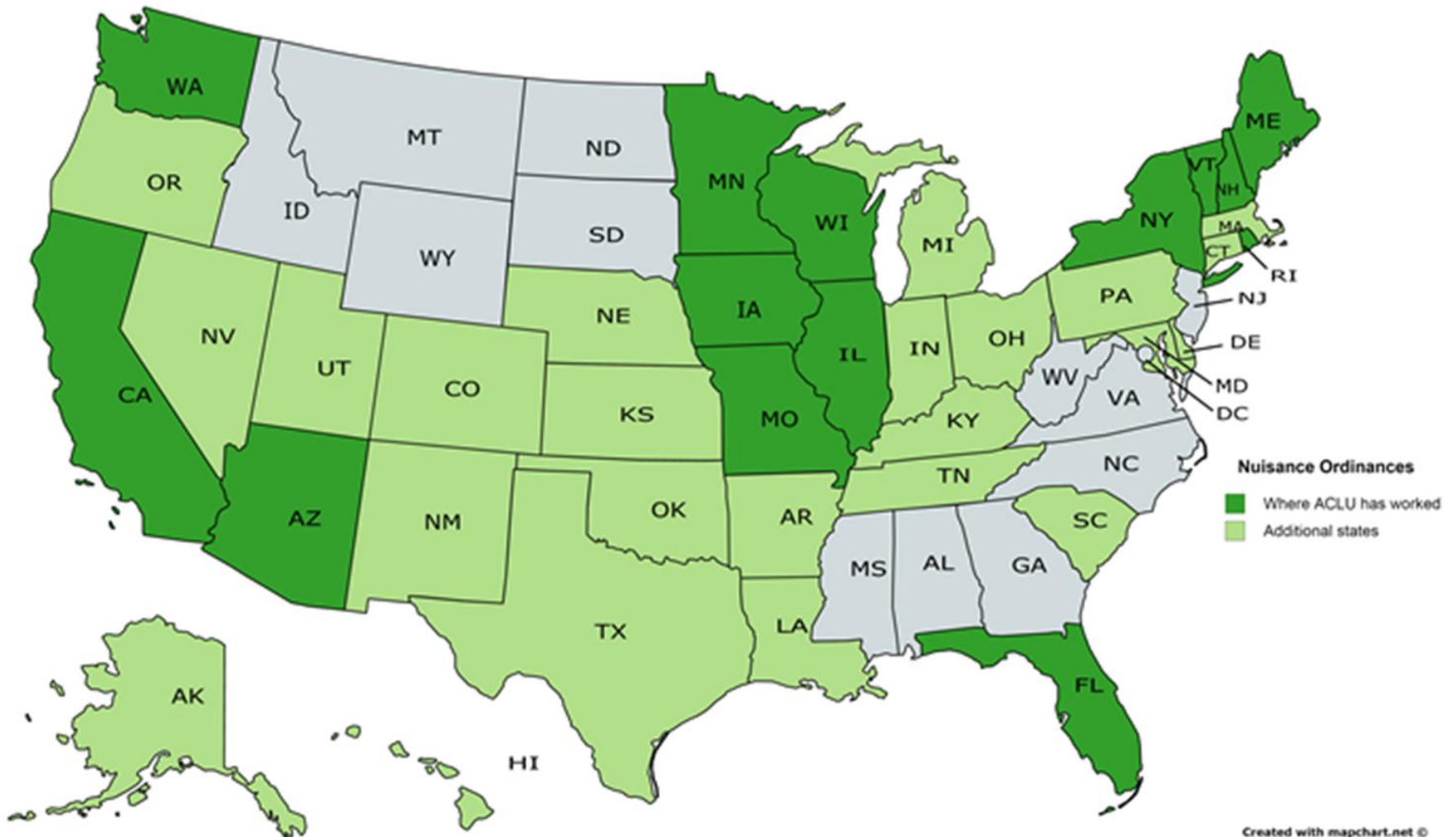
- Prohibited landlords from renting where:
 - Four or more calls for police service to the same address within a 30-day period when calls relate to commission of crime or report criminal activity; or
 - Commission of any two of more crimes

- Required use of crime-free lease:
 - Eviction based on any single criminal activity

- Enforced by Police Department

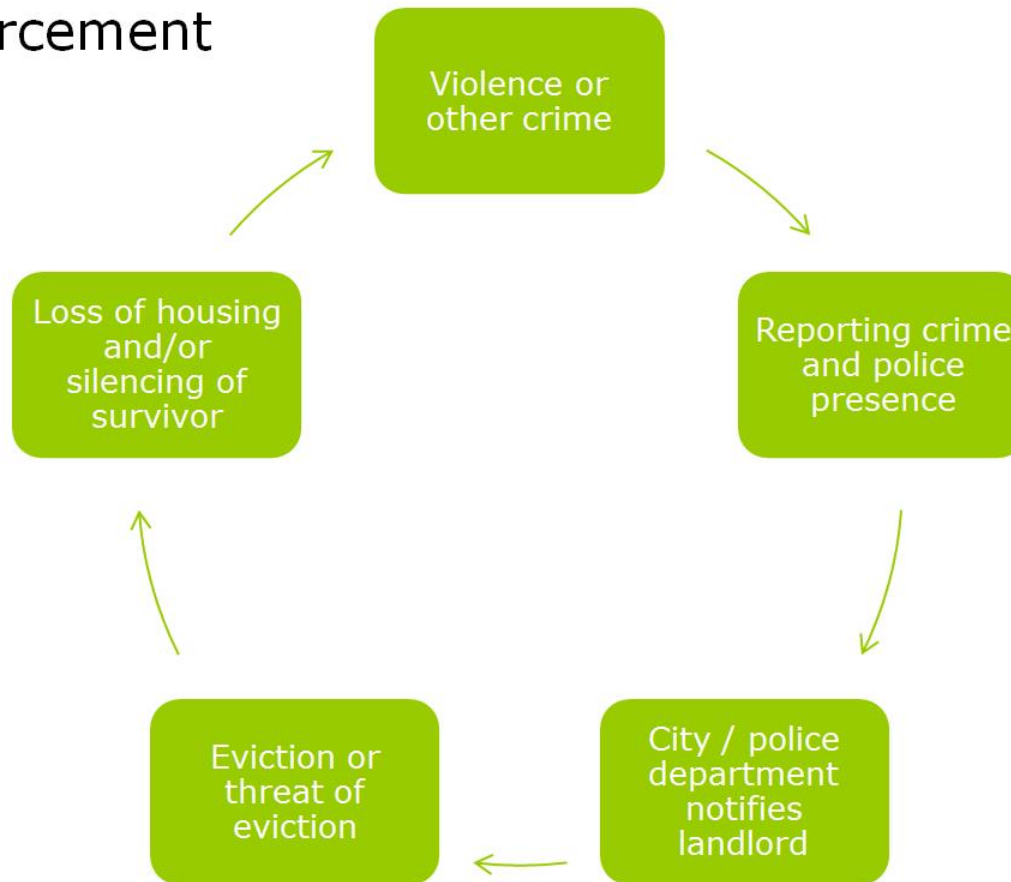
National Issue

(non-exhaustive map of states where ordinances exist)



Who Is Harmed?

- Tenants who seek or need emergency or police assistance
- Landlords
- Law enforcement



Who Is Harmed?



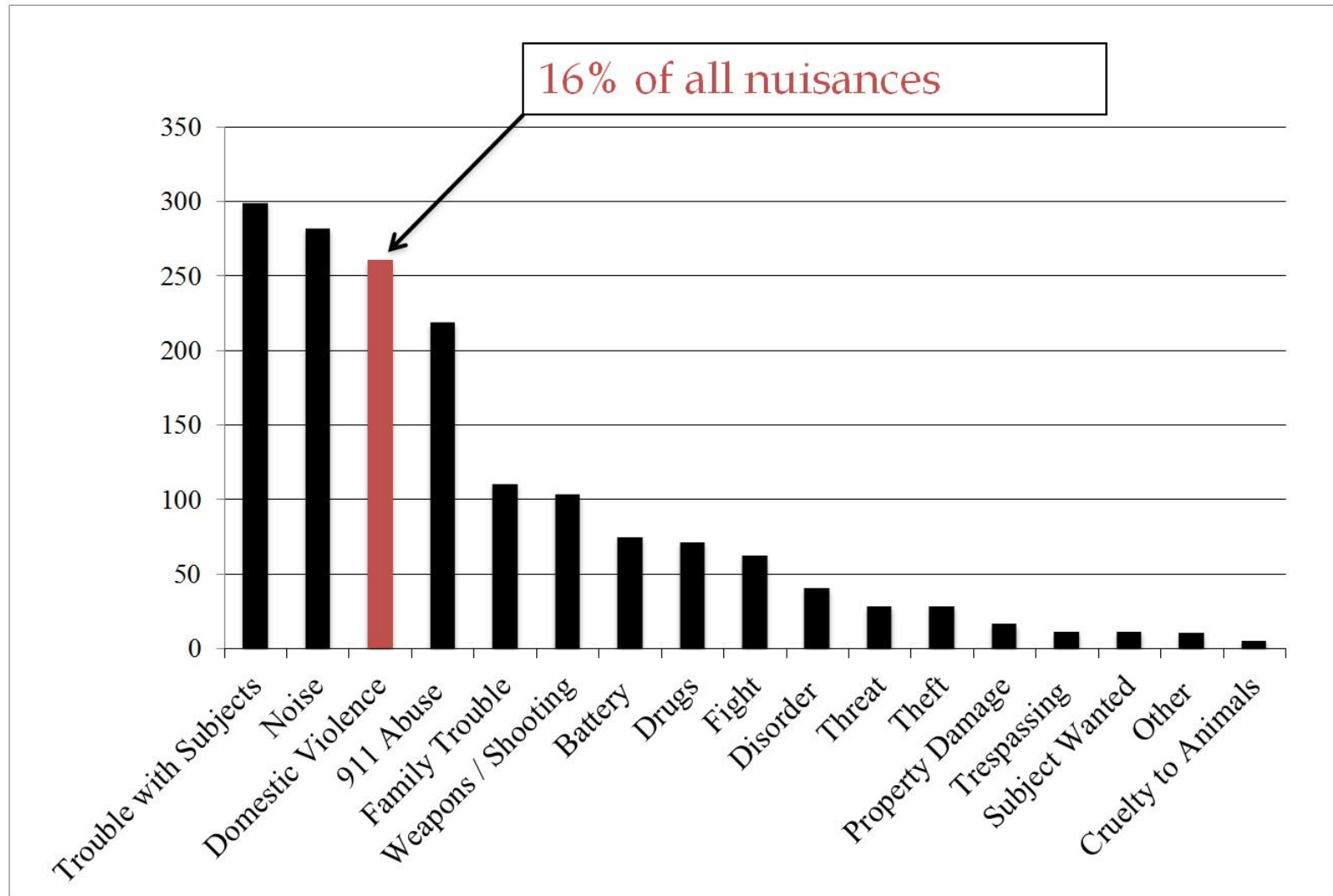
Milwaukee, WI

Matthew Desmond & Nicol Valdez,
Unpolicing the Urban Poor

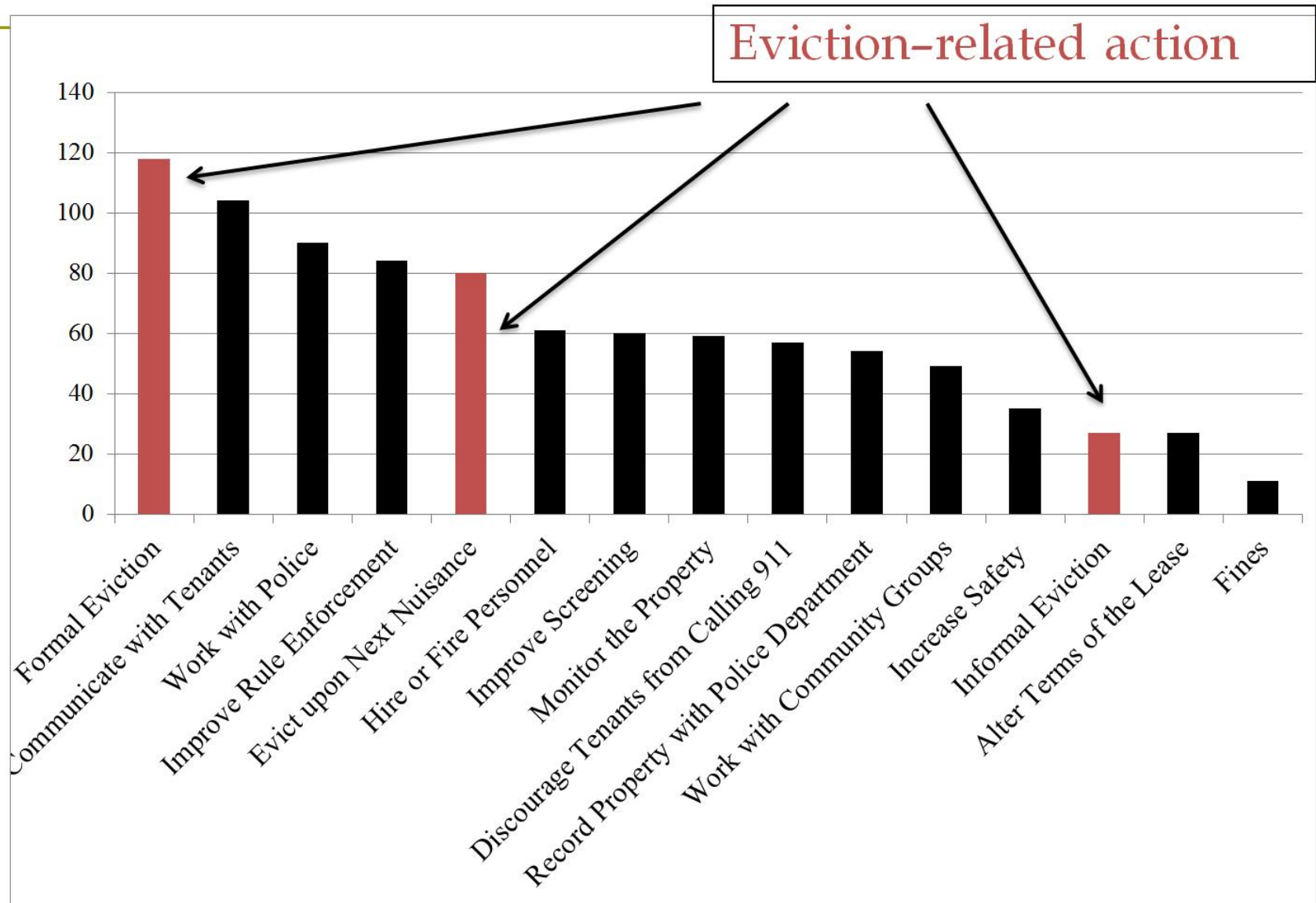
Racial disparity in the proportion of
nuisance-eligible properties that received
citations:

- White neighborhoods: 1 in 41
- Black neighborhoods: 1 in 16

Top 20 Nuisance Activities, Milwaukee 2008 - 2009



Property Owners' Abatement Strategies



Domestic violence victims held responsible

*In the majority of cases landlords evicted (or threatened with eviction) **only battered women**, because abuser did not live in home.*

“First, we are evicting Sheila M, the caller for numerous help from police,” one landlord wrote to the MPD. “She has been beaten by her ‘man’ who kicks in doors and goes to jail for 1 or 2 days. ... We suggested she obtain a gun and kill him in self-defense, but evidently she hasn’t. Therefore, we are evicting her.”

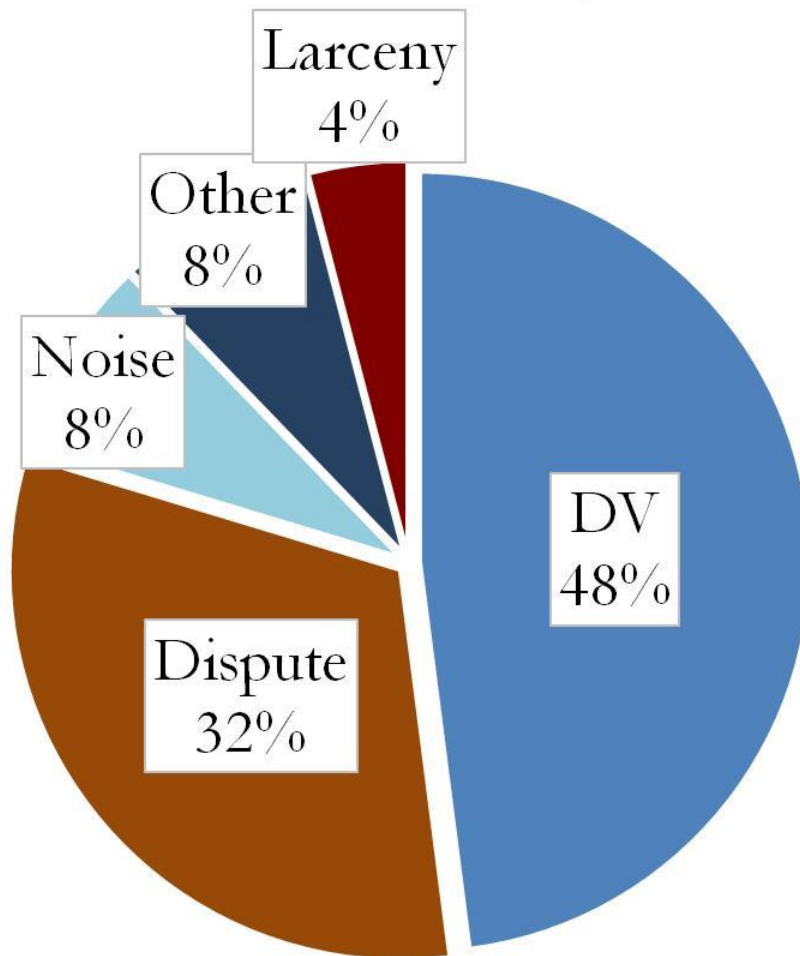
Silenced: How Nuisance Ordinances Punish Crime Victims in New York (ACLU & SSRC 2015)

Binghamton Police Incidents Ranked by Percentage of Points Received

INCIDENT TYPE	NUMBER OF INCIDENTS	PERCENTAGE OF INCIDENTS	PERCENTAGE OF INCIDENTS THAT RECEIVED POINTS	PERCENTAGE OF POINTS
Domestic Violence	71	13%	21%	38%
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%
TOTAL	535	100%	101%*	100%

*Silenced: How Nuisance Ordinances Punish
Crime Victims in New York* (ACLU & SSRC 2015)

Fulton Nuisance Incidents by Incident Type



St. Louis, MO

- ❑ Two studies conducted by Prof. Gretchen Arnold, St. Louis University
- ❑ Both studies conclude ordinance does harm:
 - women's access to housing, current and long-term
 - ability to call 911
 - increases vulnerability to violence
 - triggers physical and mental health problems
 - increases abuser's power over victim
- ❑ Law enforcement personnel aren't aware of these effects.

Impact on Community Members

- ❑ Silences crime victims and threatens safety
- ❑ Housing insecurity and/or eviction – double victimization
- ❑ Particularly harms domestic violence survivors, people with disabilities

Impact on Law Enforcement

- ❑ Discourages reports of crime
- ❑ Interferes with identifying repeat and serious offenders
- ❑ Impedes enforcement of restraining orders
- ❑ Empowers perpetrators
- ❑ Liability

Legal Analysis

- Constitution:
 - 1st Amendment right to petition
 - Due process
 - Equal protection
 - * DOJ guidance on Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence
- Fair Housing Act– sex, race, disability, etc.
 - * HUD guidance
- Violence Against Women Act
- Americans with Disabilities Act

Cases brought by Tenants

- *Grape v. East Rochester, NY* (W.D.N.Y.)
- *Briggs v. Norristown, PA* (E.D. Pa.)
- *Markham v. Surprise, AZ* (D. Az.)
- *Victor Valley Family Resource Center v. Hesperia, CA* (C.D. Cal.) – pending on behalf of transitional housing provider and people on probation; reentry

Local and State Advocacy

- ❑ Local advocacy on proposed or existing ordinances
- ❑ Domestic violence carve-outs don't solve the problem – need to protect all crime victims, people who need emergency aid
- ❑ State laws preempting local ordinances
 - IA, PA, MN: broadly protects right to call for emergency assistance
 - IL and CA: more limited protections
 - Bill pending in NY

Resources

Contact spark@aclu.org for more information on this issue across the country

ACLU webpage: www.aclu.org/notanuisance

ACLU survey: www.aclu.org/nuisancesurvey

ACLU, *Safe Homes, Safe Communities: A Guide for Local Leaders on Domestic Violence and Fair Housing*, www.aclu.org/safe-homes



Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances

**Against Victims of
Domestic Violence, Other Crime Victims, and
Others Who Require Police or Emergency Services**

Jeanine Worden, Associate General Counsel for Fair Housing
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Fair Housing Act Standards and Nuisance Ordinances

- **Overview**
- **Legal Guidance issued on September 13, 2016**
<http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>
- **HUD enforces the Fair Housing Act.**
- **The Fair Housing Act prohibits discrimination in housing and housing-related transactions because of race, color, religion, sex, disability, familial status or national origin.**
- **The Guidance explains how the Fair Housing Act applies to nuisance or crime-free housing ordinances.**

Fair Housing Act Standards and Nuisance Ordinances

- **Overview**
 - The **Guidance does not create new standards** or impose new requirements that do not already exist under the Act.
 - The Act **does not prohibit** state or local governments from **addressing nuisances** that occur on residential properties.
 - The Act does prohibit state or local governments from addressing nuisances in a manner that discriminates because of race, color, national origin, religion, sex, disability, or familial status.
 - The Guidance focuses on victims of domestic violence, but the principles apply equally to other crime victims and others who require police or emergency services.

Fair Housing Act Standards and Nuisance Ordinances

- **Fair Housing Act Coverage Includes:**
 - Enactment or enforcement of nuisance or crime-free housing ordinances and policies or practices related to the enforcement of these ordinances.
 - State and local governments, including law enforcement agencies, public and private housing providers, public housing agencies and other government-assisted housing.
 - Applies to rental and owner-occupied housing.
 - Guidance focuses on **rental housing**.

Fair Housing Act Standards and Nuisance Ordinances

- **What Are Nuisance Ordinances?**
 - Label conduct associated with a property—whether by resident, guest, other person—a “nuisance” and **require or incentivize the landlord &/or homeowner to end the nuisance under threat of various penalties.**
 - State and local governments use a variety of terms to describe the types of ordinances addressed by the guidance, including: “nuisance,” “chronic nuisance,” “crime-free,” or “disorderly behavior.”
 - Hundreds of nuisance ordinances across states and localities.

Fair Housing Act Standards and Nuisance Ordinances

- **Crime-free Ordinances and Lease Addenda**
 - Ordinances require or encourage housing providers to evict tenants because of alleged criminal activity.
 - Regardless of whether tenant was victim of criminal activity, including domestic violence.
 - Regardless of where the alleged criminal activity occurred.
 - Government policies or practices may also encourage or incentivize housing providers to use lease provisions that permit eviction based on an arrest or even on assertions of criminal activity.

Fair Housing Act Standards and Nuisance Ordinances

- **Guidance focuses on Domestic Violence Victims**
 - Domestic Violence is **not a protected class** under the Act
 - But domestic violence victims may be protected because of their sex or another protected characteristic.
 - Some ordinances define domestic violence incidents as nuisances **regardless of whether resident is victim or perpetrator.**
 - In others, domestic violence incidents not specifically defined as nuisances, but may still be covered because the **ordinances broadly define nuisance activity** as violation of any federal, state or local law, or conduct such as:
 - **disturbing the peace, excessive noise, disorderly conduct, or calls for emergency services that exceed a specified number within a given timeframe.**

Fair Housing Act Standards and Nuisance Ordinances

- **Two Methods of Proof**

Discriminatory Effects

Locality violates the Act if nuisance or crime-free housing ordinance or related policies or practices have an unjustified discriminatory effect, even when the locality had no intent to discriminate.

Assessed under a three-step, burden-shifting standard requiring a fact-specific analysis.

Disparate Treatment

Locality intentionally violates the Act when it:

- Enacts a nuisance ordinance or crime-free housing ordinance directed at protected class(es).
- Selectively enforces a nuisance or crime-free housing ordinance against protected class(es).

Fair Housing Act Standards and Nuisance Ordinances

- **Discriminatory Effects Liability:**

Data can play an important role in determining whether or not a nuisance ordinance or crime free ordinance violates the Fair Housing Act.

HUD will use state or local statistics to the greatest extent feasible.

National statistics may be relevant and appropriate to use.

On average, women comprise 80% of all domestic violence victims each year, which may provide grounds for HUD to investigate allegations that the adverse effects of a nuisance ordinance fall more heavily on women.

Other evidence: resident data and files, demographic data, city and police records including data on enforcement of nuisance or crime-free ordinances, citations, correspondence between housing providers and city officials, and court records regarding nuisance abatement.

Fair Housing Act Standards and Nuisance Ordinances

- **Discriminatory Effects Liability:**

Local governments will have a difficult burden defending a nuisance ordinance or crime free ordinance if the ordinance:

Cuts off access to emergency services for those in grave need of such services, including victims of domestic violence or other crimes, potentially endangering their lives, safety and security.

Requires or encourages housing providers to evict victims of domestic violence or other crimes or others in need of emergency services.

Fair Housing Act Standards and Nuisance Ordinances

- What should you do if you have a nuisance ordinance or crime free housing ordinance of the kind discussed in this webinar?

Alert appropriate officials that the ordinance, or enforcement of the ordinance, could result in liability.

Provide a copy of HUD's guidance to your local government's attorney.

If asked for recommendations on how to change this type of ordinance, recommend that the ordinance be repealed. The Fair Housing Act provides many protections, and a carve-out for domestic violence victims is unlikely to eliminate potential liability for violations.

While the ordinance is still on the books, be very careful to avoid enforcing the ordinance against victims of domestic violence and other crimes. Causing someone to be evicted, or face the threat of eviction, may cause your agency to be liable for Fair Housing Act violations.

Keeping Housing Fair and Safe Using Data

Chief Mark Talbot

Leadership principles:



- Always begin with purpose
- Focus on achieving specific policing objectives
- First, do no harm

POLICING 101: basic police functions

1. To prevent and control conduct widely recognized as threatening to life and property.
2. To aid individuals who are in danger of physical harm, such as the victim of a criminal attack.
3. To protect constitutional guarantees, such as the right of free speech and assembly.
4. To facilitate the movement of people and vehicles.
5. To assist those who cannot care for themselves: the intoxicated, the addicted, the mentally ill, the physically disabled, the old, and the young.
6. To resolve conflict, whether it be between individuals, groups of individuals, or individuals and their government.
7. To identify problems that have the potential for becoming more serious problems for the individual citizen, for the police, or for government.
8. To create and maintain a feeling of security in the community.

*Goldstein, H. (1977) *Policing a free society*. Cambridge, MA: HarperCollins Publishers.

*"Forgetting our objectives is
the most frequent act of
stupidity"*

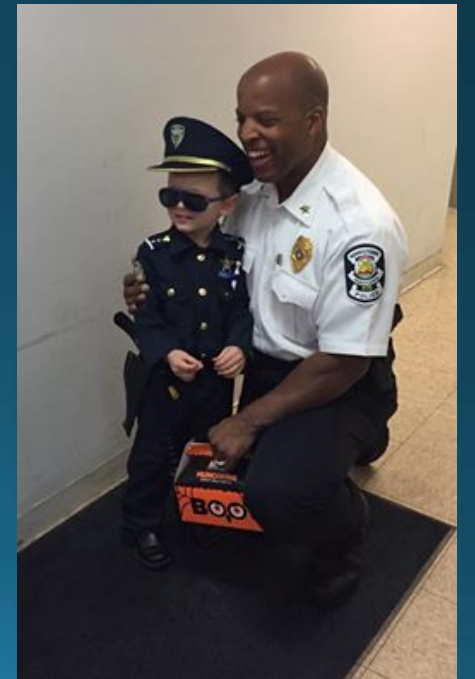
Friedrich Nietzsche



Community Policing

Community policing is a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem solving techniques, to proactively address the immediate conditions that give rise to public safety issues, such as crime, social disorder, and fear of crime.

https://cops.usdoj.gov/html/dispatch/january_2008/nugget.html



Community policing: components

- **Problem solving:** the process of engaging in the proactive and systematic examination of identified problems to develop and evaluate effective responses
- **Collaboration:** collaborative partnerships between the law enforcement agency and the individuals and organizations they serve to develop solutions to problems and increase trust in police
- **Decentralization:** the process of redistributing or dispersing functions, powers, people or things away from a central location or authority
- **Transformation:** the alignment of organizational management, structure, personnel, and information systems to support community partnerships and proactive problem solving

<https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf>

Our approach:



- Rigorously review data for concentrations of problems
- Identify crime and QOL hotspots
- Build positive connections in those neighborhoods
- Partner with other agencies
- Lead neighborhoods to a greater quality of life

Why use data?



- Without data you have stories
- Data allows you to identify concentrations of problems
- Data allows you to assess your level of fairness and effectiveness