



Don't Force Domestic Violence and Other Crime Victims to Choose Between Safety and Housing—Preserve the Right to Call 911

(A.2919 Lavine/S.405 Robach)

Joint Memorandum of Support from ACLU Women's Rights Project, Empire Justice Center, and the New York Coalition Against Domestic Violence

A.2919 (Lavine)/S.405 (Robach) will ensure that all New Yorkers can request lifesaving emergency aid in response to threats and violence without fearing they will be doubly victimized by housing loss because their call for help triggered a local nuisance ordinance that is unfairly applied against crime victims. Empire Justice Center, ACLU Women's Rights Project, and New York State Coalition Against Domestic Violence strongly support this bill and urge its immediate passage.

No victim of domestic violence or other person threatened with a crime in New York should be afraid to access police or emergency assistance because doing so may jeopardize their housing. Nevertheless, numerous municipalities throughout New York have passed local laws, so called "nuisance ordinances," that have this precise result. While these local laws often aim to address drug, weapon, disorderly conduct, and property crimes and ensure the quiet enjoyment of residents, they are frequently overbroad and, instead, have a chilling effect on the reporting of crime by crime victims—particularly victims of domestic violence—that undermines public safety.

These laws penalize individual properties when police respond to a home a certain number of times or for certain specified crimes or conduct. Generally, these ordinances are applied against a property *regardless* of whether the residential occupant was a victim of the cited crime or accessed police assistance out of reasonable, legitimate fear or concern. The ordinances then impose penalties, such as fines, property closure, and revocation of rental permits, which require or pressure landlords to evict tenants at issue.

Most of the ordinances our organizations reviewed across the state have no carve-outs or exemptions for crime victims or victims of domestic violence. Even more alarmingly, many of these ordinances are actually triggered by one or more enumerated family offenses which are the very crimes the legislature has designated to grant civil and criminal courts jurisdiction to provide protections under Article 8 of the Family Court Act and Criminal Procedure Law §§530.11 and 530.12 and other critical relief. Unsurprisingly, victims of domestic violence have been particularly negatively impacted by these laws and several have commenced federal lawsuits against the municipalities in which they live.ⁱ A study by the ACLU and the Social Science Research Council likewise found that domestic violence made up the single largest category of nuisance activity under local laws in Binghamton and Fulton, NY.ⁱⁱ Not unlike the New York experience, a Harvard study found that a nuisance ordinance in Milwaukee also punished victims of domestic violence far more frequently than the offenses it was intended to target, such as

those related to drugs, property damage, and weapons.ⁱⁱⁱ In the federal case from East Rochester, the domestic violence victim reported that the local nuisance ordinance actually empowered her abuser and allowed him to harass and stalk her with impunity because if she sought police assistance a third time, the nuisance ordinance in her community required she be removed from her rental unit simply because she called for help.^{iv} ***Until New York's Civil Rights Law is amended, domestic violence and other crime victims in communities with such ordinances will reasonably feel they have no choice but to endure further abuse, threats, stalking, or violence without police intervention where the likely alternative is eviction, housing insecurity, and risk of homelessness that result from a nuisance citation.***

Enforcement of nuisance ordinances against crime victims and victims of domestic violence may also violate a number of Constitutional and federal protections. The First Amendment protects communications to law enforcement agencies.^v Nuisance laws may thus chill, and outright burden, First Amendment rights when they impose or threaten penalties for tenants who need police aid. Enforcement of nuisance ordinances may violate Fourteenth Amendment due process protections by depriving a property owner or tenant of their property without adequate process.^{vi} These ordinances can also run afoul of the federal Fair Housing Act's prohibition of housing discrimination on the basis of sex in two ways.^{vii} Enforcement of an ordinance can result in a disparate impact on victims of domestic violence, the vast majority of whom are women. An ordinance can also intentionally discriminate if it specifically includes domestic violence as a nuisance activity or is based on gender bias. The Department of Housing and Urban Development issued guidance in September 2016, describing how nuisance ordinances can violate the Fair Housing Act and explaining that it would be difficult for a local government to justify a law that cuts off access to emergency services or encourages eviction.^{viii} HUD also has pursued action in two different states against municipalities where their local ordinances unlawfully discriminate against victims of domestic violence.^{ix} Finally, nuisance ordinances violate the federal Violence Against Women Act when they lead landlords and agents of government subsidized housing to evict a tenant based on her status as a victim of domestic violence.^x

The problem of nuisance ordinances is national in scope. Several states have already responded by enacting statutes that expressly recognize an individual's right to request police and emergency services or prohibit landlords or municipalities from imposing penalties or otherwise limiting the exercise of this right.^{xi} Most recently, Iowa and Pennsylvania lawmakers responded to widespread attention on the perverse consequences of these ordinances and voted unanimously to protect this right for all victims of crime and persons in an emergency.^{xii} We urge New York to quickly do the same by amending our own Civil Rights Law and add this new Article 9.

Key Reasons Why this Legislation is Critical:

- The bill provides that any person who is a victim of domestic violence or who otherwise believes that they are in need of police or emergency assistance has the right to request such assistance without penalty or reprisal from a local nuisance ordinance.
- It provides that municipalities may not impose penalties on a property owner or tenant on the basis of a residential occupant's exercise of his or her right to seek or utilize police or emergency aid. It prohibits landlords from taking negative housing actions against individuals for conduct protected by this new Article.
- Where a municipality seeks to improperly enforce a nuisance ordinance against a domestic violence or crime victim, this bill requires notice to such tenant or occupant, as well as the opportunity to contest the enforcement action and remedies for violations.

- The bill improves public safety and housing security for New York communities while clarifying the law for landlords and municipalities to help them avoid liability.
- This bill *will not* stop municipalities from addressing other drug, weapon, and property crimes directly through penal, housing, and zoning laws. Instead, it ensures that such efforts do not inadvertently penalize individuals for violence or other crimes perpetrated against them.
- Finally, this bill *will not* stop municipalities or landlords from penalizing individuals who perpetrate criminal activity or a breach of lease that is independent of a request by a victim of violence for emergency assistance. It authorizes a landlord or court to allow a victim to remain in occupancy but remove the perpetrator of violence through lease bifurcation.

Nobody should be forced to choose between their safety and their housing. Empire Justice Center, American Civil Liberties Union, and New York State Coalition Against Domestic Violence strongly believe that this legislation strikes a critical balance between the safety needs of victims, the duty of landlords to maintain order in their properties, and the rights of municipalities to address neighborhood welfare. The reform proposed in this bill is absolutely necessary for domestic violence and crime victims statewide and we strongly advocate for its passage.

BILL STATUS: A.2919 was introduced in the Assembly on January 23, 2017. It has previously passed the Assembly on a unanimous vote. Senator Robach introduced a same-as bill (S.405) on January 4th, which is currently in the Senate Codes Committee.

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ⁱ See Second Amended Complaint, *Grape v. Town/Village of East Rochester*, No. 07 CV 6075 CJS (F) (W.D.N.Y. July 6, 2007); Complaint, *Simmons v. City of Rochester*, No. 6:12 CV 06705 CJS (W.D.N.Y. Dec. 12, 2012); First Amended Complaint, *Peeso v. City of*

Hornell, No. 6:11-cv-6306 (W.D.N.Y. filed June 17, 2011). Cases were also filed in Pennsylvania and Arizona and settled favorably for the plaintiffs, with repeal of the ordinances and damages and attorneys' fees paid to the survivors. See Second Amended Complaint, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. October 10, 2013); Release and Settlement Agreement, *Briggs*, No. 2:13-cv-02191-ER (signed Sept. 18, 2014), https://www.aclu.org/sites/default/files/assets/2014.09.18_-_release_and_settlement_agreement_-_fully_executed.pdf; Amended Complaint, *Markham v. City of Surprise*, No. 2:15-cv-01696-SRB (D. Ariz. Sept. 21, 2015); Release and Settlement Agreement, *Markham*, No. 2:15-cv-01696-SRB (signed Mar. 21, 2016), <https://www.aclu.org/legal-document/nancy-markham-v-city-surprise-settlement-agreement-mar-21-2016>.

ⁱⁱ ACLU Women's Rights Project & Social Science Research Council, *Silenced: How Nuisance Ordinances Punish Crime Victims in New York* (2015).

ⁱⁱⁱ Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 Am. Soc. Rev. 117, 131-132 (2012).

^{iv} Second Amended Complaint at 7-8, *Grape v. Town/Village of East Rochester*, No. 07 CV 6075 CJS (F) (W.D.N.Y. July 6, 2007).

^v See *California Motor Transport Co. v. Trucking Unlimited*, 405 U.S. 508 (1972); *McDonald v. Smith*, 472 U.S. 479, 482 (1985); *Jackson v. New York 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., Okla.*, 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 "[f]iling a criminal complaint with law enforcement constitutes and exercise of 1st Amendment right to petition" . . . even an "attempt to report a criminal offense is protected by the First Amendment.").

^{vi} *Mariemont Apartment Assn. v. Village 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).

^{vii} 42 U.S.C. §§ 3604(a),(b); See *Bouley v. Young-Sabourin* 394 F. Supp. 2d 675, 678 (D. Vt. 2005) (allowing domestic violence victim's Fair Housing Act claim, which was based on landlord's eviction of her, to proceed to trial); Sara K. Pratt, U.S. Dep't of Hous. & Urban Dev., Office of Fair Hous. & Equal Opportunity, *Assessing Claims of Housing Discrimination Against Victims of Domestic Violence Under the Fair Housing Act and the Violence Against Women Act* (2011) (describing how survivors can bring claims based on unequal treatment and disparate impact of policies on domestic violence victims, the large majority of whom are women).

^{viii} U.S. Dep't of Hous. & Urban Dev., Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services 9 (Sept. 13, 2016), <http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>.

^{ix} Housing Discrimination Complaint, *Assistant Secretary for Fair Housing & Equal Opportunity v. Borough of Norristown, PA*, No. 03-13-0277-8 (Dep't of Hous. & Urban Dev. June 5, 2013); 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); Barbara Tetreault, *City Agrees to Amend Ordinance to Exempt Domestic Violence Victims*, Berlin Daily Sun, Jan. 28, 2015 available at http://www.berlindailysun.com/index.php?option=com_content&view=article&id=52563:city-agreed-to-amend-ordinance-to-exempt-domestic-violence-victims&catid=103:local-news&Itemid=442.

^x 42 U.S.C.A. § 14043e-11(b)(1).

^{xi} Minn. Stat. § 504B.205, subdivision 3; Alaska Stat. § 29.35.125(a)(DV-specific); Wis. Stat. Ann, § 66.0627(7) (DV-specific); Minn. Stat. § 504B.205, subdivision 2, (a); D.C. Code § 2-1402.21(f)(C)(DV-specific); Tex. Prop. Code Ann. § 92.015(a)(DV-specific).

^{xii} 53 Pa. Cons. Stat. Ann. § 304; Iowa Code §§ 562A.27B; 562B.25B.