



Minnesota Coalition
for Battered Women

ADVOCACY TOOLKIT

“Crime-Free” Public Nuisance Ordinances, Domestic Abuse-Related 911 Calls & Housing Stability

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PURPOSE OF THIS TOOLKIT

To provide advocates with tools to advocate for ordinances that allow victims of domestic abuse access to call 911 without losing their housing. This packet will also provide information on how city ordinances can be constructed to promote safety and comply with state and federal law.



Advocacy Toolkit:

Public Nuisance Ordinances, Domestic Abuse-related 911 Calls & Housing Stability (3.4.2015)

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What is a crime-free public nuisance ordinance in Minnesota?

A “public nuisance” means “a nuisance that causes harm or annoyance to persons in a particular locality in violation of their rights as members of the community”.¹ Other examples of “public nuisance” may include loud noises, offensive odors, or barking dogs.

An “ordinance” is “a law set forth by a governmental authority; *specifically*: a municipal regulation”.²

A crime-free ordinance requires that anytime a certain number of 911 or emergency calls are made within a year to a residence, the property is deemed by the city to be a public nuisance and penalties against the landlord or the tenant can be enforced.

Why are cities enacting crime-free ordinances?

*Across the U.S., a growing number of cities are adopting chronic nuisance ordinances, or crime-free ordinances [public nuisance], that penalize landlords and tenants when the police are called too many times to the [...residences]. Proponents argue that these ordinances are necessary to deter crime and recoup costs. Yet there is no evidence that this is the case. There is evidence, however, that these ordinances can cause real harm to survivors of domestic violence, people with mental disabilities, and people of color.*³

Municipalities establish crime free ordinances to reduce the number of disorderly behavior calls requiring police response. Municipalities argue that it is necessary to establish guidelines to reduce the number of recurring calls from specific areas in order to make communities more livable, streamline city resources to better service the broader community, and defray costs of law enforcement responses. By penalizing citizens for “nuisance” behavior, municipalities hope to be compensated for “overuse” of services in one area.

¹ Webster’s Dictionary

² Webster’s Dictionary

³ “Chronic Nuisance and Crime Free Ordinances: Endangering the Right of Domestic Violence Survivors to Seek Police Assistance.” (2014) ACLU. https://www.aclu.org/sites/default/files/assets/nuisance_ordinance_issue_summary-final_o.pdf. (Last accessed 03/04/2015)

Generally, this is how crime-free public nuisance ordinances work: when a certain number of 911 calls are made by a property within a year (usually three), these calls are considered by the city to be an “overuse” of local public services. City ordinances then label that property as a nuisance. Landlords are typically cited and instructed to “abate the nuisance” (i.e., make plans to stop the nuisance), evict the tenants, or face penalties. According to advocate reports, these penalties include fines and even the loss of rental licenses. Landlords typically respond by charging or evicting tenants to avoid further action from the municipality. In most cases, these laws apply regardless of whether a resident was a victim.

What are the problems with crime free ordinances that penalize domestic abuse related 911 calls?

For survivors of domestic violence, housing security and access to police assistance can be essential to living free from abuse. However, the security of domestic violence victims is undermined by public nuisance ordinances that punish landlords and tenants for calling 911. These ordinances interfere with victims’ ability to access 911 emergency services and can threaten victims’ housing if 911 is called.

Certain public ordinances punish tenants and their landlords for requesting police assistance and encourage landlords to evict tenants if the police are called to a property three times in four months for disorderly behavior. In some municipalities, there is no distinction between a domestic violence call for disorderly behavior made by a neighbor, for example, and a disorderly behavior call in general (such as a loud party at a residence). Some of these cities have interpreted this language to apply to cases of domestic violence. The key issue that arises, therefore, is the difference between “disorderly behavior” and “domestic violence”. Disorderly behavior involves actions which disturb the peace of the community, while domestic violence involves criminal violence towards another individual which affects the safety of another person. Since law enforcement in some jurisdictions charge incidents of domestic abuse as incidents of disorderly conduct, cities may be punishing landlords and tenants for disorderly conduct when it is really another crime altogether.



Why are certain crime free ordinances a violation of Minnesota Statute & Federal Law?

Local ordinances that cause landlords to punish tenants for calling 911 for domestic abuse or “any other conduct” are in violation of Minnesota Statute, and may potentially violate certain federal laws.⁴

- **Minnesota Statute**

- **Landlords** cannot penalize or evict **tenants** for calling police/emergency assistance for domestic abuse or any other conduct (Minn. Stat. 504B.205, subd. 2);⁵ and
- **Municipalities** cannot use local ordinances/rules to require **landlords** to evict tenants after a certain number of calls in response to domestic abuse, or penalize or charge fees to landlord for 911 calls related to domestic abuse or any other conduct (Minn. Stat. 504B.205, subd. 3).

- **Federal Statute and Case Law**

- The **Federal Fair Housing Act (FHA)**⁶ regulates private and public housing and states housing providers cannot discriminate against certain protected classes (race, sex, etc.). Some advocates have argued that housing discrimination against survivors constitutes sex discrimination; therefore, a case could be made that crime free public nuisance ordinances that penalize domestic abuse victims, discriminate against women under the FHA because the majority of domestic violence survivors are women.⁷
- In *Briggs vs. Norristown*, “the city of Norristown voted to repeal a municipal ordinance [that...] encouraged landlords to evict tenants when the police are called to a property three times in four months for ‘disorderly behavior,’ including for incidents of domestic violence.”⁸ “The American Civil Liberties Union, [...] filed a federal lawsuit challenging an unconstitutional municipal ordinance that

⁴ Despite searches through Westlaw, Lexis, and the MN Statute Law Library, no relevant case law on the phrase “any other conduct” has been found as of yet.

⁵ **Minn. Stat. 504B.205-RESIDENTIAL TENANT'S RIGHT TO SEEK POLICE AND EMERGENCY ASSISTANCE. Subdivision 1. Definitions.** In this section, “domestic abuse” has the meaning given in section 518B.01, subdivision 2. **Subd. 2. Emergency calls permitted.** (a) A landlord may not: (1) bar or limit a residential tenant's right to call for police or emergency assistance in response to domestic abuse or any other conduct; or (2) impose a penalty on a residential tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct. (b) A residential tenant may not waive and a landlord may not require the residential tenant to waive the residential tenant's right to call for police or emergency assistance. **Subd. 3. Local preemption.** This section preempts any inconsistent local ordinance or rule including, without limitation, any ordinance or rule that: (1) requires an eviction after a specified number of calls by a residential tenant for police or emergency assistance in response to domestic abuse or any other conduct; or (2) provides that calls by a residential tenant for police or emergency assistance in response to domestic abuse or any other conduct may be used to penalize or charge a fee to a landlord. This subdivision shall not otherwise preempt any local ordinance or rule that penalizes a landlord for, or requires a landlord to abate, conduct on the premises that constitutes a nuisance or other disorderly conduct as defined by local ordinance or rule.

⁶ 42 U.S.C. §§ 3601 - 3619.

⁷ “Maintaining Safe and Stable Housing for Domestic Violence Survivors.” (2012) *National Housing Law Project*. pg. 21
<http://www.nhlp.org/files/NHLP%20Domestic%20Violence%20and%20Housing%20Manual%202.pdf> (last visited 11/10/2014)

⁸ “Pennsylvania City Agrees to Repeal Law that Jeopardizes Safety of Domestic Violence Survivors.” (2014). *ACLU*.
<https://www.aclu.org/womens-rights/pennsylvania-city-agrees-repeal-law-jeopardizes-safety-domestic-violence-survivors> (last visited 11/10/2014)



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punishes innocent tenants and their landlords for requesting police assistance. The challenge was filed on behalf of a domestic violence victim who faced eviction from her home after requesting police protection from an abusive ex-boyfriend.”⁹ This lawsuit on behalf of the victim resulted in a \$495,000 settlement in addition to the ordinance repeal.

- The **Violence Against Women Act (VAWA)**¹⁰ provides legal protections for victims of domestic violence, sexual assault, dating violence and stalking, including prohibiting eviction or denial of housing to domestic violence victims in publically funded properties. Publicly funded housing includes public housing authority, Section 8 housing, income tax credit properties. The reason for the eviction or denial of housing must be directly related to domestic violence, sexual assault, dating violence and stalking.¹¹

What if law enforcement labels a residential tenant’s domestic abuse 911 call a “disorderly conduct” call?

Even if law enforcement labels a tenant’s domestic abuse 911 call as a disorderly conduct call (which frequently occurs), municipalities cannot penalize landlords, nor can landlords penalize or evict tenants for “calls by a residential tenant for police or emergency assistance in response to domestic abuse **or any other conduct**” (Minn. Stat. 504B.205).

What if *someone who is not a residential tenant* makes the 911 call about domestic abuse or other conduct – would that also qualify as a call that could not be labeled a “public nuisance”?

Minn. Stat. **504B.205** is silent on the issue of non-residential tenants making the call. However, the Minnesota Human Rights Act¹² and the Federal Fair Housing Act¹³ (barring discrimination of protected classes) and the Violence Against Women Act¹⁴ (barring eviction directly related to domestic abuse for properties receiving certain Federal funds) could be helpful. They may be used to argue that **victims of domestic violence who are tenants should *not* be punished for repeated calls by *anyone* (neighbors or guests) for police or emergency assistance in certain cases**. For example, if a call is made to request a response to domestic abuse, is mislabeled as disorderly conduct and then later proven to truly be domestic

⁹ <https://www.aclu.org/womens-rights/briggs-v-borough-norristown-et-al> (last visited 03/05/2015)

¹⁰ 42 U.S.C. §14043 et. seq.

¹¹ “The Violence Against Women Act Reauthorization Of 2013: Housing Protections (Section 601).” (2013). *NNEDV*. <http://nnedv.org/pages/3853-the-violence-against-women-act-reauthorization-of-2013-housing-protections-section-601.html> (last visited 11/10/2014)

¹² Minn. Stat. 363A

¹³ 42 U.S.C. §§ 3601 et. seq.

¹⁴ 42 U.S.C. §14043 et. seq.



abuse, it could be argued that the victim should **not** be punished. It could be further argued that punishing domestic abuse victims for calls to 911 could result in disparate impact of discrimination of women, given that the majority of domestic abuse victims are women.

What if no-one is calling the police or emergency services for domestic abuse, but the municipality or landlord labels the tenant as a “public nuisance” because they overhear “loud noises” not labeled disorderly conduct, or other conduct directly related to domestic abuse?

An argument can be made that any policy that labels domestic violence as a public nuisance and then penalizes domestic violence victims through fines and evictions is unlawful according to the Minnesota Human Rights Act,¹⁵ the Federal Fair Housing Act¹⁶ (barring discrimination of protected classes), and the Violence Against Women Act¹⁷ (barring eviction directly related to domestic abuse for properties receiving certain Federal funds). For example, in *Briggs vs. Norristown*, a tenant who was airlifted to a hospital after her boyfriend stabbed her did not call 911. Rather, the neighbors called due to “loud noises.”¹⁸

What do you do if your city has a crime free ordinance which is resulting in fines or evictions to a domestic violence victim?

1. Get a copy of the city ordinances for your municipality.
2. Determine whether the city crime free public nuisance ordinance allows for domestic violence victims to be exempt from the public nuisance ordinance.
3. If there is a problem with the underlying ordinance, approach the city about changing the ordinance by using the tools and information provided within this packet.
4. If there is a problem with law enforcement’s interpretation of the ordinance, approach law enforcement officials.
5. Track what is happening within your community.
6. Let MCBW know if advocate strategies aren’t working and we can assist.

¹⁵ Minn. Stat. 363A

¹⁶ 42 U.S.C. §§ 3601 - 3619.

¹⁷ 42 U.S.C. §14043 et. seq.

¹⁸ Id at 8.

EXAMPLES OF ORDINANCES THAT COMPLY WITH THE LAW

An "emergency call" within the definition of Minnesota Statutes Section 609.78, Subd. 3¹⁹ will **not** be considered an instance of disorderly behavior if the call is a result of a tenant or guest of a tenant taking action to seek emergency assistance that is protected by Minnesota State Statute 504B.205;

The following circumstances shall be deemed to be exceptions to the definition of disorderly behavior:

(A) An "emergency call" within the definition of Minnesota Statutes Section 609.78 and Subd.3, will not be considered an instance of disorderly behavior when the victim and suspect are "family or household members" as defined in the Domestic Abuse Act, Minnesota Statutes, Section 518B 01, Subd. 2 (b) and there exists a report of domestic abuse as defined in the Domestic Abuse Act, Minnesota Statutes Section 518B 01, Subd. 2 (a);

(B) An "emergency call" within the definition of Minnesota Statutes Section 609.78, Subd. 3, will not be considered an instance of disorderly behavior if the call is a result of a tenant or guest of a tenant taking action to seek emergency assistance that is protected by Minnesota State Statute 504B.205;

EXAMPLES OF ORDINANCES THAT ARE AMBIGUOUS WHERE MISINTERPRETATION CAN RESULT IN NON- COMPLIANCE WITH THE LAW

Ordinances which do not offer clear language relating to protection for victims of domestic violence and are typically general and confusing for law enforcement and the public. This lack of clarity can threaten the safety of victims of domestic violence by inconsistent and unlawful interpretation of city policies. Examples of "general" or ambiguous ordinances are found below:

(3) Any conduct, activity, or condition constituting disorderly conduct under Chapter 609 of the Minnesota Statutes.

Or

(a)General prohibition. No person shall make or cause to be made any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person or precludes their enjoyment of property or affects their property value. This general prohibition is not limited by the specific restrictions of this section.

¹⁹ Minn Stat 609.78 Subd. 3. **EMERGENCY TELEPHONE CALLS AND COMMUNICATIONS:** Definition. (a) Except as provided in paragraph (b), for purposes of this section, "emergency call" means: (1) a 911 call; (2) any call for emergency medical or ambulance service; or (3) any call for assistance from a police or fire department or for other assistance needed in an emergency to avoid serious harm to person or property.



TALKING POINTS TO DISTRIBUTE TO
LOCAL GOVERNMENT COUNCILS/ATTORNEYS & LAW ENFORCEMENT



PROBLEM:

- Unlawful public nuisance ordinances are penalizing landlords & tenants for dv-related 911 calls, or law enforcement interpretation of these ordinance are leading to penalizing of landlords & tenants for these same calls.

CURRENT LAW:

- **Victim & Public Safety Depend on Access to Housing & 911**
 - For survivors of domestic violence, housing security and access to police assistance can be essential to their safety. Local public nuisance ordinances that penalize landlords and domestic abuse victims for calling 911 endanger victim and public safety.
- **Minnesota Law Prohibits Crime Free Public Nuisance Ordinances that Penalize Emergency Calls for Domestic Abuse**
 - Prohibits municipalities from penalizing or charging fees to landlords for calls to police or emergency assistance in response to domestic abuse or any other conduct, may not be used to penalize or charge fees to a landlord; and states that any ordinances that do so are null and void (Minn. Stat. 504B.205, subd. 3).
 - Prohibits landlords from penalizing or charging fees to tenants for calls to police or emergency assistance in response to domestic abuse or any other conduct (Minn. Stat. 504B.205, subd. 2).
- **Noncompliance with Federal Law = Liability for Localities and Landlords**
 - According to the Fair Housing Act, domestic abuse related public nuisance ordinances may not discriminate against women under the Act because the majority of domestic violence survivors are women.
 - The Violence Against Women Act prohibits private and public Landlords for evicting or denying housing for reasons directly related to domestic abuse. This applies to landlords who have low income tax properties, or receive tenant and property based section 8 recipients, among other funding streams.

SOLUTION:

- City ordinances should explicitly state that victims of domestic violence and landlords are exempt from enforceable public nuisance actions for domestic abuse and any other conduct.
- Local policies and procedures should be clearly defined with exclusionary language for victims of domestic violence.
- Sample ordinances that comply with the law, such as the following:
 - An "emergency call" within the definition of Minnesota Statutes Section 609.78, Subd. 3 will not be considered an instance of disorderly behavior if the call is a result of a tenant or guest of a tenant taking action to seek emergency assistance that is protected by Minnesota State Statute 504B.205; An "emergency call" within the definition of Minnesota Statutes Section 609.78 and Subd.3, will not be considered an instance of disorderly behavior when the victim and suspect are "family or household members" as defined in the Domestic Abuse Act, Minnesota Statutes, Section 518B 01, Subd. 2 (b) and there exists a report of domestic abuse as defined in the Domestic Abuse Act, Minnesota Statutes Section 518B 01, Subd. 2 (a); (B) An "emergency call" within the definition of Minnesota Statutes Section 609.78, Subd. 3, will not be considered an instance of disorderly behavior if the call is a result of a tenant or guest of a tenant taking action to seek emergency assistance that is protected by Minnesota State Statute 504B.205; (b) Guest of the tenant. Any person present at the licensed premise by either the express or implied consent of a tenant.



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