

The Other War at Home: Chronic Nuisance Laws and the Revictimization of Survivors of Domestic Violence

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This Note discusses the unlikely intersection of local chronic nuisance ordinances and domestic violence. It posits that chronic nuisance law grants law enforcement, or third parties acting in a police capacity, the ability to revictimize survivors of domestic violence, disproportionately impacting women of color and poor women. Using the example of Lakisha Briggs, a Black woman who faced the threat of eviction from her home after her ex-boyfriend attacked her and her neighbor contacted law enforcement for assistance, the Note discusses the prevalence of these ordinances and their impact. Part I sets out by defining both domestic violence and chronic nuisance law, explaining how chronic nuisance law was revitalized as a policing tool beginning in the 1980s during the War on Drugs. Part II discusses the rationales behind chronic nuisance ordinances and their impact on survivors of domestic violence. Part III lays out strategies that advocates can use to combat the use of chronic nuisance ordinances against survivors of domestic violence. By considering the impacts of chronic nuisance law on survivors of domestic violence, antiviolence advocates can better acknowledge the impact of police violence against survivors, particularly women of color and poor women, and create strategies to combat it.

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INTRODUCTION

On June 23, 2012, Lakisha Briggs’s former boyfriend refused to leave her Norristown, Pennsylvania, home and threatened to kill her.¹ He bit her, struck her head with a glass ashtray, and stabbed her in the head and neck with broken glass shards.² Bleeding profusely, Ms. Briggs did not call the police. When a neighbor tried to intervene, she begged her neighbor not to call the police either. The neighbor ignored her pleas, dialed 911, and the police eventually arrived at the home. Ms. Briggs’s injuries were so severe that she was flown by helicopter to a trauma unit for treatment.³ The police had been to Ms. Briggs’s house many times during the first half of 2012, both because of domestic violence and for other reasons, and they had warned her about the possibility of eviction after getting a “third strike,” or third emergency call.⁴ Shortly after Ms. Briggs returned home from the hospital, three days after she was attacked,

1. Verified First Amended Complaint at 14, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. Apr. 29, 2013).

2. *Id.* at 15.

3. *Id.*

4. *Id.* at 12.

municipal officials told her landlord that his rental license had been revoked and he was required to give Ms. Briggs ten days to leave the home.⁵ Although the city backed down on the eviction threat once the American Civil Liberties Union (ACLU) began to advocate for Ms. Briggs, she ultimately moved to a new residence.⁶

Ms. Briggs's story demonstrates the ways in which violence against women, particularly violence against women of color and poor women,⁷ is directly linked to policing practices, including both actions by law enforcement and practices that have been outsourced to private parties.⁸ Ms. Briggs's landlord was ordered to evict her based on a municipal chronic nuisance law. Norristown's ordinance stated that landlords have a "responsibility" to make sure that their tenants do not engage in "disorderly behavior."⁹ Although the ordinance may seem reasonable at first glance, the terms in "disorderly behavior" are vaguely defined, leaving it to the discretion of the Norristown Chief of Police to determine whether a call to law enforcement occurred because of "disorderly behavior" or for some other reason.¹⁰ In fact, the ordinance was so broad that the chief of police considered the abuse experienced by Ms. Briggs to be "disorderly behavior," leading to her "third strike" and the threat of eviction.¹¹

After the ACLU began to negotiate with the Norristown municipal government, the city created a new ordinance with similar shortcomings.¹² In response, the ACLU sued the borough on Ms. Briggs's behalf, claiming that Norristown violated Ms. Briggs's First Amendment right to petition the government, Fourth Amendment protection against unreasonable seizure, and Fourteenth Amendment rights to due process and equal protection, as well as their equivalents under the Pennsylvania Constitution.¹³ Additionally, the ACLU claimed that the ordinance violated the Violence Against Women Act

5. *Id.* at 14–16.

6. Erik Eckholm, *Victims' Dilemma: 911 Calls Can Bring Eviction*, N.Y. TIMES, Aug. 17, 2013, http://www.nytimes.com/2013/08/17/us/victims-dilemma-911-calls-can-bring-eviction.html?pagewanted=all&_r=0.

7. Ms. Briggs's story is her own, but it is also illustrative of some of the effects of chronic nuisance law and the delegation of policing responsibilities to third parties, such as landlords. Of course, not all survivors of domestic violence or police violence experience it in the same way.

8. For even more extreme examples of law enforcement violence against Black women, consider the many examples of unarmed Black women killed by police. See Khadijah Costley White, *Black and Unarmed: Women and Girls Without Weapons Killed By Law Enforcement*, ROLE REBOOT (Aug. 12, 2014), <http://www.rolereboot.org/culture-and-politics/details/2014-08-black-unarmed-women-girls-without-weapons-killed-law-enforcement/>.

9. NORRISTOWN, PA., CODE § 245-3 (2012), available at http://pdf.911dispatch.com.s3.amazonaws.com/norristown_245-3.pdf (titled: "Landlords Responsible for Certain Behavior of Tenants" and referred to herein as the "New Ordinance") (on file with the author).

10. *Id.*

11. Verified First Amended Complaint of Briggs, *supra* note 1, at 10, 12.

12. *Id.* at 19–20.

13. *See id.*

(VAWA) and the Fair Housing Act (FHA), because Ms. Briggs received a federally subsidized Section 8 voucher.¹⁴ Finally, on September 8, 2014, Norristown settled with Ms. Briggs and the ACLU, agreeing to repeal its chronic nuisance ordinance and to refrain from passing another ordinance that would punish tenants or their landlords when the tenants requested emergency services.¹⁵

Lakisha Briggs's story is a troubling example of the impact of a municipal chronic nuisance ordinance. Scholars and advocates have written about how survivors of domestic violence experience homelessness,¹⁶ the difficulties they face finding safe, affordable housing while in the process of separating from their abusers,¹⁷ and about the effect of "one-strike" policies against survivors living in public housing before VAWA was amended in 2006.¹⁸ However, there has been far less focus on how chronic nuisance laws affect survivors, particularly on the different experiences survivors might have depending on their race, social class, or other social position.¹⁹

Municipalities use nuisance law to revictimize survivors of domestic violence, causing survivors to avoid calling the police for fear of being fined or evicted, despite the fact that these ordinances may violate the U.S. Constitution, state constitutions and other state law, and federal laws such as VAWA and the FHA.²⁰ This Note will address the unlikely intersection of chronic nuisance laws and domestic violence. It will explain how these supposedly neutral laws are applied in a way that revictimizes survivors of domestic violence and disproportionately harms not only women generally, but women of color and poor women in particular.

14. *Id.*

15. *Briggs v. Borough of Norristown, et al.*, ACLU, <https://www.aclu.org/womens-rights/briggs-v-borough-norristown-et-al> (updated Sept. 18, 2014).

16. *See, e.g.*, Joan H. Rollins, Renee N. Saris & Ingrid Johnston-Robledo, *Low-Income Women Speak Out About Housing: A High-Stakes Game of Musical Chairs*, 57 J. SOC. ISSUES 277, 280 (2001) ("In a larger study of homeless parents ($N=777$) across several cities in the United States, 22% reported leaving their homes because of domestic violence.").

17. *See, e.g.*, Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 BYU L. REV. 1 (critiquing the legal system's inability to address domestic violence when a survivor and perpetrator live together and explaining how this problem increases housing instability among survivors).

18. *See, e.g.*, Tara M. Vrettos, Note, *Victimizing the Victim: Evicting Domestic Violence Victims from Public Housing Based on the Zero-Tolerance Policy*, 9 CARDOZO WOMEN'S L.J. 97 (2002); Veronica L. Zoltowski, Note, *Zero Tolerance Policies: Fighting Drugs or Punishing Domestic Violence Victims?*, 37 NEW ENG. L. REV. 1231 (2003).

19. A recent exception is Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. REV. 117 (2012) (outlining the impact of Milwaukee's chronic nuisance law).

20. Cari Fais's Note, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 COLUM. L. REV. 1181 (2008), and Amanda K. Gavin's Comment, *Chronic Nuisance Ordinances: Turning Victims of Domestic Violence into "Nuisances" in the Eyes of Municipalities*, 119 PENN. ST. L. REV. 257 (2014), both outline many of these legal strategies but do not answer the vexing question of why these laws are so pervasive despite their potential legal infirmities or explain who is most impacted by these ordinances.

I hope to begin to answer the question of why municipalities persistently enact these laws, despite the fact that they are likely illegal. I hypothesize that this continues to occur, at least in part, because certain survivors are overpoliced due to their race and social class and because of the belief that those who disproportionately utilize government services should be responsible for paying for those services. Chronic nuisance laws also embody problematic, but common, assumptions about domestic violence survivors, such as the idea that survivors are responsible for their own abuse and thus should be financially responsible for the cost of maintaining their safety.

Part I of this Note begins by describing common types of chronic nuisance laws and their history and by defining domestic violence. It then explains how women of color, poor women, and women who do not conform to stereotypical gender roles are at the greatest risk of being penalized by municipal chronic nuisance laws that revictimize survivors of domestic violence through the use of law enforcement or third parties, such as landlords. This makes it more difficult for survivors to find safe and affordable housing, especially if a survivor already experiences housing discrimination based on her race or has limited housing options based on her income. Part II examines ordinances from Norristown, Pennsylvania, and Milwaukee, Wisconsin, to show the rationale behind these ordinances and the impact of these laws in practice. Part III outlines legal strategies that advocates can use to challenge these laws and to proactively ensure that nuisance laws do not penalize survivors of domestic violence. Ultimately, the Note calls for advocates to think more broadly about violence against women, including police violence.

I.

CHRONIC NUISANCE LAWS: AT THE CROSSROADS OF DOMESTIC VIOLENCE, HOUSING INSTABILITY, AND DISCRIMINATION

A. *Historical Background on Chronic Nuisance Laws*

How are factories,²¹ gay bars,²² farms,²³ and medical marijuana dispensaries²⁴ similar to homes where police have responded to emergency

21. See Jenn Harris, *Irwindale Declares Sriracha Factory a Public Nuisance*, L.A. TIMES (Apr. 10, 2014, 11:25 AM), <http://www.latimes.com/food/dailydish/la-dd-irwindale-sriracha-factory-public-nuisance-20140410-story.html>.

22. See Kristin Volk, *Cleveland Sends Cocktails Lounge Nuisance Letter Saying Police Dispatched to Gay Bar 9 Times In Year*, ABC NEWSNET5 CLEVELAND (Sept. 12, 2013, 5:18 AM), <http://www.newsnet5.com/news/local-news/cleveland-metro/cleveland-sends-cocktails-lounge-nuisance-letter-saying-police-dispatched-to-gay-bar-9-times-in-year> (citing a Cleveland, Ohio, gay bar as a nuisance after patrons were attacked in two hate crimes).

23. See Alexander A. Reinert, Note, *The Right to Farm: Hog-Tied and Nuisance-Bound*, 73 N.Y.U. L. REV. 1694 (1998).

24. See Lance Knobel, *Berkeley Council Declares Greenleaf Public Nuisance*, BERKELEYSIDE (June 5, 2013, 2:35 PM), <http://www.berkeleyside.com/2013/06/05/berkeley-council-declares-greenleaf-public-nuisance>.

calls due to domestic violence? All of these disparate places have at one time or another been designated as chronic nuisances under local ordinances. Nuisance law is a well established, but vague, common law doctrine. According to Prosser, “[t]here is general agreement that it is incapable of any exact or comprehensive definition,”²⁵ because it contains a mixture of criminal law, tort law, and property law.

Traditionally, a public nuisance has been defined as “an unreasonable interference with a right common to the general public,”²⁶ and includes circumstances in which:

the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or (b) . . . is proscribed by a statute, ordinance or administrative regulation, or (c) . . . is of a continuing nature or has produced a permanent or long-lasting effect²⁷

Beginning in the twelfth century, the English Crown brought nuisance proceedings as a criminal writ.²⁸ Starting in the sixteenth century, however, individuals were also granted the ability to bring private nuisance suits.²⁹ Today, zoning law, environmental regulations, and other statutory schemes have replaced the use of common law public nuisance claims in many cases,³⁰ but municipalities have also established chronic nuisance laws—turning what was once a quasi-criminal tort into a civil infraction.³¹

Traditionally, nuisance law was based in common law and was used to address interference with others’ property rights due to noxious odors and similar harms.³² In recent years, however, nuisance law has crept into the home, and chronic nuisance laws have penalized landlords and tenants for conduct such as contacting police or other emergency services.³³ These types of public “nuisances,” as opposed to private nuisances, are not torts with individual rights of action, but rather are administrative claims brought by the state.³⁴ Additionally, the rise in public nuisance law has made private landlords

25. PROSSER AND KEETON ON TORTS § 86, at 616 (W. Page Keeton et al. eds., 5th ed. 1984).

26. RESTATEMENT (SECOND) OF TORTS § 821B (1979).

27. *Id.*

28. Richard O. Faulk & John S. Gray, *Alchemy in the Courtroom? The Transmutation of Public Nuisance Litigation*, 2007 MICH. ST. L. REV. 941, 951.

29. *Id.* at 952.

30. *Id.* at 954–55.

31. See Suzanne G. Lieberman, *Drug Dealing and Street Gangs—The New Nuisances: Modernizing Old Theories and Bringing Neighbors Together in the War Against Crime*, 50 WASH. U. J. URB. & CONTEMP. L. 235, 244 (1996).

32. See *id.* at 243; Faulk & Gray, *supra* note 28, at 953.

33. B.A. Glesner, *Landlords as Cops: Tort, Nuisance & Forfeiture Standards Imposing Liability on Landlords for Crime on the Premises*, 42 CASE W. RES. L. REV. 679, 723 (1992); Verified First Amended Complaint of Briggs, *supra* note 1, at 14.

34. Glesner, *supra* note 33, at 728.

liable for the behavior of their tenants, expanding a landlord's duty to protect individual tenants into a duty to police tenant behavior.³⁵

B. How Nuisance Laws Perpetuate and Exacerbate the Effects of Domestic Violence for Poor Women and Women of Color

This Section maps the complex relationship between nuisance laws and domestic violence, a relationship that is in turn shaped by the dynamics of discriminatory housing policies. I will begin by briefly describing domestic violence and how the movement to address it has increasingly relied on the criminal justice system. I will then discuss how poor women and women of color are more vulnerable to both domestic violence and housing instability, problems that chronic nuisance laws only exacerbate.

Domestic violence is defined as “a pattern of abusive behavior . . . that is used by one partner to gain or maintain power and control over another intimate partner.”³⁶ Domestic violence includes not only physical violence, but also sexual, emotional, economic, and psychological abuse,³⁷ and it affects approximately 1.3 million women in the United States each year.³⁸ Although both men and women experience and perpetrate domestic violence, 85 percent of survivors are women,³⁹ and domestic violence stems from “gender inequality and the subordination of women.”⁴⁰

While all women are at risk of experiencing domestic violence, this risk may vary based on a woman's race or social class.⁴¹ Some studies suggest that Black women may be at a greater risk of domestic violence or intimate partner violence than white women; however, these statistics may not be reliable.⁴² Additionally, renters and women with low socioeconomic status may be more vulnerable to domestic violence than homeowners or wealthier women.⁴³

35. *Id.* at 682.

36. *Domestic Violence*, U.S. DEP'T OF JUSTICE, <http://www.justice.gov/ovv/domestic-violence> (last updated July 23, 2014).

37. *Id.*

38. NAT'L COAL. AGAINST DOMESTIC VIOLENCE, *DOMESTIC VIOLENCE FACTS* (2007) (on file with the author).

39. *Id.* This Note will refer to survivors using female pronouns, while acknowledging that people of all genders experience domestic violence.

40. See BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* 67 (2012).

41. See, e.g., Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241, 1259 n.56 (1991) (explaining that statistics on this issue are unreliable: “I would suggest that assertions that the problem is the same across race and class are driven less by actual knowledge about the prevalence of domestic violence in different communities than by advocates' recognition that the image of domestic violence as an issue involving primarily the poor and minorities complicates efforts to mobilize against it.”).

42. RICHIE, *supra* note 40 at 26–27 (explaining that studies that quantify the level of domestic violence across groups may use narrow definitions of intimate partners, focusing on married couples or couples in “marriage-like” relationships and leaving out couples who do not fit this rigid category).

43. Jenifer Knight & Maya Raghu, *Advancing Housing Protections for Victims of Domestic Violence*, *COLO. LAW.*, Sept. 2007, at 77, 80 (citing CALLIE MARIE RENNISON & SARAH WELCHANS,

National studies have shown that “women living in rental housing experience domestic violence at more than three times the rate of women who own their homes; and . . . women with annual household incomes of less than \$7,500 are nearly seven times more likely than women with annual household incomes of more than \$7,500 to experience domestic violence.”⁴⁴ One possible explanation, however, is that “[l]ower socio-economic groups may appear to have a higher occurrence of violence because women in these groups often must rely on more visible means of assistance. For example, victims without financial resources are more likely to need to stay at a shelter, seek free counseling, and request low cost legal advice.”⁴⁵ For wealthier women, domestic violence may just be more hidden. While all women are at risk of experiencing domestic violence, the impact of domestic violence on an individual will be different depending on a woman’s race or socioeconomic position.

Over the past forty years, domestic violence has gone from being viewed as a private matter, to being addressed by families within the confines of the home, to an issue rightly worthy of public attention and necessitating law enforcement or other intervention.⁴⁶ Although women’s rights activists in the 1970s “envisioned that victims would have autonomy in determining when the criminal justice system would intervene in their lives,” today much of the focus of domestic violence law is on prosecution and criminal sanctions rather than victim autonomy or addressing the systemic roots of domestic violence.⁴⁷ For example, domestic violence advocates have called for “mandatory arrest” laws, which require law enforcement to arrest suspected perpetrators of domestic violence, and “no-drop” prosecution policies, which require prosecutors to file criminal charges regardless of the victim’s desires.⁴⁸

This emphasis on the use of the criminal justice system to address domestic violence has meant that women of color, poor women, victims of police violence, and other marginalized groups do not receive the same protections from domestic violence as women who are more privileged based on their race or social class.⁴⁹ At their worst, mandatory arrest laws and other criminal domestic violence laws require the prosecution of perpetrators without addressing the underlying root causes of domestic violence, further expanding what Professor Beth Richie calls our “prison nation.”⁵⁰ Our current domestic

BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, NCJ 178247, INTIMATE PARTNER VIOLENCE 4–5 (2000)).

44. *Id.*

45. Zoltowski, *supra* note 18, at 1238.

46. Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 5 (2006).

47. Kimberly D. Bailey, *Lost in Translation: Domestic Violence*, “*The Personal is Political*,” and *the Criminal Justice System*, 100 J. CRIM. L. & CRIMINOLOGY 1255, 1258 (2010).

48. See G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservativization of the Battered Women’s Movement*, 42 HOUS. L. REV. 237, 265–66 (2005).

49. See RICHIE, *supra* note 40, at 94–95.

50. *See id.*

violence policies have led to a system where “the political dynamics of a prison nation interact with racial and other stigmas in such a way that women of color are more likely to be treated as criminals than as victims when they are abused.”⁵¹ In a prison nation, survivors of domestic violence, such as Lakisha Briggs, are not seen as worthy of police protection. Nuisance law and other forms of state intervention, originally designed to address crime or civil infractions, further victimize survivors.

Domestic violence survivors face many barriers in obtaining and maintaining safe and affordable housing and are often subject to housing discrimination. They may face eviction (either legal or illegal) or may be discriminated against by landlords who “heap further punishment” on survivors by refusing to rent them houses or apartments.⁵² According to congressional findings in 2006, in almost 150 cases, tenants who were evicted based on domestic violence contacted legal service providers.⁵³ The survey did not capture women who did not go to legal service providers after being evicted and thus clearly understates the prevalence of the problem. In some cases, an eviction can even lead to homelessness. In Montgomery County, Pennsylvania, where Norristown is located, 58 of the 217 people in homeless shelters on a particular day were domestic violence survivors.⁵⁴

The difficulties that survivors experience in finding housing are “compounded by the racially discriminatory employment and housing practices women of color often face,”⁵⁵ and the historic segregation of housing markets and neighborhoods persists today.⁵⁶ Starting in the mid-twentieth century, real estate agents steered Blacks towards certain neighborhoods and banks engaged in redlining, creating maps with red lines designating which areas had high proportions of minority residents and thus were considered poor investment opportunities. As a result, housing prices became inflated in redlined neighborhoods due to a smaller supply and greater demand of housing than in white neighborhoods.⁵⁷ The effects of this history are still felt today as neighborhoods remain segregated and there is “increased polarization of wealth

51. *Id.* at 7.

52. *See, e.g.*, Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 35 CLEARINGHOUSE REV. 708, 708 (2002).

53. 42 U.S.C. § 14043e (2012).

54. Annamarya Scaccia, *How Domestic Violence Survivors Get Evicted From Their Homes After Calling the Police*, RH REALITY CHECK BLOG (June 4, 2013, 2:16 PM), <http://rhrealitycheck.org/article/2013/06/04/norristown-ordinance-and-impact-on-domestic-violence-victims-2>.

55. Crenshaw, *supra* note 41, at 1246; *see* George Lipsitz, “*In an Avalanche Every Snowflake Pleads Not Guilty*”: *The Collateral Consequences of Mass Incarceration and Impediments to Women’s Fair Housing Rights*, 59 UCLA L. REV. 1746, 1753–54 (2012).

56. Ta-Nehisi Coates, *The Ghetto Is Public Policy*, ATLANTIC (May 9, 2013, 12:12 PM), <http://www.theatlantic.com/national/archive/2013/05/the-ghetto-is-public-policy/275716>.

57. *Id.*

by class and race.”⁵⁸ Thus, Black and Latina survivors not only face discrimination by individual landlords but are steered toward an artificially small portion of the housing market. Women of color who try to leave abusive relationships or are evicted due to domestic violence face greater difficulties than white women in securing a safe place to live.

Immigrant women are also at risk of being harmed by nuisance laws and may avoid contacting police both for fear of eviction under chronic nuisance laws and for fear of being harassed or reported to immigration authorities because of their immigration status. The borough of Norristown has recently come under fire from immigrants rights groups for allegedly using pretextual reasons to arrest immigrants and report them to Immigration and Customs Enforcement (ICE).⁵⁹ Considering that 30 percent of Norristown’s population is Hispanic, many of whom are recent Mexican immigrants,⁶⁰ this conduct likely has a chilling effect for immigrant domestic violence survivors in Norristown who may forego contacting law enforcement for multiple reasons. Housing policy, chronic nuisance law, and domestic violence interact in such a way that women who are the most marginalized face the greatest barriers in securing safe and affordable housing.

C. *The Rise of Contemporary Chronic Nuisance Laws*

Lakisha Briggs’s hometown of Norristown, Pennsylvania, is not unique in instituting a chronic nuisance ordinance without addressing the impact it has on domestic violence survivors and communities of color. Nationwide, hundreds, if not thousands, of towns have nuisance laws on the books, including large cities such as Portland, Oregon,⁶¹ and small towns such as Coaldale, Pennsylvania.⁶² A report from the Sargent Shriver National Center on Poverty Law includes a nonexhaustive list of one hundred municipalities in Illinois alone that have chronic nuisance laws in place.⁶³ There are at least nineteen nuisance ordinances in Pennsylvania.⁶⁴ Matthew Desmond, a sociologist who studies housing and chronic nuisance law, points to at least forty-six other

58. Lipsitz, *supra* note 55, at 1754.

59. Emma Jacobs, *Norristown Police Aid Deportations as Town Promotes Welcoming Image*, NEWSWORKS (Oct. 30, 2013), <http://www.newsworks.org/index.php/local/pa-suburbs/61354-norristown-police-aid-deportations-as-town-promotes-welcoming-image>.

60. *Id.*

61. *See, e.g.*, PORTLAND, ORE., CODE § 14B.60.010 (2013), *available at* <http://www.portlandonline.com/auditor/index.cfm?c=28531>.

62. *See, e.g.*, Chris Parker, *Coaldale Sets Fees for Police Handling Nuisance Calls*, MORNING CALL (Allentown, Pa.), Mar. 27, 2006, http://articles.mcall.com/2006-03-27/news/3646605_1_ordinance-nuisance-borough-council.

63. EMILY WERTH, SARGENT SHRIVER NAT’L CENTER ON POVERTY L., *THE COST OF BEING “CRIME FREE”: LEGAL AND PRACTICAL CONSEQUENCES OF CRIME FREE RENTAL HOUSING AND NUISANCE PROPERTY ORDINANCES I* (Aug. 2013), *available at* <http://povertylaw.org/sites/default/files/files/housing-justice/cost-of-being-crime-free.pdf>.

64. Scaccia, *supra* note 54 (citing a survey from the Pennsylvania Coalition Against Domestic Violence).

ordinances outside of Pennsylvania or Illinois.⁶⁵ Many municipalities are proposing these laws.⁶⁶ Some municipalities, however, are questioning whether passing chronic nuisance ordinances will subject them to litigation. Stevens Point, Wisconsin, voted not to implement a nuisance ordinance modeled after Milwaukee's ordinance due to opposition from landlords.⁶⁷ At a public hearing, one landlord, who is also an attorney, said that the ordinance would give the chief of police so much discretion that it could make the city vulnerable to a lawsuit.⁶⁸ The mayor of Stevens Point, however, stated that a revised version of the proposed ordinance could still be put before the city council at a later date.⁶⁹ Although there is no exhaustive study of the number of chronic nuisance ordinances, these laws are not uncommon, and their numbers may be rising. The remainder of this Section will briefly survey various chronic nuisance ordinances, including the Norristown ordinance.⁷⁰

Norristown instituted a nuisance ordinance, in effect from January 5, 2009, until November 7, 2012, that allowed the municipality to suspend or revoke a landlord's rental license if the police had responded to three or more reports of "disorderly behavior" at a residence, defined at the chief of police's discretion.⁷¹ After the ACLU contacted the municipality in reference to the ordinance, the borough instituted a new ordinance that was "substantially similar to the Old Ordinance" and penalized landlords with escalating fines for police responses to "disorderly behavior."⁷² This was the policy that had such devastating consequences for Lakisha Briggs.

While the provisions of chronic nuisance ordinances vary depending on the jurisdiction, a common example is the Milwaukee, Wisconsin, ordinance, which penalizes landlords and homeowners when police are called to a residence three or more times over a thirty day period for any number of

65. Matthew Desmond & Nicol Valdez, Online Supplement to *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. REV. 117 (2012), available at http://asr.sagepub.com/content/suppl/2013/01/24/0003122412470829.DC2/desmond_online_supplement.pdf.

66. See, e.g., Mike Eiman, *LPD Targets Nuisance Properties*, THE SENTINEL (Hanford, Cal.), Mar. 4, 2015, http://hanfordsentinel.com/news/lemoore/lpd-targets-nuisance-properties/article_6b80aac3-639d-5ce7-a71c-b855c84e739c.html (discussing a chronic nuisance ordinance that was recently enacted in Lemoore, California); Sari Lesk, *City Again Moves Ahead with Chronic Nuisance Ordinance*, STEVENS POINT J. (Wis.), Nov. 10, 2014, <http://www.stevenspointjournal.com/story/news/local/2014/11/10/city-moves-ahead-chronic-nuisance-ordinance/18832071> (discussing a revised chronic nuisance ordinance that was proposed by the Stevens Point, Wisconsin, Public Protection Committee in November 2014).

67. Brandi Makuski, *City Council Turns Down Nuisance Ordinance*, STEVENS POINT CITY-TIMES (Wis.), Nov. 23, 2013, <http://spcitytimes.com/?p=13494>.

68. *Id.*

69. *Id.*

70. For reference, I have included the Norristown ordinance in the Appendix as one example of how these laws are written.

71. Verified First Amended Complaint of Briggs, *supra* note 1, at 7.

72. *Id.* at 3.

enumerated chronic nuisances.⁷³ Once a residence is designated a public nuisance, the landlord must devise a plan to remediate the nuisance and can face escalating punitive measures, including fines.⁷⁴ Milwaukee's ordinance was amended in early 2011 to specifically exclude "domestic abuse," "sexual assault," and "stalking" from the enumerated nuisances that can trigger these penalties.⁷⁵ However, the enumerated nuisances include activities that could result from domestic violence, such as "harassment"⁷⁶ and "[d]isorderly conduct."⁷⁷ Similarly, the ordinance could cause survivors to be evicted either because the 9-1-1 call was not coded as "domestic violence" or because the landlord was not aware that domestic violence was occurring and could not create a plan to remediate the issue properly.⁷⁸

Yet, compared to other chronic nuisance laws around the country, Milwaukee's ordinance may be better for survivors. Some ordinances do not have any protections for survivors of domestic violence.⁷⁹ Some require a conviction, rather than just an arrest, for behavior to be declared a nuisance.⁸⁰ The severity of fines or penalties also varies depending on the jurisdiction's ordinance.⁸¹

For example, in August 2013, Wilkes-Barre, Pennsylvania, instituted a "one-strike" ordinance, allowing the city to close a property for six months after a drugs or weapons violation without any administrative hearing or procedural due process for the tenant or property owner.⁸² According to the ACLU, this ordinance "suffers from the same constitutional infirmities" as Norristown's chronic nuisance ordinance.⁸³ Wilkes-Barre's ordinance could similarly have devastating consequences for survivors of domestic violence

73. MILWAUKEE, WIS., CODE § 80-10 (2013), available at <http://city.milwaukee.gov/ImageLibrary/Groups/ccClerk/Ordinances/Volume-1/CH80.pdf>.

74. *Id.*

75. MILWAUKEE, WIS., CODE § 80-10-2-c (2014); see also Letter from Grant F. Langley, City Attorney, Milwaukee, Wis., to Mr. Willie L. Hines, Jr., Common Council President, Milwaukee, Wis. (Jan. 11, 2011), available at <https://milwaukee.legistar.com/LegislationDetail.aspx?ID=829188&GUID=7DD15CAD-0F8C-417F-B873-949F15EC4C78&Options=ID|Text|&Search=chronic+nuisance> ("The reason for this amendment is . . . to ensure compliance with state law, which prohibits ordinances that impose fees for the costs of responding to a call for assistance from an owner or occupant related to domestic abuse, stalking, or sexual assault. Wisconsin Statutes § 66.0627(7).").

76. MILWAUKEE, WIS., CODE § 80-10-2-c-1-a.

77. MILWAUKEE, WIS., CODE § 80-10-2-c-1-b.

78. Matt Doyle, *Ordinance Change Puts Landlords in Tough Spot, Forces Domestic Violence Victims to Come Forward*, CBS 58: WDJT MILWAUKEE (Aug. 19, 2013) (on file with the author).

79. Fais, *supra* note 20, at 1187.

80. *Id.* at 1188–89.

81. *Id.* at 1189.

82. Andrew Staub, *Critics Blast Pennsylvania City's 'One-Strike' Law as Blow to Due Process*, PA. INDEP. (Dec. 6, 2013), <http://paindependent.com/2013/12/critics-blast-pennsylvania-citys-one-strike-law-as-blow-to-due-process/>.

83. *Id.*

who could be evicted after the survivor, her child, a neighbor, or even an abuser makes just one phone call to the police.

Wilkes-Barre is considering repealing the ordinance because of the threat of litigation, but it has already negatively impacted at least one tenant whose boyfriend, who was living in the apartment but was not listed on the lease, was arrested on drug charges.⁸⁴ The tenant was evicted in September 2013.⁸⁵ According to Tony George, a Wilkes-Barre city councilman, the ordinance is needed to combat crime in the city: “We’re at war. We’re losing. We’re out-manned. We’re outgunned. . . . If it’s inflicting [sic] on your rights a little bit, so be it.”⁸⁶ In this case, the town’s desire to prevent crime through the use of an overly broad chronic nuisance law infringed upon a tenant’s Fourth Amendment right to her leasehold.

Other ordinances have similar provisions that could harm domestic violence survivors. The Hazleton, Pennsylvania, chronic nuisance ordinance states that: “For purposes of this chapter, ‘Nuisance Activity’ shall not include conduct where the person responsible is the victim of a crime and had no control over the criminal act.”⁸⁷ While on its face the ordinance appears to protect victims who call the police to report domestic violence, there are many situations where a survivor might be blamed for allowing an abuser into her home or may be afraid to kick him out. In Ms. Briggs’s case, this is exactly what happened. She allowed her ex-boyfriend into her house, or at least was unable to prevent him from gaining access,⁸⁸ so an ordinance like Hazleton’s might not have protected her either.

Similarly, the Portland, Oregon, chronic nuisance ordinance has a “Person Associated With” standard, which means that an abuser could be considered “associated” with a residence even if the survivor did not want him there.⁸⁹ According to the ordinance, a resident can be penalized if a “Person Associated With the Property” engages in three or more “Nuisance Activities” within thirty days.⁹⁰ A “Person Associated With the Property” includes someone who has “visited, or attempted to enter . . . or visit . . . a Property or Person present on a Property.”⁹¹ This means that even if an abuser is unwelcome or unable to enter a residence, the domestic violence survivor could be penalized. While

84. *Id.*

85. *Id.*

86. Jerry Lynott, *Landlords Question ‘One-Strike,’* WEEKENDER (Wilkes-Barre, Pa.) (Aug. 13, 2013, 11:44 PM), <http://www.theweekender.com/apps/pbcs.dll/article?date=20130813&category=news&lopenr=308139699>.

87. HAZLETON, PA., ORDINANCE 2009-12 § 3(e)(3) (2009), *available at* <http://www.hazletoncity.org/City-Ordinances/chronic-nuisance-properties.html>.

88. Verified First Amended Complaint of Briggs, *supra* note 1, at 14.

89. PORTLAND, ORE., CODE § 14B.60.010(F) (2013) (“Chronic Nuisance Property”), *available at* <http://www.portlandonline.com/auditor/index.cfm?c=28531>.

90. *Id.* § 14B.60.010(A)(2).

91. *Id.* § 14B.60.010(F).

these provisions may appear neutral at first glance, many of these laws do not properly account for the dynamics of domestic violence relationships and may penalize survivors for acting in their best interest—for example, by not confronting an abuser or not forcing an abuser to leave the home.

D. Chronic Nuisance Laws and Policing

While chronic nuisance laws have proliferated in recent years, they are not an entirely new phenomenon. The state's use of chronic nuisance laws to regulate tenant behavior dates back to the panic in the 1980s over crime rates and drugs, particularly crack cocaine.⁹² Starting in the 1980s, municipalities increasingly required landlords to “police” their tenants by sanctioning and even evicting tenants for perceived transgressions, both criminal and noncriminal.⁹³ In 1987, Portland, Oregon, became one of the first cities to use nuisance law to evict tenants from buildings designated as “drug houses.”⁹⁴ Even at that time, critics of the ordinance said that it had unintended effects. One lawyer said that “innocent people had been caught in the law’s wide net. When the city recommended eviction of every tenant from a drug-infested apartment complex . . . that turned out to include a woman and her two children who were not even accused of any wrongdoing.”⁹⁵

At the federal level, in 1986, the U.S. government instituted a nuisance law, colloquially known as the “‘crackhouse’ statute,”⁹⁶ which made it illegal for a landlord to “knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance.”⁹⁷ This statute was passed, along with mandatory minimum sentencing, as part of the Anti-Drug Abuse Act of 1986.⁹⁸ Scholars assert that the Anti-Drug Abuse Act was passed because of race-based fearmongering about crime and crack cocaine. Although the language of the law is broad, it has been enforced narrowly and selectively, with a racialized impact.⁹⁹ For criminal convictions for drug crimes, the Act requires different sentence lengths depending upon the type of drug seized,

92. See LENORA LAPIDUS ET AL., ACLU ET AL., CAUGHT IN THE NET: THE IMPACT OF DRUG POLICIES ON WOMEN AND FAMILIES 23–27 (2005), available at <http://www.brennancenter.org/publication/caught-net>.

93. *Now, Cities Hit Drug Suspects Where They Live*, N.Y. TIMES, Jan. 25, 1991, <http://www.nytimes.com/1991/01/25/news/now-cities-hit-drug-suspects-where-they-live.html>.

94. *Id.*

95. *Id.*

96. Michael E. Rayfield, *Pure Consumption Cases Under the Federal “Crackhouse” Statute*, 75 U. CHI. L. REV. 1805 (2008).

97. 21 U.S.C. § 856 (2012).

98. Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207-52 (codified as amended at 21 U.S.C. § 856 (2012)).

99. See *Reducing Americans’ Vulnerability to Ecstasy Act of 2002: Hearing on H.R. 5519 Before the Subcomm. on Crime, Terrorism & Homeland Sec. of the H. Comm. on the Judiciary*, 107th Cong. 18–25 (2002) (statement of Graham Boyd, Director, Drug Policy Litigation Project, ACLU).

creating a stark racial divide between those who were sentenced to harsher penalties for crack cocaine and those who received more lenient penalties for powder cocaine. As of 2000, the racial makeup of those convicted of federal crack cocaine offenses, resulting in higher sentences than for powder cocaine offenses, were 85 percent Black, 9 percent Latino, and 6 percent white.¹⁰⁰ Those convicted of federal powder cocaine offenses, resulting in lower sentences, were 30.5 percent Black, 51 percent Latino, and 18 percent white.¹⁰¹ Thus, “in effect, the media and cultural bias that demonized crack as the most dangerous of all illegal drugs and associated it with poor people of color became codified in law and enforcement practices.”¹⁰² The Act did not leave domestic violence survivors unscathed. Domestic violence survivors are often penalized for their partners’ criminal activity and may have faced the threat of eviction due to the “crackhouse” law.¹⁰³

Like the Anti-Drug Abuse Act, contemporary chronic nuisance laws are race neutral but have a disparate racial impact. In segregated neighborhoods, “[p]utatively race-neutral legislation . . . also work[s] systematically to subject communities of color to degrees of surveillance and punishment that are virtually absent from neighborhoods inhabited mostly by whites.”¹⁰⁴ The current chronic nuisance laws have been selectively enforced based on neighborhood, leading to different effects for survivors of domestic violence depending on their neighborhood and their race or social class.¹⁰⁵

Chronic nuisance laws also reflect the philosophy that those who use a disproportionate amount of public services (like police or ambulance service) should be held responsible for paying the costs, either literally through the use of fines or by forfeiting their residence.¹⁰⁶ Thus, those who are least able to pay for law enforcement may be evicted or face other penalties if the police are called to their address. This philosophy is congruent with the United States’ welfare policies, in which government aid is “limited, fragmentary, and isolated from other state activities, informed as they are by a moralistic and moralizing conception of poverty as a product of the individual failings of the poor.”¹⁰⁷ Today, more and more municipalities are using chronic nuisance laws

100. LAPIDUS ET AL., *supra* note 92, at 26–27.

101. *Id.*

102. *Id.* at 27.

103. *See id.* at 35–38.

104. Lipsitz, *supra* note 55, at 1750–51.

105. *See* Desmond & Valdez, *supra* note 19.

106. *Id.* at 119 (“With respect to economic factors, as the financial demands of mass incarceration, harsher sentencing, and growing citizen pressure on the police presented municipalities with steep budgetary challenges, police departments increasingly turned to third-party policing to control costs.”).

107. LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY 42 (2009) (writing about the shift from welfare benefits to “workfare”—pushing former welfare recipients into low wage work that keeps them in poverty).

to declare properties nuisances.¹⁰⁸ This discourages residents from using “excessive” police services and potentially allows municipalities to recoup the cost of police and emergency services from residents who call the police frequently.¹⁰⁹ Like the concept of welfare recipients being forced to reimburse the state for benefits received if they are later entitled to child support or other payments,¹¹⁰ police and emergency services are not viewed as an entitlement but rather as a service that must be paid for, either by directly charging landlords or tenants for reimbursement or by discouraging residents from using emergency services as a cost-saving measure. Under this philosophy, only victims of crime who are truly deserving, as determined by police discretion, should receive medical assistance and help from law enforcement without paying for it. In this context, Norristown’s chronic nuisance law is particularly troubling.

Despite the rhetoric of holding those who use public services accountable for their costs, it is unclear if these laws are actually effective in what they purport to do. Pennsylvania recently passed a bill that will protect crime victims from eviction through chronic nuisance ordinances.¹¹¹ The fiscal impact report for the bill states that “[t]he legislation could have a minimal fiscal impact on municipalities that enforce or attempt to enforce such an ordinance” but does not specify what the actual cost would be.¹¹² Milwaukee billed residents \$41,176 for not complying with the chronic nuisance law from June 2002 to August 2004, although it is unclear how much of this was actually collected.¹¹³ Furthermore, it is not clear that these ordinances are effective in reducing crime, although they “may increase the acceptability of hidden, private enforcement costs.”¹¹⁴ Not only do chronic nuisance laws have potentially deadly consequences for survivors of domestic violence or their children, they may not be feasible ways for municipalities to raise revenue or address crime overall. As early as 1992, there were warnings that these laws would reduce the availability of low-income rental housing because landlords would seek other investment opportunities if laws regarding their liability for

108. Desmond & Valdez note that nuisance laws became popular in the 1980s. Desmond & Valdez, *supra* note 19, at 120.

109. Fais, *supra* note 20, at 1181.

110. See, e.g., Deborah Harris, *Child Support for Welfare Families: Family Policy Trapped in Its Own Rhetoric*, 16 N.Y.U. REV. L. & SOC. CHANGE 619, 620, 627 (1988) (discussing the flawed “consensus” that children should be supported by their parents, rather than the state, and the problems that will result from using child support payments to reimburse the government for welfare benefits it has already paid out).

111. H.B. 1796, Reg. Sess. 2013–2014 (Pa. 2014).

112. H. COMM. ON APPROPRIATIONS, FISCAL NOTE, H.B. 1796, Reg. Sess. 2013–2014, at 2 (Pa. 2014), available at <http://www.legis.state.pa.us/WU01/LI/BI/FN/2013/0/HB1796P2870.pdf>.

113. Linda Spice, *Milwaukee Suburbs Enforcing Nuisance Laws*, CHI. TRIB., Aug. 15, 2004, http://articles.chicagotribune.com/2004-08-15/business/0408150500_1_property-owners-property-tax-bills-ordinance.

114. Glesner, *supra* note 33, at 683.

criminal activity on the premises of their property were not sufficiently clear.¹¹⁵ Not only do these laws harm survivors of domestic violence who already struggle to find safe and affordable housing, they disproportionately harm low-income women.

II.

FROM NORRISTOWN TO MILWAUKEE, THE RATIONALES OF CHRONIC NUISANCE LAWS AND THEIR IMPACT ON SURVIVORS OF DOMESTIC VIOLENCE

A. *Economic Rationales Behind Chronic Nuisance Laws*

Norristown and other municipalities use chronic nuisance laws to make landlords responsible for the health and safety of their tenants, rather than address safety issues through the use of traditional methods of law enforcement. Chronic nuisance laws have been categorized as a type of “third party policing,” and the theoretical basis for these laws is individualistic: “[v]iewed from a societal perspective, recent developments in landlord policing responsibilities signify movement toward a more individualist standard since, overall, the general public’s policing responsibility is being reallocated to the private sector.”¹¹⁶ This trend decentralizes and privatizes policing responsibilities, effectively making protection an individual responsibility.¹¹⁷ The shift towards third-party policing is tied to budgetary concerns, privatization, and the idea that those who use resources should be held responsible for paying for them.

The borough of Norristown, Pennsylvania, where Lakisha Briggs resided, is a diverse, lower middle-class suburb of Philadelphia.¹¹⁸ Like many municipalities, Norristown suffered from the recent Great Recession but the borough has also been experiencing the loss of industry and jobs since the 1960s.¹¹⁹ Located in Montgomery County, the wealthiest county in Pennsylvania and one of the wealthiest in the nation,¹²⁰ Norristown has a per capita income that is approximately half the average of Montgomery County and is home to about half of Montgomery County’s Section 8 recipients.¹²¹ The borough of Norristown has been explicit about the reasons for establishing the nuisance ordinance. The City Council President told the *Philadelphia Inquirer*

115. *Id.* at 773.

116. *Id.* at 760.

117. *Id.* at 683.

118. See *State & County Quick Facts: Norristown (Borough), Pennsylvania*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/42/4254656.html> (last revised Mar. 31, 2015).

119. Carolyn Davis, *Norristown Seeks to Get Itself Boiling Again*, PHILA. INQUIRER, June 4, 2013, http://articles.philly.com/2013-06-04/news/39717038_1_logan-square-shopping-center-administrator-anthony-biondi-norristown.

120. Alison Gold, *Norristown: The Best Argument for Reducing Local Government Fragmentation in PA*, ECON. LEAGUE OF GREATER PHILA., <http://economyleague.org/node/1010> (last visited Apr. 14, 2015).

121. *Id.*

that the council “is looking to protect . . . those who believe they deserve a better quality of life. We are looking to place greater levels of accountability on the landlords.”¹²² This statement suggests that Norristown is less interested in protecting survivors of domestic violence and more interested in foisting the work of police onto landlords.

Norristown is not alone in basing its policies on these rationales. The city of Milwaukee, Wisconsin, was even more explicit in its reasons for instituting a chronic nuisance law. The city created a brochure stating that: “The Chronic Nuisance Property Code says to property owners, in effect, ‘If you do not take action to try to stop these nuisances from recurring, then you and not the taxpayers will pay the cost of the police that must respond.’”¹²³ The language of the ordinance states, “[t]he common council finds that any premises, including a manufactured home community, that has generated 3 or more responses from the police department for nuisance activities has received more than the level of general and adequate police service and has placed an undue and inappropriate burden on the taxpayers of the city.”¹²⁴ While Milwaukee’s ordinance contains exemptions for domestic abuse, sexual assault, or stalking when the survivor calls the police herself,¹²⁵ these exceptions do not include calls from neighbors.¹²⁶ Additionally, because crimes associated with domestic violence, for example trespassing or disturbing the peace, may not be categorized as such, there will undoubtedly be survivors who fall through the cracks and face sanctions. Finally, these types of policies demonstrate a lack of understanding about domestic violence. Survivors might need “more than the level of general and adequate police service,”¹²⁷ in order to protect their safety and the safety of their children, and public policy should be designed to support survivors in meeting their needs.

B. Chronic Nuisance Law as a Law Enforcement Tool Creates More Harm

In a community policing or third-party policing regime, law enforcement officials and private actors, such as landlords, are vested with discretion about how to enforce the law. In some cases, poorly trained law enforcement officers have mistaken victims of domestic violence for their abusers and enforced the law in discriminatory ways.¹²⁸ Landlords may harbor their own biases towards

122. Carolyn Davis, *Norristown Ordinance Draws More Fire*, PHILA. INQUIRER, May 2, 2013, http://articles.philly.com/2013-05-02/news/38960245_1_ordinance-rental-licenses-landlords (quoting Gary H. Simpson).

123. Fais, *supra* note 20, at 1183 (quoting Dep’t of Neighborhood Servs., City of Milwaukee, City of Milwaukee Chronic Nuisance Property Code (2005), available at <http://city.milwaukee.gov/DistrictSevenCLO/Nuisance.htm>).

124. MILWAUKEE, WIS., CODE § 80-10-1 (2014).

125. *Id.* § 80-10-2.

126. *See id.*

127. *Id.* § 80-10-1.

128. *See* Daniel G. Saunders, *The Tendency to Arrest Victims of Domestic Violence: A Preliminary Analysis of Officer Characteristics*, 10 J. INTERPERSONAL VIOLENCE 147 (1995).

domestic violence survivors.¹²⁹ Additionally, increased police surveillance in neighborhoods where residents are predominately people of color makes these neighborhoods more susceptible to state intervention through public nuisance laws.¹³⁰ The combination of bias and discretion creates a perfect storm where chronic nuisance laws harm survivors of domestic violence, particularly those from marginalized groups.

Law enforcement officers may be ill equipped to determine if domestic violence is occurring and who is perpetrating the domestic violence in certain situations.¹³¹ In the 1990s, after Wisconsin passed a mandatory arrest law requiring police to arrest abusers in cases of domestic violence, a study found that 13 percent of the arrests were of victims of domestic violence.¹³² Even more troubling, a study by the Urban Justice Center in New York City found that women of color and poor women were arrested in disproportionate numbers under New York's mandatory arrest law in cases of dual arrests due to domestic violence.¹³³ Women who do not conform to traditional gender roles, such as women who are transgender or gender nonconforming, sex workers, or queer may be "treated as unworthy of protection" and also may be more likely to be arrested under mandatory arrest laws.¹³⁴ These statistics show that police who arrive at a home may not recognize that domestic violence is occurring, particularly if a call is regarding an argument, vandalism, trespassing, or other crime that may not be stereotypically associated with domestic violence. Not only may police fail to recognize domestic violence, but their misclassification may also lead to the survivor's arrest and trigger penalties under chronic nuisance ordinances.

Nuisance ordinance laws have often been enforced in a way that disproportionately impacts communities of color. Milwaukee's nuisance ordinance, like Norristown's, gives the chief of police broad discretion in enforcing the law, which has often resulted in biased implementation. According to a study on the impact of Milwaukee's chronic nuisance ordinance in 2008 and 2009, "residential properties located in predominantly black neighborhoods were more likely to receive citations . . . properties located in more integrated black neighborhoods had the highest likelihood of being deemed nuisances."¹³⁵ During the time period of the study, emergency calls

129. See Desmond & Valdez, *supra* note 19, at 132–33.

130. See *id.* at 120–21.

131. See discussion *infra* Section I(D).

132. Saunders, *supra* note 128, at 148.

133. MARY HAVILAND ET AL., URBAN JUSTICE CTR., THE FAMILY PROTECTION AND DOMESTIC VIOLENCE INTERVENTION ACT OF 1995: EXAMINING THE EFFECTS OF MANDATORY ARREST IN NEW YORK CITY 27 (2001), available at http://www.connectnyc.org/docs/Mandatory_Arrest_Report.pdf.

134. INCITE! WOMEN OF COLOR AGAINST VIOLENCE, LAW ENFORCEMENT VIOLENCE AGAINST WOMEN OF COLOR & TRANS PEOPLE OF COLOR 38 (2008), available at http://www.incite-national.org/sites/default/files/incite_files/resource_docs/3696_toolkit-final.pdf.

135. Desmond & Valdez, *supra* note 19, at 118.

regarding domestic violence constituted 3.8 percent of 911 calls, yet domestic violence was the reason for 15.7 percent of all nuisance designations made by the city.¹³⁶ Additionally, the study found a correlation between nuisance citations for domestic violence and the racial makeup of the neighborhood.¹³⁷ Controlling for the number of 911 calls for domestic violence, “a property located in an 80 percent black neighborhood and from which at least one 911 call reporting domestic violence was placed was over 3.5 times more likely to receive a nuisance citation than a property in a 20 percent black neighborhood and from which a similar call was placed.”¹³⁸ While it is not entirely clear why this ordinance has been disproportionately enforced against Blacks in Milwaukee, because it is a type of ordinance that gives broad discretion to the chief of police and other city officials, it creates the potential for biased implementation.¹³⁹ Although the bias may not have been intentional, the city has, in effect, used nuisance ordinances to penalize Black residents, especially those in neighborhoods where the city might be attempting to displace long-term residents as a result of gentrification.¹⁴⁰

Nuisance laws invite discretion and biased implementation because they are often vaguely written and selectively enforced.¹⁴¹ According to Professor Maclin, “History teaches us that when law enforcement personnel are given loosely supervised discretionary powers, police behavior will reflect the biases and prejudices of individual officers.”¹⁴² Police officers and government officials responsible for enforcing nuisance laws will act based on acknowledged or unacknowledged biases about who is or is not considered a worthy victim of domestic violence and who deserves state protection rather than eviction. As a result, nuisance laws may impact women of color, poor

136. *Id.* at 131. Desmond notes that the percentage of 911 calls due to domestic violence is undoubtedly low because it was based on whether or not the 911 dispatcher coded the call as such. *Id.* Although it is not clear from this data whether domestic violence incidents disproportionately led to evictions in Milwaukee, the rate of evictions due to domestic violence was nonetheless substantial.

137. *Id.* at 132–33.

138. *Id.*

139. See Tracey Maclin, *Terry v. Ohio's Fourth Amendment Legacy: Black Men and Police Discretion*, 72 ST. JOHN'S L. REV. 1271, 1320 (1998) (discussing police discretion in the context of stop and frisk).

140. Desmond & Valdez, *supra* note 19, at 120–21. Desmond and Valdez present two theories that may explain why integrated Black neighborhoods had the highest rates of eviction through the chronic nuisance statute. *Id.* (“First, the minority threat thesis would predict that in integrated black neighborhoods—majority black neighborhoods containing a large proportion of nonblack residents—police officers will face pressure to respond to disorder reported by nonblack residents threatened by their black neighbors. . . . Alternatively, residents of integrated black neighborhoods might pressure the police through other means (e.g., citizen complaints), resulting in officers displaying heightened vigilance to disorder in transitioning areas.” (citations omitted)).

141. See Glesner, *supra* note 33, at 716 (“Nuisance doctrines, both public and private, encompass a broad range of activities and have been characterized as ‘the great grab bag, the dust bin, of the law.’” (quoting *Awad v. McColgan*, 98 N.W.2d 571, 573 (Mich. 1959), *overruled by Mobil Oil Corp. v. Thorn*, 258 N.W.2d 30 (Mich. 1977))).

142. Maclin, *supra* note 139, at 1320.

women, and women who do not conform to traditional gender stereotypes the most.

As police departments across the country embrace community policing, the amount of discretion that individual patrol officers exercised has increased, leading to circumstances where policies, like chronic nuisance laws, may be enforced in discriminatory ways, based on the individual biases of officers.¹⁴³ Community policing is defined as involving proactive problem solving, rather than responding to crimes that have already been committed, and officers may work in foot patrols that provide them with more contact with community members.¹⁴⁴ Critics have suggested that community policing “presents heightened risks of discriminatory law enforcement.”¹⁴⁵ Chronic nuisance laws may already be vaguely written, and law enforcement officials may have discretion to determine what is or is not a chronic nuisance based on the language of the ordinance.¹⁴⁶ This creates a perfect storm where nuisance ordinances are more likely to be used against domestic violence survivors who belong to marginalized groups.

Although discrimination against survivors of domestic violence stems from systemic misogyny and racial and class bias, the individual actions of landlords and police officers, regardless of their intentions, also play a role in how chronic nuisance laws impact survivors. Landlords whose tenants are survivors of domestic violence may have troubling attitudes about domestic violence and may have no qualms about evicting tenants after being cited under chronic nuisance laws. In Milwaukee, one landlord explained that he would evict tenants who were survivors of domestic violence because, in his words: “Like I tell my tenants: You can’t be calling the police because your boyfriend hit you again. They’re not your big babysitter. It happened last week, and you threw him out. But then you let him back in, and it happens again and again.”¹⁴⁷ Another landlord similarly demonstrated a lack of understanding of domestic violence by apologizing to the Milwaukee Police Department for a tenant who “wasted their time” with a 911 call because of domestic violence.¹⁴⁸ The landlord subsequently evicted the tenant.¹⁴⁹ Finally, another landlord suggested his tenant buy a gun to protect herself from her abuser rather than call the police.¹⁵⁰ While landlords can be allies in fighting chronic nuisance

143. Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 577 (1997).

144. *Id.*

145. *Id.* at 578.

146. See Norristown’s former chronic nuisance ordinance which defined “disorderly behavior” as “activity that can be characterized as disorderly in nature” and left the Chief of Police with discretion to determine whether a particular situation constituted “disorderly behavior” under the ordinance’s definition. NORRISTOWN, PA., CODE § 245-3(B)(1)(b) (2012).

147. Desmond & Valdez, *supra* note 19, at 131.

148. *Id.* at 134.

149. *Id.*

150. *Id.* at 135.

ordinances, especially if they believe that their economic interests are being threatened, these all too common attitudes reveal, at least in part, why landlords, politicians, and other local actors support chronic nuisance ordinances without fully considering their impact on survivors of domestic violence. As more towns and cities grapple with the fallout from the recent Great Recession, we can only hope that more cities do not make the same choices as Norristown, Milwaukee, Portland, or Wilkes-Barre and enact public nuisance ordinances that harm marginalized groups.

III.

STRATEGIES TO COMBAT NUISANCE LAW

Advocates can use traditional tools like litigation and legislative advocacy to counteract chronic nuisance laws that revictimize survivors of domestic violence, particularly women of color. Because these strategies have their limits, organizations like INCITE!, a group of radical feminists of color, are also working outside of what some activists and scholars call the nonprofit industrial complex to organize and fight violence against women without relying on the criminal justice system or funding sources that come with strings attached.¹⁵¹

Advocates can engage in both defensive and affirmative strategies to address chronic nuisance laws. Roughly grouped, defensive strategies include filing, or threatening to file, lawsuits on behalf of evicted domestic violence survivors or on behalf of landlords, based on VAWA, FHA, and/or constitutional claims. Affirmative strategies include advocating for new legislation to protect survivors and organizing against chronic nuisance ordinances in municipalities that are considering adopting these laws. Although chronic nuisance laws can be used in ways that support marginalized communities,¹⁵² legislative advocacy should focus on preventing the passage of these ordinances or ensuring that if passed, these ordinances are narrowly tailored to avoid harming survivors. Depending on the community, advocates may choose different approaches. Obviously the best course of action is for municipalities to avoid passing overly broad chronic nuisance ordinances in the first place, or to amend their ordinances to better protect survivors of domestic violence without the threat of litigation.¹⁵³

151. See discussion *supra* Part III.D.

152. See Mandy Garrells, *Raising Environmental Justice Claims Through the Law of Public Nuisance*, 20 VILL. ENVTL. L.J. 163, 180 (2009) (describing nuisance law as “a . . . powerful tool for remedying problems of environmental and social injustice.”).

153. See WERTH, *supra* note 63, at 20–25 (outlining possible ways to improve existing ordinances including but not limited to: (1) requiring training for police and other officials who are responsible for enforcing these ordinances, (2) including prohibitions against evicting crime victims, rather than only prohibiting eviction based on certain types of criminal activity, (3) never linking eviction directly to the number of emergency calls made from a property, (4) requiring that tenants must have engaged in the conduct, rather than relying on arrest or citation records, (5) implementing

This Part will explore various advocacy strategies in turn, specifically focusing on VAWA, FHA, constitutional, and state legislative claims, as well as nontraditional or non-legal advocacy.

A. *Violence Against Women Act (VAWA) and Fair Housing Act (FHA) Claims*

Chronic nuisance laws can be challenged under both the FHA¹⁵⁴ and the VAWA in some cases. In *Briggs*, the ACLU sued the borough of Norristown under both statutes, and raised constitutional and state law claims.

Chronic nuisance laws have been challenged as violations of the FHA under the disparate impact theory. The FHA states that it is illegal to “refuse to sell or rent after the making of a bona fide offer . . . or otherwise make unavailable or deny, a dwelling to any person” based on sex, as well as other protected characteristics.¹⁵⁵ Because domestic violence survivors are disproportionately women,¹⁵⁶ nuisance laws can be challenged as being discriminatorily applied, based on sex. This strategy has succeeded in administrative adjudications interpreting the FHA. In *Alvera v. Creekside Village Apartments*, the U.S. Department of Housing and Urban Development (HUD) held that “because women constitute the vast majority of domestic violence victims, policies targeting such victims necessarily have a disproportionate impact on women and thus constitute sex-discrimination under the Fair Housing Act.”¹⁵⁷ A disparate impact FHA claim was also a successful legal strategy in *Bouley v. Young-Sabourin*, a suit that involved a tenant who was evicted after her husband beat her.¹⁵⁸ The survivor’s landlord evicted her because the landlord believed “that the violence that ha[d] been happening in [her] unit would continue.”¹⁵⁹ The court dismissed the landlord’s motion for summary judgment, finding that if the plaintiff could prove that her landlord terminated her lease because she was a victim of domestic violence, this action “could constitute unlawful discrimination” under the FHA.¹⁶⁰ While it is

fair parameters for screening new tenants, (6) prioritizing more serious offenses, (7) triggering eviction only when the conduct occurs at the property, (8) providing tenants notice and the ability to challenge evictions based on nuisance laws, (9) providing landlords notice and the opportunity to challenge alleged violations (10) implementing a mechanism to inform tenants and landlords about possible reasonable accommodations for tenants with disabilities that might trigger police response to the residence, and (11) having municipalities assess whether the ordinance might lead to the loss of funding under HUD’s standard for funding recipients to “affirmatively further fair housing”).

154. As this piece was going to press, the Supreme Court granted certiorari and heard oral arguments in *Inclusive Communities Project, Inc. v. Texas Department of Housing & Community Affairs*, 747 F.3d 275 (5th Cir. 2014), *cert. granted*, 135 S. Ct. 46 (Mem.) (Oct. 2, 2014) (No. 13-1371), a case that will likely decide whether disparate impact claims are permitted under the FHA.

155. 42 U.S.C. § 3604(a) (2012).

156. See generally Crenshaw, *supra* note 41.

157. Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 AM. U. J. GENDER SOC. POL’Y & L. 377, 380 (2003).

158. 394 F. Supp. 2d 675, 677 (D. Vt. 2005).

159. *Id.* (quoting a letter from landlord to plaintiff).

160. *Id.* at 678.

possible that chronic nuisance ordinances could be successfully challenged as FHA violations, “the law is underdeveloped,” possibly due to lack of collaboration between housing advocates and advocates for survivors of domestic violence.¹⁶¹

The FHA clearly prohibits intentional racial discrimination in housing policies and may also prohibit policies that have a disparate impact against racial minorities. Lower courts are generally amenable to FHA claims based on disparate impact if a policy is found to have “significant” discriminatory effects against racial minorities. For example, in *Betsey v. Turtle Creek Associates*, the Fourth Circuit held that a rental company violated the FHA by evicting tenants with children from a particular building because this practice had a “significant” disparate impact against racial minorities and was not justified by “business necessity.”¹⁶²

The U.S. Supreme Court has not yet made a decision on whether the FHA permits plaintiffs to raise disparate impact claims based on race or sex, although lower courts do recognize these claims.¹⁶³ The Supreme Court granted certiorari in two FHA cases in the past three years in an attempt to resolve the issue, but both cases settled before oral arguments.¹⁶⁴ Some commenters suggest that the cases were settled out of fear that the Court would not uphold disparate impact claims under the FHA and create bad precedent for plaintiffs in these types of cases.¹⁶⁵ *Magner v. Gallagher* was a particularly ripe opportunity for the Court to overturn disparate impact since the case was brought by landlords who had been cited for code enforcement violations by the City of St. Paul and claimed that aggressive code enforcement increased their costs and reduced the number of affordable housing units available in the city, rather than more sympathetic tenants or community organizations.¹⁶⁶ Either way, the case appeared to be a lose-lose for housing rights activists. Thus, while FHA claims currently remain a possible way to attack chronic nuisance laws based on disparate impact, there are other statutes that might be even more helpful for contesting chronic nuisance laws.

161. Danielle Pelfrey Duryea, *Court Recognizes Domestic Violence Survivor's Fair Housing Challenge to Eviction*, 35 HOUSING L. BULL. 181, 183 (2005).

162. 36 F.2d 983 (4th Cir. 1984).

163. See ROBERT G. SCHWEMM, HOUSING DISCRIMINATION: LAW AND LITIGATION § 10:6 (2014); Eric W.M. Bain, *Another Missed Opportunity to Fix Discrimination in Discrimination Law*, 38 WM. MITCHELL L. REV. 1434, 1436–37 (2012).

164. See *Twp. of Mount Holly, N.J. v. Mt. Holly Gardens Citizens in Action, Inc.*, 658 F.3d 375 (3d Cir. 2011), *cert. granted*, 133 S. Ct. 2824 (2013), and *cert. dismissed*, 134 S. Ct. 636 (Nov. 15, 2013) (No. 11–1507); *Magner v. Gallagher*, 619 F.3d 823 (8th Cir. 2010), *cert. granted*, 132 S. Ct. 548 (2011), and *cert. dismissed*, 132 S. Ct. 1306 (Feb. 14, 2012) (No. 10–1032).

165. Lyle Denniston, *New Fair Housing Case Settled*, SCOTUSBLOG (Nov. 13, 2013, 10:21 PM), <http://www.scotusblog.com/2013/11/new-fair-housing-case-settled>; Stacy Seicshnaydre, *Will Disparate Impact Survive?*, NAT'L CONST. CTR. CONST. DAILY (Nov. 21 2013), <http://blog.constitutioncenter.org/2013/11/will-disparate-impact-survive> (“If the Court was looking for an opportunity to kill disparate impact theory, these cases came wrapped in a bow.”).

166. See Seicshnaydre, *supra* note 165; *Magner*, 619 F.3d 823.

Advocates might also challenge chronic nuisance laws as violations of the VAWA if survivors live in public housing, receive Section 8 housing vouchers, or participate in an additional HUD “covered housing program.”¹⁶⁷ VAWA prohibits landlords from denying these tenants housing or evicting them on the basis of criminal activity related to domestic violence.¹⁶⁸ Importantly, VAWA does not preempt any state or local legislation that provides greater protections to survivors of domestic violence so localities may have even stricter regulations.¹⁶⁹ However, the intersection of VAWA and a local chronic nuisance law may place landlords in a catch-22. If a landlord follows VAWA and does not evict a Section 8 recipient because of domestic violence, the landlord could still be subject to fines or penalties according to the nuisance ordinance.¹⁷⁰ This creates disincentives for landlords to accept Section 8 vouchers in municipalities with chronic nuisance ordinances, making it harder for Section 8 recipients to find housing in those communities.¹⁷¹

B. State and Federal Constitutional Claims

Plaintiffs might be successful in using constitutional claims to challenge chronic nuisance laws, depending on both the language of the ordinance and how it is enforced. In *Briggs*, the ACLU claimed that the chronic nuisance ordinance violated Ms. Briggs’s First, Fourth, and Fourteenth Amendment rights. The First Amendment includes the right “to petition the government” and protects communications to law enforcement, such as calling the police in the case of an emergency.¹⁷² The Fourth Circuit also explicitly held that the right to petition includes contacting law enforcement to report crime.¹⁷³ The ACLU argued that Norristown violated Ms. Briggs’s First Amendment rights by punishing her for contacting law enforcement.¹⁷⁴ Ms. Briggs’s Fourth Amendment rights were also at stake, because “[t]enants have possessory interests in their leaseholds,” and an unlawful eviction under a chronic nuisance ordinance is an interference with property interests, and thus a seizure under the Fourth Amendment.¹⁷⁵ Depending on the language of the ordinance, the ordinance could create a procedural due process violation if the chief of police or other government official is able to use their discretion to decide what

167. See The Violence Against Women Reauthorization Act of 2013: Overview of Applicability to HUD Programs, 78 Fed. Reg. 47,717, at n.2 (Aug. 6, 2013).

168. See NAT’L HOUS. LAW PROJECT, VAWA 2013 CONTINUES VITAL HOUSING PROTECTIONS FOR SURVIVORS AND PROVIDES NEW SAFEGUARDS (2013), available at <http://nhlp.org/article/vawa-2013-continues-vital-housing-protections-survivors-and-provides-new-safeguards>.

169. *Id.*

170. Fais, *supra* note 20, at 1207.

171. *Id.*

172. U.S. CONST. amend. I.

173. Ottensmeyer v. Chesapeake & Potomac Tel. Co. of Md., 756 F.2d 986 (4th Cir. 1985).

174. Verified First Amended Complaint of Briggs, *supra* note 1, at 25.

175. *Id.* at 27.

conduct is or is not a nuisance, and if a tenant or landlord has no opportunity to contest the eviction, as was the case in Norristown. Finally, the ordinance could violate the Equal Protection Clause of the Fourteenth Amendment, if the ordinance treats domestic violence survivors differently from other crime victims.¹⁷⁶

It is also possible, depending on the language of the chronic nuisance ordinance and how it is enforced in practice, to challenge these ordinances as overly vague.¹⁷⁷ Law enforcement or adjudicators are likely to interpret overly vague laws, such as chronic nuisance ordinances, in ways that conform to biases.¹⁷⁸ In the 1960s and 1970s, the Supreme Court overturned vagrancy and loitering laws that were overly vague,¹⁷⁹ noting that, “[w]here, as here, there are no standards governing the exercise of the discretion granted by the ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law.”¹⁸⁰ In the case of a chronic nuisance ordinance like Norristown’s, which grants “sole discretion” to Norristown’s chief of police to determine whether behavior is “characterized as disorderly in nature,” a plaintiff may have a strong vagueness claim.¹⁸¹ At the same time, overturning all or part of the chronic nuisance ordinance would do little to circumscribe the discretion that law enforcement agents already have in a community policing regime.¹⁸²

C. State Legislation

States have had mixed results in protecting survivors from chronic nuisance ordinances through state legislation. In response to *Briggs*, Pennsylvania legislators passed a law creating a private cause of action for tenants and landlords who are penalized for contacting “police or emergency assistance by or on behalf of a victim of abuse . . . a victim of a crime . . . or an individual in an emergency.”¹⁸³ Crucially, this bill also preempts local legislation, meaning that municipalities cannot introduce new ordinances to evade the protections of the law.¹⁸⁴ Here, Pennsylvania may be acknowledging

176. U.S. CONST. amend. XIV, § 1 (“[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”).

177. See *Papachristou v. Jacksonville*, 405 U.S. 156, 170 (1972) (invalidating a city vagrancy ordinance as overly vague); *Coates v. City of Cincinnati*, 402 U.S. 611, 611 n.4 (1971) (holding that an ordinance was unconstitutionally vague which prohibited three or more people from congregating on the sidewalk in a manner “annoying to persons passing by”).

178. Maclin, *supra* note 139, at 1320.

179. Livingston, *supra* note 143, at 585.

180. *Papachristou*, 405 U.S. at 170.

181. NORRISTOWN, PA., CODE § 245-3(B) (2012).

182. Livingston, *supra* note 143, at 593 (citing an administrative law scholar who writes that “[e]limination of discretion at one choice point merely causes the discretion that had been exercised there to migrate elsewhere in the system” (quoting Jerry L. Mashew)).

183. H.B. 1796, Reg. Sess. 2013–2014 (Pa. 2014).

184. *Id.*

that while victims of crime may utilize more police and emergency services than the average resident, the general population should share the cost of these services. The Act was signed into law on October 31, 2014.¹⁸⁵

Although Pennsylvania's bill is promising in some respects, tenants who cannot afford a lawyer are at a distinct disadvantage in Landlord-Tenant Court where landlords can often afford to hire counsel. Even if a tenant has an affirmative defense against an eviction, she may not be able to make this claim without an attorney. Getting legal representation is not easy—in many jurisdictions, 90 percent of tenants are not represented by an attorney in housing court, while landlords are represented 90 percent of the time.¹⁸⁶ This imbalance in representation means that, in some cases, tenants with valid defenses get evicted anyway and are generally taken less seriously by the legal system.¹⁸⁷

Other states have taken different approaches to protect tenants. Wisconsin, for instance, does not require landlords to make housing available to people whose tenancy poses a threat to others, but prevents landlords from claiming that tenants are threats because they might experience domestic violence.¹⁸⁸ Additionally, Wisconsin's Open Housing Act is a corollary to the FHA.¹⁸⁹ In *Windsor v. Regency Property Management*, a Wisconsin court found that a landlord's failure to rent to a survivor of domestic violence, because of her status as a survivor of domestic violence, was a violation of the Wisconsin Open Housing Act and constituted discrimination on the basis of sex.¹⁹⁰

California also enacted a law in 2011 that creates an affirmative defense for survivors of domestic violence who are evicted because they have experienced domestic violence.¹⁹¹ This law has a number of limitations, however, including the fact that survivors will lose this defense if they allow their abuser to visit their home, or are unable to prevent their abuser from doing

185. *Bill Information—History: House Bill 1796; Regular Session 2013–2014*, PENNSYLVANIA GENERAL ASSEMBLY, http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2013&sind=0&body=H&type=B&bn=1796 (last visited Apr. 14, 2015).

186. Matthew Desmond, Op-Ed., *Tipping the Scales in Housing Court*, N.Y. TIMES, Nov. 29, 2012, <http://www.nytimes.com/2012/11/30/opinion/tipping-the-scales-in-housing-court.html>.

187. *Id.* (describing when tenants are successful in housing court—“some victories came from raising technical objections, but many others came in cases that were not open and shut but would have been treated that way had tenants been forced to represent themselves.”).

188. WIS. STAT. § 106.50(5m)(dm) (2012).

189. *Id.* § 106.50.

190. Lapidus, *supra* note 157, at 381 n.27 (“A similar claim [to the *Alvera* case], however, had been brought under a state fair housing law. See *Windsor et al. v. Regency Prop. Mgt. et al.*, No. 94 CV 2349 (Dane Co. Cir. Ct., Oct. 2, 1995) (Memorandum Decision & Order) (holding that refusing to rent to a domestic violence victim would establish a prima facie case of sex discrimination under the Wisconsin Open Housing Act).”).

191. CAL. CIV. PROC. CODE § 1161.3 (2014).

so.¹⁹² The law also requires survivors to either obtain an order of protection from their abuser or file a police report within 180 days of the domestic violence incident.¹⁹³ Survivors might be hesitant to obtain an order of protection or police report for many reasons, including bad prior experiences with law enforcement or lack of a legal immigration status.¹⁹⁴ While some California cities, such as San Francisco, may have stronger eviction protections for survivors, the statewide law may preempt these local ordinances.¹⁹⁵ While not perfect, especially considering that many survivors may not know their rights and may not know that they have an eviction defense claim, California law at least provides an avenue for survivors to avoid victimization by chronic nuisance ordinances.

Additionally, Minnesota has a law to protect tenants, which states that a landlord may not bar a tenant from contacting the police due to domestic violence.¹⁹⁶ Although survivors may not know about these rights, the law specifically preempts local ordinances that provide survivors with fewer protections. While states have taken different approaches in counteracting the effects of chronic nuisance laws, advocates can look to these examples in order to craft statewide legislation to address these issues. This could be an especially good option in cases where municipalities refuse to amend chronic nuisance ordinances to better protect survivors of domestic violence.

D. Beyond Traditional Advocacy

Chronic nuisance ordinances are just one facet of a system of policing that is rooted in systemic racism and perpetuates violence against women of color and other marginalized groups.¹⁹⁷ For example, not only are Black women disproportionately victims of unjust chronic nuisance laws, but there is also a long history of unarmed Black women being killed and injured directly by police violence.¹⁹⁸ Although abolishing or circumscribing chronic nuisance laws may prevent police and landlords from using this tool to revictimize survivors of domestic violence, this is only a small part of ending systemic racism and the normalization of violence against women.

Traditional legislative advocacy has its limits, and organizations that engage in this sort of advocacy may lose track of their priorities, much like the

192. Rebecca Licavoli Adams, *California Eviction Protections for Victims of Domestic Violence: Additional Protections or Additional Problems?*, 9 HASTINGS RACE & POVERTY L.J. 1, 78 (2012).

193. CAL. CIV. PROC. CODE § 1161.3(a)(1)(B)(2).

194. See, e.g., Jacobs, *supra* note 59.

195. Adams, *supra* note 192, at 26.

196. Residential Tenant's Right to Seek Police and Emergency Assistance, MINN. STAT. § 504B.205 (2014), available at <https://www.revisor.mn.gov/statutes/?id=504B.205>.

197. See, e.g., Kirsten West Savali, *Black Women Are Killed By Police, Too*, DAME (Aug. 18, 2014, 6:32 AM), <http://www.damemagazine.com/2014/08/18/black-women-are-killed-police-too>.

198. *Id.*; see also White, *supra* note 8.

anti-domestic violence movement in the 1970s and 1980s, which became coopted by those who supported increased reliance on the criminal justice system to address domestic violence rather than fighting against systemic misogyny.¹⁹⁹ Organizations like INCITE!²⁰⁰ work to end violence against women and communities of color without relying on traditional legislative strategies and nonprofit funding sources. Their intersectional approach, recognizes the links between police violence and domestic violence.²⁰¹ It calls for “go[ing] beyond reform of state institutions to developing community based responses to violence that do not rely on the violent mechanisms of the state, but instead require us to build and transform our communities, prioritizing 1) women’s safety from violence, 2) community responsibility for creating and enabling the conditions which permit violence to take place, and 3) transformation of private and public relations of power.”²⁰² Community responsibility for ending domestic violence encompasses everything from having friends or family members work with survivors on developing safety plans to creating strategies that empower people to intervene when they see that domestic violence is occurring.²⁰³ Additionally, ensuring that there is a robust social safety net that allows women to leave violent relationships and abolishing the patriarchal norms that allow domestic violence to occur will further work against the normalization of domestic violence in our society. Organizations like INCITE!, which already have an intersectional approach, may be best situated to make connections between issues like chronic nuisance ordinances and violence against women, perpetrated both by intimate partners and the state, and create change.

CONCLUSION

For survivors of domestic violence, chronic nuisance laws can result in “third party abuse,” as survivors may be victimized by their landlords or their municipalities for calling the police for assistance.²⁰⁴ In some cases, abusers who are savvy may take advantage of these laws to discourage survivors from calling the police, or even threaten to call the police in order to have the survivor evicted.²⁰⁵ By using third parties, such as law enforcement and administrative agencies, the abuser may cause “third party victimization.”

199. RICHIE, *supra* note 40, at 97.

200. See *Vision*, INCITE!, <http://www.incite-national.org/page/vision> (“INCITE! is a national, activist organization of radical feminists of color. We mobilize to end all forms of violence against women, gender non-conforming, and trans people of color and our communities. By supporting grassroots organizing, we nurture the health and well-being of communities of color. Through our efforts, we move closer toward global justice, liberation, and peace.”) (last visited Apr. 13, 2015).

201. INCITE! WOMEN OF COLOR AGAINST VIOLENCE, *supra* note 134, at 40.

202. *Id.*

203. See Victoria Law, *Against Carceral Feminism*, JACOBIN (Oct. 17, 2014), <https://www.jacobinmag.com/2014/10/against-carceral-feminism>.

204. See Vrettos, *supra* note 18, at 102.

205. See Fais, *supra* note 20.

Furthermore, these ordinances are part of a trend of privatizing government services and require landlords to take steps to evict tenants in the name of “reducing crime,” acting as “third party police.” Landlords, who may not understand the causes of domestic violence to begin with, are likely ill equipped for these new responsibilities.

For women of color, especially poor women of color, chronic nuisance laws can have especially negative consequences and can compound other difficulties in obtaining housing. As Lenora Lapidus wrote about the *Alvera* case:

It is hard enough for victims of domestic violence, who may be entirely dependent on their abusers for financial support needed to rent an apartment, to find ways to make it on their own; to force a woman who has just suffered abuse and who is unable at that time to seek employment or to continue her current job, to find new housing may be impossible. For women like Ms. Alvera, a poor Latina woman, the racial and ethnic discrimination of the workforce and of the housing market combine to make the search for a new home even more difficult.²⁰⁶

Women of color who are survivors of domestic violence experience discrimination both on the systemic level, through our segregated housing system, and on the individual level as law enforcement and other actors have discretion to act in biased ways, whether or not the bias is intentional.

As municipalities struggle to deal with the fallout from the Great Recession, it is crucial that vital government services remain accessible to survivors of domestic violence. For this to happen, municipalities will have to give up the mindset that survivors should be held fiscally responsible for the government services they use. Additionally, advocates must think broadly about violence, accounting for both police violence and violence from landlords, before blindly relying on the criminal justice system to protect women from abuse. Amending or repealing chronic nuisance laws is just the first step in making sure that domestic violence survivors, especially poor women and women of color, can secure safe and affordable housing.

APPENDIX

Norristown Municipal Code § 245-3, Landlords Responsible for Certain Behavior of Tenants (the New Ordinance) (on file with the author):

- A. It shall be the licensee’s responsibility to assure that the tenants, the tenants’ family members, and guests of any tenant or tenant’s family member not engage in disorderly behavior in the rental dwelling unit. For the purposes of this chapter, “rental dwelling unit” shall include common areas in the building where the rental dwelling unit is located.

206. Lapidus, *supra* note 157, at 390.

B. Disorderly behavior.

1. For purposes of this § 245-3 only, “disorderly behavior” may include, but is not limited to, the following:
 - a. Drug-related illegal activity in the rental dwelling unit. “Drug-related illegal activity” means the illegal possession, manufacture, sale, distribution, purchase, use, or possession with intent to manufacture, sell or distribute a controlled substance [as defined in the Controlled Substance Act (21 U.S.C. § 802)] or possession of drug paraphernalia as defined by Pennsylvania statute. A tenant shall be deemed to be in possession of a controlled substance if any amount of a controlled substance is located in the tenant’s rental dwelling unit even if the tenant claims not to know the controlled substance was present, unless the tenant provides a sworn statement by a person, other than another tenant or tenant’s family member, that the controlled substance was his or hers and that the tenant had no knowledge of the existence of the controlled substance.
 - b. Any call to a rental dwelling unit or units to which the Norristown Police Department responds and which, in the sole discretion of the Chief of Police, involves activity that can be characterized as disorderly in nature, including, but not limited to, the following types of activity:
 - i. Disorderly conduct;
 - ii. Public nuisance;
 - iii. Unlawful use, discharge or possession of a firearm or weapon;
 - iv. Obstructing the administration of justice;
 - v. Domestic disturbances that do not require that a mandatory arrest be made;
 - vi. Prostitution; and
 - vii. Intimidation.
 - c. The issuance of at least three citations by the Municipality of Norristown for a violation of the International Property Maintenance Code, Norristown’s codification of the Uniform Construction Code, or any other general law of Norristown.
2. Calls to which the Norristown Police Department responds will not be counted for purposes of determining whether a licensee shall be subject to the fines set forth in

this § 245-3 where those calls are made by a tenant, a member of a tenant's family or a tenant's guest taking action to seek emergency assistance, unless it is discovered by the Norristown Police Department, upon investigation, that one or more of the acts constituting disorderly behavior set forth in Subsection B(1)(b) above have occurred at the rental dwelling unit(s).

- C. Upon determination by the Chief of Police that a rental dwelling unit was the location of disorderly behavior, the Chief of Police shall notify the Director of Code Enforcement, who shall notify the applicable licensee of the violation by first-class mail at the licensee's last-known address and direct the licensee to take steps to prevent further violations.
- D. If a second instance of disorderly behavior occurs at a rental dwelling unit within two months after the date of the notice for a previous disorderly behavior at the same rental dwelling unit, the Director of Code Enforcement shall notify the licensee of the violation by first-class mail at the licensee's last-known address and direct the licensee to submit, within 10 business days of the date of the notice, a written report to the Director of Code Enforcement of all action taken by the licensee since the first violation notice and actions the licensee intends to take to prevent further disorderly behavior. If the report is not received by the Director of Code Enforcement in a timely manner, the licensee shall be cited for violation of this section and, if found guilty by a court of competent jurisdiction, shall be required to pay the applicable fines as stated in § 245-3K below.
- E. If the licensee submits the report required in § 245-3D above in a timely manner, and a third instance of disorderly behavior occurs at a rental dwelling unit within two months after the date of the notice for the second instance of disorderly behavior at the same rental dwelling unit, the licensee shall be cited for violation of this section and, if found guilty by a court of competent jurisdiction, shall be required to pay the applicable fines as stated in § 245-3K below.
- F. No adverse action shall be taken against any licensee where the instance of disorderly behavior occurred during pending eviction proceedings or within 30 days of notice given by the licensee to a tenant to vacate the rental dwelling unit. However, adverse action may be taken when the licensee fails to diligently pursue the eviction process.
- G. No property shall be condemned for any reason under the International Property Maintenance Code for violation of the provisions of this section.
- H. No tenant shall be evicted or forced to vacate a rental dwelling

unit by the Municipality of Norristown for violation of the provisions of this section.

- I. It is strongly encouraged that all licensees include in their leases language that provides that it is a breach of the lease for a tenant to be convicted for disorderly behavior.
- J. It is strongly encouraged that all licensees conduct criminal background checks on prospective tenants prior to entering into a lease.
- K. Penalties for violation of § 245-3.
 1. If a licensee is convicted of violating this § 245-3, the first conviction shall carry a mandatory fine of a minimum of \$300 and a maximum of \$500.
 2. If a licensee is convicted of violating this § 245-3 for a second time, such conviction shall carry a mandatory fine of a minimum of \$500 and a maximum of \$750.
 3. If a licensee is convicted of violating this § 245-3 for a third time, such conviction shall carry a mandatory fine of a minimum of \$750 and a maximum of \$1,000.
 4. If a licensee is convicted of violating this § 245-3 for a fourth or subsequent time, such conviction(s) shall carry a mandatory fine of \$1,000.
 5. All fines levied pursuant to this § 245-3K shall have added to them all court costs and reasonable attorneys' fees incurred by the Municipality of Norristown to enforce this section. Each day that a violation continues shall constitute a separate offense.

