



**New Yorkers Should Not Have to Choose Between Safety and Housing—
Preserve the Right to Call 911**

(A.2665-A Lavine/S.4657-A Hoylman)

**Joint Memorandum of Support from
ACLU Women’s Rights Project, New York Civil Liberties Union, Empire Justice
Center, and New York State Coalition Against Domestic Violence**

The ACLU Women’s Rights Project, Empire Justice Center, the New York Civil Liberties Union, and the New York State Coalition Against Domestic Violence strongly support A.2665-A (Lavine)/S.4657-A (Hoylman) and urge its immediate passage. A.2665-A/S.4657-A will ensure that all New Yorkers can call for police assistance and emergency services without fear of losing their homes.

No one should be afraid to access police or emergency assistance because doing so may jeopardize their housing. However, municipalities throughout New York state have passed local laws, known as “nuisance ordinances,” with this very consequence.ⁱ These ordinances allow a municipality to designate a property as a “nuisance” when it is the site of a certain number of emergency responses or alleged nuisance conduct—including assault, harassment, stalking, and much more—regardless of whether the residential occupant was the victim, rather than the perpetrator, of the conduct or whether the emergency response was to a call for medical assistance. When a property is labeled a nuisance, the municipality generally instructs the owner to “abate the nuisance” or imposes harsh penalties, such as fines, revocation of rental permits, or even closure of the property. The mere threat of such penalties often leads property owners to evict or threaten to evict tenants, refuse to renew their leases, or instruct them to stop calling 911.

Nuisance ordinances put domestic violence survivors in dangerous positions.ⁱⁱ In East Rochester, for example, a survivor reported that a local nuisance ordinance empowered her abuser to harass and stalk her with impunity, because he knew that the ordinance would require her landlord to evict her if she sought police assistance a third time.ⁱⁱⁱ A joint study by the ACLU and Social Science Research Council found that domestic violence was the single largest category of enforcement under both Binghamton’s and Fulton’s nuisance ordinances.^{iv}

These ordinances also harm residents seeking help in medical emergencies. In one case, Binghamton enforced the ordinance based on two different instances where a tenant called 911 because her son and his girlfriend had overdosed on heroin, even though there had been no illegal drug activity reported at the apartment.^v Additionally, these ordinances are often harmful to people with disabilities, who may need to access emergency medical assistance with some frequency. Fulton, for example, cited an emergency call regarding a man who “stated that he wasn’t feeling well and that his medications were not working . . . that

he did not want to harm himself or others but that he was seeing things, like the devil[,] and that he was fearful.”^{vi}

Finally, researchers have found that nuisance ordinances have a disparate impact on racial minorities. For example, a Milwaukee study revealed that properties located in predominantly African-American neighborhoods were consistently more likely to receive nuisance citations than those in other neighborhoods where a similar number of calls were placed.^{vii}

A.2665-A/S.4657-A ensures that tenants can seek emergency services and retain their housing and protects landlords from penalty based on their tenants’ legitimate calls for help:

- The bill provides any person who is a survivor of domestic violence, or any other person threatened with violence, in jeopardy of harm, or in need of medical assistance, with the right to call 911 without penalty or reprisal based on a local nuisance ordinance.
- The bill protects landlords and property owners from facing liability for third-party misconduct that they cannot control or foresee by ensuring that municipalities may not impose penalties on a property owner or tenant based on a residential occupant’s exercise of their right to seek police assistance or emergency aid.
- Where a municipality seeks to improperly enforce a nuisance ordinance, the bill requires notice to the relevant tenant(s) and property owner(s), as well as the opportunity to contest the enforcement action and remedies for violations.

Importantly, A.2665-A/S.4657-A *will not* stop municipalities from addressing other drug, weapon, and property crimes directly through penal, housing, and zoning laws. Instead, it ensures that such efforts do not inadvertently punish individuals for violence or other crimes perpetrated against them. The bill also *will not* prevent municipalities or landlords from penalizing individuals who perpetrate criminal activity; it authorizes a landlord or court to remove the perpetrator of violence but to allow a survivor to remain in occupancy through lease bifurcation. Finally, the bill preserves all of the rights landlords have under current law with regard to tenants who breach their leases separate and apart from their requests for emergency assistance.

Several courts—including New York state courts—have found that nuisance ordinances run afoul of federal and state constitutional and statutory protections.^{viii} This leaves landlords in municipalities with nuisance ordinances with the uncomfortable choice between violating the local ordinance—risking losing their property or high fines—and violating constitutional, federal, and state legal obligations, exposing them to legal liability. A.2665-A/S.4657-A would eliminate this dilemma.

Nobody should be forced to choose between their safety and their housing. The ACLU Women’s Rights Project, Empire Justice Center, the New York Civil Liberties Union, and the New York State Coalition Against Domestic Violence strongly believe that this legislation strikes a critical balance between survivors’ safety needs, landlords’ duty to maintain order in their properties, and municipalities’ rights to address community welfare. A.2665-A/S.4657-A is critical for domestic violence survivors, survivors of other crimes, and individuals in need of emergency aid across the state, and we urge its immediate passage.

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ⁱ ACLU Women's Rights Project & Social Science Research Council, *Silenced: How Nuisance Ordinances Punish Crime Victims in New York* (June 2015), https://www.aclu.org/sites/default/files/field_document/equ15-report-nuisanceord-rel3.pdf.

ⁱⁱ See Second Amended Complaint, *Grape v. Town/Village of East Rochester*, No. 07 CV 6075 CJS (F) (W.D.N.Y. July 6, 2007); Complaint, *Simmons v. City of Rochester*, No. 6:12 CV 06705 CJS (W.D.N.Y. Dec. 12, 2012); First Amended Complaint, *Peeso v. City of Hornell*, No. 6:11-cv-6306 (W.D.N.Y. filed June 17, 2011). Cases were also filed in Pennsylvania and Arizona and settled favorably for the plaintiffs, with repeal of the ordinances and damages and attorneys' fees paid to the survivors. See Second Amended Complaint, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. October 10, 2013); Release and Settlement Agreement, *Briggs*, No. 2:13-cv-02191-ER (signed Sept. 18, 2014), https://www.aclu.org/sites/default/files/assets/2014.09.18_-_release_and_settlement_agreement_-_fully_executed.pdf; Amended Complaint, *Markham v. City of Surprise*, No. 2:15-cv-01696-SRB (D. Ariz. Sept. 21, 2015); Release and Settlement Agreement, *Markham*, No. 2:15-cv-01696-SRB (signed Mar. 21, 2016), <https://www.aclu.org/legal-document/nancy-markham-v-city-surprise-settlement-agreement-mar-21-2016>.

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

^{iv} ACLU Women's Rights Project & Social Science Research Council, *Silenced: How Nuisance Ordinances Punish Crime Victims in New York* (June 2015), https://www.aclu.org/sites/default/files/field_document/equ15-report-nuisanceord-rel3.pdf.

^v ACLU Women's Rights Project & Social Science Research Council, *Silenced: How Nuisance Ordinances Punish Crime Victims in New York* (June 2015), at 18, https://www.aclu.org/sites/default/files/field_document/equ15-report-nuisanceord-rel3.pdf.

^{vi} ACLU & NYCLU, *More Than a Nuisance: The Outsized Consequences of New York's Nuisance Ordinances* (2018), at 24-25, https://www.nyclu.org/sites/default/files/field_documents/nyclu_nuisancereport_20180809.pdf.

^{vii} Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOCIOLOGICAL REV. 117, 125-30 (2013), http://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr__0.pdf.

^{viii} The First Amendment to the U.S. Constitution, as well as the corresponding provisions in the New York Constitution, guarantee the right to petition the government, which includes the right to seek police assistance. In 2017, a New York state appellate court struck down the Village of Groton's nuisance ordinance as unconstitutional under the First Amendment because its penalties discouraged tenants from seeking police assistance. See *Bd. of Trustees of Vill. of Groton v. Pirro*, 152 A.D.3d 149, 160-61 (3d Dep't 2017). In addition, nuisance ordinances violate the due process rights guaranteed to both landlords and tenants under the Fourteenth Amendment by failing to provide adequate procedural protections before the municipality orders a property to be vacated or pressures a landlord to evict a tenant. In 2017, a New York state court held that Rochester's ordinance violated state and federal due process protections by closing a property and summarily evicting its occupants based on the city's public nuisance finding. *Alcorn ex rel. Proas Partners, LLC v. Muhammed*, 66 N.Y.S.2d 819, 832 (Sup. Ct. Monroe Cty. 2017). Nuisance ordinances may also violate the federal Fair Housing Act's (FHA) prohibition against housing discrimination on the basis of sex, race, and/or disability. In 2016, the U.S. Department of Housing and Urban Development (HUD) issued guidance stating that nuisance ordinances violate the FHA where they silence or threaten the housing of domestic violence survivors and survivors of other crimes who need to call 911. U.S. Department of Housing and Urban Development, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services* (Sept. 13, 2016), <https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>. Additionally, HUD has pursued action in two states against municipalities where local ordinances unlawfully discriminate against domestic violence survivors. Housing Discrimination Complaint, *Assistant Secretary for Fair Housing & Equal Opportunity v. Borough of Norristown, PA*, No. 03-13-0277-8 (Dep't of Hous. & Urban Dev. June 5, 2013); Conciliation Agreement Between Assistant Secretary of the Office of Fair Housing and Equal Opportunity and Municipality of Norristown, Nos. 03-13-0277-8 & 03-13-0277-9 (Dep't of Hous. & Urban Dev. Sept. 17, 2014); Barbara Tetreault, *City Agrees to Amend Ordinance to Exempt Domestic Violence Victims*, BERLIN DAILY SUN (Jan. 28, 2015). Finally, New York state law prohibits housing discrimination against a tenant based on their status as a "domestic violence victim." N.Y. Real Prop. § 227-d. By penalizing tenants and landlords based on domestic abuse, nuisance ordinances violate these protections.