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Treating Neighbors as Nuisances: Troubling Applications of Criminal Activity Nuisance Ordinances

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Abstract

Thousands of cities nationwide enforce Criminal Activity Nuisance Ordinances that catalyze the eviction of tenants when there are two or more police visits to a property. We report findings of an empirical study of enforcement of nuisance ordinances, finding that cities often target survivors of domestic violence, people experiencing a mental health crisis, nonprofit organizations serving people with disabilities, people seeking life-saving medical intervention to prevent a fatal drug overdose, and non-criminal behavior such as playing basketball or being "disrespectful." Codifying into public policy a path to homelessness in these instances is not only cruel and counterproductive, but likely violates the Fair Housing Act and the Constitution.

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Save a life, lose your home. That's the unconscionable choice that criminal activity nuisance ordinances (CANOs) give to renters in thousands of cities nationwide. Under these laws, cities catalyze the eviction of people for surviving domestic violence, calling a suicide hotline, seeking life-saving medical attention, or trivial things like playing basketball.

Criminal Activity Nuisance Ordinances (CANOs) are local laws that penalize property owners if there are repeated incidents of criminal activity on or near their property over a set period of time. There are an estimated 2000 CANOs nationwide.[3] Although scholars and advocates have documented the use of CANOs to penalize survivors of domestic violence,[4] less attention has been paid to other ways in which CANOs are used to punish people who need life-saving medical attention, as well as target people of color, people with disabilities, youth, and renters. Here, we report findings of an empirical study of CANO enforcement in a sample of Ohio cities.[5] We find that a significant number of nuisance designations are for things like:

- Domestic Violence: One of the most common causes for nuisance letters is domestic violence. For example, a tenant ran to a neighbor's house, "bleeding from [her] face" following an attack by her boyfriend. The neighbor called 911, and police arrested the boyfriend and charged him with felonious assault and domestic violence. The police transported the tenant to the emergency room, where doctors confirmed she sustained "an apparent nasal fracture, concussion, and facial contusions." Three days later, the city's law department wrote the landlord: "your tenant [] had a visitor [] over to the residence where he assaulted her. He was charged with Felonious Assault. This activity qualifies the property as a nuisance."[6]

[3] *Let's Stop Criminalizing Victims of Domestic Violence*, SHRIVER CENTER (Oct. 27, 2017), https://theshriverbrief.org/lets-stop-criminalizing-victims-of-domestic-violence-a72a06b50e42.

[4] Cari Fais, Note, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 COLUM. L. REV. 1118–1225 (2008); Gretchen W. Arnold, *From Victim to Offender: How Nuisance Property Laws Affect Battered Women*, J. OF INTERPERSONAL VIOLENCE 0886260516647512 (2016); Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AMERICAN SOC. REV. 117–141 (2012).

[5] Joseph Mead et al., *Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio*, URB. PUBLICATIONS, Appendix B (2017) (explaining methodology of study), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3067028.

[6] Letter from Pamela Roessner, Esq., Chief Prosecutor, Lakewood Ohio Law Department Office Of Prosecution, to Lakewood Resident, RE: Notification of Nuisance Activity, (Jan. 26,2016), available at https://www.dropbox.com/s/8jb1dy8c8ngk1kz/LL.pdf?dl=0.

- Mental Health Crisis: A resident called a mobile crisis center and threatened to harm himself. The center notified the police, which prompted the City to send details of the call to the landlord with the warning that "[t]his activity qualifies the property as a nuisance." The letter notes that the resident previously was the victim of a pepper spray attack by an unknown assailant and had an argument with a friend.[7] The landlord initiated eviction proceedings a few weeks later.

- Drug Overdose: In October of 2015, a woman called 911 after she found someone had died of a drug overdose in her home. [8] A few months later, she called the police again because someone else was experiencing an overdose. On that occasion, police and EMS responded and provided Narcan to the person in crisis, reviving him. A few weeks later the city sent the woman's landlord a letter informing her that emergency responses to the home qualified the property as a nuisance. The landlord initiated eviction proceedings against her tenant on the same day.

- Minor and non-criminal behavior: Cities have designated kids playing basketball or being "disrespectful" as nuisances.

As discussed below, CANOs impose a serious harm on people designated as nuisances, and, by penalizing or discouraging people who need assistance, CANOs are cruel and counterproductive. Moreover, CANOs violate the Constitution and the Fair Housing Act. After briefly providing an overview of CANOs, we discuss some of the more troubling ways that CANOs are used against survivors of domestic violence, people with disabilities, people seeking life-saving medical intervention, and trivial, non-criminal behavior. In light of these troubling findings, cities should reconsider their use of CANOs.

I. Background on CANOs

CANOs are found in approximately 2000 cities nationwide, and while they vary from city to city, they tend to follow a common structure. First, criminal behavior that qualifies as a nuisance is defined. Most cities list specific offenses that qualify as a nuisance (such as drug offenses, assault, trespassing, or animal complaints), while some cities include all crimes. Some CANOs allow property owners to be penalized not only for conduct that occurs on their property, but also for conduct that occurs within a set number of feet of their property. In at least one city, a resident's conduct anywhere in the city can draw a penalty against the owner of the property where that resident lives.

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[7] Letter from Ashley L. Belzer, Esq., Assistant Prosecutor, Lakewood Ohio Law Department Office Of Prosecution, to Lakewood Resident, RE: Notification of Nuisance Activity, (Dec. 9, 2014), available at https://www.dropbox.com/s/xerkm3wicr6c7s5/L.pdf?dl=0.

[8] Letter from Lakewood Ohio Law Department Office Of Prosecution, to Lakewood Resident, RE: Notification of Nuisance Activity, (April, 5 2016), available at https://www.dropbox.com/s/kyqnfgtv0madyu7/V.pdf?dl=0.

Second, CANOs specify the number of nuisances in a period of time: CANOs specify the number of offenses and the relevant time period necessary to deem a property a nuisance. A typical ordinance states two or more qualifying incidents (or one, if the incident involves certain felony offenses) over a 12-month period will lead to a declaration that a property is a nuisance.[9]

Third, CANOs specify the penalty against the property owner if there are additional qualified incidents tied to a property after it has been declared a nuisance. A common penalty is to charge the property owner a fee for the cost of responding to an emergency call to the property. At least one city also allows a property owner to be charged with a standalone misdemeanor offense if additional qualifying incidents occur after their property was declared a nuisance.[10]

Finally, CANOs often provide that property owners can avoid being fined if they take steps to abate the nuisance at their property, typically by evicting tenants. Landlords usually respond to a nuisance letter by pursuing formal eviction proceedings, with other landlords engaging in a self-help eviction or taking other negative action against the tenant.[11]

CANOs are often enacted in response to complaints about the behavior and activities of city residents. Rarely do residents express concern with serious crime. Instead, residents and councilmembers complain about annoying or rude behavior and their wish for a certain community character.[12] Race and class undertones are frequently evident. At times, these undertones are thinly veiled, if at all, as city officials explicitly identify populations they expect to be impacted by a CANO. Whether explicit or implicit, race and class motivations for adopting CANOs may carry serious implications for cities as courts have found that "protection of community character" can be code for racial prejudice and violates the Fair Housing Act's prohibition against race discrimination.[13]

Although CANOs as written apply to properties whether they are owner- or tenant-occupied, some cities readily identify renters as a target population when

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[9] E.g., Lakewood Ord. 510.01(c).

[10] Bedford Ord. § 511.12(b); § 511.99.

[11] Desmond and Valdez, *supra* note 4; AMERICAN CIVIL LIBERTIES UNION, SILENCED: HOW NUISANCE ORDINANCES PUNISH CRIME VICTIMS IN NEW YORK (2015).

[12] *Bedford City Council Meeting Minutes*, BEDFORD CITY COUNCIL (May 2, 2005), https://www.dropbox.com/s/fhybaot8iophvbf/BedfordMay2005.pdf?dl=0.

[13] Mhany Mgmt. v. City of Nassau, 819 F.3d 581 (2nd Cir. 2016); Ave. 6E Inv.' v. City of Yuma, Ariz., 818 F.3d 493, 506 (9th Cir. 2016); Greater New Orleans Fair Hous. Action Ctr. v. St. Bernard Parish, 641 F. Supp. 2d 563, 571 (E.D. La. 2009) ("'threat' to the 'shared values' of overwhelmingly Caucasian St. Bernard Parish clearly is an appeal to racial as well as class prejudice." (collecting cases)).

considering the adoption of a CANO. For example, one city passed its CANO with the explicit intention of fining property owners for their tenants' behavior: "if the renter is causing a problem, the landlord may also have to pay the cost to the City for excessive police calls."[14] In another city, the vice mayor who introduced the CANO legislation explained he hoped a nuisance notification would give landlords a reason to evict tenants.[15] In the actual implementation of CANOs, rental units are disproportionately targeted.

Some cities appear to have adopted their CANOs out of a preoccupation with renters who receive Housing Choice Vouchers. One council president expressed repeated interest in using the CANO to target properties with renters who receive housing vouchers. The law director explained that evicting the voucher holder would be a primary means of abating nuisance, and a key benefit of the nuisance ordinance would be to empower the law department to "get [Cuyahoga Metropolitan Housing Authority] involved in that point to either [sic] suspend the person's contract."[16] Fears about housing voucher holders are usually driven by stereotypes, often with racial undertones.[17] In fact, the former name for the federal Housing Choice Voucher Program, "Section 8," is often considered to be a racial slur.[18] Because protected classes (including people of color, families with children, and people with disabilities) are overrepresented among Housing Choice Voucher holders, opposition to voucher holders can often be considered unlawful discrimination.[19]

II. Implementation of Criminal Activity Nuisance Ordinances are Cruel, Counterproductive, and Illegal

[14] *Euclid City Council Meeting Minutes*, EUCLID CITY COUNCIL, at 9 (May 15, 2006), https://www.dropbox.com/s/z73iyfq1m39g9r4/EuclidMay52006Minutes.pdf?dl=0.

[15] *Lyndhurst City Council Meeting Minutes*, LYNDHURST CITY COUNCIL, at 8 (July 6, 2009), https://www.dropbox.com/s/5lqbeif3s5hqou9/Lyndhurst2009a.pdf?dl=0.

[16] *Euclid City Council Meeting Minutes*, EUCLID CITY COUNCIL, at 15 (October 16, 2006), https://www.dropbox.com/s/9qlxvu5n36hdgho/EuclidOctober%2016%202006%20Council%20Minutes.pdf?dl=0.

[17] J. Rosie Tighe, Megan E. Hatch & Joseph Mead, *Source of Income Discrimination and Fair Housing Policy*, 32 J. OF PLANNING LITERATURE 3 (2017); J. Rosie Tighe, *Public Opinion and Affordable Housing: A Review of the Literature*, 25 J. OF PLANNING LITERATURE 3 (2010); J. Rosie Tighe, *How Race and Class Stereotyping Shapes Attitudes Toward Affordable Housing*, 27 HOUSING STUD. 962 (2012).

[18] Emily Badger, *How Section 8 became a 'Racial Slur,'* WASH. POST (June 15, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/06/15/how-section-8-became-a-racial-slur/?utm_term=.46dd1f7b856f

[19] Paula Beck, *Fighting Section 8 Discrimination: The Fair Housing Act's New Frontier*, 31 HARV. C.R.-C.L. L. REV. 155 (1996).

Since eviction is the most common response to receiving a nuisance notification, these laws put residents at significant risk for housing instability. Housing instability may actually exacerbate nuisance-triggering conditions such as domestic violence, mental health crises, or drug addiction. For example, survivors of domestic violence may not seek help if they fear it will lead to housing instability or homelessness.[20] Housing instability is linked to mental health problems and even suicide.[21] Individuals who are homeless or facing housing instability are more likely than those in stable housing situations to report alcohol or drug dependency.[22]

In addition, housing instability and forced moves have a myriad of negative impacts on individuals, families, and neighborhoods. This is particularly acute for evicted renters, who often subsequently move to a smaller or lower quality unit than they would prefer[23] in higher poverty and crime neighborhoods.[24] Besides the immediate financial hardship,[25] eviction and other forced moves negatively impact mental and physical health,[26] the ability to keep one's job,[27] and child academic achievement.[28] These negative financial and health consequences are still observed two years after eviction.[29] Neighborhoods with high mobility rates

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[20] Michelle Fugate et al., *Barriers to Domestic Violence Help Seeking: Implications for Intervention*, 11 VIOLENCE AGAINST WOMEN 3, 290 (2005).

[21] Robert M. Bossarte et al., *Housing Instability and Mental Distress among US Veterans*, 103 AM. J. PUB. HEALTH S213 (2013); S. F. Suglia, C. S. Duarte & M. T. Sandel, *Housing quality, housing instability, and maternal mental health.*, 88 J. URB. HEALTH 1105 (2011).

[22] Ryan D. Murphy, Sarah E. Zemore & Nina Mulia, *Housing Instability and Alcohol Problems during the 2007–2009 US Recession: the Moderating Role of Perceived Family Support*, 91 J. URB. HEALTH 1, 17 (2014).

[23] Matthew Desmond, Carl Gershenson & Barbara Kiviat, *Forced Relocation and Residential Instability among Urban Renters*, 89 SOC. SERV. REV. 227 (2015).

[24] Matthew Desmond & Tracey Shollenberger, *Forced Displacement From Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751 (2015).

[25] Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295 (2015).

[26] Arnold, *supra* note 4; Desmond and Kimbro, *supra* note 25.

[27] MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY (2016); Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, 63 SOC. PROBS. 1, 46 (2016).

[28] Robin L. Ersing, Richard Sutphen & Diane Nicole Loeffler, *Exploring the Impact and Implications of Residential Mobility: From the Neighborhood to the School*, 10 ADVANCES IN SOC. WORK 1, 1 (2009).

[29] Desmond and Kimbro, *supra* note 25.

are less stable than neighborhoods with lower mobility rates, which is associated with less civic engagement and trust among community members,[30] crime and gang activity,[31] environmental stress,[32] negative health outcomes such as stress and depression,[33] and lower levels of neighborhood attachment and satisfaction.[34]

Evictions and forced moves have both short- and long-term consequences for the families experiencing the moves, their children, and the neighborhoods they leave. The decision to designate a property as a nuisance has potentially far-reaching consequences beyond the intention to abate the nuisance. In that light, the use of CANOs to destabilize housing situation for reasons such as domestic violence, calling a suicide hotline, or playing basketball in the street is particularly troubling.

A. Domestic Violence

One of the most common applications of CANOs are to incidents of domestic violence. Throughout the country, cities include domestic violence as a nuisance offense; about half of the cities in Ohio with criminal activity nuisance laws include domestic violence as a nuisance offense.[35] In our sampled cities, between 20 and 58% of properties designated as a nuisance were scenes of intimate partner or familial violence. The aggressive enforcement against domestic violence is consistent with findings of researchers in other cities, who found domestic violence is often one of the most common causes of nuisance letters, ranging from 38-48 percent of cases in Binghamton and Fulton, New York,[36] to one-third of

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[30] Kenneth Temkin & William M. Rohe, *Social capital and neighborhood stability: An empirical investigation*, 9 HOUSING POL'Y DEBATE 1, 61 (1998).

[31] Lyndsay N. Boggess & John R. Hipp, *Violent Crime, Residential Instability and Mobility: Does the Relationship Differ in Minority Neighborhoods?*, 26 J. QUANTITATIVE CRIMINOLOGY 3, 351–370 (2010).

[32] Amy J. Schulz et al., *Do Neighborhood Economic Characteristics, Racial Composition, and Residential Stability Predict Perceptions of Stress Associated with the Physical and Social Environment? Findings from a Multilevel Analysis in Detroit*, 85 J. URB. HEALTH 5, 642 (2008).

[33] Desmond and Kimbro, *supra* note 25; Flora I. Matheson et al., *Urban neighborhoods, chronic stress, gender and depression*, 63 SOC. SCI. & MED. 2604 (2006).

[34] Ralph B. Taylor, *Neighborhood responses to disorder and local attachments: The systemic model of attachment, social disorganization, and neighborhood use value*, 11 SOC. FORUM 1, 41 (1996).

[35] Joseph Mead et al., *Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio,* URB. PUBLICATIONS, Appendix A (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3067028.

[36] AMERICAN CIVIL LIBERTIES UNION, *supra* note 11.

letters in Milwaukee, WI.[37] As an extreme example, in Fairlawn, Ohio, almost every nuisance letter in the sampled period was sent to the scene of domestic violence.

Here are a few examples of nuisance letters sent in response to incidents of domestic violence in cities in Northeast Ohio:

- Bedford informed a landlord that their tenant created a nuisance one week after her partner attacked her. Police had arrived on the scene after "a 911 call from a male stating that his dad was hitting his mom." The partner was placed into custody, and the woman was transported to the hospital. Nearly a year later, Bedford fined the property owner after another domestic violence incident occurred on the property.[38]

- Euclid Police dispatch log reports a call from a neighbor "to state the male is beating up a female inside that apt." The incident was coded as "boy/girl trouble." The male visited, harassed, and attacked the female tenant several times over the following months. In one incident, the tenant ran to a neighbor's door, bleeding, and asked him to call the police. Shortly after, the City Law Department sent the landlord a letter, explaining the property was a nuisance because the tenant "is involved in a pattern of behavior that is disruptive to her neighbors and places an undue burden on the resources of the Euclid Police Department." The letter implies the tenant is to blame, stating "it was determined that [the tenant] willingly let [the perpetrator] into the apartment."[39]

- In 2016, a Parma tenant was evicted shortly after the City sent a nuisance letter complaining about police responding to an incident of domestic violence at the property.[40]

CANOs present survivors of domestic violence with the impossible choice between seeking help from law enforcement and keeping their home.[41] In one

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[37] Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AMER. SOC. REV. 1, 117 (2013).

[38] Letter from Chief of Police of Bedford Ohio, Kris Nietert, to City of Bedford Ohio resident regarding Bedford Codified Ordinance 511.12(b)(2), (Aug. 31, 2016), available at https://www.dropbox.com/s/imlkgzhw69d5hh5/A.pdf?dl=0.

[39] Letter from L. Christopher Frey, Director of Law, City of Euclid Ohio, to Euclid City Resident, Re: Nuisance Declaration, available at https://www.dropbox.com/s/01kisa4g01vn2s6/mm.pdf?dl=0.

[40] Letter from Robert C. Miller, Chief of Police, City of Parma Ohio, to Parma Resident, regarding Declaration of Nuisance, (Mar. 24, 2016), available at https://www.dropbox.com/s/qtd1djdzoipgkea/D.pdf?dl=0.

[41] Arnold, *supra* note 4; Gretchen Arnold & Megan Slusser, *Silencing Women's Voices: Nuisance Property Laws and Battered Women*, 40 L. AND SOC. INQUIRY 4, 908 (2015).

illustrative case from Norristown, Pennsylvania, a woman was repeatedly attacked by an ex-boyfriend, and law enforcement told her she had used up her "strikes" and future calls would be punished by the city under their CANO. Her abuser was aware that she was unable to call the police, taunting her and eventually severely attacking her to the point that she had to be rushed to the hospital.[42] The city responded to the hospital trip by forcing eviction proceedings. The American Civil Liberties Union agreed to represent the woman, and she ultimately obtained a favorable settlement from the city.[43]

Advocates have noted—and courts have concluded—that penalizing survivors of violence is not only unjust, but likely violates the First Amendment, the Violence Against Women Act, and, by penalizing victims of a crime that is highly gendered, has a disparate impact on women in violation of the Fair Housing Act.[44] In fact, last year both the United States Department of Justice and Department of Housing and Urban Development issued guidance reminding cities of their obligations under federal law.[45] In many states, CANOs also conflict with state laws designed to protect survivors of domestic violence.[46] A handful of lawsuits challenging CANOs for punishing survivors of domestic violence are currently working their way through the courts. Although seven cities in Ohio have amended their CANOs to protect survivors of domestic violence at the urging of Cleveland State University students Calla Bonnano, Vanessa Hemminger, and Marissa Pappas, many cities continue to include domestic violence as a nuisance activity.

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[42] Lakisha Briggs, *I was a domestic violence victim. My town wanted me convicted for calling 911*, THE GUARDIAN, https://www.theguardian.com/commentisfree/2015/sep/11/domestic-violence-victim-town-wanted-me-evicted-calling-911.

[43] *Briggs v. Borough Of Norristown Et Al*, ACLU (Sep. 18, 2014), https://www.aclu.org/cases/briggs-v-borough-norristown-et-al.

[44] E.g., Vill. of Groton v. Pirro, Case No. 523504 (N.Y. App. Div. June 15, 2017) (holding nuisance ordinance violated First Amendment right to petition the government), available at https://law.justia.com/cases/new-york/appellate-division-third-department/2017/523504.html; Fais, *supra* note 4; Amanda K. Gavin, *Chronic Nuisance Ordinances: Turning Victim of Domestic Violence into "Nuisances" in the Eyes of Municipalities*, 119 PENN ST. L. REV. 1, 257 (2014); Filomena Gehart, *Domestic Violence Victims a Nuisance to Cities*, 43 PEPP. L. REV. 4, 1101 (2016); Anna Kastner, *The Other War at Home: Chronic Nuisance Laws and the Revictimization of Survivors of Domestic Violence*, 103 CAL. L. REV. 4, 1047 (2015).

[45] HELEN R. KANOVSKY, U.S. DEPT. 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 SERVICE (2016), available at http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf.

[46] Brief of Amici for ACLU et al., Vill. of Groton v. Pirro, (N.Y. App. Div. 2016) (No. 523504), available at https://www.aclu.org/groton-v-pirro-aclu-amicus-brief.

B. Mental Health Crises and Group Homes for People with Disabilities

Cities sometimes use their CANO against individuals seeking help for a mental health crisis or medical emergency, even in the absence of any criminal activity.

- In 2017, a city fined a property owner $250 because the tenant called the police out of concern that her boyfriend was suicidal.[47] The city designated the property as a nuisance a few months earlier after the resident had previously sought help for her boyfriend after he threatened to kill himself. The landlord then began uncontested eviction proceedings against the tenant.

- One city designated a property as a nuisance citing several acts of non-criminal activity, including: 1) the resident's "psychiatric situation" where the resident had "slit her wrists," 2) a "personal welfare check," conducted at a friend's request, on the resident who has not been able to afford her medications, and 3) the resident's distress over being called "crazy" and her failure to take her medication in several days.[48]

- Another property in was designated a nuisance based on repeated calls for a "psychiatric situation" involving a child who apparently has a mental disability (in addition to unrelated situations of domestic violence).[49]

In addition to designating individual homes as nuisances, cities have sometimes threatened to fine organizations that provide community-based residences for people with disabilities when their residents have a medical emergency. Community integration for people with disabilities has been a legal mandate and a clinical best practice for decades.[50] However, communities are sometimes reluctant to welcome group homes into their communities.[51] For example, cities have fined group homes after staff seek assistance responding to their residents' medical emergencies:

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[47] Letter from Chief of Police of Bedford Ohio, Kris Nietert, to City of Bedford Ohio resident regarding Bedford Codified Ordinance 511.12, (Feb. 2, 2017), available at https://www.dropbox.com/s/krwhcmatgko111i/H.pdf?dl=0.

[48] Letter from Chief of Police of Bedford Ohio, Kris Nietert, to City of Bedford Ohio resident regarding Bedford Codified Ordinance 511.12, (Sept. 2, 2015), available at https://www.dropbox.com/s/r75wkxjlv11g46n/M.pdf?dl=0.

[49] Letter from Chief of Police of Bedford Ohio, Kris Nietert, to City of Bedford Ohio resident regarding Bedford Codified Ordinance 511.12, (Dec. 7, 2016), available at https://www.dropbox.com/s/fbg9oul1ud4haji/E.pdf?dl=0.

[50] E.g., 20 U.S.C. § 1412(a)(1), (5); Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999).

[51] *See* MICHAEL LEPLEY & LENORE MANGIARELLI, HOUSING CENTER, STATE OF FAIR HOUSING IN NORTHEAST OHIO 2017, available at http://www.thehousingcenter.org/wp-content/uploads/2017/04/SOFH-2017-Final.pdf.

- In one city, staff of a group home for children with disabilities called for assistance when a child "hit his head [and] got his eye split open and is bleeding."[52] The child had to be transported to the Bedford Medical Center. The City fined the group home $250 and threatened to criminally prosecute the property owners and charge them escalating fines if future medical assistance was required. Based on earlier struggles with the city, the group home filed a federal civil rights action against the City of Bedford, alleging disability discrimination.[53]
- Another city similarly threatened a group home for adults with disabilities after the staff sought police assistance after a resident attempted to harm himself and a resident went missing.[54]

The practice of penalizing property owners because their residents call for help for mental health crises raises issues under federal and state laws that prohibit discrimination against people with disabilities, including the Fair Housing Act and the Americans with Disabilities Act.[55] For example, a fair housing organization recently sued the city of Maplewood, Missouri, for disability discrimination after it sent nuisance letters in reaction to tenants in a mental health crisis who sought medical assistance.[56] Penalizing residents if they require or reach out for mental health services could discourage people from accessing the medical help that they need. Additionally, disrupting housing has been found to worsen outcomes for people with mental health conditions.[57]

C. Drug Overdoses

Across the cities in our sample, between 10 and 40% of applications of CANOs are related to a person experiencing a drug overdose. Many of the CANOs we

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[52] Letter from Chief of Police of Bedford Ohio, Kris Nietert, to City of Bedford Ohio Group Home regarding Bedford Codified Ordinance 511.12, (Jan. 6, 2017), available at https://www.dropbox.com/s/cgj4r5b19d4hgp6/G.pdf?dl=0.

[53] REACH v. Bedford, No. 1:15-cv-02351 (N.D. Ohio Feb. 16, 2017).

[54] Letter from Lakewood Ohio Law Department, Office Of Prosecution, to Lakewood Resident, RE: Notification of Nuisance Activity, (Feb. 5, 2015), available at https://www.dropbox.com/s/curstruysq7f3i4/K.pdf?dl=0l.

[55] E.g., Laflamme v. New Horizons, 605 F.Supp.2d 378, 391 (D. Conn. 2009).

[56] Robert Patrick, *Suit: Maplewood targets African-Americans, women, disabled with nuisance ordinance*, ST. LOUIS POST DISPATCH, (Mar. 14, 2017), http://www.stltoday.com/news/local/crime-and-courts/suit-maplewood-targets-african-americans-women-disabled-with-nuisance-ordinance/article_d2309e7c-8822-57ea-90a5-cf3d8098b45f.html.

[57] Yerko Rojas & Sten-Åke Stenberg, *Evictions and suicide: a follow-up study of almost 22 000 Swedish households in the wake of the global financial crisis*, 70 J. EPIDEMIOLOGY COMMUNITY HEALTH 4, 409 (2016).

reviewed explicitly include violations of criminal drug abuse laws as nuisances. Because of the nature of CANOs—they trigger as the result of someone calling the police—drug use applications generally relate to an overdose. In these cases, a family member, friend, or passerby finds someone needing emergency medical assistance for an overdose crisis. After the person calls for help, police or emergency response triggers the nuisance proceedings.

- A young man overdosed on heroin twice in his apartment within the span of a few weeks. Both times, someone called 911 for help and emergency responders revived the man and took him to the hospital. The city prosecutor filed criminal charges against the man, and he was sentenced to one year of probation that required he enter treatment related to substance abuse disorder. In February, the city also sent the man's landlord a nuisance letter, ordering the landlord to abate the nuisance or pay a $560 fine. The landlord initiated eviction proceedings against the man immediately.

- A man came home from work to discover his friend, who stayed the night at his home, had died of a drug overdose. According to police reports, the man believed his friend, who suffered from addiction in the past, had stopped using drugs. A few days after his friend's death, the man became inebriated, fell out of his chair and hit his head. After police responded to help him, the city sent him a nuisance letter ordering that he pay $681 to offset the police response.

The medical community recognizes drug and alcohol addiction as preventable diseases. Drug use and addiction are closely linked with housing instability and homelessness. Imposing criminal and other penalties on those living with addiction can act as a barrier to prevention and treatment. As in the second example above, CANOs can amplify these barriers by threatening someone's housing while they are also dealing with criminal proceedings.

Ohio and many other states have enacted a Good Samaritan statute, which provides some limited immunity from criminal charges to those who call 911 to report an overdose. The spirit of laws like this recognizes the dangers of discouraging individuals from calling the police in an emergency situation. Ohio's statute, though, operates only in the criminal context, and does not directly impact the application of CANOs. The Americans with Disabilities Act and Fair Housing Act both protect people with past drug and alcohol addiction as a mental health disability, but these federal laws explicitly exclude individuals suffering from current drug or alcohol addiction, leaving those with drug use issues vulnerable to penalties waged by CANOs.

D. Lack of Due Process & Penalizing Trivial, Non-Criminal Behavior

After the specified number of qualifying offenses occur on (or near) a property in a city with a CANO, the city will typically declare the property a nuisance and send a letter to the property owner alerting them to the possibility of penalty should there be subsequent offenses. Despite their name, criminal activity nuisance ordinances are used to penalize behavior even when the police would be unable to sustain formal criminal charges (due to lack of evidence), or when the behavior is not in fact criminal (as with the vague notions of "disrespect"). This ability to give the city additional tools to go after behavior without being constrained by usual levels of proof and process are heralded as key advantages of CANOs.

Although criminal activity nuisance notifications are formally directed at property owners, it is most often renters who suffer the consequences of the notification.[58] The vast majority of formal eviction proceedings—whether justified or not—are uncontested, likely due to tenants' confusion about their legal rights and a lack of legal representation.[59] Some cities structured their CANOs to exclude tenants from contesting the nuisance allegations against them. While discussing his city's CANO, the city manager requested an amendment, "to have the verbiage cleaned up so the warning letters, billings and/or any assessments would be mailed directly to the property owner."[60] At the city manager's urging, the city amended its law also to disallow tenants from participating in the appeal process, ensuring the person likely to bear the brunt of the nuisance letter is given neither the notice nor the chance to argue against the charges.[61]

A tenant's inability to appeal is particularly problematic if there is no proof the activity occurred, or if the activity is neither criminal nor actually covered by the city's ordinance. For example, despite the police reporting "all quiet on arrival," the mere unverified complaint by a neighbor about loud noise was enough to prompt one city to issue a nuisance designation.[62]

This may cause procedural concerns as the person facing the consequences—the tenant—does not have legal recourse to challenge the nuisance notification and is therefore treated as guilty without a right to defend themselves, even if the

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[58] AMERICAN CIVIL LIBERTIES UNION, *supra* note 11.

[59] DESMOND, *supra* note 25; Matthew Desmond & Carl Gershenson, *Who gets evicted? Assessing individual, neighborhood, and network factors*, 62 SOC. SCI. RES. 362 (2016).

[60] *Minutes of Council Work Session*, BEDFORD CITY COUNCIL (September 5, 2017), https://www.dropbox.com/s/sn9v3070nz1yp5f/Bedford2017minutes.pdf?dl=0.

[61] Bedford Ord. No. 9523-17; *Minutes of Council Work Session*, BEDFORD CITY COUNCIL (September 5, 2017), https://www.dropbox.com/s/sn9v3070nz1yp5f/Bedford2017minutes.pdf?dl=0.

[62] Letter from Chief of Police of Bedford Ohio, Kris Nietert, to City of Bedford Ohio resident regarding Bedford Codified Ordinance 511.12, (Jan. 25, 2017), available at https://www.dropbox.com/s/gj72rc8t56376vj/N.pdf?dl=0.

activity that triggered the notification did not lead to criminal charges. Some groups have therefore raised due process concerns,[63] and some courts have struck down CANOs on this ground.[64] In one rather dramatic gesture, the President of the Alliance City Council refused to sign the nuisance ordinance adopted by the council, writing instead: "I respectfully must decline to sign Ord. 21-15 on the ground that it violates the Constitution." [65] The City Council enacted the ordinance over the objection.

The lack of process also opens the door to targeting members of protected classes in response to generic complaints such as being "disrespectful" or youth playing basketball. We also see evidence that cities penalize juveniles, in many cases youth of color, with nuisance citations for minor transgressions, such as:

- A city fined a landlord $250 because a 16-year-old black resident was seen "walking through the lot of the skateboard park and pool" after curfew.[66]
- One city's nuisance letter warned, "In reviewing a history of police calls connected to your property, it appears that numerous youths congregating at the home behave in a manner that is in violation of community standards," citing non-criminal behavior like "Use of profane language, annoyance to passing motorists" and "verbal confrontation" with a police officer."[67]
- A 2015 Euclid nuisance letter was sent complaining about "juveniles playing basketball in the street."[68]

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[63] Salim Katach, Note, *A Tenant's Procedural Due Process Right in Chronic Nuisance Ordinance Jurisdictions*, 43 HOFSTRA L. REV. 3, 875 (2015); Theresa Langley, Comment, *Living Without Protection: Nuisance Property Laws Unduly Burden Innocent Tenants and Entrench Divisions between Impoverished Communities and Law Enforcement*, 52 HOUS. L. REV. 4, 1255 (2015).

[64] Victor Valley Family Res. Ctr. v. City of Hesperia, No. ED CV 16-00903-AB (SPx), 2016 WL 3647340, at *5 (C.D. Cal. July 1, 2016); Peters v. Wilkes-Barre, Case No. 3:15-cv-00152, 2016 WL 346922, (M.D. Pa. Jan 27, 2016).

[65] *An Ordinance Amending Alliance Codified Ordinance Section 734; Large Parties, Gatherings or Events To Criminal Activity Nuisances*, ALLIANCE CITY COUNCIL, 5 (June 1, 2015), https://www.dropbox.com/s/a339vnxuvj7h5nz/Alliance21-15writeon.pdf?dl=0 (quoting Steve Okey, President of Council).

[66] Letter from Chief of Police of Bedford Ohio, Kris Nietert, to City of Bedford Ohio resident regarding Bedford Codified Ordinance 511.12, (Aug. 31, 2016), available at https://www.dropbox.com/s/xh71y5icc25sivf/Q.pdf?dl=0.

[67] Letter from City of Euclid Ohio, to Euclid City Resident, Re: Nuisance Declaration, (Jun. 13, 2014), available at https://www.dropbox.com/s/9672nx2mzb0ynhu/qq.pdf?dl=0.

[68] Letter from Mary Riley Casa, Assistant Prosecutor and Assistant Director of Law, City of Euclid Ohio to Euclid Resident regarding nuisance at rental property, (Oct. 13, 2015), available at https://www.dropbox.com/s/e83ykeuhbm446w5/X.pdf?dl=0.

- Many nuisance letters are sent in response to arguments between family members or live-in partners that do not break any laws. For example, police were called because a resident was upset at her 17-year-old son for "being disrespectful," which triggered the city to send a nuisance warning.[69]

Prior research in other states with similarly-worded CANOs found that CANOs were in fact disproportionately used against people of color, leading to civil rights lawsuits challenging CANOs under the Fair Housing Act.[70] Moreover, by treating CANOs as all-encompassing tools to penalize trivial behavior deemed problematic—including non-criminal incidents that are not covered by the actual text of the CANO—cities raise constitutional objections for failing to provide sufficient notice of what is against the rules, allowing too much discretion to officials, and allowing for arbitrary (and, often, race-based) enforcement.[71] Finally, by treating disrespectful, profane, or rude comments as a basis for penalizing landowners, cities could violate basic First Amendment principles.[72]

Conclusion

Cities use CANOs to exile their most vulnerable residents, codifying a path to homelessness into public policy. Rather than penalizing renters when they seek help, cities should work to address their traumas and provide solutions. Yet despite the disturbing use of CANOs, these laws continue to spread. Cities should reevaluate gratuitous and illegal policies that needlessly destabilize housing and churn through renters.

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[69] Letter from Chief of Police of Bedford Ohio, Kris Nietert, to City of Bedford Ohio resident regarding Bedford Codified Ordinance 511.12, (Jan. 31, 2017), available at https://www.dropbox.com/s/8kbxamdh43kxn1d/T.pdf?dl=0.

[70] *Peoria Nuisance Map*, SHRIVER CENTER (Aug. 10, 2017), http://povertylaw.org/files/advocacy/housing/PeoriaSuit/PeoriaNuisanceMap.pdf; Robert Patrick, *Suit: Maplewood targets African-Americans, women, disabled with nuisance ordinance*, ST. LOUIS POST DISPATCH, (Mar. 14, 2017), http://www.stltoday.com/news/local/crime-and-courts/suit-maplewood-targets-african-americans-women-disabled-with-nuisance-ordinance/article_d2309e7c-8822-57ea-90a5-cf3d8098b45f.html.

[71] E.g., City of Chicago v. Morales, 527 U.S. 41 (1999).

[72] E.g., Cohen v. California, 403 U.S. 15 (1971).