

Public Health Implications of Housing Laws: Nuisance Evictions

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In 2012, Lakisha Briggs called the police in Norristown, Pennsylvania, because her boyfriend was beating her. The police officer helped but also warned her that if she kept calling, the police would tell her landlord to evict her. A few weeks later, Ms Briggs' abuser returned, beat her, and stabbed her in the neck. She was so afraid of being evicted that she crawled out into the street to find help instead of calling 911. A neighbor, however, did call 911. Ms Briggs survived, and the day after she returned from the hospital, her landlord evicted her.¹

Nuisance Property Ordinances

Briggs was a casualty of what are known as "nuisance property" or "crime-free" ordinances. These local ordinances are intended to make landlords take responsibility for abhorrent, disruptive, or dangerous tenants. The police or other municipal officials keep track of reported problems (ie, nuisances), and at a certain point, the landlord either has to abate the nuisance or be penalized. The Norristown ordinance authorized the borough to revoke a landlord's rental license when police responded to 911 calls for "disorderly behavior" from the same property ≥ 3 times within 4 months. "Disorderly behavior" was defined broadly, explicitly included domestic disturbances, and did not distinguish between victim and perpetrator.²

The nuisance property ordinance is one part of a legal ecology of eviction identified by sociologist Matthew Desmond.³ Desmond and colleagues showed that eviction, broadly defined to include informal evictions and other forms of dispossession, is much more common than had been appreciated and that nuisance property ordinances may be particularly problematic. Research by Desmond and Valdez⁴ in Milwaukee, Wisconsin, showed that during 2008-2009, about 1 in 3 nuisance citations were for incidents of domestic violence. An American Civil Liberties Union report tracking nuisance citations in Binghamton and Fulton, New York, found that "domestic violence was the single largest category

of enforcement" of both cities' ordinances.⁵ One national poverty law organization estimated that more than 2000 municipalities had nuisance property ordinances of some kind as of 2017,⁶ but detailed information is lacking on what these ordinances consider to be nuisances, let alone whether they are enforced in a way that deters people in need from calling 911.

Public Health Implications

For public health, concerns about these ordinances are important, both because of the general importance of stable housing to personal and family health and because of the particularly severe consequences of eviction.⁷ Our focus in this article, however, is not on the health effects of eviction-related law per se but on the problem of consistently and promptly identifying harmful legal implications more generally.

Consider the evaluation of nuisance property ordinances. The targeted use of specific nuisance property provisions to push landlords to deal with "excessive" 911 use and other disruptions by their tenants emerged in the late 1980s.⁸ These ordinances arose as a way for municipalities to make property owners responsible for the behavior of their tenants, to ease the burden on police.⁴ In 1987, Portland, Oregon, was one of the first cities to use its nuisance law to regulate drug activity in homes.⁹ Since then, many municipalities have enacted nuisance property ordinances.⁸ To our knowledge, the effects of these laws were not studied systematically until work by Desmond and Valdez⁴ in Milwaukee. (The City of Milwaukee conducted an internal study in 2004 that showed

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Table. Characteristics of city nuisance ordinances and state housing protections for victims of domestic violence, 40 US cities, as of August 1, 2017

City	City Ordinance			State Law		
	City Regulates Nuisance Activities in Residential Properties	Calls for Emergency Service Constitutes a Nuisance	Domestic Violence Exempt as Nuisance Conduct	Victims of Domestic Violence Allowed to Change Lock	Victims of Domestic Violence Allowed to Break Lease	Victims of Domestic Violence Included as Protected Class in Fair-Housing Law
Albuquerque, NM	X	X				
Atlanta, GA	X					
Austin, TX					X	
Baltimore, MD	X			X	X	
Boston, ME	X	X		X	X	
Charlotte, NC	X		X	X	X	
Chicago, IL	X	X	X	X		X
Colorado Springs, CO	X				X	
Columbus, OH	X					
Dallas, TX	X				X	
Denver, CO	X				X	
Detroit, MI	X				X	
El Paso, TX					X	
Fort Worth, TX	X				X	
Fresno, CA	X	X	X	X	X	
Houston, TX	X		X		X	
Indianapolis, IN	X			X	X	
Jacksonville, FL	X					
Kansas City, MO	X		X			
Las Vegas, NV	X			X	X	
Long Beach, CA	X			X	X	
Los Angeles, CA	X			X	X	
Louisville, KY	X					
Memphis, TN						
Mesa, AZ	X			X	X	
Milwaukee, WI	X	X	X	X	X	X
Nashville, TN	X					
New York, NY	X				X	
Oklahoma City, OK	X					
Philadelphia, PA	X					
Phoenix, AZ	X			X	X	
Portland, OR	X			X	X	
Sacramento, CA	X			X	X	
San Antonio, TX	X				X	
San Diego, CA	X			X	X	
San Francisco, CA	X			X	X	
San Jose, CA	X			X	X	
Seattle, WA	X			X	X	
Tucson, AZ	X			X	X	
Washington, DC	X			X	X	X

that landlords were abating the cited nuisances, but the study did not investigate how landlords were abating the nuisances. As such, the study did not measure any effect on legitimate help-seekers such as Briggs.⁸⁾

The implementation of these laws highlights the gap that legal epidemiology is intended to fill.^{10,11} The public would never tolerate the marketing of a new pharmaceutical without extensive testing of safety and efficacy. Laws are not pills and are almost impossible to test in advance, although

policy makers can think carefully and systematically, guided by theory and experience, about ways a new law might go wrong,¹² and researchers can promptly evaluate a law's implementation and effects.¹³

Nuisance Property Ordinances in US Cities

The first step in evaluating the possible effects of a law is often simply to "measure" the law. By measurement, we

mean using explicit, scientific methods to create a data set of the observable elements of the law across jurisdictions. Such a data set allows researchers to investigate the effects of laws, or specific elements of laws, on important health and social outcomes and to identify those provisions that create the risk of unintended and undesirable consequences. With this research in mind, we built a data set of nuisance eviction ordinances in the 40 most populous US cities. We then determined how many cities had provisions that might allow victims of domestic violence to be evicted for seeking help from emergency services.¹⁴

As of August 1, 2017, all but 3 of the 40 cities (El Paso, Texas; Austin, Texas; and Memphis, Tennessee) had a nuisance property ordinance (Table). Only 5 cities (Albuquerque, New Mexico; Boston, Massachusetts; Chicago, Illinois; Fresno, California; and Milwaukee) explicitly counted 911 calls as nuisances, but in most of them, nuisance categories could easily include a tenant experiencing domestic violence. Twenty-eight cities classified a disturbance or disorderly conduct complaint as a nuisance, and 17 included some type of violence. Only 6 cities explicitly exempted domestic violence-related incidents (Charlotte, North Carolina; Chicago; Fresno; Houston, Texas; Kansas City, Missouri; and Milwaukee, which amended its ordinance in 2011).¹⁵ In 30 of the 40 cities, no conduct was exempt from the law.

Finding so many places where the law seemed to allow domestic violence victims to be evicted for seeking help led us to consider the possibility that other laws might provide countervailing protection. The relationship of landlords and tenants is governed by local law and state law, so we looked next to the state-level data sets we built on landlord-tenant and fair-housing law.^{16,17} Ideally, these laws would protect—or at least not make life harder for—victims of domestic violence, but the laws as written raise some concern. Only 15 states, Washington, DC, and half of the large cities we examined gave tenants the right to change their locks after a domestic violence incident. Only 24 states, Washington, DC, and 29 of the largest cities allowed tenants fleeing an abuser to terminate their lease early without penalty. Domestic violence survivors in 23 states and 10 of the largest cities had neither option.

A person who has been evicted for calling 911 or who breaks a lease to flee an abuser sooner or later will be renting again, or trying to rent again. Fair-housing law is intended to protect vulnerable people from unjust discrimination. However, only 3 of the 40 largest US cities are in the 3 states (Illinois, Rhode Island, and Wisconsin) and the District of Columbia, whose fair-housing law defined victims of domestic violence as a protected class. In every other city, landlords could legally deny a lease for a history of an eviction or broken lease caused entirely by domestic violence.

The Need for Legal Epidemiology

Although other laws may protect the housing rights of domestic violence survivors,¹⁸ the fact that the main housing

laws so rarely protect victims of domestic violence is concerning, purely on the level of legal doctrine and public policy. Because this problem has been studied in only a few cities, we do not know whether the risks created or ignored by the laws actually contribute to harm in real life, such as that in the Briggs case. We do know that at least some of the risks posed by nuisance property laws to people legitimately seeking police help, and the lack of other legal protection, could have been discerned when these laws were first being drafted and certainly after cases such as Briggs' became public. When Milwaukee evaluated landlord compliance rates, it could also have investigated the effect on tenants. Instead, lawmakers typically appear to assume that the law has the effects it is supposed to have and then allow assumption to replace evaluation. Given the evidence of local harm and of legal mapping data showing the prevalence and geographic distribution of potentially problematic laws, the impact of eviction-related provisions on low-income tenants is ripe for investigation. Furthermore, this issue of unjustified but lawful eviction is just one of many.

The neglect of unintended or undesirable legal consequences and implementation problems is pervasive,¹⁹ such that legal mapping exercises—as shown in this article—in our experience commonly find provisions that are problematic on their face and whose effects or side effects are entirely unevaluated.²⁰⁻²² Failure to evaluate the actual effects of laws in a rigorous and timely manner leaves citizens exposed to interventions that fail to provide the protection they promise and may even do harm. The nuisance property ordinance story is a case study in why greater investment in, and attention to, the scientific evaluation of laws as it affects public health (what we call “legal epidemiology”) is so important to good health and good governance in the United States.

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