



State of Illinois  
Illinois Department of Human Rights

# Fair Housing Implications of Nuisance and Crime-Free Ordinances:

## A Guide for Units of Local Government





The Illinois Department of Human Rights (IDHR) enforces the Illinois Human Rights Act, which prohibits discrimination in Illinois. IDHR's mission is to secure for all individuals within the State of Illinois freedom from unlawful discrimination, and to establish and promote equal opportunity and affirmative action for all its residents.

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The UIC Law School Fair Housing Legal Support Center and Clinic is dedicated to educating the public about fair housing law. It provides legal assistance to organizations seeking to eliminate discriminatory housing practices and trains students in fair housing law to represent victims of discrimination in court and before administrative agencies.

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This Guidebook provides general information to units of local government in Illinois concerning the fair housing implications of nuisance and crime-free ordinances as well as other practices that penalize housing providers and tenants for alleged criminal activity. This Guidebook may not be appropriate in all situations and is not a substitute for legal advice. This area of law is in development, so it is recommended that local governments consult their attorneys for further information on the issues discussed in this Guidebook. While written for local government officials, this Guidebook may be helpful to property owners, housing managers, condominium associations, and other homeowner associations.

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The authors and publishers are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the government or bind the government or agency in any proceeding.

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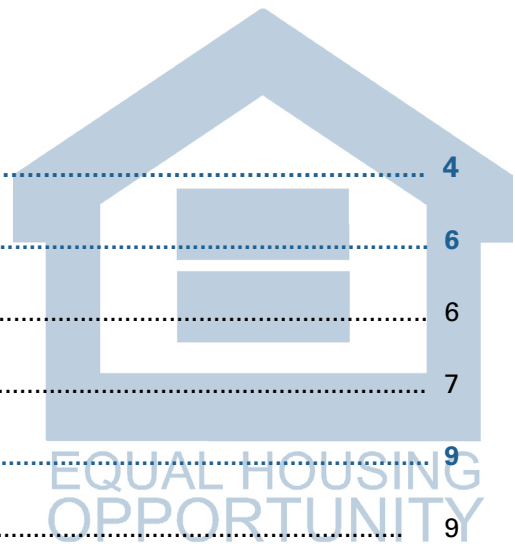
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## Section 1 Introduction

We must all work together to create and protect safe and fair housing for all people in Illinois. Accordingly, local governments should ensure that public safety policies do not discriminate against or deter individuals from seeking police services. Ensuring both public safety and fair housing can be difficult and requires thoughtful consideration of the impacts of policies, practices, and laws.

Beginning in the 1990's, numerous local governments enacted nuisance and crime-free ordinances with the stated goal of responding to concerns about criminal activity in rental housing, particularly drug activity.<sup>1</sup> These policies effectively forced housing providers to partner with law enforcement by requiring them to take adverse housing actions against tenants, up to and including eviction, for alleged criminal activity or risk having the property classified as a nuisance, with associated penalties.

### IMPORTANT

**This Guidebook uses the following words interchangeably for ease of reading:**

In reference to local government: *policy, ordinance, regulation, and rule.*  
 In reference to housing providers: *housing providers, landlords, property managers, owners, homeowners' associations, condominium associations, real estate brokers, and agents.*

<sup>1</sup> Deborah N. Archer, 'Crime-Free' Housing Ordinances, Explained, The Appeal, Feb. 17, 2021, <https://theappeal.org/the-lab/explainers/crime-free-housing-ordinances-explained/>.

## Section 1-Introduction

Federal, state, and local fair housing laws prohibit discrimination in both private and public residential housing based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, and familial status.<sup>2</sup> State and local fair housing laws include additional protected factors.

Nuisance and crime-free ordinances are unlawful if they discriminate based on characteristics protected under fair housing laws or if they are applied unequally. Even when the policies are neutral and evenly applied, they may still disproportionately impact protected groups.

The purpose of this Guidebook is to assist local officials in navigating the challenges of distinguishing between legitimate efforts to protect the public from crime and efforts that perpetuate unlawful discrimination and unfairly prevent individuals from securing one of the most basic of human needs, shelter. Discernment is important not only to protect local governments, public officials, and housing providers from liability but also to safeguard compliance with fair housing civil rights laws.



<sup>2</sup> See Fair Housing Act, 42 U.S.C. §§ 3601 – 3619.



## Section 2

### Nuisance and Crime-Free Ordinances

#### A. Nuisance Ordinances

Many municipalities and some counties have enacted general nuisance ordinances to address a variety of disruptive conduct including, but not limited to, criminal activity at rental properties.

Nuisance was traditionally recognized under common law as an unreasonable interference with the use and enjoyment of property.<sup>3</sup> Common law nuisance and general nuisance laws are still used today to address a variety of disturbances. Also, many leases and governing documents for condominiums, homeowner associations, and co-ops contain express or implied general nuisance provisions that may be used to address offensive conduct.

#### Examples of Nuisance Ordinances

- Ordinances that penalize housing providers and/or tenants for an excessive number of calls for police service from a property or about a property.
- Ordinances that use a point system for proscribed conduct and provide that if a property accumulates a certain number of points within a 12-month period, the property is considered a public nuisance.
- Ordinances that penalize property owners when two or more perceived violations of any laws occur near the property or involve a tenant of the property within a one-year period.

<sup>3</sup> *Nuisance*, Black's Law Dictionary (11th ed. 2019).

## Section 2-Nuisance and Crime-Free Ordinances

Enforcement of nuisance ordinances, leases, contracts, and/or common law claims has been problematic because they are often overbroad, vague, and impact the most vulnerable residents. They have been used to stop people, especially people of color, from soliciting, proselytizing, or congregating. Advocates charge that such policies criminalize poverty as people cannot pay the associated fines and end up with criminal records that follow them for life for being unable to pay the fines.

As shown throughout this Guidebook, not only can nuisance ordinances conflict with basic constitutional rights, but they can also have a serious and unlawful impact on fair housing rights.

### B. Crime-Free Housing Ordinances

Crime-free housing ordinances are a recently developed type of nuisance ordinance. In the early 1990s, the first crime-free ordinances emerged as a law enforcement tool to police crime in rental housing. Early models were created by the International Crime Free Association (“ICFA”), an organization founded in 1992 by the Mesa Arizona Police Department.<sup>4</sup>

Crime-free housing programs are formal partnerships between cities and housing providers. The programs’ stated goal is to reduce crime rates around residential rental properties. These programs often require housing providers to evict tenants that are deemed connected to crimes. Property owners may be required to incorporate an addendum into a tenant’s lease stating that the tenant will refrain from engaging in any form of criminal activity. Housing providers are also required to attend seminars held by the local police on crime-free housing. At these seminars, housing providers are introduced to crime-prevention techniques as well as information on how to screen and evict tenants that the police believe may be engaged in criminal activity.

#### Examples of Crime-free Housing Ordinances

- Ordinances that require landlords to secure a rental license and threaten the loss of that license if the landlord does not conduct background checks on all tenants.
- Ordinances that require landlords to evict any tenant that is alleged to have engaged in criminal activity on or near the premises.
- Ordinances that require landlords to incorporate an addendum to leases that prohibits a resident, household member, or guest from engaging in acts of violence or threats of violence, such as the unlawful discharge of firearms on the premises.

<sup>4</sup> Int’l Crime Free Ass’n, “Crime Free Programs,” available at [www.crime-free-association.org/index.html](http://www.crime-free-association.org/index.html) (Crime Free Multi-Housing Program started in 1992 in Mesa AZ, when Tim Zehring of the Mesa Police Department was tasked to design a safety program that would work in rental housing).

## Section 2-Nuisance and Crime-Free Ordinances

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Crime-free ordinances require housing providers to deny housing, evict, fine, or penalize tenants for their connection to specific crimes or “criminal activity” in general. They are often broadly written to prohibit activities such as arrests or calls for police service.

These ordinances may conflict with federal, state, and even local anti-discrimination laws. By using police contact as a trigger, these ordinances can introduce the biases of the criminal justice system into the housing market and run the risk of furthering segregation and undermining fair housing responsibilities. Segregated housing patterns often facilitate over-policing so that communities of color are more likely to have repeated interactions with police. Additionally, because a higher percentage of racial minorities in Illinois are renters compared to white residents, nuisance and crime-free ordinances may have an unlawful disparate impact.



## Section 3

### Fair Housing and Anti-Discrimination Laws

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#### A. Illinois Human Rights Act

The Illinois Human Rights Act (“IHRA”)<sup>5</sup> prohibits discrimination in real estate transactions. Real estate transactions include, but are not limited to, housing sales, rentals, broker services, appraisals, mortgage loans, and other financial assistance related to housing. The IHRA is enforceable against individuals, businesses, government entities, and other groups.

The IHRA prohibits unlawful discrimination in real estate transactions based on:

<ul style="list-style-type: none"><li>• Race</li><li>• Color</li><li>• Ancestry</li><li>• National Origin</li><li>• Religion</li><li>• Disability</li></ul>	<ul style="list-style-type: none"><li>• Sex</li><li>• Sexual Orientation</li><li>• Marital Status</li><li>• Pregnancy</li><li>• Familial Status (families with children under 18 years old)</li><li>• Order of Protection Status</li></ul>	<ul style="list-style-type: none"><li>• Age</li><li>• Arrest Record</li><li>• Military Status</li><li>• Unfavorable Discharge from Military Service</li><li>• Source of Income</li></ul>
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The IHRA provides broader protected characteristics than the federal Fair Housing Act (“FHA”).

The IHRA can be enforced both administratively through the Illinois Department of Human Rights (“IDHR”) and in the courts. The IHRA also gives the Illinois Attorney General the authority to enforce the IHRA where a covered entity engages in a pattern or practice of discrimination. The Illinois Attorney General can independently initiate an investigation into housing civil rights violations and file a lawsuit on behalf of the People of the State of Illinois.

Remedies for IHRA violations can include injunctions forbidding future violations, other affirmative relief to remove the effects of the unlawful actions or policies, compensatory and punitive damages, and payment for the complainant’s attorneys’ fees.

Notably, the IHRA provides that a housing provider is prohibited from considering a person’s arrest record when engaging in a real estate transaction. The IHRA defines “arrest record” as an arrest not leading to a conviction, a juvenile record, or criminal history record information ordered expunged, sealed, or impounded.<sup>6</sup>

A unit of government that enacts a nuisance or crime-free ordinance that subjects or has the effect of subjecting a person to discrimination in a real estate transaction based on the person’s protected characteristics may be found in violation of the Illinois Human Rights Act.

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<sup>5</sup> Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.

<sup>6</sup> Illinois Human Rights Act, 775 ILCS 5/3-1-103 (B-5).

## Section 3-Fair Housing and Anti-Discrimination Laws

### B. Illinois Civil Rights Act

The Illinois Civil Rights Act prohibits the State or a local government from discriminating against an individual based on race, color, national origin, or gender and from using “criteria or methods of administration that have the effect of subjecting [the person to discrimination] because of their race, color, national origin, or gender.”<sup>7</sup>

An aggrieved individual may bring a civil lawsuit in federal or state court against the offending unit of government. The Illinois Attorney General can independently investigate civil rights violations and file a lawsuit on behalf of the People of the State of Illinois.

A unit of government that enacts a nuisance or crime-free ordinance that subjects or has the effect of subjecting a person to discrimination based on the person’s race, color, national origin, or gender in housing may be found in violation of the Illinois Civil Rights Act.

### C. Illinois Counties Code and Illinois Municipal Code

The Illinois Counties Code<sup>8</sup> and the Illinois Municipal Code<sup>9</sup> prohibit county and municipal governments from enacting or enforcing ordinances or regulations that penalize tenants or housing providers for contacting emergency services concerning incidents related to domestic or sexual violence or for calls related to an individual’s disability.

A unit of government that enacts a nuisance or crime-free ordinance that penalizes or has the effect of penalizing tenants or housing providers for contacting emergency services concerning incidents related to domestic or sexual violence or for calls related to an individual’s disability may be found in violation of the Illinois Counties Code and the Illinois Municipal Code.



<sup>7</sup> Illinois Civil Rights Act, 740 ILCS 23/5(a).

<sup>8</sup> Counties Code, 55 ILCS 5/5-1005.10.

<sup>9</sup> Illinois Municipal Code, 65 ILCS 5/1-2-1.5.

## Section 3-Fair Housing and Anti-Discrimination Laws

### D. Local Human Rights Ordinances

Many counties and municipalities in Illinois have their own human rights ordinances and human rights agencies to investigate and enforce those ordinances. Some of these local ordinances provide protections broader than the IHRA and FHA.

Example of local human rights ordinances include:

- The Cook County Human Rights Ordinance generally prohibits housing providers from considering a criminal conviction that is more than three years old. It also requires an individualized assessment before housing is denied based on a criminal conviction that is less than three years old, to determine whether the denial is necessary to protect against a demonstrable risk to personal safety or property.<sup>10</sup>
- The City of Champaign Human Rights Ordinance specifically includes persons with “prior arrest or conviction records” as a protected class. A landlord is permitted to deny housing to persons who have been convicted of a forcible felony or a felony for the sale, manufacture, or distribution of illegal drugs, but only if the convicted person has not been out of prison for at least the last two consecutive years without further convictions for those felonies.<sup>11</sup>
- The City of Urbana Human Rights Ordinance specifically includes persons with “prior arrest or conviction records” as a protected class.<sup>12</sup>

Local governments should be aware that in enforcing nuisance or crime-free housing ordinances they may be in violation of their own human rights ordinances. Additionally, municipal nuisance or crime-free housing ordinances may have unlawful effects under the parent county’s ordinances.



<sup>10</sup> Cook County, Ill., Ord. No. 19-2394 (April 2021).

<sup>11</sup> City of Champaign, Ill., Municipal Code, Ch. 17 § 4.5 (2022).

<sup>12</sup> City of Urbana, Ill., City Code, Ch. 12 § 39 (2022).

## Section 3-Fair Housing and Anti-Discrimination Laws

### E. Federal Fair Housing Act

The Fair Housing Act (“FHA”) was passed by Congress in 1968 and generally prohibits discrimination in residential housing, including vacant land intended for residential housing.<sup>13</sup> The FHA has exceptions: excluded entities include owner-occupied buildings of four or fewer units and single-family homes sold by the owner without the assistance of a broker or agent.<sup>14</sup>



**Even if a property is mostly exempt from the FHA, the housing provider is still prohibited from making any statement or advertisement that discriminates based on protected traits.**

The FHA prohibits discrimination in housing based on:

• Race	• Color	• Religion	• National Origin
• Sex (including sexual harassment, sexual orientation, and gender identity)			
• Disability (a physical or mental impairment that substantially limits a major life activity, a history of such an impairment, or a perception that one is impaired)			
• Familial Status (a family with children under the age of 18)			

The FHA is enforceable against both public and private entities or a person. Municipalities, local officials, management companies, property owners, leasing agents, brokers, and even neighbors can be named as a party in a fair housing complaint.

The FHA can be enforced both administratively through the U.S. Department of Housing and Urban Development (“HUD”) and in the courts. The FHA also gives the U.S. Department of Justice (“DOJ”) authority to enforce the FHA where a covered entity engages in a pattern or practice of discrimination. The DOJ can independently file a lawsuit.

Remedies for FHA violations can include injunctions forbidding future violations, other affirmative relief to remove the effects of the unlawful actions or policies, compensatory and punitive damages, and payment for the complainant’s attorneys’ fees.

#### **Affirmatively Furthering Fair Housing**

Recipients of HUD funding must affirmatively further the policies and purposes of the FHA by assessing their practices and taking meaningful actions to remedy fair housing issues such as racially segregated neighborhoods, lack of housing choice, and unequal access to housing.<sup>15</sup>

Local governments are encouraged to review their ordinances for discriminatory effects as part of their efforts to fulfill their duty to affirmatively further fair housing.

<sup>13</sup> Fair Housing Act, 42 U.S.C. §3601 et seq.

<sup>14</sup> Fair Housing Act, 42 U.S.C. §3603(b).

<sup>15</sup> U.S. Dep’t of Hous. & Urb. Dev., Affirmatively Furthering Fair Housing, <https://www.hud.gov/AFFH>.

## Section 4

### Legal Theories of Discrimination

#### Under the Illinois Human Rights Act and Fair Housing Act

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#### **A. Disparate Treatment (Purposeful Discrimination)**

The IHRA and FHA both prohibit housing discrimination based on race, color, religion, sex (including sexual orientation and gender identity), familial status, national origin, or disability. The IHRA additionally prohibits discrimination based on arrest records, order of protection status, and several other protected categories.

An ordinance that explicitly applies only to persons with protected characteristics, or that is applied in a discriminatory manner, violates the IHRA and/or the FHA.

Examples of ordinances that only apply to persons with protected characteristic may include:

- An ordinance stating that families with children under the age of eighteen who are found delinquent by a juvenile court are ineligible for housing (familial status discrimination and arrest record discrimination);
- An ordinance stating that a person with a disability who calls emergency services or the police for aid more than two times in a six-month period when having an incident relating to their disability shall be evicted (disability discrimination);
- An ordinance stating that, upon arrest or allegation of criminal activity by a guest or household member, the entire household must be evicted (arrest record discrimination).

Purposeful discrimination may be shown through legislative or administrative history, historical context, the sequence of events, departures from normal procedures, and other circumstances leading to the enactment of the ordinance.

Examples of ordinances that are enacted for a discriminatory purpose may include:

- A city council rushes to pass a nuisance or crime-free ordinance in reaction to an incident that created fears that people of color may stage protests that could result in disorder or possible violence;
- A town that has traditionally enforced a sunset policy against African Americans enacts a nuisance or crime-free ordinance when Black residents from Chicago who hold subsidized housing vouchers start moving to the area.

## Section 4-Legal Theories of Discrimination Under the Illinois Human Rights Act and Fair Housing Act

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### **B. Disparate Impact (Neutral Policy, Discriminates When Applied)**

Disparate impact on a group with protected characteristics is another way to show discrimination under the IHRA and FHA.<sup>16</sup> Disparate impact occurs when a regulation, ordinance, or law is neutral on its face but in practice has a discriminatory effect upon a protected group. It is generally shown through statistical analysis.

Examples of disparate impact discrimination may include:

- An ordinance that states that victims of domestic violence who call the police more than three times in any one year shall be evicted.
- A predominately white village enacts a crime-free ordinance stating that no one with a criminal record can live in the village. If a disproportionately large percentage of persons with criminal records are persons of color, then the crime-free ordinance could have a disparate impact on persons of color by preventing them from living in the village.
- Zoning and land use regulations that exclude low or moderate-income housing and that have a disparate effect on persons of color, women with children, or people with disabilities.
- Zoning against multifamily dwellings that exclude group homes or treatment centers designed to assist people with disabilities.
- A no parking policy that prevents persons who are mobility impaired from accessing their housing units.

A defense to an allegation of disparate impact is that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the municipality or locality and there is no other practice that has a less discriminatory effect.

Facially neutral nuisance and crime-free housing laws require caution during enforcement due to a potential for disparate impact on people with disabilities.

For some individuals with disabilities, manifestations of their disabilities may greatly affect their ability to comply with nuisance laws. This generates a risk of bringing these individuals into more frequent contact with law enforcement agencies executing these laws, leading to the laws disproportionately affecting groups of individuals with certain disabilities.

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<sup>16</sup> *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015); 86 FR 33590 (Implementation of the Fair Housing Act's Discriminatory Effects Standard).

## Section 5

### Civil Rights Concerns Regarding the Application of Nuisance and Crime-Free Housing Ordinances

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Nuisance and crime-free housing ordinances generally require housing providers to evict or take other action against tenants based on alleged criminal activity at the property. Such ordinances may also require housing providers to conduct a criminal background investigation of applicants or tenants. These ordinances generally allow or require the housing provider to terminate the lease and evict tenants after one incident of alleged criminal activity. Following multiple incidents of criminal activity, the housing provider may be subject to fines, loss of rental permits, and other penalties.

Nuisance and crime-free housing ordinances may place housing providers in situations where they are at risk of violating state and federal laws that prohibit discrimination against individuals with arrest or conviction records, survivors of domestic violence, individuals with disabilities, and other members of protected classes. Housing providers should be mindful that generally, compliance with local ordinances is not a defense against violations of state and federal law.

#### **Arrests Without Convictions Do Not Prove Criminal Activity**

A housing provider is prohibited from discriminating against a person for having an arrest on their record without proof that the person was convicted.

Nuisance ordinances may violate fair housing laws if they require housing providers to evict tenants for mere alleged criminal activity. Crime-free housing ordinances may cause discrimination if they require housing providers to conduct criminal background checks without providing safeguards to ensure that housing providers do not discriminate based on mere allegations or arrests.

#### **Constitutional Issues**

Some nuisance and crime-free housing ordinances may also violate rights guaranteed by the Illinois and United States Constitutions. Ordinances may violate due process rights if they fail to provide adequate notice of what will be considered “criminal activity” or if they do not provide procedural safeguards (like notice and a hearing) before penalizing housing providers or tenants.<sup>17</sup> Ordinances that penalize individuals for calling the police may violate the First Amendment right to petition the government for a redress of grievances.<sup>18</sup>

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<sup>17</sup> See Ill. Const. art. II.; U.S. Const. amend. XIV, § 1.

<sup>18</sup> See U.S. Const. amend. I.

## Section 5-Civil Rights Concerns Regarding the Application of Nuisance and Crime-Free Housing Ordinances



### A. Civil Rights Protections for Those with Arrest Records

The IHRA prohibits discrimination based on arrest records if the arrest did not result in a conviction, was considered a juvenile record, or if the arrest record was ordered expunged, sealed, or impounded under Illinois law.<sup>19</sup> For example, a housing provider would violate the IHRA by refusing to rent, or offering unequal terms, to a person because they had a juvenile record. Ordinances that require criminal background checks or crime-free lease addenda to lease agreements may force housing providers to unlawfully discriminate against persons with arrest records protected under the IHRA.

Ordinances that do not require a criminal conviction present a heightened risk of enabling IHRA violations. HUD recognizes that arrests, unlike convictions, do not prove that a person engaged in criminal activity – merely that “someone probably suspected the person apprehended of an offense.”<sup>20</sup> Arrest records are often incomplete and do not indicate whether the person was charged, prosecuted, or convicted.<sup>21</sup> Illinois courts have similarly recognized that arrests alone do not establish criminal activity.<sup>22</sup>

<sup>19</sup> 775 ILCS 5/3-102; *See also* 775 ILCS 5/1-103 (defining the term Arrest Record).

<sup>20</sup> U.S. Dep’t of Hous. & Urb. Dev., Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions 5 (Apr. 4, 2016), [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF).

<sup>21</sup> *Id. See, e.g.*, U.S. Dep’t of Justice, The Attorney General’s Report on Criminal History Background Checks at 3, 17 (June 2006), available at [http://www.bjs.gov/content/pub/pdf/ag\\_bgchecks\\_report.pdf](http://www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf) (the FBI’s Interstate Identification Index system is missing final disposition information for approximately 50 percent of its records”).

<sup>22</sup> *See Landers v. Chicago Housing Authority*, 404 Ill. App. 3d 568, 936 N.E.2d 735 (1st Dist. 2010).



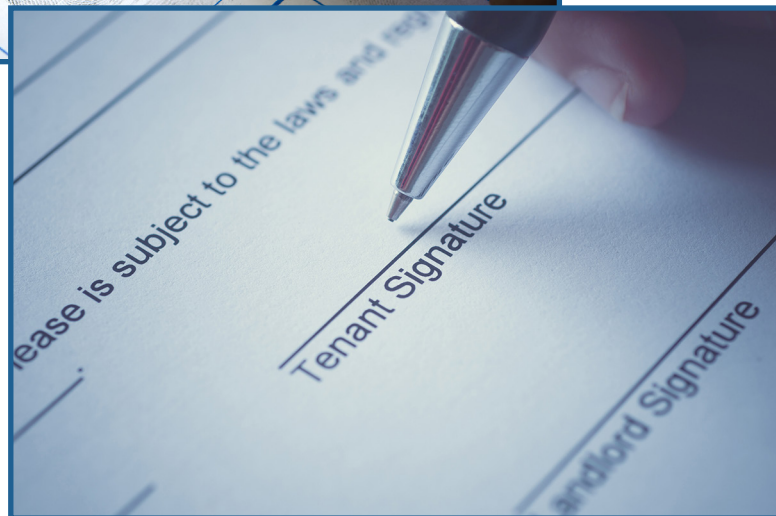
## Section 5-Civil Rights Concerns Regarding the Application of Nuisance and Crime-Free Housing Ordinances

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Ordinances that penalize housing providers and tenants for alleged criminal activity prior to conviction may cause premature and irreparable harm – particularly if the alleged violation never results in a criminal conviction.

**The prohibition on discrimination based on arrest records does not preclude a housing provider from prohibiting tenants or guests from engaging in unlawful activity on the premises.<sup>23</sup>**

In complying with local ordinances, housing providers must ensure they do not unlawfully discriminate based on arrests that did not result in a conviction, were juvenile records, or were expunged, sealed, or impounded.



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<sup>23</sup> Illinois Human Rights Act, 775 ILCS 5/3-102.5.

## Section 5-Civil Rights Concerns Regarding the Application of Nuisance and Crime-Free Housing Ordinances

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### B. Civil Rights Protections for Victims of Domestic Violence

Domestic violence may constitute the single greatest category of calls for service received by police, at times accounting for more than 50% of all calls.<sup>24</sup> Nevertheless, victims are often reluctant to report incidents of domestic violence before suffering frequent or severe abuse.<sup>25</sup> Victims may delay calling the police because they believe the abuse was a private matter, fear retaliation, wish to protect the abuser, or believe that the police would not help them.<sup>26</sup> Nuisance and crime-free housing ordinances run the risk of further discouraging victims of domestic violence from contacting the police because placing the call could lead to losing their housing.

HUD warns that nuisance and crime-free housing ordinances may penalize tenants for incidents of domestic violence “without regard to whether the resident is the victim or the perpetrator of the domestic violence.”<sup>27</sup> For example, a property may be labeled a nuisance after ‘excessive’ calls for police or emergency services. As discussed below, local governments should be aware that such ordinances may violate civil rights protections for victims of domestic violence, including specific protections under state law and protections against discrimination based on sex and order of protection status.

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<sup>24</sup> Andrew R. Klein, National Inst. Of Justice, U.S. Dep’t. Of Justice, Practical Implications of Current Domestic Violence Research 1 (2009), <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>.

<sup>25</sup> U.S. Dep’t of Hous. & Urb. Dev., 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 4 (September 2016) <https://www.hud.gov/sites/documents/FINALNUISANCEORDGD-NCE.PDF>.

<sup>26</sup> Andrew R. Klein, *supra* note 25, at 14.

<sup>27</sup> U.S. Dep’t of Hous. & Urb. Dev., *supra* note 26, at 3.

## Section 5-Civil Rights Concerns Regarding the Application of Nuisance and Crime-Free Housing Ordinances

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### 1. Illinois Public Act 99-441 (Illinois Counties and Municipal Codes)

In 2015, Illinois enacted legislation to limit the effect of nuisance and crime-free housing ordinances on victims of domestic violence and people with disabilities.<sup>28</sup> No municipality or county may enact or enforce an ordinance that penalizes tenants or housing providers for:

- Police calls made to prevent or respond to domestic or sexual violence;
- Police calls made by, or on behalf of an individual with a disability when the purpose of the call was related to that individual's disability;
- Criminal activity on the premises directly relating to domestic violence or sexual violence against a resident, household member, guest, or another party.<sup>29</sup>

This law applies to all counties and municipalities as it expressly limits home rule authority.<sup>30</sup> If a county or municipality enacts or enforces an ordinance in the manner described above, an affected resident or housing provider may bring a civil action for a court order invalidating the ordinance, compensatory damages, attorneys' fees, and other equitable relief.<sup>31</sup>



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<sup>28</sup> Act of August 21, 2015, Pub. Act 99-0441.

<sup>29</sup> 55 ILCS 5/5-1005.10 (on county ordinances); 65 ILCS 5/1-2-1.5 (on municipal ordinances).

<sup>30</sup> 55 ILCS 5/5-1005.10(d); 65 ILCS 5/1-2-1.59(d).

<sup>31</sup> 55 ILCS 5/5-1005.10(c); 65 ILCS 5/1-2-1.59(c).

## Section 5-Civil Rights Concerns Regarding the Application of Nuisance and Crime-Free Housing Ordinances

### 2. Sex and Order of Protection Status Discrimination

Enforcement of nuisance and crime-free housing ordinances may cause unlawful discrimination based on sex given that such ordinances often have a disparate impact on women. Discrimination based on a person's sex is prohibited under both the IHRA<sup>32</sup> and the FHA,<sup>33</sup> as well as ICRA.<sup>34</sup> The adverse effects of nuisance ordinances often fall more heavily on women, particularly in the context of domestic violence. A study of intimate partner violence from 1994 to 2010 found that about 80% of victims were female.<sup>35</sup>

A local government may find itself in violation of the IHRA and FHA if it enacts or enforces a nuisance or crime-free housing ordinance in a manner that results in discrimination based on sex. Discrimination may be proved by evidence of the impact, historical background, or by evidence of selective enforcement – for example, evidence that the ordinance causes housing providers to evict female tenants shortly after incidents of domestic violence.<sup>36</sup> If the ordinance or its enforcement is found to have a discriminatory effect, the local government has the burden to prove that it is necessary to achieve a substantial, legitimate, nondiscriminatory interest.<sup>37</sup>

Nuisance and crime-free ordinances may also cause unlawful discrimination based on order of protection status, which is prohibited under the IHRA.<sup>38</sup> This covers individuals protected under an order of protection issued by a court in Illinois or another state.<sup>39</sup> Although not explicitly protected under federal law, discrimination based on orders of protection may also constitute unlawful sex discrimination.

#### IMPORTANT

**The Violence Against Women Act** prohibits federally funded housing providers from denying “assistance, tenancy, or occupancy rights to housing” to tenants who were subjected to, or threatened with, domestic violence, dating violence, sexual assault, or stalking by a household member, guest, or any other person under the control of the tenant.<sup>40</sup>

<sup>32</sup> Illinois Human Rights Act, 775 ILCS 5/3-102; *See also* 775 ILCS 5/3-101 (defining the term Sex).

<sup>33</sup> Fair Housing Act, 42 U.S.C. §§ 3601-19.

<sup>34</sup> 740 ILCS 23/5.

<sup>35</sup> See Susan Castalano, Bureau of Justice Statistics, U.S. Dep't. Of Justice, Intimate Partner Violence, 1993–2010 1 (2015), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>.

<sup>36</sup> *Id.* at 10 to 12.

<sup>37</sup> U.S. Dep't of Hous. & Urb. Dev., *supra* note 25, at 7 to 10.

<sup>38</sup> Illinois Human Rights Act, 775 ILCS 5/3-102; 775 ILCS 5/3-101 (defining the Order of Protection Status).

<sup>39</sup> Illinois Human Rights Act, 775 ILCS 5/3-101.

<sup>40</sup> Violence Against Women Act, 34 U.S.C § 12491.

## Section 5-Civil Rights Concerns Regarding the Application of Nuisance and Crime-Free Housing Ordinances



### C. Civil Rights Protections for People with Disabilities

Nuisance and crime-free housing ordinances may pose civil rights concerns for people with disabilities. Disability is a protected characteristic under both the IHRA<sup>41</sup> and the FHA.<sup>42</sup> Disability comprises the single largest basis for IHRA complaints filled in Illinois.<sup>43</sup> Housing providers are prohibited from refusing to rent or offering unequal terms to an individual based on the individual's disability or association with a person with a disability.<sup>44</sup> Housing providers must make reasonable accommodations to their policies when such accommodation is necessary to afford an individual with a disability full enjoyment of the property.<sup>45</sup>

Reasonable accommodations to the requirements of nuisance or crime-free housing ordinances may be necessary to allow a person with a disability the full enjoyment of the property. Requests for accommodations are highly fact specific. Housing providers or local governments receiving an accommodation request must engage in an interactive process with the resident so that their interests can be balanced with the needs of the resident to determine the reasonableness of the request.

<sup>41</sup> Illinois Human Rights Act, 775 ILCS 5/3-101 et. seq.

<sup>42</sup> Fair Housing Act, 42 U.S.C. §§ 3601-19.

<sup>43</sup> In Fiscal Year 2021, the Illinois Department of Human Rights filed 278 charges, 80 related to mental disability and 67 related to physical disability. Illinois Department of Human Rights, Annual Report Fiscal Year 2021, available at <https://dhr.illinois.gov/publications/annual-reports.html>.

<sup>44</sup> Illinois Human Rights Act, 775 ILCS 5/3-101 et. seq.

<sup>45</sup> See Illinois Department of Human Rights, Reasonable Accommodations and Modifications: A Guide for Housing Professionals, available at <https://dhr.illinois.gov/publications/ra-rmguidebook.html>.

## Section 5-Civil Rights Concerns Regarding the Application of Nuisance and Crime-Free Housing Ordinances

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Instances where a reasonable accommodation may be necessary include:

- A person with a mental disability and a criminal record for violent episodes associated with his disability now consistently takes medication to prevent those episodes but is denied housing due to safety concerns.
- A person who suffers from extreme anxiety attacks frequently telephones the police for assistance and violates an ordinance restricting tenants to three calls per year.
- A residential treatment center for persons with mental disabilities seeks a permit to operate in a residential neighborhood but the city denies the permit, citing a concern that many of the likely tenants will have criminal histories.

**Local governments must ensure that nuisance and crime-free ordinances do not intentionally discriminate against, or have a disparate impact on, people with disabilities.**



## Section 6

### Best Practices for Local Government Leaders

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- Understand the federal, state, and local fair housing laws that apply to your jurisdiction.
- Review all housing-related ordinances, regulations, policies, and practices to determine if your jurisdiction has a nuisance and/or crime-free ordinance.
- Avoid enacting or enforcing ordinances that penalize alleged or suspected criminal activity.
- Avoid references to criminal activity that are overly broad or provide undue enforcement discretion.
- Avoid enacting or enforcing ordinances that require housing providers to use criminal history to screen tenants. Mandatory background checks create the risk that housing providers will unlawfully consider arrest records that did not lead to a conviction.
- Avoid penalizing a housing provider or a resident merely because the tenant, a household member, or a guest calls the police or has an arrest record that did not result in a conviction.
- If your jurisdiction has or enacts a nuisance or crime-free housing ordinance, the ordinance should be narrowly tailored to apply only to criminal activity that impacts public safety. Crime-free ordinances should only pertain to recent criminal convictions. If a criminal offense happened far in the past, it is likely that the person may not pose a substantial risk of reoffending.

## Section 6-Best Practices for Local Government Leaders

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- If your jurisdiction has a nuisance or crime-free housing ordinance, carefully assess whether the ordinance discriminates, or could discriminate against a protected group. Ask:
  - Does the ordinance intentionally discriminate against or single out a protected group?
  - Is or could the ordinance be applied in a discriminatory manner?
  - Does the ordinance have a disparate effect or impact on a protected group?
- If your jurisdiction receives HUD funding, assess the impact of the nuisance and/or crime-free housing ordinance as part of your Affirmatively Furthering Fair Housing obligations and take meaningful actions to remedy any risk of discrimination.
- Create a data collection and tracking system to assess nuisance and crime-free housing enforcement by address, neighborhood, alleged criminal activity, and resident demographics.
- Conduct an annual data-driven review to assess if the ordinance has discriminatory effects.
- Provide periodic training to government leaders, staff, police, housing providers, and community members on fair housing laws, issues of housing discrimination, and the risks of enforcing crime-free housing and nuisance ordinances.





## Section 7

### Legal Remedies for Unlawful Discrimination

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A person wishing to file a discrimination complaint with HUD or IDHR can do so within one year of the violation.<sup>46</sup> A person wishing to file a discrimination complaint in federal or state court can do so within two years of the violation.<sup>47</sup>

In a fair housing complaint, there are several types of relief available to an injured party.<sup>48</sup>

- Actual damages are money damages awarded to a person discriminated against to compensate for actual loss suffered because of the housing provider's discrimination, such as compensation for lost housing opportunities, rent differentials, out-of-pocket expenses, emotional suffering, moving expenses, and other costs.
- Injunctive and equitable relief requires a housing provider to do or not do a specified act. Its purpose is to correct the effects of the fair housing violation and prevent future violations. It may require a housing provider to: attend a fair housing training; grant an accommodation or modification; or prohibit further discrimination.
- Under fair housing laws, an injured party who successfully brings an action against the housing provider can recover the costs of an attorney to handle the case.

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<sup>46</sup> Illinois Human Rights Act, 775 ILCS 5/7B-102(a); Fair Housing Act, 42 U.S.C. § 3610(a)(1)(A).

<sup>47</sup> Illinois Human Rights Act, 775 ILCS 5/10-102(A); Fair Housing Act, 42 U.S.C. § 3613(a)(1)(A).

<sup>48</sup> Illinois Human Rights Act, 775 ILCS 5/8B-104; Fair Housing Act, 42 U.S.C. §3613(c)

## Section 7-Legal Remedies for Unlawful Discrimination

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- In fair housing actions brought by IDHR, HUD, the Illinois Attorney General or the U.S. Department of Justice, housing providers can be required to pay civil penalties or fines.<sup>49</sup>
- Punitive damages are money damages awarded to the injured party to punish the housing provider for particularly bad acts and to deter others from similar misconduct.
- HUD may require housing providers and local governments that receive federal funds to return those funds for violating federal fair housing laws. Projects receiving Low Income Housing Tax Credits can have their credits recaptured by the Internal Revenue Service.
- Under Illinois Public Act 99-441, a municipality or county which enacts or enforces an ordinance that penalizes people with disabilities for calling the police for reasons related to their disability, or that penalizes victims of domestic violence, may be liable for money damages, injunctive relief, and the costs of the injured party attorney.<sup>50</sup>

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<sup>49</sup> *Krueger v. Cuomo*, 115 F.3d 487, 493 (7th Cir. 1997).

<sup>50</sup> Illinois County Code, 55 ILCS 5/5-1005.10; Illinois Municipal Code, 65 ILCS 5/1-2-1.5.

## Section 8 Appendices

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### Legal Guidance

1. U.S. Department of Housing and Urban Development  
Guidance for Public Housing Agencies (PHAs) and Owners of Federally Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions.  
<https://www.hud.gov/sites/documents/PIH2015-19.PDF>
2. U.S. Department of Housing and Urban Development  
Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transaction  
[https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)
3. U.S. Department of Housing and Urban Development  
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.  
<https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>

### Statutes

- a) Illinois Human Rights Act (775 ILCS 5)  
<http://www.ilga.gov/legislation/ilcs/ilcs2.asp?ChapterID=64>
- b) Illinois Civil Rights Act (740 ILCS 23)  
<https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2492&ChapterID=57>
- c) Illinois Public Act 99-441 (codified at 55 ILCS 5/5-1005.10; 65 ILCS 5/1-2-1.5)  
<https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0441>
- d) Fair Housing Act (42 U.S.C. 3601)  
<https://www.justice.gov/crt/fair-housing-act-2>

### Municipal Ordinances

Units of local governments, such as municipalities and counties, may also have their own civil rights ordinances. Housing providers should check with their units of local government to learn whether they have an ordinance that may apply.

## Section 8 Resources

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### Government Resources

**Illinois Department of Human Rights  
(IDHR) Fair Housing Division**

555 West Monroe Street, 7th Floor  
Chicago, Illinois 60661  
(Tel) (312) 814-6229  
(TTY) (866) 740-3953  
(Fax) (312) 814-6251  
IDHR.FairHousing@Illinois.gov

**Office of the Illinois Attorney General  
Civil Rights Bureau**

James R. Thompson Center  
100 West Randolph St., 11th Floor  
Chicago, Illinois 60601  
(Tel) (312) 814-5684  
(TTY) (800) 864-3013  
(Fax) (312) 814-3212  
CivilRights@ilag.gov

**U. S. Department of Housing and Urban  
Development (HUD)**

Chicago FHEO Center  
77 W. Jackson Blvd., Suite 2101  
Chicago, Illinois 60604  
(Tel) (800) 765-9372  
(Fax) (312) 886-2837

**U. S. Department of Justice (DOJ)  
Civil Rights Division**

950 Pennsylvania Ave., NW  
Washington, DC 20530-0001  
(Tel) (202) 514-4609  
(TTY) (202) 514-0716

### Other Resources

**UIC Law School  
Fair Housing Legal Support Center**

300 South State Street  
Chicago, IL 60604  
(Tel) 312-987-2397

**Shriver Center on Poverty Law**

67 E. Madison St., Suite 2000  
Chicago, IL 60603  
(Tel) (312) 263-3830

The Shriver Center on Poverty Law,  
*"The Cost of Being "Crime Free": Legal  
and Practical Consequences of Crime  
Free Rental Housing and Nuisance  
Property Ordinances"* (2013)

The Shriver Center on Poverty Law,  
*"Reducing the Cost of Crime Free:  
Alternative Strategies to Crime  
Free/Nuisance Property Ordinances in  
Illinois"* (2015)

ILLINOIS DEPARTMENT OF  
 **Human Rights**

**Chicago:**

555 West Monroe Street, 7th Floor  
Chicago, Illinois 60661  
(312) 814-6200 or (800) 662-3942 (Voice)  
(866) 740-3953 (TTY)

**Springfield:**

524 S. 2nd Street, Suite 300  
Springfield, Illinois 62701  
(217) 785-5100 (Voice)  
(866) 740-3953 (TTY)

**Marion:**

2309 West Main Street  
Marion, Illinois 62959  
(618) 993-7463 (Voice)  
(866) 740-3953 (TTY)

***Website: [dhr.illinois.gov](http://dhr.illinois.gov)***

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