

Housing Law and the Impact on Domestic Violence Survivors

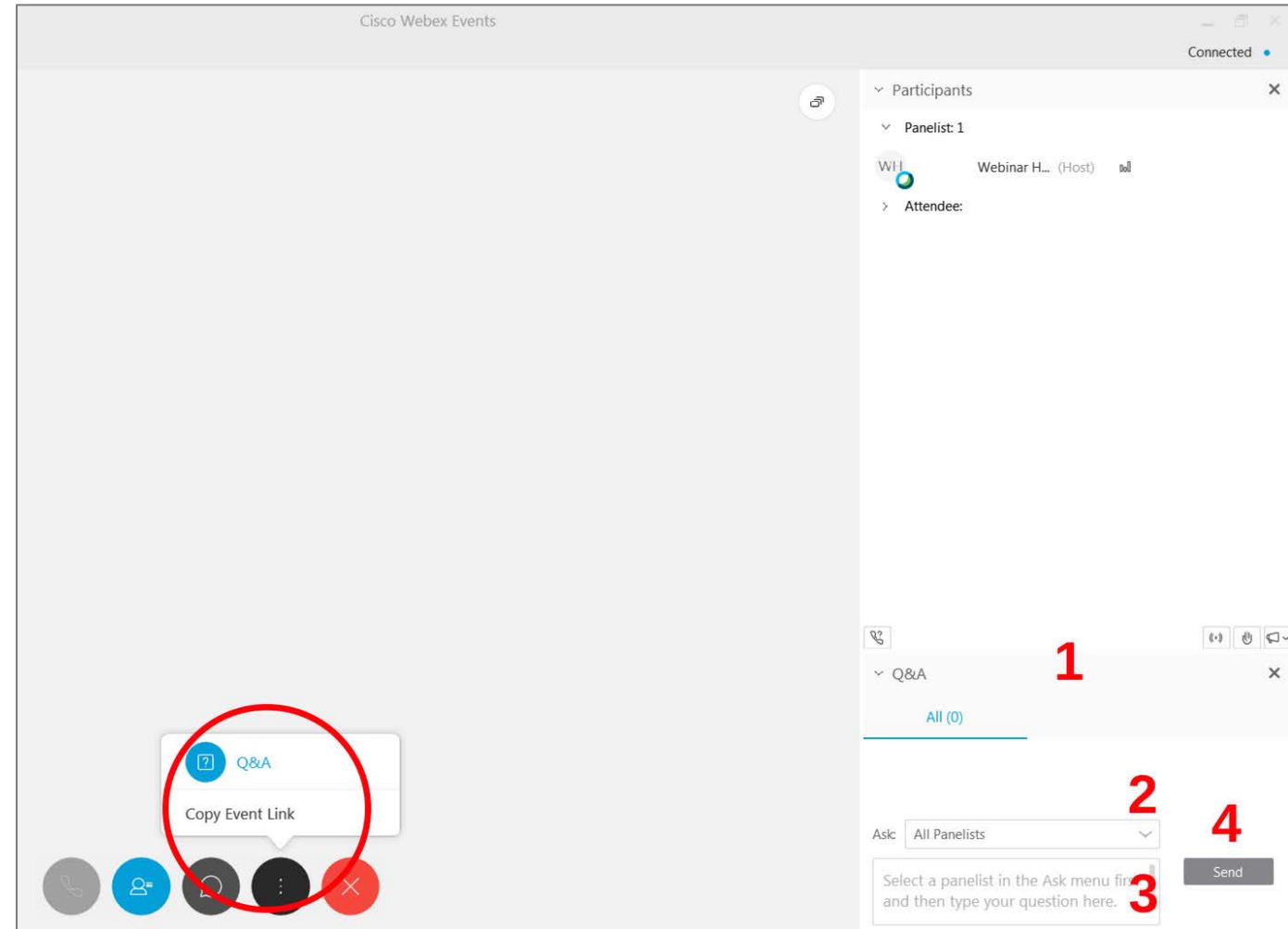
August 29, 2018

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 - Injury Prevention
 - Medical Cannabis Regulation
 - Environmental Health
 - Telehealth/Broadband Access
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 - School Discipline Laws

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 - Eviction Prevention
 - Perseveration of Affordable Housing
 - Housing and Domestic Violence
 - Sexual Assault

Key Terms

Domestic Violence (DV)

- Includes physical, sexual, emotional, and economic abuse, as well as stalking and controlling behaviors committed by intimate partners, immediate family members, or other relatives.

Intimate partner Violence (IPV)

- A type of domestic violence perpetrated by a current or former intimate partner.

Domestic Violence In United States

- **36.4% of women** experience contact sexual violence, physical violence, and/or stalking by an intimate partner. (43.6 million)
- **33.3% of men** experience contact sexual violence, physical violence, and/or stalking by an intimate partner (37.2 million)
- Domestic violence accounts for **21% percent of violent crime**
- Half of all female homicide victims are killed by intimate partners.
- On average, nearly **20 people per minute** are physically abused by an intimate partner in the United States
- Domestic violence costs more than **\$37 billion a year** in law enforcement involvement, legal work, medical and mental health treatment, and lost productivity



Domestic Violence: Public Health Epidemic

- Asthma
- Bladder and kidney infections
- Circulatory conditions
- Cardiovascular disease
- Irritable bowel syndrome
- Chronic pain syndromes
- Central nervous system disorders
- Gastrointestinal disorders
- Joint disease
- Migraines and headaches
- Gynecological disorders
- Sexually transmitted infections
- Preterm delivery
- Pregnancy difficulties
- Anxiety
- Depression
- PTSD
- Antisocial behavior
- Low self-esteem
- Emotional detachment
- Sleep disturbances

Domestic Violence and Homelessness

Domestic violence one of the major causes of homelessness

- 15% of homeless are survivors of domestic violence
- Fourth leading cause of homeless in families with children

When leaving abuser often have no safe housing options

- Limited economic and social resources
- Abuse often results in poor credit, rental, and employment histories
- Abuser often isolates victim from their social network
- Scarcity of affordable housing



Public Health Challenges of Homelessness

Every year, approximately **1.6 million individuals** experience homelessness in the United States.

- Difficulty accessing healthcare
- Mental illness
- Substance abuse
- Sexually transmitted disease
- Tuberculosis
- Hypertension
- Asthma
- Diabetes
- More frequent, longer, and more costly hospital stays



Homeless people have a mortality rate that is a four to nine times higher than comparable non-homeless individuals



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Nuisance Ordinances and Their Impact on Domestic Violence Survivors and Others Seeking Assistance

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Nuisance Ordinance overview 1

- National movement beginning in 1992 in Mesa, AZ to convince municipalities to enact nuisance or “crime free” ordinances
- Over 2,000 local governments in 44 states have some form of nuisance ordinance or crime free program
- About 1,000 have some form of “nuisance ordinance”
- Ordinances empower local government (often the police department) to directly or indirectly require the eviction of tenants whose behavior is considered a “nuisance”
- “Nuisance” behavior usually consists of multiple police calls or other contacts; doesn’t require commission of a crime
- City officials generally have great discretion in enforcement



Nuisance Ordinance overview 2

Usual results:

- Disproportionate enforcement in minority communities (related to discriminatory policing practices)
- Enforcement against survivors of domestic violence, other crime victims, people with disabilities, and others who need police assistance
- No evidence any of this furthers purported safety goals; instead it makes tenants reluctant to call police

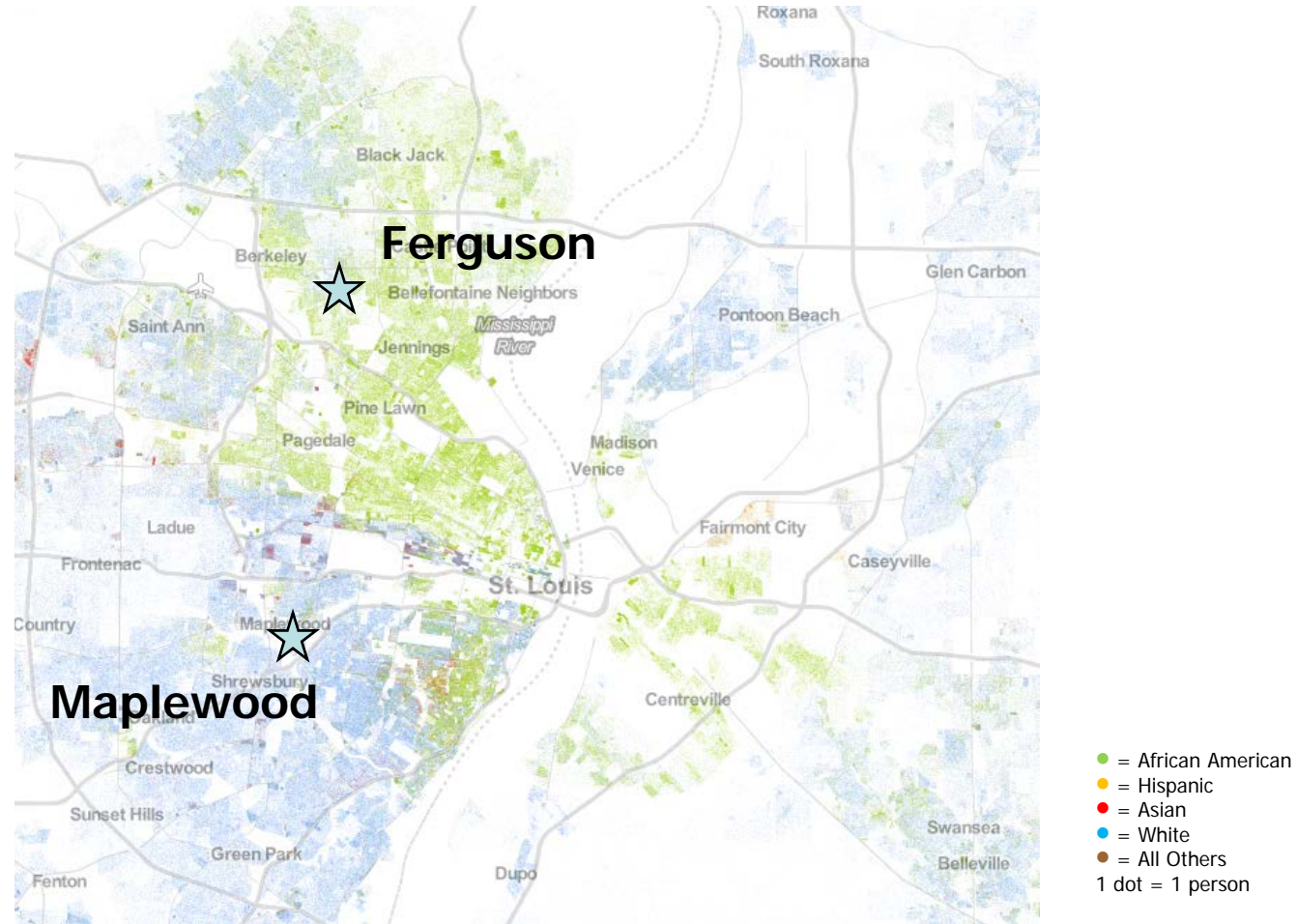


Case study: Maplewood, Mo.

- Occupancy permit required to live in Maplewood
- In 2006, Maplewood enacted a nuisance ordinance revoking occupancy permits of residents it deems “chronic nuisances”
- Maplewood Code defines “nuisances” broadly, including:
 - Anything done to “the hurt, injury, annoyance, inconvenience, or damage of the public”
 - More than 2 instances within a 180-day period of “peace disturbance or domestic violence resulting in calls to the police.”
- The remedy to abate the “nuisance” is revoking occupancy permit for period of up to six months, resulting in effective exile from the City



St. Louis, Missouri area





Metropolitan St. Louis Equal Housing and Opportunity Council v. City of Maplewood

- Maplewood has enforced primarily against African Americans, people with disabilities, and women facing domestic violence
- 43 Enforcement Hearings from March 2010 to August 2015:
 - More than 55% of affected households were African American, although African Americans comprise only 14% of the population
 - Over 25% of the enforcement actions involved residents whose “misconduct” was the manifestation of mental illness or other disabilities
 - More than 37% arose out of domestic disturbances
 - In six hearings, the “nuisance” involved a female resident attacked by a male partner. All six women were deemed to be a nuisance subject to occupancy permit revocation. All six were African American.
- Unfortunately, federal court didn’t think this was enough to state a claim of discriminatory impact or intent, mostly because of small sample size.



Watson v. City of Maplewood

- Rosetta Watson was one of the 6 African-American women who faced enforcement because of domestic violence





Watson v. City of Maplewood

- Ms. Watson was cited for making 4 calls to the police regarding her then-boyfriend:
- On Sept. 24, 2011, she called the police after she said Hennings struck her in the face with a closed fist. He was arrested for assault in the third degree, and police took photos of her lip. Two months later, on Nov. 8, 2011, she called police again to say that he shoved her. Hennings was arrested for assault in the third degree again. On Jan. 7, 2012, Watson told police she was afraid of him and wanted him to leave her home. Once police arrived, he did. On Feb. 22, 2012, she told police that Hennings was waiting at her home when she got there, and had refused to leave. He hit her and choked her, she said, and Hennings was arrested for domestic assault in the third degree once more.
- Maplewood invoked the nuisance ordinance to revoke her occupancy permit, finding: “As a result of these instances of peace disturbance and domestic violence, Maplewood police officers have been put at risk.”



Watson v. City of Maplewood

- As a result of this municipal action, Ms. Watson lost her Section 8 voucher for years for non-renewal of her lease.
- She was homeless for a time. Eventually she moved to St. Louis, where she faced further abuse from her boyfriend but was afraid to call the police.
- The ACLU sued on her behalf last year; that case has settled without requiring change in Maplewood's law.
- Publicity surrounding the two lawsuits has caused conversations in Maplewood about whether to change the nuisance ordinance; most citizens did not know how it operated. While city officials seem dug in, many citizens are now criticizing it.



HOPE Fair Housing Center v. City of Peoria

- The City of Peoria, Illinois enacted a similar ordinance in 1998 prohibiting any person from permitting a property under his or her control to become a “chronic nuisance property”
- The ordinance defines a “chronic nuisance property” as any property where three eligible offenses occur within a year
 - Eligible offenses include a wide range of events including code violations or minor drug-related offenses
 - Used to include: “Assault or battery or any related offense”
 - Now says: “Assault or battery or any related offense as defined in 720 ILCS 5/12-1 et seq., but not including domestic violence.”
- Notice of chronic nuisance designation goes to property owner, not tenant—tenant has no right to challenge

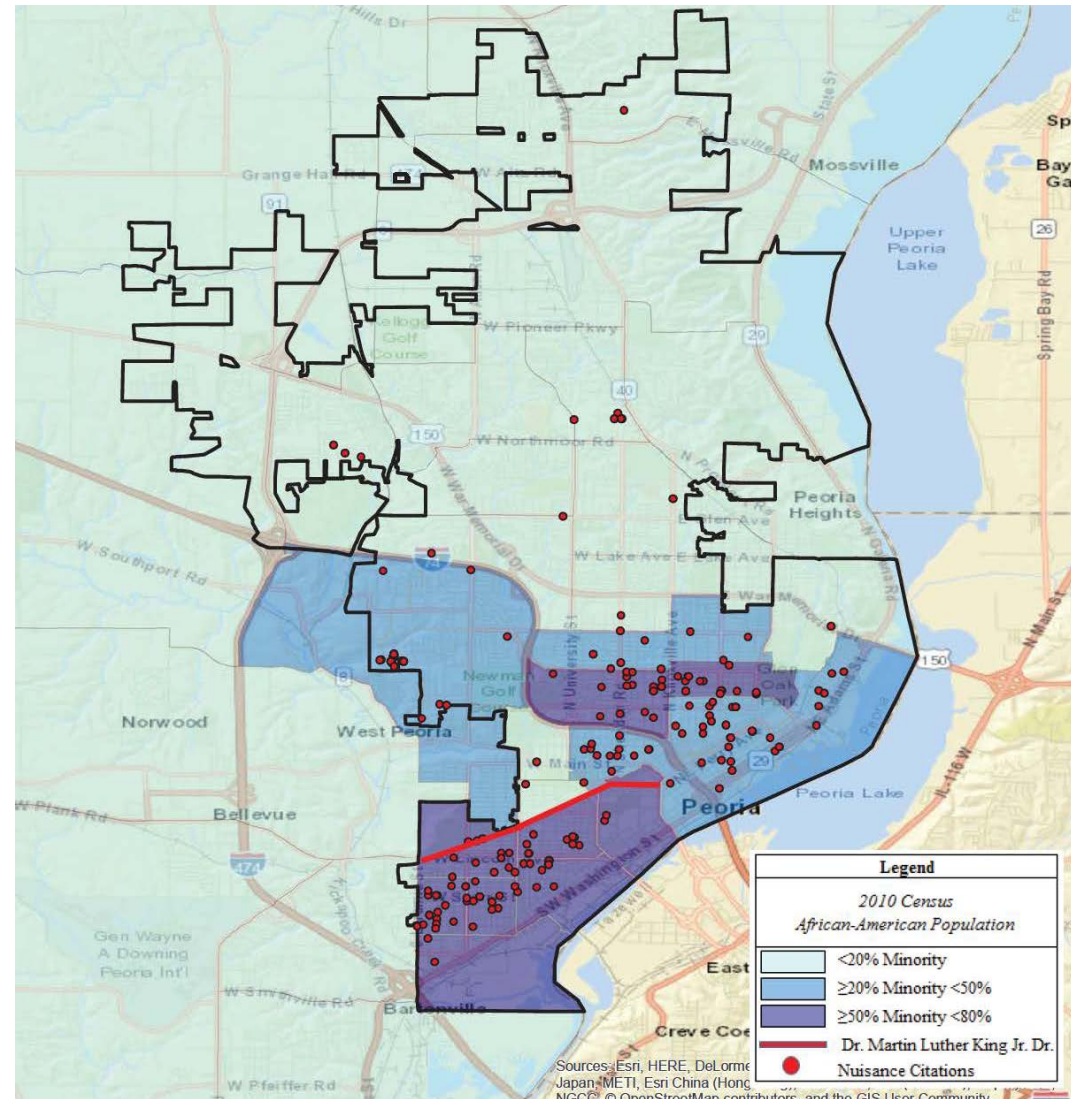


HOPE Fair Housing Center v. City of Peoria

- Once deemed a chronic nuisance property, the property owner is forced to ‘abate’ the issue
- That almost always means, forcing ‘problematic’ tenants out
- Almost never is there a contested eviction where legitimacy of the notice can be aired – tenants just leave
- Unlike in Maplewood, we don’t have extensive records of the affected tenants or the activities in question – for now
- The records we do have indicate that some properties received “nuisance” designations based in part on DV—and we’ll know more soon, in discovery
- What we have already strongly indicates selective enforcement based on race

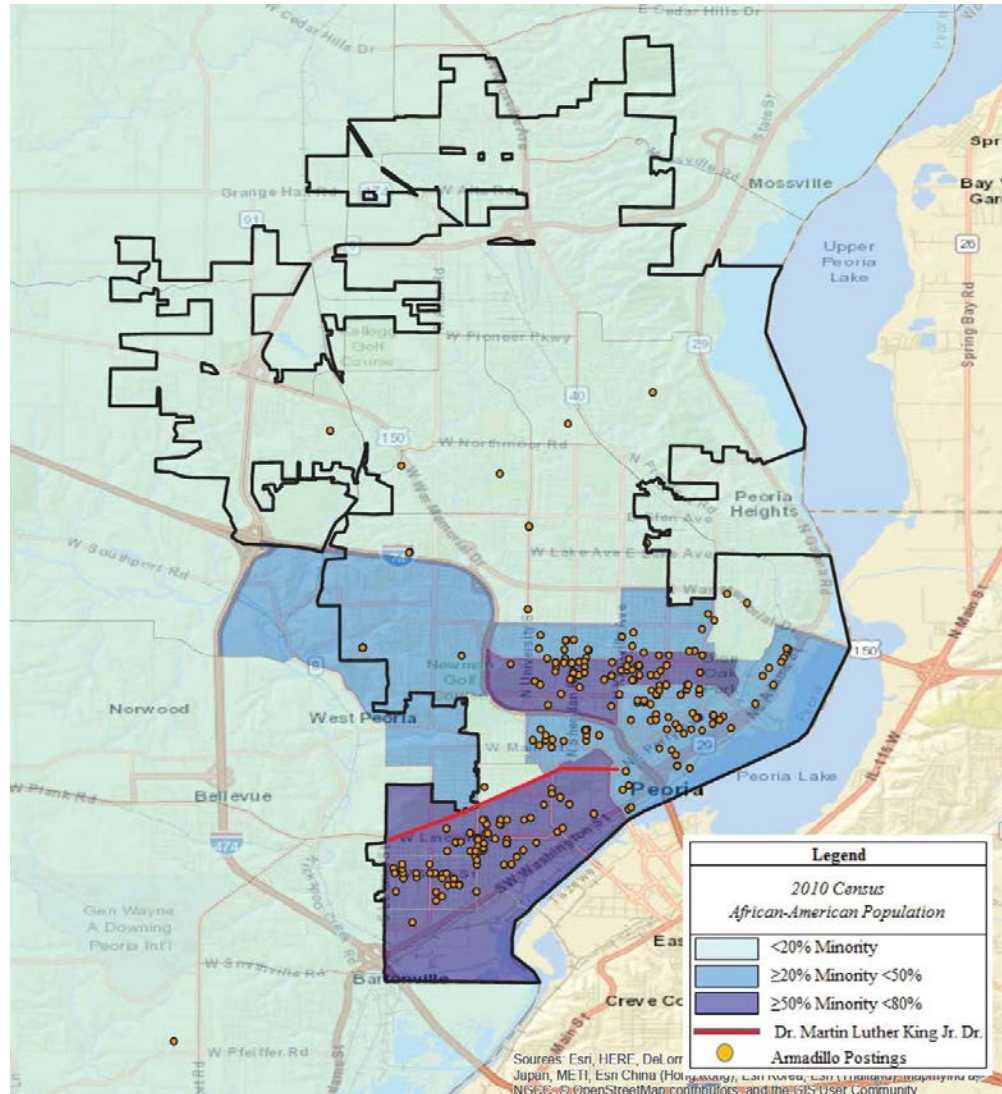


Discriminatory Enforcement





Discriminatory Policing





Studies of nuisance ordinances and effects on DV survivors

- Desmond & Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*
 - Milwaukee: Enforcement was disproportionately in black neighborhoods
 - Nearly a third of citations generated at least in part by DV, “abatement” almost always involved eviction, landlords reacted by discouraging tenants from calling 911
- Mead, Hatch, Tighe, Pappas, *Who Is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio*
 - Study of several Northeast Ohio cities: Found enforcement was disproportionately against people using housing vouchers, people of color
 - In some cities, more than half of enforcement letters respond to DV
- Arnold, *From Victim to Offender*: Qualitative study in St. Louis of DV survivors affected by nuisance ordinance enforcement; finds they struggle to get housing, are discouraged from calling 911, more vulnerable to violence

Potential Claims

- ❑ Fair Housing Act—discrimination on basis of sex, race, disability
- ❑ 1st Amendment free speech and right to petition
- ❑ Due process
- ❑ Equal protection
 - * 2015 DOJ guidance on Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence
- ❑ 4th Amendment – unlawful seizure
- ❑ 8th Amendment – excessive fines

Cases

- ▣ *Briggs v. Norristown, PA* (E.D. Pa.): Settled – repeal of ordinance, \$495K in damages and fees; conciliation of HUD Secretary complaint; passage of state law
- ▣ *Markham v. Surprise, AZ* (D. Az.): Settled – repeal of ordinance, over \$200K in damages and fees
- ▣ *Watson v. Maplewood, MO* (E.D. Mo.): pending

Cases

- ❑ *Peters v. Wilkes-Barre, Pa* (M.D. Pa. 2016): Denied motion to dismiss challenge to one-strike drug and gun ordinance
- ❑ *Victor Valley Family Resource Center v. Hesperia, CA* (C.D. Cal. 2016): Entered PI enjoining crime-free ordinance on due process grounds
- ❑ *Groton v. Pirro* (N.Y. 3rd Dept. 2017): Invalidated ordinance on its face on right to petition grounds

Resources

ACLU webpage: www.aclu.org/notanuisance

ACLU survey: www.aclu.org/nuisancesurvey

ACLU, *Safe Homes, Safe Communities: A Guide for Local Leaders on Domestic Violence and Fair Housing*,
www.aclu.org/safe-homes

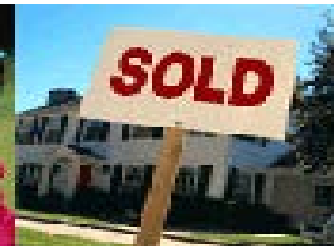
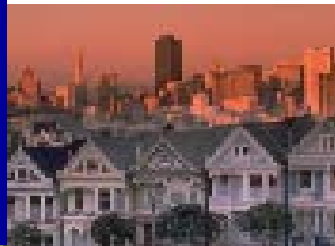


Shriver Center Reports

- ▣ *The Cost of Being “Crime Free” – Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances*, August 2013.
<http://povertylaw.org/sites/default/files/housing-justice/cost-of-being-crime-free.pdf>
- ▣ *Reducing the Cost of Crime Free: Alternative Strategies to Crime Free/Nuisance Property Ordinances in Illinois*, October 2015. <http://povertylaw.org/sites/default/files/images/advocacy/housing/reducing-the-cost-of-crime-free.pdf>



Nuisance Guidance



- On September 13, 2016, HUD's Office of General Counsel issued **"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"**
- The Guidance was issued to explain the application of the Act to nuisance and crime-free housing ordinances and ensure that the growing number of these ordinances do not lead to a violation of the Act

THE

POLICY

SURVEILLANCE

PROGRAM

A LawAtlas Project

Using Policy Surveillance to Track Housing-Related Laws

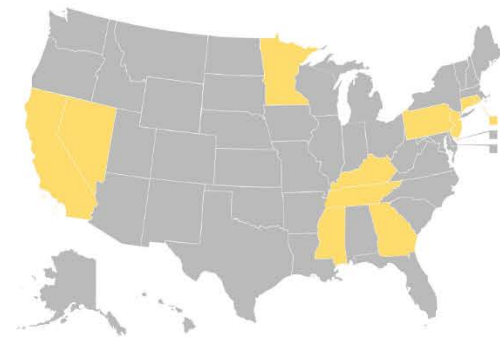
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Policy surveillance is the systematic collection, analysis, interpretation and dissemination of laws and policies across jurisdictions or institutions, and over time.

The Policy Surveillance Process



Why Policy Surveillance?



**Create accessible,
non-partisan
information**



**Create reliable
data for evaluation**



**Track change over
time & measure
progress**

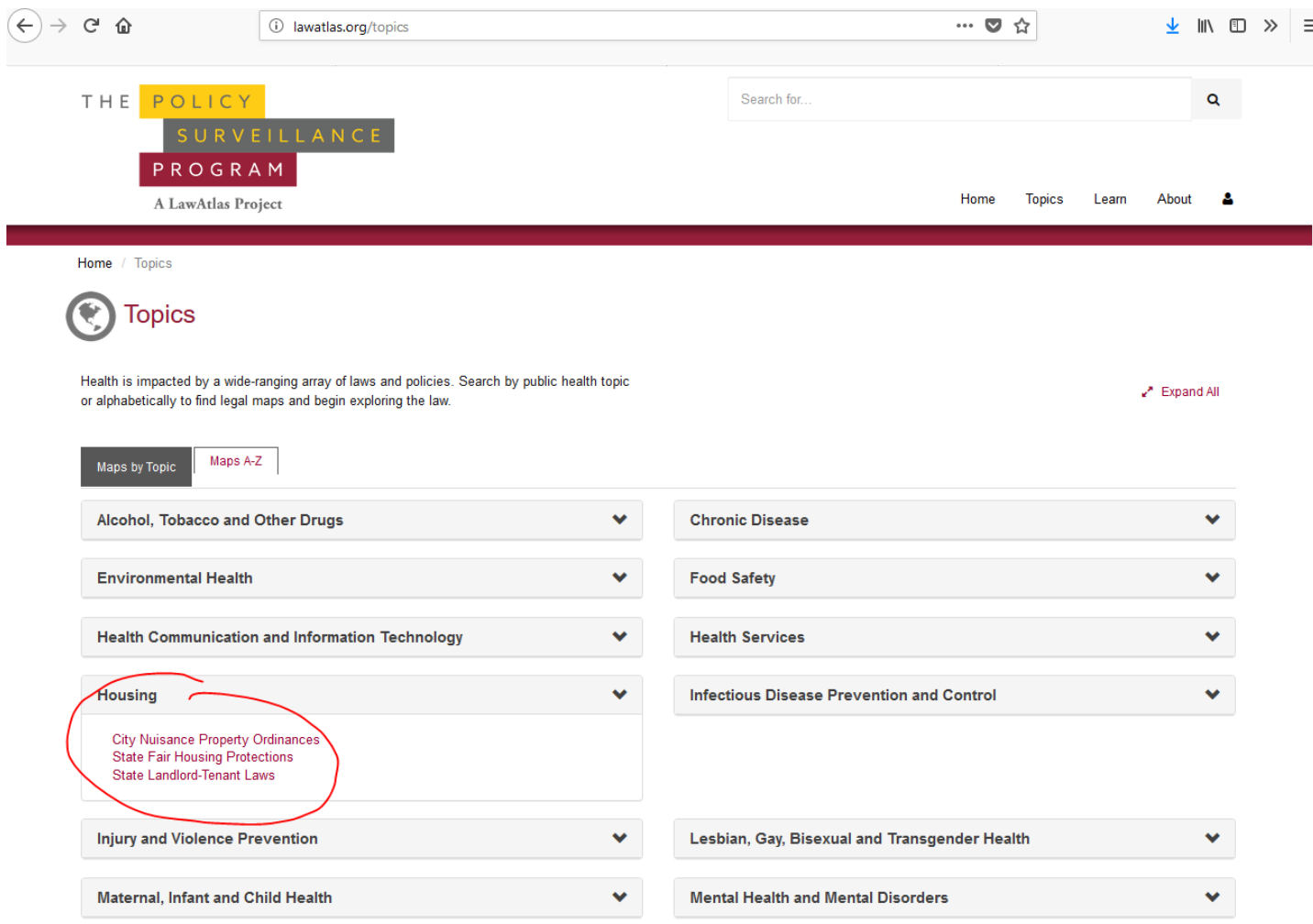


**Diffuse innovative
policy ideas**



**Build workforce
capacity**

Housing-Related Datasets



At LawAtlas.org:

- City Nuisance Property Ordinances
- State Fair Housing Protections
- State Landlord-Tenant Laws
- City Eviction Laws – coming this Fall!

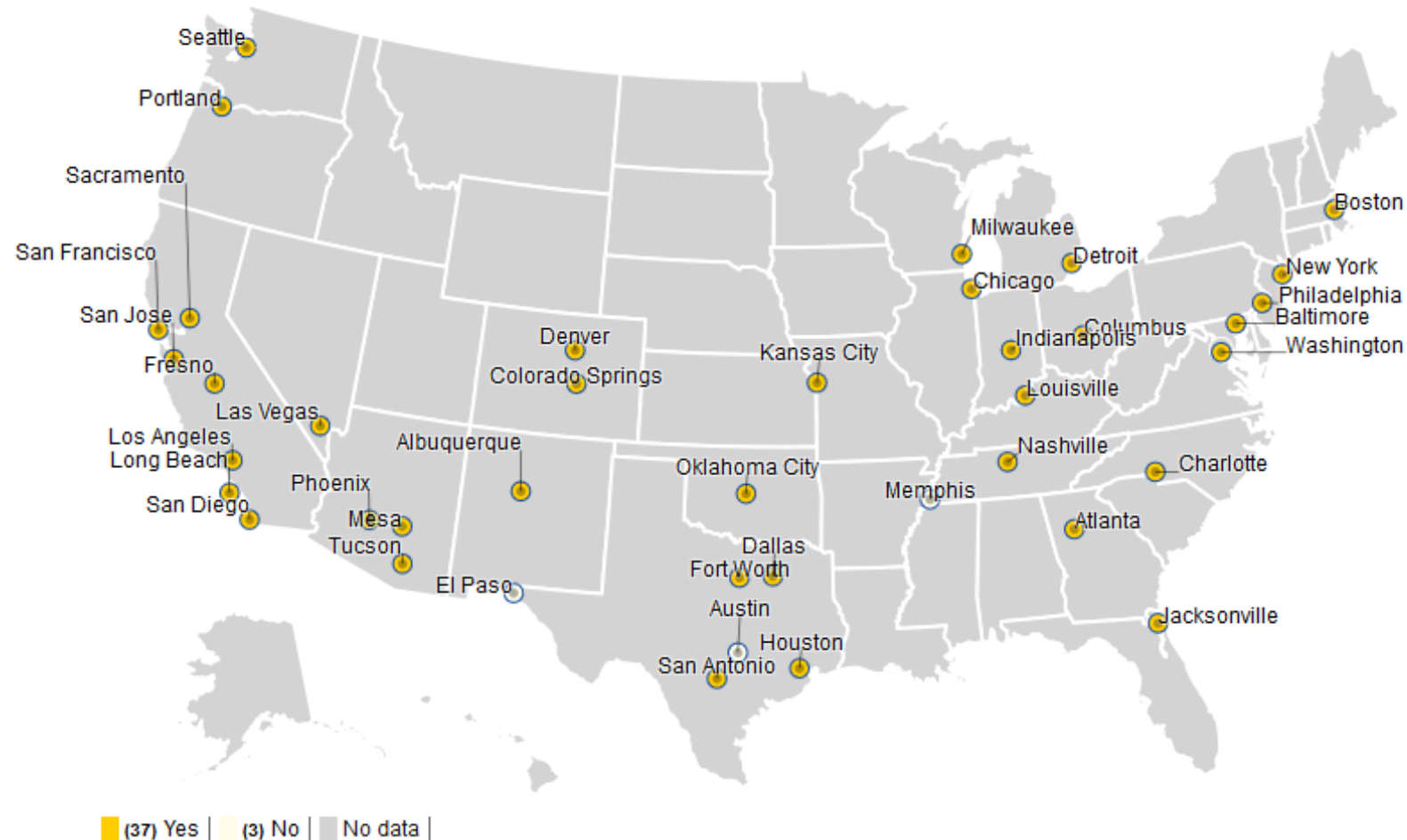
City Nuisance Property Ordinances

- Require landlords to regulate the conduct of their tenants, and often penalize them when they fail to do so
- Address a wide variety of conduct, along with notice and abatement requirements, and possible penalties

Our dataset:

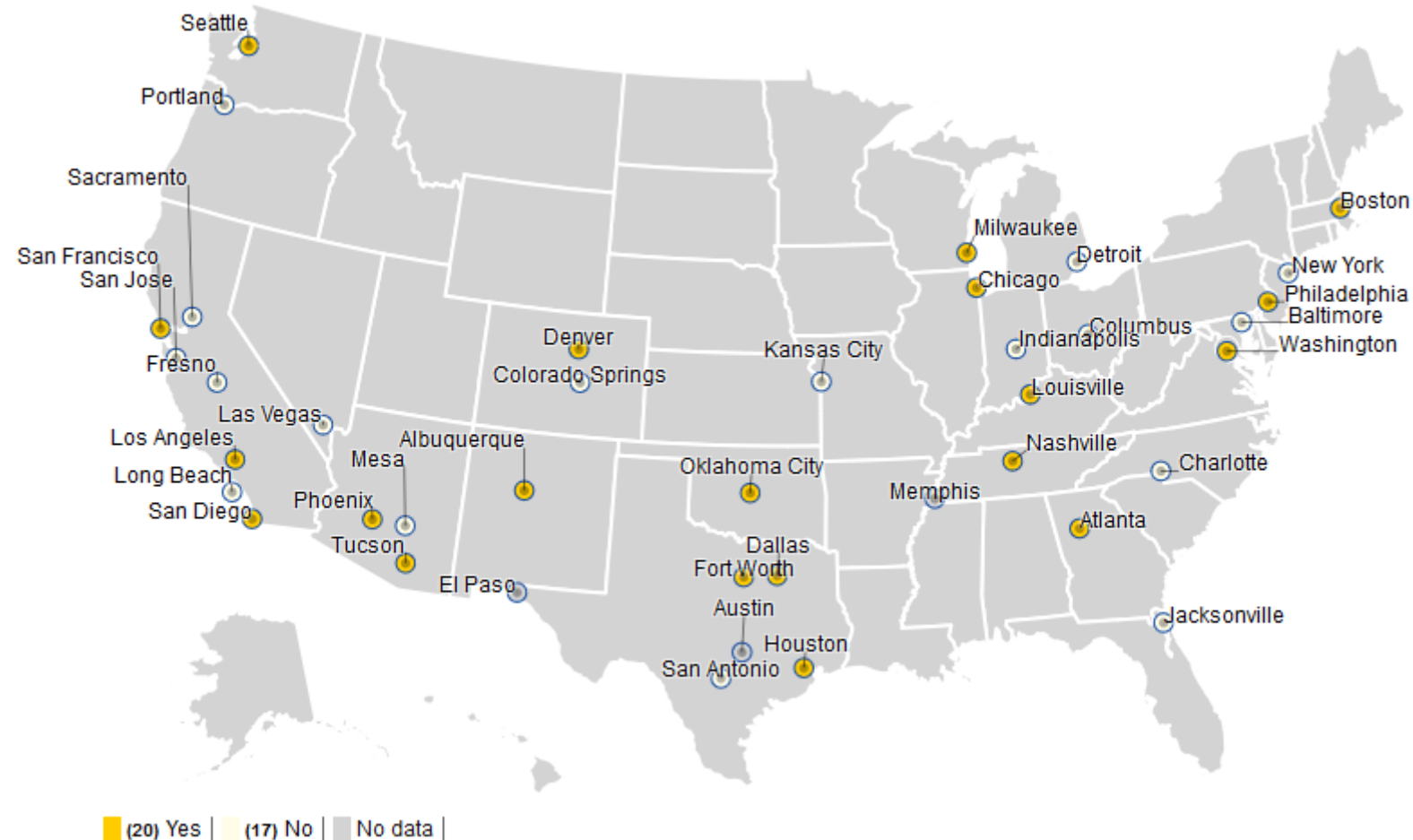
- Identifies key features of city nuisance property ordinances across the 40 most populous cities in the United States in effect as of August 1, 2017

City Nuisance Property Ordinances: Findings



37 of the 40 most populous U.S. cities had nuisance property ordinances as of August 2017

City Nuisance Property Ordinances: Findings



20 cities explicitly include eviction of tenants as a possible means to abate a nuisance

City Nuisance Property Ordinances: Other DV-related findings

- Albuquerque, Boston, Chicago, Fresno and Milwaukee are the only cities that explicitly include certain types of calls for emergency services as nuisances
- 28 cities deem a “disturbance” to be a nuisance activity
- 6 cities explicitly exempt domestic violence-related incidents from being considered a nuisance activity

State Landlord-Tenant Protections

- Govern lease agreements, maximum security deposit amounts, property maintenance requirements, and steps landlords and tenants may take if lease agreements are broken, among other elements
- To date, all 51 jurisdictions in the United States have state-level landlord-tenant laws

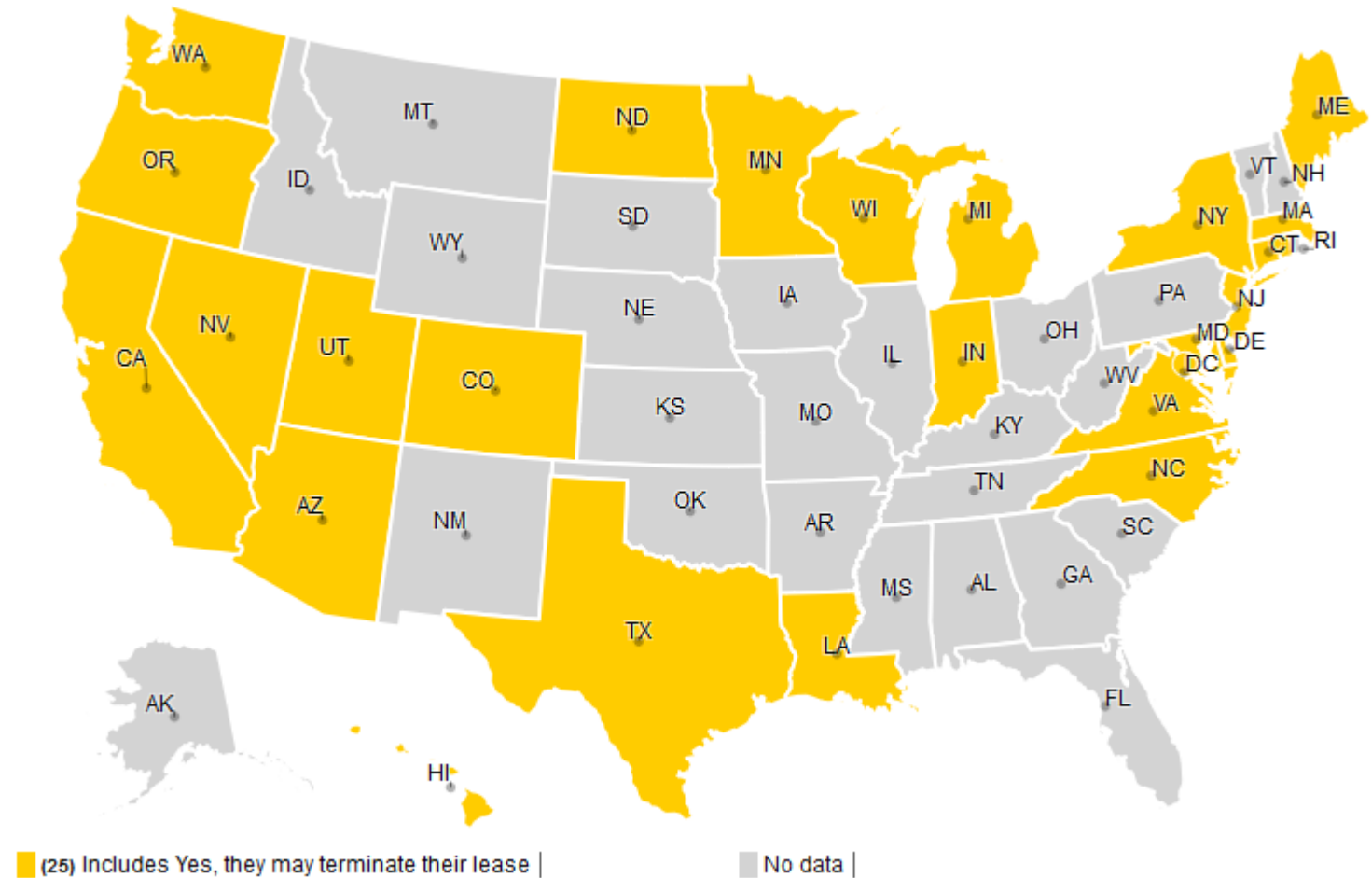
Our dataset:

- Identifies key features of state-level landlord-tenant laws across all 50 states and the District of Columbia in effect as of August 1, 2017

-
- (16) Includes Yes, they may request a lock change | No data

State Landlord-Tenant Protections: Findings

- In 24 states and DC a domestic violence survivor may terminate their lease early



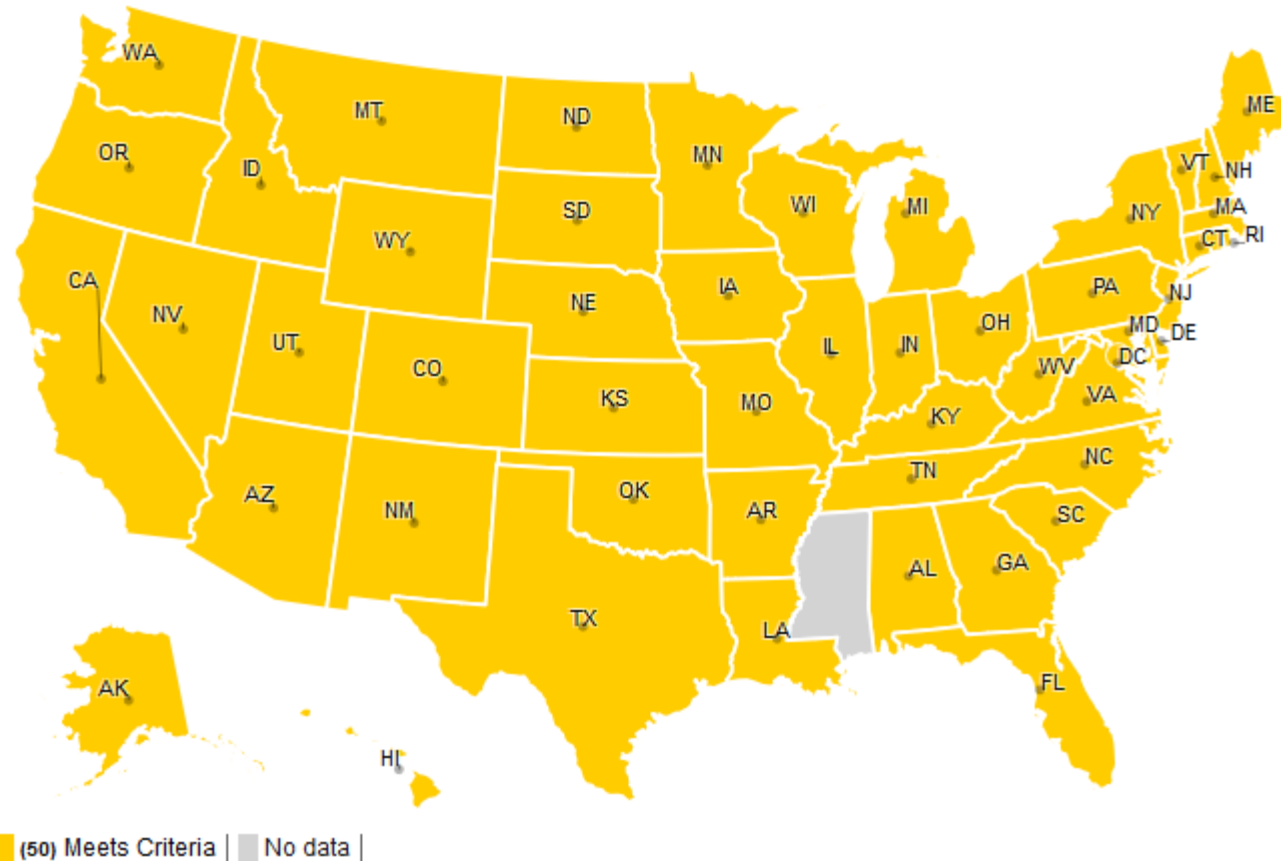
State Fair Housing Protections

- Most states have adopted their own fair housing laws to expand upon the protections provided by the federal Fair Housing Act
- Intend to prohibit discrimination based on source of income, sexual orientation, or status as a domestic violence survivor
- Regulate which protected classes are included, the types of discriminatory actions that are prohibited, and when discrimination is exempt under the law

Our dataset:

Identifies key features of state fair housing laws across all 50 states and the District of Columbia in effect as of August 1, 2017

State Fair Housing Protections



- Every state except Mississippi has a state law prohibiting discrimination in housing-related transactions
- Illinois, Rhode Island, Wisconsin and DC include domestic violence survivors as a protected class

Housing Law & Domestic Violence Recap

- 37 of the 40 most populous cities have nuisance property ordinance
- 28 cities include a disturbance, breach of peace or similar behavior as a nuisance, with 5 specifically referring to certain calls for emergency service
- 6 of those cities explicitly exempt domestic violence-related incidents from being considered a nuisance

Housing Law & Domestic Violence Recap

- 20 of the cities studied are in states where domestic violence survivors may change their locks
- 29 cities are in states where domestic violence survivors may terminate their lease early
- 3 cities are in states where domestic violence is a protected class under fair housing law

THANK YOU!

Contact Information:

Email: kmccab01@temple.edu

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Visit: <http://LawAtlas.org> and <http://publichealthlawresearch.org/>

Twitter: @LawAtlas

Youtube: YouTube.com/LawAtlasorgTemple

Public Housing and VAWA

- **What types of housing are covered under VAWA?**
 - All federally subsidized housing programs administered by HUD, USDA, and the Treasury
- **Who does VAWA protect?**
 - Victims of domestic violence, dating violence, stalking, and sexual assault
 - Tenants, immediate family members, other lawful household members
 - Living in or seeking admission to a covered housing program
- **Who must comply with VAWA?**
 - Public housing agencies administering federal subsidized housing programs
 - Landlords, owners, managers participating in federal subsidized housing programs
 - Denial reasons may not appear to be related to status (i.e. criminal record, credit history, past evictions)
- **What forms of violence does it protect?**
 - Actual and threatened violence
 - Emotional, psychological, physical, sexual, dating violence and stalking
- **How many incidents must there be?**
 - 1 or more
- **Must housing authority/Sec. 8/LL give tenants notice about VAWA protections?**
 - Yes, notice of rights to tenants in lease, HAP contract, policies

Public Housing and VAWA

- **Admissions and Eligibility**

- Victim status is not an appropriate basis for denial of admission or housing assistance
- Landlords renting to Sec. 8 tenants cannot deny housing based on victim status
- Denial reasons may not appear to be related to status (i.e. criminal record, credit history, past evictions)

- **Evictions and Termination of Assistance**

- Establishes acceptance to federal “one-strike” criminal activity rule when activity directly relates to DV. Sec. 8 cannot terminate assistance, PHA cannot evict.
- Allows lease bifurcation to maintain the victim’s tenancy while evicting or terminating the perpetrator
- If lease bifurcation occurs, and the removed tenant or lawful occupant was the sole tenant eligible to receive assistance, the remaining tenant will be provided the opportunity to establish eligibility for the housing program. If the remaining tenant cannot establish eligibility then the landlord is required to provide reasonable time to find new housing
- Can be tricky with a PFA

- **Transfers and Breaking Lease**

- Lease bifurcation
- Porting Section 8 voucher to another jurisdiction
- Emergency transfer (PHA and Sec. 8) + breaking lease w/ 30 days notice

Required Forms of Documentation Under VAWA

- HUD Self-certification form
- Documentation from victim service provider, medical or mental health professional, attorney under penalty of perjury
- Court, police, administrative record
 - Must provide within 14 business days, but LL has discretion to extend timeframe
 - Victims can be evicted for lease violations unrelated to domestic violence or if their tenancy poses a threat to the community.
 - Information must be kept confidential (this does not always happen!)

Private Housing and DV/SA

- Not covered by VAWA
- State Legislation
 - Pennsylvania Civil Procedures – extends appeal filing deadlines for survivors
 - Pending: HB 1051 – statewide lease termination provision
 - Pending: SB 919 - statewide emergency transfer policy would allow relocation for domestic, dating and sexual violence, and stalking survivors in subsidized housing.
- Philadelphia City Ordinance
 - Fair Practices Ordinance/Commission for Human Relations Domestic Violence Ordinance

Housing Advocacy Tips

- Request a DV/SA Liaison at local housing authority
- Advocating for emergency transfer policies
- Challenging noise and disturbance ordinances
- Using the Fair Housing Act
- Partnerships with other DV/SA organizations and legal services organizations to cover needs across a wide range of areas
- Advocacy for shelter, emergency, and transitional housing programs

Technical Assistance and Additional Network Resources

Housing Rights of DV Survivors

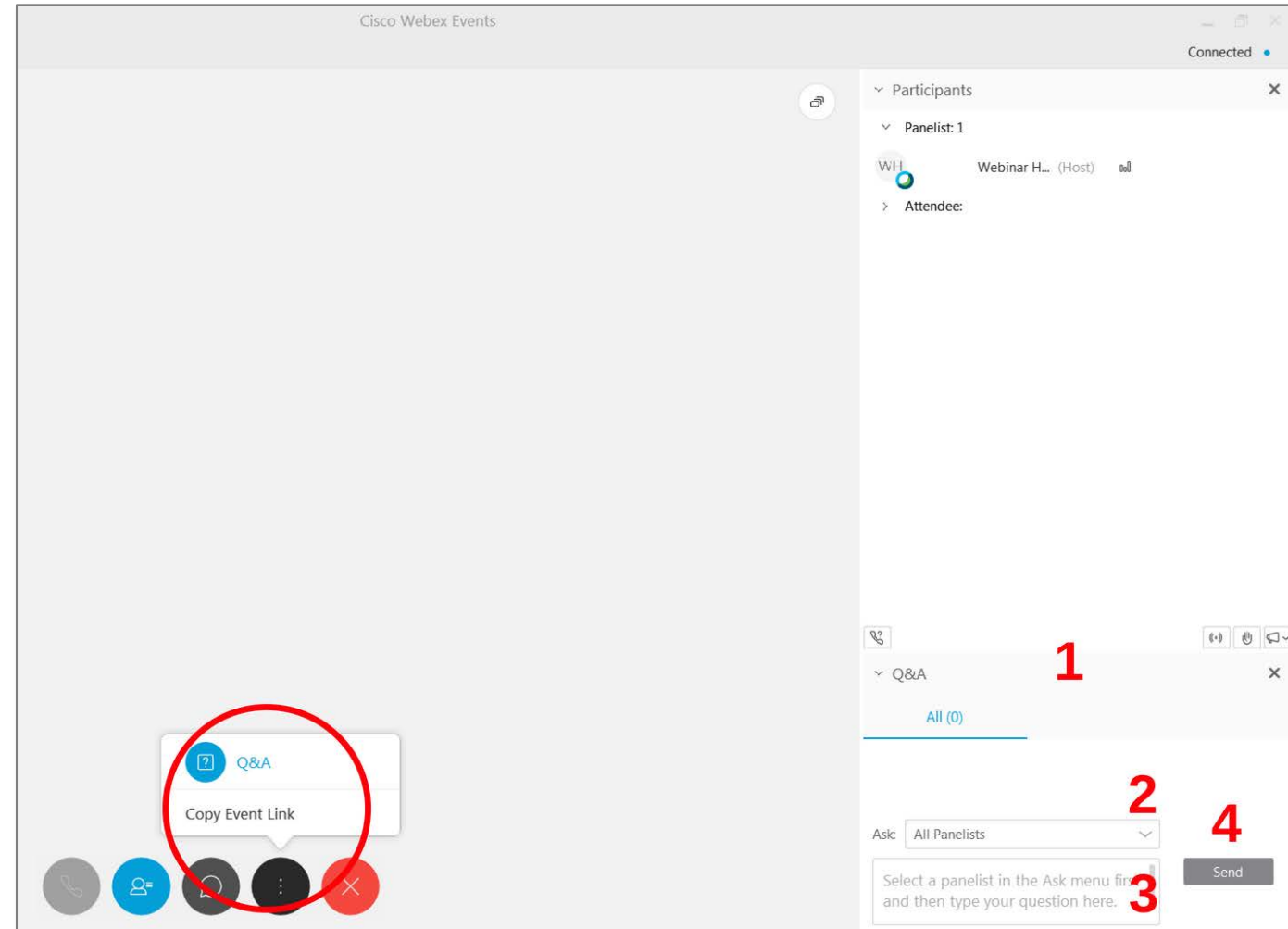
- [Issue Brief: Domestic Violence and Homelessness](#)
- [50 State Survey of Laws Addressing Housing Rights of DV Survivors](#)
- [State Specific Fact Sheets](#)

Blog Posts

- [Domestic Violence Protections for All Victims](#)
- [Protecting the Housing Rights of Domestic Violence Victims](#)

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