



September 11, 2024

Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131

Dear Attorney General Ellison,

As you know and appreciate, equal access to housing, free from discrimination based on race, ethnicity, gender, disability, and other protected characteristics, is essential to ensure safe and affordable housing for all Minnesotans. So-called crime-free housing or nuisance ordinances (“CFHOs”) that have proliferated throughout Minnesota impede this equal access and thwart these critical goals.

These ordinances, and their related programs and policies (together, “Crime-Free Housing Policies”) require landlords, often under threat of prosecution, to conduct criminal records screening that effectively bars applicants with a wide-variety of criminal records from housing. Moreover, these policies often encourage or require evictions based on alleged criminal activity and impose fines or other penalties against a landlord after a rental unit exceeds a threshold number of calls for emergency assistance. Crime-Free Housing Policies raise substantial concerns under state and federal law and undermine the safety and welfare of communities throughout Minnesota. These policies often intentionally target and displace Black, Indigenous, and people of color (“BIPOC”), which is particularly concerning as the racial diversity of Minnesota has increased over the past several decades during which jurisdictions have passed and implemented these ordinances. Moreover, these policies disproportionately harm BIPOC renters, survivors of gender-based violence, individuals with disabilities, and other historically marginalized and vulnerable groups.

The American Civil Liberties Union Foundation (ACLU), the ACLU of Minnesota, and the undersigned organizations urge the Office of the Minnesota Attorney General to, at minimum, issue guidance to jurisdictions on the ways in which these Crime-Free Housing Policies harm communities and protected groups, and how they may violate state and federal law. To the extent jurisdictions have Crime-Free Housing Policies already in effect, guidance is critical to ensure that they are revisited and potentially repealed so that they do not run afoul of fair housing laws and are not implemented or enforced in a discriminatory manner. We also urge your Office to investigate Crime-Free Housing Policies that have been enacted or are currently enforced in a manner that may target or disproportionately harm BIPOC and other protected groups.

I. Crime-Free Housing Policies in Minnesota mandate discriminatory criminal record screening and effectively compel housing providers to evict tenants.

Because of the discriminatory nature of Crime-Free Housing Policies, the ACLU has challenged them across the country, including in Faribault, Minnesota,¹ Bedford, Ohio,² Norristown, Pennsylvania,³ Surprise, Arizona,⁴ Maplewood, Missouri,⁵ and Savannah, Georgia.⁶ These cases have ended with the repeal or substantial reform of the ordinances at issue. The federal government has also taken steps to address the violations of law these ordinances promote. The United States Department of Justice (“DOJ”) secured an agreement with the City of Hesperia and the San Bernardino County Sheriff’s Department to end its discriminatory crime-free rental housing program,⁷ and the United States Department of Housing and Urban Development (“HUD”) likewise negotiated a conciliation agreement in partnership with the ACLU that resulted in the repeal of the ordinance in Norristown, Pennsylvania.⁸ Most recently, the DOJ secured an agreement with the City of Anoka in Minnesota to substantially revise its CFHO to end discrimination against individuals with mental health disabilities.⁹ Based on these lawsuits and the proliferation of CFHOs nationally, the DOJ has also issued a letter to state and local law enforcement agencies and governments to encourage them to assess these Crime-Free

¹ *Jones v. City of Faribault*, No. 18-cv-01643, 2021 WL 1192466, at *24 (D. Minn. Feb. 18, 2021) (denying defendant’s motion for summary judgment on all claims save for one theory in an action challenging defendant’s rental licensing ordinance including its crime-free housing program); *ACLU Wins Settlement to End Housing Discrimination Case*, ACLU (June 15, 2022, 1:15 PM), <https://www.aclu.org/press-releases/aclu-wins-settlement-end-housing-discrimination-case> [<https://perma.cc/YD3Y-3RPG>].

² Settlement Agreement, *Somai v. City of Bedford* (N.D. Ohio 2020) (No. 19-cv-00373) (repealing the city’s criminal activity nuisance ordinance and preventing reenactment), <https://www.aclu.org/cases/somai-v-city-bedford-oh?document=somai-v-bedford-settlement-agreement> [<https://perma.cc/2DJT-PXR7>].

³ *Briggs v. Borough of Norristown, et al.*, ACLU OF PENNSYLVANIA (last visited July 24, 2024) (describing the repeal of the city’s nuisance ordinance and other settlement terms), <https://www.aclupa.org/en/cases/briggs-v-borough-norristown-et-al> [<https://perma.cc/SD5K-ZP4>].

⁴ Settlement Agreement, *Markham v. City of Surprise* (D. Ariz. 2015) (No. 15-cv-01696) (repealing the city’s nuisance ordinance and preventing reenactment), <https://www.aclu.org/cases/nancy-markham-v-city-surprise?document=nancy-markham-v-city-surprise-settlement-agreement-mar-21-2016#legal-documents> [<https://perma.cc/A6DH-G3LU>].

⁵ *Watson v. City of Maplewood*, No. 17-cv-01268, 2017 WL 4758960 (E.D. Mo. Oct. 20, 2017) (denying in part Maplewood’s motion to dismiss an action challenging the city’s nuisance policy, which authorized officials to revoke residents’ occupancy permits for criminal activity and police calls); *ACLU Victory Ensures Maplewood, Missouri Will Stop Punishing Crime Victims Under “Nuisance” Laws*, ACLU (Sept. 12, 2018, 10:30 AM), <https://www.aclu.org/press-releases/aclu-victory-ensures-maplewood-missouri-will-stop-punishing-crime-victims-under> [<https://perma.cc/HW6J-6BB2>].

⁶ Rachel Goodman, *Savannah Police Suspend Its Discriminatory ‘Crime Free Housing Program,’* ACLU (Feb. 1, 2018), <https://www.aclu.org/news/racial-justice/savannah-police-suspend-its-discriminatory-crime-free> [<https://perma.cc/NCM5-48X2>].

⁷ *Justice Department Secures Landmark Agreement with Hesperia and Sheriff’s Department to End ‘Crime Free’ Rental Housing Program*, U.S. ATT’Y OFF., CENT. DIST. OF CAL., (Dec. 14, 2022), <https://www.justice.gov/usao-cdca/pr/justice-department-secures-landmark-agreement-hesperia-and-sheriff-s-department-end> [<https://perma.cc/CNF2-NYPM>].

⁸ Elena Gaona, *HUD and Philadelphia-Area Borough Settle Allegations of Housing Discrimination Against Victims of Domestic Violence*, U.S. DEP’T OF HOUS. & URB. DEV. (Oct. 2, 2014), <https://archives.hud.gov/news/2014/pr14-121.cfm> [<https://perma.cc/LQN6-3U5G>].

⁹ Consent Decree at 5-15, *United States v. City of Anoka* (D. Minn. May 1, 2024) (No. 24-cv-1861), <https://www.justice.gov/crt/media/1352681/dl> [<https://perma.cc/27P9-A2FY>].

Housing Policies to ensure that they do not violate federal law and to offer assistance in bringing local jurisdictions into compliance with the law.¹⁰

Despite the disproportionate harms that these Crime-Free Housing Policies inflict on BIPOC, survivors of gender-based violence, and people with disabilities, and despite the lawsuits—including at least two in Minnesota—to end them, such policies continue unchecked throughout the State.¹¹

Crime-Free Housing Policies are often embedded into city rental licensing ordinances. They require landlords and owners to comply with various requirements, including conducting criminal records screening, attaching lease addendums that encourage evictions of families from their homes, and attending trainings on fulfilling these requirements. The ordinances typically penalize landlords for purported failures to comply with their provisions by mandating additional training, imposing steep fines, authorizing suspension or revocation of a rental license,¹² or, in some cases, authorizing criminal sanction.¹³ Jurisdictions and their police departments typically

¹⁰ Letter from Kristen Clarke, Assistant Att’y Gen., C.R. Div., U.S. Dep’t of Just., to State and Local Law Enforcement Agencies and Governments (August 15, 2024), https://www.justice.gov/d9/2024-08/doj_crime-free_and_nuisance_letter.pdf [<https://perma.cc/92PD-AH4K>].

¹¹ We are unaware of the exact number of jurisdictions within Minnesota with a CFHO. HOMELINE, a local housing organization, estimates that hundreds of jurisdictions in Minnesota maintain such policies, and have identified twenty-one communities with active CFHOs, as of 2022, within Hennepin County alone. *Crime/Drug-Free, Disorderly/Nuisance Conduct Rental Ordinances in Minnesota*, HOMELINE (last updated May 17, 2022), <https://homelinemn.org/cfo> [<https://perma.cc/JHU7-8FD5>]. Other estimates say as many as fifty communities in the seven-county Twin City metro area have active CFHOs. Eric Hauge, *The Problem with Crime-Free Housing Ordinances*, ACLU OF MINN. (June 19, 2018, 1:45 PM), <https://www.aclu-mn.org/en/news/problem-crime-free-housing-ordinances> [<https://perma.cc/6BET-42AL>]. The ACLU sent public records requests to five jurisdictions in Minnesota with CFHOs regarding their history, and their implementation (as applicable) from January 1, 2021 through June 16, 2023: Anoka, Coon Rapids, Eagan, Maplewood, and Maple Grove. Except for Eagan, all jurisdictions produced records in response to the ACLU’s requests. The materials cited throughout this letter are, in part, public records produced pursuant to these requests or are otherwise publicly available.

¹² *E.g.*, MAPLE GROVE, MINN., CODE OF ORDINANCES ch. 10, art. XI, §§ 10-363(d), 10-363(f)(3)–(6); MAPLEWOOD, MINN., CODE OF ORDINANCES ch. 12, art. XIII, § 12-615.

¹³ For example, at least one landlord in Faribault, Minnesota was charged with a criminal misdemeanor for failure to register the rental property and attend training on the Crime-Free Multi-Housing program. Amended Complaint at ¶ 204, ECF No. 9, *Jones v. City of Faribault*, 2021 WL 1192466 (D. Minn. Feb. 18, 2021) (No. 18-cv-01643), <https://www.aclu.org/cases/jones-et-al-v-city-faribault?document=amended-complaint-0#legal-documents> [<https://perma.cc/2BP4-7CJC>]. *See also*, COON RAPIDS, MINN., CODE OF ORDINANCES tit. 12, ch. 12-900, § 12-922 (“In addition to any other sanctions or administrative penalties imposed, any violation of this Chapter shall constitute a misdemeanor offense, punishable as defined by State law. Each day of violation constitutes a separate offense.”); MAPLEWOOD, MINN. CODE OF ORDINANCES ch. 12, art. XIII, § 12-619 (“In addition to any other sanctions or administrative penalties imposed, any violation of this chapter shall constitute a misdemeanor offense, punishable as defined by state law. Each day of violation constitutes a separate offense.”); ANOKA, MINN., CODE OF ORDINANCES ch. 50, art. II, § 50-68 (“Any person violating any provision of this article is guilty of a misdemeanor and upon conviction shall be subject to the penalties set forth in state law.”); EAGAN, MINN., CODE OF ORDINANCES ch. 10, § 10.99 (“Every person violates a section, subdivision, paragraph or provision of this chapter when he performs an act thereby prohibited or declared unlawful or fails to act when such failure is thereby prohibited or declared unlawful or performs an act prohibited or declared unlawful or fails to act when such failure is prohibited or declared unlawful by a code adopted by reference by this chapter and, upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.”); *Id.* ch. 10, § 10.44, subd. 7 (“Nothing in this section shall be construed to limit the city’s other available legal remedies for any violation of the law which may constitute a nuisance service call hereunder, including criminal, civil, injunctive or others.”).

conduct the required training under these programs, and aggressively enforce Crime-Free Housing Policies against tenants and landlords through sanctions, evictions, and threats of the same. Together, these Crime-Free Housing Policies operate on their face or in effect to (1) lock people with a history of involvement in the criminal legal system out of housing; and (2) encourage or compel landlords to evict or threaten to evict tenants and their families based on alleged criminal activity, or for seeking emergency assistance.

a. Jurisdictions in Minnesota require broad criminal record screening of prospective tenants.

Many jurisdictions in Minnesota require landlords to conduct background checks on applicants, instruct them on how to conduct such checks, and tell them what to do with the results. Some ordinances explicitly state that such background checks must include various criminal records from specific databases for “at least” the past three years, including misdemeanor convictions.¹⁴ Others provide no information whatsoever with respect to so-called “lookback” window requirements.¹⁵ In addition, mandated background check policies often conscript landlords into agents of the police by requiring them to (1) notify the police if a background check results in the discovery of warrants; and (2) maintain and make available to police a “current roster” of tenants and other people in their homes.¹⁶

Regardless of the specific requirements in the ordinance, many jurisdictions obligate landlords to attend trainings that instruct them to obtain criminal records that are outdated and irrelevant, including arrest records that may have never led to a conviction, juvenile records, and sealed and expunged records. For example, in Faribault, Minnesota, as part of its CFHO, the Faribault Police Department instructed landlords to ask potential tenants about whether they had *ever* been convicted of a crime regardless of the age or nature of the offense.¹⁷ Faribault also encouraged landlords to screen tenants by using information from Minnesota’s Bureau of Criminal Apprehension (“MBCA”), which contained data on criminal convictions for 15 years following completion of a sentence, and did not allow sorting for recent criminal history.¹⁸ A “full” criminal history report from MBCA included not only public information regarding convictions but also all arrest records and juvenile records.¹⁹ Other jurisdictions throughout the

¹⁴ *E.g.*, MAPLE GROVE, MINN., CODE OF ORDINANCES ch. 10, art. XI, § 10-363(c); BROOKLYN CENTER, MINN., CODE OF ORDINANCES AND CHARTER ch. 12, § 12-916.

¹⁵ *E.g.*, ANOKA, MINN., CODE OF ORDINANCES ch. 50, art. II, § 50-62(a).

¹⁶ ANOKA, MINN., CODE OF ORDINANCES ch. 50, art. II, § 50-62; MAPLE GROVE, MINN., CODE OF ORDINANCES ch. 10, art. XI, § 10-363(c).

¹⁷ Decl. of Alejandro Ortiz, ECF No. 216, *Jones v. City of Faribault*, 2021 WL 1192466 (D. Minn. Feb. 18, 2021) (No. 18-cv-01643) [hereinafter Ortiz Decl.] (on file with the ACLU); *id.* at Ex. BK, ECF No. 219-10, *Jones v. City of Faribault*, 2021 WL 1192466 (D. Minn. Feb. 18, 2021) (No. 18-cv-01643) (on file with the ACLU).

¹⁸ *Id.* at Ex. BH, ¶¶ 7–8, ECF No. 219-7, *Jones v. City of Faribault*, 2021 WL 1192466 (D. Minn. Feb. 18, 2021) (No. 18-cv-01643) (on file with the ACLU).

¹⁹ *Id.* at Ex. BJ, at 4, ECF No. 219-9, *Jones v. City of Faribault*, 2021 WL 1192466 (D. Minn. Feb. 18, 2021) (No. 18-cv-01643) (on file with the ACLU).

State continue to instruct on this database, and at least one jurisdiction has misleadingly suggested that a public criminal history record search is required by state law.²⁰

Some jurisdictions encourage landlords to use private tenant screening companies to screen applicants.²¹ These tenant screening companies generally rely on databases of aggregated criminal record data, which are often plagued with errors and inaccuracies and contain outdated and irrelevant information. For instance, reports may mistakenly retrieve criminal records from people with similar names, improperly include sealed or expunged records, omit critical information about how a case was resolved and/or misclassify the underlying offense.²² These errors are often impossible to correct, including because some screening companies fail to provide the underlying records to landlords. Some companies only produce a “risk” score, or overall recommendation.²³ Rather than making individualized assessments on an applicant’s criminal history and considering any mitigating circumstances, as a commitment to fair housing requires, landlords often use the overall scores, recommendations, or other insufficient and inaccurate criminal record information in these reports to deny housing to potential tenants based on *any* criminal history, including arrests, old convictions, and low-level crimes.²⁴

Trainings on Crime-Free Housing Policies also often contain inaccurate, unfounded, and threatening statements regarding criminal records and screening that encourage or effectively coerce landlords to deny applicants with any prior involvement with the criminal legal system even though criminal history is not a predictor of housing success, and blanket exclusions of people with criminal histories are unjustified and discriminatory, as explained in Section II.a. For example, per the Minnesota Crime Prevention Association’s²⁵ Crime-Free Multi-Housing

²⁰ Presentation from Anoka Police Dep’t on Understanding Criminal Backgrounds (on file with the ACLU) [hereinafter Anoka Criminal Backgrounds Presentation].

²¹ Minnesota Crime Prevention Association, *The Minnesota Crime-Free Multi-Housing Program – Maple Grove 141* (2010) (on file with the ACLU) [hereinafter MCPA’s CFMH Manual – Maple Grove].

²² ARIEL NELSON, NAT’L CONSUMER L. CTR., *BROKEN RECORDS REDUX: HOW ERRORS BY CRIMINAL BACKGROUND CHECK COMPANIES CONTINUE TO HARM CONSUMERS SEEKING JOBS AND HOUSING* 17 (Dec. 2019), <https://www.nclc.org/wp-content/uploads/2022/09/report-broken-records-redux.pdf> [<https://perma.cc/2ZFZ-3W87>]; see also Lauren Kirchner & Matthew Goldstein, *Access Denied: Faulty Automated Background Checks Freeze Out Renters*, THE MARKUP (May 28, 2020), <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters> [<https://perma.cc/EWV9-P538>].

²³ Kirchner & Goldstein, *supra* note 22.

²⁴ Ortiz Decl., *supra* note 17, at Ex. BK (suggesting landlords deny applicants who have a criminal history); see also *Conn. Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC*, 478 F. Supp. 3d 259, 275–76 (D. Conn. 2020) (describing option that landlords have to automatically send adverse action letters to let applicants know their applications have been denied after the screening company finds “disqualifying records”); *Conn. Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC*, No. 18-cv-705, 2020 WL 401776 (D. Conn. Jan. 24, 2020), at *1–2 (describing defendant’s policy of disqualifying applicants from tenancy based on criminal records and without individualized assessments of relevant mitigating information).

²⁵ MINN. CRIME PREVENTION ASS’N, <https://www.mnccrimeprevention.com> (last visited July 24, 2024) [<https://perma.cc/8D3N-FXTY>].

Program Manual (“CFMH Manual”) that several jurisdictions include in their training,²⁶ landlords are warned—without evidence—that:

- If they “eliminate” the “application process” or “screening of potential residents” they are “increasing the potential for crime to occur”;
- That “[c]onducting a thorough screening and background check on potential residents may be the most important step in managing [their] property”; and
- That “[w]ithout proper screening, owners and managers . . . may be inviting illegal activity on the property.”²⁷

Moreover, the CFMH Manual:

- Compares “criminals” to “weeds,” that “can take over an entire rental community”;²⁸
- Erroneously claims that “[p]ast behavior is the best predictor of future behavior,” and that landlords “CAN be selective against: People with . . . criminal histories BEHAVIORS are not a protected class!!”;²⁹ and
- Provides screening “[t]ips” to landlords, including “On-Site Application” because “[i]t’s more difficult to work up a story.”³⁰

Trainings by jurisdictions throughout the State also “warn[] that . . . property owners/managers make safety a priority[,]” portend unspecified “serious consequences for anyone affiliated with illegal or criminal activity[,]”³¹ and instruct that it is “up to [housing providers] to prove if the question would ever come up that [they] did the checks or paid a company to do them.”³²

Together, these ordinances, trainings, and other program components encourage housing providers to deny applicants housing based on conduct wholly unconnected to a tenant’s ability to pay rent or to contribute to a safe rental community.

b. Jurisdictions in Minnesota compel landlords to evict or threaten to evict tenants from their homes for alleged criminal activity and calls for emergency assistance.

Cities across Minnesota require landlords to prohibit and punish alleged illegal activity or disorderly conduct by mandating that crime-free lease addendums be included in all leases.³³

²⁶ MCPA’s CFMH Manual – Maple Grove, *supra* note 21; Minnesota Crime Prevention Association, *The Minnesota Crime-Free Multi-Housing Program – Anoka* (2010) (on file with the ACLU) [hereinafter MCPA’s CFMH Manual – Anoka].

²⁷ MCPA’s CFMH Manual – Maple Grove, *supra* note 21, at 14, 27; MCPA’s CFMH Manual – Anoka, *supra* note 26, at 14, 27.

²⁸ MCPA’s CFMH Manual – Maple Grove, *supra* note 21, at 13; MCPA’s CFMH Manual – Anoka, *supra* note 26, at 13.

²⁹ MCPA’s CFMH Manual – Maple Grove, *supra* note 21, at 137, 143.

³⁰ *Id.* at 141.

³¹ Presentation from Anoka Police Dep’t on an Overview of the Minnesota CFMH Program 7 (on file with the ACLU).

³² Anoka Criminal Backgrounds Presentation, *supra* note 20, at 22.

³³ *E.g.*, MAPLEWOOD, MINN., CODE OF ORDINANCES ch. 12, art. XIII, § 12-604 (“The licensee must have all tenants execute a Minnesota Crime Free Housing Lease Addendum.”); MAPLE GROVE, MINN., CODE OF ORDINANCES ch.

CFHOs and their required lease addendums often prohibit a wide range of behavior from tenants, their family members, their guests, and others “affiliated” with them both on *and* off the relevant property, and authorize eviction based on such alleged behavior.

For example, the ordinance in Maple Grove, Minnesota allows its police department to effectively require landlords to pursue evictions when, in the police’s judgment, a tenant or anyone else in the household has engaged in “disorderly conduct,” so long as “there is probable cause to support such a determination.” It provides no process by which a tenant accused of disorderly conduct can challenge that determination and clarifies that “[i]t shall not be necessary that criminal charges are brought to support a determination of disorderly conduct, nor shall the fact of dismissal or acquittal of such a criminal charge operate as a bar to adverse license action.”³⁴ This probable cause standard compels eviction based on arrest, even though an arrest alone can never justify exclusion from housing, as explained in Section II.a. In addition, police reports are inherently unreliable and prejudicial.³⁵

Even where the burden of proof to trigger eviction is a preponderance of the evidence, jurisdictions provide no guidance as to what such evidence may reliably entail, how a tenant might challenge it, or how housing providers should make such a determination. And if landlords refuse to evict or “abate” the “nuisance,” they are faced with the possibility of fines, suspension and revocation of their licenses, and/or misdemeanor charges.³⁶ This unfettered discretion coupled with sanctions for non-compliance invite and indeed effectively compel evictions based on insufficient, inaccurate, and discriminatory information.

In training on these ordinances, jurisdictions instruct landlords to evict tenants based on alleged criminal activity using these addendums. For example, the CFMH Manual encourages housing providers to “serve . . . notice” on a tenant and to “[l]et the judge decide” based merely on a complaint by another resident of a violation of the crime-free lease addendum, even when the manager was “not an eye witness to the event.”³⁷ Jurisdictions also instruct that the objective of an eviction is to “[r]esolve problems quickly and fairly” and that it should be done “efficiently” so as to “[m]inimize court time.”³⁸ To this point, the CFMH Manual warns

10, art. XI, § 10-363 (“All tenant leases signed following the enactment of this section, except for state-licensed residential facilities and subject to all preemptory state and federal laws, shall contain the following crime-free multi-housing addendum language or equivalent language . . .”); COON RAPIDS, MINN., CODE OF ORDINANCES tit. 12, ch. 12-900, § 12-903(7) (“The Licensee must have all tenants execute a Minnesota Crime Free Housing Lease Addendum.”); ANOKA, MINN., CODE OF ORDINANCES ch. 50, art. II, § 50-53(b)(9)(a) (requiring a blank copy of a “Crime-free/drug-free addendum” to be included in a property owner/landlord’s application for rental licensure.); EAGAN, MINN., CODE OF ORDINANCES ch. 6, § 6.55, subd. 4(A)(6) (“[T]enants will be required to execute a Minnesota Crime Free Housing Lease Addendum . . .”).

³⁴ MAPLE GROVE, MINN., CODE OF ORDINANCES ch. 10, art. XI, § 10-363.

³⁵ *E.g.*, NANYA GUPTA, NAT’L IMMIGRANT JUST. CTR., PREJUDICIAL AND UNRELIABLE: THE ROLE OF POLICE REPORTS IN U.S. IMMIGRATION DETENTION & DEPORTATION DECISIONS 2–3 (July 2022), https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2022-07/Prejudicial-and-Unreliable-policy-brief-FINAL_July-2022.pdf [<https://perma.cc/3SST-QBJC>].

³⁶ *E.g.*, MAPLEWOOD, MINN., CODE OF ORDINANCES ch. 12, art. XIII, §§ 12-615 (a)(14), 12-619.

³⁷ MCPA’s CFMH Manual – Maple Grove, *supra* note 21, at 45.

³⁸ *Id.* at 46.

landlords not to wait to start eviction procedures so as not to “let it fester.”³⁹ Landlords are taught that evictions are proactive, preventative measures, and that “[p]revention is the most effective way to deal with criminal activity.”⁴⁰ Landlords are further told that any indecisiveness they exhibit comes at a high penalty because if they “accept rent after knowing that a residence is in non-compliance, [they] may lose [their] legal ability to evict.”⁴¹ The CFMH Manual states that landlords are in a “weakened” position if they “look the other way.”⁴² Trainings on Crime-Free Housing Policies also suggest that landlords who do not immediately seek eviction open the door for renters to “abuse” a landlord’s rights, and landlords are urged to “swallow your medicine and get on with it.”⁴³ Landlords are told to evict residents whose guests are alleged to have committed crimes because “[t]he sooner residents who ‘front’ for others realize they will be held responsible, the sooner they may choose to stop being accomplices to the crime.”⁴⁴

Many jurisdictions also penalize landlords and tenants based solely on calls for police assistance and emergency services—even when such calls seek emergency assistance with domestic violence incidents, are made to obtain urgent medical care, or are related to non-criminal behavior such as noise complaints.⁴⁵ In doing so, such jurisdictions endanger tenants and their families while interfering with their rights to seek police assistance. Trainings on these provisions similarly encourage landlords to take steps to “abate” these so-called nuisances, including through eviction of tenants and their families. For example, a training on evictions from Anoka states that a landlord cannot evict because of police calls if those calls are in response to domestic violence but then alarmingly instructs that “[a]n eviction filed because of noise or other activities which disturb other residents or neighbors is a valid reason, even if the activity is related to [d]omestic [v]iolence.”⁴⁶ In a blatant attempt to skirt existing legal protections for survivors of gender-based violence, the training materials then explicitly instruct landlords not to include language regarding “police calls” in written tenant warnings related to these kinds of activities.⁴⁷

Through implementation of these policies, cities and their police departments effectively compel landlords to evict families based on alleged criminal activity or calls for help. For example, in letters sent by the Anoka Police Department to tenants, law enforcement warns:

Three disorderly use contacts within a 12 month period of time can lead to eviction from a rental unit, *even if you have not received a citation or been arrested for a*

³⁹ *Id.*

⁴⁰ *Id.* at 47.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *E.g.*, ANOKA, MINN., CODE OF ORDINANCES ch. 50, art. II, § 50-64; COON RAPIDS, MINN., CODE OF ORDINANCES tit. 12, ch. 12-900, § 12-917(1)(m); MAPLEWOOD, MINN., CODE OF ORDINANCES ch. 12, art. XIII, § 12-615(a)(13); EAGAN, MINN., CODE OF ORDINANCES, ch. 10, § 10.44; ST. PAUL, MINN., CODE OF ORDINANCES part II, tit. XXVI, ch. 267; *see also* Sandra Park & Linda Morris, *Dialing 911 Can Get You Evicted*, ACLU (Apr. 18, 2019), <https://www.aclu.org/news/womens-rights/dialing-911-can-get-you-evicted> [<https://perma.cc/XW5S-EHE4>].

⁴⁶ Anoka, Minn., *Ending the Tenancy – What to Do When Things Go Wrong* 8 (2021) (on file with the ACLU).

⁴⁷ *Id.*

disorderly use offense. Information about our response is forwarded to Management and/or the property owner for their review. **If we respond to your residence for one more disorderly use incident within a 12 Month period of time, Management and/or the property owner will be asked to abate the nuisance which could include eviction proceedings.**⁴⁸

Indeed, property owners are notified of these disruptions and are told to “abate the nuisance property or unit that is in violation” or otherwise “be subject to additional sanctions including nuisance fees up to suspension and/or revocation of their license to operate a rental property in the city.”⁴⁹ Landlords interpret these notices to mean they should pursue eviction or non-renewal of leases.⁵⁰ Moreover, the underlying incidents in these letters are often incredibly minor, and pose no discernable credible threat to the safety of a community. For example, one letter from Anoka cites an instance of “disorderly conduct” after a child swore at adults as she rode her bike past the apartment building at issue because she was upset about a previous incident in which another child had taken her basketball.⁵¹ Such conduct could effectively serve as the basis for an eventual eviction under these policies.

II. Crime-Free Housing Policies in Minnesota disproportionately harm vulnerable and marginalized groups in violation of state and federal law.

The Fair Housing Act (“FHA”) prohibits even facially-neutral housing policies that disproportionately harm BIPOC, women, people with disabilities, and other protected groups unless the practice is necessary to serve a substantial, legitimate, nondiscriminatory interest, and that interest could not be served by a different practice with a less discriminatory effect.⁵² Minnesota state law similarly makes such policies unlawful.⁵³ Crime-Free Housing Policies throughout Minnesota raise substantial concerns under these laws because of their disproportionate harm to protected groups.

a. The criminal record screening required by Crime-Free Housing Policies disproportionately harms Black, Latine, and Native American Minnesotans.

The criminal records screening requirements in Crime-Free Housing Policies disproportionately harm Black, Latine,⁵⁴ and Native American⁵⁵ individuals because of the stark racial disparities that exist in the United States criminal legal system due to over-policing and

⁴⁸ Letter from Anoka Police Dep’t to Tenant A (Sept. 23, 2021) (on file with the ACLU).

⁴⁹ Letter from Anoka Police Dep’t to Housing Provider A, at 1 (Nov. 22, 2021) (on file with the ACLU).

⁵⁰ E-mail from Housing Provider B to Anoka Police Dep’t, at 10–11 (Feb. 23, 2022) (on file with the ACLU).

⁵¹ Letter from Anoka Police Dep’t to Housing Provider C, at 2 (July 19, 2022) (on file with the ACLU).

⁵² *Tex. Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 527 (2015); 24 C.F.R. § 100.500(a)–(b).

⁵³ Minnesota Human Rights Act (“MHRA”), MINN. STAT. § 363A.09. The MHRA incorporates the requirements of analogous federal law, such as the FHA (discussed in more detail *infra*). *Mumid v. Abraham Lincoln High Sch.*, 618 F.3d 789, 793 (8th Cir. 2010) (“The MHRA is typically construed in accordance with federal precedent concerning analogous federal statutes” (citing *Rothmeier v. Inv. Advisers, Inc.*, 85 F.3d 1328, 1338 (8th Cir. 1996))).

⁵⁴ Throughout the text of this letter, “Latine” refers to Census-defined “Hispanic or Latino.” This change is made to reflect current norms in terminology; however, these terms should be considered interchangeable.

⁵⁵ As used herein, the term “Native American” refers to Census-defined “American Indian or Alaska Native.”

systemic bias. Black people are arrested more often than white people for the same conduct, including for low level offenses like trespassing, disorderly conduct, consuming in public, lurking, and marijuana use.⁵⁶ Moreover, Black, Latine, and Native American people are among those who are more likely to experience incarceration.⁵⁷ In 2021, Black people were incarcerated at a rate five times that of white people, and Native American and Latine people were incarcerated at 4.2 times and 2.4 times the rate of white people, respectively.⁵⁸

These racial disparities are consistent or even worse in Minnesota. In Minnesota prisons in 2021, Black people were incarcerated at more than nine times the rate of white people, Native American people were incarcerated at more than nineteen times the rate of white people, and Latine people were incarcerated at 1.8 times the rate of white people.⁵⁹ Indeed, according to 2019 data, Minnesota has some of the largest racial disparities in incarceration rates, with the incarceration rate for Black people more than nine times the incarceration rate for white people.⁶⁰ With respect to arrests, in 2018, Black people in Minnesota were over five times more likely to be arrested for marijuana possession than white people.⁶¹ And based on estimates using state criminal history data and 2020 Census data, approximately 17% of Black Minnesotans and 26% of Native American Minnesotans have a criminal history compared to under 7% of white Minnesotans.⁶² Housing policies and practices that exclude applicants with a history of involvement with the criminal legal system thus disproportionately deny housing opportunities to Minnesotan renters of color.

Screening out housing applicants based on their criminal records or otherwise punishing them for alleged criminal activity is also inextricably linked to the crisis of homelessness across the country. Criminal legal system involvement and homelessness are part of a vicious cycle.

⁵⁶ E.g., *Picking Up the Pieces: A Minneapolis Case Study*, ACLU, <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/picking-pieces> [<https://perma.cc/QZD4-VEMM>] (last visited July 26, 2024); EZEKIEL EDWARDS ET AL., ACLU, A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM 28–36 (2020), https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf [<https://perma.cc/ZY8G-RHCN>].

⁵⁷ NAZGOL GHANDNOOSH, THE SENTENCING PROJECT, ONE IN FIVE: ENDING RACIAL INEQUITY IN INCARCERATION 3 (Oct. 2023), <https://www.sentencingproject.org/app/uploads/2024/02/One-in-Five-Ending-Racial-Inequity-in-Incarceration.pdf> [<https://perma.cc/YZ7Q-M2YK>]<https://perma.cc/8FNS-JG5L>].

⁵⁸ *Id.* at 6.

⁵⁹ Per capita disparities in incarceration rates are based on 2021 one-year American Community Survey population estimates and Bureau of Justice Statistics estimates of people incarcerated in federal or state prisons in 2021. In Minnesota, non-Latine white people were incarcerated in prisons at a rate of 84 per 100,000 people, while the prison incarceration rate was 763 per 100,000 for Black people, 147 per 100,000 for Latine people, and 1,630 per 100,000 for American Indian or Alaska Native people. For specific race/ethnicity definitions used and other methods details, see *Incarcerated populations by race/ethnicity and gender for each state*, PRISON POL’Y INITIATIVE (Sept. 2023), <https://www.prisonpolicy.org/data/#state> [<https://perma.cc/Q79F-S6F3>]. For the rates presented here, see the “Rates” tab.

⁶⁰ ASHLEY NELLIS, THE SENT’G PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS 5, 10 (Oct. 2021), <https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> [<https://perma.cc/9G57-ZAMQ>].

⁶¹ EDWARDS ET AL., *supra* note 56, at 32 tbl.7.

⁶² COLLEEN CHIEN ET AL., THE PAPER PRISONS INITIATIVE, THE MINNESOTA SECOND CHANCE EXPUNGEMENT GAP 2 tbl.1 (Mar. 31, 2023), <https://www.paperprisons.org/states/pdfs/reports/The%20Minnesota%20Second%20Chance%20Expungement%20Gap.pdf> [<https://perma.cc/9ASZ-WR2Y>].

Unhoused people are at an elevated risk of arrest and incarceration, often due to laws that criminalize homelessness.⁶³ In the wake of the United State Supreme Court’s recent decision in *Grants Pass v. Johnson*, cities may be even more emboldened to unjustly treat unhoused people as criminals, including for merely sleeping in public.⁶⁴ Yet, arrests and incarceration often result in homelessness—for example, in 2017 more than 50,000 people entered shelters directly from correctional facilities.⁶⁵ Moreover, people who have been to prison just once experience homelessness at a rate nearly seven times higher than the general public, while those who have been incarcerated more than once experience rates nearly thirteen times higher.⁶⁶ Thus, substantial harms continue to stem from the consideration of criminal records in housing decisions, particularly in unhoused communities and communities of color.

These harms exist despite the fact that criminal history is not a predictor of housing success, and there is no empirical evidence that justifies broad exclusions of people with criminal histories from housing.⁶⁷ For example, a study including data from more than 10,500 households found that, at minimum, eleven of fifteen criminal offense categories have no significant effect on housing outcomes (i.e. on the resident’s reason for move-out), and the effect of a prior criminal offense on a resident’s housing outcome declines over time and becomes insignificant.⁶⁸

Federal regulators have long sounded the alarm that blanket criminal records screening policies—like those required by many Crime-Free Housing Policies throughout Minnesota—violate federal law and raise substantial fair housing concerns. In April of 2016, HUD issued nationwide guidance clarifying how the FHA applies to the use of criminal history by providers or operators of housing. Citing well-researched and long-standing disproportionate rates in arrests, convictions, and incarceration across the United States for Black and Latine individuals, HUD explained that “criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.”⁶⁹ HUD emphasized that “where a policy or

⁶³ TRISTIA BAUMAN ET AL., NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019 71 (Dec. 2019), <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> [<https://perma.cc/TQD6-6ZJV>] (“Unhoused people are arrested at disproportionate rates across the country, and they are as much as 11 times more likely than housed people to be jailed.”).

⁶⁴ 144 S. Ct. 2202, 2216 (2024) (holding that the imposition of criminal penalties for sleeping or camping on public property does not violate the Eighth Amendment’s prohibition on cruel and unusual punishment).

⁶⁵ MEGHAN HENRY ET AL., U.S DEP’T OF HOUS. & URB. DEV., THE 2017 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS PART 2: ESTIMATES OF HOMELESSNESS IN THE UNITED STATES 1–14 (Oct. 2018), <https://www.huduser.gov/portal/sites/default/files/pdf/2017-AHAR-Part-2.pdf> [<https://perma.cc/6733-6NEF>].

⁶⁶ Lucius Couloute, *Nowhere to Go: Homelessness among formerly incarcerated people*, PRISON POL’Y INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html> [<https://perma.cc/35LZ-5XB8>].

⁶⁷ E.g., Calvin Johnson, *Tenant Screening with Criminal Background Checks: Predictions and Perceptions Are Not Causality*, U.S DEP’T OF HOUS. & URB. DEV. (May 17, 2022), <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-051722.html> [<https://perma.cc/GU44-BPB8>].

⁶⁸ CAEL WARREN, WILDER RSCH, SUCCESS IN HOUSING: HOW MUCH DOES CRIMINAL BACKGROUND MATTER? 23 (Jan. 2019), https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf [<https://perma.cc/BK79-PHNC>].

⁶⁹ 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

practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class,” such policy is “unlawful under the [FHA] if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest . . . , or if such interest could be served by another practice that has a less discriminatory effect.”⁷⁰ HUD warned that a policy or practice of exclusion based on prior arrests, or a “blanket prohibition on any person with any conviction record” without accounting for “when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then” can *never* be necessary to serve such an interest.⁷¹ Instead, HUD instructed that any policy or practice with respect to criminal record screening should at the very least consider the nature, severity, and recency of criminal conduct, and provide for an individualized assessment of relevant mitigating information.⁷²

In 2022, HUD issued a memorandum reiterating its 2016 guidance and citing the well-established and persistent racial disparities throughout the United States’ criminal legal system. HUD again stressed that “policies or practices that fail to consider the nature, severity, and recency of an individual’s conduct are unlikely to be necessary to serve a substantial, legitimate, nondiscriminatory interest,” and therefore violate the FHA.⁷³ HUD also noted that housing providers that inform potential tenants that they do not rent to people with “criminal records” often deter those with any criminal legal system involvement from applying.⁷⁴ More recently, HUD’s Office of Fair Housing and Equal Opportunity reiterated these principles, noting that tenant screening policies based on imprecise or overbroad criteria “may unjustifiably exclude people from housing opportunities in discriminatory ways.”⁷⁵ And HUD has also proposed a rule to ensure that public housing authorities and other HUD-assisted housing providers remove barriers to housing in screening and termination decisions—many of which track the barriers that jurisdictions throughout Minnesota impose—because of fair housing concerns.⁷⁶

Despite this clear, repeated nationwide guidance from HUD, jurisdictions across Minnesota effectively compel landlords to categorically exclude people with a wide range of criminal history from housing and, indeed, from entire communities. Specifically, ordinances

TRANSACTIONS 2 (Apr. 4, 2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF [<https://perma.cc/P9DR-5AR8>] [hereinafter HUD GUIDANCE ON USE OF CRIMINAL RECORDS].

⁷⁰ *Id.*

⁷¹ *Id.* at 6.

⁷² *Id.* at 7.

⁷³ Memorandum from Demetria L. McCain, Principal Deputy Assistant Sec’y for Fair Hous. & Equal Opportunity, U.S. Dep’t of Hous. & Urb. Dev. to Off. of Fair Hous. & Equal Opportunity, Fair Hous. Assistance Program Agencies, and Fair Hous. Initiatives Program Grantees 7 (June 10, 2022), <https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf> [<https://perma.cc/DS42-HPFL>].

⁷⁴ *Id.* at 2.

⁷⁵ U.S. DEP’T OF HOUS. & URB. DEV., GUIDANCE ON APPLICATION OF THE FAIR HOUSING ACT TO THE SCREENING OF APPLICANTS FOR RENTAL HOUSING 1 (Apr. 29, 2024), https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Guidance_on_Screening_of_Applicants_for_Rental_Housing.pdf [<https://perma.cc/H9NT-CML7>].

⁷⁶ Reducing Barriers to HUD-Assisted Housing, 89 Fed. Reg. 25332 (Apr. 10, 2024).

and their trainings encourage lookback windows that span decades of criminal history.⁷⁷ Research consistently shows, however, that many categories of criminal convictions have no significant effect on housing outcomes, and where there is any effect, that limited risk decreases significantly over time, with misdemeanors having no significant effect after two years, and felonies having no significant effect after five years.⁷⁸ And most individuals with convictions have not had a conviction in several years.⁷⁹ Trainings by police departments throughout the State, however, disregard the time that has elapsed since an underlying offense, including by making unfounded statements about past behavior as predictive of future behavior.⁸⁰ At minimum, if limitations to lookback periods are not in place, all individuals with a conviction could be excluded from housing regardless of the time since a conviction, despite the fact that studies show that after a period of time, there is no meaningful difference in tenant outcomes between those with convictions and those without. Indeed, in its recent proposed rule regarding HUD-assisted housing, HUD proposes to make it presumptively unreasonable to consider criminal activity that occurred more than three years prior to a tenant's application.⁸¹

Crime-Free Housing Policies throughout Minnesota also instruct and effectively compel landlords to consider and exclude prospective tenants based on a broad range of criminal records that should never serve as a basis to disqualify tenants, and are likely to contain irrelevant, misleading, and inaccurate information.⁸² Because criminal records screening disproportionately harms Black, Latine, and Native American applicants for the reasons described above, housing providers have an obligation to demonstrate that exclusion based on a particular criminal conviction satisfies a substantial, legitimate, non-discriminatory need, and they must support any such determination with empirical evidence.⁸³ Yet cities throughout Minnesota fail to instruct landlords that such a determination is necessary. Instead, they threaten landlords with serious

⁷⁷ *Supra* Section I.a.

⁷⁸ See WARREN, *supra* note 68, at 20; see also Valerie Schneider, *Racism Knocking at the Door: The Use of Criminal Background Checks in Rental Housing*, 53 U. RICH. L. REV. 923, 933 (2019) (“There is little empirical evidence that excluding individuals from housing opportunities solely because of a criminal record increases public safety.”); Johnson, *supra* note 67; AVA PITTMAN, TACOMA HOUS. AUTH., HOUSING FOR ALL: REDUCING BARRIERS TO HOUSING FOR PEOPLE WITH CRIMINAL RECORDS 21 (May 14, 2021), https://www.tacomahousing.org/wp-content/uploads/2022/10/housing_for_all_-_reducing_barriers_to_housing_for_people_with_criminal_records_-_tacoma_housing_authority_2021-5-14.pdf [<https://perma.cc/7FSG-XE25>] (finding no meaningful relationship between criminal record history and negative housing outcomes).

⁷⁹ See, e.g., BECCA CADOFF ET AL., JOHN JAY COLL. OF CRIM. JUST., CRIMINAL CONVICTION RECORDS IN NEW YORK CITY (1980-2019) 28 (Apr. 2021), https://datacollaborativeforjustice.org/wp-content/uploads/2021/04/2021_04_07_Conviction_Record_Report.pdf [<https://perma.cc/UJK8-EFJZ>] (showing that in New York City, 63.9% of individuals with a criminal conviction have not had a new conviction in over 10 years, and 36% have not had a new conviction in over 20 years).

⁸⁰ Anoka Criminal Backgrounds Presentation, *supra* note 20, at 12; see Presentation from Lorri Kaas on Coon Rapids Crime Free Multi-Housing Program (on file with the ACLU) (presentation on applicant screening that does not advise landlords to limit their criminal record screening to a defined time period).

⁸¹ Reducing Barriers to HUD-Assisted Housing, 89 Fed. Reg. at 25363 § 5.855(b), 25366 § 882.518(b)(2), 25368 § 882.519(e)(2), 25370 § 960.204(c)(2), 25374 § 982.553(a)(4)(ii)(B).

⁸² Anoka Criminal Backgrounds Presentation, *supra* note 20, at 17; MCPA's CFMH Manual – Maple Grove, *supra* note 21, at 141; Coon Rapids, *List of Tenant Screening Companies* (on file with the ACLU); Amended Complaint Ex. D at 2, ECF No. 9-4, *Jones v. City of Faribault*, 2021 WL 1192466 (D. Minn. Feb. 18, 2021) (No. 18-cv-01643), (on file with the ACLU).

⁸³ HUD GUIDANCE ON USE OF CRIMINAL RECORDS, *supra* note 69, at 4–6.

consequences for failing to broadly exclude people from housing, and, indeed, falsely claim that discrimination based on criminal history is permissible.

Cities and their police departments with Crime-Free Housing Policies likewise discourage any individualized assessment of a prospective tenant with a criminal record, including what a person has done since the conduct underlying any criminal activity and their current circumstances. Such individualized assessment is a less discriminatory alternative to overbroad exclusions, as HUD has recognized,⁸⁴ and is essential to ensure access to fair housing.

b. Crime-Free Housing Policies that penalize tenants based on calls for emergency assistance and alleged criminal activity disproportionately harm people of color, survivors of gender-based violence, and people with disabilities.

As discussed in Section I.b, Crime-Free Housing Policies often require the eviction of tenants and entire households based on a broad range of alleged criminal activity. This disproportionately harms people of color, including because of over-policing and systemic bias at every stage of the criminal legal system. Moreover, the alleged activity these policies target like “disorderly conduct,” “other criminal activity,” or behavior that “jeopardizes the health, safety, or welfare” is vague and overbroad and gives housing providers, police, and other decisionmakers a wide lane to interpret what activity qualifies for punishment.⁸⁵ Such unfettered discretion disproportionately harms people of color.⁸⁶

Likewise, these Crime-Free Housing Policies apply only to rental housing where Black, Latine, and Native American residents of Minnesota are more likely to live. For instance, in Minnesota in 2020, only 24% of households with a white householder were renter-occupied, compared to roughly 76% of households with a Black householder, 53% of households with a Native American householder, and 54% of households with a Latine householder.⁸⁷ Black,

⁸⁴ *Id.* at 6–7.

⁸⁵ See, e.g., ANOKA, MINN., CODE OF ORDINANCES ch. 50, art. II, § 50-50; MAPLE GROVE, MINN., CODE OF ORDINANCES ch. 10, art. XI, § 10-363(b), (f); *Lease Addendum for Crime Free/Drug Free Housing*, CITY OF EAGAN, https://cityofeagan.com/images/CommunityDevelopment/rental-licensing/Handout_Crime%20Free%20Lease%20Addendum%20Example.pdf [<https://perma.cc/F7F4-FUC5>] (last visited July 26, 2024); see also Letter from City of Maple Grove Police Dep’t to Housing Provider D, at 29–30 (Jan. 14, 2022) (providing notice of “disorderly conduct” at property) (on file with the ACLU).

⁸⁶ See generally, Jamelia Morgan, *Rethinking Disorderly Conduct*, 109 CAL. L. REV. 1637 (2020), <https://static1.squarespace.com/static/640d6616cc8bbb354ff6ba65/t/64484928bb9266461d310dfb/1682458921110/1+Morgan+35+postEIC.pdf> [<https://perma.cc/F6MV-8TPP>] (discussing how disorderly conduct laws reinforce discriminatory understandings of community norms); see also SAM DAVIS ET AL., ACLU OF N.C., THE CONSEQUENCES OF COPS IN NORTH CAROLINA SCHOOLS 7 (2023), <https://static1.squarespace.com/static/64d3ad6abbf62a6134c8401a/t/65313ce2edb0aa4fde389edd/1697725667593/023.10.18-nc-discipline-final.pdf> [<https://perma.cc/RH2E-5YHV>] (explaining that in South Carolina, Black school students were charged with the vague crime of “disorderly conduct” at nearly seven times the rate of their white peers due to the “unbridled discretion” the laws grant police officers (quoting *Carolina Youth Action Project v. Wilson*, 60 F.4th 770, 784 (4th Cir. 2023))).

⁸⁷ This analysis uses 2020 decennial census data disaggregated by race/ethnicity of the householder for renter-occupied households. Here, “Black householders” are householders of one race who are Black or African American alone; “Native householders” are householders of one race who are American Indian or Alaska Native alone, “white

Latine, and Native American residents of Minnesota are also more likely than white residents of Minnesota to live in multi-unit buildings, which these ordinances typically target, rather than single-unit houses. According to 2022 data, 60% of households with a Black householder, 31% of households with a Native American householder, and 35% of households with a Latine householder in Minnesota lived in multi-unit buildings, compared to only 19% of households with a white householder.⁸⁸ In short, compared to white residents of Minnesota, Black, Latine, and Native American residents of Minnesota are more likely to rent rather than own their homes and more likely to live in multi-unit buildings rather than single-unit houses.

Crime-Free Housing Policies also target and disproportionately harm survivors of gender-based violence—the vast majority of whom are women.⁸⁹ Because these ordinances frequently

householders” are householders of one race who are white and not Hispanic or Latino, and “Latine householders” are Hispanic or Latino householders of any race. Note that this grouping leads to a small amount of double counting, specifically for Black or Native American householders of one race who are also Latine. *Compare Tenure by Household Size (Black or African American Alone Householder)*, U.S. CENSUS BUREAU tbl.H12B (2020), <https://data.census.gov/table/DECENNIALDHC2020.H12B?g=040XX00US27> [<https://perma.cc/K64N-KVX4>], with *Tenure by Household Size (American Indian and Alaska Native Alone Householder)*, U.S. CENSUS BUREAU tbl.H12C (2020), <https://data.census.gov/table/DECENNIALDHC2020.H12C?g=040XX00US27> [<https://perma.cc/QB6T-29BA>], with *Tenure by Household Size (White Alone, Not Hispanic or Latino Householder)*, U.S. CENSUS BUREAU tbl.H12I (2020), <https://data.census.gov/table/DECENNIALDHC2020.H12I?g=040XX00US27> [<https://perma.cc/XNY5-57SB>], with *Tenure by Household Size (Hispanic or Latino Householder)*, U.S. CENSUS BUREAU tbl.H12H (2020), <https://data.census.gov/table/DECENNIALDHC2020.H12H?g=040XX00US27> [<https://perma.cc/BK9J-FPDJ>]. Numbers have been computed by dividing renter-occupied total by group total. The Census Glossary defines a householder as “The person, or one of the people, in whose name the home is owned, being bought, or rented. If there is no such person present, any household member 15 years old and over can serve as the householder.” *Glossary: Householder Definition*, U.S. CENSUS BUREAU, <https://www.census.gov/glossary/?term=Householder> [<https://perma.cc/4HYK-U3HS>] (last visited July 26, 2024).

⁸⁸ This analysis uses ACS 5-year estimates for the period 2018-22, disaggregated by race/ethnicity of the householder for each household. Multi-unit structures include structures with two or more households, while single-family structures include structures with one household, attached or detached. Respondents could alternatively report that they lived in a mobile home, RV, van, boat, or other structure (approximately 2.5% of occupied households chose this option). Here, “Black householders” are householders of one race who are Black or African American alone; “Native American householders” are householders of one race who are American Indian or Alaska Native alone, “white householders” are householders of one race who are white and not Hispanic or Latino; and “Latine householders” are Hispanic or Latino householders of any race. Note that this grouping leads to a small amount of double counting, specifically for Black or Native American householders of one race who are also Latine. For more information on these estimates, including associated margins of error, *compare Units in Structure (White Alone, Not Hispanic or Latino Householder)*, U.S. CENSUS BUREAU tbl.B25032H (2022) <https://data.census.gov/table/ACSDT5Y2022.B25032H?g=040XX00US27> [<https://perma.cc/EGM4-FWEY>], with *Units in Structure (Hispanic or Latino Householder)*, U.S. CENSUS BUREAU tbl.B25032I (2022), <https://data.census.gov/table/ACSDT5Y2022.B25032I?g=040XX00US27> [<https://perma.cc/EEA4-P4MX>], with *Units in Structure (American Indian and Alaska Native Alone Householder)*, U.S. CENSUS BUREAU tbl.B25032C (2022), <https://data.census.gov/table/ACSDT5Y2022.B25032C?g=040XX00US27> [<https://perma.cc/74A4-HH25>], with *Units in Structure (Black or African American Alone Householder)*, U.S. CENSUS BUREAU tbl.B25032B (2022), <https://data.census.gov/table/ACSDT5Y2022.B25032B?g=040XX00US27> [<https://perma.cc/EK4F-XAJC>].

⁸⁹ See 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

penalize households for calls for police or emergency assistance, or for alleged criminal activity in the home even if the resident is the *victim* of the crime, cities have used them to punish and jeopardize the housing of survivors of domestic violence. As a result, domestic violence survivors often feel that they must endure violence and threats without emergency assistance out of fear that calling for help will lead to eviction and housing insecurity. Critically, such policies raise serious concerns of potential violations of the FHA and other protections against housing discrimination, including the Violence Against Women Act (“VAWA”), which has recently been updated with new protections against Crime-Free Housing Policies.⁹⁰ Likewise, federal and state constitutional rights to petition the government and due process may be implicated.⁹¹ Although federal and state protections—including Minnesota law—prohibit restricting a tenant’s right to seek police and emergency assistance in response to domestic abuse,⁹² in practice these ordinances and their enforcement still harm these survivors. For example, as noted in Section I.b, Anoka trains landlords that although domestic violence is not a valid reason for eviction, conduct related to or discovered during a response to a domestic violence incident may serve as a basis for eviction.

The harmful effects of housing instability are compounded for Black women, Native American women, and other women of color, who face both increased barriers to housing and disproportionate rates of violence.⁹³ HUD has repeatedly named housing discrimination against domestic violence survivors—and specifically the use of ordinances and programs to punish and threaten their housing—to be a significant fair housing issue,⁹⁴ as women account for the vast

EMERGENCY SERVICES 13 (Sept. 13, 2016), <https://www.hud.gov/sites/documents/FINALNUISANCEORDGNCE.PDF> [<https://perma.cc/JR8W-MGLM>] [hereinafter HUD LOCAL NUISANCE AND CFHO GUIDANCE]; see also Sandra Park, *With Nuisance Laws, Has ‘Serve and Protect’ Turned into ‘Silence and Evict’?*, MSNBC (last updated Mar. 25, 2016, 12:13 PM), <https://www.msnbc.com/msnbc/nuisance-laws-has-serve-and-protect-turned-silence-and-evict-msna821001> [<https://perma.cc/88ZG-LKSV>]; *Safe Homes, Safe Communities: A Guide for Local Leaders on Domestic Violence and Fair Housing*, ACLU (Apr. 2015), <https://www.aclu.org/publications/safe-homes-safe-communities?redirect=safe-homes> [<https://perma.cc/E5XH-TXMY>].

⁹⁰ See *infra* Section IV.

⁹¹ *Id.*

⁹² Residential Tenant’s Right to Seek Police and Emergency Assistance, MINN. STAT. § 504B.205.

⁹³ MONICA McLAUGHLIN & DEBBIE FOX, NAT’L LOW INCOME HOUS. COAL., HOUSING NEEDS OF VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING 6-6 (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf [<https://perma.cc/RGD3-RJM5>]; see also CAROLYN M. WEST & KALIMAH JOHNSON, NAT’L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN, SEXUAL VIOLENCE IN THE LIVES OF AFRICAN AMERICAN WOMEN 2–4 (Mar. 2013), https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SVAAWomenRevised.pdf [<https://perma.cc/8REK-F9LC>] (describing disproportionate rates of sexual violence involving Black women); see generally SHARON G. SMITH ET AL., CTRS. FOR DISEASE CONTROL AND PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2010-2012 STATE REPORT (Apr. 2017), <https://stacks.cdc.gov/view/cdc/46305> [<https://perma.cc/72YU-KRA8>] (describing rates of sexual violence, stalking, and intimate partner violence at national and state levels among women of color).

⁹⁴ *E.g.*, HUD LOCAL NUISANCE AND CFHO GUIDANCE, *supra* note 89; Memorandum from Sara K. Pratt, Deputy Assistant Sec’y for Enf’t & Programs to Fair Hous. & Equal Opportunity Off. Dirs. & Fair Hous. & Equal Opportunity Reg’l Dirs. (Feb. 9, 2011), <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.PDF> [<https://perma.cc/U9LC-MW85>].

majority of domestic violence survivors.⁹⁵ Indeed, HUD previously identified repeal of these ordinances as a step jurisdictions could take to affirmatively further fair housing.⁹⁶

Crime-Free Housing Policies also disproportionately harm people with disabilities. The Crime-Free Housing Policy in the DOJ’s investigation into Anoka serves as an alarming example. The DOJ’s investigation found that Anoka “was more likely to mark a call as [a nuisance call] when [it] identified that the call involved mental health issues even after controlling for whether the call involved other issues such as noise complaints, violence, or illegal drugs.”⁹⁷ In other words, people with mental health disabilities faced different consequences for seeking emergency services as a result of the Crime-Free Housing Policy when compared to people without mental health disabilities who sought emergency services for the same behavior.

III. Crime-Free Housing Policies in Minnesota intentionally target protected groups in violation of federal and state law.

In addition to these disproportionate harms, Crime-Free Housing Policies often intentionally target and displace people of color in violation of state and federal laws that prohibit intentional discrimination.⁹⁸ For example, in Faribault, the comments about the growing Somali population in the City prior to the CFHO’s passage were startling. City officials publicly commented that the CFHO would be a successful “at ‘get[ting] rid of’ residents who are ‘undesirable[.][.]’” and that “Faribault needed to attract higher income residents or it would ‘flip like Detroit in a few years.’”⁹⁹ In light of these comments and others, “the City’s knowledge that the [o]rdinance would have negative effects on the Somali community, and the City’s desire to eliminate low-rent housing downtown,” the District Court of Minnesota found “an inference that the City implemented the [o]rdinance because of its potential displacement of Black residents, not merely in spite of such effect.”¹⁰⁰ Similarly, in Hesperia, California, several statements from

⁹⁵ SHARON G. SMITH ET AL., CTRS. FOR DISEASE CONTROL AND PREVENTION, THE NATIONAL INTIMATE PARTNER & SEXUAL VIOLENCE SURVEY: 2015 DATA BRIEF – UPDATED RELEASE 7 (Nov. 2018), <https://stacks.cdc.gov/view/cdc/60893> [<https://perma.cc/RZN3-YS8S>]; see also Melissa Jeltsen & Alissa Scheller, *At Least a Third of All Women Murdered in the U.S. Are Killed by Male Partners*, HUFFPOST (last updated Dec. 6, 2017), https://www.huffpost.com/entry/men-killing-women-domesti_n_5927140 [<https://perma.cc/MRZ3-DZZW>].

⁹⁶ See HUD LOCAL NUISANCE AND CFHO GUIDANCE, *supra* note 89, at 12–13.

⁹⁷ Complaint, ¶ 45, *United States v. City of Anoka* (D. Minn. May 21, 2024) (No. 24-cv-01861), <https://www.justice.gov/crt/media/1352686/dl> [<https://perma.cc/5439-AZHU>].

⁹⁸ Fair Housing Act, 42 U.S.C. § 3604 (prohibiting housing policies that are intentionally discriminatory); Minnesota Human Rights Act, MINN. STAT. § 363A.09 (prohibiting housing discrimination on the basis of membership in a protected class); U.S. CONST. amend. XIV, § 1; MINN. CONST. art. I, § 2 (“No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.”); see also *Mumid v. Abraham Lincoln High School*, 618 F.3d 789, 793 (8th Cir. 2010) (“The MHRA is typically construed in accordance with federal precedent concerning analogous federal statutes” (citing *Rothmeier v. Inv. Advisers, Inc.*, 85 F.3d 1328, 1338 (8th Cir. 1996))); *Greene v. Comm’r of Minnesota Dep’t of Hum. Servs.*, 755 N.W.2d 713, 725 (Minn. 2008) (internal citations omitted) (noting that the Minnesota Equal Protection Clause and the Fourteenth Amendment Equal Protection Clause are applied using the same principles).

⁹⁹ Second Amended Complaint at ¶ 7, ECF No. 118, *Jones v. City of Faribault*, 2021 WL 1192466 (D. Minn. Feb. 18, 2021) (No. 18-cv-01643) (on file with the ACLU).

¹⁰⁰ *Jones v. City of Faribault*, No. 18-cv-01643, 2021 WL 1192466, at *14.

elected officials indicated that Hesperia passed its CFHO because of demographic changes in the City, and with the intent of targeting and displacing Black and Latine residents.

Data in Minnesota likewise suggests that these ordinances may have been passed in response to demographic changes in communities throughout the State. Over the last two decades when many jurisdictions in Minnesota passed these ordinances, the percentage of non-white residents of the State has grown. Specifically, in 2000, according to the United States Census, just 4.1% of the State’s population was Black.¹⁰¹ By 2020, that figure stood at 8.5%.¹⁰² Similarly in 2000 the Latine population of Minnesota was 2.9% and the Native American population of Minnesota was 1.6%, increasing by 2020 to 6.1% and 2.8% respectively.¹⁰³ Moreover, these Crime-Free Housing Policies target rental housing where Black, Latine, and Native American residents of Minnesota are more likely to live, as described in Section II.b.

In passing and amending CFHOs, many jurisdictions publicly point to an actual or perceived concern about crime in their communities, including because of changing demographics.¹⁰⁴ But the reality of crime rates in these communities and the State overall belies

¹⁰¹ For 2000, population statistics are from the 2000 Decennial Census. *2000 Decennial Census: Profile of General Demographic Characteristics: 2000 for Minnesota*, U.S. CENSUS BUREAU tbl.DP1 (2000), <https://data.census.gov/table/DECENNIALDPSLDH2000.DP1?g=040XX00US27> [<https://perma.cc/74MH-BJTS>].

For Black residents, figure includes individuals who answered on the Census that they are “Black or African American alone or in combination” with other races, and for Native American residents, figure includes individuals who answered that they are “American Indian or Alaska Native alone or in combination” with other races. For Latine residents, figure includes residents who answered that they are “Hispanic or Latino” people of any race.

¹⁰² For 2020, population statistics are from the 2020 Decennial Census. *2020 Decennial Census: Profile of General Population and Housing Characteristics: 2020 for Minnesota*, U.S. CENSUS BUREAU tbl.DP1 (2020), <https://data.census.gov/table/DECENNIALDP2020.DP1?g=040XX00US27> [<https://perma.cc/4Z3Q-MC8M>].

For Black residents, figure includes individuals who answered on the Census that they are “Black or African American alone or in combination” with other races, and for Native American residents, figure includes individuals who answered that they are “American Indian or Alaska Native alone or in combination” with other races. For Latine residents, figure includes residents who answered that they are “Hispanic or Latino” people of any race.

¹⁰³ *2000 Decennial Census*, *supra* note 101; *2020 Decennial Census*, *supra* note 102.

¹⁰⁴ *See e.g., Meeting Minutes*, Maple Grove City Council 4 (Nov. 19, 2012) (on file with the ACLU) (explaining that the proposed CFHO “was a partnership between law enforcement and rental property managers to provide a safer living environment while reducing crime within rental properties”); *Meeting Minutes*, Maple Grove City Council 11–12 (June 3, 2013) (on file with the ACLU) (one council member stating “the world [is] changing and [the Crime Free Multi-Housing Program] would allow landlords to make a responsible decision” and another that “it was the [City] Council’s obligation to not wait for crime to become a concern before taking action”); Coon Rapids Memorandum from Stoney Hiljus, City Att’y to Mayor, City Council, City Manager 2 (Mar. 1, 2011) (on file with the ACLU) (mentioning that the Ordinance aligned with the City’s “long term strategic vision” by “protect[ing] the citizens of Coon Rapids from . . . problem tenants, and to maintain stability and property values in residential neighborhoods”); *Meeting Packet*, Maplewood City Council 2 (May 23, 2022) (on file with the ACLU) (expanding the purpose of the City’s Crime-Free Housing Ordinance to “explicitly include protecting the safety of residents and the community”); ANOKA, MINN., CODE OF ORDINANCES ch. 50, art. II, § 50-49(d) (“The city council finds that repeated police calls to certain rental dwellings in the city occupied by persons with criminal histories have taxed law enforcement resources. The city council also finds that persons residing in rental dwellings who engage in disorderly conduct or cause nuisance conditions create a hostile environment for others living in close proximity, threatening the public safety. To preserve and protect the city’s neighborhoods and to promote public safety, the city council enacts a crime free rental program into this Code.”); *Crime Free Multi-Housing Program: What Is Crime Free Multi-Housing?* CITY OF ANOKA POLICE DEP’T, <https://ci.anoka.mn.us/278/Crime-Free-Multi-Housing-Program> [<https://perma.cc/A6UP-GRER>] (last visited July 24, 2024) (describing the Crime Free Housing Ordinance

that rationale. Reported crime rates in Minnesota have decreased significantly over time during the decades during which these ordinances have been passed and amended.¹⁰⁵

Once they are enacted, the enforcement of CFHOs often intentionally targets people of color and other vulnerable groups. For example, in Faribault, data showed that the Faribault Police Department more harshly enforced its ordinance against Black and Latine tenants.¹⁰⁶ Likewise, in Hesperia, “HUD determined that African American renters were almost four times as likely as non-Hispanic white renters to be evicted because of the ordinance, and Latino renters were 29% more likely than non-Hispanic white renters to be evicted.”¹⁰⁷ Furthermore, HUD found that “[t]he higher the concentration of minority population in an area, the more likely households in that neighborhood were to be evicted under the ordinance.”¹⁰⁸ Indeed, the wide array of discretion that jurisdictions have in interpreting and enforcing these ordinances invites targeted and unlawful discrimination.

IV. Crime-Free Housing Policies raise other substantial legal concerns.

Crime-Free Housing Policies also raise other substantial legal concerns. For instance, to the extent that the Crime-Free Housing Policies effectively compel landlords to evict tenants

as “designed to be a partnership between law enforcement, rental owners and managers, and residents to reduce crime, drugs, illegal, and nuisance activity in rental communities”); *Regular Meeting Minutes*, Anoka City Council 4 (May 15, 2023) (on file with the ACLU) (discussing community concerns over crime broadly with police reporting that a purported upward trend in “Part II crimes” is “due to the current culture” and that the crime-free addendum tries to address the issues in rental housing but it needs to be reviewed to strengthen restrictions); *Faribault*, 2021 WL 1192466, at *2 (finding that leading up to the passage of the Crime Free Housing Ordinance, “some residents expressed concerns about a perceived rise in crime in the downtown area” as “Somali residents moved into apartments downtown and spent time conversing on sidewalks near their homes . . .”); Second Amended Complaint at ¶ 50, ECF No. 118, *Jones v. City of Faribault*, 2021 WL 1192466 (D. Minn. Feb. 18, 2021) (No. 18-cv-01643) (on file with the ACLU) (describing a memo submitted to City Council in advance of discussion of a Crime-Free Housing Ordinance where “‘ongoing police efforts . . . to alleviate some of the fears and cultural clashes taking place[.]’” specifically regarding “business owners [who] had recently raised concerns about people on the sidewalks, including ‘alleged criminal activity and open drug transactions’” despite there being no reported increase in downtown crime).

¹⁰⁵ According to data from the FBI’s Uniform Crime Reporting program, which is voluntarily reported by local agencies, between 2000 and 2022, the total per capita crime rate for property crimes in Minnesota decreased significantly, from approximately 3,200 instances per 100,000 people in 2000 to 1,966 instances per 100,000 people in 2022. See *United States Crime Data Explorer*, FBI <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend> (last visited July 26, 2024). “Property crime” is defined as burglary, larceny-theft, motor vehicle theft, or arson. In addition, according to the Historical Crime Index from the Minnesota Crime Data Explorer, the total per-capita crime rate for homicide, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson decreased significantly from 3,632 per 100,000 people in 2000 to 2,293 per 100,000 people in 2022. See *Minnesota Crime Data Explorer*, FBI <https://cde.state.mn.us/DownloadData/HistoricalCrimeIndexDownload> [<https://perma.cc/EW4C-SEC5>] (last visited July 24, 2024).

¹⁰⁶ Second Amended Complaint at ¶ 147, ECF No. 118, *Jones v. City of Faribault*, 2021 WL 1192466 (D. Minn. Feb. 18, 2021) (No. 18-cv-01643) (on file with the ACLU) (describing disparities in the issuance of disorderly conduct notices involving white households as compared to Black and Latine households).

¹⁰⁷ Complaint at 14, ECF No. 1, *United States v. City of Hesperia*, (C.D. Cal. Dec. 22, 2022) (No. 5:19-cv-02298), <https://www.justice.gov/opa/press-release/file/1223041/dl> [<https://perma.cc/T9N3-2EGS>].

¹⁰⁸ *Id.* at 15.

without notice and an opportunity to be heard, such practices may violate the Due Process Clause of the Fourteenth Amendment.¹⁰⁹

Additionally, Crime-Free Housing Policies raise issues under the First Amendment. First, they may violate the Petition Clause by infringing on a person’s right to petition the government for grievances.¹¹⁰ Individuals have the right to communicate with law enforcement by reporting a crime or seeking medical or other emergency assistance.¹¹¹ Ordinances that impose penalties for engaging in the protected speech of communicating with law enforcement can violate this right and create a chilling effect by dissuading people from calling the police for help.¹¹² Second, a City’s enforcement of its CFHO may violate an individual’s right to freedom of association by effectively compelling eviction based on the alleged criminal activity of anyone associated with the tenants.¹¹³

Furthermore, Crime-Free Housing Policies may also violate VAWA. VAWA protects “the right to report crime and emergencies” in jurisdictions receiving funding from the Community and Development Block Grant Program (“CDBG”).¹¹⁴ It prohibits those jurisdictions from penalizing landlords, tenants, and others based on requests for emergency assistance or based on criminal activity when they are a victim or are otherwise not at fault.¹¹⁵ The 2022 VAWA Reauthorization also requires any jurisdictions receiving CDBG funding to report and certify that they are not interfering with the right to report, or to report the actions they will take in order to come into compliance with the law.¹¹⁶ Critically, Section 603 protects all individuals and housing types, whether or not they have also experienced violence.¹¹⁷ As such, CFHOs that evict or otherwise penalize landlords or tenants as a consequence of calls for emergency assistance and/or police responses to their homes are at high risk of violating the VAWA and, thus, jeopardizing the State’s federal funding.

¹⁰⁹ See, e.g., *Victor Valley Fam. Res. Ctr. v. City of Hesperia*, No. 16-cv-903, 2016 WL 3647340, at *5 (C.D. Cal. July 1, 2016) (holding that the rental housing ordinance at issue raised serious concerns under the Due Process Clause of the Fourteenth Amendment because it lacked notice and hearing provisions).

¹¹⁰ See, e.g., Verified Second Amended Complaint at 24, ECF No. 51, *Briggs v. Borough of Norristown*, 2013 WL 10129072 (E.D. Pa. 2013) (No. 13-cv-02191) (alleging that the borough violated the First Amendment’s Right to Petition Clause through its enforcement of the crime-free nuisance ordinance). See also Complaint at 34–36, *Markham v. City of Surprise*, (D. Ariz. 2015) (No. 15-cv-01696) (alleging that a crime-free nuisance ordinance violated the First Amendment’s Right to Petition and Free Speech Clauses by deterring and burdening tenants’ ability to report crimes or seek police assistance), <https://www.aclu.org/cases/nancy-markham-v-city-surprise?document=nancy-markham-v-city-surprise-complaint#> [<https://perma.cc/P9Z7-ZD49>].

¹¹¹ See *Bd. of Trs. of Groton v. Pirro*, 58 N.Y.S.3d 614, 620–23 (App. Div. 2017) (concluding that a New York crime-free nuisance ordinance is unconstitutional under the First Amendment).

¹¹² *Id.*, at 622–23.

¹¹³ See, e.g., *Brumit v. Granite City*, No. 19-cv-1090, 2021 WL 462624, at *1–2 (S.D. Ill. Feb. 9, 2021).

¹¹⁴ Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 603, § 41415, 136 Stat. 840, 885 (to be codified at 34 U.S.C. § 12495).

¹¹⁵ *Id.* § 41415(b)(1). Penalties prohibited include actual or threatened: fines or fees, eviction, refusal to rent or renew a lease, refusal to issue an occupancy or landlord permit, and designation of a property as a nuisance. *Id.* § 41415(b)(2).

¹¹⁶ *Id.* § 41415(c). “Covered governmental entity” means any governmental entity receiving funding under the Housing and Community Development Act of 1974, 42 U.S.C. § 5306. *Id.* § 41415(a).

¹¹⁷ *VAWA’s New Protections for Landlords, Tenants, and Others Impacted by Crime-Free Programs and Nuisance Property Laws*, NAT’L HOUS. L. PROJ., <https://www.nhlp.org/wp-content/uploads/VAWA-603-fact-sheet.pdf> [<https://perma.cc/X4MF-Z5XQ>] (last visited July 26, 2024).

Moreover, the FHA not only prohibits discrimination in housing because of an individual’s race, color, national origin, religion, sex, familial status, or disability,¹¹⁸ but also requires recipients of HUD funding—including states and local governments—to affirmatively further fair housing (“AFFH”) in all programs and activities related to housing.¹¹⁹ Accordingly, Minnesota, its state agencies, and its local jurisdictions that receive HUD funding “must take meaningful action to overcome fair housing issues and related barriers to fair housing choice and disparities in access to opportunity based on sex, race, national origin, disability, and other characteristics protected by the [FHA].”¹²⁰ To comply with the AFFH requirement, HUD has explicitly advised that all states and local governments receiving federal housing and community development funds¹²¹ should consider whether any local CFHOs conflict with their duty to AFFH by discriminating against protected classes or contributing to segregated housing patterns.¹²² To do so, they must conduct an analysis to identify impediments to fair housing.¹²³ If a CFHO is found to be discriminatory or to increase patterns of segregation, local governments or states should take action to address its discriminatory effects, such as by repealing or modifying it.¹²⁴ Thus, as part of their fair housing planning processes, local and state governments should track CFHOs and gather data regarding their impact to ensure that they are complying with the AFFH mandate.

Crime-Free Housing Policies may run afoul of additional provisions of Minnesota state law. For example, as noted above in Section II.b, Minnesota law makes clear that a landlord cannot evict, penalize, or limit a tenant’s right to call the police or call for emergency assistance in response to a domestic incident or any other situation.¹²⁵ Yet, jurisdictions may employ CFHOs in a manner that thwarts these protections.¹²⁶ Moreover, Minnesota law was recently amended to make clear that a landlord cannot evict a tenant for committing most crimes if such crimes were committed somewhere other than on the property.¹²⁷ Many crime-free lease addendums, however, authorize eviction for conduct both on and off the relevant property.¹²⁸ Finally, State law requires that jurisdictions withhold public access to calls for emergency service

¹¹⁸ 42 U.S.C. § 3601 *et seq.*

¹¹⁹ 42 U.S.C. § 3608(e)(5).

¹²⁰ HUD LOCAL NUISANCE AND CFHO GUIDANCE, *supra* note 89, at 12.

¹²¹ This includes Community Development Block Grant, HOME, Housing Opportunities for Persons with AIDS, or Emergency Solutions Grant funding.

¹²² HUD LOCAL NUISANCE AND CFHO GUIDANCE, *supra* note 89, at 12–13.

¹²³ Restoring Affirmatively Furthering Fair Housing Definitions and Certifications, 86 Fed. Reg. 30779, 30782 (June 10, 2021) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, 903). There is also a forthcoming final AFFH rule: Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8516 (proposed Feb. 9, 2023) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, 903), <https://www.federalregister.gov/documents/2023/02/09/2023-00625/affirmatively-furthering-fair-housing> [<https://perma.cc/ZP4N-K75M>]; see also *Affirmatively Furthering Fair Housing (AFFH)*, U.S. DEP’T OF HOUS. & URB. DEV., <https://www.hud.gov/AFFH> [<https://perma.cc/DJZ4-MJU4>] (last visited July 26, 2024).

¹²⁴ HUD LOCAL NUISANCE AND CFHO GUIDANCE, *supra* note 89, at 13. According to HUD, “[o]ne step a local government may take toward meeting its duty to affirmatively further fair housing is to eliminate disparities by repealing a nuisance or crime-free ordinance that requires or encourages evictions for use of emergency services, including 911 calls, by domestic violence or other crime victims.” *Id.* at 12–13.

¹²⁵ Residential Tenant’s Right to Seek Police and Emergency Assistance, MINN. STAT. § 504B.205.

¹²⁶ See *supra* Section II.b.

¹²⁷ Covenant of Landlord and tenant not to allow unlawful activities, MINN. STAT. § 504B.171, subd. 2a.

¹²⁸ See *supra* Section I.b.

data to protect the identity of individuals when “the object of the call is to receive help in a mental health emergency.”¹²⁹ Yet, jurisdictions share such information with landlords as part of the implementation of CFHOs.¹³⁰

V. The Attorney General’s Office should take steps to ensure that jurisdictions throughout Minnesota comply with federal and state law and provide equal access to housing for all Minnesotans.

As Attorney General of Minnesota, you play a critical role in ensuring that federal and state law is enforced throughout the State, and that Minnesotans have equal access to safe and affordable housing. Indeed, your Office recently joined with thirteen other attorneys general to support HUD’s efforts to reduce barriers to HUD-assisted housing because of overly broad criminal records screening and termination practices, many of which track those imposed on landlords by jurisdictions throughout the State.¹³¹ Your Office has also recognized and worked to address longstanding problems and systemic bias in policing and the criminal legal system that harm communities throughout the State,¹³² which, as described in Section II, is intrinsically tied to the disproportionate harms these ordinances have on Black, Latine, and Native American Minnesotans.

In light of the substantial fair housing and other concerns that Crime-Free Housing Policies raise throughout Minnesota, we urge your Office to issue guidance advising jurisdictions and their police departments on how these ordinances and policies may run afoul of federal and state law and undermine the welfare of communities. Indeed, the California Office of the

¹²⁹ Minn. Stat. § 13.82, subd. 17(f).

¹³⁰ See Complaint, ¶ 4, *United States v. City of Anoka* (D. Minn. May 21, 2024) (No. 24-cv-01861), <https://www.justice.gov/crt/media/1352686/dl> [<https://perma.cc/5439-AZHU>].

¹³¹ Press Release, Mass. Att’y Gen.’s Off., MA AG’s Office Co-leads Multistate Coalition Supporting Proposal to Reduce Barriers to HUD-Assisted Housing for People with Criminal Records (June 13, 2024), <https://www.mass.gov/news/ma-ags-office-co-leads-multistate-coalition-supporting-proposal-to-reduce-barriers-to-hud-assisted-housing-for-people-with-criminal-records> [<https://perma.cc/LG8Z-6MFL>].

¹³² See generally, JOHN HARRINGTON & KEITH ELLISON, MINN. DEP’T OF PUB. SAFETY & OFF. OF THE MINN. ATT’Y GEN., WORKING GROUP: POLICE-INVOLVED DEADLY FORCE ENCOUNTERS: RECOMMENDATIONS AND ACTION STEPS, (Feb. 2020), <https://dps.mn.gov/divisions/co/working-group/Documents/police-involved-deadly-force-encounters-recommendations.pdf> [<https://perma.cc/3AAG-BEQ4>] (describing “implementable steps for reducing deadly force encounters” with the police); *Attorney General Ellison Announces Conviction Review Unit Advisory Board*, OFF. OF THE MINN. ATT’Y GEN. (Jan. 21, 2021), https://www.ag.state.mn.us/Office/Communications/2021/01/21_AdvisoryBoard.asp [<https://perma.cc/KQ8G-H994>] (discussing the development of a unit within Attorney General Ellison’s Office to review potential wrongful convictions); Peter Callaghan, *Four Takeaways from Ellison’s Decision to Prosecute the Three Other Ex-MPD Officers, Add 2nd-Degree Murder Charge Against Chauvin*, MINNPOST (June 3, 2020), <https://www.minnpost.com/metro/2020/06/five-takeaways-from-ellisons-decision-to-prosecute-the-three-other-ex-mpd-officers-add-2nd-degree-murder-charge-against-chauvin> [<https://perma.cc/EDH5-9X65>] (discussing Attorney General Ellison’s decision to prosecute the police officers who killed George Floyd); Rachel Treisman & Jan Johnson, *The AG who Prosecuted George Floyd’s Killers Has Ideas for How to End Police Violence*, NAT’L PUB. RADIO (May 23, 2023), <https://www.npr.org/2023/05/22/1177457366/minnesota-attorney-general-keith-ellison-book-george-floyd-police-violence> [<https://perma.cc/Y2NZ-UAN8>] (describing Attorney General Ellison’s commitment to police reform).

Attorney General issued such guidance to address the similar proliferation of these ordinances throughout California because of the substantial legal concerns they raised.¹³³

Guidance is critical to ensure that jurisdictions with Crime-Free Housing Policies or those that are considering enacting or implementing such policies understand the ways in which these practices violate or have the potential to violate federal and state law, including because of the disproportionate harms they cause to people of color, survivors of gender-based violence, people with disabilities, and other groups. In particular, we urge your office to issue guidance that:

- Provides an overview of how Crime-Free Housing Policies may violate various anti-discrimination and other federal and state laws in intent, implementation, or effect;
- Explains how such ordinances likely cause disproportionate harm to Black, Latine, and Native American renters, survivors of gender-based violence, people with disabilities, and other vulnerable and marginalized groups;
- Identifies issues for jurisdictions and their police departments that have or are considering Crime-Free Housing Policies to review, including but not limited to (1) repealing any discriminatory ordinance or practice; and (2) assessing whether an ordinance, practice, or program has a discriminatory effect, and, if so whether such a law, practice, or program is necessary to achieve a substantial, legitimate, non-discriminatory interest that cannot be served by another practice with a less discriminatory effect; and
- Makes clear that your Office is prepared to protect the rights of Minnesotans to access and maintain housing free of discrimination.

Additionally, your Office should solicit and investigate complaints from Minnesotans who have been unlawfully denied housing or displaced from their homes because of Crime-Free Housing Policies.

Crime-Free Housing Policies are pervasive barriers to housing and particularly harm Black, Latine, and Native American families, including those headed by women, survivors of gender-based violence, and other vulnerable and marginalized groups. Guidance from your Office is essential to addressing these exclusionary policies, and to furthering fair housing. Please feel free to contact Amanda M. Meyer (amandam@aclu.org), Alejandro Ortiz (ortiza@aclu.org), and Vedan Anthony-North (vanthony-north@aclu.org), ACLU Racial Justice Program, Linda S. Morris (lindam1@aclu.org), ACLU Women's Rights Project, or Ian Bratlie (ibratlie@aclu-mn.org) and Catherine Ahlin-Halverson (cahlin@aclu-mn.org), ACLU of Minnesota with any questions.

Sincerely,

American Civil Liberties Union Foundation
American Civil Liberties Union of Minnesota
HOME Line

¹³³ See e.g., Letter from Rob Bonta, Cal. Att'y Gen., to All Cities and Counties in California, *Crime-Free Housing Policies* (Apr. 21, 2023), https://oag.ca.gov/system/files/attachments/press-docs/Crime%20Free%20Housing%20Guidance_4.21.23.pdf [<https://perma.cc/C6CT-NACQ>]. California recently passed Assembly Bill 1418, which effectively preempts CFHOs statewide. See Cal. Gov. Code, § 53165.1.

Housing Justice Center
Jewish Community Action Minnesota
Mid-Minnesota Legal Aid
Minneapolis NAACP
Minnesota Public Defender
Southern Minnesota Regional Legal Services