

Nuisance Abatement Lawsuits in New York State



Nuisance abatement lawsuits are a discriminatory tool used to close commercial properties and evict tenants from residential properties, which disproportionately affect poor communities and communities of color.

In February 2016, ProPublica published a comprehensive investigation on NYPD's use of nuisance abatement law (NAL) – an arcane law giving the city power to close commercial properties and evict tenants from residential properties when there is suspicion that the property is being used for illegal activity.ⁱ The NYPD Legal Bureau's Civil Enforcement Unit (CEU) posits that this practice is critical to prevent the use of commercial and residential buildings for drug sales.ⁱⁱ The CEU is authorized to close commercial buildings and evict tenants from residential properties when they believe drug sellers operate at the property. For the property to be reopened, the owner must select new tenants who are approved by the department.ⁱⁱⁱ ProPublica reports that since the nuisance abatement law was created in the 1970s to address the sex industry in Times Square, it has been expanded, commonly targeting apartments and small businesses.^{iv}

The NYPD files more than 1,000 nuisance abatement cases a year, nearly half of them against residences. Although the nuisance abatement provision was created to respond to the growth of the sex industry, there were only 28 nuisance abatement cases for prostitution in 2013. The top alleged offenses are alcohol beverage control violations, drug and marijuana violations and since the expansion of the provision in 2015, the sale of synthetic marijuana.

Nuisance abatement lawsuits can result in residents being permanently barred from their homes without being convicted of or even charged with a crime. Police were previously allowed to begin the process of eviction with just a judge's signature, at which point residents had not even been notified of the actions filed against them. Residents or storeowners were afforded no due process prior to losing access to their home or business. They could only begin the process of negotiating a settlement with police once they had already lost access to their property. At this point, they are either homeless or barred from their business, leaving them to make onerous concessions to the police. In some instances, individuals agreed to allow the NYPD to make unannounced property inspections for a year, allow warrantless searches into their homes or ban certain individuals from being in their homes.^v Settlements or stipulations are often determined and agreed to without the presence of a defense attorney; because nuisance abatement lawsuits are a civil action, residents had no right to an attorney.^{vi}

There are stark racial disparities in the use of nuisance abatement actions. In New York City, communities of color bore the brunt of the removal actions.^{vii} In a review of 516 residential nuisance abatement actions filed in the Supreme Court from 2013 through 2014, 9 of 10 homes subjected to nuisance abatement actions were in minority communities. Out of 215 cases that resulted in eviction, only five tenants were white.

In response to the ProPublica piece, Mayor Bill De Blasio said the city was committed to granting fair hearings to any tenants or businesses targeted for enforcement. Concurrently, the NYPD promised a complete review of its nuisance abatement efforts to eliminate any chance that innocent people would suffer consequences before seeing a judge.^{viii}

In October 2016, the New York City Council introduced the Nuisance Abatement Fairness Act, a legislative package aimed at curbing abuse and limiting the practice. The nuisance abatement reform package was passed in 2017,^{ix} eliminating the most draconian penalties and ensuring that innocent people do not lose their homes or businesses.^x When the NAL reforms are implemented, misdemeanor possession of drugs and misdemeanors related to marijuana will no longer face nuisance abatement actions; however, felony possession for sale of drugs and all felonies related to marijuana remain liable to NAL.^{xi} Furthermore, the NAL reforms would require law enforcement to obtain laboratory reports for any drug related action to

ensure that NAL actions are not made erroneously. They would also require any drug sale nuisance case to have at least one incident personally witnessed by a police officer, eliminating the ability to file NAL cases based solely on information from “confidential informants.”^{xii}

While NAL reforms will protect residents in New York City from unjustified evictions and closures, a range of municipal nuisance abatement laws are enforced throughout New York State. Buffalo,^{xiii} Rochester,^{xiv} and Syracuse^{xv} all have nuisance abatement ordinances. While the injunction process differs in different municipalities, nuisance abatement laws disparately impact tenants arrested for or suspected of drug use or drug selling. In a review of the use of nuisance abatement enforcement procedures in Rochester, community members said that certain neighborhoods received differential treatment – specifically cited were neighborhoods in the Southeast and Southwest quadrants, where large numbers of college students reside. Residents believed that certain areas received fewer complaints due to the willingness to tolerate or downplay loud parties where liquor and drugs are being consumed because the actions are associated with good actors (e.g. college students and young people). Low-income neighborhoods, where tenants participate in similar activities, receive the majority of the complaints, thus leaving them vulnerable to nuisance abatement actions.^{xvi} In Syracuse, which is experiencing an uptick in synthetic cannabinoid use, shop owners are facing fines for selling the substance. If there are continued violations, they are charged with violating the public nuisance abatement law and risk losing their certificate of occupancy.^{xvii}

Although the NAL reforms implemented in New York City are a positive step, the actions continue to promote penalties for storeowners who sell synthetic cannabinoids such as K2. Cracking down on storeowners who sell these drugs is not an effective way to curb misuse. History has demonstrated that drug prohibition bolsters the underground market, without the benefits and protections of a regulatory structure. An effective means to counter the emergence of synthetic cannabinoids would be to revisit our failed marijuana policies, end prohibition, and promote a regulated market so individuals can purchase and use marijuana without fear of criminal and economic penalties. Instead of criminalizing K2 distribution, lawmakers should regulate sales, educate the public on the harms of synthetic cannabinoids and invest in services for users, especially homeless users with co-occurring illnesses. These remedies promote public health and safety and do not rely on law enforcement.

As New York takes steps to reduce the role of criminalization in drug policy, it is important to review all public policies related to drug use and assess whether they reinforce the drug war or disarm it.

ⁱ Ryley, Sarah. "The NYPD Is Kicking People Out of Their Homes, Even if They Haven't Committed a Crime." ProPublica. April 20, 2016. <https://www.propublica.org/article/nypd-nuisance-abatement-evictions>

ⁱⁱ "NYPD Legal Bureau." NYPD Legal Bureau. Available at: http://www.nyc.gov/html/nypd/html/legal_matters/dclm_civil_enforcement_unit.shtml

ⁱⁱⁱ Ibid.

^{iv} Ryley, Sarah. "The NYPD Is Kicking People Out of Their Homes, Even if They Haven't Committed a Crime." ProPublica. April 20, 2016. <https://www.propublica.org/article/nypd-nuisance-abatement-evictions>

^v Ibid.

^{vi} Ibid.

^{vii} Ibid.

^{viii} Ryley, Sarah. "After Mayor Pledges 'Due Process,' NYPD Renews Aggressive Nuisance Abatement Enforcement." ProPublica. October 13, 2016. Available at: <https://www.propublica.org/article/mayor-pledges-due-process-nypd-aggressive-nuisance-abatement-enforcement>

^{ix} Donachie, Patrick. "Council Passes Nuisance Abatement Reform." Times Ledger, 16 Feb. 2017, www.timesledger.com/stories/2017/7/nuisance_2017_02_17_q.html.

^x "New York City Council Announces Nuisance Abatement Fairness Act." Press Release. October 19, 2016, Available at: <http://council.nyc.gov/press/2016/10/19/128/>

^{xi} Ibid.

^{xii} "New York City Council Announces Nuisance Abatement Fairness Act." Press Release. October 19, 2016, Available at: <http://council.nyc.gov/press/2016/10/19/128/>

^{xiii} "City of Buffalo, NY: Nuisance Abatement." City of Buffalo, NY Code. Available at:
<http://ecode360.com/11767330>

^{xiv} "City of Rochester." City of Rochester. N.p., n.d. Web. 21 Feb. 2017.
<http://www.cityofrochester.gov/nuisancereport>.

^{xv} Munno, Greg. "101 and Losing Her Home." Syracuse.com., December 25, 2008. Available at:
http://www.syracuse.com/news/index.ssf/2008/12/101_and_losing_her_home.html

^{xvi} "City of Rochester." City of Rochester, Strategic Community Intervention, 2016,
www.cityofrochester.gov/nuisancereport/.

^{xvii} Bolt, Chris. "Can Nuisance Abatement Cut Down on Synthetic Drug Sales in Syracuse?" WAER, 2015,
waer.org/post/can-nuisance-abatement-cut-down-synthetic-drug-sales-syracuse.