

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1418 (McKinnor)
Version: April 12, 2023
Hearing Date: July 6, 2023
Fiscal: Yes
Urgency: No
ME

SUBJECT

Tenancy: local regulations: contact with law enforcement or criminal convictions

DIGEST

This bill prohibits local governments from enacting so called “crime-free” housing policies that include provisions such as requiring landlords to evict tenants for alleged criminal activity or for calling law enforcement.

EXECUTIVE SUMMARY

So called “Crime-free” housing ordinances impose broad requirements and prohibitions on landlords and tenants that go beyond addressing actual crime or nuisance behavior. There is no evidence that “crime-free” rental ordinances reduce crime. However there is evidence that the programs are implemented for discriminatory purposes. For example, the federal Department of Justice reached a settlement with the City of Hesperia to end the city’s “crime-free” rental housing program. The law suit was prompted by a Housing and Urban Development Department investigation that found that Black renters were almost four times more likely, and Latine¹ renters were 29% more likely than white renters to be evicted under the program. The rental ordinance contained provisions requiring rental property owners to evict tenants upon notice by the sheriff’s department that the tenants had engaged in any alleged criminal activity even when allegations do not result in an arrest. The “crime-free” ordinance also encouraged housing providers to evict entire families when only one household member engaged in alleged criminal activity. Hesperia’s ordinance also required landlords to screen

¹ Staff is using the gender and language inclusive term “Latine” instead of Latino. Staff notes that Latine people are not homogenous ethnically. In most cases we are of mixed ethnicities, including African and Indigenous. The term Latino/Latine/Latinx centers Europe instead of the people of color components of our heritage. Since there is no term that staff is aware of that is inclusive of our true ethnic heritage, I use the term Latine in this analysis and apologize to my Indigenous and Black ancestors. See them, *8 LGBTQ+ People on Whether They Prefer “Latinx,” “Latine,” or Neither* (Oct. 10, 2022) by Quispe López. <https://www.them.us/story/latinx-latine-difference-definition> [all links in this analysis are current as of June 30, 2023].

potential tenants through the sheriff's department, which would then notify landlords whether the applicant had violated the rules of the program.

In order to combat these practices that exacerbate housing insecurity, this bill prohibits a local government from enacting policies that: require landlords to use criminal background checks; make alleged criminal behavior without a felony conviction a basis to evict a tenant; require landlords to evict an entire household when a household member is convicted of a felony; define nuisance behavior to include police contact, police service calls, or anything else outside the scope of the existing state definition of a nuisance; or require landlords to include lease provisions that provide a basis for eviction beyond those in existing state law.

This bill is sponsored by the California Rural Legal Assistance Foundation, Disability Rights California, the National Housing Law Project, Root and Rebound, and the Western Center on Law and Poverty. The bill is supported by the California Apartment Association and civil rights and housing rights organizations. There is no known opposition to the bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Prohibits discrimination in the sale, rental or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin. (42 USC §§ 3601-19.)
- 2) Prohibits termination of a lease without just cause, which includes maintaining, committing, or permitting the maintenance or commission of a nuisance, criminal activity by the tenant on the premises, including any common areas, or any criminal threat, as defined, directed at any owner or agent of the owner of the premises, and breach of a material term of the lease. (Civ. Code § 1946.2.)
- 3) Prohibits a local agency from promulgating, enforcing, or implementing any ordinance, rule, policy, or regulation, that authorizes, or requires the imposition, or threatened imposition, of a penalty against a resident, owner, tenant, landlord, or other person as a consequence of law enforcement assistance or emergency assistance being summoned by, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency. (Gov. Code § 53165 (b).)
- 4) Defines "tenant" as a tenant, subtenant, lessee, or sublessee. (Gov. Code § 53165 (a)(6).)
- 5) Defines "local agency" as a county, city, whether general law or chartered, city and county, town, housing authority, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency. (Gov. Code § 53165 (a)(2).)

- 6) Defines “penalty” to mean any of the following:
 - a) the actual or threatened assessment of fees, fines, or penalties;
 - b) the actual or threatened termination of a tenancy or the actual or threatened failure to renew a tenancy;
 - c) the actual or threatened revocation, suspension, or nonrenewal of a rental certificate, license, or permit;
 - d) the designation or threatened designation as a nuisance property or as a perpetrator of criminal activity under local law, or imposition or threatened imposition of a similar designation; or
 - e) subjecting a tenant to inferior terms, privileges, and conditions of tenancy in comparison to tenants who have not sought law enforcement assistance or emergency assistance. (Gov. Code § 53165 (a)(4).)

- 7) Prohibits a landlord from terminating or failing to renew a tenancy due to acts against a tenant or a tenant’s household member that constitute domestic violence; sexual assault; stalking; human trafficking; or abuse of an elder or a dependent adult if both of the following conditions are met:
 - a) the act or acts have been documented in specified forms, including a temporary restraining order, protective order, a written report made by a peace officer, or documentation from a qualified third party; and
 - b) the perpetrator of the abuse or violence is not a tenant of the same dwelling unit as the tenant or household member. (Civ. Proc. Code § 1161.3 (a).)

- 8) Authorizes a landlord to proceed to terminate or decline to renew a tenancy after a tenant has invoked the protections in 7) if both the following conditions are met:
 - a) the tenant allows the perpetrator to visit the property or the landlord reasonably believes that the presence of the perpetrator poses a physical threat to other tenants, guests, invitees, or licensees, or to a tenant’s right to quiet possession; and
 - b) the landlord gave at least three days’ notice to the tenant to correct a violation of a). (Civ. Proc. Code § 1161.3 (b).)

- 9) Provides that a provision in a rental or lease agreement that prohibits or limits, or threatens to prohibit or limit, a tenant’s, resident’s, or other person’s right to summon law enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency, if the tenant, resident, or other person believes that the law enforcement assistance or emergency assistance is necessary to prevent or address the perpetration, escalation, or exacerbation of the abuse, crime, or emergency, is void as contrary to public policy. (Civ. Code § 1946.8 (b).)

- 10) Prohibits a landlord from imposing or threatening to impose, penalties on a tenant or resident who exercises the tenant’s or resident’s right to summon law

enforcement assistance or emergency assistance as, or on behalf of, a victim of abuse, a victim of crime, or an individual in an emergency, based on the person's belief that the assistance is necessary. (Civ. Code § 1946.8 (c).)

This bill:

- 1) Prohibits a local government from promulgating, enforcing, or implementing an ordinance, rule, policy, program, or regulation, that does any of the following:
 - imposes or threatens to impose a penalty against a resident, owner, tenant, landlord, or other person as a consequence of contact with a law enforcement agency on or near the property;
 - defines as a nuisance, contact with a law enforcement agency, request for emergency assistance, or an act or omission that does not constitute a nuisance pursuant to Part 3 (commencing with Section 3479) of Division 4 of the Civil Code;
 - requires a tenant to obtain a certificate of occupancy as a condition of tenancy;
 - establishes, maintains, or promotes a registry of tenants for the purposes of discouraging a landlord from renting to a tenant on the registry or excluding a tenant on the registry from rental housing within the local government's jurisdiction; or
 - requires or encourages a landlord to do, or imposes a penalty on a landlord for the failure to do, any of the following: (a) evict or penalize a tenant because of the tenant's association with another tenant or household member who has had contact with a law enforcement agency or has a criminal conviction; (b) evict or penalize a tenant because of the tenant's alleged unlawful conduct or arrest on or near the property; (c) include a provision in a lease or rental agreement that provides a ground for eviction not provided by, or that is in conflict with, state or federal law; or (d) perform a criminal background check of a tenant or a prospective tenant.
- 2) Provides that this bill preempts a local ordinance, rule, policy, program, or regulation, or any provision thereof, which is inconsistent with this section, irrespective of the effective date of the ordinance, rule, policy, program, or regulation.
- 3) Provides that a local ordinance, rule, policy, program, or regulation that is inconsistent with this bill is void as a matter of public policy and shall not serve as a basis of eviction.
- 4) Specifies that this section does not prohibit a local government from promulgating, enforcing, or implementing an ordinance, rule, policy, program, or regulation that is otherwise consistent with state law.
- 5) Provides that if a local government violates the provisions of this bill, then a nonprofit organization exempt from federal income taxation under Section 501(c)(3)

of the Internal Revenue Code, as amended, may bring an action for injunctive relief to require the local government to cease and desist the unlawful practice. Provides that the organization shall be considered a party for purposes of this enforcement mechanism.

- 6) Provides that if a local government violates the provisions of this bill, then a resident, tenant, owner, landlord, or other person may obtain any of the following: (a) a court order requiring the local government to cease and desist the unlawful practice; (b) a court order finding an ordinance, rule, policy, program, or regulation, or any portion thereof, which violates this section is void and unenforceable; and (c) other equitable relief as the court may deem appropriate.
- 7) Specifies that a court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to 5) and 6) above where it is found that a local government has violated this section.
- 8) Provides that the above remedies are cumulative and not exclusive of any other remedies provided by law.
- 9) Requires that, within one year of the effective date of the provisions of this bill, a local government shall repeal, or bring into compliance with this section, any local ordinance, rule, policy, program, or regulation that is inconsistent with provisions of this bill.
- 10) Defines "law enforcement agency" as a department or agency of the United States, state, local government, or other political subdivision thereof, authorized by law or regulation to engage in or supervise the prevention, detection, investigation, or prosecution of a violation of criminal or civil law, including, but not limited to, the United States Immigration and Customs Enforcement and the State Department of Social Services.
- 11) Defines "local government" as having the same definition as that term is defined in Government Code section 82041.
- 12) Defines "program" as a voluntary or mandatory initiative operated or endorsed by a local government or a law enforcement agency.
- 13) Defines "penalty" as any of the following: (a) an actual or threatened assessment of fees, fines, or penalties; (b) an actual or threatened eviction, termination of a tenancy, or the actual or threatened failure to renew a tenancy; (c) an actual or threatened denial of a housing subsidy; (d) an actual or threatened revocation, suspension, or nonrenewal of a certificate of occupancy or a rental certificate, license, or permit; (e) a designation or threatened closure of a property or designation as a nuisance property or as a perpetrator of criminal activity under local law, or imposition or

threatened imposition of a similar designation; or (f) an actual or threatened nuisance action.

COMMENTS

1. Stated need for the bill

According to the Family Violence Appellate Project, writing in support:

AB 1418 will prohibit cities and counties from enacting “crime-free housing” programs and policies that include provisions such as requiring landlords to evict tenants for alleged criminal activity or contact with law enforcement. These harmful policies disproportionately affect Black and Latinx renters and conflict with a variety of state and federal laws, including civil rights law. They also tend to deny tenants the ability to directly challenge enforcement actions and use overly vague language that make it unclear to the tenant what behavior may lead to their eviction, raising due process concerns.

“Crime-free housing” policies and programs also harm survivors of domestic violence, victims of sexual exploitation, and people with disabilities. These populations interact more frequently with police who are responding to domestic disputes, trafficking, or mental health crises, for example. They additionally serve as a barrier to re-entry for our formerly incarcerated population. By creating impediments to housing stability for vulnerable renters, these policies contribute to the state’s homelessness crisis.

The California Task Force to Study and Develop Reparation Proposals for African Americans listed “crime-free housing” ordinances as a contributing factor in housing segregation and called for their repeal. We join with the members of the task force in calling for an end to these harmful policies.

According to the author:

These policies generally take two forms: “crime-free” ordinances, which impose mandatory requirements, and ostensibly voluntary “crime-free” programs. Though programs are generally characterized as voluntary, local governments effectively coerce rental housing owners into participating. For example, one city publicly lists participating properties on their website and designates them as “crime-free properties,” clearly implying that nonparticipating properties are not crime-free or safe. Logically, owners are forced to participate in such programs to prevent reputational harm and maintain property marketability. This bill covers both ordinances and programs.

“Crime-free” policies accomplish their discriminatory purpose by imposing broad requirements and prohibitions that go well beyond addressing actual

crime or nuisance behavior, thus facilitating the displacement of the targeted population. For example, these policies label a broad array of conduct as “nuisance” or “criminal” behavior, often including calling 911 or other emergency services; they penalize tenants (including requiring their eviction) for merely alleged or suspected criminal behavior; and they often require the eviction of an entire household for the alleged violation of only one member.

This bill prohibits the most common “crime-free” policy provisions that lend themselves the most to arbitrary displacement.

In support of the bill, the California Apartment Association writes:

On behalf of the members of the California Apartment Association (CAA), I extend to you CAA’s continued support for AB 1418, your bill that would prohibit a local government from, among other things, imposing a penalty against a resident, owner, tenant, landlord, or other person who has contact with a law enforcement agency, as specified. The bill would also prohibit a local government from requiring or encouraging a rental property owner to perform a criminal background check of a tenant or a prospective tenant, or to evict or penalize a tenant because of the tenant’s association with another tenant or household member who has had contact with a law enforcement agency or has a criminal conviction.

CAA has objected to local ordinances that have attempted to require rental property owners to evict tenants as outlined in AB 1418 as well as local laws that have mandated owners serve as quasi-immigration agents and to report tenants. This is an inappropriate and objectionable mandate on the part of local governments.

2. While there is no evidence that “crime free” rental ordinances reduce crime, there is evidence that “crime-free” rental ordinances are racially motivated and disproportionately enforced against people of color

There is no evidence that “crime-free” rental ordinances reduce crime. A Los Angeles Times analysis highlighted how California jurisdictions adopted “crime-free” housing programs following increases in the Black and Latine population in the jurisdictions.² The policies are disproportionately enforced against Black and Latine renters leading to housing instability. A study that examined the origin of these policies concluded that

² Liam Dillon, Ben Poston, Julia Barajas, *Black and Latino renters face eviction, exclusion amid police crackdowns in California*, Los Angeles Times, November 19, 2020, available at <https://www.latimes.com/homeless-housing/story/2020-11-19/california-housing-policies-hurt-black-latino-renters>.

“crime-free” policies are primarily used as a tool of racial exclusion and represent the evolution of laws designed to exclude people of color from communities.³

As explained by the author, these “policies accomplish their discriminatory purpose by imposing broad requirements and prohibitions that go well beyond addressing actual crime or nuisance behavior with the goal of facilitating the displacement of the targeted population. For example, these policies label a broad array of conduct as ‘nuisance’ or ‘criminal’ behavior, often including calling 911 or other emergency services; they penalize tenants (including requiring their eviction) for merely alleged or suspected criminal behavior; and they often require the eviction of an entire household for the alleged violation of only one member. AB 1418 would prohibit common ‘crime-free’ policy provisions that lend themselves the most to arbitrary displacement.”

The city of Hesperia had a “crime-free” rental ordinance. However, the City of Hesperia revoked their “crime-free” ordinance after they were sued by the United States Justice Department in 2019 and subsequently entered into a settlement agreement. The law suit was prompted by a Housing and Urban Development Department (HUD) investigation that found, among other things, that Black renters were almost four times more likely, and Latine renters were 29% more likely than white renters to be evicted under the program. The “crime free” rental ordinance contained provisions requiring rental property owners to evict tenants upon notice by the sheriff’s department that the tenants had engaged in any alleged “criminal activity” on or near property even if allegations did not result in an arrest, charge, or conviction. The “crime-free” ordinance also encouraged housing providers to evict entire families when only one household member engaged in alleged criminal activity. Hesperia’s ordinance also required landlords to screen potential tenants through the sheriff’s department, which would then notify landlords whether the applicant had “violated” the rules of the program.

In order to end similar programs, this bill prohibits a local government from enacting policies that, among other things: require landlords to use criminal background checks; make alleged criminal behavior without a felony conviction a basis to evict a tenant; require landlords to evict an entire household when a household member is convicted of a felony; define nuisance behavior to include police contact, police service calls, or anything else outside the scope of the existing state definition of a nuisance; or require landlords to include a provision in a lease or rental agreement that provides a ground for eviction not provided by, or that is in conflict with, state or federal law. The bill also voids as a matter of public policy a local ordinance, rule, policy, program, or regulation that is inconsistent with these provisions and provides that they shall not serve as a basis of eviction.

³ Deborah N. Archer, American Constitution Society, You Can’t Go Home Again: Racial Exclusion Through Crime-Free Housing Ordinances (November 2019) at 3, available at <https://www.acslaw.org/wp-content/uploads/2019/11/Racial-Exclusion-Through-Crime-Free-Housing-Ordinances.pdf>.

According to the sponsors:

[. . .] Often touted as crime-fighting tools, these policies represent a new phase in the evolution of segregationist housing laws designed to exclude people of color from communities.

[. . .]

The harmful impact of crime-free housing policies on Black and Latinx communities and other protected classes runs afoul of existing state and federal laws, including civil rights laws. The federal Department of Justice recently announced a settlement with the City of Hesperia to end the city's discriminatory crime-free rental housing program. These policies also tend to deny tenants the ability to directly challenge enforcement actions and commonly use overly broad or vague language that makes it hard for tenants to know what behavior may lead to their eviction, raising due process concerns.

SUPPORT

California Rural Legal Assistance Foundation (sponsor)

Disability Rights California (sponsor)

National Housing Law Project (sponsor)

Root & Rebound (sponsor)

Western Center on Law & Poverty (sponsor)

AIDS Healthcare Foundation

American Civil Liberties Union California Action

California Apartment Association

California Housing Partnership

Community Access Center

Communities United for Restorative Youth Justice

Community Legal Services in East Palo Alto

Disability Rights Education and Defense Fund

East Bay YIMBY

Family Violence Appellate Project

Grow The Richmond

Housing California

Housing Now CA

Los Angeles Homeless Services Authority

Michelson Center for Public Policy

Mountain View YIMBY

Napa-Solano for Everyone

National Association of Social Workers-California Chapter

Northern Neighbors

Oakland Privacy

Peninsula for Everyone

People for Housing Orange County
Placer Independent Resource Services
Progress Noe Valley
Public Counsel
Public Interest Law Project
Public Law Center
San Francisco YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
Secure Justice
SLOCo YIMBY
South Bay YIMBY
South Side Forward
Ventura County YIMBY
YIMBY Action

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 319 (Campos, Ch. 138, Stats. 2014) prohibited a city or county from adopting a policy that requires a landlord to evict a tenant based on acts of domestic violence, sexual assault, stalking, human trafficking, or elder abuse against a tenant or a tenant's household member or requiring a landlord to evict a victim of domestic violence and other crimes based on exceeding a specified number of calls to 911.

PRIOR VOTES:

Assembly Floor (Ayes 72, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Judiciary Committee (Ayes 10, Noes 0)
