

Model Drug Nuisance Abatement Act

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Model Drug Nuisance Abatement Act

Policy Statement

Buildings and premises which are the sites of repeated drug distribution activity constitute a blight and a danger to the community.

The traditional law enforcement response of arrest and prosecution of the individual offender has not been adequate to address the problem over a sustained period of time. The goal of community mobilization legislation is to provide new incentives and legal tools to community-based organizations by creating strong and effective civil remedies.

The Model Drug Nuisance Abatement Act develops a long standing civil remedy, which historically has been used to close down bawdy houses and gin mills, to focus on eradicating the drug distribution activity in private or commercial premises. Most importantly, the nuisance law seeks to inspire and support the grass roots efforts by the community by making the community or neighborhood organization, or the citizens who live or work in the community the real party in the civil action. The organization or individual is the plaintiff in the lawsuit and is guaranteed expedited access to the courts. They may seek a preliminary or permanent injunction against the drug-related activity, may seek the closure of the premises for up to a year and may seek severe civil penalties against the owner who knowingly permitted the nuisance to exist.

The laws are remedial in nature. This Act seeks to abate or remedy the drug nuisance problem. It also provides for a sliding scale of civil penalty to compensate the community-at-large. It is designed to encourage a proper resolution of the problem in a manner which is proportionate to the harm to the community and the culpability of the offender. For instance, upon the filing of the complaint, if the court finds that the premises constitute a nuisance and the owner had knowledge of the fact and the public safety and welfare is at risk, the law mandates that the premises be ordered immediately closed. The actual closure is conducted by law enforcement authorities.

The burden is on the owner/defendant to prove the nuisance is abated. The actions are to be given expedited and priority consideration by the court.

As the case proceeds to trial, the defendant/owner is subject to a permanent closure order and civil penalties. The Act provides strong negotiation tools to the community organizations and great incentive to the owner to enter into a settlement. For example, the Act provides that the defendant/owner can vacate the closure order by transferring title to certain categories of nonprofit community groups.

Many of the provisions of the Act are mandatory to ensure uniform interpretation and enforcement. However, the courts are provided many options to avoid unnecessary hardship to innocent persons. For example, one provision permits the court to order a defendant who had knowledge of the nuisance to provide relocation assistance to an innocent tenant who is displaced as a result of a closure order.

The legislative findings recognize that property owners, or managers have the affirmative duty to prevent drug activity on the premises under their control. The Act provides a community enforcement tool and remedy to those injured by the failure of the owner to fulfill that responsibility.

Highlights of the Model Drug Nuisance Abatement Act

- Defines a building, place or premises as a “drug nuisance” if:
 1. It is the site at which three or more separate drug violations have occurred within the period of one year prior to the commencement of the civil action; or
 2. On three or more separate occasions within the period of one year prior to the commencement of the civil action under this Act, it was the site at which two or more persons who did not reside in or upon such site gathered for the principal purpose of unlawfully ingesting a controlled dangerous substance whether or not any such controlled dangerous substance was unlawfully distributed or purchased at such location (e.g., a “shooting gallery” or “crack-house”); or
 3. It is the site at which any amount of controlled dangerous substance has been manufactured, or at which more than [fifty] marijuana plants have at any one time been grown or cultivated, or at which any controlled dangerous substance in an amount of [one kilogram] or more has at any time been unlawfully stored, warehoused, concealed or otherwise kept, whether or not three or more separate such unlawful acts have occurred within any prescribed period of time; or
 4. It was used or is being used in any way in furtherance of or to promote or facilitate the commission of any drug violations, whether or not three or more separate violations have occurred within any prescribed period of time.
- Authorizes an anti-drug neighborhood organization, a person residing or working within 1,000 feet of the nuisance, the municipal attorney or the criminal prosecuting agency to bring a nuisance abatement action for injunctive relief or for penalties against an owner, landlord, tenant or agent of the premises alleged to be a drug nuisance.
- Applies equivalent of Fed.R.Civ.P. 11 sanctions to either party for frivolous pleadings or motions
- Directs courts to hear actions brought under this Act on an expedited basis, and discourages continuances.
- Provides for preliminary closing orders within thirty days of filing of the complaint.
- Addresses the concern about ejecting onto the street drug-addicted residents with no provision for housing needs, especially where those residents may be mothers with small children or pregnant women. All residents, by requirement of this section, are notified of treatment resources to which they can go. Treatment experts indicate that the vast majority of addicted residents in properties closed down under nuisance proceedings are sufficiently advanced in their disease of addiction to require residential treatment.
- Directs courts, where they determine after trial that the premises constitutes a drug nuisance, to order the closure of the premises for not more than one year, unless the court is clearly convinced that any vacancy resulting from the closure would exacerbate rather than abate the nuisance, or would otherwise be extraordinarily harmful to the community or the public interest.
- Requires courts to limit, so far as practicable, temporary, preliminary or permanent closing orders issued pursuant to the Act, to that portion or portions of the entire building, place or premises which are necessary to abate the nuisance and to prevent the recurrence of drug violations.
- Permits courts to re-open closed premises where the defendant submits clear and convincing proof that the nuisance has been satisfactorily abated and is not

likely to recur. Provides specific guidelines for “abatement plans” which defendants may submit in order to meet the second prong of their burden.

- Provides the court with the option of appointing a receiver to manage or operate the building, place or premises for such times as the court deems necessary to abate the nuisance, and delineates the powers of the receiver.
- Requires courts, after granting injunctive relief, to impose a civil penalty of [\$25,000] or the value of the property (whichever is greater), against defendants who knowingly conducted, maintained, aided, abetted or permitted the drug nuisance. The proceeds from such fines shall be split between neighborhood rehabilitation and treatment programs.
- Directs courts to waive the above penalty where defendant (1) has not violated court orders issued under this Act and (2) has transferred title to the premises to the plaintiff, any other neighborhood

anti-drug organization or treatment provider approved by the court, so long as the recipient is a 26 U.S.C. 501(c) (nonprofit) organization.

- Permits prevailing plaintiffs to recover attorney’s fees and other costs of action from defendants.
- Requires inspection and finding of substantial compliance with applicable housing, building, fire, health and safety codes by appropriate governmental authority, as a prerequisite to releasing or reopening of closed premises. Authorizes courts to issue such orders as necessary to bring premises into compliance, at owner’s expense.
- Authorizes civil actions for actual damages which may be brought by a person injured in his or her business or property by reason of a drug nuisance, against any person who knowingly conducted, maintained, aided, or abetted or permitted any drug violation constituting the nuisance.

Model Drug Nuisance Abatement Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the “Model Drug Nuisance Abatement Act.”

Section 2. Legislative Findings.

(a) Despite efforts by law enforcement, private and commercial premises remain the sites of repeated drug distribution violations. These locations attract criminals and the violence and threat of violence associated with illicit drug trade.

(b) The continued occurrence of criminal activities at these locations is detrimental to the public health, safety and welfare. Drug nuisances reduce property values, injure legitimate businesses and commerce and erode the quality of life for law-abiding persons working or residing in or near these locations.

(c) Property owners, landlords, managers and operators have an affirmative duty to take the actions necessary to prevent drug violations from occurring on their properties and to abate existing drug nuisances. These affirmative duties are no less important than the duty to maintain properties in accordance with applicable building, fire, zoning, safety and similar codes, ordinances, rules and regulations designed to protect the health, safety and welfare of residents, workers, invitees, neighbors and other persons.

(d) The ongoing existence of a drug nuisance is detrimental to the public interest and warrants prompt injunctive relief by the courts. It is the express policy of this state to authorize and encourage courts to issue temporary restraining orders or preliminary injunctions pursuant to the provisions of this [Act] upon a finding that a drug nuisance exists. It is not necessary for any authorized plaintiff seeking temporary or preliminary injunctive relief to establish any specific or irreparable injury arising from the drug nuisance. The existence of any remedy at law shall not prevent the granting of injunctive relief pursuant to this [Act].

(e) The civil actions for injunctive relief, damages and penalties authorized by this [Act] are remedial rather than punitive in nature. Penalties collected pursuant to Section 18 are intended not to punish culpable defendants, but rather to compensate the community at large, by providing funding for additional treatment, neighborhood rehabilitation, drug prevention and drug education costs. Damages awarded to individual plaintiffs pursuant to Section 29 are intended to compensate the individuals for specific losses to their businesses or properties.

(f) It is the policy of this state to ensure that the civil actions and remedies authorized by this [Act] be heard by the courts on a priority basis to expeditiously identify and abate drug nuisances.

(g) It is necessary to ensure the certain, expeditious and uniform enforcement by the courts of the rights, duties and remedies established herein. Certainty, predictability and uniformity in enforcement are essential to encourage property owners, landlords, managers and operators to take affirmative steps necessary to prevent their properties from first becoming the sites of drug violations.

COMMENT

The [Model Drug Nuisance Abatement Act] recognizes that private and commercial premises may become the sites of drug related activity which destroys the quality of life and economic well-being of a community. The [Act] recognizes that the ownership of property comes with an affirmative duty to make sure the property is not used to harm the people who live in its environs; the failure to do so warrants remedial injunctive relief, damages and penalties so as to recompense the community-at-large. The [Act] provides a prompt remedy to property owners or neighborhood organizations to obtain injunctions or other remedial relief, notwithstanding the existence of other remedies that exist through the criminal or civil law.

Section 3. Purpose.

The purpose of this [Act] is to authorize temporary, preliminary and permanent injunctive relief and other remedies to abate drug nuisances. An additional purpose is to encourage owners, landlords, operators and managers of buildings, places or premises (hereinafter referred to as "premises") to take the affirmative steps necessary to prevent drug violations on their properties.

Section 4. Definitions.

As used in this [Act]:

(a) "Drug distribution event" means the unlawful manufacture, distribution, sale, or possession with intent to distribute, sell or deliver a controlled substance or an unlawful attempt or conspiracy to commit such act.

(b) "Controlled substance," "manufacture," "distribution," "sale," and "possession with intent to sell or distribute" shall have the same meaning as those terms are used in [cite to applicable state controlled substance law].

(c) "Drug nuisance" means a premises at which:

(1) three or more separate drug distribution events have occurred within the period of one year prior to the commencement of the civil action under this [Act]; or

(2) on three or more separate occasions within the period of one year prior to the commencement of the civil action under this [Act], two or more persons who did not reside in or upon such site gathered for the principal purpose of unlawfully ingesting, injecting, inhaling, or otherwise using a controlled substance, whether or not any such controlled substance was unlawfully distributed or purchased at such location; or

(3) any amount of controlled substance has been manufactured, or more than [fifty] marijuana plants have at any one time been grown or cultivated, or any controlled substance in an amount of [one kilogram] or more has at any one time been unlawfully stored, warehoused, concealed or otherwise kept, whether or not three or more separate such unlawful acts have occurred within any prescribed period of time; or

(4) the site was used or is being used in any way in furtherance of or to promote or facilitate the

commission of any drug distribution event, whether or not three or more separate violations have occurred within any prescribed period of time.

(d) "Neighborhood or community organization" means a group, whether or not incorporated, which consists of persons who reside or work at or in a building, complex of buildings, street, block or neighborhood any part of which is located on or within 1,000 feet of the premises alleged to be a drug nuisance, which has the purpose of benefitting the quality of life in its neighborhood or community, including treatment programs.

(e) "Owner" means any person in whom is vested the ownership and title of property, and who is the owner of record. "Owner" shall include any local, city, state or federal governmental entity.

(f) "Person" means a natural person, corporation, association, partnership, trustee, lessee, agent, assignee, enterprise, governmental entity, and any other legal entity or group of individuals associated in fact which is capable of holding a legal or beneficial interest in property.

COMMENT

"Drug distribution event" is defined to include those serious drug offenses generally classified as a felony with state codes, and which by their dangerous character constitute a danger to the community. The class of crimes is limited to non-possessory offenses, i.e., it does not address simple use or possession cases, with the exception of the provision which addresses the so-called "shooting galleries;" sites at which people congregate for the unlawful use of drugs on premises that are not strictly their residences. This is consistent with the approach taken in the companion expedited eviction statute. There are two policy considerations: first, that drug-trafficking, more than possession for personal use, is more likely to give rise to the destructive conditions which both [Acts] intend to target; and second, that the powerful remedies provided in this statute will be more unpredictable and may work injustice where a potential defendant's personal drug use has, in fact, had little impact on the lives of those who live around her or him.

"Controlled substance," "manufacture," "distribution," "delivery", and "possession with intent to sell," "distribute" or "deliver" are defined to be consistent with state criminal or controlled substance codes.

“Drug nuisance” is defined expansively to account for situations which have not previously been construed to be included under traditional nuisance law:

Paragraph (1) addresses a premises where there is persistent drug distribution activity over a period of a year. Realistically, most properties will satisfy this threshold number of events in a much shorter period of time. Nonetheless, sites often move throughout a neighborhood to avoid detection; thus the cumulative number over the period of one year is designed to address this situation.

Paragraph (2) is designed to address the problem of “shooting galleries.” Experience dictates that these sites are often notorious and the attendant criminal activity creates a serious danger to the community.

Paragraph (3) applies to “grow houses” or warehouses where drugs or marijuana plants are stored. These buildings may be used in part as residences and tend to attract violence destructive to the neighborhood.

Paragraph (4) applies to premises which have a causal connection to drug distribution activity, and the language is similar to that of many state forfeiture laws.

“Neighborhood or community organization” is defined expansively to encourage collective or individual efforts by those located in close proximity to the alleged nuisance. These persons have the most at stake in the economic loss and the personal harm arising from the existence of the nuisance. Bringing the nuisance abatement action under the name of the organization empowers the community by supplying some degree of anonymity, and therefore protection, to those willing to fight to eliminate the drug nuisance.

Section 5. Nature of Actions and Jurisdiction.

The causes of action established in this [Act] are civil actions to enjoin the commission of drug distribution events, to close down and physically secure premises or portions thereof which constitute drug nuisances and to otherwise abate such drug nuisances, and to impose civil penalties. These actions shall be brought in the [insert appropriate court], which shall have jurisdiction to issue temporary, preliminary or permanent injunctive or other equitable relief, whether or not an adequate remedy exists at law.

COMMENT

This section establishes a civil cause of action which

enjoins the commission of drug distribution events and may close down the premises and impose penalties as warranted, in keeping with Section 3(e) which declares that the action is remedial rather than punitive in nature. This section makes unambiguously clear that this equitable action is allowed whether there exists any other remedy at law.

Section 6. Standard of Proof.

Except as may otherwise be expressly provided, the civil causes of action established in this [Act] shall be proved by a preponderance of the evidence.

COMMENT

This section makes clear that this [Act] provides a civil remedy, and does not require the proof beyond a reasonable doubt mandated in criminal proceedings.

Section 7. Parties.

(a) Who May Bring Actions. A civil action for temporary, preliminary or permanent injunctive relief or for penalties pursuant to this [Act] may be brought by:

- (1) the municipal or state attorney or corporation counsel representing any municipal or county or state governing body which has jurisdiction over the location at which the alleged drug nuisance exists; or
- (2) the state attorney general and county prosecutor having jurisdiction where the alleged drug nuisance exists; or
- (3) any neighborhood or community organization as defined in this [Act]; or
- (4) any person who resides, is employed full or part-time at the site of a business premises, or owns or operates a business premises, on or within 1,000 feet of any alleged drug nuisance.

(b) Defendants to the Action. A civil action pursuant to this [Act] shall be brought against the owner, and may also be brought against any person within the jurisdiction of the court who is a landlord, tenant, manager, operator or supervisor of any premises alleged to be a drug nuisance. In addition, the court shall have in rem jurisdiction over the premises alleged to be a drug nuisance, and the complaint initiating a civil action pursuant to this [Act] shall name as a defendant the premises involved, describing it by block, lot num-

ber and street address, or by such other means as are appropriate in the circumstances.

(c) Protections Against Frivolous Actions and Sanctions for Unfounded or Unwarranted Pleadings, Motions, or Other Papers. In any action brought pursuant to this [Act], every pleading, motion, and other paper of a party shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. Such signature of an attorney constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this subsection, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(d) No Bond or Security Required. No person or entity shall be required to post any bond or security as a condition of initiating or prosecuting any action brought pursuant to this [Act].

(e) Ready Availability of Ownership Information to Potential Plaintiffs. Any person or entity who upon an oath in writing states the affiant is preparing to initiate an action pursuant to this [Act] may request that the [county recorder or equivalent office] promptly provide the name and address of all owners of the premises as reflected upon the current county records, without charge.

(f) Presumption of Ownership. The person in whose name the premises involved is recorded in the [county recorder or equivalent office] shall be presumed to be the owner thereof.

(g) Presumption of Agency. Whenever there is evidence that a person was the manager, operator, supervisor or was in any other way in charge of the premises

involved at the time any conduct constituting the drug nuisance is alleged to have been committed, such evidence shall be rebuttably presumptive that he or she was an agent or employee of the owner, landlord or lessee of the premises.

COMMENT

The [Act] permits municipal or state attorneys or corporation counsels to file the civil nuisance action, as well as the state attorney general or county prosecuting attorney. The pursuit of this civil remedy may be a vital service provided to a community that is at risk and unwilling or unable to proceed under the circumstances.

The provision which empowers a neighborhood or community organization or a person residing or employed within 1,000 feet of the premises alleged to be a nuisance is an important provision. It recognizes the adage of strength in numbers; therefore it allows a community or neighborhood group to initiate court action. The community group or individual action as the plaintiff is the catalyst to overall mobilization to seek abatement of the drug related activity. One of the remedies available as a means of settlement of the lawsuit (see Section 19) is the transfer of title to the premises to the plaintiff or any other neighborhood or community organization approved by the court. Thus, an organization has a legitimate stake in the outcome of the lawsuit as well as an incentive for action.

Subsection (b) names the owner of the premises as a mandatory party defendant. The section sets forth as permissive defendants those who maintain custody or control. The section also provides for in rem jurisdiction against the property so as to permit closure orders and liens against the property.

Subsections (c) and (d) provide that, in lieu of the filing of a bond or security, the civil complaint is to be verified and signed by an attorney so as to avoid frivolous lawsuits, and to ensure that the pleadings are supported factually and legally. Sanctions, such as those provided for in Fed.R.Civ.P. 11 are provided for unwarranted pleadings, motions or other papers.

Subsection (e) assists the neighborhood organization or other plaintiffs in locating owners or landlords, by requiring the appropriate county office to provide the name and address of all owners currently registered, without charge.

Subsection (f) creates a presumption of ownership based on the information filed in appropriate local offices.

Subsection (g) create a rebuttable presumption of agency by a manager or person who maintains custody or control over the premises. A management company could therefore be served as agent for the owners and as permissive defendants.

Section 8. Notice to Interested Parties.

(a) Notice to Defendants. A complaint initiating an action pursuant to this [Act] shall be personally served and notice to all in personam defendants shall be provided in the same manner as serving [original notices][complaints] in civil actions. After filing an affidavit that personal service cannot be had after due diligence on one or more in personam defendants within twenty days after the filing of the complaint, the plaintiff may 1) cause a copy of the complaint to be mailed to the defendant by certified mail, restricted delivery, return receipt to the clerk of court requested, and 2) cause a copy of the complaint to be affixed conspicuously to the premises alleged to be a drug nuisance. Service shall be deemed completed five days after filing with the court proof of such mailing and an affidavit that a copy of the complaint has been affixed to the premises.

(b) Notice to Affected Tenants, Residents, and Guests. All tenants or residents of any premises which is used in whole or in part as a business, home, residence or dwelling, other than transient guests of a guest house, hotel or motel, who may be affected by any order issued pursuant to this [Act] shall be provided such reasonable notice as shall be ordered by the court and shall be afforded opportunity to be heard at all hearings.

(c) Lis Pendens. Notice of lis pendens shall be filed concurrently with the commencement of the action in the same manner as is generally provided for by law or court rule.

COMMENT

The provisions are meant to effect expeditious process by the court. Notice to all interested or affected parties is vital to the truth-finding process, as the court is required to balance competing interests in order to tailor a fair remedy.

Section 9. Substitution of Plaintiff.

When a court determines in its discretion that the plaintiff

bringing an action pursuant to this [Act] has failed to prosecute the matter with reasonable diligence, the court may substitute as plaintiff any person or entity that consents thereto, provided that such person or entity would have been authorized pursuant to this [Act] to initiate the action.

COMMENT

The provisions of this section are designed to preclude the possibility for the collusive or incompetent handling of any action brought pursuant to this [Act]. Specifically, the court is authorized to substitute as a plaintiff any person or entity who could have brought the action where the court determines in its discretion that the party which did initiate the action has failed to prosecute the matter with reasonable diligence. However, the court would have no authority under this section to order any person or entity to assume the responsibility for prosecuting the matter; rather, this section contemplates that such substitute plaintiffs would consent to taking responsibility for handling the lawsuit.

Section 10. Expedited Priority Proceedings: Criteria for Granting Continuances.

(a) General Policy. All actions for injunctive relief or civil penalties brought pursuant to this [Act] shall be heard by the court on an expedited and priority basis.

(b) No Continuances. The court shall not grant a continuance except for compelling and extraordinary reasons, or on the application of a criminal prosecuting agency for good cause shown.

(c) Stay Pending Criminal Proceedings. The court shall not stay the civil proceedings pending the disposition of any related criminal proceeding except for compelling and extraordinary reasons or except upon the application of a criminal prosecuting agency for good cause shown.

(d) Dismissal of Actions for Want of Prosecution. The court shall not dismiss an action brought pursuant to this [Act] for want of prosecution unless the court is clearly convinced that the interests of justice require such dismissal. In that event and upon such a finding, the dismissal shall be without prejudice to the right of the plaintiff or any other person or entity authorized to bring an action pursuant to this [Act] to re-institute the action.

COMMENT

This section establishes and reaffirms the overriding principle in this [Act] that all actions should be heard as swiftly as possible. Furthermore, this section makes clear that the court must not grant a continuance of the proceedings except for compelling and extraordinary reasons.

This section also deals with the difficult issue of whether and to what extent a civil proceeding should be allowed to continue concurrently with criminal proceedings involving the same transaction or parties. The general rule in most states seems to be that civil proceedings are typically stayed pending the outcome of related criminal prosecutions. This is done not only to avoid some of the Fifth Amendment issues which typically attend parallel criminal and civil proceedings, but also to avoid the possibility that the civil litigation might interfere with the conduct of an ongoing investigation or prosecution. In this context, however, public policy demands that the nuisance abatement action be heard as expeditiously as possible. Moreover, the interests of the prosecuting authority are protected to some extent in that the prosecutor is authorized to initiate an action as a plaintiff.

In order to achieve the most appropriate balance of these competing interests, this section makes clear that the court must grant a continuance at the requests of an appropriate criminal prosecuting agency "for good cause shown". Although this standard is significantly less than the standard of "compelling and extraordinary reasons," it is nonetheless envisioned that the prosecuting authority would be required to provide the court with those specific reasons which justify continuing the abatement proceeding. Such reasons would thus override the statutory objective of hearing and concluding such proceedings at the earliest possible opportunity in order to protect the rights and interests of law-abiding people. Nothing in this section would preclude, however, the prosecutor from making such specific application *in camera* or by such other means as may be necessary to safeguard an ongoing investigation, drug enforcement operation, surveillance, or criminal prosecution.

Section 11. Issuance of Preliminary Closing Order and Preliminary Restraining Order.

(a) General Rule. Any person or entity authorized to bring a civil action for injunctive relief pursuant to this

[Act] may file a complaint seeking preliminary injunctive relief by alleging that the premises constitutes a drug nuisance. Upon receipt of the complaint, the court shall order a preliminary hearing which shall not be later than [30] days from the date of the order. Service shall be made upon the owners of the premises pursuant to subsection 8(a) not less than five days prior to the hearing. In the event that service cannot be completed in time to give the owners the minimum notice required by this subsection, the court may set a new hearing date.

(b) Preliminary Closing Order. If the court finds 1) that the premises constitutes a drug nuisance, 2) that at least 30 days prior to the filing of the complaint seeking preliminary injunctive relief, the owner or the owner's agent had been notified by certified letter of the drug nuisance, and 3) that the public health, safety or welfare immediately requires a preliminary closing order, the court shall issue an order to close the premises involved or the portions appropriate in the circumstances. The order shall direct actions necessary to physically secure the premises, or appropriate portions thereof, against use for any purpose. The preliminary closing order shall also restrain the defendant and all persons from removing or in any manner interfering with the furniture, fixtures and movable or personal property located on or within the premises constituting the drug nuisance.

(c) Other Preliminary Relief. If the court finds that the premises constitutes a drug nuisance but that immediate closing of the premises is not required pursuant to subsection (b), the court may enjoin the drug nuisance and issue an order restraining the defendants and all other persons conducting, maintaining, aiding, abetting, or permitting drug distribution events constituting the drug nuisance. Additionally the court may issue an order appointing a temporary receiver to manage or operate the premises. A temporary receiver shall have such powers and duties specifically authorized pursuant to of subsection 16(f) of this [Act].

(d) Admissible Evidence. In determining whether the public health, safety or welfare immediately requires a preliminary closing order, the court shall consider any relevant evidence presented concerning any attendant circumstances, including but not limited to whether the alleged drug distribution events or related activities involve the use or threat of violence at or near the site alleged to be a drug nuisance, or whether the alleged drug distribution events in any way involve distribution or sale of a controlled substance by or to a juve-

nile, or whether the site alleged to be a drug nuisance is located within a drug-free zone within the meaning of [insert cite to criminal drug-free school, drug-free public housing, drug-free recreational center, drug-free park, or other drug-free zone provisions].

COMMENT

Subsection (a) provides the vehicle for seeking a preliminary injunctive order and provides for a preliminary hearing within 30 days of filing and receipt of the complaint. The following subsection (b) sets up the criteria for the court to decide whether to issue an immediate preliminary closure order and/or other relief as deemed appropriate under the circumstances.

Subsection (c) outlines additional relief which may be ordered if the court finds that the premises are a nuisance but does not find that immediate closure is mandated under the prior subsection. The court may enjoin the drug-related activity by the defendant and all other persons on the premises. This section provides the court with a wide range of discretion in fashioning an appropriate preliminary remedy. This triggers the responsibility of the owner to take action to stop the criminal activity, for instance by commencing an eviction action. The appointment of a receiver has the immediate effect of removing management and control from the owner of both the premises and its revenues. This is designed to provide meaningful relief to the beleaguered community organization and to impress upon the owner, the importance of remedial action.

Subsection (d) provides a non-exhaustive list of the types of evidence which shall be admissible in making the community welfare and safety determinations called for in this section. The mandatory language is reflective of the intent to provide the widest range of relevant evidence to the court including considerations which are not operative under traditional nuisance law.

Section 12. Enforcement of Preliminary Closing and Restraining Orders.

(a) Entities Enforcing Orders. Upon order of the court, preliminary restraining and closing orders shall be enforced by the [sheriff, local police department, or other appropriate agency].

(b) Inventory of Personal Property. The officers serving a temporary closing order or a temporary restraining order shall file with the court an inventory of the personal property situated in or on the premises closed

and shall be allowed to enter the premises to make the inventory. The inventory shall provide an accurate representation of the personal property subject to such inventory including, but not limited to, photographing of furniture, fixtures and other personal or movable property.

(c) Vacation of Premises. The officers serving a preliminary closing order shall, upon service of the order, demand all persons present in the premises closed, to vacate such premises or portion thereof forthwith unless the court orders otherwise. The premises or portion thereof shall be securely locked and all keys shall be held by the agency closing the premises.

(d) Posting of Court Order. Upon service of a preliminary closing order or a preliminary restraining order, the officer shall post a copy thereof in a conspicuous place or upon one or more of the principal doors at entrances of the premises. In addition, where a preliminary closing order has been granted, the officers shall affix, in a conspicuous place or upon one or more of the principal entrances of such premises, a printed notice that the entire premises or portion thereof have been closed by court order, which notice shall contain the legend "Closed by Court Order" in block lettering of sufficient size to be observed by anyone intending or likely to enter the premises. The printed notice shall also include the date of the order, the court which issued the order and the name of the office or agency posting the notice. In addition, where a preliminary restraining order has been granted, the officer shall affix, in the same manner, a notice similar to the notice provided for in relation to a preliminary closing order except that the notice shall state that certain activity is prohibited by court order and that removal of furniture, fixtures or other personal or movable property is prohibited by court order.

(e) Mutilation or Removal of Posted Court Order. Any person who without lawful authority mutilates or removes any order or notice posted in accordance with the provisions of subsection (d) is guilty of a misdemeanor.

(f) Violation of Court Order. Any person who knowingly or purposely violates any preliminary restraining order or closing order issued pursuant to this [Act] shall be subject to civil contempt as well as punishment for criminal contempt pursuant to [insert cite to applicable criminal contempt law].

COMMENT

This section provides that preliminary restraining and closing orders shall be enforced by the sheriff, local police department or other appropriate agency as a recognition of the dangers inherent in an enforcement action. It seeks to mobilize and empower the groups to initiate the lawsuits while maintaining traditional law enforcement roles. This section seeks to maintain the integrity of the premises during the pendency of the lawsuit and to prevent the all too common experience of damage or retaliatory destruction of real and personal property.

The posting provision in subsection (d) provides actual knowledge to the world that the premises are closed by court order; it also subjects any violators to the civil and criminal contempt of the court. This is a traditional feature in most nuisance and forfeiture laws. The community is presumed to be the eyes and ears of this closure order; thus, it is anticipated that violations would be reported immediately to the authorities, in which case the court is mandated to take contempt action under subsection (f).

Section 13. Notification and Provision of Treatment Resources.

(a) Notification to Persons Present. The officers serving a preliminary closing order as provided in Section 12(c), shall provide outreach information and referral materials to all residents present on how to obtain alcohol and other drug treatment.

(b) Notification to Social Services Agencies. The court, no less than [ten] days prior to the removal of any persons pursuant to this [Act], shall cause notice to be provided to the local alcohol and other drug agency, the local child welfare agency, and other appropriate social service agencies.

(c) Posting of Notification. A one-page summary of such information and materials shall be posted next to any preliminary closing order or preliminary restraining order posted in accordance with Section 12(d).

(d) Preparation and Dissemination of Treatment Resource Information. The [single state authority on alcohol and other drugs] or its designee shall prepare all materials described in subsections (a) and (b), and shall disseminate them to all [sheriffs departments, local police departments, or other appropriate agencies] which are empowered to enforce closing orders under this [Act].

COMMENT

Strong concern has been expressed about throwing drug-addicted residents out on the street with no provision, especially where those residents may be mothers with small children or pregnant women.

This section addresses that concern. All residents, by requirement of this section, are notified of treatment resources to which they can go. As a practical matter virtually all addicts living in such circumstances will be sufficiently disintegrated to require inpatient treatment, so that their housing needs would be resolved by their decisions to seek treatment.

Subsection (d) directs the [single state authority on alcohol and other drugs] to prepare and disseminate the materials so as to maintain coordination with other outreach efforts.

Section 14. Premises Involving Multiple Residences or Businesses.

(a) Limiting Order to Nuisance Portion of Premises. Where the premises constituting the drug nuisance includes multiple residences, dwellings or business establishments, a preliminary or permanent closing order issued pursuant to any provision of this [Act] shall, so far as is practicable, be limited to that portion of the entire premises necessary to abate the nuisance and prevent the recurrence of drug distribution events.

(b) Duty of Certain Landlords to Displaced Innocent Tenants. In addition to any other relief expressly authorized by this [Act], the court may order a defendant who knew or had reason to know of the nuisance, to provide relocation assistance to any tenant ordered to vacate a premises pursuant to this [Act], provided that the court determines that such tenant was not involved in any drug distribution event constituting the nuisance and did not knowingly aid in the commission of any such drug distribution event. Relocation assistance shall be in the amount necessary to cover moving costs, security deposits for utilities and comparable housing, any lost rent, and any other reasonable expenses the court may deem fair and reasonable as a result of the court's order to close a premises or any portion thereof pursuant to this [Act].

COMMENT

In order to safeguard the rights of innocent persons and businesses, Section (a) provides that where the premises constituting the drug nuisance includes multiple resi-

dences or business establishments, a preliminary or permanent closing order must so far as is practicable be limited only to that portion or portions of the entire premises which is necessary to abate the nuisance and to prevent the recurrence of drug violations. This feature ensures that the remedy is tailored reasonably and is no broader than necessary to effect the relief.

The court is authorized to order a defendant who knew or had reason to know of the nuisance to provide relocation assistance, including cost of moving to comparable housing for a tenant who was not involved in the drug distribution event. This is a severe remedy which is imposed on the “culpable” owner who has knowledge of the nuisance and has failed to act to protect the otherwise innocent tenants or residents. This provision provides strong incentives to initiate corrective action, such as eviction of offending tenants.

Section 15. Vacating or Modifying Closing Order Before Trial on Application of a Defendant.

(a) General Rule. The court upon application of a defendant may, at any time before trial, vacate or modify a closing order, after notice to the person or entity bringing the action pursuant to this [Act], where the defendant clearly and convincingly shows that he or she was not in any way involved in the commission of any drug distribution event constituting the nuisance, and he or she further:

(1) provides a bond or undertaking in an amount equal to the assessed value, for property tax purposes, of the premises or portion thereof subject to the closure order, or such other amount fixed by the court, and the court determines that the public safety or welfare will be adequately protected thereby; or

(2) submits clear and convincing proof to the court that the drug nuisance has been satisfactorily abated and will not recur. In determining whether the drug nuisance has been satisfactorily abated and will not recur, the court shall consider the nature, severity and duration of the drug nuisance and all other relevant factors, including but not limited to the following:

(A) Whether the defendant through the exercise of reasonable diligence should have known that drug distribution events were occurring on the premises, and whether the defendant took

steps necessary and appropriate in the circumstances to prevent the commission of such events;

(B) Whether the defendant has in good faith initiated eviction or removal actions pursuant to [the “Model Expedited Eviction of Drug Traffickers Act” or other pertinent state statute] against tenants or other persons who committed drug distribution events on the premises involved, immediately upon learning of a factual basis for initiating such eviction or removal action;

(C) Whether the defendant has developed an abatement plan which has been agreed to by the person or entity bringing the action pursuant to this [Act] and has been approved by the court. Such abatement plan may provide for:

(i) Hiring an on-site manager to prevent the recurrence of drug distribution events;

(ii) Making capital improvements to the property, such as security gates;

(iii) Installing improved interior or exterior lighting;

(iv) Employing security guards;

(v) Installing electronic security or visual monitoring systems;

(vi) Establishing tenant-approved security procedures;

(vii) Attending property management training programs;

(viii) Making cosmetic improvements to the property;

(ix) Providing, at no cost, suitable space and facilities for a local enforcement agency to establish a police substation or mini-station on or near the site of the drug nuisance; or

(x) Establishing any other program or initiative designed to enhance security and prevent the recurrence of drug distribution events on or near the premises involved.

(b) Forfeiture of Bond. Where the court accepts a bond or undertaking pursuant to subsection (a), and conduct constituting a drug nuisance recurs, the bond or under-

taking shall be forfeited unless the court finds compelling and extraordinary reasons why such forfeiture would not be in the interests of justice. Any monies forfeited pursuant to this section shall be paid into the dedicated fund established in Section 18(d) of this [Act].

COMMENT

An owner may apply to re-open a closed premises by providing a bond or submitting clear and convincing proof to the court that the drug nuisance has been satisfactorily abated and that he or she was not involved in the drug distribution event. This is part of a series of sections designed to encourage a settlement of the litigation, and an abatement of the problem so that it does not recur. The court and the litigants have wide latitude in this area. In determining whether the nuisance has been satisfactorily abated, this section sets forth a non-exhaustive list of factors relating to the nature, severity and duration of the nuisance, and factors to assess the culpability of the owner and his or her efforts to take corrective action.

The above list is may also be helpful to the court or to the parties in negotiating a settlement.

Section 16. Permanent Injunction and Other Relief.

Where the court after trial finds that a premises is a drug nuisance, the court shall grant permanent injunctive relief and shall issue orders as are necessary to abate the drug nuisance and to prevent to the extent reasonably possible the recurrence of the drug nuisance. The court's order may include, but need not be limited to all of the following:

(a) Seizure and Sale of Personal Property. Directing the sheriff or other appropriate agency to seize and remove from the premises all material, equipment and instrumentalities used in the creation and maintenance of the drug nuisance, and directing the sheriff to sell the property in the manner provided for the sale of personal property under execution in accordance with the general rules of civil procedure. The net proceeds of any such sale, after the deduction of all lawful expenses involved, shall be paid into the dedicated Fund established in Section 18(d) of this [Act].

(b) Restoration of Premises. Authorizing the plaintiffs to make repairs, renovations and construction and structural alterations or to take such other actions nec-

essary to bring the premises into compliance with all applicable housing, building, fire, zoning, health and safety codes, ordinances, rules, regulations or statutes. Expenditures may be filed as a lien against the property.

(c) Closing of Premises. Directing the closing of the premises, or appropriate portion thereof, to the extent necessary to abate the nuisance, and directing the officer or agency enforcing the closure order to post a copy of the judgment and a printed notice of such closing order conforming to the requirements of Section 12(d) of this [Act]. The closing directed by the judgment shall be for such period of time as the court may direct but, subject to the provisions of Section 20 of this [Act], shall not be for a period of more than one year from the posting of the judgment provided for in this subsection.

(d) Suspension of Licenses. Suspending or revoking any business, professional, operational or liquor license.

(e) Suspension of Government Subsidies. Ordering the suspension of any state, city or local governmental subsidies payable to the owners of the property, such as tenant assistance payments to landlords, until the nuisance is satisfactorily abated.

(f) Appointment of Receiver. Appointing a temporary receiver to manage or operate the premises for such time as the court deems necessary to abate the nuisance. A receiver appointed pursuant to this section shall have such powers and duties as the court shall direct, including but not limited to:

- (1) Collecting, holding and dispersing the proceeds of all rents due from all tenants;
- (2) Leasing or renting portions of the premises involved;
- (3) Making or authorizing other persons to make necessary repairs or to maintain the property;
- (4) Hiring security or other personnel necessary for the safe and proper operation of the premises;
- (5) Retaining counsel to prosecute or defend suits arising from his or her management of the premises; and
- (6) Expending funds from the collected rents in furtherance of the foregoing powers.

A receiver appointed by the court pursuant to this section or Section 11(c) of this [Act] shall upon entering upon his

or her duties be sworn and shall affirm faithfully and fairly to discharge the trust committed to him or her. In addition, the receiver may be required to post a bond or undertaking in an amount to be fixed by the court making the appointment, to ensure that such receiver will faithfully discharge his or her duties.

(g) Combination of Remedies. Imposing any or all of the foregoing remedies in combination with each other.

COMMENT

This section provides that after a trial, upon a finding of a nuisance, the court shall grant permanent injunctive relief and shall issue orders necessary to abate the nuisance and prevent recurrence. The mandatory language regarding the injunctive relief is an express legislative policy that the proceedings result in certain and uniform enforcement. The section also provides that the court may order the closure of the building, or appropriate portion thereof, for not more than one year. Because closure may be the substitution of one kind of blight for another - no community can remain viable with boarded up houses and buildings - the [Act] is designed to encourage the defendant and permit the court to exercise a variety of options which will permit the premises to remain open.

Subsection (b) permits the community group or other plaintiffs to restore the premises and to impose the costs as a lien against the property. Subsequent sections make clear that this lien encumbers all real estate owned or acquired in the future by the defendant. This type of judgment is a strong incentive for potential defendants to take remedial action.

Subsection (d) permits the court to suspend or revoke liquor licenses, as well as other types of business, professional or operational licenses. This remedy alone can, in typical instances such as “nuisance bars”, go far to solve the problem.

Subsection (f) also encourages the use of innovative strategies by the court and the litigants, by setting forth a non-exhaustive list of powers and duties of a receiver appointed by the court following the order of a preliminary or permanent injunction. This appointment may be in effect for such time as is necessary to abate the nuisance. The receiver may be ordered to effect the remedial action submitted in the abatement plan. Appointment of a receiver under this subsection may, under certain circumstances, also be an effective means of restoring the premises to lawful activity without closing the property.

Section 17. Presumption of Closure; Vacation of Closure After Abatement of Nuisance and Proof that Nuisance is Not Likely to Occur.

(a) Presumption of Closure. Where the court after trial determines that a premises constitutes a drug nuisance, the court shall order the closure of the premises or appropriate portion or portions thereof pursuant to Section 16(c) of this [Act], unless the court is clearly convinced that any vacancy resulting from the closure would exacerbate rather than abate the nuisance or would otherwise be extraordinarily harmful to the community or the public interest.

(b) Vacation of Closure Order. The court at any time after trial may vacate the provisions of the judgment that direct the closing of the premises or any portion thereof provided that the defendant submits clear and convincing proof to the court that the drug nuisance has been satisfactorily abated and is not likely to recur. In determining whether the drug nuisance has been satisfactorily abated and is not likely to recur, the court shall consider the nature, severity and duration of the drug nuisance and all other relevant factors, including but not limited to those factors set forth in Section 15(a) of this [Act].

COMMENT

Subsection (a) creates a presumption of closure unless the court is clearly convinced that any vacancy would exacerbate rather than abate the nuisance or would otherwise be extraordinarily harmful to the community. This is a common sense approach. Subsection (b) also permits the closure order to be vacated where clear and convincing proof establishes that the nuisance is abated and not likely to recur.

Section 18. Penalties.

(a) Civil Penalties for Culpable Defendants. Where the court after trial finds that a premises is a drug nuisance, the court in addition to granting appropriate injunctive relief shall impose a civil penalty against a defendant who knowingly conducted, maintained, aided, abetted or permitted a drug nuisance. The penalty shall be [\$25,000.00] or the market value of the entire premises involved, whichever amount is greater, unless the court finds, based on the evidence, that imposition of such penalty would constitute a miscarriage of justice under the totality of the circumstances. In such case it may lower the penalty amount to the extent necessary to avoid such miscarriage of justice.

(b) Prima Facie Evidence of Defendant's Culpability. For the purpose of imposing a civil penalty pursuant to this section, the following shall be prima facie evidence that the defendant knowingly permitted the drug nuisance:

(1) the defendant failed to initiate an eviction action, pursuant to the provisions of [the Model Expedited Eviction of Drug Traffickers Act or other pertinent state statute], against a tenant after being notified by certified or registered mail of the tenant's drug distribution events committed on the leased premises; or

(2) a closure order was vacated under Section 17(b) within two years before the occurrence of the instant drug nuisance.

(c) Waiver of Penalty Upon Transfer of Title. The court at any time shall waive, suspend or revoke any unpaid civil penalty imposed pursuant to this section where it is satisfied that:

(1) the defendant against whom the penalty has been imposed has not violated any order issued pursuant to any provision of this [Act]; and

(2) the defendant has transferred title to the premises to the plaintiff or any other neighborhood or community organization approved by the court, provided that the recipient is a nonprofit incorporated organization or association which is exempt from taxation under 26 U.S.C 501(c) and which is authorized by its corporate charter or bylaws to rehabilitate, restore, maintain, manage or operate any commercial or residential premises. Unless otherwise agreed to by the recipient organization, the defendant shall personally retain all state and local tax liability and the obligation shall attach to any other real property in the county owned by the defendant.

(d) Collection and Disposition of Proceeds. All civil penalties imposed pursuant to this section shall be collected as provided in [insert cite to appropriate statute governing collections generally]. Ten percent of the penalties shall be retained by the court to offset the costs of collection. Half of all remaining monies collected pursuant to this section shall be deposited in a non-lapsing revolving Fund to be known as the "Nuisance Abatement and Neighborhood Rehabilitation Fund." Monies in this Fund shall be appropriated by the [municipality] [county] [state] on an annual basis for the purpose of funding local drug nuisance abatement, drug prevention, education, and housing and

neighborhood rehabilitation programs. All of the remaining funds shall be deposited in a non-lapsing revolving fund to be known as the "Treatment for Displaced Residents Fund," to be administered by the [single state authority on alcohol and other drugs] or its designee. None of these funds shall be used to supplant existing municipal, county, state or federal resources for the courts, nuisance abatement, drug prevention, education, housing or neighborhood rehabilitation programs, or treatment.

COMMENT

Subsection (a) mandates that the court after trial, in addition to granting any appropriate injunctive relief, impose a civil penalty against any or all defendants who knowingly conducted, maintained, aided, abetted or permitted the drug nuisance. This penalty is a form of liquidated damages to the community at large (as opposed to any specific individuals, for which the defendant remains liable under Section 29). This is in accord with the sliding scale of defendant culpability. There is an escape valve for the court to order a lesser amount if the imposition of the statutory amount were to cause a miscarriage of justice.

The transfer of property under subsection (c) is an option available to the owner at any time; however, the prospect of the imposition of civil penalties makes this a viable option. The statute requires that the organization receiving the property be certified as a 26 U.S.C. 501(c) non-profit organization. States may wish to impose additional conditions and terms of the transfer to ensure the rehabilitation process.

Subsection (d) provides for the collection and disposition of funds from the penalties. Each state has a constitutional and/or statutory scheme for penalties or fines; therefore, this is a general recommendation. The goal of this provision is to provide two basic funds to be administered by the appropriate agencies to assist in 1) neighborhood rehabilitation and 2) treatment for addicted residents displaced under this [Act]. The latter function is also funded by Section 29(e) of the [Model Expedited Eviction of Drug Traffickers Act].

Section 19. Settlements.

(a) Court-Approved Settlements. Nothing in this [Act] shall be construed in any way to prevent the parties to the action at any time before or after trial from negotiating and agreeing to a fair settlement of the dispute, subject to the approval of the court.

(b) Vacation of Closure Order Upon Transfer of Title. The court, on application of a plaintiff may vacate a closing order issued pursuant to this [Act], where the defendant has transferred title to the premises to the plaintiff or any other neighborhood or community organization approved by the court, provided that the recipient is a nonprofit incorporated organization or association which is exempt from taxation under 26 U.S.C. 501(c) and which is authorized by its corporate charter or bylaws to rehabilitate, restore, maintain, manage or operate any commercial or residential premises. In that event, the requirements for pre-release inspection set forth in Section 23 of this [Act] shall not apply.

COMMENT

In keeping with the [Act's] remedial focus, this section expressly authorizes the parties to negotiate and settle the action subject to the court's approval. The settlement process is in the defendant's best interest in light of the graduated scale of potentially severe penalties and liabilities under the [Act].

Section 20. Recovery of Costs.

Whenever an action for injunctive relief or penalties brought pursuant to this [Act] terminates in a settlement or judgment favorable to the plaintiff, the plaintiff shall be entitled to recover the actual cost of the suit, including but not limited to reasonable attorney fees and all expenses and disbursements by the plaintiff and any other governmental entity in investigating, bringing, maintaining and enforcing the action and any court orders issued pursuant thereto. All defendants shall be jointly and severally liable for the payment of taxed costs imposed pursuant to this section.

COMMENT

Most neighborhood organizations lack the wherewithal to pay a lawyer to bring nuisance abatement actions on their behalf. Without this provision, which places these costs on the party whose conduct or omissions were ultimately responsible for them, the organizations cannot abate drug nuisances to the full extent provided under the [Act].

Most states permit a prevailing plaintiff to recover the costs of a suit only where such recovery is expressly authorized by statute. Accordingly, this section makes clear that any authorized plaintiff who brings a successful action pursuant to this [Act] shall be entitled to

recover the costs of the suit. Such costs include, but are not limited to, reasonable attorney fees. This section creates an absolute right to recovery by a prevailing plaintiff. Accordingly, the court would have no discretion to deny recovery of costs to any such prevailing plaintiff, although the court would have discretion to determine the amount of such costs in accordance with the general provisions of law or court rules.

Thus, attorneys who may wish to represent neighborhood organizations in such actions on a pro bono basis, are now provided the additional incentive of being able to be compensated for their efforts. This section also creates a disincentive to the defendant to engage in the usual strategy of protracting or delaying the proceedings.

Section 21. Liens.

A judgment awarding a permanent injunction pursuant to this Act shall be a lien upon the premises declared to be a drug nuisance. In addition, a judgment against an in personam defendant imposing a civil penalty or bill of taxed costs pursuant to this [Act] shall be a lien upon the real estate owned by the defendant at the time of such rendition, and also upon all real estate the defendant may subsequently acquire, for a period of [ten years] from the date of the judgment.

COMMENT

This section provides that a judgment awarding a permanent injunction constitutes a lien upon the premises, thus the requirement that there be a lis pendens filed at the initiation of the suit. In addition, a judgment against an in personam defendant imposing a civil penalty becomes a lien on any real estate owned at the time or acquired thereafter by the defendant. This concept is similar to the notion of substitute assets contained in the [Commission Forfeiture Reform Act] and asset forfeiture laws of certain states.

Section 22. Contempt.

Any person who knowingly violates any order issued pursuant to this [Act] shall be subject to civil contempt as well as punishment for criminal contempt under [insert cite to applicable criminal contempt law]. Nothing in this [Act] shall be construed in any way to preclude or preempt a criminal prosecution for violation of a controlled substance offense or any other criminal offense.

Section 23. Release of Premises Upon Inspection or Repair.

(a) Compliance With Codes as Prerequisite to Opening. Subject to the provision of Section 19(b), and unless the court expressly orders otherwise, no premises or portion thereof ordered to be closed pursuant to any provision of this [Act] shall be released or opened unless it has been inspected by [insert designation of appropriate inspection authority] and found to be in compliance with applicable local or state housing, building, fire, zoning, health and safety codes, ordinances, rules, regulations or statutes. Where the inspection reveals violations of any such code, ordinance, rule, regulation or statute, the court shall issue such orders or grant such relief as may be necessary to bring the premises or portion thereof into compliance. In that event, the court may order the premises or portion thereof to remain closed pending such necessary repairs or modification, notwithstanding that the order of closure may exceed the one year time limit prescribed in Section 16(c) of this [Act].

(b) Authorization to Inspect or Repair. The court may authorize any person or government official to enter a premises or portion thereof closed pursuant to this [Act] for the purpose of conducting an inspection or making any repairs or modifications necessary to abate the nuisance or to bring the premises or portion thereof into compliance with any applicable housing, building, fire, zoning, health or safety code, ordinance, rule, regulation or statute.

COMMENT

This section is designed to strengthen the community's and the court's ability to ensure code and ordinance compliance of those buildings ordered closed under the [Act], so that the property remains under the jurisdiction of the court pending substantial compliance with the code, regulation, ordinances or statutes, even in excess of the one year closure provision. The period of time in which the property remains closed is within the discretion of the court and local practice, and policies of inspection agencies may influence the procedures defined by the court.

Section 24. Cumulative Remedies.

The causes of action and remedies authorized by this [Act] shall be cumulative with each other and shall be in addition to, not in lieu of, any other causes of action or remedies which may be available at law or equity.

Section 25. Admissibility of Evidence to Prove Drug Nuisance.

(a) General Rule. In any action brought pursuant to this [Act], all relevant evidence, including evidence of the use or threat of violence, evidence of reputation in a community and any prior efforts or lack of efforts by the defendant to abate the drug nuisance shall be admissible to prove the existence of a drug nuisance.

(b) Effect of Criminal Conviction or Adjudication of Delinquency. Where a criminal prosecution or adjudication proceeding involving the drug distribution event constituting the drug nuisance results in a criminal conviction or adjudication of delinquency, such conviction or adjudication shall create a rebuttable presumption that the drug distribution event occurred. Any evidence or testimony admitted in the criminal or juvenile proceedings, including transcripts or a court reporter's notes of the transcripts of the adult or juvenile criminal proceedings, whether or not they have been transcribed, may be admitted in the civil action brought pursuant to this [Act].

(c) Use of Sealed Criminal Proceeding Records. In the event that the evidence or records of a criminal proceeding which did not result in a conviction or adjudication of delinquency have been sealed in accordance with [cite to applicable state law or procedure], the court in a civil action brought pursuant to this [Act] may, notwithstanding any other provision of this [Act], order such evidence or records to be unsealed if the court finds that such evidence or records would be relevant to the fair disposition of the civil action.

(d) Protection of Threatened Witnesses or Affiants. If proof of the existence of the drug nuisance depends, in whole or in part, upon the affidavits or testimony of witnesses who are not peace officers, the court may, upon a showing of prior threats of violence or acts of violence by any defendant or any other person, issue orders to protect those witnesses including, but not limited to, the nondisclosure of the name, address or any other information which may identify those witnesses.

(e) Availability of Law Enforcement Resources to Plaintiffs or Potential Plaintiffs. A law enforcement agency may make available to any person or entity seeking to secure compliance with this [Act] any police report, or edited portion thereof, or forensic laboratory report, or edited portion thereof concerning drug distribution events committed on or within the premises involved. A law enforcement agency may also make

any officer or officers available to testify as a fact or expert witness in a civil action brought pursuant to this [Act]. The agency shall not disclose such information where, in the agency's opinion, such disclosure would jeopardize an investigation, prosecution, or other proceeding, or where such disclosure would violate any federal or state statute.

COMMENT

This section provides general guidelines relating to the liberal admissibility of evidence in the nuisance trial and the creation of a rebuttable presumption if the conduct which is the predicate for the allegation of nuisance has been the subject of a criminal conviction or juvenile adjudication. These provisions are designed to supplant state evidence codes or rules of evidence to the extent constitutionally permissible.

This section seeks to mobilize or energize the members of the community to use the judicial system to its fullest. It provides for protective orders for witnesses upon a showing of a threat or act of violence by the defendant consistent with many state crime victims' rights statutes or witness protection statutes. It seeks to ensure certain, expeditious and uniform enforcement. Law enforcement is encouraged to provide police or laboratory reports, and to authorize police personnel to act as witnesses to the extent necessary to maintain the cause of action. The section provides the proper safeguards against inappropriate disclosure of information which may jeopardize an investigation or prosecution.

Section 26. Relationship to Criminal Proceedings.

A civil action may be brought and maintained pursuant to this [Act], and the court may find the existence of a drug nuisance, notwithstanding that a drug distribution event or events used to establish the existence of the drug nuisance have not resulted in an arrest, prosecution, conviction or adjudication of delinquency.

COMMENT

This section again affirms that actions brought pursuant to this act are remedial rather than punitive in nature and thus should be decided independently of any criminal prosecutions. Since the standard of proof generally required in an action pursuant to this section is a preponderance of the evidence, the fact that any criminal prosecution involving the drug nuisance is not commenced, or if commenced has not yet been concluded,

or has even terminated in an acquittal, should not preclude the civil action or the issuance of any order pursuant to this [Act]. In other words, it is possible for the plaintiff to prevail under this [Act] on the basis of evidence which would not be sufficient to convict in a criminal prosecution.

Section 27. Liability for Damage to Closed Properties.

(a) Effect of Court-Ordered Closing. A court-ordered closing of a premises or portion thereof pursuant to this [Act] shall not constitute an act of possession, ownership or control by the court, the plaintiff or any government official or entity responsible for enforcing the court order.

(b) Immunity of Plaintiffs and Enforcing Agencies. Any person or entity bringing, maintaining or enforcing any civil action or order issued in accordance with the provisions of this [Act] shall have immunity from any civil liability that might otherwise be incurred for any theft of, or loss, damage or injury to any premises constituting the drug nuisance, or to any fixture, furniture, personal or movable property located in or on any such premises.

Section 28. Civil Immunity.

Any person or entity who, in good faith, institutes, participates in, testifies in, or encourages any person or entity to institute, participate in or testify in a civil action brought pursuant to this [Act], or who in good faith provides any information relied upon by any person or entity in instituting or participating in a civil action pursuant to this [Act], shall have immunity from any civil liability that might otherwise be incurred or imposed.

COMMENT

Many states have immunity provisions; nonetheless, citizens or community groups may decline to initiate a cause of action for fear of retaliation through litigation. This provision makes clear that plaintiffs who institute a cause of action in good faith, or who are materially involved in the lawsuit, are immune from civil liability. This provision is counterbalanced by the protection against frivolous actions contained in Section 7(c), which requires that the complaint is warranted in fact and law to the best of the attorney's belief.

Section 29. Civil Action for Damages Resulting From Drug Nuisance.

(a) Right of Action for Damages. Notwithstanding the provisions of Section 7(a) of this [Act], any person damaged in his or her business or property by reason of a drug nuisance may bring a separate civil action for actual damages in the [insert appropriate court] against any persons who knowingly conducted, maintained, aided, abetted or permitted any drug distribution event constituting the drug nuisance.

(b) Effect of Prior Notification of Owner Concerning Nuisance. In a civil action for damages pursuant to this section, the failure of an owner or landlord to initiate an eviction action against a tenant in accordance with the provisions of [the Model Expedited Eviction of Drug Traffickers Act], if the owner or landlord has been notified by certified or registered mail of the tenant's drug distribution events committed on the leased premises, shall be prima facie evidence that the owner knowingly gave permission to engage in conduct constituting the drug nuisance.

(c) Admissibility of Expert Testimony. In a civil action for damages pursuant to this section, expert testimony may be used to determine the amount of any actual damage or loss incurred by reason of the drug nuisance.

(d) Attorney's Fees and Other Costs to Prevailing Plaintiff. Whenever an action for damages brought pursuant to this section terminates in a settlement or judgment favorable to the plaintiff, the plaintiff shall be entitled to recover the actual cost of the suit, including but not limited to reasonable attorney fees and all expenses and disbursements by the plaintiff in investigating, bringing and maintaining the action. All defendants shall be jointly and severally liable for the payments of taxed costs imposed pursuant to this section.

(e) General Admissibility of Evidence. In any civil action for damages brought pursuant to this section, any evidence admitted or admissible in a civil action for injunctive relief or penalty pursuant to this [Act] shall be admissible.

COMMENT

This section authorizes a civil action for actual damages, which may be brought by a person injured in his or her business or property by reason of a drug nuisance. This separate cause of action may be brought against any person who knowingly has conducted, maintained, aided, abetted or permitted any drug violation constituting the nuisance. Subsection (b) encourages a person

to notify, by certified or registered mail, the owner of a leased premises of the existence of drug distribution activity by a tenant. The owner is then obligated to take action under [the Model Expedited Eviction of Drug Traffickers Act] or be subject to a finding that his failure to so act is prima facie evidence of consent to the illegal activity. The further incentive to the plaintiff to initiate such causes of action is the recovery of costs, including attorney's fees, upon a favorable judgment or settlement.

Section 30. Use of Property for Treatment and Other Purposes.

Where title to property has been transferred to any neighborhood or community organization pursuant to Section 18(c) of this [Act], or pursuant to any negotiated settlement of any action brought pursuant to this [Act], such property may, subject to the approval of the court in which the civil action was initiated, be used to house an alcohol and other drug prevention, education, intervention, or licensed alcohol and other drug counseling or treatment program. Nothing herein shall be construed in any way to exempt such property from the requirements of any applicable zoning, fire, safety or health code, ordinance, rule, regulation or statute.

COMMENT

The [Act] provides for the use of property transferred by settlement or judgment to a alcohol and other drug prevention, education, intervention or licensed alcohol and other drug counseling or treatment program.

Section 31. Liberal Construction.

The provisions of this [Act] shall be liberally construed to effectuate the remedial purposes, objectives and policies set forth in Sections 2 and 3 of this [Act].

Section 32. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 33. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date][reference to specific date.]

Appendix B

Questions and Answers Concerning the Drug Nuisance Abatement Act

1. What is a drug nuisance?

A drug nuisance is a building or place at which there have been three or more serious drug crimes, such as distribution or manufacturing drugs within a year, or a place which is used as a “shooting gallery”, a grow site or warehouse for drugs; or a place which is used by the drug trafficker in connection with the drug activity. The definition is expansive to define those places where dangerous drug activity takes place and attracts other dangerous criminal activity to the detriment of the community.

2. Who can sue?

A neighborhood or community group or a person residing or working within 1,000 feet of the nuisance can sue, in addition to the criminal prosecuting attorney, municipal or state attorneys, the attorney general or the corporation counsel.

3. What is to keep the law from being used as harassment?

Papers filed in the case must be signed by an attorney saying he or she has read the papers, asked the appropriate questions and to the best of his or her knowledge the lawsuit is proper based on the facts and the law. Unsigned papers will not be accepted and the court can assess costs against someone who violates the rule.

4. Do we have to do something first?

In order to get an immediate preliminary closing order, the owner or his agent must have received a certified letter notifying him of the drug nuisance. The letter gives the owner actual notice of the problem.

The law also provides civil penalties up to \$25,000.00 if an owner knowingly maintains or allows the place to be a nuisance. If a plaintiff sent a certified or registered letter to the owner under the Model Expedited Eviction of Drug Traffickers Act to put the owner on notice of a tenant’s drug dealing, and the owner failed to evict that is prima facie evidence that the owner knew about the nuisance.

5. Do we need a lawyer?

All pleadings and papers must be read and signed by a lawyer who certifies that the action is appropriate, factual and legal. The lawyer need not appear in the court hearings.

6. How do we pay for a lawyer and cost of litigation?

Any plaintiff who brings a successful action under this Act is entitled to receive the costs of the attorney fees and other costs of the litigation. This relieves the plaintiff of the financial burden of the lawsuit and may provide an incentive to lawyers to assist neighborhood or community groups.

7. What good does it do to sue?

The lawsuit means action and attention to a problem in the community which has not been solved by traditional criminal justice approaches. This law lets the people who have the most at stake in their community attack the drug problem, close down the drug house which has been the scene of criminal activity and has scared away businesses and residents. If as a result of the lawsuit, the owner takes action to stop the drug activity and keep it from recurring—that's action. The terms of the settlement can be negotiated by the parties.

If the owner does not want to be bothered, the property can be transferred to the group for rehabilitation and resale, or for drug or alcohol prevention, education or counseling centers. The place is put to good use—that's action. The fact that the community or neighborhood groups can reclaim buildings and the streets from the drug dealers provides a sense of accomplishment and ensures the safety of the community. The fact that a community takes action provides a strong message to drug dealers to stay out or leave and to owners that they must take responsibility for their properties.

8. How do I find out who the owner is?

The law provides that a person who proves in writing that they are properly starting a lawsuit under this act may get the name and address of the owner of leased residential property from the county recorder, or clerk without charge. The law presumes that a persons whose name is listed is the owner. If there is a management company or operator they are presumed to be the agents for the owner and they can be named as defendants in the lawsuit.

9. Who do I have to notify about the lawsuit?

You must notify and name as a defendant the owner to the property as well as the property itself. This is because the court may order action taken as it relates to the property, such as closing it down for up to a year. The court may also order the defendant to pay costs or lose other privileges that are personal to him.

You may also sue the landlord, tenant, or manager of the property.

You must provide actual or mail notice to the defendant in the lawsuit, as well as notice to affected tenant resident and guests who may be affected by the lawsuit.

Finally you must file a lis pendens as provided by law to put prospective buyers on notice of the action.

10. Once I sue, how long does it take to shut the house down?

Thirty days after filing of the complaint seeking injunctive relief, the court must set a preliminary hearing, and service must be made on the defendants and the building not less than five days prior to the hearing. If service cannot be made, the case can be rescheduled to make service.

11. What if innocent people also live there?

Especially in multi-unit dwellings, there may be some people in the building that are innocent of the drug activity. If the court is entering a closing order, it is required to limit that order as far as practicable to those units which will stop the drug activity and keep it from recurring. If the defendant knowingly allowed the drug activity to exist, the court could also order the defendant to provide relocation assistance to the innocent tenants who may be displaced by the closure order. This is another good reason to make an actual notification to the owner of the existence of the problem.

12. What happens to the property after its closed?

If the court enters either a preliminary or permanent closing order, the property would remain closed for up to one year, if the defendant does not abate or solve the nuisance or otherwise settle the case. The actual closing is done by the sheriff or local law enforcement and the premises are posted "closed by court order". Anyone who violates that order is subject to civil and criminal contempt of the court, which means they could be fined or put in jail. Anyone who tampers with the posted closure notice is guilty of a misdemeanor.

13. How do we stop owners from letting drug dealers illegally use their properties?

The law provides different tools for the courts to use depending on the degree of their blameworthiness. You stop people from using or permitting their property from being used for drug activity by insisting that the law be applied. If the person did not or could not reasonably have known of the drug activity, the court may order a receiver to take over the property and work to abate the problem. If the owner knowingly permitted the drug activity, they could have the property shut down, penalties assessed against them and lose professional licenses. In addition, liens could be put on the property to leverage the owner into a settlement or corrective action. A community which makes use of this strong medicine sends a message to all property owners and drug dealers that the conduct will not be tolerated and that the community will act to protect itself. The deterrent value is very powerful.

14. Can an organization like ours acquire the properties that have been shut down under this act?

The act is designed to encourage early settlements of the problem either through corrective action or the transfer of the property to a non profit tax exempt organization or association. The defendant can ask the court to suspend or waive any civil penalties incurred under the act upon the transfer of the property to the 501(c) organization, which was the plaintiff in the action or a court approved neighborhood or community organization. Unless otherwise agreed upon by the recipient organization, the owner still retains the present tax obligation and it attaches to other property owned by him.

15. Won't the lawsuit just throw drug addicts out into the streets creating an even worse problem?

The law addresses the very serious crimes such as manufacture, distribution and delivery of drugs; however, the act requires that all residents be provided with drug treatment information upon entry of the closure orders. This is especially important to young mothers with children or pregnant women with a drug problem.

16. Why do we need this law in the first place?

Traditional law enforcement approaches to this problem have failed to satisfactorily address the need. This approach creates an incentive for the community to act as well as an incentive for the property owners to responsibly manage or control the permissible use of their premises. The act also states the legislative intent is that these lawsuits be given priority in a the court system and urges creative approaches by the litigants and the courts as well. In a very real sense, the act is an empowerment tool for many segments of the community at large.

17. Do the drug dealers have to be arrested before we can sue?

No, this is an independent civil action which cannot be delayed or dismissed due to the arrest or non-arrest of the drug dealers, unless required by the interests of justice. If there is a criminal conviction or juvenile adjudication for the drug activity, that fact is admissible in the civil proceedings and it creates a presumption that the drug activity took place.

18. Can we be sued for bringing an action or providing information to someone who is bringing an action?

You cannot be sued for bringing a lawsuit, or testifying or providing information relating to the lawsuit so long as you do so in good faith.

19. What if I've lost money in my business or otherwise suffered actual damages because of drug dealings?

If you have been damaged in your business or property because of the drug activity, you can file a separate civil action for actual damages against the person who knowingly permitted or caused the drug activity to exist. This is in addition to any other remedy provided under the act.

20. What if I am afraid to bring action?

One of the reasons to allow community groups to act as the plaintiffs is the old adage "that there is strength in numbers". The group should offer the support to initiate and carry through with the lawsuit. If there are threats of violence, the court may issue a protective order to protect a witness, including a order for the nondisclosure of names and addresses.

21. Can I expect law enforcement to back me up?

The Act provides that law enforcement may provide police or laboratory reports and provide police as witnesses of the facts or as experts. In addition, if there are threats or criminal acts which arise from the civil action, proper law enforcement action should be taken including arrest and prosecution where appropriate.

Nuisance Abatement in Action

Introduction

There are many excellent local programs throughout the nation for “abating” drug nuisances and for evicting drug dealers from residential tenancies. It is simply not feasible in this Appendix to mention, much less thoroughly describe, all of the many community-based initiatives that have proven to be successful in addressing various aspects of the drug problem. Some programs deserve special note, however, if only because the people responsible for designing and implementing these programs provided information and invaluable assistance to the Commission in drafting the community mobilization model legislation.

The proposed legislation is designed to capture the spirit and essence of these highly successful programs. It is interesting to note, however, that some programs have worked quite well even though the laws upon which they are based are jerry-built, overgeneralized or outdated. In some cases, statutes written many decades ago to deal with the problems of a distant era have only recently been adapted to address the nation’s emerging and evolving drug problem. Consider that many nuisance laws date back to the Prohibition era, and were originally designed to close down gin mills, speakeasies and bawdy houses. The Ohio Attorney General, has shown that it is sometimes possible “to teach an old law new tricks.” By the same token, most states have long since adopted general eviction statutes which are not designed to facilitate the eviction of drug dealers, but rather were written so as to make it more difficult for landlords to dispossess tenants.

The point is simply that some anti-drug programs are able to succeed despite less than ideal laws because of the creativity, dedication and hard work of certain judges, prosecutors, government officials and community activists. But if successful programs are to be replicated across the nation, we cannot afford to depend so much on the ingenuity or creativity of individual judges or litigants. Rather, it is incumbent upon state legislatures to entrust judges and public and private litigants with carefully crafted, state-of-the-art legal tools — remedies which carefully balance right and responsibilities and which are specifically written to address America’s drug problems in the 90s. The Commission has sought to incorporate and institutionalize in statutory form the very best features of these innovative anti-drug programs. These proposed model laws, in other words, are designed to be practical tools which are easy to use and which can be implemented in a consistent, predictable and uniform fashion in virtually any jurisdiction.

Narcotics Nuisance Abatement Unit

Chicago, Illinois

The Cook County State's Attorney's Office Narcotics Nuisance Abatement Unit (NNAU) began in August, 1990 as a direct response to the volume of drug trafficking occurring in buildings and homes within Cook County, Illinois. Prior to the creation of NNAU, it was ascertained that of the 13,000 felony drug cases filed by the office in 1989, one-third involved houses or buildings. The data indicated that drug dealers who operated from houses and buildings tended to deal in a higher volume of drugs and were less visible to law enforcement and rival dealers. Most importantly, drug houses attract gangs and other criminal elements which, in turn, adversely affect citizens' safety and welfare, a community's quality of life, and property values.

NNAU coordinates community and law enforcement resources to remove drug-dealing tenants from commercial buildings, homes, and apartments. The operational strategy of NNAU is to aggressively seek out drug nuisance properties that exist in a community by working with neighborhood groups and organizations, as well as local police and various government agencies. When a narcotics nuisance is determined to exist, NNAU informs the property owner that a drug nuisance exists on his or her property. NNAU recommends a course of action to the property owner, which often includes the eviction of the drug-dealing tenant. If the property owner voluntarily complies with the recommendation, no further action is taken. If the property owner does not comply, NNAU files a petition in court seeking an injunction to enjoin the property owner from using the property for one year. In many cases, property owners now contact NNAU to report drug dealing by tenants and to seek a recommendation for action on their part.

Community support plays an integral role in the abatement process. NNAU utilizes an Advisory Council(council) consisting of representatives of community groups, block clubs, and various civic organizations. The Council meets on a quarterly basis to discuss and exchange strategies and information. The council provides the often crucial information needed by law enforcement to assist them in their efforts to rid neighborhoods of drug dealers and dope houses. The Council provides information to the community that results in more than 200 reports per month about drug activities in homes and buildings. This information is supplemented by review of all narcotics cases filed in the county to identify drug nuisances.

NNAU also utilizes a Law Enforcement Task Force(Task Force) consisting of representatives from the Chicago Police Department, suburban police departments, Illinois State Police, Federal Bureau of Investigation, Drug Enforcement Agency, Bureau of Alcohol, Tobacco, and Firearms, and the U.S. Attorney's Office. The Task Force facilitates coordination of agencies providing support to

the nuisance abatement process. The Task Force also provides a forum for the discussion of issues relating to the overall effort to deter and apprehend narcotics offenders.

NNAU is staffed by seven assistant state's attorneys, five state's attorney investigators, two community liaisons, two clerks, two secretaries, and a computer technician and programmer. In 1992, NNAU reviewed over 2,500 complaints and closed over 700 drug houses, most without any court action.

Nuisance Bar Task Force

Philadelphia, Pennsylvania

Introduction.

This statement describes the agenda and operation of the Nuisance Bar Task Force (Task Force), a new project initiated by District Attorney Lynne Abraham. The Task Force Director is Assistant District Attorney David Castro, an attorney with substantial experience and success in taking action against nuisance bars. He may be directly contacted with complaints about nuisance bars at (215) 686-9617. He is also available to meet with members of your community for a special counselling session specifically directed to the subject of nuisance bars.

Part A of this statement describes the mission of the Task Force. The Task Force assists Philadelphia communities in eliminating public nuisances and establishing systems for the local monitoring and control of past and potential nuisance sites. Part B describes a series of specific projects that are in progress, including law enforcement coordination, the creation of a nuisance hot line, the establishment of a panel of volunteer lawyers, and the organization of town watches.

A. The Task Force Helps Philadelphia communities eliminate public nuisances and establish systems for the monitoring and control of past and potential nuisance sites.

The Task Force will assist Philadelphia communities. The Task Force defines its goals with respect to the needs of specific Philadelphia communities. The Task Force recognizes that community participation in cases is essential and determines the merit and priority level of particular cases with respect to the commitment and organization of the afflicted community, as well as the seriousness of the underlying nuisance activity.

The Task Force targets public nuisances. As used by the Task Force, the term “public nuisance” signifies an ongoing condition or activity that constitutes an unreasonable or unlawful use of property interfering with public rights. The Task Force focuses upon nuisances that violate public rights. Private nuisance cases are referred to private or pro bono counsel as appropriate.

Pursuant to Section 6-611 of the Pennsylvania Liquor Code, any liquor licensed establishment which serves minors, drunks, known alcoholics, known criminals, or persons of known intemperate habits, or otherwise violates the Pennsylvania Liquor Code, is a public nuisance. Moreover, because Pennsylvania courts have read Section 6-611 to incorporate common law nuisance doctrines, a liquor licensed establishment that engages in unreasonable conduct disruptive to community life (for example, littering, violence, noise pollution, and similar activities damaging to community health, safety, and welfare) is also a public nuisance.

Sections 19-2600 through 2602 of the Philadelphia Code provide a mechanism to revoke the business privilege license of any establishment unreasonably interfering with a public right of three or more people through any activity or condition which violates the law. The Task Force uses these provisions to put nuisance bars out of business.

The Task Force uses civil remedies. The Task Force compliments existing criminal law enforcement efforts through the use of civil remedies. The Task Force obtains injunctions (orders to cease operations), and, in cases involving drug crime, forfeiture of the nuisance property. Further, the Task Force coordinates with private attorneys to assist community plaintiffs in filing civil damage actions against the persons who own or control targeted nuisance sites.

The Task Force monitors and controls past and potential nuisance sites. The Task Force works with communities to ensure that past nuisances do not return, that potential nuisances do not develop, and that legal pressure is brought to bear upon nuisances that do not yet merit a full litigation effort.

The Task Force works with civic organizations to develop a strong community presence that will suppress unlawful nuisance conduct. The Task Force acts to increase the flow of information both between various civic organizations in particular communities and between those organizations and law enforcement agencies. The Task Force helps communities identify and control nuisances before they become serious problems. The Task Force notifies the owners of sites of incipient nuisance activity. Such owners then have an opportunity to redress community grievances. Such notices provide a strong foundation for litigation against unresponsive owners. A notified owner who fails to act is unable to plead ignorance of the underlying wrongdoing with credibility when ultimately confronted in court.

In short, the Task Force works to eliminate public nuisances, and create systems to control past, and prevent future, nuisance development.

B. Specific Projects

1. Law Enforcement Coordination.

The Task Force is spear-headed by the District Attorney's Office and includes representatives from the State Police LCE (Liquor Control Enforcement), LCB, Health Department, Department of Licenses and Inspections, City Solicitor's Office, Police Department, and the Philadelphia Legislative Delegation. The Task Force is also organizing and coordinating with three subcommittees: (1) a committee of volunteer pro bono attorneys, (2) a city-wide committee of community organizations, and (3) a committee of concerned licensees. These subcommittees will report to and meet with the Task Force as necessary.

The foregoing group allows the Task Force maximum access to important information and personnel resources.

2. Nuisance Hot Line

The Task Force is working to set up a hot line answering service with multiple voice-mail boxes, allowing persons to leave messages and information regarding local nuisance activities. The message system will prompt callers to identify which part of the city they are calling from, along

with other useful information. The Task Force will analyze the calls and use the information gathered to monitor nuisance activity and to prepare corrective action.

3. Volunteer Panel

The Task Force is recruiting and training volunteer lawyers to represent and counsel community plaintiffs in nuisance cases. When volunteer lawyers have become skilled in handling nuisance cases, they will be deputized and allowed to prosecute nuisance cases as special assistant district attorneys. The creation of a volunteer panel will be an essential resource to cover the many nuisance cases that currently need attention.

4. Town Watch Organization

To assist communities in maintaining a presence at potential nuisances, the Task Force will educate communities regarding the creation and organization of town watches, which help to suppress nuisance activities and provide valuable surveillance. Town watches will be placed in contact with one another and organized on a city-wide level, to increase information sharing both among town watches, and between them and interested law enforcement agencies.

C. Conclusion

The foregoing represents the current blueprint for the Task Force. As these plans are executed, the goals and projects of the Task Force will be subject to further development.

Operation Crackdown: Teaching an Old Law New Tricks

Tom Merriman, Deputy Attorney General
to Ohio Attorney General Lee Fisher

Throughout the Twentieth Century, local law enforcement authorities from across the nation have used nuisance abatement laws to padlock bordellos, gambling houses, and illegal liquor establishments. Some have also attempted to employ padlock laws to shut down “dirty” book stores and pornographic movie houses. Although these latter flirtations with the First Amendment have often been the source of substantial attention and controversy, state nuisance abatement procedures have remained a relatively untapped resource in America’s crime fighting arsenal.

On July 15th, 1991, however, Ohio’s 74-year-old nuisance abatement law was awakened from its deep dusty sleep and unleashed as a potent weapon in the War on Drugs. It was on that date that Ohio Attorney General Lee Fisher launched OPERATION CRACKDOWN and became the first state attorney general in the nation, to our knowledge, to use a state nuisance abatement law to shut down a drug house.

After assistant attorneys general from our Cleveland office had obtained an ex parte Temporary Restraining Order, Cleveland Police SWAT and narcotics officers converged upon a targeted crack house on the city’s east side. The house had been the site of multiple undercover drug buys, raids, and arrests. Despite these repeated law enforcement interventions, however, affidavits from narcotics officers filed in support of the Motion for a Temporary Restraining Order indicated that the structure was continuing to function as a crack house. Within minutes after the house was secured by SWAT officers, the neighborhood erupted with the noise of whirring buzz saws and pounding hammers. It was quickly apparent to the crowd of nearly 150 people that had gathered outside that this was no ordinary drug raid.

The Ohio nuisance abatement law, not unlike many others throughout the country, empowers the state attorney general to obtain an ex parte temporary restraining order authorizing local law enforcement officers to forcibly enter, board, padlock, and immediately shut down an alleged drug house if it can be demonstrated to the satisfaction of the court that the premises have been the site of a felony drug violation. Although a T.R.O. can last up to fourteen days, the Ohio nuisance abatement law requires that a preliminary injunction hearing occur within ten days after the initial closure. At the preliminary injunction phase, the state must introduce evidence to support its allegation that the property constitutes a nuisance.

Rather than put neighbors at risk, our office has generally relied upon previous searches, surveillance, and testimony from police officers regarding undercover drug buys to establish the existence of a nuisance. Defendants (whether they are owners, occupants, tenants, or simply maintainers of the nuisance) are then afforded an opportunity to cross-examine the state’s witnesses

and to introduce their own evidence. At the trial phase, the attorney general may then seek both the imposition of a permanent injunction, which then closes the property for one year from the date of trial, and the award of court costs, attorney fees, and the cost of the closure.

At any time prior to the issuance of a permanent injunction, a property owner may present evidence to rebut the statutory presumption that they had knowledge of or, with reasonable diligence, could have discovered the existence of felony drug activity. However, even if a property owner satisfies this burden, the court cannot simply release the owner from liability, extinguish the closure order, and instruct the local police department to remove the boards from an alleged drug house. The Ohio nuisance abatement law effectively imposes a strict liability standard on individuals who own property that has been the site of felony drug violations during the period of their ownership. If a property owner proves that they had no knowledge of the illegal activity and could not have discovered it despite reasonable diligence, they must pay the court costs and post a bond equal to the value of the property that guarantees that felony drug activity will not resume on the premises. Only upon payment of the costs and posting of the bond may the court release the property to the owner and order the removal of the boards and padlocks.

THE VALUE OF NUISANCE ABATEMENT IN THE WAR ON DRUGS

For too long in cities throughout this country, the saga of the neighborhood drug house could be retold with interchangeable dates, times, and locations without altering the outcome of the story. In the typical case, neighbors and police officers alike dutifully play their role in the criminal justice process only to learn that their efforts to close down the neighborhood drug den have been completely futile. At the outset, the neighbors begin noticing a high volume of traffic in and out of a house with visitors never remaining for more than two or three minutes at a time. They report their suspicions to the local police department which adds the location to a long list of suspected drug houses requiring investigation.

As the illegal activity intensifies and becomes more flagrant, the neighbors pump up the volume on their complaints. Some even band together as surveillance teams chronicling drug transactions, copying license plate numbers, and regularly updating the police on the latest developments. The police respond with their own surveillance and undercover drug buys, which culminate in the execution of a search warrant and subsequent arrests for drug trafficking. But this is usually not the end of the story of the typical neighborhood drug house.

More often than not, the suspected drug dealer posts bail and is back in the same house on the same street dealing the same drugs to the same customers within twenty-four hours. Upon waiving their speedy trial right, a suspected drug dealer guarantees that their criminal case is quickly buried in the court's busy docket. Even if the suspect is convicted and sentenced to prison, there is usually an able-bodied cohort all too willing to operate the drug house while the now convicted drug dealer awaits parole from an over-crowded penal institution. Although the saga of the neighborhood drug house never ends, the moral of the story as taught to neighbors and police officers alike comes across loud and clear: no matter what steps you take, the neighborhood drug house will continue to operate without missing a beat.

While this depiction of the never-ending saga of the neighborhood drug house may seem unduly fatalistic, for millions of inner city Americans, it is the reality of the so-called War on Drugs. State nuisance abatement laws, however, have the ability to provide citizens with immediate, visible, and permanent relief from the chronic neighborhood drug house. Although the specific statutory abatement procedures vary from state to state, the availability of *ex parte* closure orders under these statutory schemes enables local law enforcement officials to immediately shut down illegal drug houses operating in their community.

Those who argue that the issuance of a closure order will simply force the drug dealer to move to another part of town miss the basic purpose behind this strategy. In addition to increasing the cost of engaging in illegal drug trade, the abatement of drug nuisances through the use of injunctive relief empowers citizens working with local law enforcement to take back their streets, house by house, block by block. By creating a realistic opportunity to actually shut down a neighborhood drug house, citizens are motivated to work with the police and become the eyes and ears of law enforcement.

This is not Pollyannaish wishful thinking. Rather, it is the actual experience of our office after shutting down 112 drug houses in just over two years. As a result of the tremendous media attention these closures have generated, the Cleveland Police Narcotics Unit has reported a substantial increase in the number of citizen complaints about drug houses. Through these citizen contacts, the Cleveland Police have been able to uncover numerous drug operations that had previously gone undetected.

At a most basic level, OPERATION CRACKDOWN and the nuisance abatement law have given people a reason to believe that they can actually assert some genuine control over a small piece of an otherwise overwhelming drug epidemic. Without that sense of hope, citizens give up and police lose their most vital resource in the community.

State Statutes Dealing with Drug Nuisance Abatement

OVERVIEW

Approximately 33 states have abatement statutes that directly address nuisances involving controlled substances. There are three types of possible drug abatement statutes. The first does not mention drugs. However, the definition of a nuisance is broad enough to undoubtedly encompass drug activity. Usually these statutes define nuisance as an activity injurious to a person's health or his or her enjoyment of property. The second type of statute includes drug activity in its definition of drug nuisance. However, the statute goes no further to provide a procedural method of prosecuting the claim. The third type of statute is the comprehensive drug abatement statute. This statute defines a drug nuisance; states who has standing to file a suit; lists the procedures for filing a suit; and provides remedies.

NOTES

While reading the following survey please note the following:

1. Many statutes provide costs for prevailing plaintiffs. Costs in its technical definition does not include attorney fees. See Cal. Health & Safety Code §11579. Some statutes provide for the plaintiff's costs in the action, which may or may not include attorney fees. See Colo. §16-13-311(3)(A)(III).
2. Many statutes provide an alternative to closing the property. The property is released to the owner upon the payment of costs, the abatement of the nuisance for a specified period of time, the posting of a bond and in the case of some statutes, the court finding the defendant acted in good faith. See Hawaii §712-1277. In the survey these sections are noted as "owner redelivery section" and are located in the comments to each statutory summary.
3. Many statutes provide that an abatement action will have precedence over most actions that are filed prior to the abatement action. See N.C. §19-3. In the survey these sections are noted as "priority of action section" and are located in the comments to each statutory summary.
4. Or. Rev. Stat. §105.585(1)&(3) provides that a lien created to recover costs of the abatement action is a superior lien to all other liens, mortgages and encumbrances.

ARKANSAS

ARK. STAT. ANN. §16-105-401 through §16-105-417

Drug Nuisance:

Any place used for the purpose of the unlawful sale, storing, manufacture, or use of a controlled substance is a common nuisance. §16-105-402.

Standing to Bring Suit:

The prosecuting attorney for the county, city attorney, or any citizen of the state or resident of the county §16-105-403.

Frivolous Pleadings:

Private citizens may be charged with costs if the court finds there were no reasonable grounds to bring the action. §16-105-410.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty

Up to \$5,000.00 based on the severity of the nuisance and its duration. §16-105-412(d).

Civil Action for Damages:

Yes. §16-105-402.

Attorney Fees for Prevailing Plaintiffs:

Yes. §16-105-402.

Comments:

If the court finds that the closing of the property will cause a nuisance or harm to the community, the court can charge the owner the rental value of the property. This is in lieu of closing the property. The money collected will go to a community prevention and education program. §16-105-412(c).

Owner redelivery section. §16-105-416(a).

CALIFORNIA

CAL. HEALTH & SAFETY CODE §11570 - §11587.

Drug Nuisance:

Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing or giving away a controlled substance. §11570.

Standing to Bring Suit:

The district attorney of the county, city attorney, or any citizen of the state residing in the county. §11571(a).

Frivolous Pleadings:

Private citizens shall be taxed with costs if the court finds the action was brought without any reasonable grounds or cause of action. §11578. The applicant of a temporary writ of injunction has to agree to pay the defendant a specified amount if the court later finds that the applicant was not entitled to the injunction.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty

Up to \$25,000.00 based on the severity of the nuisance and the duration. §11582(b) (This section will become operative on January 1, 1996.)

Civil Action for Damages:

The landlord of a closed property has to pay the relocation costs of displaced tenants. This includes moving costs, security deposits and other costs the court deems reasonable. §11573.5(d).

Attorney Fees for Prevailing Plaintiffs:

Plaintiff's costs are a lien against the property upon the granting of an order of abatement. §11579.

Comments:

The statute provides for the protection of witnesses. For example, the court does not have to give the names and

addresses of witnesses. §11573.5(a).
 Priority of action provision. §11575.
 Owner redelivery section. §11586(a).

COLORADO

COLO. REV. STAT. §16-13-303 through §16-13-314.

Drug Nuisance:

Every building used for the unlawful manufacture, cultivation, growth, production, processing, sale, or distribution or for storage or possession for any unlawful manufacture, sale or distribution of any controlled substance or any other drug which the possession of is an offense in the state. Every building used for the unlawful possession of any controlled substance, except for possession of eight ounces of marijuana. §16-13-303(c)(I)(II).

Standing to Bring Suit:

The district attorney or the attorney general with the consent of the district attorney. §16-13-307(4).

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

After plaintiff's costs are satisfied, then all who suffered bodily injury or property damage as a result of the nuisance can petition the court for damages. §16-13-311(3)(a)(IV)(B) & §16-13-314(1)(d)(II).

Attorney Fees for Prevailing Plaintiffs:

The court may order the sale of the property, in which case the proceeds shall go to the plaintiff's costs in the action. §16-13-311(3)(A)(III).

Comments:

None.

CONNECTICUT

CONN. GEN. STAT. ANN. §21a-259

Drug Nuisance:

Any store, shop, warehouse, dwelling house....frequently resorted to by drug dependent persons for the purpose of using controlled substances. §21a-259.

Standing to Bring Suit:

Not Provided.

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

This statute does not provide any procedural or remedial sections. §21a-259.

FLORIDA

FLA. STAT. ANN. §823.10 & §893.138.

Drug Nuisance:

Any place which is visited by persons for the purpose of unlawfully using any controlled substance or for the illegally keeping, selling, or delivering of the same shall be deemed to be a public nuisance. §823.10.

Any place or premises that has been used on more than two occasions, within a 6 month period, as the site of the unlawful sale or delivery of controlled substances may be declared a public nuisance, and such nuisance may be abated. §893.138(1).

Standing to Bring Suit:

Any employee, officer, or resident of the county or municipality may bring a complaint before an administrative board specifically set up to hear complaints regarding nuisances. §893.138(2).

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

Fla. Stat. Ann. §823.10 does not provide any procedural or remedial sections.

Fla. Stat. Ann. §893.138 is an enabling statute which allows counties and municipalities to establish administrative boards.

GEORGIA

GA. CODE ANN. §41-2-1 through §41-2-17.

Drug Nuisance:

No definition per se. However, there is a section which creates a public officer position. The public officer can

close properties upon personal observations or through law enforcement reports and evidence that drug crimes are taking place on the property. §41-2-10(b).

Standing to Bring Suit:

The District Attorney and private citizens that are specially injured from a public nuisance can file a petition for abatement. §41-2-2.

Frivolous Pleadings:

Not Provided.

Alternative Service:

Nonresidents and residents whose addresses are unknown can be served by the posting the complaint on a conspicuous part of the building. §4-2-12(c) & (e).

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

None.

HAWAII

HAWAII REV. STAT. §712-1270 through §712-1280.

Drug Nuisance:

Every place used for violating the drug laws. §712-1270.

Standing to Bring Suit:

The attorney general, county prosecutor, or any citizen of the county. §712-1271.

Frivolous Pleadings:

The court will tax the citizen costs if the court determines

there were no reasonable grounds to bring the action. §712-1274.

Alternative Service:
Not Provided.

Notice of Treatment Services:
Not Provided.

Preliminary Hearing:
Not Provided.

Appointment of Receiver:
Not Provided.

Civil Penalty:
Not Provided.

Civil Action for Damages:
Not Provided.

Attorney Fees for Prevailing Plaintiffs:
Yes. The plaintiff will receive costs and expenses for bringing a successful action. §712-1276.

Comments:
Owner redelivery section. §712-1277.
Priority of action section. §712-1273.

ILLINOIS
ILL COMP. STAT. ch. §40/0.01 through §40/13.

Drug Nuisance:
Any place at which or in which controlled substances are unlawfully sold, possessed, served, stored, delivered, manufactured, cultivated, given away or used more than once within a period of one year. §40/1.

Standing to Bring Suit:
The state's attorney or any resident of the county. §40/3(a).

Frivolous Pleadings:
Citizen plaintiff will pay costs if the court finds there were no reasonable grounds to bring the action. §40/4.

Alternative Service:
Not Provided.

Notice of Treatment Services:
Not Provided.

Preliminary Hearing:
Not Provided.

Appointment of Receiver:
Not Provided.

Civil Penalty:
Not Provided.

Civil Action for Damages:
Not Provided.

Attorney Fees for Prevailing Plaintiffs:
Costs for closing the place. §40/6.

Comments:
Owner redelivery provision. §40/9.

IOWA
IOWA CODE ANN. §657.1 through §657.7.

Drug Nuisance:
Places resorted to by persons using controlled substances. §657.2(6).

Standing to Bring Suit:
A civil action may be commenced by anyone who has been injured by the nuisance. §657.1.

Frivolous Pleadings:
Not Provided.

Alternative Service:
Not Provided.

Notice of Treatment Services:
Not Provided.

Preliminary Hearing:
Not Provided.

Appointment of Receiver:
Not Provided.

Civil Penalty:
Not Provided.

Civil Action for Damages:

Yes. §657.1.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

Owner redelivery section. §657.6.

KANSAS

KAN. STAT. ANN. §22-3901 through §22-3904.

Drug Nuisance:

Violating any law regulating narcotics or dangerous drugs is a common nuisance. §22-3901(g).

Standing to Bring Suit:

The attorney general, county attorney or city attorney. §22-3902(2).

Frivolous Pleadings:

Not Provided.

Alternative Service:

Yes. No notice required if the owner is not ascertainable. §22-3902(8).

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Yes. Up to \$ 25,000. §22-3904(1).

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Yes. §22-3904(3).

Comments:

None.

LOUISIANA

LA. REV. STAT. ANN. §13:4711 through §13:4716.

Drug Nuisance:

Conducting, carrying on or knowingly permitting the illegal manufacture, sale, or distribution of a controlled dangerous. §13:4711(a).

Standing to Bring Suit:

The attorney general, county attorney or city attorney or municipal attorney. §13:4712.

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Upon an application for injunctive relief, a hearing must take place within 24 hours after notice to the defendant. §13:4713(B).

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

Owner redelivery section. §13:4716 (A).

MAINE

ME. REV. STAT. ANN. tit. 17, §2741 through §2744, §2701 through §2706.

Drug Nuisance:

All places used for the illegal keeping or sale of narcotic drugs. §2741.

Standing to Bring Suit:

The county attorney or seven or more legal voters. §2741.

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Yes. See comments.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

Whoever keeps or maintains a nuisance can be fined \$200 to \$1000 dollars and imprisoned from 60 days to 11 months. §2742. If the owner knowingly permits the nuisance, the owner can receive the same fine and punishments as above. §2744.

Owner redelivery section. §2703.

MARYLAND**MD. REAL PROP. CODE ANN. §14-120.****Drug Nuisance:**

Assembled persons for illegally administering a controlled substance. Illegal manufacture or distribution of a controlled substance or controlled paraphernalia. Illegal storage of a controlled substance in sufficient quantity to reasonably indicate under all circumstances intent to manufacture, distribute or dispense. §14-120(a)(4)(i)(ii)(iii).

Standing to Bring Suit:

The state's attorney, county attorney or solicitor or any community association within whose boundaries the nuisance is located. §14-120(b)(1)(2)(3).

Frivolous Pleadings:

Not Provided.

Alternative Service:

In addition to service as required by the Maryland rules, within 48 hours of the complaint the plaintiff shall post conspicuously a notice on the property indicating the nature of the proceeding, the time and place of the hearing, and the name and telephone of the person to contact for additional help. §14-120(c)(1)(2)(i)(ii).

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

A community association can get costs and attorney fees. §14-120(h).

Comments:

None.

MASSACHUSETTS**MASS. ANN. LAWS ch. 139, §16 & §16A.****Drug Nuisance:**

A building, place, or house used for the keeping, sale or manufacture of a controlled substance. §16.

Standing to Bring Suit:

Attorney general, district attorney, chief of police, or ten or more legal voters. §16A.

Frivolous Pleadings:

If the court finds there were no reasonable grounds for the action, the plaintiff will pay costs. §12.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Yes. §16.

Comments:

Owner redelivery section. §11.

MICHIGAN

MICH. COMP. LAWS ANN. §600.3801 through §600.3835

Drug Nuisance:

Any building or place used for the purpose of the unlawful manufacture, transportation, sale, bartering or furnishing of any controlled substance is declared a nuisance. §600.3801.

Standing to Bring Suit:

The attorney general, prosecuting attorney, or any citizen of the county. §600.3805.

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Proceeds of the sale of any property go to the costs of the abatement. §600.3825(3) & §600.3835.

Comments:

Owner redelivery section. §600.3840(1).

MINNESOTA

MINN. STAT. ANN. §617.81 through §617.87.

Drug Nuisance:

Three (3) or more misdemeanor convictions or two or more convictions of which at least one is a gross misdemeanor or felony, within the previous two (2) years for unlawful sale or possession of controlled substances within the building. §617.87 Subd.2 (4).

Standing to Bring Suit:

The city attorney, county attorney, or the attorney general. §617.82.

Frivolous Pleadings:

Not Provided.

Alternative Service:

Nonresidents and residents whose addresses are unknown can be served by the posting the complaint on a conspicuous part of the building. §4-2-12(c) & (e).

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Yes. §617.84.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

Notice is provided by the court administrator to the owner of the property upon the conviction of a drug offense which occurred on his property. This information is also sent to the county recorder. §617.81 Subd. 3.

Owner redelivery section. §617.87.

MISSISSIPPI

MISS. CODE ANN. §95-3-1 through §95-3-25.

Drug Nuisance:

Any place where controlled substances are unlawfully sold, used, possessed or delivered. (A single sale will not constitute a nuisance.) §95-3-1(c).

Standing to Bring Suit:

The attorney general, district attorney, county attorney or any citizen of the county. §95-3-5.

Frivolous Pleadings:

If the court finds the action was brought without reasonable grounds, then costs will be taxed against the citizen plaintiff. §95-3-13

Alternative Service:

Notice by publication for unknown defendants. §95-3-17.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

There must be a hearing within 10 days upon the application for a injunction. §95-5-9.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Yes. §95-3-13.

Comments:

Owner redelivery section. §95-3-11.

MISSOURI

MO. ANN. STAT. §195.130

Drug Nuisance:

Any place used for the illegal use, keeping, or selling of controlled substances is a public nuisance. §195.130(1).

Standing to Bring Suit:

The attorney general, circuit attorney, or county attorney §195.30(2).

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

This nuisance is charged as a class C felony. §195.130(4).

NEW HAMPSHIRE

N.H. REV. STAT. ANN. §318-B:16

Drug Nuisance:

Any place resorted to by drug dependent persons or the purpose of using controlled drugs or which is used for the illegal keeping or selling of the same is deemed a common nuisance. §318-B:16.

Standing to Bring Suit:

Not Provided.

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

None.

NEW JERSEY

N.J. STAT. ANN. §24:21-35, §2C:33-12 & §2A:54A-2.

Drug Nuisance:

The maintenance of any building, conveyance or premises whatever which is resorted to by persons for the unlawful manufacture, distribution, dispensing, administration or use of controlled substances shall constitute the keeping of a common nuisance. §24:21-35.

Standing to Bring Suit:

Not Provided.

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Hearing within 10 days of filing for preliminary injunction. §2A:54A-2(b).

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

Owner redelivery section. §2A:54A-2(c).

NORTH CAROLINA

N.C. GEN. STAT. §19-1 through §19-8.3.

Drug Nuisance:

The establishment, maintenance, ownership or leasing of any place for the purpose of illegal possession or sale of narcotic drugs. 19-1. Every place which, as a regular course of business, is used for the purposes of the illegal possession or sale of narcotic drugs. §19-1.2.(6).

Standing to Bring Suit:

The attorney general, district attorney, or any private citizen of the county. §19-2.1.

Frivolous Pleadings:

The defendant can go against the plaintiff's bond for damages if the action was wrongfully brought. §19-2.1.

Alternative Service:

Handing to or leaving a copy of the temporary restraining order with any person in charge of or residing on the premises or the posting of the order upon one or more of the principal doors of the building. §19-2.3.

Notice of Treatment Services:

Not Provided

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided

Civil Penalty:

Forfeiture of the property. §19-6.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Yes. §19-6 & §19-8.

Comments:

A private citizen must post a bond for not less than \$ 1,000.00 for an issuance of a restraining order or injunction. §19-2.1.

Priority of action section. §19-3.

Owner redelivery section. §19-7.

OHIO

OHIO REV. CODE. ANN. §3719.10, §3767.01 through §3767.11.

Drug Nuisance:

Premises on which a felony drug violation occurred. §3719.10.

Standing to Bring Suit:

The attorney general, county attorney, city attorney or private citizen of the county. §3767.03.

Frivolous Pleadings:

A private citizen must post a bond of at least \$ 500.00 to cover the defendants damages if the court determines the case was wrongfully brought. §3767.03. The plaintiff will be taxed costs if the court finds that there were no reasonable grounds to bring the action. §3767.05(c).

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Within 10 days of the filing for a preliminary injunction. §3767.04(B)(1).

Appointment of Receiver:

Not Provided.

Civil Penalty:

Tax of \$300.00 for defendants who have not proved their innocence. §3767.08.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

Owner redelivery section. §3767.04(C).

Priority of action section. §3767.05(A).

OREGON

OR. REV. STAT. §105.550 through §105.600.

Drug Nuisance:

Any place where activity involving the unauthorized delivery, manufacture or possession of a controlled substance occurs or is kept. §105.555(c).

Standing to Bring Suit:

The county attorney, district attorney, attorney general or person residing or doing business in the county where the property is located. §105.560.

Frivolous Pleadings:

Costs will be taxed a private citizen who brings an action without reasonable grounds. §105.570(3).

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Yes. §105.595.

Attorney Fees for Prevailing Plaintiffs:

Yes. A lien created to recover these costs are a superior lien above all other liens, mortgages, and encumbrances. 105.585(1) & (3).

Comments:

Priority of action section. 105.575.

Owner redelivery section. 105.580.

PENNSYLVANIA

PA. STAT. ANN. tit. 42, §8381-§8392.

Drug Nuisance:

The use of any property which facilitates or is intended to facilitate a violation of The Controlled Substance Act, or similar act of the federal government or any other state.

Standing to Bring Suit:

The district attorney, the attorney general if requested by the district attorney, the solicitor for the county or municipality, a resident within 1,000 feet of the property, including a tenant of the property, the owner of the property or any community based organization.

Frivolous Pleadings:

Not Provided.

Alternative Service:

Posting notice on the premises if the owner cannot be located.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

The plaintiff is entitled to a hearing within 10 days of a motion for a preliminary injunction.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not less than \$500 nor more than \$10,000.

Civil Action for Damages:

Yes.

Attorney Fees for Prevailing Plaintiffs:

Yes.

Comments:

None.

RHODE ISLAND

R.I. GEN. LAWS §21-28-4.06(1)(2)(a)(b) & §10-1-1 through §10-1-10.

Drug Nuisance:

Any place which is used for the unlawful sale, use or keeping of a controlled substance shall be deemed a common nuisance. §21-28-4.06(1).

Standing to Bring Suit:

The attorney general or any citizen of the state. §10-1-1.

Frivolous Pleadings:

If the court finds there were no reasonable grounds for the citizen plaintiff to bring the action, the plaintiff shall pay costs.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Hearing within 20 days after filing of an application for temporary injunction.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Knowingly keeping and maintaining such nuisance, the defendant can be fined up to \$5,000. §21-21-4.06(2)(a). Knowingly permitting such nuisance can be fined up to \$20,000. §21-28-4.06(2)(b).

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Yes. §10-1-7.

Comments:

Owner redelivery section. 10-1-8.

TENNESSEE

TENN. CODE ANN. §29-3-101 through §29-3-111.

Drug Nuisance:

Any place in or upon which unlawful sale of any controlled substance occurs. §29-3-101(2).

Standing to Bring Suit:

The attorney general, county attorney or 10 or more citizens. §29-3-103 & §29-3-102.

Frivolous Pleadings:

Citizen plaintiffs are required to post a bond to satisfy the defendants costs and damages in the event that the court finds there was no probable cause for the action. §29-3-104.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

Priority of action section. §29-3-108.

TEXAS

TEX. CIV. PRAC. & REM. CODE ANN. §123.001-§125.045.

Drug Nuisance:

Knowingly maintaining a place where people habitually

go for the delivery or use of a controlled substance. §125.001.

Standing to Bring Suit:

A private citizen, attorney general, district, county or city attorney. §125.002(a).

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

Owner redelivery section. §125.002(B)(C).

UTAH

UTAH CODE ANN. §78-38-9 through §78-38-14.

Drug Nuisance:

Every building or place where the unlawful sale, manufacture, service, storage, distribution, dispensing, or acquisition of any controlled substance occurs. §78-38-9.

Standing to Bring Suit:

A private citizen, county or city attorney or any business residing in the county. §78-38-10.

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Attorney fees and costs are provided only where the defendant landlord or agent had actual notice and failed to take reasonable action within a reasonable time. §78-38-10(1).

Comments:

Protection of witnesses section. §78-38-12.

VIRGINIA

VA. CODE ANN. §18.2-258 through §18.2-258.1.

Drug Nuisance:

Any place with the knowledge of the owner, agent or lessor that is frequented by persons under the influence of a controlled substance or in possession, distributing or manufacturing of a controlled substance. §18.2-258(A).

Standing to Bring Suit:

The attorney for the commonwealth or any citizen of the county, city or town. §18.2-258.01.

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty

Yes. Not less than \$500.00. §18.2-258.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Not Provided.

Comments:

None.

WASHINGTON

WASH. REV. CODE ANN. §7.43.010-§7.43.130.

Drug Nuisance:

Every building or unit within a building used for the purpose of unlawfully giving away any controlled substance and any building or unit within a building wherein or upon which such acts take place. §7.43.010.

Standing to Bring Suit:

Not Provided.

Frivolous Pleadings:

Citizen applicant for a restraining order or injunction must post a bond of at least \$1000. This is to cover the damages or costs of a defendant wrongfully restrained. §7.43.040.

Alternative Service:

The preliminary restraining order or injunction may be served by posting the order in a conspicuous fashion on the doors of the property.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Yes. §7.43.130.

Attorney Fees for Prevailing Plaintiffs:

Yes. §7.43.100.

Comments:

Priority of action section. §7.43.050.

Owner redelivery section. §7.43.080(2).

WISCONSIN**WIS. STAT. ANN. §823.113.****Drug Nuisance:**

Any building or structure used to facilitate the delivery or manufacture of a controlled substance is a public nuisance. §823.113(1).

Standing to Bring Suit:

The city, town or village where the nuisance exists. §823.113(2).

Frivolous Pleadings:

Not Provided.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty:

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Yes. §823.115(1).

Comments:

Owner redelivery section. §823.115.

WYOMING**WYO. STAT. §6-6-201 through §6-6-209.****Drug Nuisance:**

Whoever maintains, uses or leases any structure for manufacture, possession, sale, or disposition of a controlled substance. §6-6-201.

Standing to Bring Suit:

The county attorney or any citizen of the county. §6-6-202.

Frivolous Pleadings:

If the court finds that a citizen brought an action without reasonable grounds, then costs will be taxed against the plaintiff. §6-6-203.

Alternative Service:

Not Provided.

Notice of Treatment Services:

Not Provided.

Preliminary Hearing:

Not Provided.

Appointment of Receiver:

Not Provided.

Civil Penalty

Not Provided.

Civil Action for Damages:

Not Provided.

Attorney Fees for Prevailing Plaintiffs:

Yes. §6-6-205 & §6-6-206.

Comments:

Owner redelivery section. §6-6-206.

Priority of action section. §6-6-203.