

Model Crimes Code Provisions to Protect Tenants and Neighbors

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Model Crimes Code Provisions to Protect Tenants and Neighbors

Policy Statement

Among the many difficulties faced by anti-drug organizations and citizens is the inability of law enforcement agencies to act effectively against drug traffickers. This is especially demoralizing and disempowering when concerned law-abiding citizens report drug trafficking activity to the police but nothing happens, because the police lack legally sufficient information to arrest the traffickers.

From a practical enforcement perspective, the remedy established in this section should prove to be extremely useful to local police in responding to such “tips,” and is also designed to make it easier for them to apprehend recidivist drug dealers. Specifically, the existence of a stay-away orders issued pursuant to Sections 1 and 4 (post-conviction and pretrial court orders that defendants stay away from the premises or location where they committed their drug distribution offenses) would authorize subsequent arrests based solely on probable cause to believe that the defendant had re-entered the prohibited location. In other words, the defendant’s mere presence at the prohibited location would be sufficient to authorize an arrest and lawful search incident thereto; it would not be necessary for police to see the defendant actually engage in the drug crime.

This feature is important in that some professional drug distributors have become adept at techniques designed to hide and disguise their drug trafficking activities. These techniques include the use of sophisticated hand signals, code words, hidden stashes, and the use of networks of underage “lookouts” to provide warning of the impending approach of law enforcement officers. These evasive techniques, however, would be largely unavailing if police only had to establish that the offender was present at the prohibited location.

In many cases, middle and upper echelon traffickers who employ street level distributors would be discouraged from retaining persons who are subject to a restraining order since these employees would face too great a risk of re-arrest, at least with respect to activities in and around the prohibited locations. It is intended that such restraining orders would be effective in discouraging persons from returning to open and notorious drug market places.

Furthermore, the systematic use of stay-away orders could lead to greater public awareness and increased mobilization campaigns designed to enlist the support of law-abiding citizens residing in and around high drug trafficking neighborhoods. Publicizing this new remedy would provide greater incentives for law-abiding residents to provide confidential tips to law enforcement authorities, since law enforcement could promptly respond and make lawful arrests without having to corroborate or otherwise confirm that the offender was actually engaged once again in drug distri-

bution activities. Rather, police responding to a tip could effect a lawful arrest and search incident there to merely on their observation that the defendant was at a prohibited location. In this way, the public eventually could be encouraged to provide more information to law enforcement precisely because they would see immediate positive results. Similarly, this remedy provides new opportunities for law enforcement to work with, organize and enlist the support of neighborhood watch groups and tenant associations, and to empower and mobilize the citizen groups with new tools with which to protect their own communities.

These provisions are principally designed to bar persons from returning to specified areas at which they have no legitimate business. This is a particularly important need since, in many cases, drug distributors who operate in neighborhood and public housing projects are not residents of these neighborhoods or leased residential premises. In these circumstances, the activities of these non-resident offenders would not be addressed by other provisions of other model state drug laws proposed by the Commission which, for example, would authorize or facilitate eviction proceedings. Indeed, these non-resident offenders simply enjoy no property right which could be subject to termination in a civil action to remove a tenant, although the proposed Model Expedited Eviction of Drug Traffickers Act does introduce an innovation by authorizing a "partial" eviction which would be tantamount a stay-away order issued pursuant to Sections 1 or 4.

In the pretrial context (Section 4), this proposed remedy addresses reality that too many drug distributors who are arrested are released on bail or their own recognizance and are soon back out on the streets dealing drugs again. Citizens, and police officers as well, are rightfully indignant when persons charged with serious drug trafficking crimes are released on their own recognizance pending trial and are allowed to go back to the very neighborhoods and locations of which they were arrested. This is especially troubling when the arrestee has no legitimate reason to return to the scene of the alleged crime. The remedy outlined in this section does directly address these widely held and deeply felt public concerns.

Communities' frustrations with what they feel to be an unresponsive criminal justice system is addressed in a different way by Section 5. In many states, legislatures have adopted laws which expressly recognize the rights of victims of crime. Unfortunately, these laws embrace too narrow a definition of the term "victim." This section is designed to repudiate the notion that drug distribution offenses are "victimless" crimes. Drug trafficking, by its nature, attracts and intensifies other forms of crime and violence. This section, which recognizes people who live or work in the vicinity of drug trafficking as victims of crime, is intended to give effect to an overriding objective of these model statutes: to redress the social as well as economic injuries caused by persons who engage in the unlawful manufacture, distribution, sale or possession with intent to sell or distribute controlled substances.

Highlights of the Model Crimes Code Provisions to Protect Tenants and Neighbors

- Creates a new sentencing option following a conviction or adjudication of delinquency, which allows a court as a condition of probation or parole to prohibit the defendant from entering in or upon the leased residential premises at which the drug-related crime occurred:
 - Provides for notice of removal order to a landlord or an agent and to the police department, and requires conspicuous posting of removal order at principal entrances of premises involved;
 - Provides that the court may forego issuing such an order following a conviction or adjudication only where the defendant or delinquent establishes that 1) he or she has no prior drug-trafficking or firearm offense and the instant offense was not committed for profit, or 2) by clear and convincing evidence that the issuance of such an order would constitute an injustice which overrides the need to protect the rights, safety and health of the other tenants and residents of the leased residential premises involved.
 - Provides that violations of removal orders subject the violator to civil or criminal contempt, revocation of bail, probation or parole, or any combination of such remedies. Authorizes police officers to arrest an individual where probable cause exists to believe the individual is violating such a removal order.
- Requires the owner or landlord of leased residential premises, and any tenant organization, to be notified whenever a person is convicted or adjudicated delinquent for a drug-related offense committed on the leased residential premises.
- Authorizes the court to issue a pretrial restraining order as a condition of bail which would prohibit a person alleged to have committed a drug-related crime from returning to any portion of the leased residential premises at which the crime was alleged to have been committed. Requires the court, in determining whether to issue such an order, to consider whether the person is a resident of the premises, whether the person has any lawful or legitimate business on or near the premises, or otherwise legitimately needs to enter the premises. (These “stay away” orders are similar to the ex parte restraining orders issued in domestic violence cases and which are designed to protect the victims of domestic violence.)
- Provides that any tenant, resident, tenant association or person living, working, or operating a business within 1,000 feet shall be deemed to be a “victim” of the defendant’s or juvenile’s unlawful activities committed on the leased residential premises. Expressly authorizes these persons or groups to provide a statement for inclusion in the presentence investigation report, and also to make an oral statement directly to the sentencing court explaining the impact of the crime on the quality of life in the affected residential premises.

Model Crimes Code Provisions to Protect Tenants and Neighbors

Section 1. Removal and Restraint of Certain Adult Defendants and Juvenile Delinquents Following Certain Convictions or Adjudications of Delinquency.

(a) Removal of Certain Dangerous Convicted Adults.

In addition to any other disposition authorized by law, where a person is convicted of any offense involving the manufacture, distribution, sale or possession with intent to sell a controlled substance, and the offense or act took place upon a residential premises, the court shall, except as provided in Subsection (h), issue an order prohibiting the person from entering in or upon the premises involved. Where the person convicted is a tenant to the premises, the order of removal and restraint shall have the same effect as if the person had been evicted and removed from the premises pursuant to [the Model Expedited Eviction of Drug Traffickers Act].

(b) Removal of Certain Dangerous Juvenile Delinquents.

Except as provided in Subsection (h), where a juvenile has been adjudicated delinquent for an act as provided in subsection (a), the court may, in addition to any other disposition authorized by law, issue an order prohibiting the juvenile from entering in or upon the premises involved. Nothing in this subsection shall be construed in any way to limit the authority of the court to order the juvenile [or his or her parents, guardian or any family member over whom the court has jurisdiction,] to take such actions or to impose such restraints as may be necessary to facilitate the rehabilitation of the juvenile or to protect public safety or to safeguard or enforce the rights of other tenants and residents of the premises involved. The court may commit the juvenile to the state [Department of Social Services][or other appropriate agency] for alternative residential placement as is practicable, or may retain jurisdiction and place the juvenile as a ward of the court.

(c) Duration of Removal Order. An order issued pursuant to this section shall remain in effect for such period of time as shall be fixed by the court, which shall

not be less than two years nor more than the maximum term of imprisonment or detention allowable by law for the underlying offense.

(d) Required Condition of Probation. Where the court issues a removal or restraining order pursuant to this section and the person is also sentenced to probation, the court shall make continuing compliance with the order issued pursuant to this section an express condition of probation. Where the person has been sentenced to a term of incarceration, continuing compliance with the terms and conditions of the order issued pursuant to this section shall be made an express condition of the person's release from confinement on parole.

(e) Specificity of Removal Order. An order issued pursuant to this section shall describe the premises from which the person has been removed and barred, including all buildings and all appurtenant land, with sufficient specificity to enable the person to guide his or her conduct accordingly, and to enable a law enforcement officer to enforce the order. The person shall be given a copy of the order issued pursuant to this section and shall acknowledge, in writing, the receipt of the order.

(f) Notice to Interested Persons of Removal Order. The court shall cause notice of any order issued pursuant to this section to be transmitted forthwith to the owner, landlord or agent of the premises involved. In addition, the court shall provide notice of the order to the police department having jurisdiction of the premises and appurtenant land from which the person has been removed and barred.

(g) Posting of Removal Order. The police department shall post a copy of any orders issued pursuant to this section in a conspicuous place or upon one or more of the principal entrances of the premises. Such posting shall be for the purpose of informing the public, and the failure to post a copy of the order shall in no way excuse any violation of the order.

(h) Exceptions to General Rule. The court may forego issuing an order pursuant to subsection (a) only where the defendant establishes at the time of sentencing:

(1) That he or she has not previously been convicted or adjudicated delinquent for any offense involving the unlawful manufacturing, distribution, sale or possession with intent to distribute or sell a controlled substance, or the unlawful use or possession of any firearm, under the laws of this state, the United States, or any state, and the defendant further establishes at the sentencing hearing by a preponderance of the evidence that the instant offense was not committed for profit; or

(2) By clear and convincing evidence that the issuance of an order pursuant to subsection (a) of this section would cause undue hardship to innocent persons and would constitute a serious injustice which overrides the need to protect the rights, safety and health of the other tenants and residents of the residential premises involved.

(i) Appeal by Prosecution. Where the court forgoes issuing an order pursuant to either of the provisions of subsection (h), the sentence imposed by the court order shall not become final for ten days in order to permit the appeal of the court's findings by the prosecution.

(j) Non-Exclusivity of Remedies. Nothing in this section shall be construed in any way to limit the authority of the court to take such other actions or to issue such orders as may be necessary to protect the public safety or to safeguard or enforce the rights of other tenants and residents of the premises involved.

(k) Supervised Visits. Notwithstanding any other provision of this section, the court may permit the person to return to the residential premises to pick up personal belongings and effects, and may by order restrict the time and duration and provide for police supervision of such a visit.

COMMENT

Section 1 authorizes the court to remove and restrain certain adult defendants and juvenile delinquents who have been convicted or adjudicated delinquent of drug distribution-type offenses. In many jurisdictions, courts are already authorized to issue such orders as a condition of probation. It is thought, however, that the better practice is to specifically authorize courts to impose such remedies, and to provide precise legislative guidance as to when these sanctions should be imposed.

Subsection (a) requires the court to issue an order prohibiting a person convicted of any offense involving the manufacture, distribution, sale or possession with intent to distribute or sell a controlled substance, from entering in or upon the residential premises where the offense took place. In the case of defendants who were tenants or residents of the premises, the effect of any such order would be the same as if the person had been evicted and removed from the premises pursuant to the [Model Expedited Eviction of Drug Traffickers Act].

Subsection (b) authorizes, but does not require, the court to impose a similar restraining sanction against a juvenile adjudicated delinquent for any drug offense listed above. It should be noted that nothing in this section is designed in any way to limit the authority of the court under any other statute or general principles of law to impose such sanctions or to take such actions as may be necessary to protect public safety or to facilitate the rehabilitation of the defendant or juvenile. The remedy set forth in this section will have little immediate impact where the defendant or juvenile is sentenced to a term of incarceration. However, pursuant to the provisions of subsection (c), the court order barring the person from returning to the premises at which the drug distribution offense was committed will remain in effect for a period up to the maximum term of imprisonment or detention which the court could have imposed at the time of sentencing. In other words, this restraining order could extend beyond any actual term of imprisonment. In that event, the effect of an order pursuant to this section would be to establish a required condition of such parole or release that the person stay away from the premises at which he or she committed the drug distribution offense. Accordingly, subsection (d) expressly provides that where the person has been sentenced to a term of incarceration, he or she must continue to comply with the terms and conditions of the stay-away order issued pursuant to this section as an express condition of release from confinement on parole.

In a closely related vein, subsection (d) provides that where the person upon conviction or adjudication of delinquency is sentenced to a probationary, noncustodial term, the defendant or juvenile shall be required to comply with the stay-away order issued pursuant to this section as an express condition of probation.

Subsection (e) requires that an order issued pursuant to this section be drafted with sufficient specificity to enable the defendant to comply, and to permit a law enforcement agency to enforce the order. From a practi-

cal enforcement perspective, the remedy established in this section makes it easier for police to apprehend recidivist drug dealers who return to their “place of business.” Specifically, the existence of a stay-away order issued pursuant to this section or Section (4)(pre-trial restraints of defendant by court order) would authorize subsequent arrests based solely on probable cause to believe that the defendant had re-entered the prohibited neighborhood or location. In other words, the defendant’s mere presence would be sufficient to authorize an arrest and lawful search incident thereto; it would not be necessary for police to see the defendant actually engage in the drug crime.

This feature is important in that some of the most dangerous professional drug distributors have become adept at techniques designed to hide and disguise their drug trafficking activities. These techniques include the use of sophisticated hand signals, code words, hidden stashes, and the use of networks of underage “lookouts” to provide warning of the impending approach of law enforcement officers. These evasive techniques, however, would be largely unavailing if police only had to establish that the offender was present at the prohibited location.

In order to enlist more active community participation, subsection (f) provides that the court must cause notice of any order issued pursuant to this section to be transmitted forthwith to the owner or landlord of the premises involved, as well as to the police department having patrol jurisdiction of that location. In addition, subsection (g) requires that a copy of any orders issued pursuant to this section be posted in a conspicuous place to inform the public. This section makes clear, however, that the fact that any such order is not posted or is otherwise removed or mutilated would not in any way preclude enforcement of the order, especially since the person who has been ordered to stay away would have been provided a copy of the order at the time of sentencing, and would be required to acknowledge in writing his or her receipt of the order. See subsection (e).

Subsection (h) Provides an exception to the general rule which would require the court to issue a stay-away order pursuant to subsection (a). Specifically, the court, in its discretion, may forego issuing a stay-away order only where the defendant establishes at the time of sentencing that he or she is not a repeat drug offender and has not previously been convicted of any firearms offense under the laws of this state, United States or any other state. The defendant bears the burden of establishing this fact by preponderance of the evidence.

Even where the court is satisfied that the defendant is not a repeat offender, the court is under no obligation to refrain from imposing the stay-away order.

Alternatively, subsection (h) provides that the court is authorized, in the exercise of its discretion, to forego issuing the stay-away order where the defendant has established by clear and convincing evidence that the issuance of a stay-away order would cause undue hardship to innocent persons and would constitute a serious injustice which overrides the need to protect the rights, safety and health of the other tenants and residents of the residential premises. This exception will only rarely be used. Under this formulation, the presumption that the court would issue a stay-away order would not be overcome by the fact that the defendant is a first offender, or that the mitigating factors at sentencing preponderate or even substantially outweigh any aggravating factors. Similarly, the criteria of “serious injustice” necessarily directs the court’s attention to the character of the defendant. Rehabilitation, however, is not the goal to be achieved by the exception; rather, the overriding purpose of this statutorily presumed sanction is to guarantee to that victims of the defendant’s drug trafficking activities (see Section 5) are protected from any continuing criminal activities committed by this defendant or juvenile. It is thus intended that this would only apply in exceptional cases where the issuance of the stay-away order will not serve any specific deterrent or incapacitation purpose.

In order to insure that these exemptions are only rarely used in appropriate cases, subsection (i) expressly authorizes the prosecuting authority to appeal the court’s determination to forego issuing an order otherwise required pursuant to subsection (a). This subsection’s further provision that such order by the court will not become final for ten days in order to permit the appeal is designed to ensure compliance with any interpretation of either the state or federal constitutional guarantee against double jeopardy.

Section 2. Contempt.

Violation of any removal or restraining order issued pursuant to this [Act] shall subject the person to civil contempt, criminal contempt, revocation of bail, probation or parole, or any combination of these sanctions. A law enforcement officer may arrest a person when an officer has probable cause to believe that the person has violated the terms of any removal or restraining order issued pursuant to any provision of this [Act].

Section 3. Notification of Certain Convictions or Adjudications to Owner or Landlord of Leased Premises.

Where a defendant is convicted of any offense involving the manufacture, distribution, sale or possession with intent to distribute or sell a controlled substance, or where a juvenile is adjudicated delinquent for an act which if committed by an adult would constitute any such offense, the prosecutor shall ascertain whether the offense or act took place upon leased premises. Where the prosecutor ascertains the offense or act did so occur, it shall cause notice of the conviction, plea or adjudication to be transmitted forthwith to the landlord owner or agent, and to any tenant association representing the tenants or residents of the premises.

COMMENT

This section requires the prosecuting authority to provide notice to a landlord or owner of a premises where a defendant is convicted for any drug distribution-type offense occurring on such leased premises. Providing such notice will afford the landlord the opportunity to take such appropriate actions as may be authorized pursuant to the [Model Expedited Eviction of Drug Traffickers Act]. Where the court has issued a stay-away order pursuant to Section 1, the need for a landlord or a tenant association to initiate a civil eviction action would be superfluous, since the effect of the stay-away order would be to achieve the benefits of a complete or partial eviction as may be authorized pursuant to the [Model Expedited Eviction of Drug Traffickers Act].

Section 4. Pretrial Restraints of Defendant By Court Order.

(a) Grounds for Restraining Order. When a juvenile or adult is charged with any offense which involves manufacturing, distributing, selling or possessing with intent to distribute or sell a controlled substance, or the unlawful possession or use of a firearm, and he or she is released from custody before trial on bail or personal recognizance, or is released to the custody of his or her parents, guardian, custodian or public or private agency, the court authorizing the release shall as a condition of release issue an order prohibiting the person from entering in or upon the premises, location, or specified area at, upon or near which the offense is alleged to have been committed. Where the court finds that the person lawfully resides at the premises or has any lawful or legitimate business on or near the premises, location or specified area, or otherwise legit-

imately needs to enter such premises, location or area, the court shall not issue an order pursuant to this section unless the court is clearly convinced that the need to bar the person outweighs the person's interest in returning to the premises, location, or area.

(b) Specificity of Restraining Order. A pretrial restraining order pursuant to this section may be issued at any time, and shall describe the premises, location or area from which the person has been barred, including all buildings and all appurtenant land, with sufficient specificity to enable the person to guide his or her conduct accordingly and to enable a law enforcement officer to enforce the order. Where appropriate, the court may append a map depicting the streets, blocks, buildings or land included within the order. The person shall be given a copy of the restraining order and any appended map, and shall acknowledge in writing the receipt thereof.

(c) Notice to Interested Persons. The court shall provide notice of the restraining order to the law enforcement agency which made the arrest and to the prosecutor. In addition, where the order prohibits a defendant or juvenile from entering in or upon any building, business premises, school or other public or private or commercial premises, the court shall cause notice of the restraining order to be transmitted to the owner of such property or to his or her appropriate agent, or, in the case of a school or any government-owned property, to the appropriate administrator, and to any tenant association representing the residents of any leased premises.

(d) Notice of Modifications of Orders. The court shall immediately notify the appropriate law enforcement agency in writing whenever an order issued pursuant to this section is stayed, modified or vacated.

(e) Non-Exclusivity of Remedies. Nothing in this section shall be construed in any way to limit the authority of the court to impose such additional restraints or conditions of pretrial release necessary to protect the public safety or to ensure the person's appearance at trial.

COMMENT

Section 4 authorizes a court to issue a pretrial restraining order barring a defendant or juvenile from returning to the scene of the alleged drug transaction. The benefits of such an order are generally described in the comments of Section 1.

This section expressly provides that when the court determines that the person lawfully resides at the premises or otherwise has legitimate business at the premises or location, the court may not issue a stay-away order unless it is clearly convinced that the need to bar the person outweigh the person's interest in returning to the premises, location or area. This provision is consistent with the presumption of innocence which applies in all criminal proceedings.

This remedy would provide new enforcement tools to make it easier to apprehend recidivist drug distributors, and provide an important new mechanism by which law enforcement agencies can enlist the support and cooperation of citizens, community leaders, tenant associations and other groups. When the person ordered pursuant to this section to stay away from a specified area is rearrested for violation of that order, the offender would be subject to revocation of bail and to either civil or criminal contempt pursuant to Section 2.

Section 5. Community Impact Statements.

(a) Victims of Drug Crimes. When a person is convicted or adjudicated delinquent for any offense involving the unlawful manufacture, distribution, sale or possession with intent to distribute or sell a controlled substance, the following shall be deemed to be victims of the offense:

- (1) any landlord or owner of the premises upon which the offense occurred;
- (2) any tenant or other person who resides within 1,000 feet of the site of the offense;
- (3) any tenant association representing tenants residing within 1,000 feet of the site of the offense;
- (4) any person who is employed full or part-time at a business premises within 1,000 feet of the site of the offense; or
- (5) any person who owns or operates a business premises which is located on or within 1,000 feet of the site of the offense.

(b) Rights of Victims. All victims, as defined in subsection (a), shall be permitted to provide a statement for inclusion in the presentence investigation report, and shall also be permitted to make an oral statement directly to the sentencing court concerning the impact of the crime.

COMMENT

Subsection (a) broadens the definition of a victim to include any landlord or owner of a property at which a drug distribution-type offense was committed, any tenant or other person who resides within 1,000 feet of the site of the offense, any tenant association representing any such tenant, any person employed full time or part time at a business premises within 1,000 feet of the site of the offense, and any person who otherwise owns or operate a business premises within 1,000 feet of the site of the offense. By recognizing these individuals or entities as victims of the offense, they are thereby entitled to those rights and privileges accorded by constitution or by statute to the victims of crime.

Subsection (b) provides that any such victim shall be permitted to provide a statement for inclusion in the presentence investigation report, and shall also be permitted to make an oral statement directly to the court at the time of sentencing concerning the nature and impact of the crime. Nothing in subsection (b) should be construed as limiting the nature or extent of the rights accorded crime victims pursuant to any other law.

By including this important albeit somewhat symbolic feature, prosecuting authorities would be authorized to reach out to affected members of the community in developing community impact statements, and thereby could help to assuage community concerns about the drug crisis and help to galvanize public opinion and community-wide support for programs designed to address the many problems attendant to the illicit drug trafficking trade.

Section 6. 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 7. Effective Date.

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