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RIDDING NEIGHBORHOODS OF DRUG HOUSES
IN THE PRIVATE SECTOR

Final Report

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Drugs, Alcohol, and Crime Program

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Criminal Justice Section

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ABSTRACT

Our exploratory project provides one of the first systematic looks at how drug abatement laws are fashioned and used across the country. Based on our national telephone survey with officials in the 50 largest cities, statutory analysis, study of five sites, examination of sampled cases, and surveys with residents and landlords, we draw six conclusions.

(1) There are a variety of criminal and civil state statutes, laws, and local ordinances available to assist communities in ridding neighborhoods of drug houses in the private sector. Many communities are using these in innovative and creative ways.

(2) Among the five sites studied, all reported successes in ridding neighborhoods of drug houses in the private sector. Cases we sampled in each county documented many of these successes.

(3) Residents in neighborhoods in which a drug house was targeted for abatement actions often knew of the city's efforts, supported those efforts, and perceived that the abatement action reduced the size of the drug problem in their neighborhood.

(4) Many landlords who were targeted by the cities' abatement actions were surprisingly supportive of those actions and willing to take the necessary steps to cease drug dealing in their buildings, even at great personal cost to them. Most, however, would have preferred a more cooperative approach from the city and better communication about the problem prior to the officials taking the abatement action.

(5) Resources are key in aggressive city-wide drug abatement efforts and restrict the use of available statutes, laws, and civil and criminal actions. Lack of resources also severely limit follow-up efforts to monitor compliance with drug abatement actions.

(6) The long-term effects of drug abatement actions in permanently driving drug dealers out of business are largely unknown, as are the long-term effects on the quality of the housing stock in the cities studied. There is evidence that cities need to go beyond shutting down "problem" buildings and work with residents and landlords in order to refurbish drug-infested neighborhoods to truly achieve permanent positive effects.

CHAPTER 1

INTRODUCTION

In a remarkably short period of time, drug problems have skyrocketed, especially within poor inner-city neighborhoods. Although there is little empirical data available on the amount of devastation drugs have inflicted on the fabric of communities, there is substantial concern that drugs have destroyed many communities and seriously damaged others. Media reports, city officials, and concerned citizen groups present a disturbing picture of the impact of drug abuse. Its effect on the commission of homicide--one of the most heinous crimes we know--is frightening. Drugs have contributed to an escalating homicide rate in Washington, D.C. (Philadelphia Inquirer, 1989), Queens, N.Y. (New York Times, 1988a), and other large cities. As alarming as these homicide rates are, the harm inflicted by abuse of drugs extends beyond individual victims and too often creates a community inundated with, and incapacitated by, fear.

Media accounts suggest that residents of some areas are afraid to leave their homes due to battles between rival drug gangs (U.S. News and World Report, 1989). Even pre-teen youths are being corrupted by the large sums of fast money to be made in the drug trade (Newsweek, 1988). Sadly, drug use and the drug culture are destroying entire families (Rolling Stone, 1989; New York Times, 1987).

The relationship between drugs, the accompanying violence, and low-income housing communities is fairly straightforward. These neighborhoods are ideal sites in which drug houses can flourish,

due to their isolation from the rest of society (Washington Post, 1989a). Drug traffickers attempt to establish "turfs" or areas of domain within cities where they control the sale of drugs and reap the profits. Segregated low-income neighborhoods, unfortunately, meet their needs very well (Washington Post, 1988a, 1988b). Children are recruited and paid to be "lookouts," and older youths become dealers, often turning profits over to the parent to pay rent or buy food (Washington Post, 1989c). Even children who are not being drawn into the drug trade are being affected. As a matter of course they are taught not to play with used syringes; to avoid playing outdoors; and to lie down on the apartment floor when gunshots are heard. The result is often the destruction of a sense of community; heightened fear (Star & Tribune, 1988); mistrust of one's neighbors (Skogan, 1987); and feelings of powerlessness (Skogan, 1986).

The drug problem exacerbates an already bad housing situation in low-income communities. In cities throughout the United States, there is a serious shortage of decent, safe housing that low-income and moderate-income families can afford (National Housing Task Force, 1988). Rent levels have been rising steadily, unprofitable units have been removed from the stock, and buildings in some urban neighborhoods have been transformed from low-income to high-income housing through extensive renovations (Apgar, 1988; Turner, 1988). A common way for traffickers to operate is to take over one or several apartments or houses in an area and use them as bases for drug sales. Such drug houses are often associated

with violence, property crime, and social disruption (Rolling Stone, 1989). Because of the shortage of low-income housing, many tenants have no alternative but to remain, even when their buildings or neighborhoods are invaded by drug dealers.

The negative impact of drugs on low-income neighborhoods is becoming apparent, and neighborhood residents are not the only victims. The entrenchment of drug traffickers in private low-income residences has also created a difficult and dangerous situation for law enforcement officers. Incidents of violence perpetrated against officers patrolling in such neighborhoods are occurring at alarming rates. For example, in the spring of 1989, an officer was killed in Alexandria, Virginia, during an arrest of a drug dealer in a low-income residence. The imminent danger posed by drug houses in low-income housing has motivated police, neighborhood residents, and local political leaders to join together to rid neighborhoods of these houses.

Communities, police and local governments are now fighting back, and working together in ways previously unheard of in neighborhoods traditionally suspicious of both police and the political structure. From New York, Philadelphia and Washington, to Minneapolis, Portland and Seattle, residents have aided and augmented police efforts to rid their neighborhoods of drug houses. Neighbors have monitored and reported drug transactions, patrolled areas cleaned up by police sweeps, and even harassed dealers and buyers, sometimes placing themselves at great risk (Davis, Smith, and Hillenbrand, 1991; Newsweek, 1988; Star &

Tribune, 1988; The Philadelphia Inquirer, 1988; Office of Neighborhood Associations, Crime Prevention Program, 1987; Hayeslip, 1989).

Among the newest and potentially most powerful weapons municipalities and states have developed in the war on drugs in the private-housing sector are new drug house-specific municipal ordinances and new applications of already-existing ordinances and state laws pertaining to "public nuisance" or "public safety." In this chapter, the general term "drug house law" will be used but it is intended to include both ordinances and statutes specifically designed to close down drug houses and the more general ordinances and statutes being used for this purpose.

Drug House Laws and Ordinances

Drug house laws vary in content and form. For example, some involve civil remedies, some criminal sanctions; some may be brought by neighborhood residents, while others require the intervention of the police, or city or district attorney. To illustrate the variety of laws being used, we provide a brief description of some of the efforts being made by localities around the country to stop drug dealing in private-sector housing.

Portland, Oregon. In Portland, the Office of Neighborhood Associations Crime Prevention Program has been a national leader in the fight of communities against drugs. The Program organized neighborhood efforts to track and report drug activity, which eventually led to development of a special reporting form that

provides police with information similar to that required for a search warrant. The Program also organized residents to survey buildings where drug dealing was occurring for city code violations and successfully lobbied the police and district attorney for increased patrols and increased investigations of drug activity. In 1987, the Program was responsible for enactment of a drug-house ordinance which enables the city to impose civil penalties on owners of properties used chronically as bases for drug dealing. In just the first month of its enactment, this ordinance resulted in 12 civil suits to close drug houses, 10 of which were successful. Moreover, city officials began discussions with an additional 30 property owners.

Denver, Colorado. Citizens in North Denver monitored trafficking operations in drug houses. Using the city's nuisance ordinance, they were able to stop these operations by evicting 200 people from September 1988 to May 1989 (Gottlieb, 1989; Weingart, 1990).

Ohio. Project Dunamis, started by the Concerned Christian Men in Dayton, Ohio, takes a unique approach that combines evictions with community organizing. The Project takes advantage of an existing state law under which a dwelling can be declared a nuisance if activities there are "obnoxious or offensive" or endanger the health and safety of others. Under the program, community residents file a civil lawsuit asking the court to declare the drug house a nuisance. If the court fails to act on the matter within 10 days, the citizens can seek a preliminary

injunction that could result in shutting down the house and possible forfeiture of the property. A recent state appeals court decision upheld the Project's use of the nuisance law.

Project Dunamis is unique in that it is making a concerted effort to train residents of Dayton and other Ohio cities to apply the Project's methods in their own neighborhoods. Concerned Christian Men has trained 400 people in filing (and winning) nuisance suits against drug houses. Thus, the Project has the potential to have a sizeable impact.

New York City. In New York City, neighborhood residents have used the city's Bawdy House Law, enacted in 1840 to control prostitution, to evict drug house tenants. This law allows anyone who lives within 200 feet of a "bawdy" house to sue for eviction and requires that the landlord pay the plaintiff's legal fees. The Manhattan District Attorney also has used the law to close drug houses (Pooley, 1989; Williams, 1986; Weingart, 1990).

Alexandria, Virginia. When police in Alexandria notify the Commonwealth's Attorney that there is evidence to believe that a certain residence is being used as a drug house, the Commonwealth's Attorney sends written notice to the landlord. The notice states that any further evidence of illegal narcotics activity will result in a warrant for the landlord's arrest, under a state law specifying drug activity as a public nuisance. The landlord is further notified that proceedings may be initiated whereby any ownership interest in the property may be forfeited to the state

or federal government. As a result of these efforts, at least 48 evictions have occurred since March 1989.

Sacramento, California. After arresting a tenant on a drug violation, the police notify the landlord to clean up the building and make it "liveable" for the other tenants. If necessary, the landlord is told to relocate the tenants and close up the building. The California state "nuisance" law gives the police this authority.

The above examples are only illustrative of the different types of drug house laws being used. Other communities--several of which are described in-depth in this report--are making concerted drug abatement efforts as well. The laws they are using are significant in several respects. First, they give property owners a strong incentive to prevent drugs from being sold on their premises. Second, they provide some protection to property owners who might otherwise be subjected to intimidation or retaliation when they try to evict dealers on their own initiative. While some advocates see drug laws as a positive step to rid neighborhoods of drug houses, others are concerned such laws may violate due process rights. And, indeed, not all such laws have been upheld by the courts. For example, Trenton, New Jersey passed a drug house ordinance in 1988. A test case resulted in the ordinance being struck down because it conflicted with rights given by the state to tenants facing eviction proceedings.

Thus, there are serious questions about the legality of drug house laws. Moreover, questions of fairness may be raised in

instances where an entire family is evicted because of the actions of one person. Also, it is not clear whether the laws are effective in ridding a community of drug houses, or whether the drug house simply re-emerges in another location down the street.

It is important that local officials--in their eagerness to rid neighborhoods of drug houses--proceed fairly within the constraints of due process. The issues are complex and need careful and considered thought. For example, if one member of the household is convicted of drug dealing and placed on probation, who in the household, if anyone, should be evicted--the perpetrator or the entire family? This is not an easy question, and various perspectives need to be considered. The issue becomes even murkier when strong evidence exists that an individual household member is dealing drugs, but there has not been any criminal conviction. What standard of proof is sufficient to evict? Given the shortage of low-cost rental housing, is eviction of families likely to exacerbate homelessness and increase the pressures on shelters and service providers? How effective are the eviction proceedings and what is their impact on communities? These are important legal and policy questions which need to be carefully considered in communities considering drug abatement efforts.

RESEARCH OBJECTIVES

Attempts to rid neighborhoods of drug houses are still very new. We know little about what communities are doing outside of

those efforts which receive federal support or which happen to draw the attention of the national media. While efforts to close down drug houses hold promise for improving neighborhoods in which low-income families reside, they also have potential dangers for infringing on due process rights if they not enacted and implemented properly. Therefore, the legality and effects of such efforts ought to be rigorously evaluated. But first we need to know more about the kinds of responses communities are undertaking and how the courts have responded. Our study was exploratory and lays the foundation for subsequent formal evaluations. Three key questions were addressed:

(1) What types of laws are being used to close down drug houses? How widespread are their use? Are they general "nuisance" or "public safety" laws or laws specifically designed for drug houses? Who is responsible for implementing them? How do they work? What sanctions are imposed? What are the legal remedies?

(2) Which type of drug house ordinances and laws have been upheld, and which struck down, by the courts? To what extent do they conflict with tenants' rights legislation or due process rights? Can laws be drafted so that they do not infringe on these rights? If so, how should they be drafted?

(3) Do drug house laws make a difference to the communities in which they are enacted? How successful are they at ridding neighborhoods of these houses? Do they expose landlords or neighbors to reprisal by dealers? Do evictions reduce drug trafficking or merely move it to other locations in the neighborhood? Do they enhance the quality of life for local residents? Do they have any unintended results, such as the eviction of innocent family members or neighbors who reside in the drug house?

To address the above questions, we conducted a national statutory analysis; a telephone survey with officials in the 50 largest cities; site visits to five abatement sites to describe

their programs and provide a preliminary assessment of their effects; and telephone surveys with residents and landlords in the five sites to gain their perspectives on the drug abatement efforts in their community. The five sites were selected from the telephone survey to represent different approaches to drug abatement in private-sector housing. Further, we only selected sites in which the city had actually moved to abate the problem in at least 20 cases to allow us to examine outcome data.

CHAPTER 2

REVIEW OF NATIONAL DRUG ABATEMENT EFFORTS: RESULTS OF THE TELEPHONE SURVEY AND OVERVIEW OF THE STATUTORY ANALYSIS

In this chapter, we present findings from the national telephone survey with officials in the 50 largest cities. This is followed by an overview of the statutory analysis of the laws and statutes states have available to rid neighborhoods of drug havens in private-sector housing. The full statutory analysis is contained in Appendix A.

The National Telephone Survey

We attempted interviews with officials in the nation's 50 largest cities and were successful in completing interviews in all but one. Of the 49 officials interviewed, 16 (33%) reported that their city had no special programs or were using no particular statutes to abate drug activity in private-sector housing. The majority--67%--told us about their drug abatement efforts in limited detail. Strategies and approaches differed considerably in terms of the agencies and officials involved; the statutes/laws/ordinances being used; the intended targets; the level of effort; and their enforcement procedures. When asked about the type of laws/ordinances/statutes being used, 55% reported using public nuisance/drug nuisance statutes; 21% were using forfeiture laws; 6% were using zoning ordinances, and 18% were using various "other" civil codes. Most cities (85%) utilized

civil enforcement procedures; only 6% employed criminal procedures, and 9% used a combination of civil and criminal procedures. From the surveys, it was clear that many cities are making strides to reduce drug activity in private-sector housing by employing a wide variety of approaches. Our statutory analysis suggests that cities have available a diversity of laws to assist with those efforts.

The Statutory Analysis

Various types of statutes are used to control drug activity on private premises. Not all specifically mention drugs (e.g., general "nuisance" statutes, or general forfeiture statutes), or premises (e.g., criminal statutes proscribing illegal drug activity). It is clear, however, from the numbers of laws that are both drug-specific and premise-specific that legislators believe drug activity on private premises is sufficiently serious to warrant special attention.

Drug-specific, premise-specific laws empowering government officials to rid premises of drug activity generally fall into three categories: (1) nuisance abatement statutes; (2) illegal establishment statutes; and (3) forfeiture statutes. Each has advantages and disadvantages. Forfeiture may offer the most permanent solution -- but also be the most difficult to obtain. Arrests under illegal establishment laws may be the swiftest, but, in the end, offer the most temporary relief. Abatement may have the lowest evidentiary requirements but require the most careful follow-up monitoring of the property.

Court challenges to the various types of statutes have generally been unsuccessful, although broad use of forfeiture statutes has been viewed with considerable concern by some courts.

Abatement Statutes

Approximately half the states designate buildings, dwellings, or premises used for illegal drug activity "nuisances" subject to abatement through civil actions against property owners or other individuals responsible for drug activity there. While most of the statutes authorize preliminary injunctions requiring immediate vacation of the premises, permanent injunctions are issued only after judicial hearings at which the parties have been allowed to participate. The most common sanction is closure of the premises for up to a year. Failure to comply with abatement orders constitutes contempt of court in most instances and may result in a fine and incarceration, usually up to six months. Many states provide for closure orders to be cancelled upon posting of a bond for property value, such bond to be forfeited for further illegal drug activity on the premises.

Illegal Establishment Statutes

Approximately three-fourths of the states have "illegal establishment" laws making it illegal to keep dwellings or premises knowingly "resorted to" by persons using or selling controlled substances or "for the purpose" of using or selling controlled substances. Some states designate the crime a felony, others a

misdemeanor. Sentences vary considerably, with maximum terms ranging from a low of three months to a high of 20 years and maximum fines from \$500 to \$100,000.

Forfeiture Statutes

The federal government and most states authorize criminal or civil forfeiture of real property used to facilitate certain types of illegal drug activity or derived from proceeds of such activity. Authorization is usually limited by offense level, type of drug, amount of drug, or value of the drug. Forfeited property (or proceeds from the sale of the property) often goes directly to the involved law enforcement agency or to special funds. Most criminal forfeiture statutes are "racketeering," "organized crime," or "criminal enterprise" statutes directed against property owners convicted (or expected to be convicted) of a "pattern" of felonious drug trafficking. Civil forfeiture actions require only that the state show that the property has been involved in illegal drug activity. The state generally favors civil forfeiture since the government's burden of proof is lower than in criminal forfeiture and property may be forfeited even if the property owner is not available or if the illegal activity is conducted by a tenant.

Statutes Used for Ridding Premises of Drug Activity

<u>State</u>	<u>Abatement</u>	<u>Offense</u>	<u>Civil Forf.</u>	<u>Crim. Forf.</u>
Alabama		X	X	
Alaska		X		
Arizona	*		X	X
Arkansas	X			
California.	X		X	
Colorado	X		X	X
Connecticut			X	X
Delaware	*	X	X	X
Florida	X	X	X	X
Georgia			X	X
Hawaii		X	X	
Idaho			X	X
Illinois	X	X	X	X
Indiana		X		
Iowa	X	X		
Kansas	X		X	
Kentucky			X	
Louisiana			X	X
Maine	X	X	X	
Maryland		X	X	
Massachusetts	X	X	X	
Michigan	X	X		
Minnesota	X	X	X	
Mississippi	X	X	X	X
Missouri	X	X	X	X
Montana			X	
Nebraska		X		
Nevada		X	X	
New Hampshire			X	
New Jersey	X	X	X	
New Mexico				
New York		X	X	X
N. Carolina	X	X		X
North Dakota			X	
Ohio	X		X	X
Oklahoma		X	X	
Oregon	X	X		
Pennsylvania			X	
Rhode Island		X	X	X
South Carolina			X	X
South Dakota			X	
Tennessee	X	X		X
Texas	X		X	
Utah	X		X	X
Vermont			X	
Virginia	X	X	X	
Washington	X	X	X	
West Virginia		X	X	
Wisconsin	X	X	X	
Wyoming	X	X	X	

*"Illegal activity" is a nuisance.

CHAPTER 3

MILWAUKEE'S DRUG ABATEMENT EFFORTS

Milwaukee's drug abatement effort is a well-organized and aggressive effort to rid problem locations of drug dealing. It is the best-financed program we visited, receiving \$500,000 in state funds. In the program's 18-month history, more than 450 properties have been targeted by the city's Drug Abatement Team--an inter-agency task force consisting of police, staff of the city attorney's office, building inspectors, and members of community organizations. To date, nearly nine in ten property owners who have been notified by the Team that a nuisance exists have abated the problem without need for the city to file a civil suit.

How the Team Began

Milwaukee's west side is a predominantly Black residential section of the city, consisting of a mix of single family homes, duplexes, and a scattering of large apartment complexes. During the early 1980s Milwaukee suffered a serious slump caused by the wholesale loss of manufacturing jobs that had traditionally been the basis of the city's economy. Later in the decade, the city as a whole pulled itself out of the slump by making old manufacturing plants more efficient and creating jobs in the service sector. But even as the rest of the city boomed, unemployment in the Black community remained stubbornly high at around 20%. Drug use and violence soared: homicides doubled in just three years between 1988 and 1990.

The Drug Abatement Team was born out of the efforts of State Representative Gwendolynne Moore and COWSA (Cooperation West Side Association), a well-established community association. Begun by local churches, COWSA grew to eight full-time employees and receives funding from the state and the United Way. COWSA has organized block clubs on the west side, and encouraged these clubs to organize anti-crime patrols and to work to improve street lighting. Recently, COWSA began working with the Milwaukee Police Department to implement community policing on the west side.

Rep. Moore and COWSA were concerned about the proliferation of drugs and violent crime. They had heard about drug house abatement programs in Portland, Seattle, and other cities, and were particularly influenced by the program developed by officials in Oakland, California. Rep. Moore, COWSA and the Lisbon Avenue Neighborhood Development Project (an umbrella organization of churches, community groups, and business interests on Milwaukee's west side spawned by COWSA) convinced a number of Milwaukee landlords to attend hearings on drugs and crime held by the state legislature. The property owners testified that they were opposed to drug activity in their buildings, but that current laws often gave them insufficient basis for evicting tenants involved in selling narcotics. The governor was persuaded that new legislation and enforcement funds were needed, and these were provided in Assembly Bill 823.113 (Drug House a Public Nuisance: action for abatement) jointly sponsored by Rep. Moore and State Senator Gary George.

The new law is an updated version of an older bawdy house law that allows the city to file a civil suit in order to have a property declared a public nuisance. If the Circuit Court finds that a property is being used to facilitate the delivery or manufacture of drugs, it may issue injunctive relief. An order to close can follow and, eventually, an order to sell, with the owner getting nothing from the sale. Property owners can submit an undertaking to the court to attempt to stop the process. If the court does close a property, the structure must remain closed until any building code violations are cleared.

The legislature provided \$500,000 for the establishment of a pilot program on Milwaukee's west side, and on July 1, 1990 the Drug Abatement Team was formed.

How the Team Operates

Properties are targeted by the Drug Abatement Team following complaints from community residents or tips from police informants; each method of identifying problem properties accounts for about half of the Team's work. Community complaints are gathered by COWSA. Residents who spot drug activity are encouraged to call a special hotline manned by Casandra McCoy, COWSA's community liaison officer assigned to the Drug Abatement Team. She filters the information received in the calls (drug sale locations are tracked; reports of drug use are screened out) and periodically FAXes it to the police detectives assigned to the Drug Abatement Team. Most callers prefer to remain anonymous, and they are not pressed to

divulge their names. The police report back to COWSA on action taken against reported problem locations, and callers may get an update by calling back in three to four weeks.

Once a drug sales location is reported to the police department, its CAP unit (Community Against Pushers) surveys the property and attempts to make an undercover buy. If drug activity cannot be substantiated in spite of persistent complaints, the police send an "I" (information) letter to the property owner. The letter states that the police suspect that there is drug activity at the property, but they haven't been able to substantiate it--yet. The owner is encouraged to investigate and remedy the situation. ("I" letters account for only 1% of the letters sent to owners.)

If drugs are discovered in the search and/or arrests are made, the case is given over to Detectives Glenn Zirgibel and Gregg Hoppe, members of the Drug Abatement Team. They send the property owner an abatement letter. Owners are informed that drug activity has been documented at an address (specific apartments are not named in multi-unit buildings). Owners are given five days to stop the activity. If they do not, the letter continues, the property may be declared a public nuisance and closed or sold. Recipients are encouraged to call the detectives assigned to the Drug Abatement Team.

Police continue to monitor complaints from neighbors and, within the subsequent two weeks, attempt another buy at the location. If the detectives come up empty, they check up again at

all targeted properties within 60 days of the first letter to ensure that the nuisance has remained abated.

If drug sales persist, a second letter is sent. If this letter fails to abate the nuisance, the City Attorney's Office is brought into the operation. Police detectives refer the case to John Carter, a private attorney retained as part of the Drug Abatement Team, for legal action. Carter prepares a suit to be filed in civil court that can eventually result in closure and/or sale of the property. Simultaneously, the City Attorney's Office may call in a building inspector to look for code violations. Owners must correct any violations which are found or face the imposition of a fine through Municipal Court.

In the event that the court does order a property to be sold, revenues generated from the sale would be used to recoup expenses of the Drug Abatement Team and to recompense the mortgage holder. Any surplus revenue would go to law enforcement agencies, to drug and alcohol treatment programs, and to programs for housing rehabilitation and crime control. Property owners would receive none of the proceeds.

In a vast majority of cases, city officials claim that the initial letter alone is sufficient to abate the problem. That certainly is borne out by Police Department statistics. According to a June 28, 1991 police memo, the Drug Abatement Team investigated 391 complaints of drug houses. Of these, 84% were cleared by compliance, nearly all through eviction of problem tenants by landlords. (Clearance is defined as cessation of drug

activity at a location. It is up to the detectives assigned to the Drug Abatement Team to decide what action by property owners is likely to be sufficient to abate the problem.) An additional 11% (44 cases) were pending further investigation. (This category includes very recent cases as well as older cases in which it was not yet clear that owners had taken sufficient steps to abate the nuisance.)

As of the date of the memo, only 21 cases, or 5% of the 391 cases handled by the Drug Abatement Team, had been referred to the City Attorney's Office for possible civil action. In most of these cases, however, negotiations between the owners and the City Attorney's Office were ongoing. As of our visit, only seven suits have been filed by the City Attorney's Office--all cases in which property owners had been clearly unresponsive.

Five of the cases have been resolved by stipulations short of judgment. The other two suits have been hard fought, and prominent in the press. The most notorious case is against the owner of a 36-unit building at 2803 W. Kilbourn Street. Members of the Drug Abatement Team characterize the building as the worst drug dealing location on the west side. In the two years prior to the Team's action against the property, police had made 164 arrests at the apartment house, resulting in 354 criminal charges. The building has been described as being to drugs what McDonald's is to hamburgers. Detective Zirgibel was quoted in the Milwaukee Journal (March 10, 1991) as saying "If this new law doesn't work for this building, it won't work. Might as well pack up and go home."

The building's appearance is deceptive. It is relatively new and in decent repair, built originally for young white-collar workers interested in living near their downtown jobs. Now, however, the residents are mostly transients. As many as 10 units have been involved in drug trafficking, according to the police. Police argue that the building has acquired a reputation over the years as a good place for drug sellers to do business. The police also acknowledge, though, that not all of the residents are drug dealers; some of the tenants have lived in the building for a dozen years.

City officials claim that the owner of 2803 W. Kilbourn did little to attempt to abate drug sales at the property. Detectives assigned to the Drug Abatement Team found that drug sales remained flagrant. In fact, after the city had targeted the property, the building manager was shot to death while he slept in his apartment in what police characterized as a drug-related shooting.

The building owner asserts that he did attempt to bring the property into compliance. He claims to have evicted several tenants, to have cooperated with the police by reporting drug activity and providing keys to the building, to have corrected more than 60 building code violations noted by the Drug Abatement Team's building inspector, and to have improved security. City officials do not dispute this, but believed that the owner's actions did not go far enough, given the scope of the problem. The City Attorney's Office demanded that the building be cleared out and closed for 60-90 days.

The owner refused, and the city filed suit in Circuit Court. The owner then filed a countersuit, challenging the city's right to take over his property. The suit alleged that the owner's rights to equal protection and due process were violated, and that the city cannot deprive him of his property without compensation.

Seven weeks before our visit the property burned, and has been closed since. Although the city's objective of closing the building has now been realized, both the abatement suit and the countersuit continue. Whether the fire will impact on the litigation is unclear at this time.

The other hard-fought suit involves a 12-unit building at 620 N. 26th Street. Unlike 2803 Kilbourn, this building is owner-occupied and has been in the same family for 70 years. Police claimed that drug activity at the property was rampant, and that they made more than 30 undercover buys within a one-year period. After two letters failed to bring about the desired results, the city filed suit and the building was declared a public nuisance. Following fresh evidence of drug activity, a judge ordered the building closed, and soon after ordered it sold.

Although most of the units were vacant by the time the building was closed, three apartments remained occupied by innocent parties (no allegations of drug sales had been made against them). Although the city contends that it bore no responsibility for the people who were thrown out of their homes as a result of its action, city staff did help to find new residences for the tenants. All of the tenants also received financial assistance from the Red

Cross to cover their security deposits and first month's rent in their new locations. Two of the tenants were offered units in subsidized public housing projects.

The owner of 620 N. 26th Street has filed an appeal of the Circuit Court decision (using the same lawyer representing the owner of 2803 W. Kilbourn). He is arguing that he was denied equal protection and due process, and that he was unfairly deprived of his property without compensation. The outcome of this test case will determine the future of the Drug Abatement Team.

Effects on the Community

A sample of 50 cases taken from program files showed that the Drug Abatement Team targets primarily small- to medium-sized rental units. Forty-nine percent of the cases we sampled involved rental units containing three units or less; 30% involved buildings containing 4-20 rental units; 14% involved rental properties with more than 20 units; and 6% involved single family owner-occupied houses.

The majority of the cases (70%) we sampled were resolved through removal of one or more problem tenants. In 20% of our sample, officials were satisfied with a pledge by owners that the problem would be rectified. In 4% of the cases we found that the problem had been solved by a tenant asking a problem guest to leave. Also in 4% of our cases, owners agreed to install better security. Finally, in just one case (2% of the sample), the targeted building was closed.

According to the two detectives assigned to the Drug Abatement Team, only 6-8% of the locations initially cleared show new signs of drug activity when they checked up 60 days later. Thus, gains made by the Team seem to be relatively permanent. (Our sample corroborated the police estimate: Renewed activity was found in 8% of our 50-case sample.)

The local papers are replete with examples of blocks being cleaned up through the efforts of the Drug Abatement Team, after calls to 911 and arrests failed to stop drug sales at problem locations. Probably the biggest changes have been documented in the area around 27th and Wells Streets where the Drug Abatement Team has cleared entire apartment buildings of tenants. Residents report that not only drug sales, but prostitution and use of firearms have declined dramatically. And, Assistant City Attorney Stanosz hopes that, as blocks are cleared of dealers, banks may be more willing to provide mortgage money and invest in redevelopment projects in the west side.

Because Milwaukee's program is localized, it is the only city where officials were able to provide some statistics to substantiate anecdotal accounts of program effects. Police statistics are available comparing total crimes by census tract for the first four months of 1991 to the first four months in 1990. These records indicate that crime in the area served by the Drug Abatement Team has been reduced by 21%, while citywide crimes declined by 14% during the same period (chi-square=16.59, df=1,

p<.001, comparing the targeted area with the remainder of the city).

Because the program covers only a segment of the city, we also had in Milwaukee a unique opportunity to look for displacement effects: Was the target area being cleaned up at the expense of surrounding neighborhoods? We analyzed data on total crimes for the census tracts surrounding the abatement target area, and found that crime declined by 14% from the first four months of 1990 to the first four months of 1991. This decline matches exactly the citywide trend reported above. Therefore, we have no evidence to suggest that crime was simply displaced from the target area to surrounding neighborhoods.

But, even if a block or an area can be cleaned up, is the Team only "scattering rats in the woodpile," as attorney William Pangman has characterized their action? No one knows for sure: The Drug Abatement Team makes no systematic efforts to track the whereabouts or activities of displaced dealers. Detective Hoppe believes that they don't move too far, perhaps relocating elsewhere in or near the targeted area. COWSA's community liaison officer McCoy aims to make it harder for them to relocate in the targeted area by working with local landlords to blacklist those who have been evicted through the Team's efforts. In the Wells Street area, landlords now share a file of evicted tenants, against which applicants are checked.

Assistant City Attorney Stanosz believes that drug sellers' business will be reduced if they are forced to move because they

may lose customers and because they may have to compete with established dealers in the new location. Detective Zirgibel concurs, adding that a relocated dealer told him that he had quit the business because the move had made it too difficult to continue to make a living pedaling narcotics.

Conclusion

The scale of the program in Milwaukee was qualitatively different than the programs in other cities that we visited. The generous financing, the large number of properties targeted, and concentration on a sector rather than an entire city make Milwaukee's Drug Abatement Team a potentially potent force in the city's battle against drugs.

As of January 20 the Drug Abatement Team was expanded to cover the entire city. The state has pledged \$1.4 million for the effort, matched by \$160,000 in city funds. The funds will be used to hire four additional detectives, one additional police clerk, and three additional community liaison representatives. That is good news for city residents, if not to future program evaluators, who now will not have the luxury of making comparisons between the area served by the Drug Abatement Team with non-program areas.

The efforts of the Drug Abatement Team are being supplemented by two major community redevelopment efforts on the west side. Marquette University's Campus Circle Project has developed a comprehensive plan to refurbish existing housing, construct new housing, create commercial ventures to fuel economic development,

increase opportunities for jobs, and expand community services. The Milwaukee Neighborhood Partnership, Inc. seeks to acquire, rehabilitate, and manage 700 units of multi-family housing on the west side. With these kinds of commitments, Milwaukee's west side may stand a real chance of turning around and becoming a model for arresting urban decline that others may want to emulate.

CHAPTER 4

ALEXANDRIA'S DRUG ABATEMENT EFFORTS

Alexandria, Virginia is located just a few miles from our nation's capital. It is a city of approximately 113,000 people occupying 15.75 square miles. Almost one-third of its housing consists of single family units, one-fifth are condominiums, and slightly less than one-half are rental units. Of this housing stock, about 3,700 are federally and/or locally subsidized. These units make up 6% of the total housing units and 13% of the apartment stock. The median household income is high at \$46,000. The Department of Defense is by far the largest employer in the city, while the second largest is the city itself.

Alexandria has attempted a coordinated strategy of drug abuse eradication. As a result of citizens' concerns with increased neighborhood drug dealing and use of crack cocaine, the City Council created in 1987 the Ad Hoc Anti-Drug Task Force to study the City's serious drug problem and develop a plan for addressing drug issues. The following year, the Task Force made 63 recommendations to the City Council which were designed to attack the problem comprehensively. In response to the Task Force's findings, the City Council implemented an Anti-Drug Program in 1988 which calls for intensified law enforcement activities to reduce drug sales, expanded availability of drug treatment programs, and a public education campaign to deter illegal drug use, especially among school-age children.

The City Manager then established a committee of Alexandria City and state agency representatives to oversee the City's anti-drug program. This committee continues to meet monthly to discuss drug-related issues and develop strategies to combat the drug problem. The committee includes several members of the City Council, the City Manager, an Assistant City Manager, and representatives of the Police Department, the Commonwealth's Attorney's Office, Juvenile and Adult Probation and Parole, Court Services, the Sheriff's Office, the Alexandria Redevelopment and Housing Authority, the City Attorney, the Office of Housing, the Recreation Department, the Human Services Department, Financial and Informational Services, the Office of Citizen Assistance, and the Mental Health, Mental Retardation and Substance Abuse Department.

With the help of neighborhood groups and the Alexandria Redevelopment Housing Authority (ARHA), the city intensified its efforts against drugs in given target neighborhoods. During Fiscal Year 1991, police spent an average of 1,256 hours a month in the target neighborhoods, which represented a 13% increase over the prior year. The mayor's office reports success in this area thanks to "constant pressure on street-level drug dealers" in these neighborhoods. ARHA also received three HUD grants of \$250,000 specifically for drug elimination in public housing. Since 1988, a total of \$7.9 million in new revenues was added to anti-drug efforts, while 1990 saw \$100,000 go towards hiring off-duty police to work in high crime areas.

Impetus for the Drug Abatement Program

In March of 1989, an Alexandria police officer was shot and killed during a drug-related hostage incident that occurred outside a low-income public-housing unit overrun with drug dealers. Another officer was seriously wounded during the same incident. The shooting led to much discussion about evicting drug dealers from both private and public housing. In fact, this tragedy caused HUD to reexamine their drug eviction policy and eventually led to changes in their policies to ease the eviction process of those caught selling drugs in HUD public-housing units.

Upon eviction from public housing for drug activities, the Housing Authority serves individuals with "no trespassing" notices, and provides a copy of the notices to the Police Department. This action has been extremely successful toward insuring that evicted persons do not return to the property. In the private sector, the City undertook action as well.

Beginning in the summer of 1989, the Commonwealth's Attorney's office took the lead in targeting drug dealers operating out of private housing. Their efforts are part of the wider effort to combat drugs in Alexandria discussed earlier. Eviction is just one part of this effort.

The Program in Operation

To rid neighborhoods of drug havens in private-sector housing, Alexandria is using a long-standing nuisance statute designed to rid neighborhoods of prostitution and massage parlors. The 1950

statute was revised in 1990 to add drug sales and use to the list of nuisance violations. This civil statute is seen as an important tool, as the level of proof to move against the landlord is a "preponderance of the evidence" rather than the more stringent "beyond a reasonable doubt" standard needed to criminally prosecute suspected drug dealers. There have been no constitutional challenges to the statute, but they hardly ever have to use it because the threat of using it almost always resolves the problem. Of course, if the prosecutor has sufficient evidence to criminally prosecute individuals selling drugs, they do so in addition to notifying the landlord about the drug dealing on their property.

The Commonwealth's Attorney's efforts require the close coordination and cooperation of the police department to identify problem houses and warn landlords to stop the drug dealing from their property. Every time the police find any amount of drugs (or residue or drug paraphernalia to suggest the manufacturing of drugs) in a house following the execution of a search warrant, they notify the Commonwealth's Attorney's office even in cases in which there was insufficient evidence to make an arrest.

While the police and prosecutors' intent is to remove dealers from private-sector housing, they admit that some users get caught in the net. The police target dealers rather than particular properties and their usual route to identifying dealers is through informants and undercover buys. Once the police notify the Commonwealth's Attorney that drugs were found in a residence, the prosecutor's office sends a letter to the landlord (or the owner

if it is owner-occupied) alerting them that drugs are being sold on their property. They are warned that they must take action to stop future drug sales. If they fail to do so, they are told that they may be prosecuted or civil action may be taken to confiscate their property. The letter is hand delivered by the police officer responsible for the abatement action.

The letter from the Commonwealth's Attorney does not provide any guidance as to what action the landlord should take, but the officer will work closely with the landlord and usually discusses possible actions and specific strategies with them. If the person identified in the letter as a drug dealer is a tenant, the most likely advice will be to evict. According to the police and the prosecutor, most "honest" landlords are very cooperative and appreciate the warning letter, as the responsibility for evicting the dealer is shared with the city. This removes some of the fear landlords often have in evicting drug dealers.

If the owner decides to evict, the tenant receives a notice to vacate the property within 10 days. Should the tenant fight the action, the landlord can go to civil court to get the person removed. The judge almost always immediately grants the motion to evict when the landlord has a Commonwealth's Attorney's letter notifying the owner of drug dealing on their property. If the dealer is a family member the police may also suggest the removal of the person, but under some circumstances they may agree to allow the person to remain in the house as long as the drug dealing ceases.

Once the letter is delivered to the landlord, it is up to the police to monitor the situation to determine if the landlord has taken appropriate action and drug dealing ceases. The prosecutor will not take further action unless the police alerts them that dealing is continuing in the house. If another arrest is made in the house--or the police learn of subsequent drug dealing from informants or through surveillance--they will report the case back to the prosecutor's office. Since 1989, 150 letters have been sent to landlords and only two cases have been reported back to the prosecutor for action beyond the initial letter. In one case the federal authorities seized the property¹ and the owner was jailed for ten days; the other case was pending at the time of our site visit. According to Jennifer Pollard, the Assistant Commonwealth's Attorney in charge of the program, simply sending the letters almost always results in cessation of the drug activity. She further contends that they are not just moving dealers to another house to set up shop but believes they are truly putting some dealers out of business, at least in Alexandria. In her opinion (shared by the law enforcement officials we spoke with), they have been very successful in ridding dealers from private-sector housing.

¹ The preferred route to seizing property has been for the federal authorities to take the action rather than local authorities. When the federal authorities seized a property, the local police department received 90% of the profit from the sale of the house and the federal government received 10%. If the state seized the house, all of the profit was reverted to state and the local authorities received nothing. The law now allows the money to be returned to the local jurisdictions.

While officials claim that landlords are generally supportive of their efforts, they told us that the city began its efforts without consulting any landlord groups. To date, the police told us that only one landlord has been totally uncooperative because "he gets a lot of money from renting to drug dealers--he makes much more renting a dump to dealers than he can make by bringing it up to code and renting to a family." At the time of our site visit, they were still working to shut this landlord down.

Alexandria has many strong community groups that work cooperatively with the police to identify "problem" houses. Ms. Pollard contends that very few hardship cases have resulted from evicting people from private housing (although there may be more hardship cases when people are evicted from public housing). One exception she noted was a 70-year-old lady whose son was dealing drugs from her house. In that case, the city took no action against the woman but instead prosecuted the son.

The Effects of Alexandria's Drug Abatement Efforts

Since 1989, the Commonwealth's Attorney's office has sent approximately 150 letters to owners warning them to stop the drug dealing occurring on their property. We randomly sampled 50 letters from among the 150 and collected information about those cases. The basis for sending the warning letter was an arrest made on the property in 21% of the cases; a civilian complaint in 7% of the cases; information received from an informant in 36% of the

cases; and the seizure of drugs from the property in 36% of the cases.

Private homes were the target in 8% of the cases, single rental units comprised 12% of the sample, and the majority--80% --were apartment buildings in which one or two units were identified as problems. Simply sending the letter warning that action would be taken if the landlord did not stop the drug selling resulted in eviction of the tenant in 73% of the cases, according to police records. Another 9% of the tenants voluntarily vacated the premises. Of the remaining cases, 2% of the buildings were seized; 7% of the properties ceased to be drug havens without eviction or removal of the tenant; 2% were dropped for insufficient evidence; and 7% were pending at the time of data collection. The police noted no cases in which drug activity continued at the residence. It is important to understand, however, that there was a single officer assigned to this duty (she had other duties as well that occupied about half her time) and close systematic follow-up was not feasible. No attempts were made to verify the owner's representation that the tenant was evicted. Unless a new arrest was made or new complaints received, she would not likely learn that the tenant was not evicted or that there was subsequent drug dealing. (This is unlike Milwaukee where undercover buys were attempted to determine if dealing continued.) Certainly, blatant dealing would become known, but it is possible that the dealer simply became "smarter" by selling drugs more discreetly. At least from the police perspective, they were confident that the city's

action did stop drug dealing in the vast majority of targeted residences and they considered the warning letters to be highly effective.

CHAPTER 5

HOUSTON'S DRUG ABATEMENT EFFORTS

Houston is a city still waiting for something to bring it out of the long slump that began when the Texas savings and loan industry went bust in the late 1980s. Unemployment remains relatively high and real estate continues to hover at bargain-basement prices. In such an economic climate, it is not surprising that drugs are a major problem, particularly crack cocaine.

One of the city's most potent weapons in the fight against drugs is its drug house abatement program, a cooperative venture between the offices of the Houston City Attorney and the Harris County Attorney. The program's actions are based on an old bawdy house ordinance (Chapter 125 of Texas Civil Practice and Remedies Code) which permits closure of properties defined as a common and/or public nuisance. The statute was updated in 1987 to include narcotics in the scope of what it defines as a nuisance.

The program's history dates back ten years, when County Attorney Mike Driscoll began using Chapter 125 to get rid of sexually oriented businesses. The current program still targets sexually oriented and other businesses all over the county, but its focus is residential rental properties, especially motels and other (single-room occupancy) SRO units. Of 24 case files we examined on site, 10 of the targeted properties were motels, four were large apartment buildings (over 20 units), one was a single family home,

and nine were bars, convenience stores, and other commercial properties.

Actually, the term "program" is not quite appropriate to describe the collaborative effort which operates without a formal budget or structure. In the County Attorney's Office the activities of the Task Force are a part of the office's environmental division. The Division Chief, Rock Owens, devotes a portion of his time to drug house abatement, as do two other assistant county attorneys and an investigator. On the City Attorney's staff, Donna Edmundson, Assistant City Attorney, dedicates all of her time to drug house abatement. The team has worked together on abatement efforts for the past three years.

The team reviews about 35 problem sites each month for potential action. Most of the team's workload comes from either the vice or tactical units of the Houston Police Department. Some cases are brought to their attention by churches or civic clubs such as the Neartown Association or the Garden Villas Civic Association. (Houston has few civic organizations devoted specifically to anti-crime activities, according to Assistant City Attorney Edmundson.)

By the time the abatement team receives a case from the police, the police have already made attempts to abate the drug activity through traditional law enforcement methods. When the team receives a referral, it requests from the police a list of calls for service at the location. Particular attention is paid to whether multiple arrests have been made and drug paraphernalia

recovered. Priority is given to locations in close proximity to churches, day care centers and schools.

If the team believes action is warranted, they have a number of options. If the building is vacant, the case may be referred to the city's neighborhood protection team. This program razes buildings that are deemed structurally unsafe. According to Assistant City Attorney Edmundson, the abatement team has referred numerous properties to the dangerous buildings program. She did not know how many of these have been torn down.

A second option the team has is to refer a case to the County Attorney's Office for a forfeiture action. This option can only be used sparingly: To warrant a forfeiture action, a substantial amount of money and narcotics must be seized at a property, and the owner must participate in, or be aware of, the illegal activity. And to make it worthwhile for the County Attorney's Office to pursue, the property must have substantial value with a minimal lien. Since such properties seldom come across the desk of the drug abatement team, only two cases have been referred for forfeiture actions.

According to County Attorney Owens, the abatement team has contacted the owner of the property and held a meeting with the owner and the police in about 100 cases. If the owner is willing to cooperate in the local government's effort to stop the drug activity, the government may agree not to file suit.

The final option available is to file a civil suit in District Court seeking injunctive relief. This has been done in about 50

cases to date. The government has the option of first seeking a Temporary Restraining Order (TRO) ex parte. Because the TRO is only good for 14 days, the abatement team has opted instead to notify owners and apply for a temporary injunction. This takes about 90-120 days from the time a suit is filed. When a temporary injunction is obtained, owners are given a chance to settle by posting bond (in the minimum amount of \$5,000 cash) and agreeing to a permanent injunction. The statute does not provide for return of the bond, although the practice is to return it after one year has passed with the property remaining free of illegal activity. If there are continuing violations at the location, the owner may be held in contempt of court, the bond forfeited, the owner fined or jailed, and the location closed for one year. Agreements may also involve eviction of problem tenants, structural changes to the property, or approval by the city and county of new tenants. Owners may be asked to allow police to position undercover officers on premises to conduct reverse-sting operations.

In five cases to date, owners have chosen not to post bond and to continue litigation. In these cases, the parties are served and a hearing date is set to consider issuing a permanent injunction. The city and county prevailed in all five of these actions, and the properties were closed by the court for one year. Most of these have burned, been torn down by the city's dangerous building program, or remained vacant. (Owners cannot attempt to sell them since the injunctions are attached to the property and run with the

land.) So far, the abatement law has not been challenged by appeal.

The 24 files we were able to examine from among the 50 suits that have been filed showed that seven cases resulted in evictions; six in the posting of a bond and a promise by the owner to correct the problem; three in closing of buildings; and two in demolition of buildings (six cases were pending at the time of our visit).

The Task Force has received a good deal of local media coverage, and has been involved in a few notorious cases. The most interesting and ironic involved George's Bar-b-que, a restaurant in a section of Houston called Acres Home. Acres Home is a community begun by former slaves. It is nationally known because it spawned an effort that became one of President Bush's Thousand Points of Light. The area contains Winzer Park, a locale that became locally notorious as a place to score drugs. Through the efforts of the Acres Home War on Drugs Committee, of which George Clark was a member, the park was cleared of drug activity several years ago. The park was visited by the President in 1989 and even today remains relatively drug free.

However, the dealers who had done business in the park did not quit, but moved their operations to other nearby locations. One of the locations where narcotics activity increased was an intersection on W. Little York Street. On that corner was located George's Bar-b-que, a 24-hour restaurant operated by George Clark. There was no shortage of evidence that drugs were being dealt by people who frequented George's: More than 20 convictions resulted

from arrests made there since 1989. And, in less than one year, police had been summoned to the site 80 times by complaints ranging from drug dealings to shootings. The exterior of the building is pock-marked by bullet and shotgun blasts from drug deals gone bad outside the restaurant.

George Clark did not dispute that drugs were a problem at the location. But he maintained that he was doing all he could to control the problem. In fact, he placed half of the 80 calls to the police. But officials contended that he was not doing enough, and argued that the restauranteur himself has a police record for drug sales.

Officials recognized that closing the restaurant was not in the community's best interests: Assistant County Attorney Owens was quoted in a local paper as saying, "The last thing I want to do in a community that's fraught with problems...is to close down a legitimate business." But officials felt compelled to do something, so they filed a suit under the drug abatement statute in District Court. The government was willing to settle for the restauranteur and the property owner posting a \$5,000 bond, but the defendants later reneged on the agreement. After more discussion, the abatement team pressed the property owner to evict George's Bar-b-que and close the building for four to six months. The situation nobody wanted--the closure of a successful neighborhood business--had come to pass.

The abatement team also moved against other properties on the same corner. A drug house was declared a dangerous building by the

city and razed. An abatement suit filed against a convenience store was ongoing at the time of our visit.

Another action that received a good deal of media coverage involved the Curry Place Apartments, a notorious haven for drug use and prostitution. According to Assistant County Attorney Owens, residents of the complex had been convicted of more than 40 drug charges and an even greater number of prostitution counts. Officials did not believe that the problems of the building could be ameliorated through any action short of emptying the entire 40-unit building. Assistant County Attorney Owens told a Houston paper, "Basically, the people who live there are so bad we can't tell the good guys from the bad guys." A drug abatement suit was filed which resulted ultimately in the eviction of the building's 60 residents. The owners agreed to ensure that no drug use or sales would take place at the property, that no prostitution would be allowed, and that any new tenants would be approved by the District Court. Eventually, the building was sold, rehabbed, and reopened. To date the location has remained relatively free of drug activity.

Effectiveness of the Task Force

Assistant City Attorney Edmundson believes the Task Force has had a significant impact on neighborhood drug sales. Although there are no systematic records kept of results of follow-up on targeted properties, Edmundson and Owens maintain that all properties where drug activity has been abated have remained

relatively drug free. Edmundson acknowledges that the evicted dealers usually set up shop elsewhere. But she believes that the process disrupts both the drug dealer's operation and local consumption.

She also argues that the activities of the Task Force have made property owners more circumspect. Landlords or their agents now notify authorities when they see a lot of traffic in and out of an apartment or motel unit. Some motels have adopted a "no locals" policy.

Conclusion

Houston's drug abatement effort has added an important weapon to the fight against drugs. More so than in several other cities we examined, Houston's program has adopted a tough, adversarial attitude toward owners of properties where drugs are being sold. Filing suit is clearly an effective way to gain owners' attention. But this approach also seems to result in more closure orders. And, in a city where the demand for real estate is low, properties that are closed temporarily may never find their way back into active use.

CHAPTER 6

TOLEDO'S DRUG ABATEMENT EFFORTS

Toledo is the county seat of Lucas County in northwestern Ohio, approximately 75 miles east of the Ohio-Indiana border. The city and county are in the central portion of a triangle formed by the cities of Chicago, Detroit and Cleveland. The city covers an area of 84 square miles and borders Lake Erie to the east and the state of Michigan to the north. Its population is close to 350,000, making it the fourth largest city in Ohio and the 49th largest in the United States. Glass and automotive manufacturing are major employers in the area, although recent years have seen cutbacks in the local automotive industry.

According to officials, the city's close proximity to Detroit has contributed to an influx of violent drug dealers in recent years. Much of the dealing is done from private dwellings scattered throughout the city, particularly in the lower economic neighborhoods. Many of these are single- or double-family homes, either rental or owner-occupied, or relatively small (eight to ten units) multi-family rental buildings in inner city residential neighborhoods. There are few large multi-family buildings.

In the spring of 1988, the Lucas County Prosecutor's Office began a concerted effort to hold landlords responsible for drug-related activities on their properties. The effort was prompted by an increase in citizen complaints about drug dealing from homes in their neighborhoods. Prior to this time, the

criminal justice system's response to such complaints had focused on the occupant directly responsible for the illegal drug activity, whether the occupant was a tenant or an owner. Surveillance was conducted, raids undertaken, and arrests made. Such actions were largely ineffective, however, since those arrested were often released from jail and back on the premises within a matter of hours. Efforts by the Department of Health and the Department of Housing to abate the activities on non-criminal nuisance grounds were equally ineffective since judges would only order the occupants' temporary vacation from the premises. They were reluctant to shift the focus from the occupant to the landlord by ordering the premises closed.

In an effort to overcome this judicial reluctance, the prosecutor's office coordinated raids on three drug houses in one day, and provided advance notice to the media. When the defendants were brought into the courthouse, the media representatives were waiting. Since that highly publicized effort, judges have issued 42 "padlock orders."

Statutory Basis for Drug Abatement

By Ohio statute, premises where felony violations of controlled substances laws occur are nuisances subject to abatement (O.R.C. 3719.10). Whenever a nuisance exists, the prosecuting attorney may bring an action in equity asking the court to order the premises closed and padlocked for up to a year (O.R.C. 3767.03 et seq.).

Targeting of Drug House

The Toledo Police Department's Vice-Metro Section targets drug houses for potential closure. According to the captain of that Section, approximately 80% of the drug houses which have been padlocked have been brought to the Section's attention through citizen complaints. These may be from neighbors, Crime Stoppers, or community groups such as neighborhood block watches, "Crack Down, Inc.", or the East Toledo Community Group. Approximately 20% come from informants.

Limited police manpower precludes intensive follow-up on all citizen complaints about drug houses. Police therefore prioritize complaints according to a variety of factors, including the perceived level of dangerousness to the community, the timeliness of the alleged activity, the premise's proximity to schools, the type and level of drug activity, and the amount and quality of information available, etc. The size of the building may also be relevant. The assistant prosecutor noted that there is little incentive to seek closure of an individual unit in a large building with many units involved in drug activity since this would not significantly reduce the building's drug activity. Accordingly, single-family or duplex houses are most commonly targeted. The number of complaints is also important as, not surprisingly, the "squeaky wheel" often commands attention.

Evidence of both "recent" and "continuing" illegal activity is necessary for a padlock order. Accordingly, Vice-Metro

undercover officers conduct surveillance of alleged drug houses and, where warranted, make undercover "buys." Subsequently, a search warrant is sought and, once obtained, a raid conducted. Arrests may or may not be made, depending on the level of evidence.

Only when there is subsequent felony drug activity on the premises will the prosecutor's office request the court to issue a padlock order. The police themselves do not have the manpower to conduct follow-up surveillance to determine if such activity occurs. However, further citizen (or informant) complaints usually trigger another undercover "buy" which will provide the recent and continuing evidence necessary to request a padlock order.

The Process

Upon a recommendation from Vice-Metro, the prosecutor's office prepares a complaint and a motion for a Temporary Restraining Order (TRO). The former details evidence that a particular property is a "nuisance" subject to abatement; the latter seeks a court order to close and padlock the premises immediately, pending a hearing for a preliminary or permanent injunction to close the premises for a year. (Generally, only the affected units are targeted for closure in multi-unit buildings.) The TRO motion is accompanied by an "attorneys certification Rule 65." Rule 65 of the Ohio Rules of Civil Procedure provides that notice to defendants is not required if they are causing "immediate and irreparable harm, injury, loss, and/or damage." The certification also notes that opportunity for a hearing will be provided defendants prior to a

preliminary or permanent injunction. Thus, the TRO hearing is ex parte, without appearance of either occupant or landlord.

The Rule 65 certification facilitates the surprise which is an important element of the abatement procedure. The motion for the TRO is made, and the order obtained and executed on the same day. A contingent of approximately 25 persons appears at the targeted premises, armed with a battering ram. An "entry team" of five or six members of the Toledo Police Department SWAT team secures the premises, serves search warrants, and makes arrests if warranted. The sheriff's office, responsible for executing the TRO, sends eight to 10 deputies to serve the summons and complaint, videotape the entry, make a videotaped inventory of the premises, and oversee the padlocking and, if necessary, the boarding up of the premises. (If the occupant is not the property owner, a deputy sheriff simultaneously delivers a complaint and summons to the landlord, whether on the premises or elsewhere.) Uniformed officers are present to detour street traffic. The assistant prosecutor is also on the scene.

Within two weeks of the execution of the Temporary Restraining Order, a hearing is held on the prosecutor's request for a preliminary and/or permanent injunction. The prosecutor's office presents the same evidence here as was presented at the ex parte TRO hearing. In addition, police officers testify regarding surveillance, a chemist may testify about drugs found on the premises and establish the chain of custody of those drugs, and persons from "action" hotlines may testify about complaints of

illegal activity or crimes committed in or around the property in question.

Since landlords are "strictly liable" for activity which takes place on their property, their lack of knowledge or involvement in the alleged drug activity is irrelevant to the prosecutor's request for a court order closing the house. However, if the owner can satisfy the court that he or she was unaware of the illegal activity and is willing to make a good faith effort to abate such activity in the future, the court may allow the owner to post a bond to reopen the premises. This practice, which was originally the exception, has become the rule as a result of pressure by organized property owners. The bond is typically 10% of the value of the property, although the court often "withholds qualifications for bond," whereby the property itself is used as bond. Should subsequent violations occur, the injunction can be reinstated, the house immediately padlocked, and ultimately forfeited. In fact, however, there rarely is subsequent reported activity on bonded premises, and the forfeiture process has been instituted only once. (The prosecutor's office has been looking into the possibility of using forfeiture statutes in lieu of the nuisance statute as a vehicle to close drug houses. However, the advantages of doing so are unclear since the procedures are more onerous and most of the properties involved are of minimal financial value.)

The time between when a house is targeted by the police until it is closed by the court is generally three to four months.

We examined 26 files to collect outcome data and to explore the type of buildings that were targeted. Of these, eight involved private houses, seven single rental units, five businesses, three two-unit buildings, one five-unit building, one eight-unit building, and one 50-unit building. Temporary Restraining Orders involving padlocking of the premises were issued in virtually all of the cases. Permanent injunctions were subsequently issued in 20 and preliminary injunctions in three others. Up to a year was most often noted as the period of closure, although six months was noted in several. At the time of the review, several files indicated closure periods that were still open; in the absence of information to the contrary, it is presumed the subject premises were still closed. A few others indicated that the full closure period had terminated and the injunction dissolved. However, bonds were posted in at least eight cases, generally resulting in reopening of the premises well before the termination of the closure period. Moreover, at least six injunctions were dismissed for other reasons, e.g., because of owner cooperation with law enforcement, owner agreement to evict tenants, sale of the premises, or burning of the premises.

Follow-Up

Absent complaints from neighbors, police do little follow-up to determine whether a house that has been padlocked remains free of drug-related activity. (Police knew of at least one padlocked house which had been broken into and used as a place for "doing"

drugs.) Likewise, no effort is made to track individuals who occupied the premises at the time it was closed. Most of these dealers are considered relatively "small time," and are assumed to have resumed drug activity elsewhere, likely in Toledo.

Cost of the Abatement Program

The cost of the abatement program is relatively modest. One assistant prosecutor performs most drug house abatement duties, spending approximately 15% to 20% of his time on them. Some police time is required for conducting surveillance and conducting undercover buys in premises where there have been complaints. Sheriff time is primarily limited to the day of the closure. Padlocking and boarding expenses (approximately \$100 per closure) are paid from forfeiture funds in the Law Enforcement Drug Fund. Nevertheless, due to manpower shortages, fewer padlock orders are being requested now than during the past several years.

Official Assessment of the Program

The criminal justice agencies involved in Toledo's drug abatement program--the prosecutor's office, the police department, and the sheriff's department--are very enthusiastic about it. While there are no illusions that the program will solve the drug problem or more than temporarily disrupt the ousted occupants' drug dealing, the nuisance statute provides law enforcement an additional tool to respond to citizens' immediate concerns. Whereas arrests alone usually relieve the situation for only a few

hours, padlock orders usually relieve it for considerable periods of time, regardless of whether the padlock remains in place or is removed by posting of a bond.

The Lucas County Prosecutor's Office strongly prefers its surprise closures to other jurisdictions' practice of sending landlords letters warning them that their properties may be closed if they do not abate the illegal activities taking place there. Several reasons were given for this preference. First, there is considerable skepticism that warning letters would have any appreciable effect on abating drug activity. Secondly, the prosecutors believe responsibility for enforcing the laws rests with the police and prosecutors, not with landlords (even though the landlords are responsible if they allow the activity). Moreover, the Office sees its own role as prosecuting--not warning those who break the law--and property owners themselves are often involved in the drug house activities conducted on their property. It was noted that owners of establishments where other types of illegal activities take place, such as houses of prostitution, are not warned in advance of police action. The prosecutors also noted that although the TRO procedure temporarily closes their properties, "innocent" property owners may post bond to release them. Finally, prosecutors expressed concern that sending warning letters might expose individual prosecutors to personal liability if the allegations about particular tenants were not subsequently substantiated.

Apparently authorities in other Ohio cities share the view of the Toledo Prosecutor's Office with respect to its drug house abatement program--Toledo prosecutors mentioned that officials in Cleveland, Akron, and Lorain County are eager to implement similar programs in their own jurisdictions.

Toledo officials believe city residents are equally enthusiastic about the program. They note that prior to the program, there was a high level of citizen frustration when arrested individuals returned to the neighborhood and resumed their drug trafficking in a matter of hours. Now they can cite instances of neighbors standing in their yards applauding the padlocking of drug houses.

Officials acknowledge somewhat less enthusiasm on the part of landlords. While property managers or owner representatives have told them they appreciate the prosecutor's efforts to rid their properties of drug dealers, many believe it impractical and unfair to hold landlords responsible for the activities of their tenants. In response to requests to "back off" somewhat, the prosecutor's office has increasingly participated in fashioning consent orders whereby "innocent" landlords whose properties have been closed are allowed to post bond in return for removal of the padlock. Thus, despite the averred purpose of closing drug houses for a year, less than half of the houses padlocked under temporary restraining orders have remained closed that long. Nevertheless, the TRO and bond appear to be effective in reducing drug activity in the targeted premises for significant periods of time.

CHAPTER 7

SAN FRANCISCO'S DRUG ABATEMENT EFFORTS

San Francisco sits on a peninsula, with the Pacific Ocean to the west, San Francisco Bay to the east, and the Golden Gate to the North. The Port of San Francisco is one of the major trading centers for the U.S., contributing to more than \$6 billion of sales by the city's wholesalers. San Francisco is built on a series of hills with elevations varying from sea level to 933.6 feet. About 724,000 people live in the city, while the entire nine-county metropolitan area is more than five million people. A little less than half of the population is white, while Asians make up about 28%, Latin Americans 14%, and African Americans 11%.

Since 1856, the city and county of San Francisco have had identical boundaries and a consolidated government--the only example of this form of government to be found in California. Legislative powers are vested in an 11-member Board of Supervisors.

The Drug Abatement Effort

San Francisco has a multi-faceted approach to ridding neighborhoods of drug dealers in private-sector housing. Within the District Attorney's Office is located the Narcotics Civil Abatement Program and multiple agencies participate in The Code Enforcement Task Force. The District Attorney's Office focuses on the prosecution of drug dealers, while the Task Force focuses on

improving the quality of housing stock by removing drug dealers and eradicating unsafe and run-down housing. Both work closely together to accomplish their missions.

The Code Enforcement Task Force

The Code Enforcement Task Force is a joint effort of the Bureau of Business Inspections (BBI), the City Attorney's Office, the Fire Department, the Health Department, the District Attorney's office, and the San Francisco Police Department. It began in 1989 to tackle the problems of buildings infested with drug dealers and unsafe and unsightly properties. They meet monthly to discuss problem properties brought to the attention of the group by one of its members. A joint approach was adopted because they felt that uncooperative owners were effectively playing one part of the system against another. As one of the community-oriented police officers on the Task Force explained, many landlords only gave lip-service to correcting problems prior to the Task Force, as they counted on miscommunication among departments and bureaucratic sluggishness to buy them time to make repairs. In the past, for example, an owner might claim to the officer that the Building Department had okayed needed repairs and they were in compliance with codes. The officer would have to waste valuable time checking their story. Things have changed since the Task Force. Now, all members of the Task Force share information at meetings and verify the owners' allegations. This has resulted in fewer false

allegations by the owners since they know a cooperative, collateral response is now the norm.

At Task Force meetings, problem buildings are identified and monitored, and enforcement strategies are jointly planned. They average eight new referrals each month. While they define "problem" buildings broadly to include all types of abandoned and run-down buildings with fire, health and safety infractions, they estimate that 75-90% of these buildings also have drug users, sellers, and manufacturers squatting or living in the buildings. Their approach to the drug and other problems is to use whatever statute will allow the quickest and most effective response. The city attorney, police, and fire, health, and building inspectors go out to targeted properties together to assess the situation. The police provide protection to other team members, offer security advice to the property owner, and look for criminal violations. The deputy city attorney in charge of the program, Mark Barmore, talks with the owner and advises them of their legal responsibility to clean up the building and stop the drug dealing. The city inspectors check for code violations and have the power to immediately close the building if those violations are serious enough, i.e., if the violations pose imminent life and safety hazards. Since inspections can be done without warning², the team

² The inspections can be done without warning, but they rarely are. The property owner can deny access and force the city to seek an inspection warrant. This rarely happens as owners realize that these warrants are easily attainable from the courts but the city avoids this process whenever possible as it simple adds time and hassle to the process.

often prefers to move on these violations and close the building. This is faster than taking criminal or other civil action. These actions can always come later if there is enough evidence to proceed, or the owner fails to cooperate in resolving the problems in the building.

The Task Force makes specific recommendations to owners as to strategies they might undertake to stop drug dealing in their buildings. Many landlords cooperate and follow through on those recommendations (one of the most common being to evict the problem tenants) and admit they simply lost control of their buildings. For those landlords, civil action is not usually pursued. But for uncooperative landlords, several sanctions are possible, including closing the building, liens on their properties, and administrative fines. Another major sanction available for rental properties is to deny property owners interest and depreciation allowances through action taken by the state franchise tax office.

A major initiative of the Task Force has been to work with residential hotels in the South of Market, Mission and Tenderloin areas of the city. Many hotels in these areas have been hotbeds for drug sales and gangs and the Task Force is reaching out to owners to involve them in reducing problems in these places. One major motivation for the Task Force to work with these hotel owners was a belief that all they would be doing was displace dealers from one hotel to another unless a neighborhood-wide effort was mounted. Therefore, the Southern Police Station invited all the hotel owners in the South of the Market area to join their Hotel Assistance

Program and meet with them to discuss how to establish house rules in the hotels, how to screen tenants, and how to reduce drug sales in the building. They described the effort as very successful but are realistic--they hope to reduce drug sales but do not expect they can completely stop drug sales in these types of residential hotels. In the targeted neighborhoods, 30% of the hotels have been involved in their program.

The Task Force members believe they could be more successful if they had the resources needed to move against all irresponsible and dishonest owners. They report that most owners do cooperate with the city but the City Attorney estimates that about one-fourth have required some legal action to force compliance. Of those properties targeted with drug problems, an estimated 70-80% of the owners abated the drug problem once the Task Force became involved. Three cases have resulted in a suit being filed by the City Attorney under the state Health and Safety Code's drug abatement provision (discussed below). In all three cases, the City obtained a TRO and then a preliminary injunction. The drug activity ceased and all three actions resulted in monetary settlements. In one of those cases, the City Attorney also encouraged the neighbors to file a small claims action against the hotel owner claiming damages to the neighborhood. Forty-two residents joined together in the suit and each received \$5,000 in damages from the owner.

We sampled 20 cases from the City Attorney's files in which landlords had received some written or verbal warning to cease the

drug activity on their property. The 20 cases represented the universe of cases in which the deputy city attorney had warned the property owner of a drug problem on their property (there were many more "open" cases in which no warning was issued and cases involving bars and other business establishments that were excluded from the sample). Many of these cases--61%--came to the attention of the Task Force through citizen complaints, while 32% became known through drug arrest, and 7% through informants. Of the 20 cases, 50% of the properties were hotels, 40% were apartment buildings, and 10% were private homes in which the alleged drug dealer was the owner. The warning resulted in the following--35% of the cases resulted in the landlord evicting the tenant, 30% were still pending, 25% resulted in the abatement of the drug problem without any eviction or seizure of the property, 5% of the tenants voluntarily moved, 5% of the buildings were seized, and 5% were destroyed by fire.

When civil actions failed, or when the police believed there was sufficient evidence for criminal action or forfeiture, the case was referred to the District Attorneys' Office for action.

The District Attorney's Narcotics Civil Abatement Program

The program began in 1989 in cooperation with the San Francisco Police Department's Narcotic Division and local civic groups. An Assistant District Attorney, Hugh Donohoe, is in charge of the program. His position is supported through a state grant made possible through federal drug block money. The goal of the

program is to identify nuisance properties and prosecute owners under the Narcotic Abatement Act, Health and Safety Code 11570 et seq. They are targeting high-profile residences identified by the police and neighbors as large-scale drug houses.

The Health and Safety Code 11570 they are using is modelled after a 1913 law used primarily to shut down houses of prostitution in red light districts. It was amended in 1972 to include using, selling, or manufacturing drugs to the list of nuisance violations and it was amended in 1986, 1987, and 1988 to add more teeth to its enforcement provisions. The Code contains civil remedies (restraining orders, temporary and permanent injunctions, economic sanctions) and forfeiture for public nuisances at properties where drugs are sold, manufactured, or used. The District Attorney's Office uses the Code along with criminal prosecution and civil forfeiture for targeted drug houses.

The Health and Safety Code is a civil code with a "preponderance of the evidence" as the standard of proof, lower than the criminal one of "beyond a reasonable doubt." The District Attorney and the City Attorney³ are responsible for its enforcement. The District Attorney is also responsible for criminal prosecution when both types of actions are warranted. The civil action can be leveled against anyone--the owner, the tenants,

³ Both the District Attorney and the City Attorney have jurisdiction and both offices have brought successful actions under this section. The City Attorney tends to use the code when there are also other code violations (such as building, fire, and/or health violations) on the property. The District Attorney is more likely to use the code when the problems are limited to drugs.

or their agents--who allow the nuisance to exist or continue. It is the job of the police department, or the City Attorney's Office, to present the District Attorney's Office with evidence to proceed under this Code. A pattern of drug arrests on the premises is the usual route to proving knowledge of drug use/sales on the property. Community groups often help the police identify "problem" houses and provide a strong link in the overall city's efforts to eradicate drug houses.

To invoke the Code, the District Attorney, or the City Attorney, may undertake several progressively more punitive steps to insure that drug activity stops, including: (1) filing a law suit, (2) seeking a temporary injunctive relief and closure, and (3) seeking a permanent final abatement order to close the property and collect damages. First, the District Attorney files a law suit with the Superior Court. Next, a temporary restraining order may be obtained from the Court. Notice of the order is posted on the premises restricting use of the property in accordance with the specifics in the court's temporary restraining orders. The order may, for example, dictate that no further drug activity occur, may prohibit the removal of any property from the premises, or may restrict visitors to the premises. The date for the permanent restraining order is also noted. The temporary restraining order remains in effect for 15-20 days. When the temporary order issues, a show cause hearing is scheduled to seek preliminary injunctive relief. By the preliminary injunction, the court may order that rent from the property be put in escrow until the nuisance is

abated for up to a maximum of 90 days. If closure is requested by the city, all tenants in the targeted property are given "reasonable" notice and the chance to present their arguments against closure.

Should a final abatement order be requested by the District Attorney and granted by the court, several actions may result, including closure of the building and assessment of damages. Punishment for violating the order is also specified. If the property is closed, all fixtures in the building will be sold and the building closed for up to one year unless a vacant building is deemed more harmful to the community than an occupied building. In that case, the court may order the owner to pay one year's fair-market rental value of the building to the city. Damages may also be assessed at the final abatement order for up to \$25,000. A forfeiture action may also be initiated in which the city seizes the building and sells it (this type of forfeiture would be pressed under state law and, if granted, local law enforcement would receive 80% of the profits, the District Attorney 13%, and the remainder would go to the state).⁴

If any of the abatement orders are violated, a contempt order may result with fines ranging from \$500 to \$10,000 and/or the imposition of up to six months in jail. However, if the owner

⁴ This is where the District Attorney's and the City Attorney's authority deviates. The District Attorney has the authority to seize the property and initiate forfeiture proceedings. The City Attorney can only move to close the building for up to one year. As a result, the District Attorney typically handles the more serious drug houses where forfeiture may be desirable.

follows the conditions of the abatement order, pays all costs and fees associated with the lien, and posts a bond for the full value of the property for a year, the building may be released back to the owner.

The District Attorney had (as of the date of our site visit) taken only two cases all the way through to the abatement stage. Three other cases had just been filed and 10 others were still in the investigative stage. Of the two cases in which the full extent of the civil statute had been pressed, one settled with the city, by voluntarily forfeiting the house which was then sold by the city and the other was still fighting the action. The former case was a notorious single-family residence in the Potrero District. It was the first property targeted by the District Attorney's Narcotics Civil Abatement Program. At the house over 70 arrests had been made for drug-related offenses. Weapons and stolen property had also been uncovered through surveillance and undercover buys. The house had become infamous as a round-the-clock place where all types of drugs could be easily bought and where drug users resided. The police, along with the District Attorney, used the Health and Safety Code to file a civil action to abate and seize the property. They received a temporary restraining order that tightly controlled how the property could be used--access was limited and the house was subject to inspection by the police without a warrant. These actions resulted in the premises being abandoned by the drug dealers. The house was then sold by the city to respectable owners who have maintained the

property. Through the civil abatement efforts of the District Attorney and the police, a well-known crack house was thus put out of business.

The District Attorney's Office need not provide prior warning to owners whose properties are under investigation.⁵ Such notice is usually not given as it would jeopardize the prosecutor's criminal cases, according to Mr. Donohoe. He believes their efforts have been very effective thus far, but noted that underfunding of the program has limited the number of owners against whom they can proceed. Thus the statute was categorized by him as being "underutilized."

Conclusions

San Francisco has spearheaded drug abatement efforts within all major departments in the city--the police, fire, health, sanitation, and building departments, and the district attorney's and city attorney's offices. Their efforts include criminal prosecution, administrative actions, civil actions, and forfeitures, and they have been successful in ridding many properties of drug problems. They admit, however, that much remains to be done and that too few resources are available to tackle all the problem buildings in San Francisco. The tools are

⁵ The City Attorney will warn the owner if the owner does not occupy the premises and some arrests have already been made on the property. If the property is owner-occupied, no warning is issued as the City Attorney presumes knowledge of the problem and the case is taken directly to civil court.

there and the strategies appear sound, but resources are likely to affect the future of the program in a dramatic way.

CHAPTER 8

RESIDENTS' PERSPECTIVE

There are several ways to gauge the impact of drug abatement programs. One way is through examining police data on reports of drug activity and other crimes. The best situation in which to analyze program effects on such indicators is where the program has been implemented in one part of a city, and other areas of the city can be used as a comparison. This situation obtained in Milwaukee, and we discussed earlier evidence that the program has had a significant impact on crime reported to the police.

Another way to assess program effects on crime, drugs, and other signs of social and physical disorder is to examine perceptions of residents living near the target of abatement efforts. That is the focus of this chapter. In each of the five cities included in our work we targeted five properties from our sample that had been the target of abatement actions within the past six months.

For these properties we drew lists of nearby residents from Coles and Haynes (reverse) telephone directories. At each abatement site, we began by identifying those residents in buildings on the same block (both sides of the street) as the targeted property. We attempted to contact these residents by telephone. If we reached our goal of 12 completed interviews we stopped. If we had fewer than 12 interviews, we continued sampling from the adjacent blocks on the same street. Sampling proceeded,

moving farther away from the targeted property, until 12 completed interviews were obtained. For the 23 of the 25 neighborhoods in the five sites, all interviewed residents were within three blocks of the targeted neighborhood. For the other two sites, residents were sampled from as far as four blocks away and seven blocks away.

Table 8-1 displays our success rate in obtaining interviews with residents selected in the process described above. Fifty-three percent of the units sampled could not produce an interview because the unit was ineligible (i.e., it was a business rather than a residence, the number reached was outside of the target neighborhood, or the respondent had lived in the neighborhood less than two years) or contact failed to be established (i.e., the phone was disconnected, there was no answer, no one at the number spoke English well enough to be interviewed, or no one was home over the age of 18). Of the remaining units sampled, 72% resulted in an interview. Interviews were conducted with the person answering the phone unless that person was not 18 years of age; in that case, we asked to speak to an adult member of the household. In 28% of the eligible units contacted, the respondent refused to be interviewed.

We asked respondents if they were aware that drug dealing was going at the target location; if they were aware of the abatement efforts; if they felt that the abatement effort was something that the city should have done; if the abatement effort had reduced crime, drug activity and other signs of social disorder on the

TABLE 8-1

SUCCESS RATE IN TELEPHONE INTERVIEW ATTEMPTS

1) Total units sampled	893
2) Unit out of target range	136
a. Business reached (27)	
b. Number reached not in target neighborhood (56)	
c. Respondent not resident of neighborhood long enough (53)	
3) Unable to establish contact	339
a. Phone disconnected (165)	
b. No answer (144)	
c. No English spoken (25)	
d. No one home over 18 (5)	
4) Eligible for interview	418
a. Refused (118)	
b. Interview completed (300)	

block; and if the abatement effort had changed their feelings about the neighborhood and about people's ability to fight drugs.

Perceptions of Crime, Drugs, and Other Signs of Disorder

Table 8-2 compares the five cities we studied intensively on a number of indicators of neighborhood crime and disorder. We asked respondents about four kinds of disorder in their neighborhoods: crime, drugs, drinking, and loitering. Drugs and crime were seen as the largest neighborhood problems. Sixty-two percent of the respondents believed that drug abuse was a problem in their neighborhood and 61% believed that crime was a problem. Drinking was seen as a neighborhood problem by 51% of respondents, and juveniles hanging out was seen as a problem by just 26%. In spite of drugs and crime, more than three-quarters (78%) of the people we spoke to felt at least somewhat safe in their neighborhoods, and 83% said that they liked their neighborhood.

There were substantial differences between cities on these indicators. On five of the six items, Milwaukee came out the worst. This is likely because the Milwaukee abatement team focused their efforts on just one neighborhood that was believed to have the worst drug and crime problems in the city. The Milwaukee statistics suggest that residents of this area are very discouraged about life in their neighborhood. Toledo came out the best on all four measures of social disorder, while Alexandria residents rated their neighborhood highest in terms of safety and how well they liked it.

TABLE 8-2

PERCEPTIONS OF NEIGHBORHOOD CRIME AND DISORDER IN FIVE CITIES

	ALEX	HOUSTON	MILW	SF	TOLEDO
% who think drugs are a problem	68%	67%	71%	59%	48%
% who think drinking is a problem*	65%	50%	64%	39%	35%
% who think kids hanging out is a problem*	23%	38%	39%	20%	15%
% who think crime is a problem*	58%	67%	80%	56%	45%
% who feel safe*	87%	81%	62%	80%	80%
% who like neighborhood*	93%	79%	74%	88%	80%

 * indicates differences between cities is significant at .05 level or better

Perceptions of the Abatement Process

Exactly half of the residents we spoke to said they were aware of the abatement program's efforts at the targeted location. Most people (78%) who knew of the abatement action found out through their own observation or through conversations with neighbors, but 11% found out through the media and 4% from the police. Awareness of abatement actions varied considerably by city. It was highest in Houston (76%) and Toledo (63%) where abatement actions frequently involved highly visible property closures (see Table 8-3). (The Houston program apparently had excellent press coverage as well: 19% of all Houstonians surveyed learned of the action through the media--a figure several times higher than any other city in our sample.) Awareness was lowest in Milwaukee (28%) and Alexandria (35%) where actions often involved just the sending of a letter to property owners.

Just about half (49%) of the residents surveyed believed that the city had picked well in choosing the target property. Most of those not answering affirmatively simply did not know enough to state an opinion: Just 4% of respondents believed that the city had targeted the wrong choice. "No opinion" answers were more common in Alexandria than in the other cities, perhaps because drug dealing was more covert there.

TABLE 8-3

PERCEPTIONS OF THE ABATEMENT PROCESS IN FIVE CITIES

	ALEX	HOUSTON	MILW	SF	TOLEDO
% who were aware of abatement action*	35%	76%	28%	54%	63%
% who thought city chose well in targeting property*	32%	52%	54%	56%	52%
% who think city abatement action is appropriate*	82%	98%	97%	93%	95%

* indicates differences between cities is significant at .05 level or better

Support for drug abatement efforts was overwhelming in all the cities we studied. In four of the cities, over 90% of respondents believed that the city's abatement actions were appropriate. In Alexandria, the proportion in favor of the program was somewhat lower but, even there, 82% supported the actions.

Program Effects on Residents' Perceptions of Crime and Disorder

To assess the impact of the abatement programs we asked respondents a series of questions about changes in crime and disorder following the abatement action on their block. We were surprised to find that many people did report changes on their blocks since the abatement action occurred.

More than one-third of respondents (36%) told us that they believed that drug sales on their block had become less frequent following the abatement action. Other indicators of social disorder decreased as well: A quarter of respondents (28%) said that drinking on their block had declined, and about one in four respondents (28%) stated that kids hanging out on their block had become less of a problem since the abatement action.

With the reduction in social disorder came other positive changes. One in four respondents (24%) said that crime, in general, had gone down. We asked people if they also saw other important changes, and one-quarter (27%) responded affirmatively. The change mentioned most often was a greater police presence, suggesting that abatement targets sometimes were picked to coordinate with other police anti-drug actions (such as sweeps, buy

and busts, etc.). Another positive change mentioned with some frequency was that residents banded together to fight crime. We do not know whether such community organizing was a serendipitous result of the abatement action or a precursor to the targeting of particular properties by the police and city attorney.

We saw mixed effects of the abatement programs on the way people felt about their neighborhoods. One in five respondents (22%) thought that the neighborhood had become safer since the abatement action, but a nearly equal proportion (16%) felt that the neighborhood had become less safe. Similarly, 15% of respondents reported that they liked their neighborhood better since the abatement action, but the same percentage said that they liked their neighborhood less since the action. Our data suggests that those who liked their neighborhoods less felt that way because the abatement action drove home to them the point that their neighborhood was not safe. Most respondents who liked their neighborhood less also felt less safe in their neighborhood since the abatement action ($r=0.24$, $p<.001$).

Finally, we asked people whether the abatement action had empowered them to fight drugs in their communities. A large majority (70%) of respondents answered affirmatively, suggesting that these programs may have positive effects beyond just short-term reductions in drugs and crime.

Table 8-4 presents the data on program effects separately for each of the five cities that we studied intensively. While there are no significant differences between cities for most of the eight

indicators in Table 8-4, an overall pattern is apparent. Houston's abatement actions resulted in the largest positive changes in resident perceptions on six of the eight indicators of program impact. In contrast, Milwaukee's abatement actions resulted in the smallest positive changes in resident perceptions on six of the eight indicators. These differences between Houston and Milwaukee resident perceptions of program impact underscore a point made above: Houston residents were far more likely than Milwaukee residents to be aware of abatement actions on their block because the Houston actions often involved highly visible closure of properties. Administrators of Milwaukee's program, on the other hand, seldom demanded such severe actions from property owners.

TABLE 8-4

EFFECTS OF ABATEMENT ACTIONS IN FIVE CITIES

	ALEX	HOUSTON	MILW	SF	TOLEDO
% who believe drug dealing on block decreased	37%	41%	30%	39%	35%
% who believe drinking on block decreased	35%	41%	20%	29%	22%
% who believe hanging out on block decreased	47%	50%	26%	37%	32%
% who believe crime on block decreased	25%	36%	15%	32%	18%
% who feel safer on block	28%	29%	16%	27%	13%
% who see other important changes on block	28%	33%	25%	24%	27%
% who like neighborhood more*	20%	10%	7%	25%	10%
% who feel action empowered people to fight drugs	68%	79%	59%	66%	80%

* indicates differences between cities is significant at .05 level or better

Conclusions

We found that abatement actions had surprisingly high visibility in the communities where they occurred. Community awareness was highest in those cities where properties are often closed as a result of abatement actions. It was lowest in Milwaukee where abatement actions frequently consisted of just a letter followed by a quiet eviction. Clearly, the methods used by abatement programs affects the level of community awareness.

Abatement actions enjoyed strong support of residents in the neighborhoods we sampled. Across the five cities studied in depth, fully 93% of respondents believed that specific abatement actions taken in their neighborhoods were appropriate.

Abatement actions brought about a number of positive changes in residents' perceptions of their neighborhoods. One in three respondents believed that the action had reduced drug sales, while one in four believed that the action had reduced drinking and the same proportion believed that it reduced the number of kids hanging out. The abatement actions had mixed effects on how respondents felt about their neighborhoods. This is probably because, for some residents, the fact that the action was taken alerted them (for the first time) to--or reinforced their perception of--the serious drug problem in the neighborhood. Similar effects of burglary-prevention programs have been noted by other researchers (e.g., Rosenbaum, 1983; Winkler, 1987).

CHAPTER 9

LANDLORDS' PERSPECTIVE

The use of abatement laws to close down drug houses in privately owned properties can be seen as advantageous from a number of perspectives. Because a lesser standard of proof is needed to take civil rather than criminal action (preponderance of the evidence versus beyond a reasonable doubt), law enforcement officials can move more quickly to abate the problem. These actions take place in civil court, thus reducing the strain on already overburdened criminal courts. In some jurisdictions housing authorities and building inspectors can move to close properties based on deteriorating and unsafe conditions alone, thus removing the problem altogether from the criminal justice system.

There is one perspective not yet addressed, however--that of the property owner/landlord. By circumventing the issue of the drug dealer's criminality, the abatement laws place the responsibility for the drug-house problem in the hands of the landlord. What do property owners/managers think of the use of the abatement laws? Are they cooperating with city officials? Do they think the laws are fair? Did they have any problems with the drug-dealing tenants once they started eviction proceedings? How costly has the process been?

To answer these and other questions, a sample of four to five property owners/managers in each of the five jurisdictions was interviewed by telephone. All but one of the respondents were

investment owners/managers; one was the attorney for a man whose live-in grandchildren were the alleged dealers/users. In some cases the actual property owner was unavailable, and therefore we interviewed the property manager familiar with the abatement action.

Initiation of the Action

We were interested in finding out what the landlord did upon receipt of the abatement notice from the jurisdiction. In fact, in half the cases it was the landlord him/herself who contacted the authorities about alleged drug dealing on their property (N=20), which was then followed by some notice of the landlord's responsibility to evict the tenant. One-third of the landlords were notified by the city attorney or told by the police; the remainder were told by neighbors, watched the police raid the property (without prior notice to the landlord), or knew the tenant had been arrested. Close to two-thirds of the respondents were aware of drug dealing on the property prior to police notification (Table 9-1).

Landlords' Perspective on the Law

What was the landlords' response to being notified of their responsibility to evict drug-dealing tenants? We had made an assumption when writing the survey questions that the property owners we spoke with, all of whom had been involved in the abatement process, would be aware of the abatement laws in their

TABLE 9-1

INITIATION OF THE ACTION

Awareness of drug dealing prior
to city's notice

N=21

Yes
No

62%
38%

locality and would understand that the law places the burden on them, rather than on the police to arrest and evict the drug dealer. In fact many reported to us that they were not aware in advance of the notice that it would be their responsibility. In spite of that, not one of the landlords considered contesting the action, and all stated they cooperated fully (Table 9-2).

Landlords we spoke with reported being just as desirous of eliminating drug dealers from their property as were city officials. A few took umbrage at the suggestion they felt was inherent in the abatement notice that they were in some way profiting from the drug activity on their property. In fact, many told of having to pay large sums of money to renovate properties after the drug dealers left.

Do property owners think the abatement laws are a good idea? Two-fifths of the landlords think so; one-third think they are a bad idea; and one-quarter are unsure (Table 9-2). For those who believe the law is a good idea, most acknowledged its effectiveness at getting rid of a problem--the fact that "it works." For those who do not agree the law is a good idea, the majority felt that it makes the landlord responsible for something he/she did not do. Some made the point that, unless they are on the property themselves every day, watching, they are unlikely to be aware of such activity. One landlord told of apparent undercover drug buys and several raids at her upstairs unit which went on unbeknownst to her, until she received the abatement notice from the city. She suggested that she would have appreciated being notified by the

TABLE 9-2

LANDLORDS' PERSPECTIVE ON THE LAW

Landlord considered contesting
city's action

N=20

Yes	0%
No	100%

Whether the drug abatement law is a good idea

N=20

Yes	40%
No	35%
Unsure	25%

police after the first raid when she may have been able to assist in monitoring the situation. This would have made her feel less like a criminal upon receiving the city's notice. One who responded "unsure" said that "sometimes, it's out of our hands."

Still others said the process was costly to landlords. We attempted to break down expenses into (a) legal fees relating to the actual eviction, (b) other legal fees, (c) lost rent, and (d) miscellaneous expenses. Twelve of the 22 respondents reported no legal fees with respect to the actual eviction, and several said there were no subsequent costs either. Others were not so fortunate, and legal fees for these evictions ranged from \$14 to \$5,000. "Other" legal fees ranged from \$100 all the way to \$70,000 (to contest the loss of a rooming house license). The two most costly categories were in lost rent and miscellaneous expenses. Income from rental properties was curtailed for several months up to a year, both from nonpayment of rent and closure of property for renovation, and ranged from \$900 to \$45,000 (so far). Significant costs were enumerated under the "miscellaneous" category, and included hiring security guards and money for renovations, cleaning, and maintenance. Some jurisdictions also require the posting of a bond to ensure there will be no more drug activity on the premises. For example, in one jurisdiction the bond amount is \$5,000, and is returnable after one year. In another jurisdiction, one landlord had to put up the value of the property for one year. This landlord characterized the bond as "putting the house on probation."

Consequences of Landlords' Actions

What happened when the landlord initiated action against the tenant--did the tenant refuse to move or threaten the landlord in any way? In a majority of cases, the tenant did not resist the abatement action (Table 9-3), and only one landlord reported a tenant fighting the eviction in court. While there were no retaliatory actions by tenants in three-quarters of the cases (Table 3), one property manager reported receiving threats against her personally and the building, and one property owner said his property manager was beaten up and shots were fired at a window in one of his buildings.

There is concern in some quarters that in the process of evicting drug dealers innocent family members may be "put out" as well. In our survey, close to half reported that innocent people had to move out as a result of the eviction (Table 9-3). In most cases, this involved children or other family members of the alleged drug dealer, although in one case the entire rooming house was shut down, and everyone had to vacate.

For those landlords who reported receiving feedback from other tenants about the eviction, most said the other tenants were supportive and "very happy." One property owner, however, said other tenants moved out due to fear that the problem would recur.

Did the eviction of the drug dealer reduce the problems at the property? Fifty-nine percent of the respondents said the eviction had an overall impact on reducing drug problems at the property;

TABLE 9-3

CONSEQUENCES OF LANDLORDS' ACTIONS

Resistance to eviction by tenant

N=16

Yes	12%
No	88%

Drug dealers retaliated against landlord/property

N=21

Yes	14%
No	76%
Don't know	10%

Innocent people were forced to move

N=15

Yes	47%
No	53%

Impact of eviction on property (N=17)

	<u>Yes</u>	<u>No</u>	<u>DK</u>
Overall drug problems reduced	59%	24%	17%
Loitering reduced	53%	24%	23%
Vandalism/graffiti reduced	47%	35%	18%

53% said that loitering had decreased subsequent to the eviction; and 47% noted a decrease in vandalism and graffiti (Table 9-3).

Changes Made

We were interested in finding out if property owners/managers have initiated any changes in the way they do business as a result of their experience with the abatement process. While close to half our respondents said they have made changes with respect to screening and management, half said they have not (Table 9-4). In some ways this can be attributed to the fact that for some of the property owners the problem came with the property. Four of the landlords came into possession of properties in which the drug dealer already resided. In another case, the landlord had rented to a tenant who in turn had sublet the apartment without the owner's knowledge; this person turned out to be a drug dealer. One case involved a man's live-in grandchildren. With respect to any changes made in the way they screen prospective tenants (for those who had this in their control), most said they would "be more careful" and conduct more thorough background checks. One landlord is taking himself off the low-income property roll, however. He feels this is an unfortunate side effect of the problem but doesn't want to put himself in this situation again.

Again, when asked about any changes in management style, the most common answer was that they will be more careful, more visible around the property, "nosier." A couple have hired security guards and guard dogs; one off-site owner has a neighbor reporting to her;

TABLE 9-4
CHANGES MADE

Changes in screening of new tenants

N=17

Yes	47%
No	53%

Changes in management practices/policies

N=19

Yes	42%
No	58%

Changes in attitudes regarding future ownership of rental properties

N=15

Yes	47%
No	53%

and one has changed the lease to specifically cite drug use as grounds for eviction.

We wondered whether the experience has discouraged people from owning rental properties in the future. While the sample was split (Table 9-4), several attributed their disinclination to deteriorating neighborhoods and crime as a whole. Sixty-six percent of our sample (N=21) currently own other rental properties, running the gamut from single family to multi-dwelling buildings, and 31% (N=13) of them have experienced similar problems in those properties.

Suggestions for Improvement

When we asked whether the landlords considered the abatement law fair to property owners, fully half characterized the law as unfair (Table 9-5). We then gave them the opportunity to tell us how the law could be improved. Several landlords said they would have felt better about the process if they had been informed and prepared. Many didn't know in advance that they could be held accountable for drug use/sale on their property, and were surprised and often embarrassed by the abatement notice, saying they felt like the criminal. Others said they would have liked to have been informed earlier in the process of drug sales on their property, rather than finding out after several raids or buys. (While one landlord suggested a warning letter would have been appreciated, in fact several jurisdictions do send out such warning letters and have much success abating the problem at this early stage.)

TABLE 9-5

SUGGESTIONS FOR IMPROVEMENT

Whether the process is fair to property owners

	N=22
Yes	36%
No	55%
Unsure	9%

Finally, a couple noted that it is the police's job, not theirs, to control crime, and they want the ball out of their court and back in the hands of law enforcement.

Conclusions

In an effort to close down drug houses, authorities are reinstituting old "bawdy house" laws and other Prohibition-era statutes and applying them to drug activity occurring at privately owned properties. While there are advantages for the system (lower standard of proof, use of non-criminal justice resources), the onus is placed on the non-drug dealing property owner. Most of the property owners/managers/landlords, at least in our sample, appear to be cooperating fully with authorities to rid properties of those engaged in the illegal activities. But this cooperation is at some cost to the owner, either in terms of actual money or in some measure of respect for the system.

If city authorities are going to continue using civil abatement laws to assist in their fight against drugs, it may behoove them to take the owner's perspective into consideration. We recommend increased communication between city officials and property owners/managers/landlords as to their responsibility in these matters. This could take the form of seminars or town meetings between city attorneys, law enforcement officials and interested property owners, and could include suggestions on how to screen prospective tenants; how to provide security; and clarifications about what the law requires of them. Either in lieu

of the meetings or in conjunction with them, handouts elucidating such responsibilities and suggestions could be made available and distributed through such channels as offices of building and inspections, landlord/tenant associations, and the like. Hopefully this might lead to an enhanced atmosphere of cooperation between the city and property owners.

CHAPTER 10
CONCLUSIONS

Our exploratory project provides one of the first systematic looks at how drug abatement laws are fashioned and used across the country. Based on our national telephone survey with officials in the 50 largest cities, statutory analysis, process study of five sites, examination of sampled cases, and surveys with residents and landlords, we draw six conclusions. These five programs, located in Milwaukee, Alexandria, Houston, Toledo, and San Francisco, were selected because they represented diversity in methods of operation and because they were all well-organized and aggressive in their pursuit of nuisance abatement.

In these five cities, we conducted site visits during which we examined program files and interviewed key individuals connected with the abatement efforts from police departments, city and county attorney's offices, and community organizations. We also spoke to a sample of residents who lived near properties targeted by the abatement programs to determine whether they were aware of the abatement efforts and whether they believed that the efforts made a difference in neighborhood drug activity. Finally, we interviewed in each city a small sample of owners whose properties were targeted by the abatement programs to ascertain their feelings about the programs. We drew six conclusions from our research.

(1) There are a variety of criminal and civil state statutes, laws, and local ordinances available to assist communities in ridding neighborhoods of drug houses in the private sector. Many communities are using these in innovative and creative ways.

Various types of statutes are used to control drug activity on private premises. Not all specifically mention drugs (e.g., general "nuisance" statutes, or general forfeiture statutes), or premises (e.g., criminal statutes proscribing illegal drug activity). It is clear, however, from the numbers of laws that are both drug-specific and premise-specific that legislators believe drug activity on private premises is sufficiently serious to warrant special attention.

Drug-specific, premise-specific laws empowering government officials to rid properties of drug activity generally fall into three categories: (1) nuisance abatement statutes; (2) illegal establishment statutes; and (3) forfeiture statutes. Each has advantages and disadvantages. Forfeiture may offer the most permanent solution--but also may be the most difficult to obtain. Arrests under illegal establishment laws may be the swiftest, but, in the end, offer only the most temporary relief. Abatement may have the lowest evidentiary requirements but requires the most careful follow-up monitoring of the property.

Court challenges to the various types of statutes have generally been unsuccessful, although broad use of forfeiture statutes has been viewed with considerable concern by some courts. A notable exception to the pattern of rulings favorable to the

state is Trenton, New Jersey's abatement ordinance, which was struck down by the state's supreme court because the court determined that the ordinance conflicted with state tenants' rights laws.

From our national telephone survey with officials in the 50 largest cities, we learned that many communities are working to reduce drug selling in private-sector housing. Sixty-seven percent of the officials surveyed told us about efforts their city is making to abate drug activity in privately owned residences. Over half were using public nuisance/drug nuisance statutes and were proceeding through the civil, rather than the criminal courts. Many reported successes in driving drug dealers out and few court challenges to the constitutionality of the statutes.

Among the five sites chosen for study, different strategies and tools were available. For example, Alexandria's and Milwaukee's approaches both rely heavily on warning letters to move landlords to stop the drug dealing in their buildings, with a heavy reliance on eviction as the means towards that end. In Alexandria, the Commonwealth's Attorney's Office works with the police to determine which landlords should receive warning letters, whereas in Milwaukee it is the City Attorney's Office working with law enforcement. Milwaukee police, unlike the Alexandria police, have the resources to follow-up and attempt undercover buys in buildings where the drug problem was supposedly abated. In both Toledo and Houston, law enforcement agencies do not warn property owners prior to getting a court order to close properties at which the police

have found continuing drug sales. San Francisco has two independent programs, one run by the District Attorney's Office and the other by a city-wide Task Force comprised of the City Attorney's Office, law enforcement, the Bureau of Building Inspection's office, and the health, fire and sanitation departments. The Task Force relies heavily on using code violations as their primary tool to force owners to attend to the drug problems in their buildings, as these violations are quicker and easier to bring than are drug abatement actions under their state statute. Thus, across the sites, the actors involved, the laws and ordinances used, the amount of warning given to owners, the type of actions typically taken, and the amount of follow-up varied considerably. Despite the differences, all the approaches yielded many "success" stories, as discussed below.

(2) Among the five sites studied, all reported successes in ridding neighborhoods of drug houses in the private sector. Cases we sampled in each county documented many of these successes.

In all five sites, officials perceived that their efforts had reduced the level of drug sales in private houses. All were also quick to point out that complete eradication of drug problems in private-sector housing was unrealistic but many of the more "notorious" drug houses had been put out of business by their efforts.

Our case samples showed that abatement actions were successful in the short run in at least 85% of the cases in each of the five cities we studied in depth. And, in those cities where follow-up investigations were done routinely, there were seldom indications that drug sales had resumed at targeted properties within several months after the abatement action. The success rates are all the more remarkable when considering that, in most instances, abatement actions consisted of a single warning letter.

(3) Residents in neighborhoods in which a drug house was targeted for abatement actions often knew of the city's efforts, supported those efforts, and perceived that the abatement action reduced the size of the drug problem in their neighborhood.

We found that abatement actions had surprisingly high visibility in the communities where they occurred. Community awareness was highest in those cities where properties are often closed as a result of abatement actions. It was lowest in those sites where abatement actions frequently consisted of just a letter followed by a quiet eviction. Clearly, the methods used by abatement programs affects the level of community awareness.

Abatement actions enjoyed strong support of residents in all of the neighborhoods we sampled. Across the five cities studied in depth, fully 93% of respondents believed that specific abatement actions taken in their neighborhoods were appropriate.

Abatement actions brought about a number of positive changes in residents' perceptions of their neighborhoods. One in three respondents believed that the action had reduced drug sales, while one in four believed that the action had reduced drinking and the same proportion believed that it reduced the number of juveniles hanging out in the neighborhood. The abatement actions had mixed effects on how respondents felt about their neighborhoods. This is probably because, for some residents, the fact that the action was taken alerted them (for the first time) to--or reinforced their perception about--the serious drug problem in the neighborhood. Similar effects of burglary prevention programs have been noted by other researchers.

(4) Many landlords who were targeted by the cities' abatement actions were surprisingly supportive of those actions and willing to take the necessary steps to cease drug dealing in their buildings, even at great personal cost to them. Most, however, would have preferred a more cooperative approach from the city and better communication about the problem prior to the officials taking the abatement action.

In an effort to close down drug houses, authorities are reinstating old "bawdy house" laws and other Prohibition-era statutes and drafting new drug house ordinances. These are being applied to drug activity occurring at privately owned properties. While there are advantages for the system (lower standard of proof, use of non-criminal justice resources), the onus is placed on the non-drug dealing property owner to cease the drug activity. Most

of the property owners/managers/landlords, at least in our sample, appear to be cooperating fully with authorities to rid properties of those engaged in the illegal activities. But this cooperation is at some cost to the owner, either in terms of actual money or in some measure of respect for a system they believe is unfairly treating them, rather than the drug dealer, like the criminal.

If city authorities are going to continue using civil abatement laws to assist in their fight against drugs, it may behoove them to take the owner's perspective into consideration. We recommend increased communication between city officials and property owners/managers/landlords as to their responsibility in these matters. This could take the form of seminars or town meetings between city attorneys, law enforcement officials and interested property owners, and could include suggestions on how to screen prospective tenants; how to provide security; and clarifications about what the law requires of them. Either in lieu of the meetings or in conjunction with them, handouts elucidating such responsibilities and suggestions could be made available and distributed through such channels as offices of buildings and inspections, landlord/tenant associations, and the like. Hopefully this might lead to an enhanced atmosphere of cooperation between the city and property owners.

It may also strengthen the drug abatement efforts of cities. A reactive stance that relies on targeting buildings after they have become a problem will always be limited by the amount of resources available to identify the problem buildings, document the

problem sufficiently to take official action, take the action, and monitor compliance. A proactive stance that seeks to work with landlords before a major problem exists offers the potential for reaching more landlords with fewer resources. And, as discussed next, resources limited the scope of drug abatement activities in all of the study sites.

(5) Resources are key in aggressive city-wide drug abatement efforts and restrict the use of available statutes, laws, and civil and criminal actions. Lack of resources also severely limit follow-up efforts to monitor compliance with drug abatement actions.

The abatement programs we studied were remarkable not only for their success rates, but also because most have achieved significant results without any special resources or staff. Police and city attorneys ran abatement programs with existing staff everywhere we visited except in Milwaukee and San Francisco.

Milwaukee shows what can be achieved if substantial extra resources are devoted to drug abatement. Its "Cadillac" version of an abatement program, with a first-year budget of a half million dollars, set it apart from other programs we saw in terms of scope, organization, and follow-up. Extra resources for abatement in other cities could greatly expand the number of properties targeted, their ability to pursue court actions, and their ability

to keep an eye on targeted properties for an extended period of time.

(6) The long-term effects of drug abatement actions in permanently driving drug dealers out of business are largely unknown, as are the long-term effects on the quality of the housing stock in the cities studied. There is evidence that cities need to go beyond shutting down "problem" buildings and work with residents and landlords in order to refurbish drug-infested neighborhoods to truly achieve permanent positive effects.

Without question, officials in all five cities experienced some successes in eradicating drug activities at some private properties. But the key question is how permanent their achievements will be. Little was known in any of the sites about the subsequent drug activities of those evicted or displaced from targeted houses. Did they go out of business or simply set up shop in another part of town? We heard a lot of speculation that disrupting drug dealers by forcing them to different locations where buyers had to find them anew does, at a minimum, cut down on their trade and, at best, takes the profit out of doing business sufficiently to make them quit dealing altogether. Certainly, there is a logic to this line of thinking but documented research would help test whether it holds up in reality.

Little is known as well about the long-term effects of the cities' actions on the quality of the housing stock and the quality of life in the communities studied. Residents reported some

positive effects and this is encouraging, but all the programs studied had been in existence for relatively short periods of time (indeed, abatement efforts nationally are a recent phenomenon). There was evidence that the abatement efforts in all of the cities studied led to the abandonment of some properties. This appeared to be a greater problem in cities that usually proceeded directly to law suits (Houston and Toledo) than in cities that usually send warning letters (San Francisco, Milwaukee, and Alexandria). In the long run, abandoned properties do not bode well for the health of neighborhoods. Also, at least some "honest" landlords told us the city's decision to hold them accountable for drug dealing on their premises has driven them out of the real estate market. This does not bode well for the health of inner-city neighborhoods either.

Only in Milwaukee was there a concerted effort to revitalize the communities targeted for drug abatement efforts. The efforts of the Drug Abatement Team are being supplemented by two major community redevelopment efforts on the west side. Marquette University's Campus Circle Project has developed a comprehensive plan to refurbish existing housing, construct new housing, create commercial ventures to fuel economic development, increase opportunities for jobs, and expand community services. The Milwaukee Neighborhood Partnership, Inc. seeks to acquire, rehab, and manage 700 units of multi-family housing on the west side. Other communities may want to consider the Milwaukee example when planning long-term for arresting urban decline.

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APPENDIX A

50-STATE STATUTORY ANALYSIS

Various types of statutes are used to control drug activity on private premises. Some do not specifically mention drugs (e.g., general "nuisance" statutes, or general forfeiture statutes), and some do not specifically mention premises (e.g., criminal statutes proscribing illegal drug activity). It is clear, however, from the numbers of laws that are both drug-specific and premise-specific that legislators believe drug activity on private premises is sufficiently serious to warrant special attention.

Drug-specific, premise-specific laws empowering government officials to rid properties of drug activity generally fall into three categories: (1) nuisance abatement statutes; (2) illegal establishment statutes; and (3) forfeiture statutes. In addition, some legislatures have authorized landlords to evict tenants who engage in drug-related activity on the premises.¹

Nuisance abatement statutes, illegal establishment statutes, and forfeiture statutes each have advantages and disadvantages for criminal justice officials under certain circumstances. Forfeiture may offer the most permanent solution--but also may be the most difficult to obtain. Arrests authorized under illegal establishment laws may be the swiftest, but, in the end, offer the

Statutes Used for Ridding Premises of Drug Activity

<u>State</u>	<u>Abatement</u>	<u>Offense</u>	<u>Civil Forf.</u>	<u>Crim. Forf.</u>
Alabama		X	X	
Alaska		X		
Arizona	*		X	X
Arkansas	X			
California.	X		X	
Colorado	X		X	X
Connecticut			X	X
Delaware	*	X	X	X
Florida	X	X	X	X
Georgia			X	X
Hawaii		X	X	
Idaho			X	X
Illinois	X	X	X	X
Indiana		X		
Iowa	X	X		
Kansas	X		X	
Kentucky			X	
Louisiana			X	X
Maine	X	X	X	
Maryland		X	X	
Massachusetts	X	X	X	
Michigan	X	X		
Minnesota	X	X	X	
Mississippi	X	X	X	X
Missouri	X	X	X	X
Montana			X	
Nebraska		X		
Nevada		X	X	
New Hampshire			X	
New Jersey	X	X	X	
New Mexico				
New York		X	X	X
N. Carolina	X	X		X
North Dakota			X	
Ohio	X		X	X
Oklahoma		X	X	
Oregon	X	X		
Pennsylvania			X	
Rhode Island		X	X	X
South Carolina			X	X
South Dakota			X	
Tennessee	X	X		X
Texas	X		X	
Utah	X		X	X
Vermont			X	
Virginia	X	X	X	
Washington	X	X	X	
West Virginia		X	X	
Wisconsin	X	X	X	
Wyoming	X	X	X	

*"Illegal activity" is a nuisance.

most temporary relief. Abatement may have the lowest evidentiary requirements but require the most careful follow-up monitoring of the property.

Specific features of the drug-specific, premise-specific laws used by officials are discussed below.

Drug Dwellings As Nuisances Subject to Abatement

Approximately half the states have designated buildings, dwellings, or premises used for illegal drug activity as "nuisances" subject to abatement through civil actions.²

While not all of these statutes specify what illegal drug activity makes the structure a nuisance, most designate certain types of activity. Drug possession³ and drug dealing or selling⁴ are most common. Drug delivering or transporting,⁵ drug manufacturing,⁶ drug use,⁷ and drug storage,⁸ are also frequently mentioned.

Targets

Statutes usually specify that abatement proceedings may be brought against the owner of the property or the individual responsible for the nuisance. In addition, tenants or lessees are explicitly mentioned as potential targets of abatement proceedings in at least half of the statutes.⁹

Complainant

Most of the drug-specific nuisance statutes designate the individual or individuals who may bring an abatement action. Almost all include the district, county or state's attorney.¹⁰ The Attorney General¹¹ and the city attorney¹² are also frequently mentioned. Citizens may initiate abatement actions in at least 16 states.¹³

Statutes that allow citizen initiation of actions often have provisions to discourage capricious or unwarranted actions. For example, in some states, the costs of suits ultimately found to be groundless must be borne by the citizens who brought them, sometimes by forfeiture of bonds posted at the outset.¹⁴ Verification of the complaint is sometimes required.¹⁵ One statute authorizes prosecutors to decline prosecution of citizen-initiated actions.¹⁶ Several require citizen complaints to be brought by more than one citizen.¹⁷

Dismissal of citizen complaints must be approved by the court in at least five states.¹⁸ This requirement may discourage frivolous or harassing actions, especially in the states which also require citizen complainants to pay the costs of groundless complaints. It may also ensure appropriate attention to complaints brought by citizens who subsequently seek to dismiss them in light of threats or intimidation by the subjects of the complaints.

Restraining Orders and Injunctions

A number of statutes authorize courts to issue temporary restraining orders to prevent removal of items from the premises or preliminary injunctions requiring immediate closure of the building. Whereas provisions for temporary restraining orders are frequently allowed to be granted "ex parte," i.e., without participation or notice of the other party,¹⁹ preliminary injunctions usually require notice to the parties.²⁰

Permanent injunctions are invariably granted only after judicial hearings, prior to which all parties are notified and at which they are allowed to participate.

Evidence

Over half the states with explicit procedures for abating drug-related activities on premises specify certain types of evidence that are relevant to a showing that the premises have been used in violation of the statute. Most common is evidence of the general reputation of the building.²¹ Criminal convictions relating to the alleged violation,²² the reputation of persons alleged to be conducting the nuisance,²³ or the reputation of frequent visitors to the building²⁴ are mentioned in some statutes. Convictions in past cases are specified in two,²⁵ and previous arrests in one.²⁶

Sanctions

The most common sanction specified by these statutes for drug-related nuisances is temporary closure of the premises.²⁷ The

length of the temporary closure is not always specified, but when it is, it is usually up to a year.²⁸ At least two states authorize permanent closure.²⁹

Abatement statutes commonly authorize sale or distribution of materials or supplies used in maintaining or facilitating the nuisance.³⁰ Several have substantial civil penalties.³¹ Forfeiture is designated as a means of abatement in a few states³² and sale of the building in at least one.³³

Finally, a number of states charge the abatement costs to the defendant, either directly or by putting a lien on the property.³⁴

Modification/Cancellation of Abatement Orders

About half the relevant statutes provide for modifying or cancelling closure or other abatement orders.³⁵ Typically, they require the individual directly or indirectly responsible for the nuisance to post a bond that is forfeited if the property is subsequently found to be used for illegal drug activity.

Failure to Comply With Abatement Orders

Over half the statutes authorizing abatement of drug-related nuisances explicitly state that failure to comply with abatement orders constitutes contempt of court.³⁶

Although maximum fines range from \$50 to \$10,000, most states have a maximum fine of \$1,000. Maximum incarceration is generally six months.

Court Decisions

Several courts have acknowledged the authority of states to enact drug-related nuisance laws.³⁷ Moreover, those that have considered the constitutionality of such statutes have generally upheld them against challenges on grounds of violating speech or religious freedoms, due process, or separation of powers.³⁸

Drug Dwellings as "Illegal Establishments" Subject to Criminal Prosecution

Approximately three-fifths of the states have enacted "illegal establishment" laws.³⁹ Most are based on a provision in the Uniform Controlled Dangerous Substances Act promulgated by the National Conference of Commissioners of Uniform State Laws in 1970. That provision would make it illegal:

knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this Act for the purpose of using these substances, or which is used for keeping or selling them in violation of this Act.

Even though based on the Uniform Act, half of the states' "illegal establishment" laws are somewhat more limited in scope than the Act. These include language similar to that suggested by the American Bar Association Criminal Justice Section which would make it illegal:

knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or vehicle, for the purpose of using, keeping, or selling controlled substances in violation of this Act.⁴⁰

Proscribed Activity

Proscribed activity in "illegal establishment" laws almost always includes possession⁴¹ and usually sales or trafficking⁴² and use.⁴³ Some statutes also specify manufacturing⁴⁴ and delivering.⁴⁵

Penalties

Penalties cover a wide spectrum. Keeping or maintaining dwellings where illegal drug activity takes place is designated a felony in at least 13 states⁴⁶ and a misdemeanor in at least nine.⁴⁷ Most states do not have minimum terms, and maximum terms range from a low of three months to a high of 20 years.⁴⁸ Maximum fines range from \$500 to \$100,000.

Nuisance Designation

A third of the states where maintaining dwellings for illegal drug activity is a criminal offense designate the offense a "nuisance."⁴⁹ The designation does not appear to affect the term of sentence since nuisance offenses are included among the lower and upper end of the penalty spectrum of illegal establishment laws.

Court Decisions

Few courts have examined the validity of the illegal establishment laws. Those which have have found them constitutionally valid.⁵⁰

Drug Dwellings as Real Property Subject to Forfeiture

The federal government and most states have laws providing for forfeiture of property or property interests involving illegal drug activity. Forfeiture laws may be either civil or criminal. In civil forfeiture actions, the state must show that the property has been involved in illegal drug activity, but a criminal conviction is not necessary to demonstrate such activity. In fact, civil forfeiture is usually not precluded even if the property owner or tenant is tried and acquitted of criminal activity. Criminal forfeiture, on the other hand, is directed against a property owner who has been (or is expected to be) convicted of unlawful conduct involving the property.

From the government's point of view, civil forfeiture is generally preferable to criminal forfeiture for several reasons: (1) the government's burden of proof about alleged drug-related activity is lower; (2) property may be forfeited even if its owner cannot be located; and (3) property may be forfeited even if the illegal activity is conducted by a tenant, rather than the property owner.

Civil Forfeiture

The federal government and four-fifths of the states explicitly authorize civil forfeiture of real property associated with illegal drug activity.⁵¹ Most civil forfeiture statutes authorize forfeiture of buildings and dwellings used to facilitate illegal drug activity;⁵² about half authorize forfeiture of real property derived from proceeds of illegal drug activity.⁵³

Authorization for civil forfeiture of real property is typically found in statutory provisions which, in addition to real property, list other forfeitable property, such as controlled substances, raw materials, containers, and conveyances used in illegal drug activities.⁵⁴ (At least six states which authorize forfeiture of these latter types of property do not authorize forfeiture of real property.)⁵⁵

Civil Forfeiture Requirements

Like abatement laws, most civil forfeiture laws do not require a criminal conviction. Nevertheless, it may be more difficult for the state to meet forfeiture standards than abatement standards. Of 28 states which specify the type of illegal drug activities which render real property subject to forfeiture, none specifies drug use, and at least six explicitly exclude possession offenses.⁵⁶ While some allow forfeiture for drug sales,⁵⁷ others limit it to activities involving manufacture or delivery of drugs.⁵⁸ Moreover, nearly three-fourths of the statutes have one or more limitations based on offense level, type of drug, amount of drug, or value of the drug. Nearly half require the underlying offense to be a felony,⁵⁹ and seven exclude all or minor marijuana offenses.⁶⁰ Several exclude crimes where the retail value of the drug is under \$1,000.⁶¹ Massachusetts requires at least three incidents of illegal activity before the real property can be forfeited. Vermont precludes forfeiture of real property which constitutes a primary residence, and California does not allow forfeiture of an

interest in a family residence under \$100,000. Finally, virtually all the statutes prohibit forfeiture if the property owner was unaware of, or did not consent to, the illegal drug activity.

Initiation of Civil Forfeiture

Whereas many of the abatement statutes allow citizens as well as officials to initiate proceedings, few forfeiture statutes allow citizen initiation.⁶² Most of the relevant forfeiture statutes authorize the district/county/state's attorney to initiate forfeiture actions.⁶³ About half authorize the Attorney General, either as a supplemental authority or, in two instances, as the sole authority.⁶⁴ Forfeiture proceedings in two states may be initiated by the Director of Law Enforcement.⁶⁵

Civil Forfeiture Procedures

Not all state civil forfeiture statutes include detailed procedural provisions. Nevertheless, while several states allow administrative forfeiture of non-contested complaints,⁶⁶ forfeiture generally requires a judicial hearing. Moreover, the government usually has the burden of proving that the property is subject to forfeiture.⁶⁷ Most commonly, proof must be by a "preponderance of the evidence,"⁶⁸ although some statutes have the lesser "probable cause" standard⁶⁹ and some the greater "clear and convincing"⁷⁰ standard. About half specify that the property owner has the burden of proving exceptions or exemptions (e.g., lack of consent, lack of knowledge) which would preclude forfeiture.⁷¹ When

specified, the level of proof required is generally "preponderance of the evidence."

Incentives of Civil Forfeiture

Where the type and level of drug activity qualifies and sufficient evidence is available, there is considerable incentive for many jurisdictions to use civil forfeiture statutes to close drug houses. Over half of the relevant statutes provide that the state or local law enforcement agency which seizes the property is entitled to retain some or all of it upon forfeiture.⁷² Some allow the prosecuting agency to retain or share in the retention of forfeited property.⁷³ When forfeited property is sold, at least a proportion of the proceeds may be retained by the relevant law enforcement agencies in nearly half the states,⁷⁴ and by the prosecutor in at least a dozen.⁷⁵ There is presumably somewhat less financial incentive to the extent proceeds are earmarked in whole or in part for state special funds,⁷⁶ statewide administrative agencies,⁷⁷ or state or local general funds,⁷⁸ even though these funds may also be targeted toward law enforcement or drug prevention efforts.

Criminal Forfeiture

Nature of Criminal Forfeiture

As previously noted, conviction is a prerequisite to forfeiture under the criminal forfeiture statutes. The federal

government and several states provide for criminal--as well as civil--forfeiture of real property associated with non-racketeering drug-related activity and at least two states provide for criminal--but not civil--forfeiture of such property.⁷⁹ However, criminal forfeiture statutes are most often "racketeering," "organized crime," or "criminal enterprise" statutes providing substantial sanctions for engaging in a "pattern" of felonious drug trafficking.⁸⁰

Criminal Forfeiture Procedures

While conviction under the relevant criminal forfeiture statutes is necessary for criminal forfeiture, it is not always sufficient. Some statutes require that the government's intention to seek forfeiture be specified in the criminal complaint, information or indictment which initiated the prosecution. Most require a separate, post-conviction hearing at which the court or jury which determined guilt determines whether grounds for forfeiture exist. The burden of proof is generally upon the state, and the level of proof required varies.

Initiation/Incentives of Criminal Forfeiture

As in civil forfeiture, criminal forfeiture actions are initiated by government officials who generally share in the distribution of forfeiture proceeds.

Court Decisions

The courts have viewed forfeiture statutes with some skepticism, often noting they must be strictly construed in favor of persons against whom they are sought to be imposed.⁸¹ Major concerns revolve around issues of consent, adequate notice, and opportunity to appear at hearings where forfeiture is being sought. Nevertheless, the constitutionality of these statutes have survived numerous challenges.⁸²

ENDNOTES

1. Statutes authorizing private landlords to initiate eviction proceedings against tenants are not reviewed in detail here. Examples of these statutes include: Connecticut, C.G.S.A. 47-a-11 and 15; Illinois, S.H.A. 100 1/2 P 24; Maine, 17 M.R.S.A. 2743; Massachusetts, M.G.L.A. 139-19; Minnesota, M.S.A. 504.181 and 617.85; Mississippi, M.C.A. 95-3-23; Nevada, N.R.S. 453-305; New Jersey, N.J.S. 2A:18-61.1; New York, McK.Unconsol.Laws §26-408, North Carolina, G.S. §19-6; Ohio, R.C. §3767.10; Pennsylvania, 68 Pa.C.S.A. 250.555; Rhode Island, Gen. Laws 1956, 34-18-24 and 36; Washington, R.C.W.A. 59.18.130; 170; 180.

2. **States designating drug dwellings nuisances subject to abatement:** Arkansas, A.C.A. 16-105-402; California, West's Ann.Cal.Health & Safety Code §11570; Colorado, C.R.S.A.16-13-301 (see also 18-18-108); Florida, F.S.A. 823.10; 60.05; Illinois, S.H.A.100 1/2-15; Iowa, I.C.A. §657.2; Kansas, K.S.A. 22-3901; Maine, 27 M.R.S.A. §42; Massachusetts, M.G.L.A.139-16 and 16A; Michigan, M.C.L.A. 27A-3801 and 600.3801; Minnesota, M.S.A. §617.80 through 87; Mississippi, M.C.A. 95-3-1 (see also 41-29-309); Missouri, V.A.M.S. 195.130; New Jersey, N.J.S.A. 2A:54A-1 and 2C:33-11.1; North Carolina, G.S. §19-1, 19-2.1; Ohio, R.C. §3719.10 and 3767.03 (Page's); Oregon, O.R.S. 105.555; Tennessee, T.C.A. 29-3-101; Texas, V.T.C.A., Civil Practice & Remedies Code §125.001 and .022; Utah, U.T.A. 58-37-14; Virginia, Code 1950, §18.2-258.01; Washington, RCWA 7.43.010; .056 and 7.48A.030; Wisconsin, W.S.A. 823.113; Wyoming, W.S. 1977 §6-6-201.

Arizona (A.R.S. 13-2908) and Delaware (Del.C. 11-1322) designate buildings where "illegal activity" is conducted as "nuisances." Other states have general "nuisance" statutes which do not explicitly mention drugs or controlled substances but which officials consider to encompass such activities. Georgia authorizes localities to designate buildings where drug activity takes places as nuisances and to abate them (41-2-7 through 17). Arkansas, A.C.A. 5-64-803, and West Virginia, Code 60A-4-403a, are among those states declaring as "nuisances" buildings or premises where activities relating to drug paraphernalia are conducted.

3. **States designating drug possession as grounds for abatement:** Arkansas, California, Colorado, Florida, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Oregon, Utah, Virginia, Washington, Wyoming

4. **States designating drug selling/dealing as grounds for abatement:** Arkansas, California, Colorado, Florida, Illinois, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Tennessee, Utah, Washington, Wyoming

5. States designating delivering/transporting drugs as grounds for abatement: Colorado, Florida, Michigan, Mississippi, New Jersey, Oregon, Texas, Virginia, Washington, Wisconsin, Wyoming

6. States designating drug manufacturing as grounds for abatement: Arkansas, California, Colorado, Massachusetts, Michigan, New Jersey, Oregon, Virginia, Washington, Wisconsin, Wyoming

7. States designating drug use as grounds for abatement: Arkansas, Florida, Illinois, Mississippi, Missouri, New Jersey, Texas, Utah, Washington

8. States designating drug storage as grounds for abatement: Arkansas, California, Colorado, Illinois, Maine, Michigan, Utah, Washington

9. States designating tenants or lessees as potential targets of abatement: Arkansas, California, Illinois, Kansas, Massachusetts, Michigan, Mississippi, Missouri, Oregon, Tennessee, Texas, Wisconsin, Wyoming

10. States designating abatement complainant: Arkansas, California, Colorado, Florida, Illinois, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, North Carolina, Ohio (does not explicitly include the state's attorney), Oregon, Tennessee, Texas, Virginia, Washington, Wyoming

11. States authorizing Attorney General to be complainant: Florida, Illinois, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, North Carolina, Oregon, Tennessee, Texas, Washington

12. States authorizing city attorney to be complainant: California, Florida, Kansas, Minnesota, Oregon, Tennessee, Texas, Washington

13. States authorizing citizens to be complainant: Arkansas, California, Florida, Illinois, Maine, Massachusetts, Michigan, Minnesota, Mississippi, North Carolina, Ohio, Oregon, Tennessee, Texas, Virginia, Washington, Wyoming

14. States requiring citizen complainants to pay for groundless complaints: Arkansas (bond), Florida, Michigan, Mississippi, North Carolina (bond), Ohio (bond), Oregon, Tennessee (bond)

15. States requiring verification of citizen complaints: California, Texas

16. State authorizing district attorney to decline prosecution of citizen complaint: Virginia
17. States requiring multiple citizen complaints: Maine (7 or more), Massachusetts (10 or more), Tennessee (10 or more)
18. States requiring court dismissal of citizen complaints: Florida, Illinois, Minnesota, Mississippi, Oregon, Wyoming
19. States authorizing ex parte temporary restraining orders: Minnesota, Mississippi, New Jersey, Oregon, Washington
20. States requiring notice for preliminary injunctions: Florida, Massachusetts, Minnesota, Mississippi, North Carolina, Washington, Wisconsin. See also, Kansas: State v. Durst, 235 K. 62, 66, 67, 678 P.2d 1126 (1984); Michigan, State ex rel. Wayne County Prosecutor v. Gladstone (1975), 235 N.W.2d 60, 64 Mich.App.55.
21. States designating general reputation of building as evidence: Illinois, Michigan, Minnesota, Mississippi, New Jersey, North Carolina, Oregon, Tennessee, Texas, Washington, Wyoming
22. States designating criminal convictions as evidence: Iowa, Mississippi, North Carolina, Ohio
23. States designating reputation of individual as evidence: California, Oregon, Tennessee
24. States designating reputation of frequent visitors as evidence: North Carolina, Oregon, Washington
25. States designating previous convictions as evidence: Massachusetts, Minnesota
26. State designating previous arrests as evidence: Washington
27. States authorizing temporary closure as abatement sanction: California, Illinois, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oregon, Texas, Virginia, Washington, Wisconsin, Wyoming
28. States authorizing temporary closure up to a year as abatement sanction: California, Illinois, Kansas (up to two years), Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Ohio, Oregon, Texas, Washington
29. States authorizing permanent closure as abatement sanction: North Carolina, Tennessee
30. States authorizing sale of materials used in maintaining nuisance: Illinois, Kansas, Michigan, Minnesota, Mississippi, North Carolina, Ohio, Tennessee, Washington, Wisconsin, Wyoming

31. States authorizing civil penalties as abatement sanctions: California (\$25,000), Kansas (\$25,000), New Jersey (\$300 to \$1,000), Washington (\$25,000)

32. Statutes authorizing forfeiture as abatement sanction: Colorado, New Jersey, North Carolina

33. State authorizing sale of building as abatement sanction: Ohio

34. States charging defendant with abatement costs: Arkansas, Illinois, Iowa, Kansas, Massachusetts, North Carolina, Ohio, Oregon, Washington, Wisconsin

35. States providing for modifying/cancelling abatement orders: Illinois, Iowa, Massachusetts, Minnesota, Mississippi, North Carolina, Oregon, Texas, Virginia, Washington, Wisconsin, Wyoming

36. States where failure to comply with abatement orders constitutes contempt of court: California, Florida, Illinois, Michigan, Minnesota, Mississippi, North Carolina, Ohio, Oregon, Tennessee, Texas, Washington, Wisconsin, Wyoming

37. See, e.g., Florida, Orlando Sports Stadium, Inc. v. State ex rel. Powell, 262 So.2d 881 (1972); Massachusetts, Reale v. Judges of Superior Court of the Commonwealth (1928), 163 N.E. 893, 265 Mass. 135; New York, People v. New York Edison Co., 1913, 159 App.Div. 786, 144 N.Y.S. 707.

38. See, e.g., Kansas, State v. Pinball Machines, 222 K. 416, 418, 419, 420, 565 P.2d 236; Massachusetts, Reale v. Judges of Superior Court of the Commonwealth (1928) 163 N.E. 893, 265 Mass. 135.; Tennessee, Wilson v. Winstead, 470 F.Supp. 263 (E.D. Tenn. 1978), State ex rel. Estes v. Persica, 130 Tenn. 48, 168 S.W. 1056 (1914), and Barrowman v. State ex rel. Evans, 214 Tenn. 408, 381 S.W.2d 251 (1964).

39. States designating drug dwellings illegal establishments subject to criminal prosecution: Alabama, Code 1975 §20-2-71; Alaska, AS 11.71.040; Delaware, 16 Del.C. 4755; D.C. Code §33-542; Florida, F.S.A. 893.13(2)(a)(5); Hawaii, HRS 329-41; Illinois, S.H.A. ch. 56 1/2 - 1406; see also 1406.1, making it an offense for persons who control buildings to permit or make the building available for unlawfully manufacturing or delivering a controlled substance, and 38-37-2, making it an offense to maintain the public nuisance of using buildings for illegal drug purposes; Indiana, IC 16-6-8-10; see also 35-48-4-13(b), making it an offense to commit the common nuisance of maintaining a building for unlawful drug activity; Iowa, I.C.A. §204.402; see also 657.3, making it an offense to erect, cause or continue a public nuisance, including places resorted to by person using controlled substances; Maine, 17 M.R.S.A. §2741, 42; see also 17-2744, making it an offense for

a person to maintain a nuisance by permitting buildings under his control to be used for illegal purposes; Maryland, Code 1957, Art. 27 §286; Massachusetts, M.G.L.A. 139.20, proscribing aiding in the maintenance of a nuisance, i.e., knowingly letting premises owned or under control of a person to be used for illegal keeping, sale, or manufacture of controlled substances; Michigan, M.C.L.A. 333.7405, 6.; Minnesota, M.S.A. §609.326, which makes it a gross misdemeanor to own, lease, operate, manage, maintain or conduct a "disorderly house" where controlled substances are sold or possessed; see also 609.745, making it an offense for whomever has control of real property to permit it to be used to maintain a public nuisance (includes a "disorderly house" where illegal drug activity takes place); Mississippi, M.C.A. 41-29-141; Missouri, V.A.M.S. 195.130; Nebraska, N.R.S. 28-417; Nevada, N.R.S. 453.326; New Jersey, N.J.S. 24:21-35 designates place where drug activity is conducted a nuisance, N.J.S. 2C:33-1 as a misdemeanor; New York, McKinney's C.L.N.Y. Penal 240.45; North Carolina, G.S. §90-108; North Dakota, NDCC, 19-03.1-24; Oklahoma, 63 O.S.A. 2-404; Oregon, O.R.S. 475.993; Rhode Island, Gen. Laws 1956, §21-28-4.06(a), see also 21-28-4.06(b), making it an offense for an owner to permit any building owned or controlled by him to be used for unlawful drug activity; South Carolina, Code 1976 §44-53-380; Tennessee, T.C.A. 53-11-401; Virginia, Code 1950, §18.2-258; Washington, R.C.W.A. 69.50.402; West Virginia, Code, §60A-4-402; Wisconsin, W.S.A. 161.42; Wyoming, W.S. 1977 §6-6-209, making leasing or subletting property for the manufacture, possession, sale or disposition of controlled substances an offense.

40. Reports of the American Bar Association, February, 1971, p. 327. States adopting this or similar language include: Alaska, Hawaii, Indiana, Maine, Massachusetts, Minnesota, Missouri, New York, Oregon, Rhode Island, Virginia, Wyoming

41. States where "illegal establishment" laws include possession of drugs: Alabama, Arkansas, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, Washington, West Virginia, Wisconsin, Wyoming

42. States where "illegal establishment" laws include sales or trafficking: Alabama, Florida, Hawaii, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Virginia, Washington, West Virginia, Wyoming

43. States where "illegal establishment" laws include drug use: Alabama, Delaware, Florida, Hawaii, Indiana, Iowa, Maryland, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Washington, West Virginia, Wisconsin

44. States where "illegal establishment" laws include drug manufacturing: Illinois, Maryland, Massachusetts, New Jersey, Virginia, Wisconsin, Wyoming

45. States where "illegal establishment" laws include drug delivery: Alaska, Delaware, Illinois, Maryland, Virginia, Wisconsin

46. States where drug establishments are designated felonies: Alabama, Alaska, Delaware, Hawaii, Indiana, Maryland, Missouri, New York, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee

47. States where drug establishments are designated misdemeanors: Florida, Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, New Jersey, Virginia, West Virginia

48. States where "illegal establishment" penalties are:

-1 year:	Indiana, Maine, Minnesota, Nebraska, Wyoming
1 year:	Florida, Illinois, Massachusetts, Mississippi, Virginia, West Virginia, Wisconsin
1-5 years:	Alaska, Delaware, Hawaii, Indiana, Iowa, Michigan, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina
5-20 years:	Missouri, Nevada, Rhode Island, Tennessee
+20 years:	Alaska, Maryland

49. States where "illegal establishments" are designated "nuisances:" Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, New York Rhode Island, Virginia, Wyoming

50. See, e.g., Alaska, State v. Erickson, 574 P.2d 1 (Alaska 1978); Indiana, Carter v. State, 1975, 325 N.E.2d 467, 163 Ind.App. 653, and Elliott v. State, App.1982, 435 N.E.2d 302.

51. Statutes authorizing civil forfeiture of real property associated with illegal drug activity: Federal, 21 U.S.C. 881(a)(7), 18 U.S.C. 1963; Alabama, Code 1975, 20-2-93; Arizona, A.R.S. 13-3413 and 13-4304; California,* West's Ann.Cal.Health & Safety Code §11470 and 11488; Colorado, C.R.S.A. 16-13-301; 16-13-314; Connecticut, C.G.S.A. 54-36h; Delaware,* 16 Del.C. 4784; Florida, F.S.A. 893.12 and 932.701; Georgia, Code 16-13-49 (same section also includes in personem actions); Hawaii, HRS 712A; Idaho*, I.C. 37-2744A; Illinois,* S.H.A. ch. 56 1/2 - 1505; Kansas,* K.S.A. 65-4135 and 65-4171; Kentucky, K.R.S. 218A.410 and 415; Louisiana, R.S. 15-1356 and 40-2601 (see 40-2613 for in personem forfeiture); Maine, 15-5821; Maryland, A.C.M. 27-297; Massachusetts, M.G.L.A. 94C-47; Minnesota, M.S.A. 609.531, 609.5311 through 17; Mississippi,* Code 1972, 41-29-153 and 41-29-177;

Missouri, V.A.M.S. 513.600; Montana, M.C.A. 44-12-101; Nevada,* N.R.S. 453.301 and 179.1164; New Hampshire, R.S.A. 318-B:17-b; New Jersey, N.J.S.A. 2C:64-1; New York, NY CPLR 1310; North Dakota, NDCC 19-03.1-36; Ohio, R.C. §2925.41; Oklahoma,* 63 Okl.St. Ann. 2-503; Pennsylvania, 42 Pa.C.S.A. 6801; Rhode Island,* Gen. Laws 1956, 21-28-5.04.2; South Carolina, Code 1976 44-53-520; South Dakota, SDCL 34-20B-70.1; Texas, Vernon's Ann. Texas C.C.P. Art. 59.01; Utah, U.T.A. 1953, 58-37-13; Vermont, 18 V.S.A. 4241; Virginia, Code 1950, 19.2-386.1; Washington,* RCWA 69.50.505; West Virginia,* Code, §60A-7-703; Wisconsin, W.S.A. 161.55; Wyoming, W.S.1977 §35-7-1049.

* Based on NCCUSL Uniform Controlled Substances Act

52. **States authorizing civil forfeiture of real property used to facilitate drug activity:** Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Washington, West Virginia, Wyoming

53. **States authorizing civil forfeiture of real property derived from proceeds of illegal drug activity:** Alabama, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Montana, Nevada, New York, North Dakota, Ohio, Oklahoma, Rhode Island, Vermont, Washington, Wisconsin

54. The National Conference of Uniform State Laws' Uniform Controlled Substances Act is often cited in the state statutes. That Act, as approved in 1970 and updated in 1973, enumerated types of forfeitable property; however, it did not include real property which facilitated or was derived from illegal drug activity. When the Act was updated in 1990, the forfeiture provisions were omitted altogether, and are being drafted as a separate Civil Forfeiture Act. A current draft includes among the forfeitable property real as well as personal property that is "used or intended to be used in any manner or part to facilitate conduct giving rise to forfeiture" and "proceeds of conduct giving rise to forfeiture"--wording similar to many of the existing statutes.

55. **States with forfeiture provisions not including real property:** Alaska, Indiana, Michigan, Nebraska, New Mexico, North Carolina

56. **States excluding real property forfeiture for possession offenses:** Arkansas, California, Delaware, Georgia, Maryland, Nevada

57. **States authorizing real property forfeiture for drug sales:** Alabama, California, Colorado, Hawaii, Kansas, Maine, Missouri, North Dakota, Pennsylvania, Rhode Island, South Carolina

58. States limiting real property forfeiture to crimes involving manufacture/delivery of drugs: Illinois, Maryland, Massachusetts, Minnesota, New Hampshire, Washington

59. States requiring underlying drug offense of real property forfeiture to be felony level: Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Missouri, Montana, New Hampshire, New York, Ohio, Oklahoma, Texas, Washington, West Virginia

60. States excluding real property forfeiture for marijuana offenses: Colorado, Georgia, Kentucky, Maine, Massachusetts, Rhode Island, Washington

61. States excluding real property forfeiture where underlying offense involves retail value of less than \$1,000: Minnesota, Utah

62. State authorizing forfeiture actions by parties other than Commonwealth: Kentucky (where there has been a conviction)

63. States authorizing district/county/state's attorney to initiate real property forfeiture hearings: Alabama, California, Connecticut, Florida, Georgia, Hawaii, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nevada, New York, Ohio, South Carolina, Texas, Utah, Virginia, West Virginia, Wisconsin

64. States authorizing the Attorney General to initiate real property forfeiture hearings: Alabama, California, Connecticut, Maine, Massachusetts, Missouri, New Hampshire (sole authority), New York, South Carolina, South Dakota (sole authority), Virginia

65. States authorizing Director of Law Enforcement to initiate real property forfeiture actions: Idaho, Illinois

66. States authorizing administrative forfeitures: Delaware, Washington

67. States where state has burden of proving real property is subject to forfeiture: Alabama, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin

68. States where level of proof for real property forfeiture is preponderance of the evidence: California, Idaho, Kansas, Maine, New Hampshire, Oklahoma, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin

69. States where level of proof for real property forfeiture is probable cause: Georgia, Illinois, Louisiana, Massachusetts, Missouri, Rhode Island

70. States where level of proof for real property forfeiture is clear and convincing evidence: Connecticut, Kentucky, Maryland, Minnesota, New York, Ohio, Vermont

71. States where property owner has burden of proving exceptions/exemptions to real property forfeiture: Alabama, Colorado, Florida, Georgia, Hawaii, Illinois, Kansas, Louisiana, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, South Dakota, Virginia, Wisconsin

72. States where seizing law enforcement agency may retain forfeited property: Alabama, California, Delaware, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Hampshire, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin

73. States where prosecuting agency may retain forfeited property: Illinois, Minnesota, New Jersey, New York

74. States where seizing law enforcement agencies may retain proceeds of forfeited property: Alabama, California, Colorado, Hawaii (25%), Illinois (65%), Louisiana (60%), Maine, Massachusetts (50%), Minnesota (70%), Nevada, New Jersey, Rhode Island (70%), South Carolina (90%), Texas, West Virginia (90%), Wisconsin (up to 50% of forfeiture expenses)

75. States where prosecuting agency may retain some or all of the proceeds of forfeited property: California, Hawaii (25%), Illinois (12.5%), Kentucky (18%), Louisiana (20%), Massachusetts (50%), Minnesota (20%), New Jersey, Pennsylvania, Rhode Island, Texas, West Virginia (10%)

76. States where proceeds of forfeited property are earmarked in whole or in part to special funds: California (Asset Forfeiture Fund), Connecticut (Drug Asset Forfeiture Fund), Delaware (Special Law Enforcement Assistance Fund), Florida (local Law Enforcement Trust Fund), Hawaii (50% to Criminal Forfeiture Fund), Illinois (12.5% to State's Attorney Appellate Prosecutors' Fund), Kansas (local Law Enforcement Agency Trust Fund), Kentucky (State Forfeiture Trust Fund as "pass through"), Louisiana (Special Asset Forfeiture Fund, as "pass through; 20% to Criminal Court Fund), New Hampshire (45% to State Drug Forfeiture Fund), Ohio (state or local Law Enforcement Trust Fund, as "pass through"), Oklahoma (Bureau of Narcotics Revolving Fund, Bureau of Public Safety Revolving Fund), South Dakota (State Drug Control Fund), Virginia (Special Fund for Department of Criminal Justice Services), Wisconsin (School Fund)

77. States where proceeds of forfeited property are earmarked in whole or in part for state administrative agencies: Idaho (Director of Law Enforcement), Illinois (10% to Department of State

Police), Kentucky (36% to Human Resources Cabinet, 36% to Corrections Cabinet, and 10% to Justice Cabinet), New Hampshire (10% to Alcohol, Drug Abuse Prevention), Rhode Island (10% to Department of Mental Health), South Dakota (Bureau of Narcotics and Drugs)

78. States where proceeds of forfeited property revert in whole or in part to the general treasury of the state or political subdivision: Colorado, Florida, Georgia (up to 25% to state; 75% to local treasury for law enforcement purposes), Maryland, Minnesota (10%), Missouri, New Hampshire (45%), North Dakota, South Carolina (10%), Texas, Utah, Vermont, Washington (25% to local general fund for law enforcement purposes; 25% to state general fund for law enforcement purposes; 50% to state general fund for drug enforcement)

79. Non-racketeering criminal forfeiture statutes authorizing criminal forfeiture of real property associated with illegal drug-related activity: Federal, 21 U.S.C. 881, 853; Arkansas, 5-64-505(a)(7)(iv); New York, McKinney's Penal Law 480 et seq. (see note ___ for non-racketeering civil forfeiture provision); Ohio, 2925.42 (see note ___ for non-racketeering civil forfeiture provision); Rhode Island, 21-28-5.04.1 (see note ___ for non-racketeering civil forfeiture provision), Tennessee, 53-11-452. In Nevada, a conviction of a tenant is grounds for forfeiture of property if the owner has been notified of the tenant's conviction but subsequently fails to evict that tenant, N.R.S. 435.305.

80. Racketeering statutes authorizing criminal forfeiture of real property associated with illegal drug-related activity: Federal, 18 U.S.C. 1963; Alabama, Code 1975, 13A-12-2233; Arkansas, A.C.A. 5-64-414; Colorado, C.R.S.A. 18-17-105; Connecticut, C.G.S.A. 53-396; Delaware, 11 Del.C. 1504; Florida, West's F.S.A. 895.05 (civil); Georgia, Code, 16-14-7; Idaho, I.C. 18-7804; Illinois, S.H.A. ch. 56 1/2 P 1405, S.H.A. ch. 56 1/2 1655; Louisiana, LSA-R.S. 15:1356; Mississippi, Code 1972, 97-43-9; Missouri, V.A.M.S. 195.130; New Mexico, NMSA 1978, 30-42-4; New York, McKinney's Penal Law 460.30 and .70; North Carolina, G.S. 750-5; Rhode Island, Gen.Laws 1956, 7-15-3; Tennessee, T.C.A. 39-12-202; Utah, U.C.A. 1953, 76-10-1603.5.

81. E.g., Alabama, Reeder v. State ex rel. Myers, 294 Ala. 260, 314 So.2d 853 (1975) and State v. Blair, 435 So.2d 124 (Ala. Civ. App. 1983); California, Baca v. Minier (App. 5 Dist. 1991) 280 CalRptr. 810, 229 Cal.App.3d 1253; Nevada, One 1978 Chevrolet Van v. County of Churchill, 97 Nev. 510, 634 P.2d 1208 (1981); New Jersey, State v. One Ford Van, Econoline, 154 J.J.Super. 326, 381 A.2d 387 (A.D. 1977) and State v. Garcia, 114 N.J.Super. 444, 276 A.2d 880 (L.1971).

82. E.g., Alabama, Kirkland v. State ex rel. Baxley, 340 So. 2d 1121 (Ala. Civ. App. 1976); Florida, Smith v. Hindery, pp. 1 Distr., 454 So.2d 663 (1984); Georgia, Tant v. State, 247 Ga. 264, 275 S.E.2d (1981) and Porter v. State, 196 Ga. App. 31, 395 S.E.2d 360 (1990); Illinois, People v. Gant, App. 4 Dist.1986, 103 Ill.Dec.334, 150 Ill.App.3d 180, 501 N.E.2d 355; New York, Morgenthau v. Citisource, Inc., 1986, 68 N.Y.2d 211, 508 N.Y.S.2d 152, 500 N.E.2d 850, on remand 128 A.D.2d 459, 513 N.Y.S.2d 429; Washington, Smith v. Mount (1986), 45 Wash.App.623, 726 P.2d 474.