

THE WHITE HOUSE

PRESIDENT'S COMMISSION ON MODEL STATE DRUG LAWS



# Community Mobilization

December 1993

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# President's Commission on Model State Drug Laws

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**OFFICE OF NATIONAL DRUG CONTROL POLICY  
EXECUTIVE OFFICE OF THE PRESIDENT  
Washington, D.C. 20500**

December 1, 1993

Dear Colleague:

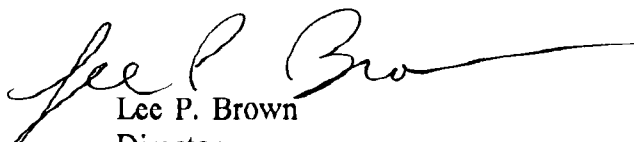
Drug use and drug trafficking have affected virtually every town, city, and State in America. Nearly every family has been touched in some way by illegal drug use and the violence it spawns.

The drug problem pervades all aspects of American life. In response, the President's National Drug Control Strategy calls for a broad-based crusade to reduce the demand for drugs, restrict their availability, and deter drug-related crime and violence. A fundamental principle of this Strategy is the idea that the most effective drug control programs are those designed and carried out at the State and community levels.

In recent years States and localities have responded creatively and energetically to the threat posed by illicit drugs, in part by enacting a broad range of codes and statutes. The President's Commission on Model State Drug Laws, a bipartisan group of distinguished Americans with extensive experience in law enforcement, drug treatment, and prevention, has spent the past year reviewing these codes and statutes.

Based on this review, the Commission has developed a comprehensive package of legislative initiatives, with specific recommendations that address not only the need for more effective criminal laws but also, and just as important, the need for legislation to empower and mobilize communities to confront the drug problem. In addition, the Commission's recommendations provide innovative civil remedies to supplement our criminal codes; facilitate the development of comprehensive educational and prevention tools by which to teach our children to resist the temptation of drugs; encourage businesses and their employees to work cooperatively by establishing effective workplace initiatives and employee assistance programs; and enhance our ability to provide drug treatment to those who need it.

The package of State legislative initiatives compiled by the President's Commission is a valuable resource for State legislators, local officials, and other concerned citizens who are seeking additional ways to confront and overcome the problems created by drug trafficking and drug use. I encourage your careful review of these initiatives.

  
Lee P. Brown  
Director



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## Executive Director's Preface

Alcohol and other drug addiction erodes the vitality of our nation in ways we do not even realize. Drug-trafficking crimes and crack babies grab headlines, but as a society we fail to acknowledge, and public policy fails to reflect, that many of the other major problems of our day have their roots in widespread substance abuse.

Health care costs, for example, are driven up dramatically by untreated addiction; the average alcoholic or other drug addict is conservatively estimated to be using ten times the medical services of a non-addict. The disease of addiction destroys the body in many ways not commonly known, and all of us pay the costs of treating this physical breakdown through higher taxes or higher insurance premiums. Until the health care system provides sufficient access to effective treatment, as recommended in the Commission's model legislation, health care costs will remain unacceptably high no matter how the health care system is redesigned.

Crime and prison overcrowding is another example. Sixty to eighty percent of criminal defendants are addicted. Those who are convicted and jailed continue their habits in prison, where alcohol and drugs are readily available despite regulations and enforcement to keep them out. Offenders not imprisoned for life or executed will ultimately be released into society, still addicted and still dangerous. It is hardly surprising that crime rates remain high even though the number of people imprisoned in America has increased 168 percent since 1980.

Offenders entering the criminal justice system are in the perfect place at the perfect time to be assessed for addiction and referred to treatment. The burglaries, assaults, thefts, rapes and murders committed by that addicted sixty to eighty percent are closely connected to their alcohol and drug problems. Crime and prison overcrowding will not diminish to an acceptable level until the criminal justice and treatment systems are integrated, as recommended in the Commission's Model Criminal Justice and Treatment Act. It will take years before every person arrested is assessed for substance addiction and where appropriate referred into treatment, but our country cannot afford to do anything but begin this transition.

Productivity in the workplace (which affects our global economic competitiveness) is another area where substance abuse has tremendous impact. Untreated addictions cost American businesses from \$50 billion to \$100 billion each year in increased medical claims and disability costs from illness and injuries, theft, absenteeism, and decreased productivity. These costs are comprehensible when one considers that fully two-thirds of all drug abusers in America are in the workplace.

The workplace is also a highly effective point of intervention for adult abusers. While much of the attention to drug-free workplaces in recent years has focused on drug testing, testing is only one tool to address the problem. A comprehensive drug-free workplace program is essential: written

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policy statements, employees assistance programs and rehabilitation resources, employee education programs, supervisor training programs, testing, and confidentiality protections. Employers consistently report that these bring tremendous cost savings.

As staggering as are the obvious economic costs of alcohol and other drug abuse, the costs in human suffering are even greater. Millions of American babies are born into families ruined by the disease of addiction. The neglect, the cruelty and the abuse they suffer rob them of their innate innocence, hope, spontaneity and enjoyment of life. The bewilderment of children who can't count on a rational, nurturing, secure framework to grow up in causes incalculable emotional and spiritual damage.

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Those who offer solutions for our country's drug problems have traditionally misunderstood each other. Many law enforcement officials, for example, have been suspicious of those advocating treatment for criminal offenders. They believe that treatment advocates do not care about making criminals pay for their crimes, that they are cavalier about protecting public safety, and that treatment is just a "soft," easy alternative to the hard prison time that serious offenders should be serving. Many treatment advocates, on the other hand, have countervailing suspicions. They believe the law enforcement community is myopically focused on punishment without looking at the broader picture of how to create a safer society by changing addicted offenders' lives.

The President's Commission on Model State Drug Laws was a microcosm of the diverse viewpoints on the drug crisis. The law enforcement perspective was well represented, with three state attorneys general, five big city prosecutors, and two police chiefs. Those representing the treatment and prevention disciplines, though fewer in number, were not deterred from persuasively championing their own perspectives.

The challenge of reaching consensus initially seemed insurmountable to many of us. But after hundreds of hours of frank, honest exchanges about goals, priorities, concerns and doubts, both during formal meetings and hearings, and informally during off hours, something remarkable happened. Virtually every Commissioner learned that the "other" perspectives were not in opposition to his or her own.

Law enforcement Commissioners learned that treatment providers actually need the support of tough law enforcement; that instead of "special breaks," addicted offenders have to be held responsible for their actions like everyone else. Indeed, some treatment providers complained that the criminal justice system too often is not tough enough, and undermines treatment programs by not carrying out their recommendations to jail criminal justice clients who are not cooperating with the course of treatment.

Similarly, the treatment Commissioners found that prosecutors and police are not opposed to treatment per se. They learned that prosecutors' hesitations have sprung primarily from the public misperception that treatment does not work. When presented with compelling evidence that treatment can be effective in substantially reducing both recidivism and relapse, and thereby protects public safety, law enforcement Commissioners unanimously supported the expansion of treatment resources within both the criminal justice system and the public and private health care systems.

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The model legislation this Commission created integrates an unprecedented diversity of credible approaches into a single, comprehensive proposal. Bringing together leading professionals from different fields to address a common problem, and seeking to broaden the understanding of each by all the others, is itself a model for effective change.

By opening their minds to the broad picture of drug problems and solutions, these Commissioners were able to contribute to a richer whole than any of us thought possible in the beginning. By sincerely striving to understand approaches and perspectives they weren't always familiar with, they helped to create a package of legislation that will finally, and truly, make a difference.

Gary Tennis  
Executive Director

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# Introduction

The 1988 Anti-Drug Abuse Amendments created a six month bipartisan presidential commission to develop state legislative responses to the drug problem. Funded in 1991, the 23 member Commission was sworn in on November 16, 1992. Twelve Democrats and eleven Republicans, the Commissioners included an urban mayor, a superior court judge, state legislators, a child advocate, a housing specialist, state attorneys general, police chiefs, treatment providers, urban district attorneys and private practice lawyers. The Commission's mission was:

to develop comprehensive model state laws to significantly reduce, with the goal to eliminate, alcohol and other drug abuse in America through effective use and coordination of prevention, education, treatment, enforcement, and corrections.

To facilitate its mission, the Commission held public hearings around the country to gather information on five broad topics:

- Economic remedies against drug traffickers
- Community mobilization and coordinated state drug planning mechanisms
- Crimes code enforcement against drug offenders
- Alcohol and other drug treatment
- Drug-free families, schools, and workplaces

The Community Mobilization hearing was held on January 27, 1993 at the Wayne County Building in Detroit, Michigan. Oral and written testimony was received from community activists, religious leaders, prosecutors in charge of nuisance abatement proceedings, state drug policy coordinators ("drug czars"), residential treatment facility directors, elected district attorneys, law professors, public housing resident leaders, and leaders of multi-city anti-drug efforts. Witnesses discussed the coordination of law enforcement and community activists in successful drug nuisance abatement programs; the need for rapid eviction of drug traffickers from public housing; the difficulty treatment facilities have in overcoming the NIMBY ("not in my backyard") syndrome in order to site treatment facilities and the inevitable acceptance of the facilities by the community once the communities find their fears unfounded; alternative means to take drug nuisance properties away from irresponsible owners: the development of models of cooperation between law enforcement offices and community organizations in maximizing community mobilization; approaches to bringing about the coordination and collaboration of all state agencies addressing the abuse of alcohol and other drugs and the resulting problems; and how cities within a state can work together in responding to their drug problems.

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Six months of review, analysis and drafting have culminated in the following model community mobilization acts recommended by the Commission and discussed in Volume II of the Commission's Final Report:

- Model Expedited Eviction of Drug Traffickers Act
- Model Drug Nuisance Abatement Act
- Model Crimes Code Provisions to Protect Tenants and Neighbors
- Model Anti-Drug Volunteer Protection Act
- Model Alcohol and Other Drug Abuse Policy and Planning Coordination Act
- Model Community Mobilization Funding Act

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# Community Mobilization

## Policy Statement

State legislatures should be encouraged to authorize a host of innovative civil actions to supplement traditional criminal sentencing sanctions directed against convicted drug offenders. The ability to use innovative civil remedies to redress injuries related to the illicit drug trade, to safeguard the interests of citizens who are the constant victims of drug trafficking and drug-related crimes, and to leverage drug dependent dealers into treatment, are especially important given the level of prison and jail overcrowding which exists in most jurisdictions. Budgetary constraints and the current strain on the nation's correctional system are imposing inherent limits on the ability of the criminal justice system to deal with the evolving drug crisis.

Even more importantly, the state remedial legislation contained in this volume will help to provide law abiding citizens with important new protections and incentives to organize and to work cooperatively with law enforcement, other government officials, and with private sector concerns, in addressing the drug problem at the neighborhood and community level. These laws are designed to inspire, support and strengthen grass roots efforts to reclaim buildings, streets and entire neighborhoods from the influence of drug traffickers and violent street criminals.

The enclosed model legislation, recommended for consideration by state legislatures, will:

- Provide qualified immunity from civil liability for anti-drug volunteers for their volunteer activity;
- Authorize civil actions to evict tenants or members of tenants' households who commit drug offenses on the residential premises or use those premises in furtherance of drug trafficking activities;
- Authorize civil actions to permanently remove and bar persons from leased residential premises where those persons have engaged in drug trafficking activities on or near the premises, even though they are not tenants or residents and thus have no recognized "property rights" to terminate in a traditional eviction proceeding;
- Afford legal standing to tenant associations so as to authorize such organizations to bring civil eviction actions in appropriate cases where the owner/landlord refuses to initiate the eviction proceeding against a resident drug dealer in the owner/landlord's own right;
- Authorize courts in appropriate cases to refrain from ordering the eviction of a tenant where the tenant was not personally involved in drug trafficking activities and where a



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traditional complete eviction would pose an undue hardship to innocent persons. The model legislation nonetheless imposes carefully prescribed standards and procedures where this “safety valve” provision is to be invoked, so as to ensure that drug trafficking activities do not recur;

- Authorize a tenant association or criminal prosecuting agency to recover from the landlord/owner the costs of successfully litigating an eviction action where the landlord/owner refused to bring the lawsuit. This provision would be designed to provide financial incentives for landlord/owners to protect the interests and rights of their law abiding tenants and residents;
- Use the threat of imminent eviction to motivate drug or alcohol dependent offenders to enter and positively participate in treatment, and to successfully gain recovery;
- Authorize a new sentencing option following a conviction or adjudication of delinquency which would expressly allow a court, as a condition of probation or parole, to prohibit the defendant from returning to the site of the leased residential premises at which the drug-related crime occurred;
- Authorize juvenile courts to apply this prohibition to juveniles adjudicated delinquent for drug-trafficking in a particular residential area. This provision is intended to counteract adult drug traffickers’ common practice of using children (because they are subject to lighter sanctions in most jurisdictions) to deal or to assist in dealing their drugs;
- Authorize a court to issue a pretrial restraining order as a condition of bail which would prohibit the defendant from returning to the site of the leased residential premises at which the drug-related crime is alleged to have been committed, where that person is not a lawful resident at the premises and thus has no lawful or legitimate business or need to enter the premises;
- Expressly reject the notion that drug distribution offenses are “victimless” crimes, by treating law abiding tenants and residents as crime victims within the meaning of state victims’ rights legislation, thereby expressly authorizing such persons to provide victim impact statements or personally to address the court at the time of sentencing;
- Authorize courts to “abate” a “drug nuisance” by closing a building or premises which is the site of drug trafficking, by ordering the owner/landlord to develop and implement an effective “abatement plan”, or by imposing civil penalties against culpable owners/landlords who unreasonably permit or tolerate drug trafficking activities to occur on their premises;
- Strongly encourage the transfer of drug nuisance properties to non-profit anti-drug neighborhood organizations and treatment centers by owners who unreasonably permitted the property to be a drug nuisance, by imposing a mandatory \$25,000 fine upon such owners, which fine may be waived only if the owner conveys the premises to such an organization;
- Enable anti-drug organizations to secure representation of counsel by requiring the payment of their attorneys’ fees where the action is successful;

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- Authorize persons who have been injured in their businesses or property by reason of a drug nuisance to bring a civil action for actual damages against any person who knowingly conducted, maintained, aided, abetted or permitted a drug violation constituting the nuisance;
  - Encourage each state legislature to establish an Executive Council within the executive branch of government to coordinate state drug control policies, programs and initiatives designed to address the alcohol and other drug abuse problem. The functions of the Executive Council include the responsibility to develop a statewide "master plan" setting forth short and long term goals and objectives; to review and making recommendations concerning the budgets of all state agencies involved in drug and alcohol abuse programs; and to review and endorse applications by state and local agencies for federal grant funding;
  - Encourage each state to establish advisory boards to represent a wide range of alcohol and other drug abuse interests and constituencies, so as to provide the Executive Council with input and information concerning the development and implementation of the state's alcohol and other drug abuse master plan.

In sum, many neighborhood and community groups have become zealous participants in fighting the scourge of drugs in their communities, an arena that historically has been the relatively exclusive arena of government. When these courageous groups' efforts cannot make positive, concrete gains, their efforts, often frustrated by the lack of government resources to support them, may understandably falter. This Commission urges state legislatures to give these groups the legal tools they need to drive flagrant drug-trafficking, with all its destructive effects, out of their midst. The motivation, to have safe homes and neighborhoods, clearly is there; this set of statutes is intended to help provide the wherewithal.

# Model Expedited Eviction of Drug Traffickers Act

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# Model Expedited Eviction of Drug Traffickers Act

## Policy Statement

This Act is part of the series of statutes proposed by the Commission that are designed to establish and codify a number of innovative civil actions to supplement traditional criminal sentencing sanctions directed against convicted drug offenders. The ability of private litigants and public agencies to use innovative civil remedies to redress injuries related to the illicit drug trade and to safeguard the interests of law abiding citizens who are the constant victims of drug-related crimes is especially important given the level of prison and jail overcrowding which exists in most jurisdictions. The state legislatures must recognize that, given existing budgetary constraints and the current strain on the nation's correctional system, there are inherent limits on the ability of the criminal justice system to deal with the evolving drug crisis.

More importantly, carefully crafted civil remedial legislation can help to provide law abiding citizens with important new incentives to organize and to work cooperatively with law enforcement, other governmental officials, and with private sector concerns, in addressing the drug problem at the neighborhood and community level. It is thus the overriding intention of this Act to help inspire and support grassroots efforts to reclaim buildings, streets and entire neighborhoods from the influence of drug traffickers and violent street criminals.

The Model Expedited Eviction of Drug Traffickers Act is designed to be fast and easy to use by landlords, tenant organizations and prosecuting agencies to evict drug dealers from neighborhood properties. It is designed to provide practical economic incentives for landlords to take those actions that are necessary and appropriate under the circumstances to protect the interests of their law abiding tenants. At the same time, it is designed to provide incentives to these tenants to organize into bona fide tenant associations in order to protect their own rights and interests without the need to resort to vigilantism or other manifestations of the frustrations which have gripped many neighborhoods, and especially urban communities, throughout the nation. The Act recognizes that tenants have an inalienable right to reside in a safe premises, one which is free from violence and intimidation typically associated with the illicit drug trade. This right to safety is no less fundamental, and no less an appropriate subject of civil enforcement actions, than are the commonly asserted civil rights to heat, running water and other basic attributes of a habitable environment.

Currently, the landlord-tenant statutes in many jurisdictions are known as "anti-eviction" acts, which are designed principally to protect the legal rights of tenants as against those landlords who seek to remove them in civil eviction proceedings. Although this Act, in contrast, is designed to facilitate and expedite eviction actions in certain circumstances, this Act nonetheless continues to effect this general philosophy by seeking to protect the rights of law abiding tenants and residents

as against those tenants and residents who engage in illicit drug activities on or near the leased residential premises. This Act thus recognizes that drug trafficking activities, by their very nature, attract crime and violence as offenders seek to use force and violence to protect their "wares" and "turf". This Act provides in unequivocal terms that drug-trafficking activities are incompatible with the basic rights of law abiding tenants and residents.

A tenant's involvement in drugs and the often coincident decline in community living standards engendered by drug-related activity (random criminal violence, pressure on neighborhood children to buy, open sale of drugs, loud noise, out-of-state vehicles, trash) clearly violates contractual lease obligations and common law principles requiring that citizens live peaceably with their neighbors.

As noted above, the Act should be adopted and implemented in conjunction with other statutes proposed by the Commission, including the Model Drug Nuisance Abatement Act. That Act is designed principally to close down properties which constitute a drug nuisance, while the Act focuses on the removal of the offending individuals from the premises which remain open. It is important to understand that these two statutes are designed to work in tandem. The Model Drug Nuisance Abatement Act, for example, creates a legal duty on landlords expeditiously to evict drug-trafficking tenants as a means to abate drug nuisances. The Model Expedited Eviction of Drug Traffickers Act therefore is a necessary companion law to the Model Drug Nuisance Abatement Act, since it provides landlords with critical tools needed to satisfactorily carry out this legal duty.

It is critical to note that the provisions of this Act are intended to be remedial, rather than punitive, in their nature and effect. The Act attempts carefully to balance the rights of other parties and acknowledges that the eviction remedy can, historically, prove to be an extremely harsh and unforgiving sanction. The Act, nonetheless, puts all tenants and residents on clear notice that drug trafficking activity on or near leased residential premises will not be tolerated.

The Act includes a number of important innovations in landlord-tenant law. For one, the Act includes important new provisions concerning who may initiate an eviction action. Under traditional principles of landlord-tenant law, only the landlord or owner of the property, or his or her agent, is authorized to initiate an eviction proceeding. Any such limitation in defining the scope of persons who have standing to bring such a lawsuit has proven unacceptable in the context of the nation's current drug crisis. Consider, for example, that:

1. The owner of a parcel of property may not live on the property or even in the neighborhood. Such an owner may have no real economic incentive for taking responsibility for the property, so long as he or she continues to receive rent. In many cases, such an "absentee" owner, may honestly not be aware of the drug trafficking activity occurring on his or her premises.
2. The owner may live on or near the premises, but may be deterred from instituting action to remove drug-involved tenants for fear of violent retaliation.
3. An "absentee" owner may actually benefit indirectly from the drug trafficking activities, in that the drug-involved tenants typically pay their rent on time and in cash. In those circumstances, the landlord may have no economic incentive to intervene or otherwise take action against the drug-trafficking residents.



For all of these reasons, this Act expands the scope of permissible plaintiffs, specifically authorizing, in certain circumstances, a bona fide tenant organization or local prosecutor's agency to initiate an eviction action, and especially where the landlord for any reason refuses to do so after being provided notice of the factual basis for commencing the action.

These innovative and important provisions of the statute are modeled roughly after well-established corporate law, which authorizes class action or so-called "shareholder derivative" suits. In that context, any shareholder of a corporation may initiate a civil lawsuit in the right of the corporation where the shareholder has reason to believe that the corporation has suffered a civil wrong in tort or in contract, and the Board of Directors of the corporation refuses to protect the corporation's interest by filing a lawsuit after having been demanded to do so by the aggrieved shareholder. By expanding the permissible range of plaintiffs in this fashion, such provisions of law serve to encourage corporate directors aggressively and faithfully to protect the legal interests of the corporation and its shareholders.

So too, the provisions of this Act, which authorize under certain circumstances the initiation of an eviction action by a tenant association or prosecuting agency, are designed to provide strong practical incentives for landlords to take action on their own to protect the rights of law abiding tenants. Only in this way can the landlords be certain to maintain control of the conduct and costs resulting from the litigation. This important innovation is designed in a very literal sense to empower the victims of drug-related crime by affording them standing to be heard in the civil courts.

The second major innovation concerns the nature of the remedies which are available to the courts upon the finding that drug-trafficking activity has been committed upon the leased residential premises. Traditionally, an eviction action under landlord-tenant law is an *in rem* suit. The court's jurisdiction is limited to determining whether or not to terminate the leasehold. In other words, the court in a traditional landlord-tenant action may either extinguish the contractual relationship between the landlord and the tenant (thereby giving rise to an action to dispossess the tenant, i.e. to effect an eviction) or dismiss the suit brought by the landlord. Traditionally, there has been no flexibility or variability in the remedies available to the court. The action is thus *in rem*, as opposed to *in personam*, in as much as most landlord-tenant courts have no authority to direct the tenant to modify his or her behavior, other than to order him or her to vacate the premises entirely.

This Act, in contrast, introduces the concept of a "partial eviction." Under this approach, the court may specifically tailor its eviction order to remove only those persons who are culpable, that is, those who were found to be actually involved in the drug-trafficking activity occurring on or related to the leased residential premises. Under this formulation, under certain circumstances which are carefully described in the Act, the court may preserve the tenancy upon certain conditions, thus allowing an innocent tenant or resident to remain on the premises, while ordering culpable offenders to vacate the premises. Because this Act provides far greater flexibility to the courts in tailoring an appropriate remedy, its effect is to be more fair and more effective, avoiding to the greatest extent possible the phenomenon of "throwing the baby out with the bath water."

In a closely related vein, the third major innovation permits the courts in certain circumstances to establish a "probationary tenancy." Under this unique and enlightened remedy, the court may allow the drug-dependent tenant or resident, who otherwise would be subject to complete eviction, to remain on the premises so long as he or she is undergoing an appropriate and carefully super-

vised course of drug treatment. This provision recognizes that many persons who sell illicit drugs are doing so to support their own drug addiction. The Act should thus become part of a comprehensive panoply of legal remedies, in both the civil and criminal justice systems, which is designed to encourage alcohol or drug dependent offenders to seek and accept help, and at the same time balances the rights and needs of these drug dependent persons with the legitimate and compelling rights of neighbors and other tenants to live in an environment which is free of drug trafficking activities.

Finally, this Act provides firm guidance to the courts as to when and under what circumstances a complete or partial eviction should occur, and under what circumstances a court may decline to order an eviction or removal of an individual notwithstanding that the plaintiff in the action has proven the existence of tenancy-based drug trafficking activities. Most state eviction statutes, in contrast, merely set out the so-called "grounds" for eviction, leaving the courts with wholly unguided discretion to decide whether to effect the eviction when these grounds have been established. The Act recognizes the need for some measure of predictability and uniformity in the implementation of the statutorily authorized remedies. This is necessary for policy reasons, in order to achieve one of the Act's principal objectives, that is, to deter tenants, residents and their guests from engaging in drug trafficking activities in the first place. It is thus intended that by providing precise guidance to the courts, tenants, residents and landlords are placed on clear notice of what will happen to them if they engage in or tolerate drug-related criminal activities occurring on the leased residential premises.

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# Highlights of the Model Expedited Eviction of Drug Traffickers Act

## ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes and seeks to promote the right of all citizens to be safe and secure in their residences, and to live and raise their children in apartment complexes, neighborhoods and communities which are free from the destructive influence of drug dealers and drug related crime and violence.
  - Recognizes that persons who commit drug distribution offenses on or near leased residential premises, or who permit or tolerate such offenses to be committed, violate the civil rights and jeopardize the health and safety of the other tenants and residents.
  - Recognizes that tenants are responsible, and holds them accountable, for any drug distribution activities which occur within their individual rental units, including those illegal activities committed by members of the tenants' household and guests. Tenants, in other words, are held to have an affirmative obligation to take such actions as are reasonable and necessary in the circumstances to prevent the commission of drug-related criminal<sup>1</sup> within their households and to prevent guests from committing such criminal activities on or near any portion of the leased residential premises.
  - Establishes the policy of encouraging owners and landlords to protect the rights, safety and health of their tenants and residents by promptly commencing and fully pursuing civil eviction and removal proceedings against those tenants and other persons who engage in drug-related crimes on or near their properties.
- enforcement by the courts of the rights and remedies established in the Model Act.
  - Authorizes civil actions to evict tenants and members of the tenants' household, as well as civil actions termed "partial evictions," to remove from the premises persons who commit drug crimes but who are not themselves signatories to a lease and who therefore have no contractual obligations to the landlord. Thus, a defendant to a civil action brought pursuant to the Model Act need not have a contractual relationship to any authorized plaintiff or otherwise have any cognizable property right or interest in the leased residential premises involved. This represents a significant departure from traditional landlord-tenant law, which generally limits the jurisdiction of the court to enforcing or terminating the terms of a contractual lease agreement between the landlord and tenant.
  - Authorizes a "complete eviction," except under certain circumstances, whenever the court finds that:
    1. drug-related criminal activity has occurred on or within the individual rental unit leased to the tenant; or
    2. the individual rental unit leased to the tenant was used in any way in furtherance of or to promote drug-related criminal activity; or
    3. the tenant, any member of the tenant's household or any guest has engaged in drug-related criminal activity on or near any portion of the entire leased residential premises; or

## PROCEDURES AND REMEDIES

- Ensures swift disposition of all civil eviction and removal actions, and ensures the certain and uniform

<sup>1</sup> Drug-related criminal activity is defined as the unlawful manufacture, sale, distribution or possession with intent to sell or distribute, a controlled substance in violation of the state's controlled substances law, or an unlawful attempt or conspiracy to commit such as act.

4. the tenant has given permission to or invited a person who has been removed and barred from the premises pursuant to the Model Act to return to or re-enter the premises; or
  5. the tenant has failed to notify appropriate law enforcement or public housing authorities immediately upon learning that a person who has been removed and barred from returning to the premises pursuant to the Model Act has returned to or re-entered the tenant's individual rental unit.
- Provides that a civil action to evict a tenant engaged in drug-related criminal activity or to remove any non-tenant engaged in such activity from the premises may be brought by:
    1. the owner or landlord of the leased residential premises, or his or her agent; or
    2. a tenant organization; or
    3. a criminal prosecuting agency.
  - Provides that where non-tenants engaged in drug-related criminal activity are not named as a party defendant or otherwise not subjected to the jurisdiction of the court, the removal order is to be directed against the tenant; such an order provides that as an express condition of the tenancy, the tenant shall not give permission to the barred person or persons to return to or re-enter the leased residential premises.
  - Provides an "affirmative defense," using a preponderance of the evidence standard, where the defendant was not involved in the drug-related criminal activity and:
    1. he or she did not know or have reason to know that the illegal conduct giving rise to the eviction action was occurring; or
    2. he or she did everything that could reasonably be expected in the circumstances to prevent the commission of the drug-related criminal activity; or
    3. he or she promptly reported the drug-related criminal activity to appropriate law enforcement authorities.
  - Requires the court, where it finds that a tenant has satisfactorily established an affirmative defense, to order that any and all persons found to have engaged in drug-related criminal activity on any portion of the entire premises, including but not limited to adult or minor members of the tenant's household, be permanently removed and barred from returning to the premises. The Model Act requires the court, under such circumstances, also to order as an express condition of the tenancy, that the tenant not permit or invite any such person who has been barred to return to or re-enter any portion of the leased residential premises.
  - Requires the court to order the immediate eviction of the tenant where the court finds that:
    1. the tenant has given permission to or invited any person removed or barred from the leased residential premises pursuant to the Model Act to return to or re-enter any portion of the premises; or
    2. the tenant has failed to notify appropriate law enforcement or public housing authorities immediately upon learning that any person who has been removed and barred has re-entered the tenant's individual rental unit; or
    3. the tenant has otherwise knowingly violated an express term or condition of or order issued by the court pursuant to the Model Act.
  - As an alternative means of making certain that innocent persons are not unwittingly punished, the Model Act authorizes a court to refrain from evicting a tenant where, having regard to the circumstances of the criminal activity and the condition of the tenant, the court is clearly convinced that immediate eviction would be a serious injustice which overrides the need to protect the rights, safety and health of the other tenants and residents of the leased residential premises.
  - Makes clear that the civil causes of action established in the Model Act need only be proved by a preponderance of the evidence, affirming common law traditions that it is not necessary that any person be convicted in a criminal prosecution as a predicate to commencing a civil proceeding such as an eviction. Where, however, a criminal prosecution involving the drug-related criminal activity results in a criminal conviction, that conviction constitutes rebuttable proof that drug-related criminal activity occurred.

<sup>2</sup> A "complete eviction" would be defined as the eviction and removal of a tenant and all members of the tenant's household. A "partial eviction," in contrast, would mean the removal of specified persons, other than the tenant, from a leased residential premises.

- Affirms the admissibility in the civil action of any evidence or testimony admitted in a related adult or juvenile criminal proceeding.
- Protects plaintiffs or witnesses from the violent and intimidating tactics used by drug dealers by establishing a privilege so that any plaintiff or witness may refuse to disclose the identity of any person who has furnished information concerning the suspected commission of drug-related criminal activity, unless the court finds that the disclosure of the informant's identity is essential to assure a fair determination of the civil suit.
- Authorizes, in certain circumstances, non-law enforcement plaintiffs (i.e., landlords or tenant associations) to have access to information in police or forensic laboratory reports concerning the drug-related criminal activity committed on or near the leased residential premises. The Model Act authorizes law enforcement officers to testify in the civil action as fact or expert witnesses. It does not require a law enforcement agency to divulge information as to the identity of any confidential informant or undercover officer, or information derived from electronic surveillance or grand jury proceedings which have not already been made public.
- Authorizes a prevailing tenant organization/plaintiff to recover the cost of the suit, including but not limited to reasonable attorney fees and costs from the landlord/owner, who is deemed to be the beneficiary of the successful eviction action. Such cost recovery applies only where the landlord or owner, or his or her agent, has refused to bring the action in his or her own right after having been requested in writing to do so.
- Permits the court, under certain circumstances, to establish a "probationary tenancy" in lieu of eviction, so long as the otherwise-evicted tenant or resident is undergoing and cooperating with an appropriate and carefully supervised course of drug treatment.

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# Model Expedited Eviction of Drug Traffickers Act

## *Section 1. Short Title.*

The provisions of this [Act] shall be known and may be cited as the "Model Expedited Eviction of Drug Traffickers Act."

## *Section 2. Legislative Findings.*

(a) All citizens, regardless of their income or economic status, have the right to be safe and secure in their residences. All citizens further have the right to live and raise their children in apartment complexes, neighborhoods and communities which are free from the destructive influence of drug dealers and drug-related crime and violence.

(b) Persons who commit drug distribution offenses on or in the immediate vicinity of leased residential premises, or who permit or tolerate such offenses to be committed, violate the rights and jeopardize the health and safety of the other tenants, residents, and on-site employees of the premises.

(c) It is the policy of this state to ensure the swift eviction and removal of persons who engage in certain drug-related criminal activity on or in the immediate vicinity of leased residential premises, or who permit members of their households or guests to engage in this criminal activity on or in the vicinity of the premises.

(d) Tenants have an obligation to take such actions as are reasonable and necessary under the circumstances to prevent the commission of drug-related criminal activity within their individual rental units and also to prevent members of their household and guests from committing such criminal activity on or in the immediate vicinity of any portion of the leased residential premises.

(e) It is the policy of this state to encourage owners and landlords to protect the rights, safety and health of their tenants and residents by promptly commencing and fully prosecuting civil eviction and removal proceedings against those tenants and other persons

who engage in drug-related criminal activity on or in the immediate vicinity of their properties.

(f) The civil causes of action and remedies authorized by this [Act] are remedial rather than punitive in nature, and are designed first and foremost to protect the rights, safety and health of law-abiding tenants, residents, and on-site employees, while affording due process of law to persons alleged to have allowed such criminal activity to occur on or in the immediate vicinity of leased residential premises.

(g) Except as may otherwise be expressly provided, it is the general policy of this state to afford the same rights and privileges under this [Act] to the tenants and residents of publicly owned, publicly-assisted and privately-owned premises and housing facilities.

(h) Tenants should be empowered to take legal action to protect and enforce their own rights to live in a peaceful community. Tenant organizations should have access to the courts and should therefore be afforded legal standing to initiate eviction for drug-related criminal activity on or in the immediate vicinity of the leased residential premises.

(i) It is the policy of this state to ensure that the causes of action and remedies authorized by this [Act] are heard by the courts on an expedited and priority basis so as to evict and remove as soon as practicable all persons who engage in drug-related criminal activity on or in the immediate vicinity of leased residential premises or who allow such criminal activity to occur.

(j) In addition to ensuring the swift disposition of all civil actions brought pursuant to this [Act], it is necessary and appropriate to ensure certain and uniform enforcement by the courts of the rights and remedies provided by this statute. Such certainty, predictability and uniformity is essential to discourage persons from committing or tolerating the commission of drug-related criminal activity, and thereby to protect the rights, safety and health of law-abiding tenants and residents.

## COMMENT

By identifying the purposes to be achieved by this remedial legislation, this declaration will aid the courts in interpreting and implementing the specific provisions of the [Act]. Accordingly, where appropriate, all questions of statutory construction should be made by reference to various provisions of this section. *See also* Section 32 (providing that the provisions of this [Act] shall be liberally construed to effectuate the various remedial purposes, objectives and policies set forth in the Legislative Findings).

**Section 3. Purpose.**

This [Act] is intended to provide a legal process to ensure prompt eviction of persons engaging in specified drug-related criminal activity on or near leased residential premises, or who permit others to engage in such criminal activity. This [Act] is further intended to authorize courts to order persons other than tenants who engage in certain drug-related criminal activity to stay away from the location where the criminal activity occurred.

## COMMENT

This section sets out in the simplest possible terms the overriding goals of this [Act], and focuses on the need for swift handling by the courts of civil actions brought pursuant to this [Act]. This section further recognizes that one of the innovative remedies created by the [Act] is that courts are authorized to order persons other than the tenant who engage in certain criminal activity to stay away from the leased residential premises. This introductory section thus makes clear that one of the key features of the [Act] is to authorize courts to impose a so-called "partial eviction."

**Section 4. Definitions.**

As used in this [Act]:

- (a) "Complete eviction" means the eviction and removal of a tenant and all members of the tenant's household.
- (b) "Controlled substance," "manufacture," "distribution," and "possession with intent to sell or distribute" shall have the same meaning as those terms are used in [cite to applicable state controlled substances law].
- (c) "Drug dependent person" means a person who is a chemically dependent person as defined by the [single state authority on alcohol and other drugs].
- (d) "Drug-related criminal activity" means the unlawful manufacture, sale, distribution or possession with intent to sell or distribute, a controlled substance in violation of [cite to applicable state controlled substances law], or an unlawful attempt or conspiracy to commit such an act.
- (e) "Entire premises" or "leased residential premises" means a house, building, mobile home or apartment, whether publicly or privately owned, which is leased for residential purposes. These terms include the entire building or complex of buildings or mobile home park and all real property of any nature appurtenant thereto and used in connection therewith, including all individual rental units and common areas. These terms do not include a hotel, motel or other guest house or part thereof rented to a transient guest.
- (f) "Felony" means a criminal offense punishable by more than one year of imprisonment.
- (g) "Guest" means any natural person who has been given express or implied permission by a tenant, a member of the tenant's household, or another guest of the tenant to enter an individual rental unit or any portion of the entire premises.
- (h) "Individual rental unit" means an apartment or individual dwelling or accommodation which is leased to a particular tenant, whether or not it is used or occupied or intended to be used or occupied by a single family or household.
- (i) "Owner" or "landlord" means a person, entity, corporation or governmental authority or agency who or which owns, operates or manages any leased residential premises.
- (j) "Partial eviction" means the eviction and removal of specified persons other than the tenant from a leased residential premises.
- (k) "Resident" means any natural person who lawfully resides in a leased residential premises who is not a signatory to a lease or otherwise has no contractual relationship to a landlord or owner. The term includes but is not limited to members of the household of a tenant.
- (l) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor and evaluate alcohol and other drug treatment services in the state.

(m) "Tenant" means any natural person or entity who is a named party or signatory to a lease or rental agreement, and who occupies, resides at or has a legal right to possess and use an individual rental unit.

(n) "Tenant organization" means an organization or association, whether or not incorporated, which is representative of the tenants or residents of a leased residential premises, the membership of which consists of tenants of the leased residential premises which the organization or association represents. The term also includes a community-based organization with members who are tenants of the leased residential premises.

#### COMMENT

This section provides the definitions used throughout the [Act]. Although most of these definitions are either self-explanatory or are taken verbatim from other related civil and criminal statutes, several deserve special note. The term "complete eviction," defined in paragraph (a), is used to describe the traditional remedy available in landlord-tenant courts, that is, to terminate a leasehold and to evict, dispossess, and remove a tenant and all members of the tenant's household. In this regard, the term "tenant" is defined in paragraph (m) to mean the named party or signatory to the lease, and is thus distinguished from the term "resident," defined in paragraph (k), which includes any natural person who lawfully resides at the leased premises but who is not the signatory to the lease. This distinction is important in that this [Act] authorizes certain remedies and orders directed against residents and other persons in addition to tenants, who alone stand in a direct contractual relationship with the landlord.

The term "drug-related criminal activity" is used to describe the type of illicit conduct which could give rise to an action and remedy under the [Act]. This form of criminal behavior is limited to the sale or distribution of a controlled substance and includes possession with the intent to sell or distribute any such substance. It is thus important to note that the terms "distribution" or "sell" are used in the disjunctive, so that it is not necessary for a plaintiff to establish that the offender distributed illicit drugs in exchange for money or anything else of value, or otherwise reaped or intended to reap a profit from the illicit transaction.

It is also important to note that the term "drug-related criminal activity" does not include simple possession, use or being under the influence of a controlled dangerous substance. Rather, this [Act], as its short title indicates, is designed to remove and deter drug trafficking

activities. This is in contrast to the proposed Model Nuisance Abatement Act, which, in certain limited circumstances, recognizes that the utilization of a facility for the repeated consumption of illicit drugs (e.g., a "shooting gallery" or a "crack house") warrants a civil remedy. In this [Act], however, the conduct which could give rise to a complete or partial eviction is the distribution of illicit drugs, rather than the use of illicit drugs.

It should be noted, however, that the act of "manufacture" is also included. This reference is derived from general criminal law provisions, and is broadly defined in those laws to mean the production, preparation, propagation, compounding, conversion or processing of a controlled substance, and includes any packaging or re-packaging of the substance or labelling or re-labelling of the container in which it is kept. It is thus clear that any drug production activities, whether or not they actually involve chemical processing or the "cooking" of a controlled substance, are strictly prohibited and would subject the culpable tenant or resident to eviction under this [Act].

The term "partial eviction," defined in paragraph (j), refers to the innovative remedy available to a court to order the removal of specified persons other than the tenant where such persons have engaged in "drug-related criminal activity" on or involving the leased residential premises.

The term "tenant organization" is broadly defined in paragraph (n) to mean any organization or association which is representative of the tenants or residents of a leased residential premises. It is intended that this term would be interpreted liberally to include virtually any type of organization or association which reasonably claims to be representative of any or all of the tenants or residents of a given premises without regard to the size of the organization, the percentage of the tenants or residents who are members or are represented, or whether or not the organization is formally incorporated. Moreover, this definition makes clear that the membership of the organization need not be restricted to tenants or residents of a given residential premises. Rather, a tenant organization can be an organization representing a broader-based segment of the community or neighborhood, provided that some members of this organization are tenants (that is, formal lease signatories) to a given leased residential premises. This term is important in that tenant organizations are authorized in certain circumstances to initiate a civil action pursuant to this [Act].



### *Section 5. Nature of Actions and Jurisdiction.*

The causes of action established in this [Act] are civil actions to evict or remove tenants or other persons from leased residential premises. These actions shall be brought in the [appropriate court].

#### COMMENT

This section is designed to allow state legislatures to identify the specific court or courts authorized to hear civil actions brought pursuant to this [Act]. It should be noted that in some states, courts assigned to hear landlord-tenant disputes have extremely limited jurisdiction and are not permitted to issue injunctions or other forms of equitable relief. To the extent that a "partial eviction," as defined in this [Act], contemplates an equitable remedy directed against culpable persons who may not have a direct contractual relationship to the landlord or plaintiff, state legislatures should carefully consider the designation of the appropriate type of court.

### *Section 6. Standard of Proof.*

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

#### COMMENT

This section makes clear that, except as may otherwise be expressly provided in various provisions of the law, the standard of proof in an action brought pursuant to this [Act] is a preponderance of the evidence. This section, along with Section 5, makes clear that the causes of action available under this [Act] are civil and remedial, notwithstanding that the plaintiff will be required to prove the commission of acts which constitute drug trafficking offenses.

### *Section 7. Parties.*

(a) Who May Bring Action. A civil action pursuant to this [Act] may be brought by:

- (1) The owner or landlord of a leased residential premises, or his or her agent; or
- (2) A tenant organization; or
- (3) A criminal prosecuting attorney, or municipal, county or state attorney.

(b) Defendants to the Action. A civil action pursuant

to this [Act] may be brought against any person within the jurisdiction of the court, including but not limited to a tenant, adult or minor member of the tenant's household, guest or resident of the leased residential premises. If any defendant's true name is unknown to the plaintiff, process may issue against the defendant under a fictitious name, stating it to be fictitious and adding an appropriate description sufficient to identify him or her.

(c) Notice to Interested Parties.

(1) Notice to Defendants. A complaint initiating an action pursuant to this [Act] shall be personally served, and notice to all defendants shall be provided in the same manner as serving [original notices][complaints] in civil actions. After filing an affidavit that personal service cannot be had after due diligence on one or more defendants within twenty days after the filing of the complaint, the plaintiff may:

(A) cause a copy of the complaint to be mailed to the defendant by certified mail, restricted delivery, with return receipt requested to the clerk of court, and

(B) cause a copy of the complaint to be affixed conspicuously to the main entrance to the premises and to all entrances to the individual rental unit where the drug-related criminal activity is alleged to have occurred.

Service shall be deemed completed five days after filing with the court proof of such mailing and an affidavit that a copy of the complaint has been affixed to the premises.

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

(d) Naming and Service of Owners in Actions Brought by Tenant Organizations or Prosecutors. Where an action pursuant to this [Act] is initiated by a tenant organization or criminal prosecuting attorney, or municipal, county or state attorney, the owner of the leased residential premises shall be named as a defendant and shall be served with a copy of the complaint

pursuant to subsection (c). Any agent of the owner may be named as a party and shall, in any event, have the right to appear and participate in all proceedings conducted pursuant to this [Act].

(e) Protections Against Frivolous Actions and Sanctions for Unfounded or Unwarranted Pleadings, Motions or Other Papers. No tenant organization shall be permitted to bring an action pursuant to this [Act] unless the organization is represented by an attorney at law who is licensed in this state.

(1) In any action brought pursuant to this [Act], regardless of the identity of the plaintiff, every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated.

(2) An owner, landlord, or his or her agent, who is not represented by an attorney, shall sign the party's pleading, motion or other paper and state the party's address.

(3) Such signature of an attorney or party constitutes a certificate by the signer that:

(A) the signer has read the pleading, motion, or other paper;

(B) to the best of the signer's knowledge, information and belief formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(C) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(4) If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(5) If the court finds that:

(A) the signer has not read the pleading, motion or other paper;

(B) the signer does not have knowledge, information or a belief regarding the facts contained in the pleading, motion, or other paper, or that a reasonable inquiry has not been made;

(C) the pleading, motion or other paper is not well-grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or

(D) the pleading, motion, or other paper was interposed for any improper delay or needless increase in the cost of litigation;

then the court, upon motion, or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(f) Ready Availability of Ownership Information to Potential Plaintiffs. Any person or entity who states upon an oath in writing, that he or she is preparing to initiate an action pursuant to this [Act], may request that the [county recorder or equivalent office] promptly provide, without charge, the name and address of all owners of the leased residential premises where the drug-related criminal activity is alleged to have occurred, as reflected upon the current county records.

#### COMMENT

Subsection (a) describes the persons or entities authorized to initiate a civil action pursuant to this [Act]. While the [Act] expressly recognizes the traditional right of an owner or landlord, or his or her agent, to initiate the eviction action, this section also gives standing to tenant organizations or a criminal prosecuting attorney, or municipal, county, or state attorney. This section is designed to provide incentives to tenants to organize into bona fide organizations or associations so that they can, in appropriate circumstances, take steps to protect their own rights in a court of law. In a very real sense, this provision is designed to "empower" these law-abiding tenants and residents.

Unlike the rules of procedure generally governing a corporate shareholder's derivative suit, the tenant organization has standing to initiate the action in its own right, rather than in the right of the landlord, and need not make any particular demand upon the landlord to bring the action. However, a prevailing tenant organization would not be entitled to recover the costs of the suit from the landlord or owner pursuant to Section 24 of this [Act], unless the landlord or owner refused to bring the action after having being requested to do so in writ-

ing by the tenant association. Under this formulation, tenant associations are automatically empowered to protect their own rights, but are nonetheless encouraged to work cooperatively with the landlord or owner. It is hoped in this way that landlords will fulfill their own responsibilities to protect the interests of their tenants without having to erect unreasonable or time consuming barriers to the right of those tenants to initiate actions on their own behalf.

Subsection (a) expressly authorizes prosecuting attorneys to initiate actions under this [Act]. Tenant associations, even landlords, may be intimidated by the threat of retaliation, given the violent nature of drug traffickers. It is thus envisioned that prosecuting agencies and municipal, county or state attorneys can provide an invaluable service to both landlords and law-abiding tenants by taking responsibility for initiating these actions in appropriate circumstances.

Subsection (b) identifies those persons who are subject to an order issued by a court pursuant to this [Act]. These putative defendants include not only a signatory to a lease who engages in drug-related criminal activity, but also any adult or minor member of such tenant's household, guest or resident of the leased premises. This subsection includes a provision for moving against unknown or unnamed ("John Doe") offenders. This provision is made necessary by the fact that some tenants, residents or their guests may invite other persons onto the premises to engage in drug trafficking activity where it is not possible to determine the true identity of those persons.

Subsection (c) outlines the basic procedures for initiating an action pursuant to this [Act], by serving personal notice or, in certain circumstances, a substitute form of service. This provision generally follows ordinary civil procedure rules, which are used in most jurisdictions. Paragraph (2) of this subsection provides that the court shall order that reasonable notice be given to other tenants or residents of the building, place, or premises, and shall afford them an opportunity to be heard at all hearings. This provision recognizes that given the nature of these actions, all tenants and residents have a vested interest in the outcome of the litigation, and especially with respect to the use of some of the more ameliorative provisions of this [Act] which authorize courts to refrain from evicting or removing a person who has engaged in drug trafficking activity on the premises. *See, e.g.* Sections 9 and Section 28.

Subsection (d) provides that where an action is initiated by a tenant organization or prosecuting agency, the

landlord must be named as a defendant and must be served with a copy of the complaint. In any such action, the landlord would have the right to appear and participate in all proceedings.

Subsection (e) provides important protections against the possibility of frivolous or "nuisance" suits initiated pursuant to this [Act]. The need for such sanctions and protections is especially important given the broad definition of "tenant organization," and the other provision of this section which authorize such associations to initiate eviction actions in their own right and without first having to request the landlord to bring the action or otherwise seek the landlord's concurrence. The [Act] expressly provides that where the eviction action is brought by a tenant association, the association must be represented by an attorney at law licensed in the state. In other words, the tenant association would not be authorized to initiate a pro se action. Under the laws in most states, a corporation appearing in a lawsuit, either as a plaintiff or a defendant, must be represented by a licensed attorney. This ban against pro se representation in an eviction action brought by a tenant association is designed in conjunction with the provisions of subsection (e), to protect against frivolous or unfounded lawsuits, especially since the attorney would be required to certify that there is an adequate factual and legal basis for the law-suit and any and all pleadings, motions, and other papers filed during the course of the civil action. This subsection is patterned after Federal Rule of Civil Procedure 11 and similar state rules of procedure, which require that every pleading, motion and other filing be signed by an attorney-at-law.

Finally, subsection (f) is designed to facilitate the investigation necessary to initiate an eviction action pursuant to this [Act] by authorizing any potential plaintiff to request the appropriate government office to provide promptly, and without charge, the names and addresses of all owners of the leased residential premises as reflected in current government records.

## *Section 8. Remedies and Judicial Orders.*

(a) Grounds for Complete Eviction. Subject to the provisions of Sections 9 and 28, the court shall order the immediate eviction, as set forth in Sections 14(b) and 16, of a tenant where it finds that:

- (1) Drug-related criminal activity has occurred on or within the individual rental unit leased to the tenant; or
- (2) The individual rental unit leased to the tenant

was used in any way in furtherance of or to promote drug-related criminal activity; or

(3) The tenant, any member of the tenant's household or any guest has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the entire premises; or

(4) The tenant has given permission to or invited a person to return or re-enter any portion of the entire premises, knowing that the person has been removed and barred from the entire premises pursuant to this [Act]; or

(5) The tenant has failed to notify law enforcement or public housing authorities immediately upon learning that a person who has been removed and barred from the tenant's individual rental unit pursuant to this [Act], has returned to or re-entered the tenant's individual rental unit.

(b) Grounds for Partial Eviction and Issuance of Removal Orders. The court shall, subject to the provisions of Subsection 9(b) and Section 28, order the immediate removal from the entire premises of any person other than the tenant, including but not limited to an adult or minor member of the tenant's household, where the court finds that such person has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the leased residential premises. Persons removed pursuant to this section shall be barred from returning to or re-entering any portion of the entire premises.

(c) Removal Orders Directed Against the Tenant. Where the court finds that a member of the tenant's household, or guest or resident of the tenant's leased residential premises, has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the leased residential premises, but such person has not been named as a party defendant, has not appeared in the action or otherwise has not been subjected to the jurisdiction of the court, a removal order issued pursuant to subsection (b) shall be directed against the tenant, and shall provide that as an express condition of the tenancy, the tenant shall not give permission to or invite the barred person or persons to return to or re-enter any portion of the entire premises. The tenant shall acknowledge in writing that he or she understands the terms of the court's order, and that he or she further understands that the failure to comply with the court's order will result in the mandatory termination of the tenancy pursuant to Section 14 of this [Act].

#### COMMENT

Subsection (a) sets forth the basic grounds for ordering a complete eviction, that is, court-ordered termination of the affected leasehold. Under this statute, unlike many current state eviction laws, where the court finds that the plaintiff has established one or more grounds for complete eviction by a preponderance of the evidence, the court is required to issue an order terminating the leasehold unless the defendant has established the basis for an affirmative defense or exemption pursuant to Section 9, or the court is otherwise authorized to impose a "probationary tenancy" pursuant to Section 28.

With respect to the individual rental unit leased to the tenant, a complete eviction would be required where the plaintiff has established that drug-related criminal activity has occurred on or within such unit, or that the unit was used in any way in furtherance of or to promote drug-related criminal activity. Under the first such ground, the plaintiff need only establish the occurrence of the drug-related criminal activity on or within the individual rental unit. The plaintiff need not establish the specific identity of the person or persons who actually engaged in the criminal conduct. Thus it is not necessary, for example, for the plaintiff to prove that the tenant or even any member of the tenant's household was actually engaged in criminal activity, provided that the plaintiff has established that such criminal activity was conducted by some person, whether known or unknown, or named or unnamed as a party to the action, on or within the rental unit. The protections set forth in Section 9 are more than adequate to protect the interests of any innocent tenant whose rental unit was unwittingly used in furtherance of drug-related criminal activity.

The ground set forth in paragraph (a) (2) requires proof that the individual rental unit was used in any way, or by any person, in furtherance of or to promote drug-related criminal activity. This language is generally derived from civil forfeiture law, and contemplates a causal as opposed to casual relationship between the rental unit and the criminal activity. It is thought that this ground would appropriately deal with circumstances where a rental unit was used as part of and in furtherance of a drug trafficking conspiracy, even if the actual drugs involved were not kept or distributed on or within the rental unit. Thus, for example, a drug trafficker who used a telephone facility within the individual rental unit as part of a drug trafficking conspiracy, or who otherwise makes the rental unit available for use

by others to support drug-related criminal activity, would subject that rental unit to a complete eviction within the meaning of this [Act].

Paragraph (a)(3) provides a basis for a complete eviction with respect to drug-related criminal activity which need not necessarily occur on or within the individual rental unit leased to the tenant, but rather on or in the immediate vicinity of any portion of the entire premises. The term "entire premises" would include the entire building or complex of buildings associated with the tenancy, including all real property of any nature which is used in connection therewith, which would include the hallways, apartment sidewalks, and other "common areas".

Also, this ground for a complete eviction is not limited to the drug-related criminal activity of the tenant, but would include any such activity conducted by any member of the tenant's household or any guest. In this context, the term "guest," as defined in Section 3, could mean any natural person who has been given express or implied permission by a tenant, a member of the tenant's household, or another guest of the tenant to enter any individual rental unit or any portion of the entire premises. Thus it is not necessary for the plaintiff to establish that the tenant or member of the tenant's household in any way assisted such guests in committing the drug-related criminal activity. Again, the provisions of Section 9 provide adequate safeguards for any such "innocent" tenants and residents.

Paragraph (a)(4) applies to a breach of duty by the tenant in inviting or giving permission to a person to re-enter the premises, knowing that the person has been removed and barred from the premises by the court pursuant to this [Act]. Finally, paragraph (a)(5) applies to a similar breach of duty by a tenant who fails to notify either law enforcement or public housing authorities when a person barred from his or her individual rental unit returns to or re-enters the unit.

Subsection (b) sets forth the grounds for a partial eviction and the issuance of a removal order. Specifically, this subsection requires the court to order the immediate removal from the entire premises of any person where the plaintiff has established that the person has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the leased residential premises. As in the case of a complete eviction pursuant to subsection (a), the court has no discretion to refrain from issuing a partial eviction removal order where the plaintiff has established the grounds there-

for, unless the defendant or person subject to the removal order establishes the basis for some form of relief pursuant to Section 9 or Section 28.

The provisions of both this subsection and Section 8(a)(3) refer to criminal conduct occurring on or "in the immediate vicinity" of any portion of the leased residential premises. Unlike criminal statutes which define the offense of distributing drugs on or near school property, or other specified places, it is thought that since this is a civil, not criminal, statute, the requirements of due process would not require the legislature to specify the exact distance (e.g., 1000 feet) within which the conduct would be subject to enhanced punishment or, in this case, a complete or partial eviction. Rather, it is thought that courts implementing this [Act] would be able to decide on a case-by-case basis whether the drug-related criminal activity is of such proximity to the outer boundaries of the leased residential premises, given the specific circumstances involved and the nature of the property and surrounding neighborhoods, as to invoke the goals and objectives of this [Act] and to warrant the granting of a complete or partial eviction. The court, in other words, would be required to determine as a matter of both fact and law whether the drug-related criminal activity occurred within the "immediate vicinity" of the leased residential premises, considering the totality of the circumstances and the statutory findings and objectives set forth generally in Section 3 of the [Act].

Subsection (c) provides a specific remedy to be used by the court where the plaintiff has established that some individual associated with the tenant has engaged in drug-related criminal activity on or in the immediate vicinity of the leased residential premises, but the plaintiff is unable to specifically identify such person or otherwise subject him or her to the jurisdiction of the court by naming him or her as a party or otherwise providing personal service. In that event, it would be neither possible nor practicable merely to issue the removal order as part of a partial eviction against the unserved or even unnamed culpable offender. Accordingly, this subsection requires the court to direct the removal order against the tenant and further provides that the lease agreement be amended as a matter of law to provide that, as an express condition of the tenancy, the tenant shall not give permission to or invite the barred person or persons to return to or re-enter any portion of the entire premises. In accordance with the provisions of Section 7(b), it would be sufficient to provide notice to the tenant to identify the barred person under a fictitious name, provided that the person is described with

sufficient specificity that the tenant could reasonably be expected to know who has been barred. This subsection further provides that the tenant must acknowledge in writing that he or she understands the terms of the court's order and that failure to comply with this new condition of the tenancy will result in a mandatory complete eviction.

### ***Section 9. Affirmative Defense or Exemption to a Complete Eviction.***

(a) Affirmative Defense. The court may refrain from ordering the complete eviction of a tenant pursuant to Section 8(a) of this [Act], where the tenant has established that he or she was not involved in the drug-related criminal activity, and that:

(1) he or she did not know or have reason to know that drug-related criminal activity was occurring on or within the individual rental unit, that the individual rental unit was used in any way in furtherance of or to promote drug-related criminal activity, or that any member of the tenant's household or any guest has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the entire premises; or

(2) he or she had done everything that could reasonably be expected in the circumstances to prevent the commission of the drug-related criminal activity; or

(3) he or she had promptly reported the drug-related criminal activity to appropriate law enforcement authorities.

(b) Exemption. Where the grounds for a complete eviction have been established, the court shall forthwith order the eviction of the tenant, unless, having regard to the circumstances of the criminal activity and the condition of the tenant, the court is clearly convinced that immediate eviction or removal would be a serious injustice, the prevention of which overrides the need to protect the rights, safety and health of the other tenants and residents of the leased residential premises.

(c) Burden of Proof. The burden of proof for the affirmative defense set forth in subsection (a) shall be by a preponderance of the evidence. The burden of proof for the exemption set forth in subsection (b) shall be by clear and convincing evidence.

#### **COMMENTS**

**This section sets forth those circumstances where a**

court, in the exercise of its discretion, may refrain from ordering a complete or partial eviction in the interest of fairness or justice. The first circumstance is designated as an affirmative defense to a complete eviction, which must be proved by the tenant by a preponderance of the evidence. The affirmative defense is available when the tenant has established that he or she was not involved in the drug-related criminal activity and that he or she did not know or have reason to know that the drug-related activity was occurring, or had done everything that could reasonably be expected in the circumstances to prevent the commission of the drug-related activity, or otherwise had promptly reported the drug-related criminal activity to appropriate law enforcement authorities. In essence, this affirmative defense is similar to the so-called "innocent owner" exception commonly found in civil forfeiture statutes as a matter of state law or constitutional imperative.

Where the defendant establishes the affirmative defense by a preponderance of the evidence, the court is authorized but not required to refrain from ordering the complete eviction. Moreover, where the court does elect in the exercise of its discretion to refrain from ordering the complete eviction, the court must nonetheless proceed to order the removal of those individuals who were culpably involved in the drug-related criminal activity. *See* Section 10.

In addition to the affirmative defense established in subsection (a), subsection (b) establishes an exemption to complete eviction which must be proved by the tenant by clear and convincing evidence. The court would be authorized in its discretion to grant the exemption only where it is clearly convinced that an immediate eviction or removal would be a serious injustice, the prevention of which overrides the need to protect the rights, safety and health of the other tenants and residents of the leased residential premises. Once again, it is important to note that this exemption is discretionary with the court. Moreover, it would not be sufficient as a matter of law for the tenant to establish only that the eviction would constitute a serious injustice; rather the tenant must also establish that the need to prevent such injustice overrides the need to protect the rights and interests of law-abiding neighbors and other residents of the leased residential premises.

It is intended that this exemption will only rarely be used, and that the more common and appropriate form of "safety valve" would be for the tenant to establish the basis for the affirmative defense in subsection (a). This is especially true in that under subsection (a), the

tenant would have established that he or she was truly innocent. In other words, it is envisioned that the exemption established in subsection (b) would only be used as an alternative means of making certain that a serious injustice is not committed; the preferred mechanism for avoiding the strictures of this [Act] would be to establish by a simple preponderance of the evidence the basis for an affirmative defense in subsection (a).

### ***Section 10. Mandatory Partial Eviction Where Affirmative Defense or Exemption to Complete Eviction is Established.***

(a) General Rule. Where the plaintiff has established grounds for a complete eviction but the court finds that the tenant has satisfactorily established the basis for an affirmative defense or exemption pursuant to Section 9, and the court in its discretion elects not to order the complete eviction of the tenant, the court, except as otherwise provided in Section 28, shall order the immediate removal from the entire premises of any person other than the tenant, including but not limited to adult or minor members of the tenant's household, who have engaged in drug-related criminal activity on any portion of the entire premises. Persons removed pursuant to this section shall be permanently barred from returning to or re-entering any portion of the entire premises. The court shall further order as an express condition of the tenancy that the tenant shall not give permission to or invite any person who has been removed pursuant to this [Act] to return to or re-enter any portion of the entire premises.

(b) Acknowledgment of Conditional Tenancy. The tenant upon whom a partial eviction is imposed, shall acknowledge in writing that he or she understands the terms of the court's order issued pursuant to subsection (a) of this section, and that he or she further understands that the failure to comply with the court's order will result in the mandatory termination of the tenancy pursuant to Section 8 of this [Act]. Refusal by the tenant to acknowledge such terms, as required by this subsection, shall vitiate any prior finding by the court that an exemption to a complete eviction exists, or that the tenant has satisfactorily established an affirmative defense.

#### **COMMENT**

**This section establishes the procedures to be used in the event that a tenant has satisfactorily established the basis for an affirmative defense or exemption pursuant**

to Section 9, and where the court elects not to order the complete eviction of the tenant, notwithstanding that the plaintiff in the action has established the basis for a complete eviction. This section thus reflects the careful balancing of rights and interests involved and makes clear that while courts should be authorized to avoid an eviction in certain specified hardship cases, the rights of law-abiding tenants and residents must generally prevail. Accordingly, where the court in its discretion refrains from ordering a complete eviction, the court must proceed at a minimum to order the partial eviction or removal of those individuals who ought not to benefit from the "innocent person" exception. This provision requires the removal of any such persons who have been shown to have engaged in drug-related criminal activity, including adult or minor members of the tenant's household. Where for any reason it is not possible to separate such members from the tenant, it is envisioned that a complete eviction should ensue. However, it is also important to note that Section 28 establishes an innovative remedy which is designed to permit persons subject to a partial eviction or removal order to remain in the premises during their satisfactory participation in a court-ordered course of drug treatment and monitoring.

This section expressly provides that any person removed pursuant to this section is permanently barred from returning to or re-entering any portion of the entire premises. Furthermore, this section provides that as an express condition of the court refraining from ordering the complete eviction pursuant to Section 9, the tenant will be required not to give permission to or otherwise invite any person who has been removed to return to or re-enter any portion of the premises. In essence, this section establishes a "conditional tenancy" which imposes an affirmative duty upon the tenant to keep any and all barred persons from returning to any portion of the leased residential premises. Where the tenant breaches that duty, he or she is subject to a mandatory eviction. This provision is necessary in order to safeguard the rights of law-abiding tenants and residents; it therefore is an appropriate condition of allowing the tenant to remain in the premises despite the basis for a complete eviction pursuant to Section 9.

### ***Section 11. Substitution of Plaintiff.***

Where the court determines in its discretion that the plaintiff bringing an action pursuant to this [Act] has failed to prosecute the matter with reasonable diligence, the court may substitute as plaintiff any person or entity

that consents thereto, provided that such person or entity would have been authorized pursuant to the provisions of this [Act] to initiate the action.

COMMENT

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

***Section 12. Execution of Removal or Eviction Order.***

Any removal or eviction order issued by a court pursuant to this [Act] shall be enforced by the person or entity bringing the action, provided however that the appropriate law enforcement agency shall, upon the request of the person or entity bringing the action, assume responsibility for the actual execution of the removal or eviction.

COMMENT

The provisions of this section state the general rule that the prevailing party in the action is authorized to enforce any removal or eviction order issued by the court. This section makes clear, however, that private litigants ought not be required physically to confront those drug traffickers who are subject to an eviction or removal order. Accordingly, this section provides that the appropriate law enforcement authority must assume responsibility for the actual execution of the removal or eviction order where law enforcement services have been requested by the prevailing party.

***Section 13. Obstructing the Execution or Enforcement of a Removal or Eviction Order.***

Any person who knowingly violates any order issued pursuant to this [Act], or who knowingly interferes with, obstructs, impairs, or prevents any law enforcement officer from enforcing or executing any order issued pursuant to this [Act], shall be subject to criminal contempt

under [insert cite to applicable criminal contempt law]. Nothing in this section shall be construed in any way to preclude or preempt a criminal prosecution for [insert cite to applicable obstruction of justice law] or any other criminal offense.

***Section 14. Motion to Enforce Removal Order and Mandatory Evictions.***

- (a) General Rule. Any person authorized to bring an action pursuant to this [Act] may at any time move to enforce a removal order issued pursuant to this [Act].
- (b) Expedited Hearings. A motion to enforce a removal order shall be heard on an expedited basis and within [\_\_\_] days of the filing of the motion.
- (c) Mandatory Eviction. The court shall order the immediate eviction of the tenant where it finds that:
  - (1) The tenant has given permission to or invited any person removed or barred from the leased residential premises pursuant to this [Act] to return to or re-enter any portion of the premises; or
  - (2) The tenant has failed to notify appropriate law enforcement or public housing authorities immediately upon learning that any person who had been removed and barred pursuant to this [Act] has returned to or re-entered the tenant's individual rental unit; or
  - (3) The tenant has otherwise knowingly violated an express term or condition of any order issued by the court pursuant to this [Act].

COMMENT

This section expressly provides that any motion to enforce a removal order must be heard by the court on an expedited basis and within a specified number of days following the filing of the motion to enforce. As noted throughout, one of the principal objectives of this legislation is to ensure the prompt handling by the courts of eviction proceedings brought pursuant to this [Act]. The benefits of such prompt litigation would be entirely lost if the enforcement of any resulting eviction order were in any way to be delayed.

This section also provides that the court must order an immediate eviction of the tenant where it finds that the tenant has breached the duty imposed pursuant to other provisions of this [Act] to prevent the return or re-entry of any person who has been barred from the leased residential premises. This [Act] nonetheless recognizes



that some tenants whose premises were used to conduct drug-related criminal activity may themselves be victims. It is not uncommon, for example, for a tenant to be intimidated by an adult or minor child or grandchild who has engaged in drug-related criminal activity and whose unlawful conduct has subjected the tenant to a complete eviction. Accordingly, this section makes clear that where a partial eviction has been ordered, the duties thereafter imposed as a matter of law upon the tenant should be deemed to be satisfied where the tenant notifies appropriate law enforcement or public housing authorities immediately upon learning that any person who has been removed and barred pursuant to this [Act] has returned to or re-entered the tenant's individual rental unit. In other words, the tenant need not physically obstruct the return of the barred drug trafficker or otherwise subject himself or herself to the immediate prospect of retaliation. While it is conceivable that some tenants might be afraid to notify law enforcement authorities for fear of retaliation, it is nonetheless necessary to require such notification in order to protect the rights and interests of law-abiding tenants and residents.

### *Section 15. Impermissible Defense.*

It shall not be a defense to an action brought pursuant to this [Act] that the drug-related criminal activity was an isolated incident or otherwise has not recurred. Nor is it a defense that the person who actually engaged in the drug-related criminal activity no longer resides in the tenant's individual rental unit.

#### COMMENT

This section makes clear that the plaintiff in an action brought pursuant to this [Act] is not required in any way to establish that the drug-related criminal activity giving rise to the eviction was part of a pattern of activity. Accordingly, it is not a defense if a drug-related criminal activity was an isolated incident or otherwise has not recurred. This section makes clear that the action may be brought and sustained even where the individual who actually engaged in the drug-related criminal activity no longer resides in the tenant's individual rental unit. The provisions of Section 9 are adequate to safeguard the interests of a law-abiding tenant under such circumstances. Thus, for example, where the tenant can establish by a preponderance of the evidence that he or she was innocent of the drug-related criminal activity proven by the plaintiff, and that the person who actually committed the activity no longer resides in his

or her individual rental unit, then the appropriate relief would be the issuance of the removal order directed against the specific drug trafficker, and the establishment of a "conditional tenancy" wherein the tenant would thereafter be required to refuse permission for re-entry to the drug trafficker, and notify law enforcement or public housing authorities if the person does return to or re-enter the tenant's individual rental unit.

### *Section 16. Expedited Proceedings.*

(a) Expedited Hearing. When a complaint is filed initiating an action pursuant to this [Act], the court shall set the matter for a hearing which shall be held on an expedited basis and within [ ] days following the filing of the complaint.

(b) Standards for Continuances. The court shall not grant a continuance, nor shall it stay the civil proceedings pending the disposition of any related criminal proceedings, except for compelling and extraordinary reasons or on application of [insert the appropriate criminal prosecuting authority] for good cause shown.

#### COMMENT

This section establishes and reaffirms the overriding principle in this [Act] that all actions for a complete or partial eviction should be heard as swiftly as possible. Accordingly, this section requires the court to set the matter for a hearing and to convene the hearing within a specified number of days following the filing of the complaint. Furthermore, this section makes clear that the court must not grant a continuance of the proceedings except for compelling and extraordinary reasons.

This section also deals with the difficult issue of whether and to what extent a civil proceeding should be allowed to continue concurrently with criminal proceedings involving the same transaction or parties. The general rule in most states seems to be that civil proceedings are typically stayed pending the outcome of related criminal prosecutions. This is done not only to avoid some of the Fifth Amendment issues which typically attend parallel criminal and civil proceedings, but also to avoid the possibility that the civil litigation might interfere with the conduct of an ongoing investigation or prosecution.

In this context, however, public policy demands that the civil eviction action be heard as expeditiously as possible. Moreover, the interests of the prosecuting authority are protected to some extent in that the prosecutor is

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

### *Section 17. Notice to Interested Parties.*

Notwithstanding any other provision of law, rule or regulation concerning the procedures otherwise used in eviction proceedings, it shall not be necessary to provide notice to the tenant to vacate the premises prior to filing the complaint initiating a civil action pursuant to this [Act].

#### COMMENT

In some states, statutes or rules of procedure governing landlord/tenant actions require the landlord to provide notice to the tenant to vacate the premises prior to filing the complaint initiating the eviction action. This section makes clear that in an action brought pursuant to this [Act], such prior notice to the tenant need not be given.

### *Section 18. Inapplicability of Exclusionary Rule.*

No relevant testimony or evidence shall be excluded from any civil action brought pursuant to this [Act] on account of the manner by which it was obtained by a law enforcement officer or agency, notwithstanding that the civil action may have been brought by [an appropriate criminal prosecuting authority].

#### COMMENT

This section provides that the exclusionary rule will not operate to suppress evidence from any civil action brought pursuant to this [Act] on account of the manner by which it was obtained by a law enforcement officer. This would be true even where the civil action is brought by a prosecuting authority. This section reaffirms that the remedies authorized by this [Act] are remedial not punitive in nature. It would thus be inappropriate to preclude the admission of relevant evidence, especially since it is unlikely that the application of the exclusionary rule in this context would provide any additional incentives for law enforcement officers to comply with the requirements of the Fourth Amendment. It should be noted, however, that many states have already decided the issue of whether unlawfully obtained evidence may be admitted in civil proceedings. In any jurisdiction where the exclusion of such evidence required on independent state constitutional grounds, this section ought not be adopted.

### *Section 19. Relation to Criminal Proceedings.*

(a) Criminal Proceedings, Conviction or Adjudication Not Required. The fact that a criminal prosecution involving the drug-related criminal activity is not commenced or, if commenced, has not yet been concluded or has terminated without a conviction or adjudication of delinquency shall not preclude a civil action or the issuance of any order pursuant to this [Act].

(b) Effect of Conviction or Adjudication. Where a criminal prosecution involving the drug-related criminal activity results in a final criminal conviction or adjudication of delinquency, such adjudication or conviction shall be considered in the civil action as creating a rebuttable presumption that the drug violation occurred, provided however that any such final conviction or adjudication shall estop the convicted defendant or adjudicated juvenile from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this [Act].

(c) Admissibility of Criminal Trial Recordings or Transcripts. Any evidence or testimony admitted in the criminal proceeding, including recordings or transcripts of the adult or juvenile criminal proceedings, whether or not they have been transcribed, may be admitted in the civil action initiated pursuant to this [Act].

(d) Use of Sealed Criminal Proceeding Records. In the

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

#### COMMENT

This section again affirms that actions brought pursuant to this [Act] are remedial rather than punitive in nature and thus should be decided by reference to a lower standard of proof than that required in criminal prosecutions. Since the standard of proof generally required in an action pursuant to this [Act] is a mere preponderance of the evidence, the fact that any criminal prosecution involving the drug-related criminal activity is not commenced, or if commenced has not yet been concluded, or has even terminated in an acquittal, should not preclude the civil action or the issuance of any order pursuant to this [Act]. It is possible for the plaintiff to prevail under this [Act] on the basis of evidence which would not be sufficient to convict in a criminal prosecution.

Subsection (b) nonetheless makes clear that the results of a criminal prosecution are relevant and should be considered in a civil action where the prosecution results in a conviction or adjudication of delinquency. In that event, the prosecuting authority would have established the occurrence of the drug-related criminal activity by proof beyond a reasonable doubt, a standard of proof substantially greater than that required for a plaintiff to prevail in an action pursuant to this [Act]. Accordingly, this section provides that any such adjudication of delinquency or conviction should be considered in the civil action as creating a rebuttable presumption that the drug violation occurred.

Furthermore, this subsection provides that where a defendant or person subject to a removal order in an action pursuant to this [Act] has been convicted or adjudicated delinquent, either as a result of a guilty plea or a verdict rendered by a jury or judge, it would be inappropriate for that individual thereafter to deny his or her guilt in the course of any litigation brought pursuant to this [Act]. Accordingly, any such person is estopped to deny the essential allegations of the criminal offense for which he or she has been convicted or adjudicated delinquent.

It would be the responsibility of the court in a civil action pursuant to this [Act] to determine the precise nature of these "essential allegations" of the criminal offense. It is envisioned that this would entail a review by the court of the relevant indictment, criminal complaint, transcript of any plea hearings or trial, or verdict sheet or judgment of conviction in the criminal prosecution. The court would be required to determine that the criminal conviction or adjudication of delinquency unambiguously reflects a finding in a criminal court by proof beyond a reasonable doubt that this individual did commit the acts claimed to be the drug-related criminal activity forming the basis for a complete or partial eviction action pursuant to this [Act].

Subsection (c) provides that any evidence or testimony admitted in the earlier criminal or delinquency proceeding may be admitted in the civil action pursuant to this [Act]. Such evidence would, of course, be subject to the general rules of evidence with respect to determinations of relevancy and hearsay exceptions.

Subsection (d) is included in recognition that some state statutes provide that records of a criminal proceeding that does not result in a conviction or adjudication of delinquency are sealed. This subsection provides that notwithstanding any such state law or procedure, the court in a civil action brought pursuant to this [Act] may order such evidence, transcript or records to be unsealed, provided that the court finds that such materials would be relevant to the fair disposition of the civil action.

#### *Section 20. Discovery.*

The parties to an action brought pursuant to this [Act] shall not be entitled to conduct discovery otherwise available in a civil action except by leave of court where required to ensure the fair disposition of the civil action. However, the plaintiff in a civil action brought pursuant to this [Act] shall provide to the tenant and all other named defendants a reasonable opportunity prior to the hearing to examine any relevant documents or records within the plaintiff's possession which directly relate to the action, subject to the limitations of Section 22.

#### COMMENT

Many provisions and features of this [Act] are designed to ensure that these civil proceedings are heard and resolved as quickly as possible, taking into account the requirements of due process of law. For this reason, this section and several other sections outline procedures

which are designed to minimize pretrial delay which often occurs in civil matters. Accordingly, this section generally prohibits the parties from conducting the forms of discovery which are usually available in a civil action, including service of interrogatories and the taking of depositions. Such modes of discovery are only available to the parties in an action brought pursuant to this [Act] by leave of court and where such discovery is required to ensure the fair disposition of the civil action. Nonetheless, this section, in an effort to ensure both fairness and as swift a resolution of the dispute as possible, requires a plaintiff in a civil action brought pursuant to this [Act] to provide to the tenant and all other named defendants a reasonable opportunity prior to the hearing to examine any relevant documents, records or regulations within the plaintiff's possession which directly relate to the action. Although this section thus envisions an "open discovery" policy, this provision is subject to the limitations set forth in Section 22, which permit law enforcement agencies in certain circumstances to refuse to disclose information in their possession which might jeopardize an ongoing investigation, drug enforcement operation, surveillance, prosecution or other such proceeding.

### ***Section 21. Protection of Threatened Witnesses or Affiant.***

If proof necessary to establish the grounds for eviction depends, in whole or in part, upon the affidavits or testimony of witnesses who are not peace officers, the court may, upon a showing of prior threats of violence or acts of violence by any defendant or any other person, issue orders to protect those witnesses, including but not limited to, the nondisclosure of the name, address or any other information which may identify those witnesses.

#### **COMMENT**

Regrettably, drug traffickers often use violent and intimidating tactics against not only their competitors, but also any others who might otherwise interfere in any way with their illicit operations. Accordingly, this section authorizes the court to issue such protective orders as may be necessary to safeguard the identity of any non-law enforcement witness upon a showing of prior threats of violence or acts of violence by any defendant or by any other person. Such orders may include, but need not be limited to, the nondisclosure of identifying information about the threatened or potentially threatened witness. Nothing in this section should be construed to preclude or limit the court's

inherent authority, subject to the requirements of due process, to issue such orders as may be necessary to protect the life or property of any person who might have relevant evidence to present in a civil action.

### ***Section 22. Availability of Law Enforcement Resources to Plaintiffs or Potential Plaintiffs.***

A law enforcement agency may make available to any person or entity authorized to bring an action pursuant to this [Act] any police report or edited portion thereof, or forensic laboratory report or edited portion thereof, concerning drug-related criminal activity committed on or in the immediate vicinity of the leased residential premises. A law enforcement agency may also make any officer or officers available to testify as a fact witness or expert witness in a civil action brought pursuant to this [Act]. The agency shall not disclose such information where, in the agency's opinion, such disclosure would jeopardize an investigation, prosecution, or other proceeding, or where such disclosure would violate any federal or state statute.

#### **COMMENT**

Because the required proofs in an action brought pursuant to this statute necessarily involve an alleged criminal activity, it is conceivable if not likely that local law enforcement or prosecuting agencies may be in possession of information which would be relevant and admissible in the civil action. Accordingly, this section authorizes in certain circumstances non-law enforcement plaintiffs (landlords or tenant associations) to request access to police or forensic laboratory reports concerning the drug-related criminal activity committed on or near the leased residential premises. Thus, the appropriate prosecution or law enforcement agency could provide to the plaintiffs a forensic laboratory report that confirms that a substance seized from a particular apartment was, in fact, a controlled dangerous substance. This section also expressly authorizes law enforcement officers to testify in the civil action as either fact or expert witnesses.

To a large extent, the problems associated with the need for law enforcement agencies to maintain control over the information in their possession is ameliorated by the fact that this [Act] expressly authorizes the prosecuting authority to serve as the plaintiff and to initiate and litigate the civil eviction action. It is thought that in this way, the prosecuting agency can provide this vital service to law-abiding tenants victimized by drug-related criminal activity occurring on or near the leased resi-

dential premises, and at the same time can be certain that the civil litigation in no way disrupts or interferes with an ongoing investigation, drug enforcement operation, surveillance or prosecution.

This section makes clear, moreover, that the law enforcement agency in possession of any such relevant information may not disclose that information in the course of the civil litigation where, in the law enforcement agency's opinion, such disclosure would jeopardize an investigation, prosecution, or other proceeding such as a civil forfeiture action. It is intended that the court hearing the civil action pursuant to this [Act] would have no authority to compel a law enforcement agency, over its objection, to divulge information as to the identity of a confidential informant or undercover officer or any other information which the law enforcement agency deems necessary to keep confidential. Moreover, this section makes clear that nothing in this [Act] is intended to overrule other federal or state statutes concerning, for example, the confidentiality of information in the possession of a law enforcement agency which is derived from electronic surveillance or grand jury proceedings.

### *Section 23. Ongoing Collection of Rent.*

A landlord or owner shall be entitled to collect rent due and owing from the tenant during the pendency of any civil action brought pursuant to this [Act].

### *Section 24. Recovery of Costs by Prevailing Plaintiff.*

A tenant organization, prosecuting attorney, or a municipal, county or state attorney bringing a successful action pursuant to this [Act], including where such action is ultimately discharged under Section 28(k), shall be entitled to recover the cost of the suit, including but not limited to reasonable attorney fees and costs, from the landlord or owner of the leased residential premises involved, provided that the landlord or owner, or his or her appropriate agent, had refused to bring the action within ten days after having been requested to do so in writing, delivered personally or by certified mail, return receipt requested. Where the court determines, pursuant to Section 11 of this [Act], that an owner or landlord of the leased residential premises, or his or her agent, has failed to prosecute the action with reasonable diligence, such owner, landlord or agent shall be responsible for the payment of all reasonable costs of the suit expended by a prevailing substitute

plaintiff designated pursuant to Section 11 of this [Act] notwithstanding that the owner, landlord or agent had initiated the action.

#### COMMENT

Many states permit a prevailing plaintiff to recover the costs of the suit only where such recovery is expressly authorized by statute. Accordingly, this section makes clear that any authorized plaintiff who brings a successful action pursuant to this [Act] shall be entitled to recover the costs of the suit. Such costs include, but are not limited to, reasonable attorney's fees. It should be noted that this section creates an absolute right to recovery by a prevailing plaintiff. Accordingly, the court would have no discretion to deny recovery of costs to any such prevailing plaintiff, although the court would have discretion to determine the amount of such costs in accordance with the general provisions of law or court rules.

This section provides that the prevailing plaintiff may recover such reasonable costs only from the landlord or owner of the leased residential premises involved. It is thought that, consistent with the general model of a corporate shareholder's derivative suit, an eviction action successfully brought by a tenant organization or prosecuting agency serves also to benefit the interests of the landlord. This recovery provision only applies, however, where the landlord or owner, or her or his appropriate agent, has refused to bring the action within ten days after having been requested to do so in writing. In other words, the landlord or owner can avoid the possibility of having to pay costs of a suit brought by a tenant association or criminal prosecuting agency simply by initiating the action in his or her own right. Where the court determines, however, that the landlord or agent has failed to prosecute the matter with reasonable diligence, any such landlord or agent would be responsible for the reasonable costs expended by a prevailing substitute plaintiff designated pursuant to Section 11.

This section is designed to create substantial economic and practical incentives for landlords diligently to investigate, initiate and prosecute civil eviction actions against tenants or residents who engage in drug-related criminal activity on or within the immediate vicinity of the leased residential premises. Nothing in this section or any other provision of this [Act] should be construed to preempt, preclude or limit a civil action brought by a landlord to recover actual damages from any culpable person who engaged in drug-related criminal activity on or near the leased residential premises. *See also* Section

26. Such actual damages might include, but need not be limited to, the costs of a suit brought pursuant to this [Act].

### *Section 25. Preliminary or Emergency Relief.*

The court before which the civil action has been brought pursuant to this [Act] shall have the authority at any time to issue a temporary restraining order, grant preliminary relief or take such other actions as the court deems necessary to enjoin or prevent the commission of drug-related criminal activity on or in the immediate vicinity of leased residential premises, or otherwise to protect the rights and interests of all tenants and residents. A violation of any such duly issued order or preliminary relief shall subject the violator to being held in civil or criminal contempt.

#### COMMENT

This section makes clear that the court has the authority at any time to issue such temporary restraining orders, or to grant such preliminary relief or to take such other actions as the court deems necessary to enjoin or prevent the commission of drug-related criminal activity. This section thus restates the general inherent powers of the courts. It should be noted, however, that landlord/tenant courts in many states have extremely limited jurisdiction and are not permitted to issue injunctions or other forms of equitable relief. In those jurisdictions, the state legislatures may wish to delete this section or, alternatively, to consider providing another venue for cases brought under this [Act]. *See also* Section 5 and accompanying comments.

### *Section 26. Cumulative Remedies.*

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

#### COMMENT

This section makes clear that nothing in this [Act] shall be construed in any way to preempt, preclude or limit any other civil action or remedy which may be available at law or at equity, including an action for damages against persons who engage in drug-related criminal activity on or near any leased residential premises.

### *Section 27. Civil Immunity.*

Any person or organization who, in good faith, institutes, participates in, or encourages a person or entity to institute or participate in, a civil action brought pursuant to this [Act], or who in good faith provides any information relied upon by any person or entity in instituting or participating in a civil action pursuant to this [Act], shall have immunity from any civil liability that might otherwise be incurred or imposed. Any such person or organization shall have the same immunity from civil liability with respect to testimony given in any judicial proceeding conducted pursuant to this [Act].

#### COMMENT

This sections provides a qualified immunity for any person or organization who institutes, participates in, or in any way encourages a person or entity to institute or participate in a civil action brought pursuant to this [Act]. So too, this section provides qualified, good-faith immunity to any person or organization that provides any information relied upon by any person or entity in instituting or participating in a civil action pursuant to this [Act]. Finally, this section makes clear that any such person or organization shall have the same immunity from civil liability with respect to any testimony given in any judicial proceeding conducted pursuant to this [Act]. Nothing in this section is designed to provide immunity to persons who act in bad faith. It is intended that this section be interpreted to provide the same type and extent of qualified immunity as is generally afforded law enforcement officers and agencies.

### *Section 28. Probationary Tenancy During Period of Court-Ordered Rehabilitation.*

(a) Temporary Suspension of Eviction or Removal Order Pending Referral for Addiction Assessment and Treatment Recommendation. The court on the application of the tenant or other person subject to removal may suspend the execution of an order of complete or partial eviction for a period of not more than ten days in order to refer the person to a licensed substance abuse treatment program or facility for an alcohol and other drug addiction assessment and treatment recommendation, in order to determine whether the person is a suitable candidate for a stay of execution of eviction or removal pursuant to subsection (b), provided that the person asserts that:

- (1) he or she is drug dependent within the meaning of this [Act]; and

(2) he or she is willing to participate in a licensed treatment and monitoring program recommended by the program or facility and approved by the court; and

(3) he or she meets the requirements set forth in subsection (b), (4), (5), and (6); and further provided that the court is clearly convinced that the temporary suspension of execution of the order of eviction or removal will not endanger the safety of the community or otherwise unduly jeopardize the rights or interests of other tenants and residents of the leased residential premises. Pending the filing of an application for a stay of execution pursuant to subsection (b), a temporary suspension issued pursuant to this subsection shall automatically expire on the date fixed by the court, or ten days after the suspension is granted, whichever is earlier. At such time, the order of eviction or removal shall be immediately enforced unless a stay is granted in accordance with the provisions of subsection (b).

(b) Application to Stay Execution of Eviction or Removal Order. On application of the tenant or other person subject to removal, the court may stay execution of an order of complete or partial eviction, for a period of time as provided in subsection (f) and during which the person is participating in a court-approved and licensed alcohol and other drug treatment program, provided that the tenant or other person subject to complete or partial eviction establishes by clear and convincing evidence all of the following:

(1) the person is drug dependent, and the drug-related criminal activity that was the basis for the order of eviction or removal was committed in order to support the person's drug dependency; and

(2) no evidence is presently proffered or has been presented that the person is an adult and, in the commission of such drug-related criminal activity, distributed a controlled substance to a person under 16 years of age; and

(3) no evidence is presently proffered or has been presented that the person unlawfully used or possessed a firearm on the leased premises, or that the person used or threatened to use violence in committing any of the acts which are the basis for the order of eviction or removal; and

(4) the person has not previously undergone

court-approved treatment pursuant to the provisions of this section; and

(5) the person has agreed to participate in the course of alcohol and other drug treatment recommended by the treatment facility conducting the court-ordered addiction assessment; and

(6) the stay of execution of the order of complete or partial eviction will not endanger the safety of the community or otherwise unduly jeopardize the rights or interests of other tenants and residents of the leased residential premises; and

(7) admission to the recommended course of treatment will serve to benefit the person by addressing his or her drug dependency and will thereby remove the incentive for the person to engage in drug-related criminal activity.

(c) Right of Interested Persons to be Heard. The plaintiff in the civil action and the tenant organization for the premises, whether or not such organization joined in the civil action, shall be provided an opportunity to be heard with respect to an application to temporarily suspend execution of an eviction order pursuant to subsection (a) or to stay execution of such an order pursuant to subsection (b), or to discharge the order of eviction or removal pursuant to subsection (k), and shall also have the right to participate in any action upon a violation pursuant to subsection (j).

(d) Participation in Recommended Course of Treatment. Where the court is satisfied that the grounds for a stay set forth in subsection (b) have been clearly and convincingly established, the court as a condition of the stay of execution of the eviction or removal order shall order the person to participate in the recommended course of treatment, which program shall include periodic drug testing. Such course of treatment shall take place in a program licensed by the [single state authority on alcohol and other drugs] to provide substance abuse treatment. The court shall impose reasonable terms and conditions of the person's participation in the court-approved treatment program as if the person were placed on probation following a conviction for a crime. Such terms and conditions shall include a requirement that the person comply with all rules and regulations established by the treatment program. The terms and conditions imposed by the court may also include but need not be limited to establishing a curfew or imposing restrictions on the person's associations and places where he or she may travel. The court may at any time modify or impose additional terms or

conditions, provided that the court, prior to its removal of any significant term or condition, provides notice to all persons or entities entitled pursuant to subsection (c) to participate in the proceedings. The person placed on probationary tenancy shall consent to such original or amended terms and conditions, as a condition of the stay of execution of the eviction or removal order, and shall acknowledge in writing that he or she understands and accepts all such terms and conditions. In the event that the person refuses to accept or comply with any such original or amended terms and conditions, the stay of execution shall be automatically rescinded and the order of eviction or removal shall be immediately enforced in accordance with the provisions of this [Act].

(e) Period of Probationary Tenancy. Where the person maintains compliance with the terms and conditions of the court and with the requirements of the course of treatment and monitoring, the stay of execution of an order of eviction or removal shall remain in force for a period of six months. The court, upon recommendation by the treatment program, may extend the initial period of the probationary tenancy for an additional six months.

(f) Prompt Initiation of Treatment. A stay of execution of an order of eviction or removal pursuant to this section shall be contingent upon the person commencing his or her participation in the recommended course of treatment, or being placed on a certified waiting list until a position for the recommended course of treatment becomes available, within ten days of the entry of the court's order granting the stay of execution of eviction or removal. If the person is placed on a certified list, he or she must submit to regular drug testing as ordered by the court and must also attend, with verification, no fewer than five twelve-step recovery meetings per week, until the course of treatment can begin. If the person for any reason fails to comply with the conditions of this subsection within this time period, the stay of execution shall be automatically rescinded unless the court determines that there are extraordinary and compelling reasons to reinstate the stay pending the person's participation in the recommended course of treatment, by a date certain to be fixed by the court.

(g) Reporting of Progress in Course of Treatment. The treatment program shall, as a condition of the stay of execution of the eviction or removal order, agree in writing to report periodically to the court as to the person's progress and compliance with court-imposed

terms and conditions. The treatment program shall further agree to promptly report any significant failure to comply with the requirements of the course of treatment. The treatment program shall also agree immediately to advise the court in the event that the person for any reason terminates his or her participation in the course of treatment. The person and, where necessary, the person's parent or legal guardian, shall, as a condition of the stay of execution, sign such consent forms as are necessary to release information to the court pursuant to this section, with respect to his or her participation in the course of treatment.

(h) Supervisory Jurisdiction of Probation Department. The court may assign the [insert designation of county probation agency] and, in the case of a juvenile the [insert designation of the county child welfare or protective services agency] the responsibility to assist in monitoring and supervising the person's participation in the recommended course of treatment and his or her compliance with all court-imposed terms and conditions of the probationary tenancy. The court may also assign the [insert designation of county probation agency] the responsibility to administer the periodic drug testing, which agency shall immediately report any significant violation of the court-imposed terms and conditions, in accordance with the provisions of subsection (g).

(i) Effect of Violation. Upon a first significant violation of any court-ordered term or condition of the probationary tenancy, the court may and upon recommendation of the treatment program or upon subsequent violation, shall in the absence of extraordinary and compelling reasons, rescind the stay of execution of the order of eviction or removal, in which event such order shall be immediately enforced. In making its determination whether to rescind the stay after a first significant violation, the court shall consider the nature and seriousness of the infraction in relation to the person's progress in the course of treatment, and shall also consider the recommendations of the treatment program. Where the treatment program determines to discontinue the person's course of treatment, the court shall revoke the probationary tenancy and rescind the stay of execution or the order of eviction or removal, unless the treatment program recommends that another treatment program be engaged to provide the course of treatment. Notwithstanding any other provision of this section, where the court finds reasonable grounds to believe that the person, during the term of the probationary tenancy, has been involved in drug-related



criminal activity, whether or not such activity occurred on the leased residential premises, the court shall immediately rescind the stay of execution of the order of eviction or removal, in which event such order shall be immediately enforced.

(j) Action Upon Violation. An action for a violation of any term or condition of the probationary tenancy may be brought by the plaintiff in the eviction action, any person or entity which could have initiated the eviction action pursuant to this [Act], by the treatment program, any agency assigned by the court to assist in monitoring or supervising the probationary tenancy, or by the court on its own motion. Such action shall be summary in nature and shall be heard and decided within five days of the notice to the court of the violation.

(k) Discharge of Order of Eviction or Removal. If after the expiration of the term of probationary tenancy, the court determines that the person has satisfactorily complied with the terms and conditions of the recommended course of treatment, and that the person no longer poses a risk to the other residents and tenants of the leased residential premises, the court shall discharge the order of eviction or removal and shall dismiss the action brought pursuant to this [Act]. Nothing in this section shall be construed in any way to prevent the initiation at any time of a new action pursuant to this [Act].

#### COMMENT

As noted in the accompanying Policy Statement, this statute includes a number of innovative provisions which are designed to temper the "all or nothing" remedies which traditionally have been available in eviction actions brought in landlord/tenant courts. This section establishes one such important innovation in the law of eviction - the concept of a probationary tenancy. To some extent, the provisions of Sections 9 and 10 establish a closely related principle, that is, a "conditional eviction" whereby the court is authorized to permit a tenant to remain in the premises subject to the condition that he or she cooperates with a removal order directed against a person or persons who actually committed drug-related criminal activity on the leased premises. That section was designed to provide the court with a remedy which carefully balances the interests of less culpable tenants as against the interests of law-abiding neighbors and other tenants and residents who are adversely affected by the conduct of drug-related criminal activity occurring within the apartment building or complex of buildings.

Similarly, this section is designed to balance important public policy interests: the need to protect the rights of law-abiding tenants by ensuring the swift removal of all tenancy-based drug distributors, as against the need and opportunity to provide meaningful alcohol and other drug rehabilitation services to drug dependent offenders who are willing to accept such help. In fact, the rehabilitation of addicted offenders is perhaps the most effective long-term means to advance the right of law-abiding tenants to live in an environment free of drug trafficking, since addicts in recovery are among the most militant activists against drug trafficking in their neighborhoods. Nonetheless, in the short-term view, this also involves a delicate balancing, and for this reason, this section includes a number of important substantive and procedural safeguards.

Many drug distributors are themselves drug dependent. Essentially, these offenders engage in drug trafficking activities in order to support their own drug habits. Because this category of trafficker is not motivated entirely by greed, it is possible to prevent the occurrence of future criminal activity by addressing their underlying drug problems. This is a vital public policy objective, of course, in that an eviction or removal order pursuant to this [Act] would only displace the drug dependent distributor, forcing him or her to distribute drugs at some other location, thereby endangering another set of innocent individuals. In other words, while a successful eviction or removal pursuant to this [Act] would undoubtedly benefit the plaintiffs in this civil action, it would not necessarily benefit society-at-large. It is thus important to take advantage of all available judicial remedies, whether civil or criminal and whether prosecuted by government agencies or by private litigants, to encourage if not require drug dependent offenders to accept the drug rehabilitation they need.

Treatment, handled properly, has proven to be effective. Few addicts, however, voluntarily and under their own initiative seek help for substance abuse problems. More often, the decision to participate in alcohol and other drug rehabilitation is a result of pressure brought to bear by others, including employers, family members, medical and health care professionals, education officials, law enforcement agencies or courts. This section is designed to provide one such means by which to effect an intervention and thereby to induce drug dependent offenders to accept help and to participate and remain in a meaningful treatment program.

In essence, this section provides that the addicted person subject to eviction or removal may avoid the called-

for sanction by agreeing to participate in a carefully monitored drug treatment program approved by the court. Where the person refuses to accept such help, or otherwise fails satisfactorily to comply with all terms of conditions of this "probationary" tenancy, the eviction or removal order is automatically and immediately enforced.

Subsection (a) authorizes a person who is to be evicted or removed to apply to the court for a temporary stay in order to allow him or her to undergo a substance abuse diagnostic assessment to determine whether he or she is a suitable candidate for probationary tenancy. Any such application to the court would only be made after the court has already determined that the plaintiff has established a factual basis pursuant to this [Act] to order a complete or partial eviction. The stay authorized pursuant to this subsection may not exceed ten days, and the court is not authorized to extend any such temporary stay. Rather, as noted throughout this [Act], it is the express intent that all remedies and sanctions would be imposed as swiftly as possible in order to protect the rights and interests of law-abiding tenants.

A temporary stay and referral for substance abuse diagnostic assessment is authorized by this subsection in recognition that in most cases, the court at the time of finding the basis for an eviction or removal would not have a sufficient factual basis to determine whether or not the person subject to eviction or removal is a suitable candidate for probationary tenancy pursuant to subsection (b). The referral authorized pursuant to this subsection must be made to a program or facility which is licensed by the [single state authority on alcohol and other drugs] to conduct a substance abuse diagnostic assessment and to determine whether and to what extent the subject needs and would benefit from some form of drug treatment.

The specific prerequisites for the temporary stay established in subsection (a) are patterned after the elements required for a probationary tenancy set forth in subsection (b). The applicant seeking a subsection (a) temporary suspension of the execution of the complete or partial eviction order need only "assert" the existence of these required elements, whereas the applicant must ultimately provide clear and convincing evidence in order to become eligible for a subsection (b) probationary tenancy.

Subsection (b) authorizes the court, on the application of the tenant or other person who otherwise would be ordered evicted or removed, to stay execution of the

order of complete or partial eviction. In order to receive such stay of execution, the person ordered to be evicted or removed must make formal application to the court and must further establish by clear and convincing evidence the existence of a series of required elements. The person must establish, for example, that he or she not only is drug dependent within the meaning of applicable state law, but that the drug-related criminal activity which formed the factual basis for the order of eviction or removal was committed in order to support the person's drug dependency. In addition, the court must be satisfied that the person at no time committed the offense of distributing a controlled substance to a person under 16 years of age, and that the person at no time unlawfully used or possessed a firearm on the leased premises, or used or threatened to use force or violence to commit any of the acts which are the basis for the order of eviction or removal.

It is not necessary for the plaintiff to have established any such especially egregious criminal conduct committed on or involving the leased residential premises. Thus, if any testimony or evidence has been presented, whether or not such evidence was required in order to establish the plaintiff's case, that the person distributed drugs to any such minor or unlawfully possessed or carried a firearm or used force or violence, that person would be ineligible for probationary tenancy. It is thought that these provisions are necessary to give due weight to the compelling right and interest of law-abiding tenants to be free of the force and violence typically associated with the drug trade, and to raise their children in an environment free from the influence of drug traffickers who seek to peddle their wares to this especially vulnerable population.

In addition, the person seeking a probationary tenancy must provide clear and convincing evidence that he or she has not previously undergone court-approved treatment and monitoring pursuant to the provisions of this section. In other words, this ameliorative and rehabilitative option may occur only once with respect to any person subject to eviction under this [Act].

The applicant for probationary tenancy must agree, as part of the initial application pursuant to this subsection, to participate in the course of residential or outpatient treatment and monitoring recommended by the licensed treatment facility which conducted the court-ordered substance abuse diagnostic assessment authorized pursuant to subsection (a). The court must also be satisfied that allowing the person to undergo the recommended course of treatment will serve to benefit the

person by addressing his or her drug dependency, and in this way will remove the incentive for the person to engage in any future drug-related criminal activity. Finally, the applicant must convince the court that granting a probationary tenancy will not endanger the safety of the community or otherwise unduly jeopardize the rights and interests of other tenants and residents of the leased residential premises. In making this determination, it is intended that the court consider the totality of the known circumstances, including the same types of factors which typically attend a criminal sentencing proceeding, where courts are required to consider the "whole person."

It is important to note that the court's authority to grant the stay of execution and to order a probationary tenancy is discretionary with the court. Thus, the court is not required to grant a stay of execution or establish a probationary tenancy even where the person subject to complete or partial eviction has clearly and convincingly established all of the required elements.

Subsection (c) provides that the plaintiff and any tenant organization have an opportunity to be heard with respect to an application for a probationary tenancy, as well as the right to be heard with respect to any enforcement proceedings concerning a probationary tenant's compliance with all court-imposed terms and conditions. The tenant association is expressly accorded the right to be heard at all such proceedings, even where such organization is not a plaintiff and was not previously involved in formal litigation. *See also* Section 7(c)(2).

Subsection (d) provides that where the court has, in its discretion, granted a stay of execution in accordance with the provisions of subsection (b), the court must thereupon order the person applying for a probationary tenancy to participate in a course of treatment and which was recommended by the substance abuse diagnostic assessment conducted pursuant to subsection (a). It is thought that in these circumstances, the court would have less discretion to determine the appropriate type, form and duration of treatment than would ordinarily be accorded to a criminal sentencing court. Thus, under this statute, the specific recommendations of the professional diagnostic assessment program should be followed. Those recommendations may provide for either residential or outpatient treatment. This subsection also expressly provides that any such course of treatment must include periodic drug testing. Moreover, the course of treatment must take place in a program licensed by the [single state authority on alcohol

and other drugs] to provide substance abuse treatment.

Subsection (d) further requires the court to impose reasonable terms and conditions of the person's participation in a court-approved treatment program. In essence, the court would be authorized to include any term or condition which a criminal court would be authorized to impose as a condition of probation following a conviction for a crime or an adjudication of delinquency. However, such terms and conditions must include a requirement that the person comply with all rules and regulations established by the treatment program. Note also that the court is expressly authorized to establish a curfew or to impose restrictions on the person's associations and places where he or she may travel. Finally, subsection (d) further requires the person placed on probationary tenancy to consent to all such original or amended terms and conditions of the stay of execution, and to acknowledge in writing that he or she understands and accepts all of the terms and conditions. In the event that the person refuses to accept and comply with any such original or amended term, the stay of execution must automatically be rescinded and the person shall thereupon be subject to the immediate enforcement of the eviction or removal order.

Subsection (e) provides that the term of probationary tenancy is fixed at a period of six months, although the term of probationary tenancy may be extended for an additional six months where the court-designated treatment program recommends such extension.

Subsection (f) provides that the stay of execution authorized pursuant to this section is contingent upon the person commencing his or her participation in the recommended course of treatment within ten days of the entry of the court's order. This time period could be satisfied with the person's being placed on a certified waiting list until a position for the recommended course of treatment becomes available. In that event, however, the person must submit to regular drug testing and must also attend no fewer than five 12-step (*ie.* Narcotics Anonymous or Alcoholics Anonymous) recovery meetings per week, until the course of court-approved treatment can begin.

Subsection (g) provides that the designated treatment program must, as a condition of the stay of execution, agree in writing to report periodically to the court as to the person's progress. By the same token, the treatment program must agree to promptly report any significant failure to comply with the requirements of the course of treatment and to immediately advise the court in the

event the person for any reason terminates his or her participation in the course of treatment. Because this treatment is ordered following the civil action rather than a criminal conviction, this subsection provides that in the case of a juvenile, and when necessary, the person's parent or legal guardian must sign such consent forms as are necessary to release the information to the court in accordance with any applicable state or federal statutes, rules or regulations.

Subsection (h) authorizes the court to assign the local or county probation agency, and in the case of a juvenile, an appropriate child welfare or protective services agency, to assist in monitoring and supervising the person's participation in the recommended course of treatment and the person's compliance with all court-imposed terms and conditions of the probationary tenancy period. Thus, for example, the court may assign any such government agency the responsibility to administer the periodic drug tests required as a condition of the probationary tenancy. This section thus represents an intended departure from general law which limits the authority of probation departments to persons who have been convicted of crimes or adjudicated delinquent. It is thought as a matter of overriding policy that it would be necessary in certain cases to use the supervisory and monitoring resources of a probation department to make certain that a person granted a probationary tenancy complies with all court-ordered terms and conditions. Where any such government agency is assigned by the court the responsibility to assist in monitoring and supervising the person, such agency shall be required to report any positive drug test or any other significant violation to the court.

Subsection (i) establishes the standards and procedures for enforcing the terms of a probationary tenancy. Specifically, this subsection authorizes the court to revoke the probationary tenancy and order the immediate eviction or removal of the person upon any first significant violation, provided, however, that the court must revoke the probationary tenancy upon the determination of any first significant violation where such revocation has been recommended by the court-designated treatment program unless the court finds that there are extraordinary and compelling reasons to disregard the recommendations of the treatment program. This provision is designed not only to hold probationary tenants accountable, but also to make clear that the recommendations of the treatment program will carry considerable weight with the court. It is intended in this way that probationary tenants undergoing court-ordered treatment will understand the importance of

complying with all rules and regulations established by the treatment program.

To further emphasize the important role the treatment program must serve in supervising the course of treatment, this subsection provides that where the treatment program for any reason decides to discontinue the person's course of treatment, the court must thereupon revoke the probationary tenancy unless the treatment program recommends that another treatment program be engaged to provide the course of treatment. No substance abuse treatment program or facility should be required against its own interest to provide services for persons subject to a probationary tenancy pursuant to this civil statute.

Subsection (i) further provides that in making its determination whether to revoke the probationary tenancy after a finding of the first significant violation, the court should consider the nature and seriousness of the infraction in relation to the person's overall progress in the course of treatment. A second violation requires revocation of the stay of eviction, absent extraordinary and compelling reasons.

Finally, subsection (i) provides in unambiguous terms that where the court finds reasonable grounds to believe that the person, during the term of probationary tenancy, has been involved in continued drug-related activity, the court must immediately rescind the stay of execution and order the immediate removal of the person. It would not matter for the purposes of this mandate whether the drug-related criminal activity occurred on the leased residential premises. This subsection is designed to make clear that the ameliorative and rehabilitative option of a probationary tenancy is only available to persons who refrain from committing further drug trafficking activities.

Subsection (j) specifies those persons or associations who would be authorized to bring an action before the court to establish a violation of any term or condition of the probationary tenancy. This list includes not only the treatment program, and any agency assigned by the court to assist in monitoring and supervising the probationary tenancy, but any person or organization which would have been authorized to bring the initial eviction action, whether or not such person or organization actually served as the plaintiff in the action. Thus, for example, even where the eviction action is brought by the landlord, a tenant association or criminal prosecuting agency would have standing to initiate an action for violation of the terms of the probationary tenancy.

The subsection further provides that the actual violation of any term or condition of the probationary tenancy must be heard in summary fashion and a hearing must be conducted within five days of the notice to the court of the violation.

Subsection (k) provides that where the probationary tenant has satisfactorily complied with the terms and conditions of the recommended course of treatment, the court may, after the expiration of the term of the probationary tenancy, discharge the order of eviction or removal and dismiss the action brought pursuant to this [Act]. The court must find, however, based on the totality of the circumstances and considering the person's progress in the course of treatment, that the person no longer poses a risk to the other residents and tenants of the leased residential premises. The effect of this provision is to establish a remedy similar to a "conditional discharge" in a criminal proceeding. This section makes clear, however, that it in no way precludes any person from initiating a new eviction action at any time, based upon alleged drug-related criminal activity other than those which were the subject of the original action which was discharged pursuant to this subsection.

## *Section 29. Notification and Provision of Treatment Resources.*

(a) Notification to Person Removed. The court, prior to the removal of any person pursuant to this [Act], shall cause of the removal to be provided to that person outreach information and referral materials on how to obtain alcohol and other drug treatment.

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

(c) Preparation and Dissemination of Treatment Resource Information. The [single state authority on alcohol and other drugs] or its designee shall prepare the outreach information and referral materials and shall disseminate the information and materials to all courts having jurisdiction to issue orders pursuant to this [Act].

(d) Compensation to Treatment Programs for Services Provided. Licensed treatment programs may apply to the [single state authority on alcohol and other drugs] or its designee for compensation for treatment services

provided to persons removed pursuant to this [Act]. The [single state authority on alcohol and other drugs] shall adopt such regulations as it deems appropriate governing the treatment programs and the manner of dispensation of compensation to such programs.

(e) Funding Source for Treatment Services. Such compensation shall be drawn from [the "Treatment for Displaced Residents Fund" provided for in Subsection 18(d) of the Model Nuisance Abatement Act] [and/or] [Demand Reduction Assessment Fund provided for in Section 6 of the Model Demand Reduction Assessment Act or equivalent designated state fund], which imposes mandatory fines on all drug violators and earmarks the funds for treatment and prevention.

### COMMENT

This section requires the court to cause certain outreach information and referral materials to be provided to persons who are subject to complete or partial eviction. Specifically, the court is required to make certain that prior to the actual removal of any person pursuant to this [Act], such person receives information concerning how to obtain alcohol and other drug treatment services.

Subsection (b) provides that no less than ten days prior to the actual removal of any person pursuant to this [Act], the court must provide notice of the eviction or displacement to the appropriate local alcohol and other drug agency, the local child welfare agency where the eviction involves the removal or displacement of a minor, and to such other appropriate social services agencies as the court deems appropriate. In order to avoid any unnecessary delays, and consistent with the overriding objective of this [Act] for swift execution of removal and eviction orders, it is intended that the court would provide all such information and notices at the same time that the court makes the required findings necessary to establish the factual and legal basis for a complete or partial eviction. Accordingly, it is intended that wherever possible, the enforcement of the eviction or removal order in accordance with Section 12 would occur ten days after the entry of the court's order.

Subsection (c) provides that all outreach information referral materials required to be distributed, be prepared by the [single state authority on alcohol and other drugs.]

Subsection (d) provides a mechanism by which to pay for the treatment and monitoring services provided to persons granted a probationary tenancy. Specifically, this subsection authorizes the licensed treatment pro-

gram providing the services to apply to the [single state authority on alcohol and other drugs] for compensation. It is intended that such compensation would be drawn in accordance with rules and regulations established by the [single state authority on alcohol and other drugs] from the "Treatment for Displaced Residents Fund" established in accordance with the [Model Drug Nuisance Abatement Act], the [Model Demand Reduction Assessment Act], see Volume I, Economic Remedies, or from any designated state fund which imposes mandatory fines on all drug violators and earmarks the funds for treatment and prevention.

Nothing in this section or any other provision of this [Act] should be construed to preempt or limit the authority of the court to order any person to pay for his or her own treatment services, where the court is satisfied that the person is able to pay, considering the extent to which the person has health insurance or other benefits, the nature and extent of his or her financial resources and whether or not he or she is engaged in gainful employment and thus is able to reimburse all or some portion of such treatment costs over time and in installments.

### ***Section 30. Relocation Assistance.***

Notwithstanding any other provision of law, no landlord or owner shall bear any responsibility or liability for relocating any person who has been evicted, removed or barred pursuant to this [Act].

#### **COMMENT**

In many states, statutes require landlords in certain circumstances to bear the cost of relocating persons who have been removed or displaced from the premises. This section makes clear the common sense notion that no such policy should be read to require a landlord or owner to pay any expense or otherwise bear any liability for relocating any person who has been evicted,

removed or barred pursuant to this [Act]. Clearly, such a requirement would be absurd with respect to a person found to be involved in or to have culpably permitted others to commit drug-related criminal activity on the leased residential premises. In those states where no such general requirement for relocation assistance exists, this section will be unnecessary.

### ***Section 31. Severability.***

If any one or more sections, clauses, sentences or parts of this [Act] shall for any reason be adjudged unconstitutional, the judgment shall not affect the remaining provisions but shall be confined to the specific provisions held to be unconstitutional.

### ***Section 32. Liberal Construction.***

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

#### **COMMENT**

Given the remedial, non-punitive nature of the rights and remedies established in this [Act], this section provides that the provisions of the [Act] shall be liberally construed. Courts in interpreting and applying the provisions of this [Act] are directed to consider the purposes, objectives and policies which are set forth at length in Section 2 (Legislative Findings).

### ***Section 33. Effective Date.***

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

# Appendix A

# Questions and Answers Concerning the Model Expedited Eviction of Drug Traffickers Act

## **1. Who can get evicted under this law?**

Any tenant who distributes illicit drugs on the leased premises, or who allows others to distribute drugs there may be evicted. In addition, this law would allow courts to order a drug dealer to stay away from the premises, even if that drug dealer is not a tenant.

## **2. Drug trafficking is a major problem in some housing developments and apartment complexes. What will happen if the landlord does nothing to stop the problem?**

This law allows persons other than the landlord to bring an eviction action to remove drug dealers. A prosecutor or county or municipal attorney, for example, can start the eviction process. Moreover, a tenant organization can also go to court to evict or remove a drug dealer. This feature is designed to give tenants and residents an additional reason for organizing and participating in a tenant association. This law literally “empowers” tenants to use the courts to protect their own interests.

## **3. Does the tenant organization have to ask the landlord for permission before starting an eviction proceeding?**

No. A tenant organization can start the eviction process on its own. However, the law is designed to create an incentive for law abiding tenants to work cooperatively with their landlord to evict drug dealers. If the tenant organization asks the landlord to start the eviction process and the landlord refuses to do so, the tenant organization can make the landlord pay for the cost of the law suit if the organization brings and wins the eviction action.

## **4. Does a tenant organization need to hire a lawyer and if so, how does the tenant organization pay for his or her services?**

The law requires a tenant organization to be represented by an attorney. This is to make sure that there is always a good reason for starting the law suit and to make certain that the law is not abused. Many lawyers agree to handle these types of cases with the understanding that they will only get paid if they win. As noted above, if the tenant organization wins the case and the landlord had refused to bring the case after being requested in writing to do so, the winning lawyer will be paid by the landlord.



**5. How long does it take to get drug dealers out under this law?**

This law is designed to work as fast as possible so that drug dealers can be removed quickly. The law provides that these cases must be heard by the courts on a priority basis and the courts are generally not allowed to delay the proceedings as happens too often in other civil cases.

**6. What if the drug dealer is not a tenant?**

This law authorizes courts to remove any person who deals drugs on or near the leased premises. Thus, for example, a member of a tenant's household or a guest, regardless of age, can be evicted if he or she deals drugs, even though the drug dealer never signed the lease. In essence, the court will issue a "stay away" order to the drug dealer, forcing him or her to leave the premises and not return under penalty of arrest.

**7. What if the tenant was innocent and was truly helpless to stop the drug dealing from occurring in his or her apartment?**

No one wants to evict a grandmother, for example, who simply couldn't stop her grandchild from selling drugs from her apartment. At the same time, in order to protect the rights of law abiding citizens, we simply cannot permit the grandchild to continue to peddle illicit drugs. For this reason, and so as to balance the rights of all concerned parties, the law provides that the tenant can avoid being evicted if he or she can show the court that he or she was not personally involved in drug dealing, and 1) had no way of reasonably knowing that the drug dealing was going on; or 2) did everything he or she could to prevent the drug dealing from taking place or; 3) promptly called the police to report that the drug dealing was taking place.

Where the court allows the innocent tenant to stay, however, the court must also order the drug dealer to leave and not to return. Moreover, from that point on, the tenant must take those steps which are reasonable and necessary to make certain that the drug dealer does not come back to the premises.

**8. Besides the person or persons to be evicted, who has to be notified about the lawsuit?**

If the action is started by a tenant organization or prosecutor, the landlord must be told about the lawsuit. Remember that in the first instance, it is landlord's responsibility to evict drug dealers from the premises. Moreover, this law provides that any person living in the apartment building who might be affected by the outcome of the case has a right to be notified and to be heard in court.

**9. Do the drug dealers have to be arrested or convicted before they can be evicted?**

No. This is a civil lawsuit which does not depend upon a criminal prosecution. A person can be evicted or ordered to stay away under this law even if he or she has never been arrested, charged or convicted of drug dealing. If, on the other hand, the person has been convicted of drug dealing, that fact would come out in the eviction proceeding and would pretty much establish that that person is subject to eviction.

**10. What happens if the evicted drug dealer comes back?**

Any drug dealer who is evicted and who returns to the premises can be arrested for contempt of court. Where a guest or member of a tenant's family is ordered to stay away, and the tenant is allowed to remain, that tenant must make certain that the person ordered to stay away does not return. If the drug dealer does come back, the tenant must call the police to let them know. If the tenant doesn't do this, he or she would be subject to an immediate eviction.

**11. Can a landlord or members of a tenant organization be sued for bringing an eviction action or for providing information so that someone else can bring the action?**

No. The law provides that as long as a person is acting in good faith, he or she cannot be sued.

**12. What if someone is afraid to bring the action for fear that the drug dealer may retaliate?**

The law permits the court to take steps to protect witnesses. For example, the court may order that the name or identity of the witness not be disclosed. And remember, this law allows the prosecutor to bring the eviction action.

**13. Will the police help landlords and tenant organizations to bring these actions?**

The law not only allows prosecutors to take responsibility for bringing the action, but also allows police and prosecutors to provide police and laboratory reports to prove that drug dealing took place. Furthermore, the police are required to assume responsibility for actually removing the drug dealer once the court has issued an order of eviction.

**14. What if the drug dealer is a juvenile living with his or her parents on the premises?**

Under this law, the drug dealer can be ordered to leave the premises and stay away even if he or she is only a juvenile. However, where a juvenile is involved in the proceedings, the local child welfare agency must be notified so that the juvenile is not simply put out on the street.

**15. Many drug dealers are addicts and if they are evicted, they will just move their drug trafficking operation to some other neighborhood. Does this law provide for any long term solution to address their addiction?**

This law contains a unique feature which in some cases would allow a court to let an addicted drug dealer stay on the premises so long as he or she is undergoing substance abuse treatment approved by the court. It must be noted, however, that this law is designed first and foremost to protect law abiding residents. For this reason, the treatment option can only be used where the offender agrees to participate in a carefully monitored substance abuse program and even then, the court must be convinced that the offender's continued presence will not endanger his or her neighbors.

The law also requires that any person evicted or removed from the premises receive information concerning how to obtain alcohol and other drug abuse treatment, and even provides a way to make that treatment more affordable by allowing licensed treatment programs to receive compensation for treatment services provided to evicted persons from a fund made up of monies collected from convicted drug offenders.

**16. Why do we need this statute? What does it add to landlord tenant law?**

This law makes many significant improvements and brings in some new ideas and approaches to state eviction laws. As noted above, it is designed first and foremost to protect the rights of law abiding tenants and residents. It is designed to "empower" these citizens, giving them an opportunity to be heard in the courts. It is designed to give a reason for addicts to accept help to deal with their problem as a condition of avoiding being put out on the streets. Finally, it provides precise guidance to the courts so that this law can be applied predictably and consistently.

# Model Drug Nuisance Abatement Act

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# Model Drug Nuisance Abatement Act

## Policy Statement

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

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

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

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

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

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

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

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

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# Highlights of the Model Drug Nuisance Abatement Act

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

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

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

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

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

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# Model Drug Nuisance Abatement Act

## ***Section 1. Short Title.***

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

## ***Section 2. Legislative Findings.***

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

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

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

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

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

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

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

## **COMMENT**

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

### Section 3. Purpose.

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

### Section 4. Definitions.

As used in this [Act]:

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

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

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

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

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

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

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

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

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

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

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

#### COMMENT

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

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

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

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

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

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

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

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

### *Section 5. Nature of Actions and Jurisdiction.*

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

#### COMMENT

This section establishes a civil cause of action which

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

### *Section 6. Standard of Proof.*

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

#### COMMENT

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

### *Section 7. Parties.*

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

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

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

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

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

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

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

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

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

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

#### COMMENT

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

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

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

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

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

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



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

### ***Section 8. Notice to Interested Parties.***

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

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

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

#### **COMMENT**

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

### ***Section 9. Substitution of Plaintiff.***

When a court determines in its discretion that the plaintiff

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

#### **COMMENT**

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

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

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

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

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

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

## COMMENT

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

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

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

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

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

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

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

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

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

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

#### COMMENT

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

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

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

### ***Section 12. Enforcement of Preliminary Closing and Restraining Orders.***

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

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

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

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

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

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

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

## COMMENT

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

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

### *Section 13. Notification and Provision of Treatment Resources.*

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

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

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

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

## COMMENT

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

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

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

### *Section 14. Premises Involving Multiple Residences or Businesses.*

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

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

## COMMENT

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

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

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

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

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

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

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

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

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

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

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

- (i) Hiring an on-site manager to prevent the recurrence of drug distribution events;
- (ii) Making capital improvements to the property, such as security gates;
- (iii) Installing improved interior or exterior lighting;
- (iv) Employing security guards;
- (v) Installing electronic security or visual monitoring systems;
- (vi) Establishing tenant-approved security procedures;
- (vii) Attending property management training programs;
- (viii) Making cosmetic improvements to the property;
- (ix) Providing, at no cost, suitable space and facilities for a local enforcement agency to establish a police substation or mini-station on or near the site of the drug nuisance; or
- (x) Establishing any other program or initiative designed to enhance security and prevent the recurrence of drug distribution events on or near the premises involved.

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

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

COMMENT

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

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

***Section 16. Permanent Injunction and Other Relief.***

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

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

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

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

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

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

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

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

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

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

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

#### COMMENT

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

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

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

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

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

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

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

#### COMMENT

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

### ***Section 18. Penalties.***

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

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

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

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

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

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

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

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

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

#### COMMENT

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

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

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

#### Section 19. Settlements.

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



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

## COMMENT

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

### *Section 20. Recovery of Costs.*

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

## COMMENT

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

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

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

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

### *Section 21. Liens.*

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

## COMMENT

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

### *Section 22. Contempt.*

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

### ***Section 23. Release of Premises Upon Inspection or Repair.***

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

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

#### **COMMENT**

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

### ***Section 24. Cumulative Remedies.***

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

### ***Section 25. Admissibility of Evidence to Prove Drug Nuisance.***

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

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

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

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

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

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

#### COMMENT

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

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

### ***Section 26. Relationship to Criminal Proceedings.***

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

#### COMMENT

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

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

### ***Section 27. Liability for Damage to Closed Properties.***

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

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

### ***Section 28. Civil Immunity.***

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

#### COMMENT

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

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

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

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

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

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

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

### **COMMENT**

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

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

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

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

### **COMMENT**

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

## ***Section 31. Liberal Construction.***

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

## ***Section 32. Severability.***

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

## ***Section 33. Effective Date.***

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

# Appendix B

# Questions and Answers Concerning the Drug Nuisance Abatement Act

## **1. What is a drug nuisance?**

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

## **2. Who can sue?**

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

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

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

## **4. Do we have to do something first?**

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

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

## **5. Do we need a lawyer?**

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

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

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

**7. What good does it do to sue?**

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

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

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

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

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

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

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

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

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

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

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

**11. What if innocent people also live there?**

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

**12. What happens to the property after its closed?**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

**20. What if I am afraid to bring action?**

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

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

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

# Nuisance Abatement in Action

## Introduction

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

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

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

# Narcotics Nuisance Abatement Unit

## Chicago, Illinois

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

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

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

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

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

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

# Nuisance Bar Task Force

## Philadelphia, Pennsylvania

### **Introduction.**

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

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

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

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

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

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

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

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

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

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

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

## **B. Specific Projects**

### **1. Law Enforcement Coordination.**

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

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

### **2. Nuisance Hot Line**

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

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

### 3. Volunteer Panel

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

### 4. Town Watch Organization

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

## C. Conclusion

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

# Operation Crackdown: Teaching an Old Law New Tricks

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

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

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

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

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

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



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

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

### **THE VALUE OF NUISANCE ABATEMENT IN THE WAR ON DRUGS**

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

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

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

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

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

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

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

# State Statutes Dealing with Drug Nuisance Abatement

## OVERVIEW

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

## NOTES

While reading the following survey please note the following:

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

## **ARKANSAS**

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

### **Drug Nuisance:**

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

### **Standing to Bring Suit:**

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

### **Frivolous Pleadings:**

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

### **Alternative Service:**

Not Provided.

### **Notice of Treatment Services:**

Not Provided.

### **Preliminary Hearing:**

Not Provided.

### **Appointment of Receiver:**

Not Provided.

### **Civil Penalty**

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

### **Civil Action for Damages:**

Yes. §16-105-402.

### **Attorney Fees for Prevailing Plaintiffs:**

Yes. §16-105-402.

### **Comments:**

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

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

## **CALIFORNIA**

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

### **Drug Nuisance:**

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

### **Standing to Bring Suit:**

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

### **Frivolous Pleadings:**

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

### **Alternative Service:**

Not Provided.

### **Notice of Treatment Services:**

Not Provided.

### **Preliminary Hearing:**

Not Provided.

### **Appointment of Receiver:**

Not Provided.

### **Civil Penalty**

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

### **Civil Action for Damages:**

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

### **Attorney Fees for Prevailing Plaintiffs:**

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

### **Comments:**

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

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

## **COLORADO**

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

### **Drug Nuisance:**

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

### **Standing to Bring Suit:**

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

### **Frivolous Pleadings:**

Not Provided.

### **Alternative Service:**

Not Provided.

### **Notice of Treatment Services:**

Not Provided.

### **Preliminary Hearing:**

Not Provided.

### **Appointment of Receiver:**

Not Provided.

### **Civil Penalty:**

Not Provided.

### **Civil Action for Damages:**

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

### **Attorney Fees for Prevailing Plaintiffs:**

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

### **Comments:**

None.

## **CONNECTICUT**

**CONN. GEN. STAT. ANN. §21a-259**

### **Drug Nuisance:**

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

### **Standing to Bring Suit:**

Not Provided.

### **Frivolous Pleadings:**

Not Provided.

### **Alternative Service:**

Not Provided.

### **Notice of Treatment Services:**

Not Provided.

### **Preliminary Hearing:**

Not Provided.

### **Appointment of Receiver:**

Not Provided.

### **Civil Penalty:**

Not Provided.

### **Civil Action for Damages:**

Not Provided.

### **Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

### **Comments:**

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

## **FLORIDA**

**FLA. STAT. ANN. §823.10 & §893.138.**

### **Drug Nuisance:**

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

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

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

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

**GEORGIA**

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

**Drug Nuisance:**

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

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

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

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

None.

**HAWAII**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

The court will tax the citizen costs if the court determines

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

**Alternative Service:**  
Not Provided.

**Notice of Treatment Services:**  
Not Provided.

**Preliminary Hearing:**  
Not Provided.

**Appointment of Receiver:**  
Not Provided.

**Civil Penalty:**  
Not Provided.

**Civil Action for Damages:**  
Not Provided.

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

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

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

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

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

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

**Alternative Service:**  
Not Provided.

**Notice of Treatment Services:**  
Not Provided.

**Preliminary Hearing:**  
Not Provided.

**Appointment of Receiver:**  
Not Provided.

**Civil Penalty:**  
Not Provided.

**Civil Action for Damages:**  
Not Provided.

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

**Comments:**  
Owner redelivery provision. §40/9.

**IOWA**  
**IOWA CODE ANN. §657.1 through §657.7.**

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

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

**Frivolous Pleadings:**  
Not Provided.

**Alternative Service:**  
Not Provided.

**Notice of Treatment Services:**  
Not Provided.

**Preliminary Hearing:**  
Not Provided.

**Appointment of Receiver:**  
Not Provided.

**Civil Penalty:**  
Not Provided.

**Civil Action for Damages:**

Yes. §657.1.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

Owner redelivery section. §657.6.

**KANSAS**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

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

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Yes. Up to \$ 25,000. §22-3904(1).

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Yes. §22-3904(3).

**Comments:**

None.

**LOUISIANA**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

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

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

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

**MAINE**

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

**Drug Nuisance:**

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



**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Yes. See comments.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

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

Owner redelivery section. §2703.

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

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

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

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

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

**Comments:**

None.

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

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

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

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Yes. §16.

**Comments:**

Owner redelivery section. §11.

**MICHIGAN**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

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

**Comments:**

Owner redelivery section. §600.3840(1).

**MINNESOTA**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

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

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Yes. §617.84.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

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

Owner redelivery section. §617.87.

**MISSISSIPPI**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

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

**Alternative Service:**

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

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

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

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Yes. §95-3-13.

**Comments:**

Owner redelivery section. §95-3-11.

**MISSOURI**

MO. ANN. STAT. §195.130

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

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

**NEW HAMPSHIRE**

N.H. REV. STAT. ANN. §318-B:16

**Drug Nuisance:**

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

**Standing to Bring Suit:**

Not Provided.

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

None.

**NEW JERSEY**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

Not Provided.

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

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

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

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

**NORTH CAROLINA**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

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

**Alternative Service:**

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

**Notice of Treatment Services:**

Not Provided

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided

**Civil Penalty:**

Forfeiture of the property. §19-6.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Yes. §19-6 & §19-8.

**Comments:**

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

Priority of action section. §19-3.

Owner redelivery section. §19-7.

**OHIO**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

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

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

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

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

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

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

Owner redelivery section. §3767.04(C).

Priority of action section. §3767.05(A).

**OREGON**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

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

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Yes. §105.595.

**Attorney Fees for Prevailing Plaintiffs:**

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

**Comments:**

Priority of action section. 105.575.

Owner redelivery section. 105.580.

**PENNSYLVANIA**

**PA. STAT. ANN. tit. 42, §8381-§8392.**

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

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

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

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

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

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

**Civil Action for Damages:**

Yes.

**Attorney Fees for Prevailing Plaintiffs:**

Yes.

**Comments:**

None.

**RHODE ISLAND**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

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

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

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

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

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

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Yes. §10-1-7.

**Comments:**

Owner redelivery section. 10-1-8.

**TENNESSEE**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

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

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

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

**TEXAS**

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

**Drug Nuisance:**

Knowingly maintaining a place where people habitually

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

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

**UTAH**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

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

**Comments:**

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

**VIRGINIA**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty**

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

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Not Provided.

**Comments:**

None.

**WASHINGTON**

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

**Drug Nuisance:**

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

**Standing to Bring Suit:**

Not Provided.

**Frivolous Pleadings:**

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

**Alternative Service:**

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

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.



**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Yes. §7.43.130.

**Attorney Fees for Prevailing Plaintiffs:**

Yes. §7.43.100.

**Comments:**

Priority of action section. §7.43.050.

Owner redelivery section. §7.43.080(2).

**WISCONSIN**

WIS. STAT. ANN. §823.113.

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

Not Provided.

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty:**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Yes. §823.115(1).

**Comments:**

Owner redelivery section. §823.115.

**WYOMING**

WYO. STAT. §6-6-201 through §6-6-209.

**Drug Nuisance:**

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

**Standing to Bring Suit:**

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

**Frivolous Pleadings:**

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

**Alternative Service:**

Not Provided.

**Notice of Treatment Services:**

Not Provided.

**Preliminary Hearing:**

Not Provided.

**Appointment of Receiver:**

Not Provided.

**Civil Penalty**

Not Provided.

**Civil Action for Damages:**

Not Provided.

**Attorney Fees for Prevailing Plaintiffs:**

Yes. §6-6-205 & §6-6-206.

**Comments:**

Owner redelivery section. §6-6-206.

Priority of action section. §6-6-203.

# Model Crimes Code Provisions to Protect Tenants and Neighbors

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# Model Crimes Code Provisions to Protect Tenants and Neighbors

## Policy Statement

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

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

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

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

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

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

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

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

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

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

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

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# Model Crimes Code Provisions to Protect Tenants and Neighbors

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

### **(a) Removal of Certain Dangerous Convicted Adults.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### COMMENT

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

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

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

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

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



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

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

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

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

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

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

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

## *Section 2. Contempt.*

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

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

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

#### **COMMENT**

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

### ***Section 4. Pretrial Restraints of Defendant By Court Order.***

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

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

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

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

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

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

#### **COMMENT**

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

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

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

### *Section 5. Community Impact Statements.*

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

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

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

### COMMENT

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

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

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

### *Section 6. Severability.*

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

### *Section 7. Effective Date.*

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

# Model Anti-Drug Volunteer Protection Act

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# Model Anti-Drug Volunteer Protection Act

## Policy Statement

Anti-drug volunteer efforts have been critical in holding the line against the social disintegration that has accompanied the explosion in drug-related criminal activities. Such volunteer efforts have been struggling heroically to re-stitch the social fabric that has, in many communities, largely unraveled.

Nonetheless, many anti-drug volunteers are hesitant to offer their services, deterred by an increasingly widespread perception that their personal assets may be placed at risk if someone is inadvertently harmed as a result of their volunteer activities. This fear must not be permitted to stand in the way of their critical contributions to the community. This Act attempts to strike a balance between the right of an individual who has been harmed to seek compensation and the right of the individual to freely give time and energy without compensation as an anti-drug volunteer without fear of personal liability for good faith, non-malicious conduct. The interest of the community in benefitting from that individual's volunteer activity must also be weighed in the balance.

This Act is similar in legal effect to other Good Samaritan laws that have been passed, for groups as disparate as medical emergency personnel and Little League baseball coaches. It is intended to encourage volunteers to join the struggle to reduce drug use in their communities.

The Act's limitation of liability of anti-drug volunteers resembles existing volunteer protection laws in nearly every state. While the state laws vary, all rest upon the premise that certain categories of volunteers should not be subjected to full personal liability. Several of the laws, including those of Maryland and Kansas, permit recovery against an insured volunteer up to the limits of the policy. Other states have long limited recovery against charitable organizations to the amount of insurance, if any.

This Act fairly balances the competing interests of anti-drug volunteers and would-be plaintiffs. More importantly, the Act recognizes that the country's general social welfare hangs in the balance when liability fears dampen volunteer initiative.

The United States Supreme Court and the judiciary in most states give legislatures wide latitude to modify tort rules. (See *Constitutionality of the Charitable Redress System*, Charles Tremper, Esq. 76 *Cornell Law Review* 466 (Jan. 1991)) A rational basis generally suffices for permitting recovery against some defendants and disallowing it against others or limiting the amount of recovery.

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# Highlights of the Model Anti-Drug Volunteer Protection Act

- Provides immunity for civil liability if the anti-drug volunteer was:
  1. acting in good faith; and
  2. acting within the scope of the volunteer's role with the anti-drug volunteer organization; and
  3. not engaging in willful or wanton misconduct; and
  4. acting legally.
- Defines anti-drug volunteer organization broadly to include any non-profit organization (need not be certified as Section 501(c) organization, so long as meets Section 501(c) description), corporate volunteer program, medical facility, or substance abuse treatment program.
- Limits liability of anti-drug volunteer organizations to economic damages, eliminating liability for non-economic damages such as pain and suffering.

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# Model Anti-Drug Volunteer Protection Act

## **Section 1. Short Title.**

The provisions of this [Act] shall be known and may be cited as the "Model Anti-Drug Volunteer Protection Act."

## **Section 2. Legislative Findings and Purpose**

(a) The willingness of anti-drug volunteers to offer their services has been increasingly deterred by a perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers.

(b) The contributions of anti-drug programs, activities and services to communities are diminished by the resulting unwillingness of individuals to serve either as volunteers or as officers, directors and trustees of nonprofit public and private organizations.

(c) It is in the public interest to strike a balance between the right of a person to seek redress for injury and the right of an individual to freely give time and energy without compensation as a volunteer working to reduce drug use in the community, without fear of personal liability for acts undertaken in good faith, absent willful or wanton conduct on the part of the volunteer

(d) The provisions of the [Act] are intended to encourage volunteers to contribute their services to reduce the drug use in their communities and at the same time provide a reasonable basis for redress of claims which may arise relating to those services.

## **Section 3. Definitions.**

As used in this [Act]:

(a) "Anti-drug volunteer" is any person performing services for an anti-drug volunteer organization or governmental organization without compensation, other than reimbursement for actual expenses incurred. The term includes a volunteer serving as a director, officer, trustee or direct service volunteer.

(b) "Anti-drug volunteer organization" is any non-profit organization, corporate volunteer program, medical facility, or substance abuse treatment program, that uses volunteers to reduce drug use in the community.

(c) "Corporate volunteer program" means a program administered by any entity other than a nonprofit organization or governmental entity that enlists primarily its own employees, retirees, partners, or professional affiliates in a volunteer capacity to achieve objectives that would qualify as charitable under section 501(c) of the United States Internal Revenue Code.

(d) "Governmental entity" means any county, municipality, township, school district, chartered unit or subdivision, governmental unit, other special district, similar entity, or any association, authority, board commission, division office, officer, task force or other agency of any state, county or municipality.

(e) "Nonprofit organization" means any organization which is described in section 501(c) of the United States Internal Revenue Code, 26 U.S.C. 501(c), whether or not it has been certified by the United States Internal Revenue Service.

(f) "Willful and wanton misconduct" means conduct which is committed with an intentional or reckless disregard for the safety of others or with an intentional disregard of a duty necessary to the safety of another's property.

### **COMMENT**

Because the following section applies the protections afforded under this [Act] to "anti-drug volunteers", the definitions of "anti-drug volunteers" and "anti-drug volunteer organization" effectively defines the scope of who receives limited immunity. The [Act's] protections do not apply to compensated individuals; they are entitled to the same protections and subject to the same liabilities of compensated individuals in other occupations. The [Act] is intended to reflect the Commission's sense that those who already are sacrificing their time and effort *without* pay to reduce drug use in their com-



munities should not be held under the law to be putting their property at risk by virtue of their contributions to the community.

Additionally, the required purpose of an anti-drug volunteer organization, "to reduce drug use in the community," should be broadly interpreted. A wide range of community programs is envisioned, such as those that provide beneficial alternatives to drug use.

The definitions in this section depend one upon the other. Specifically, an "anti-drug volunteer" is defined as one who works for an "anti-drug volunteer organization," which in turn is defined to include certain "non-profit organizations" and "corporate volunteer programs," which terms are also defined. Thus, subsequent references to "anti-drug volunteers" incorporate five of the six definitions in this section.

#### ***Section 4. Scope of Immunity for Anti-Drug Volunteers.***

Any anti-drug volunteer shall be immune from civil liability if:

- (a) the volunteer was acting in good faith and within the scope of such volunteer's role with an anti-drug volunteer organization or governmental entity; and
- (b) the damage or injury was not caused by willful and wanton misconduct or illegal conduct by such volunteer.

#### **COMMENT**

This section sets forth the heart of the [Act]. The liability protections are not absolute. It is designed to carefully contour the [Act's] protections to protect only that conduct which is to be encouraged. It cannot be used to protect "bad" actions; nor can it be used as a shield to protect actions that truly are not within the scope of the volunteer's role with an anti-drug volunteer organization or governmental entity.

#### ***Section 5. Limitation of Liability for Anti-Drug Volunteer Organizations.***

With respect to claims arising from any activity undertaken for the primary purpose of reducing drug use in the community, an anti-drug volunteer organization shall not be liable for non-economic damages, including but not limited to pain and suffering and loss of consortium.

#### **COMMENT**

Anti-drug volunteer organizations, retain a limited liability which the individuals in the organizations do not have under this [Act]. This provision represents a compromise between two legitimate interests: 1) the interest of the injured individual to have the actual resulting costs paid by the entity (the anti-drug volunteer organization) who wrongfully caused the individual's injury; and 2) society's interest in preserving the assets of such organizations to carry on their anti-drug activities. The compromise is that the injured individual may be able to collect their actual *economic* losses, such as medical expenses, property damage and lost wages. However, the resources of anti-drug volunteer organizations will *not* be available to pay non-economic damages, such as compensation for loss of consortium, or pain and suffering.

It is intended that Section 5 not obviate the protection against *personal* liability which Section 4 provides. Thus, a plaintiff subject suing an anti-drug volunteer organization would not be able to reach beyond the organization to obtain damages from board members or other individuals associated with the organization, except to the extent that such individuals' injurious conduct actually falls outside the scope of immunity set forth in Section 4.

#### ***Section 6. Severability.***

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

#### ***Section 7. Effective Date.***

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

# Model Alcohol and Other Drug Abuse Policy and Planning Coordination Act

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# Model Alcohol and Other Drug Abuse Policy and Planning Coordination Act

## Policy Statement

Drug problems cut across the current jurisdiction of many state agencies: criminal justice, health, public housing, education and others. In many states, agencies work with insufficient knowledge of, or cooperation with, the efforts of other agencies. Scarce anti-drug resources are used in duplicative or conflicting efforts. Turf wars over responsibilities and budgets are common. There is little in the way of accurate determination of outcomes. Partnerships among agencies and between the public and private sectors are often the result of existing relationships rather than derived from strategic decisions about what might be most effective.

The Commission believes that this lack of coordinated statewide efforts is a major obstacle to dealing with the problems of drug abuse. There are alternative ways of working toward this coordination of state efforts. Some members believe that a strong policy statement regarding the need for coordination is sufficient to adjust the thinking of public officials, private leaders and the general public in a way that promotes cooperation and increased coordination.

The more widely held opinion is that the move toward coordination of state drug efforts will be materially aided by the institutionalization of such a process. The attached model legislation is offered, not as an exclusively "correct" model, but rather as a series of features and characteristics that, in some combination, varying according to the needs of each state, would characterize such an institutionalized effort.

To address these inefficiencies, many states have attempted to coordinate the efforts aimed at the problems of drugs. Some have attempted to do this by establishing a position of state drug control executive (inaccurately called "Drug Czar"). The position within the government varies from attorney general to chief of staff of an anti-drug commission.

The principles of such an effort to coordinate state drug planning, policies, and budgets are the following:

- It is necessary to establish and institutionalize a rational process for long range planning, information gathering, and strategic decision making.
- There are no quick fixes to the range of drug problems. Therefore, short and long term goals and objectives should be part of the strategy development.
- A single entity with the responsibility for planning, coordinating, and evaluating anti-drug efforts is necessary and is best placed within the executive branch; funding for this entity should be institutionalized and not be dependent on the consent of other agencies.

- All anti-drug efforts should be evaluated for outcomes as well as other performance measures and decisions regarding continued funding should be based on the results of such evaluations.
- The collection and shared use of all relevant data, research techniques, monitoring, as well as results of evaluations should improve policy planning.
- The responsible entity should seek advice from all relevant agencies as well as from the public.
- Despite the legal and regulatory differences between licit and illicit drugs, the governmental effort to address drug problems must be comprehensive and address all classes of substances that are widely abused.

There is no agreement regarding the degree of budgetary control of all anti-drug efforts by the entity with responsibility for the state anti-drug strategy.

With these principles in mind, the attached legislation offers options regarding possible methods of coordinating state drug policies. Given the differing history, governmental structure, and constitution of the various states, there is no one right way to bring about coordination legislatively. The attached is a collection of the ways in which states have worked to bring about such coordination.

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# Highlights of the Model Alcohol and Other Drug Abuse Policy and Planning Coordination Act

## ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that the nature and scope of the alcohol and other drug abuse problem transcends the jurisdictional boundaries of any single government agency and therefore requires states to develop an integrated, comprehensive and multi-disciplinary response.
- Recognizes the need to establish and to institutionalize a rational process for long range planning, information gathering and decision making so as to ensure the best possible use of limited resources and to ensure the fair allocation of such limited resources among the various programs, activities and initiatives designed to address the alcohol and other drug abuse problem.
- Recognizes that any rational and cost effective governmental effort to address substance abuse must be comprehensive and cannot be limited in its scope to any one mind-altering substance and, for this reason, a single entity within the executive branch is established or designated which would be responsible for coordinating, evaluating and monitoring efforts to address the abuse of both alcohol and controlled dangerous substances.
- Recognizes that rational strategic planning and funding decisions cannot be restricted to a single fiscal year or budgetary or grant funding cycle and, for this reason, all budgetary decisions are to be made by reference to a comprehensive, long range plan to ensure some reasonable level of consistency and stability.
- Recognizes that the collection and use of data, modern research techniques, and rigorous empirical monitoring and evaluation should at all times inform and illuminate policy planning and must be made an integral part of the policy planning and implementation.

## SPECIFIC RECOMMENDATIONS

- Provides for the establishment of a cabinet level executive council comprised of cabinet officers and state agency heads from all of the major departments involved in alcohol and other drug abuse enforcement, prevention, education and treatment.
- Provides for the chairperson of the council to be selected by the governor and to report directly to the governor.
- Provides that the executive council should be provided with adequate staff to fulfill all of its prescribed functions and responsibilities.
- Provides, alternatively, for somewhat broader representation on the council including cabinet officers from those departments and agencies which are most directly involved in alcohol and other drug abuse programs as ex officio members, and public members who could represent various county, local and private interests and constituencies involved in alcohol and other drug abuse programs.
- Provides the Executive Alcohol and Other Drug Abuse Planning and Coordinating Council(Council) with a number of general responsibilities and functions, including:
  - the responsibility to formulate, implement and continuously revise a comprehensive statewide plan to reduce the incidence of alcohol and other drug abuse;
  - the responsibility to articulate statewide budgetary priorities based on a needs assessment;
  - the responsibility to coordinate the efforts and enlist the assistance of all public and private agencies involved in alcohol and other drug abuse programs;

- the responsibility to promote strict accountability and fiscal responsibility through objective evaluation, assessment, improvement and coordination
- the responsibility to act as the governor's liaison with private sector treatment, counseling and rehabilitation providers, educators, and other interested persons;
- the responsibility to review and assess the experience of other states and the federal government in developing programs and to review all research studies and findings and act as a clearinghouse of information;
- the responsibility to review existing statutes and pending legislation to make recommendations to the legislature concerning the need to enhance or improve the state's response to the alcohol and other drug abuse problem;
- the responsibility to seek advice and input from concerned citizens and experts and to provide feedback from these interested persons or entities concerning the effectiveness of existing programs;
- the responsibility to communicate to citizens and explain the priorities and objectives established in the comprehensive master plan by convening public hearings and by other means.
- Additionally provides that the Council would have the specific responsibility to formulate and submit to the governor and to the legislature a comprehensive statewide alcoholism and other drug abuse master plan setting forth goals and objectives which can be quantitatively and qualitatively measured and which should be achieved within a period of time prescribed by the Council.
- Provides that the master plan will establish policy priorities and will specifically identify all state, county and local agencies and departments which will be designated by the Council as lead or contributing agencies responsible for implementing programs and activities in order to achieve each specified objective.
- Provides that every state agency or department identified as a lead or contributing agency is required to submit to the Council its budget plan relating to any and all alcohol and other drug abuse initiatives. The Council should then submit to the governor recommendations concerning these expenditures to ensure that they conform to the priorities, goals and objectives established in the comprehensive master plan.
- Provides that every state, county or local agency or department which applies for federal discretionary or formula grant funds concerning drug or alcohol abuse programs would be required to submit the grant application to the Council for its review prior to submitting the application to the federal agency awarding the grant. The Council should be authorized to provide, or to withhold providing, a letter of endorsement concerning the grant application.
- Provides that the Council would have the authority to award discretionary grants to counties and municipalities for alcohol and other drug abuse programs in accordance with the priorities, goals and objectives established in the master plan. Such grant awards should be made from monies derived from a special "Demand Reduction Assessment Fund," established pursuant to other recommended model legislation, comprised of monies collected from convicted drug offenders.
- Provides for the establishment of a statewide advisory board or boards to provide the widest possible range of information and input into the development of alcohol and other drug abuse policies and programs. The advisory board or boards should be of a manageable size but should nonetheless include enough members to adequately represent all interested constituencies involved in alcohol and other drug abuse programs.
- Requires the Council to report annually to the governor and to the legislature on its activities during the past year, the degree of cooperation provided to the Council by other agencies and departments, and the progress made in achieving the goals and specific objectives set forth in the master plan.

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# Model Alcohol and Other Drug Abuse Policy and Planning Coordination Act

## ***Section 1. Short Title.***

The provisions of this [Act] shall be known and may be cited as the "Model Alcohol and Other Drug Abuse Policy and Planning Coordination Act."

## ***Section 2. Legislative Findings.***

(a) Despite efforts by treatment programs, educators, law enforcement authorities and others, alcohol and other drug abuse remains a pervasive problem which threatens to reduce the quality of life. Many of the health, safety and public welfare problems facing society can be traced directly or indirectly, to the problem of alcohol and other drug abuse. These problems include crime and violence, AIDS, poor scholastic performance, dysfunctional families, increased medical and insurance costs, urban decay and reduced productivity in the workplace.

(b) It is estimated that [ ] dollars are spent each year in this state to address the alcohol and other drug problem. The nature and scope of the problem transcends the jurisdictional boundaries of any single government agency. For this reason, publicly funded alcohol and other drug abuse programs are currently administered by many different departments and agencies operating at the federal, state, county and local levels of government. Each such department or agency has its own unique mission, perspective and contribution to the overall effort to reduce the incidence of drug and alcohol abuse. At present, however, no single governmental authority in this state has the specific statutory mandate either to coordinate the contributions of all other involved agencies and departments or to objectively measure their impact and effectiveness in terms of carefully defined strategic goals and objectives. Consequently, this state's current efforts to curb alcohol and other drug abuse, while significant and laudable, can best be characterized as a compilation of individual programs and activities, rather than as an integrated, comprehensive and mul-

tidisciplinary response to the alcohol and other drug abuse problem.

(c) It is in the public interest to establish and to institutionalize a rational process for long range planning, information gathering and decision making within the existing institutions of government. This is necessary:

- to avoid wasteful or counterproductive duplication of efforts;
- to fairly allocate limited public resources among the various programs, activities and initiatives;
- to acquire and use the most accurate and up-to-date information about the scope and nature of the problem;
- to use modern research and evaluation methodologies to ensure accountability and cost-effectiveness in the expenditure of public and private funds;
- to forge meaningful partnerships between government, concerned citizens and private industry; and
- to eliminate or resolve actual or potential jurisdictional disputes.

(d) While all of the citizens of this state should work toward addressing the alcohol and other drug abuse problem, it is evident that government has both the responsibility and the unique ability to orchestrate public and private efforts into a rational and comprehensive strategy, to galvanize public opinion against alcohol and other drug abuse, and to provide a meaningful forum for interested individuals to voice their concerns, to offer recommendations and to share their expertise and perspective.

(e) Given the nature and scope of the current alcohol and other drug abuse problem, it is evident that there are no easy solutions. It is therefore necessary to develop both short and long term goals and objectives as part of a rational planning process which looks beyond any given fiscal year or budgetary or grant funding cycle.



(f) Although the legal and regulatory controls for illicit drugs are different from those which apply to alcoholic beverages, at least with respect to consumption by adults, any rational and cost-effective governmental effort to address substance abuse must be comprehensive and cannot be limited in scope to any one intoxicating substance or class of substances which are widely abused. Therefore, it is necessary to establish within the executive branch of government a single entity which is responsible for coordinating, evaluating and monitoring efforts to address the abuse of both alcohol and controlled substances.

(g) Any comprehensive effort to address the problem of alcohol and other drug abuse must focus special attention on the needs and problems of underage persons. It is in the public interest to develop a means by which to identify and provide needed services and special assistance to young people before they become involved in the juvenile justice system or are otherwise stigmatized by being classified as delinquents.

### ***Section 3. Purpose.***

The purpose of this [Act] is to establish a permanent Executive Alcohol and Other Drug Abuse Planning and Coordinating Council to ensure the best possible use of human and fiscal resources in addressing the state's current and evolving alcohol and other drug abuse problem, and to provide direction for legislative, budgetary and public policy decisions affecting alcohol and other drug services. It is not the intention of the legislature to create a new bureaucracy, but rather to better coordinate those programs and activities undertaken by existing agencies involved in alcohol and other drug enforcement, prevention, education, public awareness, intervention and treatment. In implementing the provisions of this [Act], the Executive Alcohol and Other Drug Abuse Planning and Coordinating Council shall consider the following general principles, which reflect the legislative policy of this state to enhance, coordinate, objectively evaluate and integrate all alcohol and other drug abuse programs and activities:

(a) It is necessary candidly to identify and, where feasible, to resolve jurisdictional conflicts between the multitude of agencies and departments involved in alcohol and other drug abuse programs. In order to have a successful, cost-effective statewide effort, every agency must understand its role and contributions to the anti-alcohol and other drug abuse effort in relation to the roles and contributions of all other agencies. All programs and initiatives must conform to carefully

developed and articulated statewide priorities and must appreciably advance the goals and objectives established by the Council as part of a statewide strategic planning process.

(b) Alcohol and other drug abuse programs and initiatives must be adequately funded in order to have any beneficial impact. Reasoned budgetary decisions are therefore critical to the success of the statewide effort. Moreover, rational strategic planning cannot be restricted to a single fiscal year or budgetary or grant funding cycle. All budgetary decisions should therefore be made by reference to a comprehensive long range plan. Although any such long range plan must be flexible and remain responsive to constantly changing needs and conditions, the planning process must ensure some minimum level of consistency and stability. However, no government agency or private concern should be entitled as of right to continuation or renewal funding of any particular program or initiative. Rather, all appropriations, expenditures, grant awards and contracts should be subject to careful scrutiny to ensure the best possible use of limited resources.

(c) The collection and use of data, modern research techniques and rigorous empirical monitoring and evaluation should be used to illuminate policy planning, and must be made an integral part of the policy planning and implementation process. Data and information must be put to use to identify those programs which are successful, as well as those programs which fail to meet required standards of impact and cost effectiveness.

### ***Section 4. Executive Alcohol and Other Drug Abuse Planning and Coordinating Council.***

#### ***[version A: Cabinet Level Council]***

[(a) There is created within the executive branch a permanent [ ]-member Council which shall be designated as the Executive Alcohol and Other Drug Abuse Planning and Coordinating Council(Council). The Council shall consist of [insert titles of cabinet officers or heads of departments and agencies involved in alcohol and other drug abuse, including the state attorney general]. A Council member may designate an officer or employee of the agency he or she heads to serve as his or her alternate at meetings of the Council [provided, however, that an alternate shall not be entitled to vote on matters considered by the Council].

(b) The chairperson of the Council shall be appointed by the governor and shall serve at the pleasure of the governor during the governor's term of office and until the appointment of the chairperson's successor.

(c) The Council shall meet at least monthly and at such other times as may be designated by the chairperson. Meetings shall be held in public, except that the Council may meet in executive session. [ ] members constitute a quorum. The Council may establish such subcommittees as it deems necessary.]

#### COMMENT

Under this first alternative, the Council is comprised of cabinet officers and state agency heads from all of the major departments involved in drug and alcohol abuse enforcement, prevention, education and treatment. The chairperson of the Council is selected by the governor. The governor should seriously consider appointing as chairperson the head of the [single state authority on alcohol and other drugs] responsible for most alcohol and other drug abuse programs. The Council and its chairperson should report directly to the governor. The Council should be staffed by persons selected by the chairperson. It should be provided with adequate staff to fulfill all of its prescribed functions and responsibilities. Staff personnel should be provided by the various state agencies and departments which are involved in alcohol and other drug abuse programs. These personnel should report to the chairperson. In order to maximize the non-political and independent nature of the Council, it (and its staff) should be independent from the executive office of the governor and should not be physically housed in the governor's office.

#### *[version B: Broader Council Representation]*

[(a) There is created within the executive branch a permanent [ ] member council which shall be designated as the Executive Drug and Alcohol Abuse Planning and Coordinating Council(Council) [and which shall be independent of any supervision or control by any existing department or agency of government]. The Council shall consist of [ ] *ex officio* members and [ ] public members.

(b) The *ex officio* members of the Council shall be: [insert titles of cabinet officers from departments and agencies involved in alcohol and other drug abuse including the state attorney general]. An *ex officio* member may designate an officer or employee of the department or agency he or she heads to serve as his or

her alternate to attend Council meetings [, provided, however, that an alternate shall not be entitled to vote on matters considered by the Council].

(c) The [ ] public members shall be appointed by the governor with the advice and consent of the senate and shall be selected for their knowledge, competence, experience or interest with respect to alcohol and other drug abuse [and without regard to their political affiliation]. [Not more than one-half of the public members may be members of one political party]. The term of office of each public member shall be [ ] years, except that of the first members appointed, [ ] shall be appointed for a term of [ ] year, [ ] shall be appointed for a term of [ ] years and [ ] shall be appointed for a term of [ ] years. Each member shall serve until his or her successor has been appointed and vacancies shall be filled in the same manner as the original appointments for the remainder of the unexpired term. A public member is [eligible] [ineligible] for reappointment to the Council. The public members of the Council shall receive no compensation for their services, but shall be reimbursed for their reasonable expenses incurred in the discharge of their duties within the limits of funds appropriated or otherwise made available for this purpose. The governor may remove any public member for cause upon notice and opportunity to be heard.

(d) The chairperson of the Council shall be appointed by the governor [from among the public members of the Council] and shall serve [at the pleasure of the Governor during the governor's term of office] [for a term of [ ] years] and until the appointment of the chairperson's successor.

(e) The Council shall meet at least monthly and at such other times as may be designated by the [chairperson] [executive director]. The Council shall meet in public, except that it may meet in executive session. [ ] members shall constitute a quorum. The Council may establish subcommittees as it deems necessary to perform its functions.]

#### COMMENT

Under the second alternative the Council should be comprised of a manageable number of members (e.g. 12 - 15 members). *Ex officio* members should include cabinet officers from those departments and agencies which are most directly involved in alcohol and other drug abuse programs. Public members should include persons who represent various county, local and private

interests and constituencies involved in drug and alcohol abuse programs.

Public members should be appointed by the governor for a fixed term. They should be appointed on a non-partisan or bipartisan basis. In order to ensure future stability, the public members' terms should be staggered.

The Council should be headed by a chairperson appointed by the governor from among the public members. (Alternatively, there could be an executive director as a full time position appointed by the governor with the advice and consent of the senate. In that event, the executive director should be accorded the equivalent of cabinet level status). The chairperson or executive director should report directly to the governor.

The Council should be staffed by persons selected by the chairperson or executive director. It should be provided with adequate staff to fulfill all of its prescribed functions and responsibilities. Staff personnel should be provided by the various state agencies and departments which are involved in alcohol and other drug abuse programs. These personnel should be "loaned" to the Council and should report to the chairperson/executive director.

The Council and its staff should be independent from the executive office of the governor and should not be physically housed in the governor's office.

### ***Section 5. Administration and Staffing.***

(a) The Executive Alcohol and Other Drug Abuse Planning and Coordinating Council(Council) shall be administered by [the chairperson appointed by the governor] [a full-time executive director who shall be appointed by the governor with the advice and consent of the senate, and who shall serve (at the pleasure of the governor during the governor's term of office) (for a term of [ ] years) and until the appointment of the executive director's successor.] [The executive director shall be a person qualified by training and experience to perform the duties of his or her office.] The [chairperson] [executive director] shall report directly to the governor on all matters concerning the Council [and shall serve as a member of the governor's cabinet].

(b) The [chairperson] [executive director] shall have the authority to retain such staff as are necessary to accomplish the work of the Council within the limits

of available appropriations. The [Chairperson] [Executive Director] may call upon the *ex officio* members of the Council to provide such personnel or other support services as may be necessary to accomplish the work of the Council. Any state employees assigned to the staff of the Council shall report to the [chairperson] [executive director] or to such subordinate officers or employees as the [chairperson] [executive director] may designate.

### ***Section 6. General Responsibilities.***

The Executive Alcohol and Other Drug Abuse Planning and Coordinating Council(Council) shall have the following general responsibilities and functions:

- (a) to formulate, implement and continuously revise a comprehensive statewide plan for all state, county, local and private initiatives to reduce the incidence of alcohol and other drug abuse;
- (b) to articulate statewide budgetary priorities concerning all alcohol and other drug abuse programs based on a comprehensive assessment of needs;
- (c) to coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in alcohol and other drug abuse programs;
- (d) to identify lead and contributing agencies which would be responsible for implementing specific provisions of the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan or for achieving specific short or long term goals or objectives;
- (e) to foster and encourage regional, local and community plans and programs for reducing the incidence of alcohol and other drug abuse and to relate such regional, local and community plans to the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan formulated by the Council;
- (f) to identify and reduce the duplication of effort and inefficient and inconsistent policies and practices with respect to drug and alcohol abuse programs;
- (g) to review all existing systems for providing alcohol and other drug abuse prevention, education, intervention, diagnosis, counseling and related services in order to identify and to eliminate economic or bureaucratic barriers which prevent the timely and cost-effective provision of such services;

- (h) to establish methods for acquiring statistical information from public and private agencies, organizations and individuals and to collect from any state, county or local governmental entity or any other appropriate source data, reports, statistics or other materials which provide guidance for the development of informed policy planning and decision making;
- (i) to promote strict accountability and fiscal responsibility through objective evaluation, assessment, improvement and coordination;
- (j) to review alcohol and other drug abuse-related budgetary and program initiatives and to make recommendations to the governor and the legislature concerning the most cost-effective use of limited human and fiscal resources, consistent with the priorities, goals and objectives set forth in the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan;
- (k) to act as the governor's liaison with private sector treatment, counseling and rehabilitation providers, educators, scientists, advocates and other persons and entities involved in or seeking to become involved in alcohol and other drug abuse programs;
- (l) to review and assess the experience of other states, the federal government and other nations in developing and implementing alcohol and other drug abuse programs;
- (m) to review all research studies and findings and to act as a clearinghouse of information for all persons interested in alcohol and other drug abuse programs;
- (n) to identify, promote and replicate specific programs which have been shown to be successful and which could be replicated;
- (o) to promote the development and implementation of effective employee assistance programs and other workplace-based alcohol and other drug initiatives in both the public and private sectors;
- (p) to award grant funds from monies collected from drug offenders to local units of government to support community-based alcohol and other drug abuse programs;
- (q) to review existing statutes and to recommend legislation necessary to enhance or improve the state's response to the drug and alcohol abuse problem;
- (r) to analyze all proposed legislation concerning alcohol and other drug abuse programs and initiatives and to provide to the governor and the legislature an objective assessment concerning the proposed legislation's predicted outcomes and impact on existing systems and its conformance with the priorities, goals and objectives set forth in the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan;
- (s) to review and comment upon applications for federal grant funding for all alcohol and other drug abuse programs, and to endorse those grant applications which conform with the priorities, goals and objectives set forth in the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan;
- (t) to seek advice and input from concerned citizens, experts, educators, treatment providers, law enforcement authorities and others concerning the development, refinement and implementation of the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan and all alcohol and other drug abuse programs, and to obtain feedback from these interested persons or entities concerning the effectiveness of existing and contemplated programs;
- (u) to communicate to citizens and to explain the priorities, goals and objectives established in the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan and to educate citizens as to the existence and utility of alcohol and other drug abuse programs; and
- (v) to convene public hearings to solicit input and to explain or promote the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan and alcohol and other drug abuse programs.

### ***Section 7. Long Range Strategic Plan.***

Within [180 days] of the effective date of this [Act], the Executive Alcohol and Other Drug Abuse Planning and Coordinating Council(Council) shall formulate and submit to the governor and to the legislature a Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan incorporating and unifying all state, county, local and private alcohol and other drug abuse enforcement, education, public awareness, prevention, intervention and treatment programs and initiatives. The scope of the master plan shall not be limited to any particular fiscal year or budget cycle, but rather shall outline the state's drug and alcohol abuse strategy for a period of not less than five years. The master plan shall set forth goals and objectives which can be quantitatively and qualitatively measured and which should be achieved within a period of time as may be specifically prescribed by the Council. The master

plan shall establish policy priorities and shall specifically identify all state, county and local agencies and departments which will be designated by the Council as lead or contributing agencies and which shall be responsible for implementing programs and activities in order to achieve each specified objective. The master plan shall be based upon the best available information concerning the current nature and extent of the state's drug and alcohol abuse problem, and the Council shall annually revise the master plan to account for new information, research, problems, technologies, methodologies and opportunities.

### ***Section 8. State Spending Recommendations.***

Every state agency or department identified in the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan as a lead or contributing agency shall submit to the Executive Alcohol and Other Drug Abuse Planning and Coordinating Council(Council) their budget plans relating to any and all alcohol and other drug abuse initiatives concurrently with their submission to the [insert designation of the state office or department responsible for collating budget information and for preparing the state budget for submission to the legislature] . The Council shall submit to the governor by [insert date] of each year a report [containing recommendations for expenditures in the next fiscal year that conform to the priorities, goals and objectives established in the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan. The Council's report shall include an analysis of each department's proposed expenditures which shall address the need for and benefits reasonably expected to be derived from the proposed expenditure in terms of the priorities, goals and objectives set forth in the master plan.] [which shall include recommended appropriate allocations to state departments, local governments and service providers that conform with the priorities, goals and objectives set forth in the master plan.] Every state agency or department shall cooperate with the Council and shall in a timely fashion provide such information, data reports, statistics, analysis or other materials which are necessary to permit the Council to perform its budget review and recommendation function. Nothing in this [Act] shall be construed to prevent a state department or agency from submitting a proposed budget or request for funding to the governor or the legislature in accordance with accepted practice and procedure.

### ***Section 9. Federal Grant Funding Recommendations.***

Every state, county or local agency or department which applies for federal discretionary or formula grant funding for any alcohol and other drug abuse program shall submit the grant application to the Executive Alcohol and Other Drug Abuse Planning and Coordinating Council (Council) for its review not less than 30 days prior to formally submitting the application to the federal agency or department responsible for awarding the grant. The Council shall be authorized to review the application and to comment thereon concerning the application's conformance to the priorities, goals and objectives established in the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan. The Council shall also be authorized to provide, or to withhold providing, a letter of endorsement to the federal agency or department responsible for awarding the grant. Every such state, county or local agency or department seeking federal grant funding shall cooperate with the Council and shall in a timely fashion provide such information, data, reports, statistics, analysis or other materials which are necessary to permit the Council to perform its grant application review and endorsement function. Nothing herein shall be construed in any way to prevent the Council from endorsing or refraining from endorsing any application by a state, county or local agency or department for grant funding from a private foundation.

### ***Section 10. Awarding of Demand Reduction Grants.***

The Executive Alcohol and Other Drug Abuse Planning and Coordinating Council shall, upon the recommendation of the [chairperson] [executive director], award discretionary grants to counties and municipalities for alcohol and other drug abuse programs in accordance with the priorities, goals and objectives established in the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan. The Council shall adopt rules and regulations for the awarding of such grants from funds derived from the ["Demand Reduction Assessment Fund" established pursuant to Model Drug Demand Reduction Assessment Act][or the Special Asset Forfeiture Fund established pursuant to the Commission Forfeiture Reform Act.] Funds dispersed under this [Act] shall not supplant local funds that would have otherwise been made available for alcohol and other drug abuse programs and initiatives. County or municipal grant recipients shall as a condition of the grant award provide

matching funds when and to the extent required by the rules and regulations adopted by the Council.

### **Section 11. Statewide Advisory Boards on Alcohol and Other Drug Abuse.**

(a) A Statewide Advisory Board for Alcohol and Other Drug Abuse (Board) is hereby permanently established in the Executive Branch to assist the Executive Drug and Alcohol Abuse Planning and Coordinating Council (Council) in performing its functions. The Board shall be comprised of not more than [ ] nor fewer than [ ] members, who shall be appointed by the [governor] [chairperson] [executive director] of the Council. Board members shall be selected based on their knowledge, competence, experience or interest with respect to drug and alcohol abuse [and without regard to their political affiliation]. The Board shall include representatives from statewide associations or community organizations involved in alcohol and other drug abuse programs and initiatives and shall to the greatest extent possible reflect all state, county, local and community-based interests with respect to drug and alcohol abuse enforcement, prevention, education, public awareness, intervention and treatment.

(b) The term of office of each Board member shall be [ ] years, except that of the first members appointed, [ ] shall be appointed for a term of [ ] years. Each Board member shall serve until his or her successor has been appointed and vacancies shall be filled in the same manner as the original appointments for the remainder of the unexpired term. An Board member is [eligible] [ineligible] for reappointment to the Board. The members of the Board shall receive no compensation for their services, but shall be reimbursed for their reasonable expenses incurred in the discharge of their duties within the limits of funds appropriated or otherwise made available for this purpose. The [governor] [chairperson] [executive director] of the Council may remove any Board member for cause upon notice and opportunity to be heard.

(c) The Board shall meet once each quarter and at such other times as may be designated by the [chairperson of the Council]. The [chairperson] [executive director] shall attend and serve as the chairperson of all Board meetings. The Board shall meet at such locations as may be designated by the [chairperson] [executive director] for the convenience of the Board members and to ensure the widest possible representation of interests throughout the state. [ ] Board members

shall constitute a quorum. The Board may establish subcommittees, subject to the approval of the [chairperson] [executive director], as it deems necessary to perform its functions. The [chairperson] [executive director] may appoint on an *ad hoc* basis such persons as may be necessary to sit on any subcommittees established by the Board, and these subcommittee members shall serve at the pleasure of the [chairperson] [executive director] or for such period of time as he or she may prescribe.

(d) The staff of the Executive Drug and Alcohol Abuse Planning and Coordinating Council shall provide staff to the Statewide Advisory Board on Drug and Alcohol Abuse as necessary to accomplish the work of the Board.

(e) The Statewide Advisory Board on Drug and Alcohol Abuse, may, subject to the approval of the [chairperson] [executive director] of the Council adopt bylaws to govern the conduct of its proceedings. All Board meetings shall be conducted in public and in accordance with [insert citation to applicable state sunshine law].

#### **COMMENT**

A statewide [or alternatively regional advisory] board(s) should be established to provide the Council with the widest possible range of information and input into the development of alcohol and other drug abuse policies and programs. Regional advisory boards should be established if the size of the state so warrants. The advisory board(s) should be of a manageable size, but should nonetheless include enough members to adequately represent all interests and constituencies involved in alcohol and other drug abuse programs. Appropriate members might include any or all of the following:

- (1) representatives from the state Police Chiefs' Association;
- (2) representatives from the state District Attorney's Association;
- (3) representatives from state organizations of treatment providers or experts;
- (4) corrections officials;
- (5) representatives from social services agencies;
- (6) persons experienced in handling issues affecting youth, and especially "at risk" youth;

- (7) persons involved in job placement and development programs;
- (8) representatives from the State Department of Insurance or experts in health and hospitalization insurance matters;
- (9) state, county or local housing authorities;
- (10) state, county or local education officials and teachers;
- (11) representatives from institutions of higher education;
- (12) experts on matters relating to the elderly;
- (13) representatives from the courts or Administrative Office of the Courts;
- (14) representatives from the association of county departments or agencies responsible for county parole or probation supervision;
- (15) representatives from the State Bar Association; and
- (16) representatives from business and industry.

Board members should be appointed by either the governor, or the chairperson or executive director of the Council for a fixed term. These terms should be staggered at the outset so as to ensure future stability. The Board should meet regularly to exchange information, to provide input and to make recommendations to the Council as to the development of the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan and all aspects of the Council's responsibilities. The chairperson or executive director of the Council should attend and should chair all meetings of the statewide

Board. Board members should receive no compensation, but should be reimbursed for their reasonable travel expenses incurred in performing their duties.

### *Section 12. Annual Report.*

The Executive Drug and Alcohol Abuse Planning and Coordinating Council shall report annually to the governor and the legislature on its activities during the past year, the degree of cooperation provided to the Council by other agencies and departments involved in drug and alcohol abuse programs, and the progress made in achieving the goals and objectives set forth in the Comprehensive Statewide Alcohol and Other Drug Abuse Master Plan.

### *Section 13. Severability.*

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

### *Section 14. Effective Date.*

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

# Appendix E



ANALYTIC FRAMEWORK FOR DESIGNING STATE AND LOCAL  
DRUG STRATEGIES

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# Excerpts From

## “Analytic Framework for Designing State and Local Drug Strategies”

### ABSTRACT

State drug control policy coordinators — “drug czars” — face both an organizational challenge and a substantive one. Organizationally, they exercise only indirect and limited influence over the state agencies, local governments, and private institutions where most of the work of drug abuse control takes place. Substantively, the variety of abusable drugs, the complexity of drug abuse control measures, and the multiplicity of goals combine to make choosing and executing wise drug policies a daunting problem.

This essay attempts to impose some order on that complexity by laying out both the goals of drug abuse control policy and the categories of instruments policymakers can employ, with special attention to the problem of identifying, choosing, and adapting “model” or “star” programs to fit local conditions.

### INTRODUCTION

While the federal government takes primary responsibility for international drug abuse control efforts and for law enforcement directed at the largest drug dealing organizations, state and local governments provide, or contract for, the majority of drug law enforcement, drug abuse prevention education, and publicly-funded drug treatment. Authority and responsibility for these efforts is fragmented: divided between states and their localities, across state agencies, and between governments and other institutions, including businesses, non-profit organizations, and families.

To deal with this organizational complexity, many states have created drug policy coordinators — “drug czars” —

to take overall responsibility for the process by which policies are designed and implemented both within the state government and elsewhere. The state “drug czar” thus has a policy design problem and a problem in strategic and indirect management. This paper will focus on the problems of policy design and analysis. A complementary paper deals with the problems of strategy and management.<sup>1</sup> We should state that the techniques of strategic management, especially the use of symbols and visions to mobilize resources, are also policy tools. A policy which fails a narrow cost-benefit test may still be worthwhile if it contributes to the mobilization process.

The purpose of drug policy is to limit the damage done by drug abuse and illicit drug trafficking: damage to drug users, to other individuals, and to institutions and neighborhoods. “Damage” here includes risk; for example, although someone may go through a period of heavy drug use and emerge unharmed, or a drinking driver may arrive home safely, reducing such risky behavior is itself a goal. Measures taken to reduce drug abuse, like all public policies, have costs and unwanted side effects. The drug policy problem, to state it at the most abstract level, is how to minimize the total damage done by drug abuse, drug trafficking, and drug abuse control measures.

One drug abuse control measure is prohibition. It creates a class of illicit drugs, reducing the number of people who consume those drugs, but at the same time curtailing possible beneficial uses and creating illicit markets, and all the problems they bring.

Consequently, not all drugs of abuse are prohibited. Some, such as alcohol and nicotine in the form of tobacco, are available for non-medical use by all adults. Others, such as tranquilizers and opiate pain-relievers, are available only by doctor’s prescription. Still others, such as

<sup>1</sup> See Mark H. Moore, “Leading the Crusade Against Drugs: Strategies of State-Level Drug Czars” (Cambridge, Mass.: Harvard University, 1993).

glue and gasoline, are available for non-drug uses. Making drug abuse control policy involves thinking about all abusable substances, licit as well as illicit. But it is the illicit substances that generate what to most Americans is the most frightening face of the drug problem: violence, property crime, and disorder associated with illicit markets and expensive habits, and the creation of an illicit career track that can easily divert adolescents from less flashy legitimate work.

Under any given set of external conditions (e.g., drug supplies and prices, enforcement levels), individuals and neighborhoods will differ in their vulnerability to the temptations to engage in drug abuse and drug dealing. The distribution of vulnerabilities represents both an important background fact that policymakers need to understand and adapt to, and an important possible target of public and private drug abuse control actions.

## **DESIGNING A DRUG ABUSE CONTROL POLICY FOR A SPECIFIC AREA**

### **ASSESSING THE CURRENT SITUATION AND RESPONSE**

Too many policy-design efforts start with an idea for a program rather than a careful assessment of what is now going on. This risks designing and implementing the right solution to the wrong problem. Efforts devoted to understanding the current situation with respect to drug trafficking, drug consumption, and the associated harms, and also the current public and private responses, are likely to more than pay for themselves.

Knowledge about drug consumption comes from three sources: anecdotes, surveys, and observations. Unfortunately, national surveys offer only limited help in understanding the situation in a specific state or locality. Anecdotes are useful for generating hypotheses to be investigated, but notoriously unreliable as a basis for conclusions. Observations — of arrestees whose body fluids show signs of recent illicit drug use, of persons applying for drug treatment, of emergency-room visits for drug overdoses, of open dealing or complaints about dealing from neighbors — measure only a part of the problem, since most consumption, and much consumption-related damage, is never observed. Still, they represent an underutilized source of data about local conditions. The same is true of local surveys, which need not be of the highest technical quality to yield important insights.

Given the fragmentary nature of the data, the task of inferring the extent and distribution of drug-related dam-

age is likely to be complicated, and the result imperfect. But simply forcing program advocates to clearly express their opinions about the extent of damage and to support those opinions with data is an important step. Far better to neglect the subtle than to neglect the obvious.

An accurate characterization of the current response is as important as an accurate characterization of the current problem. In any area, substantial public and private resources are being expended right now with the announced purpose of preventing and controlling drug abuse and related damage. What are those resources? How are they being employed? What measurable outputs are being produced? What is the imagined relationship between the activity and reduced drug abuse? What evidence is there to substantiate that relationship? Every existing program ought to be subjected to the same test: Would those resources be more useful employed in some other activity by the same agency, or by some other agency? Where the answer is "yes," a battle is likely to follow; not all justified resource allocations are politically feasible. Still, current programs should always be considered as possible sources of funds for new programs.

Equally important, what isn't being done? Where are the bottlenecks? Are the police arresting more users than the courts can try? Are the courts ordering people to get treatment where there is no treatment available? Is the police drug laboratory backed up? Are there waiting lists for some programs and empty slots in others, and does that represent a mismatch of availability to need, a lack of communication, or program-shopping by users and client-shopping by programs?

Finally, an assessment ought to look for instances where that hoary cure-all, coordination, could actually help. This means finding instances where operating data from one organization that could directly benefit the operations or decisions of another organization are not being transmitted, or where decisions of one unit are frustrated by lack of complementary action by another unit. Too often, the search for "coordination" leads merely to time-wasting meetings and the preparation of plans that then gather dust, but there are also plenty of instances where only coordinated activity is likely to bear fruit.

The result of all this assessment work should be the identification of one or more aspects of the drug problem and the current response that stand in need of concentrated attention. The next step is deciding what form that attention should take.

## DESIGNING AND MONITORING INTERVENTIONS

Once some part of the drug problem is identified as being of special concern and the current response is analyzed, the task is to design and implement an appropriate response. One approach to this task is to design from scratch: assemble a team and give it the task of inventing a workable solution, given limited resources, to the identified problem.

This “tailor-made” approach has the virtue of ensuring that the proposed solution fits the situation. But it risks spending scarce time and energy reinventing the wheel, or failing to identify a solution that someone elsewhere has already developed. In addition, if each program must be reinvented afresh in each site, the opportunity to profit from the experience of others will be missed.

Thus it makes sense to seek solutions from elsewhere. To aid this process, federal agencies and private organizations have produced handbooks for “model programs” of various kinds. Agencies that have invented something that works for them are often generous with information, and some become quite zealous proselytizers. The search for the right solution is sometimes reduced to the search for the right program model to imitate; if it worked elsewhere, why shouldn’t it work here?

The answer is that “here” is different from elsewhere. Even if all the background social conditions were identical, the institutional context and the specific individuals who make a program work or fail cannot be carried from place to place along with the program manuals for TASC or DARE or any of the other acronymic panaceas available on the market in second-hand solutions.

In general, a problem in one area cannot be solved simply by importing the right program. Each jurisdiction needs to go through a process of choosing programs that fit its needs and adapting them to local conditions. That process should proceed in several stages, involving answers to the following questions:

### 1. What is the problem?

Drugs do so many different kinds of damage that it is difficult to keep them all straight. Reducing the extent of drug abuse is always desirable, but it is equally desirable to select some aspects of the problem for special attention and to work on them. Not all programs are equally useful for all problems. If drug abuse among adolescents is the problem, it makes sense to devote special enforcement attention

to the drugs adolescents actually use, rather than those more typically used by adults. If the problem is drug-related violent and property crime, then drugs whose use or trafficking is directly related to violence or theft should be addressed.

One difficulty with pursuing “star” programs is that some of them may provide solutions for problems that a particular jurisdiction does not have. For instance, there are a number of excellent program models for breaking up open retail drug markets, but implementing one in an area without such markets would have little value.

Given a proposed program, it makes sense to ask, “To what problem does this solution correspond? Is that a problem of great concern to us?” There is no use spending good money on a solution you don’t have a problem for.

### 2. What is the program type?

There are only so many different responses available to reduce the harm that drug abuse and drug dealing create. If we start with a problem to be solved, the vocabulary of possible types of responses will be limited. If, on the other hand, someone proposes a specific set of activities, there is almost always a broader category of programs into which the proposed one can be made to fit.

Sometimes the choice is between programs of different types: a retail-level crackdown, for example, versus mandatory abstinence for drug-involved offenders as ways of reducing the crime and disorder surrounding open drug markets. Each type will have its characteristic advantages and disadvantages, side effects, and costs. But since programs cannot simply be adopted, but need to be adapted to local conditions and then implemented, a direct comparison across program types will never be straightforward. The question is what program, when adapted and implemented, will produce the most value in a specific area with specific problems.

### 3. What is the claimed mechanism of action?

Any program or policy is an attempt to influence the course of events. That attempt involves a chain of causation: “We do X, which causes dealers to begin to do Y, which causes drug buyers to do Z, which reduces problem A that we are worried about.” Careful thought about the mechanisms of

action of a proposed program will help clarify whether it can help solve a problem that is important to the jurisdiction making the choice. It will also clarify the choices that must be made in designing a specific program.

#### **4. What are the costs?**

Programs require funds for planning, implementation, and evaluation. Further, programs produce costs that do not necessarily appear in the program budget. A program relying on street-level sweeps that result in large numbers of arrests generates not only program expenditures, but expenditures by court and prison systems as well. Policymakers need to consider all costs that a program or policy might generate when they design and implement interventions.

#### **5. What are the characteristic problems and side effects?**

Every type of program has problems and modes of failure to which it is especially prone. Therapeutic communities have high drop-out rates; detoxification programs have high relapse rates; methadone maintenance programs create long-term dependency on methadone, and some of their drugs "leak" onto the illicit markets. Retail enforcement crowds the courts, and stiff sentences crowd the prisons. Understanding the characteristic drawbacks of a program is useful both in selection — if the courts are already jammed, concentrated retail enforcement may not be a good idea — and in adaptation: it is possible to design retail enforcement programs to minimize the number of arrests and thus the strain on the courts.

#### **6. What are the alternatives?**

This breaks down into two questions. First, what are the alternative ways of handling the same problem or obtaining the same benefits? That is, is the proposed program the best way to manage this situation? Second, what else could we do with the money and effort that the proposed program would absorb, and what benefits would accrue from employing them in these alternative uses? That is, is the proposed program the best use of the resources it engages?

#### **7. What are the design parameters?**

The differences among possible implementations of a given program type can be thought of as the parameters of a formula: take a program type, specify the values of the key parameters, and you have a specific program ready to implement. For a treatment program of a given type (therapeutic community, outpatient drug-free, etc.), the design parameters would include size (number of patient "slots"), duration, staffing ratios, and patient selection criteria. It is in setting the parameters that local conditions and capacities can be considered. Thinking of design choices in terms of parameters whose value could be higher or lower encourages one to think in terms of trade-offs: between the number of patients who can be treated and the success probability for each patient, or between fewer, longer sentences and more, shorter sentences.

#### **8. What organizational capacity is needed? Do we have it or can we build it or buy it?**

Different programs put different demands on the public and private institutions involved. Retail enforcement requires much laboratory capacity; neighborhood mobilization requires a community that is, or can be, organized around the drug issue; mandatory abstinence for drug-involved offenders requires a probation department adequately staffed to administer the tests and write up the violations, and tough enough to carry through with sanctions; treatment requires a program, a staff, and a site.

An organization is not an all-purpose tool, adaptable to any use. Its history, its organizational structure and culture, and the training and professional aspirations of its staff make it capable of doing some jobs and not others. Unlike the economist in the story, we can't simply assume that we have a can opener; if there is not enough of the right kind of organizational capacity, we must decide to create it (and accept the costs) or look for a different program design that requires less of it.

Just as intelligent agricultural management pays attention not only to the question of whether the soil will nourish this year's crop, but to the question of what this year's crop will do to the soil, good management treats organizational capacity as both a resource to be employed and a capital stock to be maintained and improved. Executing a program can either erode an organization's capacity and

leave it less capable for the future, or it can increase its morale, its stock of skills, and its repertoire of responses.

### 9. What is the plan?

Having gone through the process of selecting a program type appropriate to some problem, considering its drawbacks, choosing a design appropriate to the local setting, and identifying or planning to build the requisite organizational capacity, we are now ready to make an operational plan, specifying who is to do what, when, with what resources, and at what costs. That plan will be wrong in ten thousand ways, and it will be necessary for the program managers to adapt on the fly. But in the absence of a plan, foreseeable problems and bottlenecks will not be foreseen and issues of design and organizational responsibility will not surface in timely fashion. A detailed plan also serves as a focal point for expectations and thus as a valuable coordinating mechanism.

### 10. How do you know what is working and fix what is not?

A detailed plan is an evaluator's dream, because it makes it easy to point out all the ways in which the program as it happened fell short of the program as planned. This temptation should be resisted.

For most purposes, the evaluator-as-scorekeeper is not very useful; even in the unlikely event that an outside evaluator can accurately measure how well the program is doing, unless the result is directly tied to budget that measurement may have no direct application. At worst, program administrators begin to manage the evaluator's perceptions rather than the real situation (as in the case of schools that begin to teach how to pass standardized tests).

Far more useful is a process of monitoring the operation of the program, in light of its claimed mechanism of action, to identify ways in which that operation can be improved. The organization actually carrying out the program is usually in the best position to monitor it, with help from outsiders with training as evaluators or experience in managing similar programs. One disadvantage of evaluation-as-scorekeeping is that it gets in the way of evaluation-as-coaching.

If retrospective evaluation by an outsider is not to

be used, some other way will be needed to make the program managers accountable for their expenditure of public money and authority. Partly, this merely requires having a separate audit function to ensure that the money was appropriately spent and accounted for. But at a deeper level, it requires designing into the program from the beginning some robust (i.e., hard-to-manipulate) measures of value, measures that the program's managers and staff acknowledge as reasonable proxies for their performance.

### THE JOB OF THE CZAR

It would be ludicrous to imagine the state drug coordinator as a master policy analyst and monitor, calculating what everyone else should do and watching to see that they do it. But the czar does have a useful role in asking the right questions, listening critically to the answers, and encouraging others to do the same and to resist the siren call of simple one-dimensional answers. Policies, like theories, should be as simple as possible but not more so.

# Model Community Mobilization Funding Act

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# Model Community Mobilization Funding Act

## Policy Statement

It is the consensus of the Commission that the effectiveness of community anti-drug efforts depends in large part on their coordination with other entities in the community also engaged in anti-drug efforts. This Act, taken from Washington state, uses the state grant program process to establish incentives for community groups to develop effective collaborative working partnerships with education, treatment, local government, law enforcement and other key elements of the community.

The Act emphasizes coordination between prevention, law enforcement, treatment, education and community groups, in the development of anti-drug projects eligible for state funding. Coordination and collaboration between these groups, in addition to reducing the chance that various efforts will be duplicative or at cross purposes with each other, enables each group's efforts to be broadened and enriched by the perspectives of the others.

The Act seeks to include community groups in the development of anti-drug strategies at local and state levels. It is intended to foster a more constructive atmosphere that recognizes and promotes the value of community groups, and is more receptive to their inclusion in society's broader efforts to address the drug problem.

Without their inclusion, communities are missing an important ally, as well as an important constituency to support the development of larger strategic efforts. The struggle against drugs cannot be won without the vigorous involvement of neighborhood groups, who are the most invested in winning back their streets.

This Act attempts to include community groups in a rational strategic approach, that genuinely uses the unique resources that they have to offer. It uses modest incentives to encourage various constituencies within a community to merge their efforts to work together toward a goal they all support.

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# Highlights of the Model Community Mobilization Funding Act

- Recognizes the critical importance of community efforts in addressing the drug problem.
- Recognizes that the most effective strategy for reducing the impact of alcohol and drug abuse is through collaboration of educators, law enforcement, treatment providers and community groups
- Establishes and uses the grant program in the governor's office [or, alternatively in the Executive Alcohol and Other Drug Abuse Planning and Coordinating Council(Council)] to motivate above-mentioned groups to develop targeted and coordinated strategies.
- Requires funding applications 1) to demonstrate that the community has developed meaningful coordinated strategy of prevention, treatment and law enforcement activities and 2) to present evidence of active commitment and involvement of local leaders from the education, treatment, law enforcement and local government fields, as well as meaningful involvement from neighborhood groups, businesses, human service organizations, health organizations and job training organizations.
- Sets forth a detailed list of application requirements which serve as guidelines for effective, coordinated community-wide action. Requires, for example, a description of the extent and impact of substance abuse in the community; a detailed explanation of the community-wide coordinated strategy for prevention, treatment and law enforcement activities; an explanation of who helped develop the strategy and what specific commitments have been made to carry it out; an explanation of how the new strategy builds on existing resources and anti-drug efforts; the identification of what additional resources are needed and for what activities; and the identification of activities for which funding is requested and detailed explanations for how those activities will work.
- Requires minimum 25% local matching funds or in-kind resources.
- Prohibits use of grant funds to supplant funding for existing activities.
- States preference for coordinated activities and makes innovative approaches to chronic widespread problems a priority.
- Establishes a peer review committee to advise the governor or the Council on the extent to which eligible applicants meet statutory criteria. Directs the governor or Council to distribute funds based on committee's information.
- Directs the governor or the Council to ask communities for input about how state drug policies and practices can help them implement their strategies, and to respond to that input with changes, where appropriate.
- Permits the governor or the Council to receive private contributions from non-governmental sources, for purposes of funding grants under this Act.
- Directs governor or the Council to provide detailed report to the legislature about grants awarded, their success, an assessment of the effectiveness of this Act in encouraging and supporting coordinated community action against substance abuse, and future recommendations.

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# Model Community Mobilization Funding Act

## ***Section 1. Short Title.***

The provisions of this [Act] shall be known and may be cited as the "Model Community Mobilization Funding Act."

## ***Section 2. Legislative Findings and Purpose.***

The legislature recognizes that statewide efforts to reduce the incidence of alcohol and other drug abuse must be increased. The legislature further recognizes that the most effective strategy for reducing the impact of alcohol and other drug abuse is through the collaborative efforts of educators, law enforcement, local government officials, local treatment providers, and concerned community and citizens' groups. The legislature intends to support the development and activities of community mobilization strategies against alcohol and other drug abuse through the following efforts:

- (a) Provide funding for collaborative prevention, education, treatment, and enforcement activities identified by communities;
- (b) Provide technical assistance and support to help communities develop and carry out effective activities; and
- (c) Provide communities with opportunities to share suggestions for state program operations and budget priorities.

## ***Section 3. Community Anti-Substance Abuse Grant Program.***

There is established in the [office of the governor][Executive Alcohol and Other Drug Abuse Planning and Coordinating Council(Council)] a grant program to provide incentive and support for communities to develop targeted an coordinated strategies to reduce the incidence of alcohol and other drug abuse. Activities which may be funded through this grant program include those which:

- (a) Prevent substance abuse through educational and

self-esteem efforts, development of positive alternatives, intervention with high-risk groups, development of strategies to instill community and personal resistance to alcohol and other drugs, and prevention strategies;

(b) Increasing access to and availability of effective treatment opportunities, particularly for underserved or highly impacted populations, developing aftercare and support mechanism, and other strategies to increase the availability and effectiveness of treatment;

(c) Provide meaningful consequences for participation in illegal activity and promote safe and healthy communities through support of law enforcement strategies;

(d) Create or build on efforts by existing community programs, coordinate their efforts, and develop cooperative efforts or other initiatives to effectively use resources to carry out the community's strategy against alcohol and other drug abuse; and

(e) Other activities which demonstrate both the feasibility of and the rationale for how the activity will achieve measurable results in the strategy against alcohol and other drug abuse.

## ***Section 4. Priority for Community Strategies Aimed at Geographic Areas Coterminous With Counties, Municipalities or Other Units of Government.***

This grant program will be available to communities of any geographic size but will encourage and reward communities which develop coordinated or complimentary strategies within geographic areas, such as county areas or groups of county areas which correspond to units of government with significant responsibilities in the area of alcohol and other drug abuse, existing coalitions, or other entities important to the success of a community's strategy against alcohol and other drug abuse.

### ***Section 5. Minimum Requirements of Grant Applications.***

At a minimum, grant applications must include the following:

- (a) Evidence that the community has developed a coordinated strategy of prevention, education, treatment, and law enforcement activities;
- (b) Evidence of active participation of the community and specific commitments to implementing the community-wide agenda by leadership from at least education, law enforcement, local government, and treatment entities in the community;
- (c) Evidence of the opportunity for meaningful involvement from others such as neighborhood and citizen groups, businesses, human service, health and job training organizations, and other key elements of the community, particularly those whose responsibilities in law enforcement, treatment, education, prevention, or other community efforts provide direct, ongoing contact with alcohol and other drug abusers;
- (d) Definition of geographic area;
- (e) Description of the extent and impact of alcohol and other drug abuse in the community, including an indication of those who are most severely impacted and those most at risk of alcohol and other drug abuse;
- (f) Explanation of the community-wide strategy for prevention, education, treatment, and law enforcement activities related to alcohol and other drug abuse with particular attention to those who are most severely impacted and those most at risk of alcohol and other drug abuse;
- (g) Explanation of who was involved in development of the strategy and what specific commitments have been made to carry it out;
- (h) Identification of existing prevention, education, treatment, and law enforcement resources committed by the community, including financial and other support, and an explanation of how the community's strategy involves and builds on the efforts of existing organizations or coalitions that have been carrying out community efforts against alcohol and other drug abuse;
- (i) Identification of activities that address specific objectives in the strategy for which additional resources are needed;
- (j) Identification of additional local resources, includ-

ing public funds, donated goods or services, and other measurable commitments, that have been committed to the activities identified in subsection (i);

(k) Identification of activities which address specific objectives in the strategy for which funding is requested. Activities should be presented in priority order;

(l) Explanation of each activity for which funding is requested, in sufficient detail to demonstrate:

- (1) Feasibility through deliberate design, specific objectives, and realistic plan for implementation;
- (2) A rationale for how this activity will achieve measurable results and how it will be evaluated;
- (3) That funds requested are necessary and appropriate to effectively carry out the activity; and

(m) Evidence of additional local resources committed to its strategy totaling at least twenty-five percent of funds awarded under this section. These resources may consist of public or private funds, donated goods or services and other measurable commitments, including in-kind contributions such as volunteer services, materials, supplies, physical facilities or a combination thereof;

(n) Written agreement that the funds applied for, if received, will not be used to replace funding for existing activities; and

(o) Identification of a fiscal agent meeting state requirements for each activity proposed for funding.

#### **COMMENT**

**This section emphasizes the requirements of coordinated community participation in the development and eventual implementation of drug strategy. All grant applicants must show evidence that *all* facets of the community, including local prevention, education, treatment, and law enforcement entities, as well as neighborhood and citizens groups, businesses, social service, health, and job training organizations, religious groups, and other key elements of the community, have actively engaged in the development of the strategy and have pledged to see that strategy come to fruition. Coordination and collaboration between these groups, in addition to reducing the chance that various efforts will be duplicative or at cross purposes with each other, enables each group's efforts to be broadened and enriched by the perspectives of the others.**

Subsections (d) and (m) provide the rest of the framework upon which the strategy will be built in the grant

applicant's community and describe the portfolio of programs that will be implemented to address the applicant's various alcohol and other drug problems.

### *Section 6. Criteria for Awarding Grants.*

The [governor][Council] shall make awards, subject to funds appropriated by the legislature, under the following terms:

(a) In order to be eligible for consideration, applications must demonstrate, at a minimum;

(1) That proposals submitted for funding are based on and address specific objectives contained in a coordinated strategy of prevention, education, treatment, and law enforcement against alcohol and other drug abuse;

(2) That there is active participation in preparation of the proposal and specific commitments to implementing the community-wide agenda by leadership from at least education, law enforcement, local government, and treatment entities in the community;

(3) That there exists the opportunity for meaningful involvement from others such as neighborhood and citizen groups, businesses, human service, health and job training organizations, and other key elements of the community, particularly those whose responsibilities in law enforcement, treatment, prevention, education or other community efforts provide direct, ongoing contact with alcohol and other drug abusers, or those at risk for alcohol and other drug abuse;

(4) That they have met the requirements listed in Section 5 of this [Act];

(5) That there are additional local resources committed to its strategy totaling at least twenty-five percent of funds awarded under this section. These resources may consist of public or private funds, donated goods or services and other measurable commitments, including in-kind contributions such as volunteer services, materials, supplies, physical facilities or a combination thereof; and

(6) That the funds applied for, if received, will not be used to replace funding for existing activities.

(b) In order to encourage and reward communities which develop coordinated or complimentary strate-

gies within geographic areas which correspond to units of government with significant responsibilities in the area of alcohol and other drug abuse, up to fifty percent of funds appropriated for the purposes of this [Act] may be awarded on a per capita basis to eligible applicants reflecting coordinated strategy from a county area or group of county areas. The [governor][Council] may establish minimum allotments per eligible county areas up to fifteen thousand dollars; and

(c) No less than fifty percent of funds appropriated under this [Act] shall be awarded on a competitive basis for activities by communities not participating in a county-wide strategy and activities identified by county-wide strategies but not funded through per capita grants. Eligible applications will be assessed and compared by a peer review committee whose members have experience in prevention, education, treatment, law enforcement, and other community efforts against alcohol and other drug abuse using the following criteria:

(1) The extent and impact of alcohol and other drug abuse;

(2) The extent to which key elements of the community are involved in and committed to the coordinated strategy;

(3) The extent of commitments of local resources to the coordinated strategy;

(4) The extent to which any activities in a community's strategy offer an innovative approach to a chronic, wide-spread problem.

The peer review committee will advise the [governor][Council] on the extent to which each eligible applicant has met these criteria. The [governor][Council] will distribute available funds based on this information.

(d) The [governor][Council] shall distribute fifty percent of the initial appropriation for the purposes of this [Act] no later than, \_\_\_\_\_, 199\_ and the remainder no later than \_\_\_\_\_, 199\_.

(e) Activities funded under this section may be considered for funding in future years, but will be considered under the same terms and criteria of new activities. Funding under this section shall not constitute an obligation by the state to provide ongoing funding.

(f) All grant recipients shall agree in writing, as a condition of the grant, to report to the [governor][Council] at such times and in such manner as shall be prescribed by the [office of the governor][Council]. Such

report shall assess the achievement of the goals and objectives of the activities for which funding was received and the effect that the funded activities had on encouraging and supporting coordinated community action against alcohol and other drug abuse.

## COMMENT

Subsection (a) generally restates the necessary framework through which funding for community anti-drug abuse strategies shall be awarded. Again, emphasis and priority will be given to those strategies that reflect comprehensive, coordinated community planning and implementation efforts.

Subsections (b) through (e) explain how and when the state funds shall be allocated among the different jurisdictions that apply for such grants.

### ***Section 7. Community Input on Development of State Policies Affecting Community Anti-Substance Abuse Strategies.***

The [governor][Council] shall ask communities for suggestions on state practices, policies, and priorities that would help communities implement their strategies against alcohol and other drug abuse. The [office of the governor] [Council] shall review and respond to those suggestions, making necessary changes where feasible, offering recommendations to the legislature where appropriate, and providing an explanation as to why suggested changes cannot be accomplished or acted upon.

## COMMENT

This section recognizes that effective government requires meaningful input from the local level. The effectiveness of state funding under this [Act] will be improved substantially if the state solicits and receives local input on state practices, policies, and priorities that affect local strategies addressing alcohol and other drug abuse.

### ***Section 8. Private Contributions to Grant Program Fund.***

The [governor][Council] may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of Sections 1 through 7 of this [Act] and expand the same or any income therefrom according to the term of the gifts, grants, or endowments.

## COMMENT

Recognizing state budgetary constraints, this section provides states with an effective vehicle through which funds may be solicited or received to help fund community anti-drug strategies. Activist governors or executive councils should feel empowered by this section to recruit, solicit, or raise public and private funds to help fund these strategies.

### ***Section 9. Report to the Legislature.***

The [governor][Council] shall report to the legislature by [ ] of each year regarding the operations of the grant program authorized under this [Act]. At a minimum, the report shall include the following:

- (a) Number of grants awarded and the amount of each grant;
- (b) Recipients of grants, including the communities in which they are based;
- (c) Purposes for which the grants were awarded;
- (d) Achievement of stated goals and objectives;
- (e) An assessment of the effect that the activities of this Act had on encouraging and supporting coordinated community action against alcohol and other drug abuse;
- (f) Recommendations for further funding for the state; and
- (g) Recommendations regarding future operations of the program, including criteria for awarding grants.

## COMMENT

This section holds the governor's office or the Council accountable for the execution of the provisions of this [Act]. Note that grant recipients are, under Section 6(f), held accountable and must provide full reports on funded programs to the governor's office or the Council.

### ***Section 10. Severability.***

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

***Section 11. Effective Date.***

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

# Appendix F



CAMPAIGNING FOR SAFT STREETS IN TACOMA, WASHINGTON

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November 12 - 14, 1993

This paper was prepared for the third meeting of the Working Group of State Drug Control Executives, November 12 - 14, 1992. The Working Group is a project of the Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard University, and is funded by the Bureau of Justice Assistance, U.S. Department of Justice (cooperative agreement #91-DD-CX-K014)

## Campaigning for Safe Streets in Tacoma, Washington

*A block organizing meeting on the Eastside of Tacoma... it's tense in the meeting because suspected gang members are circling the block in their car, threatening to shoot at the house. Neighbors at the meeting huddle together trying to decide what to do next. They call the police to come to their aid... and the police finally show up. However, the neighbors have made some decisions... keep documenting the gang and suspected drug trafficking activity in the neighborhood, report it to the CRAK line and work with the police to eliminate the illegal activity from their neighborhood. They form a phone tree, they set up a watch schedule. They have their tools: pencils, housewatch forms, their eyes, and telephones. They are ready, they document and report. They meet again to support each other and check on progress. Something changes at their next meeting: one of the gang members joins them and says he will work with them if they will help support him to leave the gang. They agree to his proposal... he provides information that is passed on to the police. They help him get a job, and they develop a telephone support plan to help him get up in the morning, get to work, and stay healthy. Six months later, he still has his job, he's out of the gang, and the neighborhood's drug trafficking is eliminated. They are a community.<sup>1</sup>*

### **Crime and Violence**

Approximately 562,000 people live in the Tacoma area. The community is relatively stable; some 75 percent of the residents have lived there for five years or longer. For the most part, they are neither poor nor under-educated. The community's average household income is \$33,000, and approximately 60 percent of the families own their own homes. Eighty-nine percent of the area's adults are high school graduates, and 45 percent have completed at least some college courses.<sup>2</sup>

Despite these advantages, Tacoma and surrounding Pierce County confront gangs, drugs, and violent crime. The FBI's Uniform Crime Reports show a 1989 total of 44,252 major felonies in the Tacoma Metropolitan Statistical Area.<sup>3</sup> With a crime rate of 7,719.4 crimes per 100,000 residents, Tacoma compares unfavorably with San Diego, California (7,362.3), Detroit, Michigan (6,975.1), and Newark, New Jersey (6,622.5).<sup>4</sup>

<sup>1</sup> Safe Streets Campaign of Tacoma-Pierce County, A Biennial Assessment of Community Mobilization for Improved Community Safety, July 1991, p.1.

<sup>2</sup> Demographic data obtained from *The Morning News Tribune*, 1990 - 1991 Market Profile for Pierce and South King Counties, August 1991.

While Tacoma's excellent seaport is reportedly used by foreign drug cartels, such high-level wholesalers regard the city primarily as a "through point" for trans-shipment to more lucrative markets in the East.<sup>5</sup> Youth gangs and street-level drug sales are far more compelling crime problems for the area's residents. Estimates from local law enforcement place current gang memberships in the 900 range, and some 400 street-level crack cocaine dealers are known to operate in the county.<sup>6</sup> These individuals are violent and competitive; Tacoma and surrounding Pierce County often experience two or three drive-by shootings each night.<sup>7</sup>

### **Organizing a Counter-Attack**

Anti-drug efforts — both in Tacoma and at the state capitol — gained impetus in 1988. In the spring of that year, the governor's cabinet established a subcommittee to study the growing problems created by drugs and gangs. By summer, the state had established an Interagency Task Force to gather facts and make strategic recommendations to the governor's Cabinet Subcommittee. Fall 1988 saw the establishment of a bipartisan state legislative committee to develop substantive and funding recommendations and, before the year was over, Governor Booth Gardner appointed Paul Dzeidzic to serve as Special Assistant on Substance Abuse Issues.

As the state's first drug czar, Dzeidzic was tasked to bring state agencies and local communities into the new initiative. His early efforts included a statewide series of community forums to focus attention on the drug problem, identify priorities, and solicit input on potential strategies.

Community leaders in Tacoma applauded the state's efforts and complemented them with their own. Elected officials, judges, the Pierce County Prosecutor, and representatives from law enforcement, the school district, the NAACP, the Black Collective, the Urban League, and others held a series of planning meetings to address the growing presence of gangs, drugs, and violence in Pierce County. As part of its strategy, the group asked community residents to suggest tactics for fighting these problems.

Many felt that planning was not enough, and four organizations (Pierce County, the City of Tacoma, the Tacoma School District, and the United Way) each pledged \$50,000 to help finance the initiative. They recruited a director to lead the effort, hired staff, and designated January 26, 1989, as the day they would begin an all-out effort to involve the community in the war on drugs and crime. More than 2,200 residents responded by attending the January 26th forum at Henry Foss High School in Tacoma. As a group, they were outraged at the explosion of drug dealing, drive-by shootings, and property destruction in their neighborhoods. They were united in their concern and determination to help make their communities safer for themselves and their children.

The governor and the legislature moved quickly to assist local efforts in Tacoma and elsewhere in the state. In fall 1988, Governor Gardner commissioned the Washington State Community Mobilization Against Substance Abuse (CMASA). Drug czar Dzeidzic helped spearhead the initiative

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<sup>3</sup> Reportable crimes include murder, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.

<sup>4</sup> U.S. Department of Justice, Federal Bureau of Investigation, Crime in the United States, 1989, August, 1990.

<sup>5</sup> Interview, Pierce County Sheriff's Office, September 1992.

<sup>6</sup> Id.

<sup>7</sup> Id.

and, in May 1990, the bipartisan Omnibus Controlled Substance Act of 1989 (which authorized the state to help finance local CMASA activities) was signed into law. Dzeidzic played a key role in developing the CMASA and, after the Omnibus Act was passed, convened a series of 22 community meetings to answer questions about the new law and help local leaders develop implementation plans.

CMASA was designed to “provide incentive and support for communities to develop targeted and coordinated strategies to reduce the incidence and impact of substance abuse.”<sup>8</sup>

Its provisions include:

- Funding support for prevention, treatment, and enforcement activities identified by communities that have brought together education, treatment, local government, law enforcement, and other key elements of the community;
- Providing communities with technical assistance and support; and
- Facilitating community input on state program and budget priorities.

The state legislature appropriated \$3.7 million to support local CMASA activities during the 1991-1993 biennium (July 1, 1991 through June 30, 1993). In addition, the state developed a technical assistance network to provide ongoing support to communities seeking to organize under CMASA’s guidelines.<sup>9</sup>

The federal government matched the state’s investment with \$3.7 million authorized under the Drug Free Schools and Communities Act.<sup>10</sup> Of the total funds available, 50 percent of the state funds and 100 percent of the federal funds were allocated to local communities on a formula basis. This left 25 percent of the total (\$1.85 million) available for competitive award.<sup>11</sup> The competitive funds were intended to encourage and reward communities for developing coordinated county wide strategies.<sup>12</sup>

Community activists from Tacoma worked closely with drug czar Dzeidzic and the Cabinet Subcommittee to develop and support the CMASA. The resources it provided enabled the initiative to develop new capabilities, and the governor’s support enhanced its legitimacy and prestige. In addition, technical assistance became readily available as state agencies and local communities began to implement — and share information about — community mobilization strategies. By June 1989, the Campaign for Safe Streets had become a potent force in Tacoma’s battle against crime and drugs.

<sup>8</sup> Office of the Governor of Washington State, Omnibus Controlled Substance and Alcohol Abuse Act, Summary and Implementation, Winter 1990, p.5.

<sup>9</sup> Id.

<sup>10</sup> Office of the Governor and Department of Community Development, Community Mobilization Against Substance Abuse FY 1993 Application for Funding, p.1.

<sup>11</sup> Id. at p.2.

<sup>12</sup> Office of the Governor of Washington State, Omnibus Controlled Substance and Alcohol Abuse Act, Summary and Implementation, Winter 1990, p.5.

### **The Campaign for Safe Streets**

Its leaders describe the Campaign for Safe Streets as “a process, not a program.”<sup>13</sup> They recognize that no single solution exists to the problems of drugs and crime, and instead give “direction and form to citizen efforts to work together to evaluate their own problems and develop their own coordinated response.”<sup>14</sup> Universal participation is encouraged and the ground rules are simple:

*We are all community members; we agree to behave as team members, to contribute ideas, listen to others, state our concerns openly, make commitments and carry out action steps. We encourage everyone to participate. We listen to one another as allies.*<sup>15</sup>

Fundamental questions faced the Campaign during its formative period. Organizers had to select targets<sup>16</sup> and build consensus on the appropriate response. Neighborhood dysfunction ultimately emerged as the key criterion. The resulting mandate allows the Campaign to respond to changes as different types of problems or substances manifest health or safety problems in the community.

The Campaign is organized into block groups, apartment complex groups, and “stake holder” groups (composed of business, labor, government, schools, religious institutions, medical services, minority commissions, and community coalitions). Group leaders work with Safe Streets staff and each other to share information, develop strategies, and craft action plans to achieve the Campaign’s primary goals:<sup>17</sup>

- Maintain healthy, safe neighborhoods. Provide organization, advice, financing, and technical assistance, but let each neighborhood develop and tailor its own solutions.
- Mobilize the 560,000 citizens of Pierce County. Make everyone who lives in Pierce County a “stake holder” by creating a positive momentum, by publicizing successes, and by promoting the measures that have been proven effective.
- Prevent substance abuse and associated crime. A partnership of 92 public agencies, private organizations, and neighborhood groups has been established to help achieve this goal. Its task is to build a healthy, resilient community where drugs and crime cannot thrive.

### **Safe Streets’ Organization**

The Campaign for Safe Streets is organized on the basis of service delivery systems and community structures. It is entrepreneurial, multi-disciplinary, and knows no jurisdictional boundaries.

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<sup>13</sup> Interview with Safe Streets Board of Directors, July 1992.

<sup>14</sup> Campaign for Safe Streets Briefing Paper, July 30, 1992.

<sup>15</sup> Id.

<sup>16</sup> Examples include trafficking and consumption of illicit drugs, abuse of pharmaceuticals, alcoholism, and tobacco use by minors.

<sup>17</sup> Campaign for Safe Streets Briefing Paper.

A Board of Directors has overall responsibility for the initiative's administration and policy direction,<sup>18</sup> and the Campaign has separate steering committees organized to specifically address community mobilization, prevention, and youth.

The Community Mobilization Steering Committee is composed of representatives from participating neighborhoods. The Committee tracks policy and program decisions made at the community level, and takes an active role in making such decisions when they affect more than one geographic area.

The Prevention Partnership Steering Committee includes representatives from business, labor, schools, the county health substance abuse and parent-child divisions, minority organizations, the arts, youth, and religious institutions. It provides policy direction and guidance in the area of substance abuse prevention.

The Youth Consortium Steering Committee is composed of representatives from more than two dozen youth-serving organizations. It focuses on gang reduction, at-risk youth, proactive school and community-based prevention and intervention strategies, and youth employment and job training programs.

Each steering committee has a coordinator, and the Safe Streets executive director works with each to develop program assistance and policy direction. The three steering committees coordinate their contacts with participating citizens, public officials, and agency staffs in order to reduce the effects of conflicting priorities.

Seventeen paid employees staff the Campaign's headquarters office. The executive director is Lyle Quasim, a man who describes himself as a "recovering bureaucrat." The former three-term state mental health commissioner grew up in one of Chicago's most crime ridden neighborhoods and is no stranger to drugs and violence. He is as likely to be found talking to gang members at midnight on an East Tacoma sidewalk as working his way through lunch at his desk.

Quasim is charismatic and driven. His staff shares his motivation; when hiring, Quasim looks as much for enthusiasm and endurance as for "paper qualifications." When "burnout" does occur, Quasim rallies his team for mutual encouragement and support. The staff's role is pivotal; the Campaign for Safe Streets may be "owned" by the community, but Quasim and his staff keep the initiative focused and underway.

### **Safe Streets' Operations**

"Block by Block Organizing" — always in capital letters — forms the cornerstone of the Campaign. Quasim points out that this technique will work only when community members are fed up and willing to help themselves. He tells prospective participants: "This is not anonymous work. You must decide how serious the problem is and how committed you are to solving it."

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<sup>18</sup> The Board of Directors is composed of ten high-level "stake holders" in community leadership positions. Its current membership includes the Deputy Pierce County Executive (who serves as Chair), the Chief of the Tacoma Police Department, the Pierce County Sheriff, the Pierce County Prosecuting Attorney, the City of Tacoma's Deputy City Manager, a member of the Tacoma School Board, the Superintendent of the Tacoma School District, an elected member of the County Council, a member of the Tacoma City Council, and the Chief Executive Officer of the Pierce County United Way. The Safe Streets Executive Director serves as staff to the Board.

The elements of Block by Block Organizing include neighborhood "phone trees" (a network of prearranged agreements to conduct telephone notifications when suspicious or criminal activities are observed), carefully documented citizen surveillance of suspected drug houses, training to describe suspects and vehicles, graffiti removal, citizen sidewalk patrols,<sup>19</sup> and the opportunity to network for community development.<sup>20</sup> The blocks themselves are organized into geographically defined community coalitions, which are in turn supported by the Community Mobilization Coordinator and Steering Committee.

Block by Block Organizing has changed traditional neighborhood relations with law enforcement. According to Tacoma Police Chief Ray Fjetland, initial mistrust has been replaced by an active partnership in which citizens have become "an extension of police eyes and ears." In turn, greater identification with participating neighborhoods gives police a greater sense of priority when handling calls that involve their citizen-partners.

The Campaign's Drug House Elimination Team combines neighborhood and public agency resources to focus on the removal of identified drug dealing establishments. This initiative employs the documented observations of area residents to help target street-level drug enforcement and civil abatement resources, and is often used to enhance the effects of Block by Block Organizing.

The Campaign's other activities are numerous and diverse. Examples include the Youth Initiative, which gives young people a role in developing intervention measures and positive alternatives for their peers; the Arts Task Force, which promotes artistic expression as a positive alternative to vandalism and graffiti; the Interfaith Task Force, which has mobilized more than 20,000 church members to prevent substance abuse and gang violence; the Minority Coalition, which was designed to improve community attitudes about cultural diversity; the Gang Informational Task Force, a coalition of government agencies and youth representatives that tracks the development and activities of gangs in the community; and the Business-Labor Coalition, which promotes drug-free workplace initiatives<sup>21</sup> and provides training sessions to link employees and neighborhood projects.<sup>22</sup>

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<sup>19</sup> Many of the Campaign's neighborhood coalitions have organized nightly walking tours of their most blighted areas. Participating residents confront loitering prostitutes, drug dealers, and gang members. Those who cannot state a legitimate reason for being there are asked to leave.

<sup>20</sup> The Campaign for Safe Streets does not use this as a mere "catch phrase." Networking for community development often involves creatively developing what Prosecuting Attorney John Ladenburg referred to as "infrastructure solutions." In one example, neighborhood organizers negotiated with the local Chamber of Commerce to create 50 youth jobs. In return, community members pledged to provide transportation, child care, and ongoing encouragement and support to the new employees.

<sup>21</sup> Safe Streets Prevention Coordinator Prescilla Lisich estimates 70 percent of the community's illicit drug users are currently employed.

<sup>22</sup> One employer told Quasim, "I thought when Safe Streets was presented we would support our employees to go out into unsafe neighborhoods and help folks clean up their areas. I was surprised to learn that a majority of our employees lived in those neighborhoods and that the workplace had become a network to organize neighborhood cleanups and beautification. This had a positive effect on our workplace."

These activities apparently generate widespread appreciation at the neighborhood level. Clipper Maxfield, Safe Streets organizer and resident of Pierce County's Lakewood area, noted that the Campaign provides "someone to call" when a neighborhood is in trouble; it "tells them how to get organized, gives them the tools they need and suggests specific ideas that have been used successfully in other neighborhoods." Maxfield also emphasized the Campaign's role as a facilitator between residents and law enforcement: "Deputy sheriffs come to all of our organizing meetings... they are grateful because without those forums they would be fighting crime without the help of the people." This is not mere rhetoric — the Campaign's community meetings recently led to the creation of a five-officer special patrol district in Lakewood's most seriously drug-impacted area.

While Maxfield's community is particularly violent,<sup>23</sup> she maintains that the Campaign's counseling, recreation, and community development activities are as important as its public safety role: "These neighborhoods need creative community solutions that go beyond calling the police... Safe Streets works with us to find those solutions."

### **Safe Streets' Resources**

The Campaign for Safe Streets is a "Multi-Government Joint Powers Agency." It is administratively hosted by Pierce County and has an operating budget of approximately \$1,027,000 per year. Approximately \$200,000, or 19.5 percent of its funding, comes from local sources (these include Pierce County, the city of Tacoma, the United Way of Tacoma/Pierce County, and the Tacoma School District). The state of Washington provides an additional \$300,000, or 29.2 percent of the Campaign's operating budget (CMASA funds from the Department of Community Development). Federal contracts with the U.S. Department of Health and Human Services and the Office of Substance Abuse Prevention account for another \$522,000 (50.8 percent of the Campaign's budget). In addition, the Campaign receives modest cash contributions from private parties (in 1992, the Campaign received \$5,000 from private donors).

The Campaign also receives an impressive array of in-kind contributions in the form of professional services, time, and materials. Examples: the advertising firm of Cole and Weber will provide the Campaign with approximately \$250,000 worth of services in 1992; members of the local news media have pledged to donate some \$200,000 in public service coverage; the city of Tacoma provides approximately \$100,000 in staff and support services each year; and Pierce County makes an annual contribution of \$125,000 in personnel, budget, and finance department assistance. Including the time of its scores of volunteers, the Campaign enjoys in-kind contributions in the range of \$975,000 per year.

Cumulatively, the Campaign's cash and in-kind revenues will total over \$2 million during 1992. This represents a cost of approximately \$3.60 per Pierce County resident. If every community in the United States were funded at the same per capita level, the national cost would equal \$900 million per year.<sup>24</sup>

<sup>23</sup> With only 60,000 residents, Lakewood often experiences more than 30 drive-by shootings each month.

<sup>24</sup> Estimate based on a U.S. population of 250 million.



### **Safe Streets' Accomplishments**

Despite the normal problems of initial organization and startup, performance statistics during the first three years have been impressive:

- More than 75,000 citizens have participated in Block by Block Organizing. In 1990, blocks were organizing at a rate of six per month. By mid-1992, that rate was up to 30 blocks per month.
- Campaign volunteers eradicated virtually all of Pierce County's gang graffiti during the second half of 1989, and six area graffiti removal teams have been established to monitor and remove new graffiti as it appears.
- Complaints and emergency calls to police dropped from 133,000 in 1989 to 106,000 in 1990, allowing police to redirect resources to accommodate other pressing service needs.
- The Drug House Elimination Team has closed more than 270 drug dealing establishments since June 1990.
- In 1991, the Youth Consortium served more than 89,000 youth and families with a mix of prevention, education, employment, and recreation programs. This was an increase of approximately 32,000 from the 1990 level.

The Campaign also appears to be changing the behavior of some public institutions. Pierce County Sheriff John Shields notes, for example, that Safe Streets has helped move law enforcement from a "hunter philosophy" to a "quality of life orientation."

Attitude changes have also occurred among the community's residents. The simple act of organizing, of taking responsibility, has reduced fear and given hope. As one resident said, "It's nice to be able to wave at your neighbor and know who it is. I took a walk and saw all the Safe Streets signs — it makes you feel good."

While anecdotal information abounds, there is little direct evidence that the Campaign has reduced the community's underlying substance abuse problems. Similarly, the community's law enforcement officials are unable to credit the Campaign with any significant reduction in drug or gang-related crime. Its impact on these problems will not be known until the Campaign develops and implements an evaluation strategy.

### **Problems and Frustrations**

The Campaign's history is not completely positive. Some residents remain concerned about retaliation.<sup>25</sup> Others are disappointed that the Campaign does not provide instant solutions and resent being called upon to make extensive personal commitments.<sup>26</sup> Some with established positions in

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<sup>25</sup> These fears are usually unfounded, but there have been some horror stories. For example, Quasim once spent several weeks cajoling a restaurant owner to paint over gang graffiti on his property. The owner finally complied, and the restaurant was destroyed by arson that very night.

<sup>26</sup> Quasim noted that some residents expect the Campaign to respond like a firefighter to a plume of smoke. He related that it is difficult for these individuals to accept Safe Streets as a facilitator, and to accept personal responsibility for the health and safety of their neighborhoods.

the community are concerned that Safe Streets will undermine existing programs and threaten their resources. In addition, the staff is continuously challenged to maintain community focus and keep the Campaign's volunteers motivated and active.

On other fronts, the Campaign has fallen victim to its own success. Expectations frequently exceed capabilities, and Quasim's management style is at least partly responsible. In approaching new initiatives, Quasim likes to "throw 100 things against the wall and see what sticks." Dramatic successes often result, but the ideas that "don't stick" sometimes leave frustration and disappointment in their wake. An example is the Campaign's failed effort to "strengthen families" through a network of community support. According to Quasim: "The idea sounded great. We actively publicized the concept and held meetings to consider strategies and objectives. Unfortunately, we found ourselves unable to come up with intervention strategies to match our enthusiasm... we didn't know what to do when all these families started showing up and presenting problems that none of us could fix."

Other frustrations include the Campaign's inability to help the parents of identified gang members, to provide services to incarcerated juveniles,<sup>27</sup> to establish more effective school liaison,<sup>28</sup> and to address the problems posed by hardcore violent offenders. Quasim noted, however, that the Campaign's greatest frustration is its failure to field an effective treatment component. Drug treatment was one of the top three priorities identified during the Campaign's formative meetings,<sup>29</sup> but its integration with other Campaign services has been stalled by a lack of consensus among treatment providers.<sup>30</sup> Quasim attributes the problem to divergent treatment philosophies, conflicting organizational loyalties, and resource competition between providers. As a result, the Campaign's only connection with drug treatment is a loose affiliation with the local providers.<sup>31</sup>

### **The Drug Czar's Current Role**

Judi Kosterman, a veteran educator with a Doctorate in substance abuse prevention, is Washington's current drug czar. She succeeded Paul Dzeidzic in December 1990, but was involved with the drug czar's office almost from its inception two years earlier. Dzeidzic met Kosterman while working with the Washington State Substance Abuse Coalition.<sup>32</sup> Because his background was primarily in health services, he enlisted her help and gradually came to rely on her as his key substance abuse advisor. That early role assured a smooth transition when Dzeidzic retired and the Governor appointed Kosterman to assume his former duties.

<sup>27</sup> Quasim complained that neither state nor local detention facilities have been willing to grant Campaign staff regular access to incarcerated juveniles.

<sup>28</sup> School liaison has been hampered by inadequate staff on the school district side. Conflicting priorities have prevented the hiring of a teacher to act as liaison between Safe Streets and the schools. As a result, the Campaign provides no services in 11 of the community's 15 school districts.

<sup>29</sup> The other two were drug interdiction and community mobilization. *Safe Streets Action Plan*, June 1989, p.9.

<sup>30</sup> Interview, Lyle Quasim, July 1992.

<sup>31</sup> Id.

<sup>32</sup> The Washington State Substance Abuse Coalition is a grass roots community-based organization. Kosterman joined the Coalition in 1983 and Dzeidzic began working with it shortly after his drug czar appointment in 1988.

Kosterman believes that the mobilization of local communities is the most promising long-term strategy to control substance abuse.<sup>33</sup> She sees her job as centered on two primary tasks:

- Challenge every citizen of the state to become personally involved in reducing substance abuse; and
- Coordinate the efforts of state agencies in support of community efforts to reduce substance abuse.

Kosterman's approach to community mobilization involves a process that provides local leadership with incentives to collaborate on and commit to sustained substance abuse reduction efforts. She believes that community ownership of the process is essential, and that the dimensions of the problem can be addressed only through a complementary mix of long-term strategies.

As Kosterman notes: "It is not a simple process for either state agency personnel or key leaders in this state's communities to leave behind the competitive, single-focus approach to substance abuse reduction and move to a non-competitive, community-determined approach."<sup>34</sup> To help achieve this objective, she has joined the Washington Department of Community Development and the State Interagency Workgroup (which includes representatives from 13 state agencies) to:

- Develop a community grant incentive program;
- Provide technical assistance to each mobilizing community;
- Implement a public relations campaign (with a statewide message that can be adapted to the needs of each community); and
- Develop a range of individual initiatives to encourage particular groups (e.g., businesses, youth groups, and minority associations) to join and support the community mobilization process in their areas.

As the governor's representative, Kosterman must often take a more direct role in advancing mobilization objectives. The governor's office has great prestige throughout the state, and gubernatorial proclamations, letters of support, and personal encouragement can be decisive in helping communities get through the conflict that often accompanies early mobilization efforts.

Kosterman also actively participates in the state's technical support network. In that capacity she facilitates local planning groups, coordinates state aid, and helps community organizers find solutions to inter-agency conflicts and turf concerns. Kosterman has been described as a "leader of the state's community development cult." She brings spirit and passion to the initiative, and plays a key role in advancing progress on this front of the Washington drug war.

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<sup>33</sup> Kosterman also emphasized the importance of coordinating state agency efforts to ensure that they are compatible with and support effective and cooperative local community solutions.

<sup>34</sup> Kosterman, Judi, Reducing Substance Abuse: A White Paper, November 1991, p.6.

This leadership is often crucial when resource competition and conflicting service demands make it difficult for local governments to maintain a consistent focus on the drug abuse problem. As Quasim notes:

*It's difficult to be an expert in your own home town. Intervention by the drug czar adds credibility to the cause and offers the validation of a statewide perspective. By serving as a "friend of the court," the drug czar has often affected the outcome of City Council and School Board policy and resource debates.*

A drug czar's tenure may be quite limited, but the state bureaucracy endures. Kosterman reasons that planning for a sustained effort requires deep organizational "buy in," and has spent considerable effort embedding the community mobilization concept in participating state agencies. She has paid particular attention to Washington's Department of Community Development, influencing it to adopt community mobilization support as part of its basic mission. The fruits of that investment may prove to be her most enduring legacy.

# Community Mobilization

## Chronology of Events

State Action	Pierce County Action
<b>Spring 1988</b>	
Governor establishes Cabinet Subcommittee on Drugs and Gangs	
<b>Summer 1988</b>	
Interagency Task Force established to develop recommendations for Cabinet Subcommittee	
<b>Fall 1988</b>	
State establishes bipartisan legislative committee	Planning meetings held in Pierce County
Governor commissions the Washington State Community Mobilization Against Substance Abuse (CMASA)	
<b>Winter 1988</b>	
Paul Dzeidzic appointed as state's first drug czar	\$200,000 raised by local agencies to finance community mobilization efforts - Tacoma's Campaign for Safe Streets is born
	Lyle Quasim hired as Safe Street's executive director

State Action	Pierce County Action
<b>January 1989</b>	
	Over 2200 residents attend community meeting at Henry Foss High School
<b>Spring - Summer 1989</b>	
Paul Dzeidzic works with legislative committee to craft 1989 Omnibus Bill; convenes 6 community forums across the state	
<b>June 1989</b>	
	Campaign for Safe Streets becomes fully operational
<b>Summer 1989</b>	
	Campaign volunteers eradicate virtually all of Pierce County's gang graffiti
<b>May 1990</b>	
Omnibus Controlled Substance Act signed into law; Paul Dzeidzic holds implementation meetings in 22 communities	Tally shows complaints and emergency calls to police have dropped by 27,000 for the year
<b>June 1990</b>	
	Drug House Elimination Team becomes operational; closes 270 sites by summer 1992

State Action	Pierce County Action
<b>December 1990</b>	
Judi Kosterman replaces Paul Dzeidzic as drug czar	
<b>July 1991</b>	
State legislature appropriates \$3.7 million to support CMASA activities for 1991-1993 biennium; federal government matches that amount	
<b>December 1991</b>	
	Annual tally shows Youth Consortium to have served over 89,000
<b>July 1992</b>	
	Safe Streets organizes blocks at a rate of 30 per month

LESSONS LEARNED:

CASE STUDIES OF THE INITIATION AND MAINTENANCE  
OF THE COMMUNITY RESPONSE TO DRUGS

Saul N. Weingart  
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David Osborne

March 1993

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## Executive Summary

In response to the illicit drug trade that became especially troublesome in the late 1980s and early 1990s, a remarkable community anti-drug movement has sprouted, even in some of the most afflicted neighborhoods. Citizens, armed only with their courage and imagination, have devised a variety of clever strategies and tactics to reclaim their streets and parks from drug traffickers.

A literature search and eleven on-site case studies revealed evidence of grassroots community responses to illicit drugs. This study examines a number of factors that gave rise to these community anti-drug efforts and sustained them over time.

This study focuses on efforts that were citizen-initiated and citizen-controlled. The operating assumption is that the unit of analysis in this project is the citizen anti-drug "initiative": a collection of individuals who joined together to participate in an activity oriented against drugs. Several computerized newspaper and magazine indices were used to identify 170 articles about neighborhoods and drugs that were published between January 1986 and June 1990. These articles described 218 individuals or groups in twenty-five states and the District of Columbia that had planned or participated in a grassroots anti-drug activity. Based on several select criteria, as well as information gleaned from telephone interviews, seven case study sites were chosen: Ad Hoc Group Against Crime (Kansas City, MO); Allerton Neighborhood Anti-Crime Committee (Bronx, NY); Brotherhood Crusade (Los Angeles, CA); Fairlawn Coalition (Washington, DC); Hill Street Crime Watch Committee (Boston, MA); United Neighbors Against Drugs (Philadelphia, PA); and Whittier Block Watch (Denver, CO). To this sample were added cases that had been prepared for a 1990 National Institute of Justice-sponsored pilot study of community responses to drugs: Philadelphia Anti-Drug Coalition (Philadelphia, PA); REACH (Detroit, MI); Stella Link Revitalization Coalition (Houston, TX); and The Blockos, 210 Stanton, At-Taqua Mosque, and Umma (Manhattan and Brooklyn, NY). The case studies are the foundation of this study.

Community anti-drug efforts show wide variations in institutional robustness and in the breadth of approach to drug problems. The more comprehensive efforts — those that are able to develop and operate from institutional strength, see drug problems from a variety of perspectives, have access to a spectrum of resources, and connect responses to broader neighborhood quality of life issues — seem more likely to endure and to keep citizens effectively together around other issues that negatively impact them. Despite general agreement among organizers and researchers that anti-drug efforts addressing a variety of related problems from a more comprehensive perspective are more desirable, citizens do not always aspire to create robust and long-lasting institutions. The informally organized efforts of citizens also offer an important drug-fighting capacity.

The hallmark of the "new" citizen drug-fighting initiatives is an unprecedented shift in the locus of responsibility for dealing with the problem away from the formal, constituted authority of the police department to the citizens themselves. Generally, the citizens form partnerships with police and city agencies, in which they demand and play an integral role.

When citizens take responsibility for the neighborhood drug problem, they challenge the conventional idea that more police protection is the only way to suppress crime and drugs. Redefining their responsibility to address the problem often creates the opportunity to develop novel approaches to drug fighting. If Washington, DC's Fairlawn Coalition had agreed with the prevailing wisdom that the principal problem facing the neighborhood was that the police response was inadequate to address the growing drug trade, there would have been little for them to do beside clamor for more police services. Instead, the Coalition members decided that the principal problem was a failure to communicate citizens' stake in the neighborhood to drug traffickers. In Houston, the diagnosis of the problem by police and the Stella Link Revitalization Coalition led to the development of an integrated strategy to beat the drug market there. Police worked to reduce drug demand rather than drug supply — without utilizing arrests — while community members improved the physical appearance of the community to create an environment that looked less neglected and that offered traffickers fewer convenient places to do business.

The level of violence endemic to the local drug market often translates into the level of fear in the neighborhood. Some drug markets create so much fear among residents of the community that the ability to mount a community response is severely compromised. The Boston and Los Angeles cases provide compelling examples of the way that drug-related violence can profoundly decrease citizens' willingness and ability to organize effectively against drugs. In both Boston and Los Angeles, citizens' expectations about the risks they would run as drug fighters restricted the kinds of activities that they felt they could safely undertake.

Other markets, though they may engender some fear among residents, do not have such a chilling effect on citizen action. In the Washington and two Philadelphia initiatives, citizens took to the streets in their effort to fight drugs, placing themselves in a most vulnerable position. In Washington, citizen drug fighters patrolled the streets in small groups. In Norris Square, Philadelphia, violent attacks on two key participants initially quieted United Neighbors Against Drugs' (UNAD) anti-drug organizing efforts. But later, following a path blazed by the Philadelphia Anti-Drug Coalition, citizen activists in Norris Square set up late-night vigils on street corners where drugs were traded. In each of these examples, a doggedly persistent citizen presence on the street managed to effectively close down a street-level drug market.

Community efforts that are specifically and primarily focused on drugs are tenuous by nature. Rather than robust, durable, and well-established corporate entities, community anti-drug groups are often small, informal associations. Groups like Manhattan's Blockos or Denver's Block Watch stay in existence only long enough to achieve their objectives. Others, like Philadelphia's UNAD, have dormant periods, either as a result of their own success or because their members were intimidated by threats and violence. Dormancy can represent a state of readiness, in which the community capacity for drug fighting exists but is not currently mobilized.

It is surprising that citizens who live in neighborhoods that have suffered many of the atomizing effects of drugs, crime, fear, and disorder often possess sufficient leadership and local, institutional, and political resources to enable the community to fight back. Some community drug fighters have previous professional experience battling community problems, while others are concerned citizens who simply have had enough of the effects of the drug problem on their neighborhood.

Community institutions also step forward to provide resources, including use of telephones, meeting space, and photocopy machines. Citizen drug fighters need and will utilize a significant variety of unconventional resources if presented with them.

Of the resources that citizen groups utilize in their assault on drugs, the police play a particularly pivotal role. Because citizens and police share a common interest in the reduction of crime, drugs, and disorder in the neighborhood, police and citizens seem like natural allies. Unfortunately, many problems plague the relationship between police and citizens. The relationship often is established almost by chance, with little coordination or thought on the part of the police. However, when police listen to and begin to work with citizens, early reservations often give way to hearty enthusiasm. "Before the project, I felt it was my sole responsibility to clean up the drug dealers," said a Houston police sergeant. "Now I have a different concept. I don't think any of it will work, unless you have community involvement." A conventional law enforcement approach, in which police retain all the power and responsibility for fighting drugs and crime, is likely to undermine citizen initiative and contribute to the persistence of drug trafficking in the neighborhood.

The community is under-utilized as a resource because many public agencies, particularly police departments, think of working with the community on what are considered "soft" problems rather than "tough" problems like drugs. These case studies demonstrate, however, that citizens are valuable and creative partners in the effort to rid communities of drugs.

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# Acknowledgements

The Commission's model Community Mobilization legislation reflects valuable contributions of numerous people who shared their time, facilities, ideas, suggestions and knowledge during the policy development, hearing and drafting process. The Commission particularly wishes to thank **Ron Susswein** of the Union County, New Jersey, Prosecutor's Office for his principal role in developing and drafting the expedited eviction, nuisance abatement and coordination of state drug control policy statutes, and advising the Commission on these issues. The Commission expresses its appreciation to Union County Prosecutor **Drew Ruotolo** for generously lending Mr. Susswein to the Commission effort.

Additionally, the Commission wishes to thank **Lynn Coughlin**, from the Philadelphia law firm of White and Williams, who worked as a Commission staffer for six months prior to the Commission's swearing-in, skillfully gathering and coordinating the best experts in the country for "state drug policy summits."

The "state drug policy summits" addressed the issues of and laid the groundwork for the Commission's efforts in the areas of expedited eviction of drug traffickers, drug nuisance abatement, and state drug policy coordination. The participants of these "state drug policy summits" who unstintingly gave of their time and experience are listed below.

Special thanks must go to Wayne County Deputy District Attorney **Andrea Solak**, staffer to Chairperson John O'Hair. Ms. Solak played a central role in the development of all of the Community Mobilization statutes, from their conceptualization to preparation for final printing. Additionally, Ms. Solak organized and supervised the Community Mobilization hearing in Detroit.

The Commission thanks **Frank Hartmann**, Executive Director of the Program in Criminal Justice Policy and Management at the Harvard University's Kennedy School of Government, who provided the Commission with the benefit of his extensive knowledge and expertise in community mobilization issues, as well as his formidable facilitation skills in leading the Community Mobilization Task Force work through an intensive decision-making process.

**Ed Davis** and **Susan Galbraith** of the Legal Action Center helped the Commission staff to develop a model statute to site alcohol and other drug treatment facilities. Although the Commission feels this issue needs to be addressed, it did not have time to address this problem adequately through model legislation. Anyone wishing to access the initial drafts of this legislation should contact Susan Galbraith or Ellen Weber at the Legal Action Center.

The Commission expresses its appreciation to **Charles Tremper**, Executive Director of the National Center for Community Risk Management and Insurance, who helped draft the anti-drug volunteer protection act.

The following individuals and organizations also contributed to the process, and helped ensure that the Commission's final report provides legislative responses which are hopeful, fair, comprehensive and empowering to communities:

## *Witnesses*

### **Public Hearing on Community Mobilization**

**January 27, 1993**

**Wayne County Building**

**Detroit, Michigan**

Hon. Lynne Abraham<sup>1</sup>  
Chairperson, Legislation Committee  
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<sup>1</sup> District Attorney Abraham testified before the Commission concerning Philadelphia's Nuisance Abatement and Urban Genesis programs at its meeting in Philadelphia on March 9, 1993. With the assistance of her Nuisance Abatement Director David Castro, Ms. Abraham also provided technical assistance to the Commission at that meeting.

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**RAMONA L. BARNES**, of Alaska. Speaker Barnes is Speaker of the Alaska State House of Representatives. She has served as a Member of the Alaska State House of Representatives since 1979. She has served as Chairman of the Alaska House Judiciary Committee, as a member of the Corrections Finance Sub-Committee, and as Chairman of the Legislative Committee. Ms. Barnes is also a member of the Governor's Task Force on State-Federal Tribal Relations, the Citizen's Advisory Commission on Alaska Lands, the Alaska Representative State's Rights Coordinating Council, and the Alaska Delegate Council of State Governments.

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**JUDGE ROSE HOM**, of California. Judge Hom is currently assigned to Criminal Trials on the Los Angeles Superior Court. She was one of the supervising judges in the Juvenile Delinquency Courts sitting in South Los Angeles. Prior to her elevation to Superior Court, she was on the Los Angeles Municipal Court bench. She was previously employed as a Los Angeles County Deputy Public Defender.

**RICHARD P. IEYOUB**, of Louisiana. Mr. Ieyoub serves as Attorney General of Louisiana after serving as Lake Charles District Attorney. He is the former President of the National District Attorneys Association.

**KEITH M. KANESHIRO**, of Hawaii. Mr. Kaneshiro has been the Prosecuting Attorney for the City and County of Honolulu since 1989. He previously served as Deputy Attorney General for the state of Hawaii. Mr. Kaneshiro serves on the Board of Directors of the National District Attorneys Association.

**VINCENT LANE**, of Illinois. Mr. Lane is Chairman of the Chicago Housing Authority and Chairman of the Department of Housing and Urban Development's Severely Distressed Housing Commission. Mr. Lane is the founder of Urban Services and Development, Inc., and in 1987, was chosen by former Chicago Mayor Harold Washington to serve on the Mayor's Navy Pier Development Corporation.

**DANIEL E. LUNGREN**, of California. Mr. Lungren is the Attorney General of California and served as a Member of the United States House of Representatives from 1979 to 1989. He also is a member of the National Association of Attorneys General (NAAG) Criminal Law Committee, and a member of the Executive Working Group.

**ROBERT H. MACY**, of Oklahoma. Mr. Macy was President of the National District Attorneys Association (NDAA) during the Commission's tenure. Mr. Macy currently serves as Chairman of the NDAA Board of Directors. He is also former Chairman of NDAA's Drug Control Committee and Chairman of the Board of Directors of the American Prosecutors Research Institute (APRI).

**N. HECTOR MCGEACHY, JR.**, of North Carolina. Mr. McGeachy has been Senior Partner with the law firm of McGeachy and Hudson for over fifty years. He is a former North Carolina State Senator and recipient of a Bronze Star. Mr. McGeachy served as Chairman of the North Carolina Grievance Commission and as a Presidential Conferee to the White House Conference for a Drug-Free America.

**EDWIN L. MILLER, JR.**, of California. Mr. Miller is District Attorney of San Diego County. He is a founding member of the National District Attorneys Association (NDAA) and the American Prosecutor's Research Initiative (APRI). Mr. Miller is also a member of the Executive Working Group for Prosecutorial Relations. He has served as President and Chairman of the Board of NDAA.

**MICHAEL MOORE**, of Mississippi. Mr. Moore is currently the Attorney General of Mississippi. Mr. Moore recently served as Chairman of the Criminal Law Committee for the National Association of Attorneys General.

**JOHN D. O'HAIR**, of Michigan. Chair of the Commission's Community Mobilization Task Force. Mr. O'Hair is Wayne County Prosecutor and served for fifteen years as Wayne County Circuit Judge. Also, Mr. O'Hair served on the Common Pleas Court from 1965 to 1968.

**JACK M. O'MALLEY**, of Illinois. Mr. O'Malley is the State's Attorney for Cook County, Illinois. Mr. O'Malley is a former partner with the law firm Winston and Strawn, a veteran Chicago police officer, and a member of the Chicago Bar Association.

**RUBEN B. ORTEGA**, of Utah. Mr. Ortega is the Salt Lake City Chief of Police and the former Phoenix, Arizona Chief of Police. He currently serves as a member of the President's Drug Advisory Council. Mr. Ortega served on the Executive Committee of the International Association of Police Chiefs, the U.S. Attorney General's Crime Study Group, and the Police Policy Board of the U.S. Conference of Mayors.

**ROBERT T. THOMPSON, JR.**, of Georgia. Chair of the Commission's Drug-Free Families, Schools, and Workplaces Task Force. Mr. Thompson is with the firm of Thompson and Associates. Mr. Thompson is the author of Substance Abuse and Employee Rehabilitation and has served as a member of the South Carolina Commission on Alcohol and Drug Abuse.