
WHAT DO LANDLORDS THINK ABOUT DRUG ABATEMENT LAWS?

by

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***Abstract:** Across the country, drug house abatement statutes have become a popular tool for reducing drug activities in targeted neighborhoods. These statutes vary in content; in the types of civil or criminal penalties that apply; and in the type of administrative/court proceedings and appeals available. Despite differences among the statutes, they share a common goal of ameliorating drug activity and holding landlords responsible for ridding their properties of drug dealers and customers. Rather than target drug sellers directly, drug house abatement programs target property owners in order to curb the activities of residents. In this chapter, we focus on the reactions of property owners to abatement actions, drawing data from interviews conducted in two major studies of drug house abatement efforts. Property owners favor the goals of abatement programs, but resent being targeted by authorities. We conclude that efforts are needed by local officials to enlist property owners to work cooperatively with them in order to solve common problems.*

INTRODUCTION

Across the country, drug house abatement statutes have become a popular tool for reducing drug activities in targeted neighborhoods. These statutes vary in content, in the types of civil or criminal penalties that apply, and in the type of administrative /court proceedings and

appeals available. Despite differences among the statutes, they share a common goal of ameliorating drug activity and holding landlords responsible for ridding their properties of drug dealers and customers.

We have been involved in two major studies of drug house abatement efforts: one multi-city investigation (Smith et al., 1992) and one single-site study (Lurigio et al., 1993). Both studies provided evidence that abatement actions are effective in cleaning up problem buildings and reducing signs of disorder in the vicinity of targeted properties. Moreover, our work suggests that the drug problems tend not to return any time soon and may not be displaced to other locations. Recent work reported in this volume by Eck and Wartell and by Mazerolle et al. using true experimental designs has also found abatement programs to be effective.

Our work (see also, Eck and Wartell in this volume) has also found that abatement efforts are very cost-effective relative to other law enforcement approaches to drug sales. Many cities conduct drug nuisance abatement actions with funds from existing municipal budgets. In a large majority of properties targeted, abatement of the nuisance is achieved through a single letter to the property owner. Similar to other local anti-drug initiatives, abatement actions are popular with residents of neighborhoods where drug dealing is extensive (Rosenbaum, 1993).

Drug nuisance abatement actions target property owners rather than the drug dealers themselves, and their success is dependent upon the cooperation of the owners. How do landlords respond to abatement notices, and what consequences do they suffer at the hands of tenants who are evicted because of the notice? Do the actions taken by the landlords reduce drug activities at their properties? How costly is the process for landlords? What do property owners/managers think of the use of the abatement laws? What management changes are undertaken by landlords to avoid abatement notices in the future? Do landlords think abatement laws are fair? These questions are the focus of this chapter. The answers have important implications for the success of drug abatement programs that rely so heavily on landlords cleaning up drug-infested properties.

STUDY SITES

Study 1

We obtained the landlords' perspective as part of two different studies. The first was a 1992 study funded by the National Institute of

Justice that assessed drug abatement programs in five sites: Alexandria, VA; Houston, TX; Milwaukee, WI; San Francisco, CA and Toledo, OH. To provide a sense of the abatement efforts studied, we will briefly describe each site's program as it was operating at the time of our 1992 study.

Alexandria

Alexandria is using a long-standing nuisance statute designed to rid neighborhoods of prostitution and massage parlors. The 1950 civil statute was revised in 1990 to add drug sales and use to the list of nuisance violations. The Commonwealth's Attorney works in close coordination with the police department to identify problem houses, and to warn landlords to stop the drug dealing from their property. Once the police notify the Commonwealth's Attorney that drugs have been found in a residence, the prosecutor's office sends a letter to the landlord alerting him or her that drugs are being sold on the property. The landlord is warned to take action to stop future drug sales or risk prosecution or civil action to confiscate their property. Once the letter is delivered to the landlord, it is up to the police to monitor the situation to determine if the he or she has taken appropriate action and drug dealing has ceased. The prosecutor will not take further action *unless* alerted by the police that dealing is continuing in the house. If another arrest is made in the house — or the police learn of subsequent drug dealing from informants or through surveillance — the police will report the case back to the prosecutor's office.

Houston

Houston's drug house abatement team is a cooperative venture between the offices of the Houston City Attorney and the Harris County Attorney. The program's actions are based on an old bawdy house ordinance that permits closure of properties defined as a common and/or public nuisance. The statute was updated in 1987 to include narcotics in the scope of what it defines as a nuisance. By the time the abatement team receives a case from the police, the police have already made attempts to reduce the drug activity through traditional law enforcement methods. If the team believes action is warranted, it has a number of options. If the building is vacant, the case may be referred to the city's neighborhood protection team. This program razes buildings that are deemed structurally unsafe. A second option is to refer a case to the County Attorney's Office for a forfeiture action. The final option available is to file a civil suit in district court seeking injunctive relief.

Milwaukee

Milwaukee's drug abatement law is an updated version of an older bawdy house law that allows the city to file a civil suit in order to have a property declared a public nuisance. If the circuit court finds that a property is being used to facilitate the delivery or manufacture of drugs, it may issue injunctive relief. An order to close can follow and, eventually, an order to sell, with the owner getting nothing from the sale. Property owners can submit a petition to the court to attempt to stop the process. If the court does close a property, the structure must remain closed until any building code violations are cleared. Properties are targeted by the drug abatement team following complaints from community residents or tips from police informants. Once a drug sales location is reported to the police department, the police attempt to make an undercover buy. If drugs are discovered in the search and/or arrests are made, the case is referred to the law enforcement drug abatement team. The team sends the property owner an abatement letter in which he or she is given five days to stop the activity at the property. If drug sales persist, a second letter is sent. If this letter fails to abate the nuisance, a suit is filed in civil court that may eventually result in closure and/or sale of the property.

San Francisco

The district attorney's office focuses on the prosecution of drug dealers and a multi-agency task force focuses on improving the quality of housing stock by removing drug dealers and eradicating unsafe and run-down housing. At task force meetings, problem buildings are identified and monitored and enforcement strategies are jointly planned. The task force makes specific recommendations to owners as to strategies they might undertake to stop drug dealing in their buildings. Many landlords cooperate and follow through on those recommendations. For uncooperative landlords, possible sanctions include closures, property liens and administrative fines.

When civil actions fail, the case is referred to the district attorneys' office for action. The district attorney may undertake several progressively more punitive steps to insure that drug activity stops, including: (1) filing a lawsuit, (2) seeking temporary injunctive relief and closure, and (3) seeking a permanent abatement order to close the property and collect damages.

Toledo

By Ohio statute, premises where felony violations of controlled substances laws occur are nuisances subject to abatement. Where a nuisance exists, the prosecuting attorney may bring an action in equity asking the court to order the premises closed and padlocked for up to a year. The Toledo Police Department's Vice-Metro Section targets drug houses for potential closure. Evidence of both "recent" and "continuing" illegal activity is necessary for a padlock order. Upon a recommendation from Vice-Metro, the prosecutor's office prepares a complaint and a motion for a temporary restraining order (TRO). The former details evidence that a particular property is a "nuisance" subject to abatement; the latter seeks a court order to close and padlock the premises immediately, pending a hearing for a preliminary or permanent injunction to close the premises for a year.

The TRO is obtained and executed on the same day. A contingent of approximately 25 persons appears at the targeted premises, armed with a battering ram. An "entry team" of five or six members of the police department SWAT team secures the premises, serves search warrants and makes arrests if required. The sheriff's office, responsible for executing the TRO, sends eight to 10 deputies to serve the summons and complaint, videotape the entry, make a videotaped inventory of the premises, and oversee the padlocking and, if necessary, the boarding up of the premises. Within two weeks of the execution of the TRO a hearing is held on the prosecutor's request for a preliminary and/or permanent injunction.

Study 2

The second study in which we examined the perspectives of landlords was a 1993 evaluation, funded by the Bureau of Justice Assistance of the Cook County (Chicago, IL) State's Attorney's Office's Narcotics Nuisance Abatement Unit.

Cook County

The program employs three strategies: (a) voluntary abatement, (b) prosecutorial abatement and (c) community outreach. To identify potential drug houses for targeting, the program receives referrals and complaints from community organizations and the police, and also accesses internal information from current prosecutions of the state's attorney's office. Next, the program screens referrals to select appropriate cases for investigation. Each case that the program identifies for

abatement is assigned to an assistant state's attorney and an investigator. The team verifies the existence of a drug problem at the referred property, establishes the nature and extent of current and/or past drug problems at the property, and identifies the alleged offender(s) and the owners or managers of the property. If investigation confirms a current nuisance, the program informs the property owner by letter that a drug nuisance exists on his or her property and requests a meeting between the owner and the program to resolve the problem. Thirty to 60 days are usually allowed for voluntary compliance with the abatement plan arrived at during the meeting. If the owner fails to cooperate with the program, the assigned attorney initiates action in the civil courts. If the case is brought to civil court, the property may be closed for a period of one year. The program also has the option of filing criminal charges if an owner does not comply with the voluntary abatement, or if the owner refuses to cooperate and a new drug arrest occurs on his or her property.

STUDY SAMPLES

In the 1992 study, we randomly selected four to five landlords/property managers in each of the five study sites and were successful in completing a total of 22 interviews by telephone. All but one of the respondents were investment owners/managers; one was the attorney for a man whose live-in grandchildren were the alleged dealers/users. In some cases the actual property owner was unavailable, and therefore we interviewed the property manager familiar with the abatement action.

In the 1993 Cook County study, a randomly selected sample of the drug abatement program files was used to obtain the names and phone numbers of landlords. A total of 230 interviews were completed with property owners, a completion rate of 64% of all those tried. The interviewed property owners were quite diverse. Their ages ranged from 24 to 94. Sixteen percent (n=35) had less than a high-school education, 17% (n=38) had completed high school, 25% (n=55) had some college education and 42% (n=91) were college graduates or more. Over half (52%, n=111) were African-American; 36% (n=76) were white; and 4% (n=8) were Asian. Just under 10% (n=21) identified themselves as Hispanic. Nearly 14% (n=30) of the landlords reported incomes under \$10,000 per year; 15% (n=33) reported incomes between \$10,000 and \$19,999; 19% (n=42) reported incomes between \$20,000 and \$40,000; and 38% (n=82) more than \$40,000. Twenty percent (n=46) of the landlords reported living at the address of the drug nuisance. Eighty-

eight percent (n=203) said they rented units at that address. Nearly two-thirds (60%, n=136) of the property owners said that they owned or managed other units.

Although the 1992 sample was quite small, the findings were remarkably similar to the larger 1993 Cook County study and, combined, present an interesting picture of how landlords feel about drug abatement laws.

ACTIONS BY LANDLORDS IN RESPONSE TO NOTIFICATION OF THE PROBLEM AND TENANT RESPONSE

In the 1992 study, the property owners we interviewed reported being just as desirous of eliminating drug dealing from their property as were city officials. In fact, we were quite surprised that half of the property owners we spoke to said that they has been the ones to alert the authorities about drug dealing on their premises. Several expressed concern that the wording of abatement notices made it seem as if they were culpable and/or were somehow profiting from knowingly allowing drug sales to take place.

In the 1992 study, all of the landlords interviewed evicted one or more tenants as a result of the abatement notification. A majority of tenants did not resist abatement actions, and only one landlord reported a tenant fighting the eviction in court. Although there were no retaliatory actions by tenants in three-quarters of the cases, one property manager reported receiving threats against her personally as well as threats against the building, and one property owner said his property manager was beaten up and shots were fired at a window in one of his buildings.

There is concern in some quarters that in the process of evicting drug dealers innocent family members may be put out as well. In the 1992 survey, close to half of the respondents reported that innocent people had to move out as a result of the eviction. In most cases, this involved children or other family members of the alleged drug dealer, although in one case the entire rooming house was shut down, and everyone had to vacate. For those landlords who reported receiving feedback from other tenants about the eviction in the 1992 sample, most said the other tenants were supportive and "very happy." One property owner, however, said other tenants moved out due to fear that the problem would recur.

In the 1993 Cook County study, the most common action landlords took after being notified of the drug nuisance was to evict the offending

tenants. Sixty-two percent (n=142) reported that they had evicted tenants. Twenty-eight percent (n=64) reported that the problem tenants had left by the time the state's attorney contacted them, and 13% (n=30) said that they had taken no particular action, either because the problem was abated without their efforts or it was being ignored. Nine percent (n=21) reported asking non-legal tenants to leave, and only 3% (n=8) said they had improved security (Table 1).

The 1992 study found that a few retaliatory actions had been taken by evicted tenants. The 1993 Cook County study uncovered a bigger problem with retaliation against landlords. Among the respondents in the 1993 study who said they had attempted to evict legal tenants, 35% (n=49) reported that the tenants had tried to resist the eviction. Of those who reported resistance, half (n=25) said the tenants had refused to move. Slightly over one-third (36%; n=18) reported that the tenant had appealed the eviction to the courts. More seriously, 18% (n=9) reported being threatened and two property owners reported that the tenants had damaged their property (Table 1).

Table 1: Survey Results from Cook County Sample

Actions Taken by Landlords Following Abatement Notice*	
Evicted tenants	62%
Tenants had already vacated	28%
Took no action	13%
Required non-legal tenants to vacate	9%
Improved security	3%
Actions Taken by Tenants Against Landlords Following Eviction Notice**	
Tenants refused to move	50%
Tenants appealed eviction	36%
Tenants threatened landlord	18%
Tenants damaged landlord's property	8%

* Numbers do not total 100% because the landlord may have taken more than one action

** Numbers do not total 100% because the tenant may have taken more than one action against the landlord

ASSESSMENT OF THE IMPACT OF ACTIONS TAKEN

In the 1992 study, 59% of the respondents said the eviction had reduced drug problems at the property, 53% said that loitering had decreased subsequent to the eviction, and 47% noted a decrease in vandalism and graffiti. In the 1993 Cook County study, the majority of property owners also felt that drug problems and related signs of disorder improved as a result of their involvement in the abatement process. Eighty percent (n=168) of owners reported that their actions had reduced overall drug problems in their building and 62% (n=130) said that loitering in and around their property had been reduced. Forty-five percent said that vandalism and graffiti were also reduced as a result of their efforts to abate the drug nuisance.

COSTS INCURRED BY THE LANDLORDS

According to the 1992 study, the abatement process was costly to some landlords. Expenses were broken down into (a) legal fees relating to the actual eviction, (b) other legal fees, (c) lost rent and (d) miscellaneous expenses. Twelve of the 22 respondents reported no legal fees with respect to the actual eviction, and several said there were no subsequent costs, either. Others were not so fortunate, and legal fees for these evictions ranged from \$14 to \$5,000. "Other" legal fees ranged from \$100 all the way to \$70,000 (to contest the loss of a rooming house license). The two most costly categories were in lost rent and miscellaneous expenses. Income from rental properties was curtailed for several months up to a year — both non-payment of rent and closure of property for renovation — costing landlords from \$900 to \$45,000 (thus far). Significant costs, enumerated under the "miscellaneous" category, included hiring security guards and paying money for renovations, cleaning and maintenance. Some jurisdictions also required the posting of a bond to ensure against further drug activity on the premises. For example, in one jurisdiction the bond amount is \$5,000, and is returnable after one year. In another jurisdiction, a landlord had to put up the value of the property for one year. This landlord characterized the bond as "putting the house on probation."

In the 1993 Cook County study, slightly over one-third (34%, n=78) of the property owners reported having contacted a lawyer or tried to take their case to court. Nearly two-thirds (63%; n=141) said that dealing with the drug problem had cost them money in the form of either legal fees or lost rent.

MANAGEMENT CHANGES UNDERTAKEN TO AVOID FUTURE PROBLEMS

In the 1992 study, we asked property owners/managers if they had initiated any changes in the way they do business as a result of their experience with the abatement process. Close to half said they had made changes with respect to screening and management, and half said they had not. In some ways this result can be attributed to the fact that for some of the property owners, the problem came with the property. Four of the landlords came into possession of properties in which the drug dealer already resided. In another case, the landlord had rented to a tenant who in turn had sublet the apartment without the owner's knowledge; this person turned out to be a drug dealer. One case involved a man's live-in grandchildren. With respect to any changes made in the way they screen prospective tenants (for those who had this in their control), most landlords said they would "be more careful" and conduct more thorough background checks. One landlord took himself off the low-income property roll, however. He felt this was an unfortunate side effect of the problem but he did not want to face the possibility of being targeted for abatement efforts in the future.

When asked about any changes in management style, the most common answer among property owners in the 1992 study was that they will be more careful, more visible around the property and "nosier." A couple have hired security guards and guard dogs; one off-site owner has a neighbor reporting to her and another has changed the lease to specifically cite drug use as grounds for eviction.

Similar to the 1992 study, the 1993 Cook County study also found that the abatement process caused landlords to alter the way they do business. In the 1993 study, over half (53%; n=110) of the landlords reported that their experience with the drug problem in their building changed how they screen new tenants. Among those who reported a change, 38% (n=38) said they now ask tenants for references; 32% (n=32) said they interview tenants' previous landlords; 12% conduct an employment check (n=12); 12% check the tenants' criminal records (n=12); 10% inform new tenants of drug laws (n=9); and 9% (n=9) have added a credit check (Table 2). Further, 41% (n=156) of the respondents said they were less likely to own or manage rental properties in the future because of their experience with the drug nuisance.

Table 2: Survey Results from Cook County Sample

Impact of Abatement on How Landlords Conduct Their Business	
Ask new tenants for reference	38%
Interview new tenants' previous landlords	32%
Conduct an employment check on new tenants	12%
Check new tenants' criminal record	12%
Inform new tenants of drug laws	10%
Conduct credit check on new tenants	41%

* Numbers do not total 100% because landlords may have initiated more than one change in how they conduct business

ARE ABATEMENT LAWS A GOOD IDEA?

Two-fifths of the landlords in the 1992 survey thought abatement laws were a good idea, one-third thought they were a bad idea and one-quarter were unsure. For those who believed the law was a good idea, most acknowledged its effectiveness at getting rid of a problem — the fact that "it works." For those who did not agree that the law is a good idea, the majority felt that it makes landlords responsible for something they did not do. Some made the point that unless they are on the property themselves every day, watching, they are unlikely to be aware of such activity.

In the 1992 study, several landlords said they would have felt better about the process if they had been informed and prepared. Many did not know in advance that they could be held accountable for drug use/sale on their property, and were surprised and often embarrassed by the abatement notice, saying *they* felt like the criminal. Others said they would have liked to have been informed earlier in the process of drug sales on their property, rather than finding out after several raids or buys.

In the 1993 study, we again asked the respondents whether they thought holding landlords responsible for tenants who deal drugs is a good idea. Even more often than in the 1992 study, the answer was a resounding no: the majority of the property owners (75%; n=156) said it was not a good idea. Among the reasons were: (a) landlords are unaware of tenants' activities (n=64); (b) landlords cannot control tenants (n=13); (c) the police and state's attorney's office should be responsible for dealing with drug nuisances (n=10); (d) landlords should not be held responsible if they cooperate with authorities (n=10); and (e) landlords

become victims of the abatement process (n=9). Respondents who said that they thought the nuisance abatement law was a good idea offered only qualified support. More than half of those providing a reason (n=30) suggested that it was positive only if landlords were aware of the problem, and a few (n=6) thought it was only a good idea if the landlord gets cooperation from outside agencies such as the state's attorney or the police.

CONCLUSIONS

In an effort to close down drug houses, authorities are reinstating old "bawdy house" laws and other Prohibition-era statutes and applying them to drug activity occurring at privately owned properties. Certainly, there are advantages for the criminal justice system (lower standard of proof, use of non-criminal justice resources), but the onus is placed primarily on property owners to clean up drug buildings. The landlords we interviewed had some positive things to say about abatement laws. Most notably, over half thought abatement efforts directed at their property helped reduce drug and disorder problems. However, the vast majority believed the laws are unfair to property owners.

While abatement programs have shown promise in controlling drug sales at particular locations, serious legal and ethical concerns have been raised about their reckless application (see Cheh, this volume). Because abatement strategies hold property owners accountable for tenants' behaviors, these statutes may infringe on owners' rights to use and enjoy property (Smith et al., 1992). Furthermore, statutes that permit authorities to close properties without notifying owners may infringe upon due process rights. Improperly applied abatement laws can injure innocent family members who are evicted along with drug dealers, as well as other tenants who are forced out with the closure of entire buildings.

Ultimately, the success of abatement programs depends on landlords cooperating with city officials to remove drug dealers. If most landlords continue to see the laws as unfair, they may drop out of the real estate market (increasing already high numbers of abandoned inner city properties), or take steps to circumvent the law (reducing compliance). In either case, this does not bode well for the future of abatement programs. City officials should consider ways to positively involve property owners in abatement efforts, and to reduce the overwhelming perception that abatement laws are unfair to owners. Opening the doors of communication through seminars, workshops or town meetings with government attorneys, law enforcement officials and interested property

owners could be valuable and could provide the opportunity to make suggestions to owners on how to screen prospective tenants, provide security, and use abatement laws to their best advantage. This might lead to an atmosphere of cooperation between abatement program staff and property owners, and turn around some of the resentment felt by many owners.



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