

ENROLLMENT(S)



(5)

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 12-178

"Drug-Related Nuisance Abatement Temporary Act of 1998"

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill No. 12-677, on first and second readings, June 2, 1998 and July 7, 1998, respectively. Following the signature of the Mayor on July 20, 1998, pursuant to Section 404(e) of "the Act", and was assigned Act No. 12-420 and published in the August 14, 1998, edition of the D.C. Register (Vol. 45 page 5669) and transmitted to Congress on January 25, 1999 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 12-178, effective March 26, 1999.



LINDA W CROPP
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

Feb. 2,3,4,8,9,10,11,12,22,23,24,25

Mar. 1,2,3,4,5,8,9,10,11,15,16,17,18,19,22,23,24,25

AN ACT

D.C. ACT 12-420

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JULY 20, 1998

*Codification
District of
Columbia
Code
1999 Supp.*

To allow, on a temporary basis, the United States Attorney for the District of Columbia, the Corporation Counsel, or a community-based organization to file an action in the Superior Court of the District of Columbia to enjoin, abate, or prevent a drug-related nuisance.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Drug-Related Nuisance Abatement Temporary Act of 1998".

Sec. 2. Definitions.

For the purpose of this act, the term:

(1) "Adverse impact" means the presence of any one or more of the following conditions:

*Note,
Sections
45-3232,
22-2713,
22-2714*

(A) Diminished real property value which is related to the use, sale, or manufacture of controlled substances or drug paraphernalia in and around the property;

(B) Increased fear of residents to walk through or in public areas, including sidewalks, streets, and parks, due to the use, sale, or manufacture of controlled substances or drug paraphernalia, or violence stemming therefrom;

(C) Increased volume of vehicular and pedestrian traffic to and from the property which is related to the use, sale, or manufacture of controlled substances or drug paraphernalia in and around the property;

(D) An increase in the number of ambulance or police calls to the property which are related to the use, sale, or manufacture of controlled substances or drug paraphernalia, or to violence stemming therefrom;

(E) Bothersome solicitations or approaches by persons wishing to sell controlled substances or drug paraphernalia on or near the property;

(F) The display of dangerous weapons at or near the property;

(G) Investigative purchases of controlled substances or drug paraphernalia by undercover law enforcement officers at or near the property;

(H) Arrests of persons on or near the property for criminal conduct relating to the use, sale, or manufacture of controlled substances or drug paraphernalia;

(I) Search warrants served or executed at the property relating to the use,

sale, or manufacture of controlled substances or drug paraphernalia;

(J) A substantial number of complaints made to law enforcement and other government officials about alleged illegal activity associated with the use, sale, or manufacture of controlled substances or drug paraphernalia in and around the property; or

(K) The discharge of a firearm at the property.

(2) "Community-based organization" means any group, whether unincorporated or incorporated, affiliated with or organized for the benefit of one or more communities or neighborhoods, of defined geographic boundaries, containing the drug-related nuisance, or any group organized to benefit the quality of life in a residential area containing the alleged drug-related nuisance.

(3) "Controlled substance" means any of the controlled substances as defined in section 102(4) of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Code § 33-501(4)).

(4) "Drug paraphernalia" means drug paraphernalia, as defined in section 2(3) of the Drug Paraphernalia Act of 1982, effective September 17, 1982 (D.C. Law 4-149; D.C. Code § 33-601(3)).

(5) "Drug-related nuisance" means:

(A) Any real property, in whole or in part, used or intended to be used to facilitate any violation of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Code § 33-501 *et seq.*); or

(B) Any real property, in whole or in part, used, or intended to be used, to facilitate the use, sale, distribution, possession, storage, transportation, or manufacture of any controlled substance or drug paraphernalia which has an adverse impact on the community.

(6) "Manufacturing" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin or independent means of chemical synthesis, including the packaging or repackaging of the drug or labeling or relabeling of its container.

(7) "Owner" means the individual, corporation, partnership, trust association, joint venture, or any other business entity, and the respective agents of such individuals or entities, in whom is vested all or any part of the title to the property alleged to be a drug-related nuisance.

(8) "Property" means tangible real property, or any interest in real property, including an interest in any leasehold, license or real estate, such as any house, apartment building, condominium, cooperative, office building, storage, restaurant, tavern, nightclub, warehouse, park, median, and the land extending to the boundaries of the lot upon which such structure is situated, and anything growing on, affixed to, or found on the land.

(9) "Tenant" means a person who resides in or occupies real property owned by another person pursuant to a lease agreement, whether written or oral, or pursuant to a tenancy at will or sufferance at common law.

Sec. 3. Action to abate.

(a) Wherever there is reason to believe that a drug-related nuisance exists, the United States Attorney for the District of Columbia, the Corporation Counsel for the District of Columbia, or any community-based organization may file an action in the Superior Court of the District of Columbia to abate, enjoin, and prevent the drug-related nuisance.

(b) Such actions shall be commenced by the filing of a complaint in the Civil Branch of the Superior Court of the District of Columbia against any person alleging the facts constituting the drug-related nuisance.

(c) Such actions shall be in equity and shall be tried without a jury.

Sec. 4. Complaint.

(a) The complaint or an affidavit attached thereto shall describe the adverse impact of the drug-related nuisance upon the surrounding community.

(b) The complaint shall contain a description of attempts made by the plaintiff to notify the owner of the property on which the drug-related nuisance is situated about the drug-related nuisance and the resulting adverse impact. No complaint shall be filed unless a reasonable attempt at notice to the owner of the property on which the alleged drug-related nuisance is situated is made no later than 14 days prior to the filing of the complaint. This notice requirement may be satisfied either by a mailing to the last known mailing address of the owner, or by posting a conspicuous notice at the property stating the general nature of the drug-related nuisance.

(c) When an action is brought pursuant to this act by a community-based organization, the complaint shall be supported by at least 1 person residing, either as a tenant or otherwise, or owning real property within 3000 feet of the property alleged to be a drug-related nuisance. Said support shall be in the form of an affidavit testifying to the fact of the affiant's residence within 3000 feet of the alleged drug-related nuisance, and that the affiant has witnessed the activities alleged to constitute a drug-related nuisance, and the affiant is aware of an adverse impact on the community stemming from the alleged drug-related nuisance.

(d) A copy of the summons and complaint shall be served upon the defendant at least 5 business days prior to the first hearing on the action. Service shall be made in accordance with the Rules of the Superior Court of the District of Columbia, or by posting a conspicuous notice at the property indicating the nature of the proceedings, a copy of the summons, and the time and place of the hearing. If service is made by posting at the property, a copy of the summons and complaint shall be sent, by first class mail, postage prepaid, to the last known mailing address, if any, of the defendant. If the defendant is not the owner of the property, a copy of the summons and complaint shall be mailed to the last known mailing address of the owner.

Sec. 5. Preliminary injunction.

(a) Upon the filing of a complaint to abate the drug-related nuisance, the Court shall hold a hearing on the motion for a preliminary injunction, within 10 business days of the filing of such action. If it appears, by affidavit or otherwise, that there is a substantial likelihood that the plaintiff will be able to prove at trial that a drug-related nuisance exists, the court may enter an order preliminarily enjoining the drug-related nuisance and granting such other relief as the court may deem appropriate, including those remedies provided in section 11. A plaintiff need not prove irreparable harm to obtain a preliminary injunction. Where appropriate, the court may order a trial of the action on the merits to be advanced and consolidated with the hearing on the motion for preliminary injunction.

(b) This section shall not be construed to prohibit the application for or the granting of a temporary restraining order, or other equitable relief otherwise provided by law.

Sec. 6. Protection of witnesses.

If proof of the existence of the drug-related nuisance depends, in whole or in part, upon affidavits of witnesses who are not law enforcement officers, the court in its discretion may issue orders to protect those witnesses, including, but not limited to, placing the complaint and supporting affidavits under seal.

Sec. 7. Conviction not required.

A previous conviction of the defendant, or any tenant or owner of the property, shall not be required to demonstrate a drug-related nuisance.

Sec. 8. Security.

No security bond shall be required to issue a preliminary injunction or temporary restraining order sought by the United States Attorney for the District of Columbia or by the Corporation Counsel. Otherwise, the court may require a security bond to issue a preliminary injunction or temporary restraining order.

Sec. 9. Burden of proof.

The plaintiff must establish that a drug-related nuisance exists by the preponderance of the evidence. Once a reasonable attempt at notice is made pursuant to section 4(b), the owner of the property shall be presumed to have knowledge of the drug-related nuisance. A plaintiff is not required to make any further showing that the owner knew, or should have known, of the drug-related nuisance to obtain relief under sections 11 or 12.

Sec. 10. Evidence of reputation.

In an action brought under this act, evidence of general reputation of the property or tenants is admissible for the purpose of proving a drug-related nuisance, and for the purpose of

proving the knowledge of the defendant of the nuisance.

Sec. 11. Relief.

(a) If the existence of a drug-related nuisance is found, the court shall enter an order permanently enjoining, abating, and preventing the continuance or recurrence of the nuisance. In order to effectuate fully the equitable remedy of abatement, such order may include damages as provided in section 12. The court may grant declaratory relief or any other relief deemed necessary to accomplish the purposes of the judgment. The court may retain jurisdiction of the case for the purpose of enforcing its orders. A drug-related nuisance is a nuisance *per se* requiring abatement as provided under subsection (b) of this section.

(b) Any order issued under this section may include the following relief:

- (1) Assessment of reasonable attorney fees and costs to the prevailing party;
- (2) Ordering the owner to make repairs upon the property;
- (3) Ordering the owner to make reasonable expenditures upon the property, including the installation of secure locks, hiring private security personnel, increasing lighting in common areas, and using videotaped surveillance of the property and adjacent alleys, sidewalks, or parking lots;
- (4) Ordering all rental income from the property to be placed in an escrow account with the court for up to 90 days or until the drug-related nuisance is abated;
- (5) Ordering all rental income for the property transferred to a trustee, to be appointed by the court, who shall be empowered to use the rental income to make reasonable expenditures related to the property in order to abate the drug-related nuisance;
- (6) Ordering the property vacated, sealed, or demolished; or
- (7) Any other remedy which the court, in its discretion, deems appropriate.

(c) In fashioning an order under this section, the court shall consider, without limitation, the following factors:

- (1) The extent and duration of the drug-related nuisance and the severity of the adverse impact on the community;
- (2) The number of people residing at the property;
- (3) The proximity of the property to other residential structures;
- (4) The number of times the property has been cited for housing code or health code violations;
- (5) The number of times the owner or tenant has been notified of drug-related problems at the property;
- (6) Prior efforts or lack of efforts by the defendant to abate the drug-related nuisance;
- (7) The involvement of the owner or tenant in the drug-related nuisance;
- (8) The costs incurred by the jurisdiction or by the community-based organization in investigating, correcting, or attempting to correct the drug-related nuisance;

- (9) Whether the drug-related nuisance was continuous or recurring;
 - (10) The economic or financial benefit accruing or likely to accrue to the defendant as a result of the conditions constituting the drug-related nuisance; or
 - (11) Any other factor the court deems relevant.
- (d) In fashioning an order under this section, the court shall not consider the lack of action by other property owners, tenants, or third parties to abate the drug-related nuisance.

Sec. 12. Damages.

In addition to equitable relief granted under this act, the plaintiff may request, and the court in its discretion may order damages for each day the drug-related nuisance is unabated since the date the defendant first received notice of the drug-related nuisance as provided in section 4(d), or knew or should have known of the existence of the drug-related nuisance, whichever is earlier. Such damages shall be payable to the plaintiff, or, in the case of an action by the United States Attorney for the District of Columbia or by the Corporation Counsel, to the General Fund of the District of Columbia. No other damages are recoverable under this act.

Sec. 13. Violation of injunction or abatement order.

- (a) A violation of any court order issued under this act is punishable as a contempt of court.
- (b) Upon finding that a defendant has willfully violated an order issued under this act, the court may issue any additional orders necessary to abate the drug-related nuisance.
- (c) Upon motion, the court may vacate an order or judgment of abatement if the owner of the property satisfies the court that the drug-related nuisance has been abated for 90 days prior to the motion, corrects all housing code and health code violations on the property, and deposits a bond in an amount to be determined by the court, which shall be in an amount reasonably calculated to ensure continued abatement of the nuisance. Any bond posted under this subsection shall be forfeited immediately if the drug-related nuisance recurs during the 2-year period following the date on which an order under this section is entered. At the close of 2 years following the date on which an order under this section is entered, the bond shall be returned.

Sec. 14. Interpretation.

This act shall be construed liberally in accordance with its remedial purposes. The definition of a drug-related nuisance shall not be subject to any restrictions or limitations upon public or private nuisance actions at common law. This action is civil in nature and none of its provisions should be interpreted as punishment.

Sec. 15. Availability of other remedies.

The provisions of this act shall not limit the availability of other remedies under the law

ENROLLED ORIGINAL

or other equitable relief whether or not an adequate remedy exists at law.

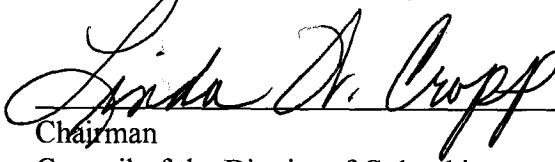
Sec. 16. Fiscal impact statement.

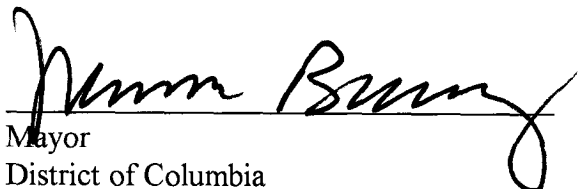
The Council adopts the fiscal impact statement in the committee report on Bill 12-519, the Drug Related Nuisance Abatement Act of 1998, as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Sec. 17. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.


Chairman
Council of the District of Columbia


Mayor
District of Columbia

APPROVED: July 20, 1998



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TWELVE

RECORD OF OFFICIAL COUNCIL VOTE

B12-677

Docket No. _____

| | ITEM ON CONSENT CALENDAR

☒ ACTION & DATE _____

ADOPTED FIRST READING, 6-2-98

☒ VOICE VOTE
RECORDED VOTE ON REQUEST

APPROVED

ABSENT _____

CATANIA AND THOMAS

| | ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote AB - Absent NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date

| | ITEM ON CONSENT CALENDAR

☒ ACTION & DATE _____

ADOPTED FINAL READING, 7-7-98

☒ VOICE VOTE
RECORDED VOTE ON REQUEST

APPROVED

ABSENT _____

THOMAS

| | ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote AB - Absent NV - Present not voting

CERTIFICATION RECORD

Secretary to the Council

Date

| | ITEM ON CONSENT CALENDAR

| | ACTION & DATE _____

☐ VOICE VOTE
RECORDED VOTE ON REQUEST

ABSENT _____

| | ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote AB - Absent NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date