

Approved March 14, 1989  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Michael O'Neal at  
Chairperson

3:30 ~~xxx~~/p.m. on February 23, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Buehler, Peterson and Shriver, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes Office  
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Representative David Heineman  
Representative Anthony Hensley  
Representative William R. Roy, Jr.  
Representative George Gomez  
Mayor Doug Wright of Topeka  
David Holstead, Assistant Shawnee County Counselor  
David Corliss, League of Kansas Municipalities  
Amy Rose Herrick, Highland Park Neighborhood Improvement Association  
Hilary Luna, President East Topeka Neighborhood Improvement Association  
Dominic Gutierrez, Topeka  
Joe Ledbetter, Topeka  
Mary Quiett, The East End Neighborhood Improvement Association  
Ray Bloxsom, Legal Advisor, City of Topeka Department of Police  
Bill McCray, Jefferson Square resident, Topeka

**HEARING ON H.B. 2252 - Waiver of 60 day waiting period in divorce action authorized**

Representative David Heineman explained H.B. 2252 would, in an action for divorce, provide the option, if both parties agree, to waive the 60-day waiting period pursuant to duly authorized settlement agreement filed with the court.

The hearing on H.B. 2252 was closed.

**HEARING ON H.B. 2347 - Nuisances/actions to close "party shacks"**

Representative Anthony Hensley testified H.B. 2347 deals with the problems caused by "party shacks" in Topeka. If a party shack is closed in one neighborhood it opens in another neighborhood. H.B. 2347 was introduced so there would be a specific state law stating how these places can be shut down by city, county, or district attorneys. He pointed out this problem is not unique to Topeka. He presented a memorandum from the Revisor of Statutes office summarizing H.B. 2347, see Attachment I. Also distributed to the Committee was a commentary from Joseph M. Schilling, Deputy City Attorney, San Diego, California, describing how the Drug Abatement Act was used to shut down "crack houses" in California, see Attachment II. H.B. 2347 was modeled after the California Drug Abatement Act.

Representative Willaim R. Roy, Jr., testified in support of H.B 2347. He said he was representing both Downtown Topeka and North Topeka. He stated H.B. 2347 is designed to provide immediate remedies to shutting down "party shacks" and to avoid having them relocate elsewhere, see Attachment III.

Representative George Gomez testified H.B. 2347 deals with the "party shack" problem. The bill is intended to give cities, law enforcement and the public an additional tool to fight illegal activity. This has been tried in other cities and has met with success. The restraining order is the hammer needed to tear down party shacks, see Attachment IV.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 313-SStatehouse, at 3:30 ~~xxx~~/p.m. on February 23, 19 89

Mayor Doug Wright testified in support of H.B. 2347. He said H.B. 2347 would allow the City Attorney to file a civil action to declare a property a nuisance and have it padlocked for up to one year". H.B. 2347 offers property owners appropriate safeguards against the arbitrary or improper seizure of their property and offers the people whose lives are disrupted by the blight of a party shack a way to see that peace and quiet is restored to their neighborhoods, see Attachment V.

In answer to a Committee question he replied allowing a private person who was damaged to bring action in his or her name would be a good addition to the bill.

David Holstead, Assistant Shawnee County Counselor, urged favorable consideration of H.B. 2347. He said H.B. 2347 gives local government a tool with which to combat the establishment and maintenance of "party shacks" by declaring them a nuisance and providing for their closure, see Attachment VI.

The Chairman announced Senator Nancy Parrish, who could not be present, strongly supports H.B. 2347.

David Corliss, League of Kansas Municipalities, testified H.B. 2347 provides limited but clear authority and a straight-forward procedure that can be used to prevent houses or other structures from repeated use by drug and alcohol abusers. He recommended two amendments to H.B. 2347. Lines 54-57 should be amended to read "The order shall provide for the effectual closing of the building or property against its use for any purpose and for keeping it closed for a period of up to one year. Also a new Sec. 3 "The provisions of this act shall be supplemental to any legal authority cities and counties may exercise in identifying, abating and preventing the conduct, maintenance or permitting a nuisance", see Attachment VII. He replied to a question from the Committee that it would be helpful if bond was discretionary of the court.

Ann Rose Herrick, Highland Park Neighborhood Improvement Association, in her testimony, related experiences of people who live near "party shacks". People who complain to the police, and file the appropriate papers, receive threats and are terrified for their safety. She said the conditions of the party shacks are deplorable and they have complained to the Health Department to try to get the houses closed. She submitted a copy of a letter to the Committee, see Attachment VIII, from an insurance company to a policy holder who lived next door to a "party shack", cancelling the insurance on their property. The insurance company listed as one of the reasons for cancelling the insurance coverage was the condition of the adjacent property. The policy holder was advised they could secure insurance from the Kansas All-Industry Placement Facility. Ms. Herrick urged the Committee to recommend H.B. 2347 for passage this session.

Hilary Luna, President East Topeka Neighborhood Improvement Association, stated he had operated a business located with a block and a half of the Main Attraction, a party shack house, and over a two year period four murders occurred at the Main Attraction. Party shacks have a tendency to dissolve the families in the neighborhoods. He said legislation is needed to stop party shack houses.

Dominic Gutierrez who lives a block and a half from a party shack that has been operating for 4 or 5 years, said these houses present not only a danger but a health hazard. The people who live in the neighborhood are afraid to speak out against the houses. He urged the Committee to recommend H.B. 2347 for passage.

Joe Ledbetter said he owns an apartment building near where a party shack house operated for two years before it was closed. He said he would never rent to people who operate party shack houses. He spoke of the problems associated with party shacks in the neighborhoods.

Mary Quiett, the East End Neighborhood Improvement Association testified H.B. 2347 has been needed for a long time and is a step in the right direction in helping to keep neighborhoods safer.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 23, 19.89

Ray Bloxsom, Legal Advisor, City of Topeka, Department of Police, testified H.B. 2347 is an excellent tool for the abatement of problem locations in a community. He commented on 4 areas of the bill, see Attachment IX.

Bill McCray testified he lives in the Jefferson Square area of Topeka. He related how party shacks disrupt the neighborhood and frighten the residents. He proposed there should be a law that would be effective in controlling these houses. He suggested the civil penalty should be \$1,000,000.

The hearing on H.B. 2347 was closed.

The Committee meeting was adjourned at 5:15 p.m.

GUEST LIST

COMMITTEE: JUDICIARY

DATE: Feb 23, 1989

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Raymond A. Blossom	204 S. W. 5th <sup>66603</sup>	Topeka Police Dept.
H. K. C. Blodgett	204 SW 5th	:" " "
Mr Ross Derrick	1919 ANDIANA	Central H.P. NIA
DOMINIC GUTIERREZ	EDS CE CHANDLER	PRIVATE CITIZEN
Mary Luna	1000 E 6th	ETN NIA
Georgia Sue Leuter	1227 S. KS. AVE	MONROE NIA
Lois M. Hens	1210 Monroe	Monroe NIA
Neil Durwell	1740 SE Hudson	Central H.P. NIA
Bonnie M. Fish	1507 East 6th	East Topeka NIA
Judith A Brown	1805 Ohio	Central H.P. Area
Chester Montgomery	1543 Washington	Central H.P. NIA
Dale Cushmanberry	820 S. Quincey <sup>501</sup> Suite	City of Topeka CED
TERRY STEVENS	TOPEKA	CITY OF TOPEKA
Gary D. Deeter	123 W. GORDON	North Topeka Baptist Church
William E. McCray	2505 Jefferson St	Jefferson Sq NIA
Jan Trap	1273 Harrison	Libertarian Party
Margie White	Box 753 - Hope, KS	Clerk of Dist Court
Virginia B. Beaman	716 W. 2ND OAKLEY	Logan Co. District Court
Paul Shelley	Topeka	OJA
DAVE CORLUS	Topeka	LKM
Van Kamp	Topeka	League of Municipalities
Linton Bartlett	Kansas City	City of Kansas City
Bon Smith	Topeka	KBA
Dan N. Hobbs	Topeka	Shawnee Co.
Stella Evans	..	Intern / Crowell



STATE OF KANSAS

ARDEN K. ENSLEY, ATTORNEY  
REVISOR OF STATUTES

NORMAN J. FURSE, ATTORNEY  
FIRST ASSISTANT REVISOR

JAMES A. WILSON III, ATTORNEY  
SENIOR ASSISTANT REVISOR

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AVIS A. SWARTZMAN, ATTORNEY  
DON S. HAYWARD, ATTORNEY  
MARY ANN TORRENCE, ATTORNEY  
WILLIAM L. EDDS, ATTORNEY  
BRUCE W. KINZIE, ATTORNEY  
THERESA M. KIERNAN, ATTORNEY  
GORDON L. SELF, ATTORNEY  
JILL A. WOLTERS, ATTORNEY

COMPUTER INFORMATION STAFF  
MARY O. CHENG, M.S.  
RICHARD M. CHAMPNEY, B.S.



LEGAL CONSULTATION—LEGISLATIVE  
COMMITTEES AND LEGISLATIVE  
LEGISLATIVE BILL DRAFTING  
SECRETARY—LEGISLATIVE  
COORDINATING COUNCIL  
SECRETARY—KANSAS COMMISSION  
ON INTERSTATE COOPERATION  
KANSAS STATUTES ANNOTATED  
EDITING AND PUBLICATION  
RULES AND REGULATIONS  
FILING AND PUBLICATION  
LEGISLATIVE INFORMATION SYSTEMS

OFFICE OF  
REVISOR OF STATUTES  
STATE HOUSE, THIRD FLOOR  
TOPEKA, KANSAS 66612-1592  
(913) 296-2321

TO: Representative Anthony Hensley

FROM: Mary Torrence, Assistant Revisor of Statutes

DATE: February 23, 1989

RE: Summary of House Bill No. 2347

*MAA*

Section 1. Any place where drug or alcohol violations occur is declared to be a nuisance. A city, county or district attorney is authorized to bring a civil action to enjoin the nuisance, sell personal property used to conduct the nuisance, close the place for one year and recover a civil penalty of up to \$25,000. A temporary injunction may be issued pending a final order in the action if the party seeking the injunction files a bond to cover any damages sustained if it's determined that the temporary injunction should not have been issued.

Section 2. Disposition of proceeds from the sale of personal property used to conduct the nuisance is provided for. The injunction may be cancelled if the owner of the place is not in contempt of court, pays all costs and files a bond.

*House Judiciary*  
*2/23/89*  
*Attachment I*

**DRUG ABATEMENT**  
**San Diego's Attempt To "Civilize" Local Drug Dealers**  
by  
**JOSEPH M. SCHILLING**  
**Deputy City Attorney**  
**San Diego, California**

Everyone in the neighborhood knew about the "Titus House." 305-307 Olivewood Terrace was the place to buy the generic size baggie of marijuana or rock cocaine--just like a neighborhood convenience store. Located in a single family residential neighborhood, the Titus family had distributed drugs from this site for nearly 10 years. Everyone in the family had some involvement, ranging from three teenage grandsons to the matriarch, 58 year old Gloria Davis, the suspected manager of this family run business.

Neighbors were terrified to complain. Groups of teenagers would loiter in the front yard of the Titus house closing deals almost every hour of the day or night. Loud, raucous parties would routinely occur on the weekends. Numerous cars would double park on the street while drivers raced to the front door to get their weekly supply. The entire neighborhood was disrupted by this drug business.

During 1987, the San Diego Police Department conducted several undercover purchases with the assistance of confidential informants. This resulted in the execution of four (4) search warrants which netted approximately \$4000 in rock cocaine and marijuana. Twenty-nine (29) drug-related arrests were made at this address between March 1987 and January 1988.

Drug activity was not confined just to this address. From May 1, 1987, until November 13, 1987 over two-hundred (200)

people had been arrested within a two block radius of the "Titus House." These arrests included ninety (90) for drug charges while the remaining included various drug-related offenses like burglary, battery, petty and grand theft and assault with a deadly weapon.

Unfortunately, given our bureaucratic criminal justice system, few of the arrests resulted in convictions which would immediately ban the "businessmen of drugs" from the streets of Olivewood Terrace. Adult members of the Titus family would be diverted to drug treatment programs or grandsons would "take the rap" since juvenile records are sealed once they reach emancipation. A few of the arrests would be lost in motions to suppress. Despite hundreds of hours invested by the Police Department using traditional law enforcement techniques, the Titus family continued their successful drug business.

On January 4, 1988, John W. Witt, City Attorney of San Diego, filed a civil complaint against the landlord and the tenants of 305-307 Olivewood Terrace, invoking a little used provision of the California Health and Safety Code--the Drug Abatement Act. The Superior Court issued a temporary restraining order against the landlord and tenants to cease and desist all drug related activities on the property. Signs were posted advising drug dealers about the court order. Tenants were prohibited from removing any personal property or fixtures. Within a few weeks, the court followed with a preliminary injunction which required the owner to evict the tenants and correct over fifty (50) housing and zoning code violations. Once the tenants leave, the



injunction prevents occupancy until the building is repaired or razed. Meanwhile, the owner must board and secure the premises per the requirements of the Uniform Fire Code.

San Diego is not the only municipality which has considered or used the Drug Abatement Act. The City of Los Angeles was the pioneer in filing such civil complaints against "rock houses" and other hideouts for drug dealers. Since the fall of 1986, the Los Angeles City Attorney has filed ten (10) civil complaints and achieved self-abatement at another thirty (30) locations throughout the nation's largest city. Given the number of apartment buildings and multi-family structures, the Los Angeles City Attorney calculates that they have abated over 600 units.

#### Drug Abatement Act

California Health and Safety Code § 11570 et seq. is a specialized public nuisance statute. Patterned after the turn of the century Redlight Abatement Act, the California Legislature has declared:

Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing or giving away any controlled substance, precursor or analog specified in this division and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

California Health and Safety Code § 11570.

As a creative alternative to traditional criminal enforcement, the Drug Abatement Act authorizes District Attorneys, City Attorneys or private citizens to file civil

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complaints seeking equitable relief to abate and perpetually enjoin the owners, lessees, agents or responsible persons from conducting or maintaining this public nuisance. The focus of the action is on the place as well as the persons committing the illegal drug acts.<sup>1</sup> The court is empowered to issue temporary restraining orders and preliminary injunctions in an effort to abate and prevent the recurrence of the nuisance.

Recognizing the quasi-criminal nature of this action, the Legislature granted the courts some extraordinary powers to abate this unique type of public nuisance:

- (1) Seizure of all fixtures, musical instruments and other moveable property which are used to maintain the nuisance;
- (2) Closure of the building for any use for a period of one year;
- (3) Assessment of a maximum civil penalty of \$25,000 against any of the defendants depending upon the severity and duration of the nuisance;
- (4) Payment of damages equal to the fair market rental value of the property for one year instead of closing the building.

1/ Thus, court orders under the Drug Abatement Act provide relief in-rem (against the property) and in-personam (against the person). Several collections of the reported decisions which support this principle that an injunction "runs with the land" in the abatement of a public nuisances can be found at 12 A.L.R. 431 and 121 A.L.R. 642.. See also, State v. Terry, 99 Wash. 1, 168 P.513 (1917) (Redlight Abatement). At 7 A.L.R. 4th 893 provides a discussion of the owner's knowledge and contempt.

Obviously, the ultimate threat is the court's power of contempt and possible execution and sale of the building itself. Section 11580 allows the court to punish violations of the abatement order by a fine between \$200 and \$1000 or imprisonment for a minimum of one month or not more than six months, or both such fine and imprisonment.

The personal property seized can be sold under execution to pay the costs of keeping the building closed and to pay for the plaintiff's costs in the action. If the proceeds from the personal property fail to fully discharge all of the costs, the building can be sold under order of the court. California Health and Safety Code § 11585. Moreover, this is one of those rare instances where the court can award reasonable attorney's fees to the prevailing party. California Civil Code § 3496.

#### Analysis and Application

A civil action under the Drug Abatement Act provides the municipal attorney with some concrete advantages. The main advantage is time. Instead of wading through the delays of criminal enforcement, a civil complaint which seeks either a temporary restraining order or preliminary injunction can result in immediate relief. Written declarations and affidavits are used to support the municipal attorney's request for provisional relief under these summary court proceedings.

In the Titus case, the City Attorney of San Diego obtained a temporary restraining order which banned further drug activities and prohibited the removal of personal property with only

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twenty-four (24) hours notice of the ex parte hearing. The Police Department served the order and inventoried the personal property to ensure that anything of value was not removed until the hearing on the preliminary injunction a few weeks away.<sup>2</sup> Thus, the City Attorney was able to provide the residents in this neighborhood with some immediate relief from the disruptive activities of the Titus family instead of waiting several months for a trial or preliminary hearing on criminal drug charges.

Another advantage is the burden of proof. At trial, the plaintiff's burden is to show by a mere preponderance of the evidence that a public nuisance exists at the property by virtue of the illegal drug activities. At the summary hearings for preliminary injunctive relief, the burden is even less. The courts usually employ the traditional balancing test of weighing the respective harms between the parties and balancing the

<sup>2/</sup> It is interesting to note that 6 guns were impounded as a result of their inventory.

likelihood of successes on the merits. California courts have derived a special rule when governmental entities seek equitable relief. The plaintiff need only show a likelihood of success on the merits where the ordinance or statute expressly provides for injunctive relief--the harm to the public is presumed. See IT Corp. v. County of Imperial, 35 Cal.3d 63, 672 P.2d 121 (1983).

In considering whether to file such an action, the municipal attorney must carefully evaluate the evidence. Not every case is ripe for Drug Abatement. Does the evidence show a pattern of continuous and repeated drug activity? Most public nuisance statutes are silent on the amount and type of evidence necessary to obtain abatement orders. No published cases exist which interpret California's Drug Abatement Act. Therefore, guidance can only be gleaned from appellate decisions interpreting its sister statute, the Redlight Abatement Act, and general equitable principles which apply to standard nuisance abatement actions.

One of those principles is the continuous nature of the activity. Where the drug activities have occurred over a prolonged period of time, a Drug Abatement action may be the most appropriate method to abate this public nuisance. Twenty-nine (29) arrests were made at the "Titus House" for drug charges in less than a year. Please note that arrests alone may be a sufficient indicator of the drug activity regardless of conviction.

While arrests are one indicator, statements from neighbors are another excellent source of evidence. In one of the cases prosecuted by the Los Angeles City Attorney's office, neighbors

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signed declarations under the penalty of perjury which described the long history of drug activities in their neighborhood. This was particularly persuasive to the court where it prohibited all visitors on the premises and warned the defendants not to intimidate or harass the neighbors.

Not all citizens, however, are so bold as to sign such declarations. The tenants in the Titus case refused to sign such statements because they feared reprisals. Despite its obvious nature as hearsay, statements from the neighbors were included in the police officers' declarations since they were not offered for their truth, but for the officers' response to the neighbors' statements.

The general reputation of the property is another relevant fact where the neighbors can offer their testimony. This source is supported from caselaw interpreting the provisions of the Redlight Abatement Act. The general reputation of a business is admissible circumstantial evidence to prove the existence of a public nuisance. See generally, People v. Macy, 43 Cal.App. 479, 481, 184 Pac. 1008 (1919) (lewd acts); People ex rel. Hicks v. Sarong Gals, 42 Cal.App.3d 556, 561, 117 Cal.Rptr. 24 (1974).

One of the most controversial issues under the Drug Abatement Act is the property owner's personal knowledge and culpability. A cursory review of statutes and cases from other states regarding maintenance of a general public nuisance indicates a split in authority. Some states require the minimal amount of evidence to show that property owners knew or should have known about the public nuisance on their property. In California, the

rule for general public nuisances and Redlight and Drug Abatement is analogous for strict liability. "A showing of personal knowledge on part of the owner or operator of the premises is not a prerequisite to relief under the Redlight Abatement Law."

People v. ex rel. Hicks v. Sarong Gals, 42 Cal.App.3d at 561 [citations omitted].

This is unfortunate that such drastic punishment must be inflicted on the innocent to prevent similar occurrences; but the evil sought to be remedied demands harsh treatment and the owner whose premises are used for immoral purposes must suffer the consequences.

People v. Bayside Land Co., 48 Cal.App. 257, 261, 191 Pac. 994 (1920) (Redlight Abatement).

Public welfare regulations which are silent with regard to intent have been interpreted by the courts to impose criminal responsibility for the prohibited act or omission irrespective of mens rea. See generally, United States v. Park, 421 U.S. 658, 44 L.Ed 2d 489, 95 S.Ct 1903 (1975); Morrisette v. United States, 342 U.S. 246, 256-58, 96 L.Ed 288, 72 S.Ct 240 (1951); People v. Travers, 52 Cal.App.3d 111, 124 Cal.Rptr. 728 (1975) (mislabeling of consumer goods); People v. Bachrach, 114 Cal.App.3d Supp. 8, 170 Cal.Rptr. 773 (1980) (Building Code violations).

Thus, whether the context be civil or criminal, liability and the duty to take affirmative action flow not from the landowner's active responsibility for a condition of his land that causes widespread harm to others or his knowledge of or intent to cause such harm but rather, and quite simply, from his very possession and control of the land in question. [Citation omitted.]

Leslie Salt Co. v. San Francisco Bay Conservation etc. Com., 153 Cal.App.3d 605, 622, 200 Cal.Rptr. 575 (1983).

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In the Titus case, our investigation failed to connect the property owner to any of the illegal drug activities. Despite his lack of knowledge, however, the court issued the appropriate equitable relief under the principles of strict liability.

#### Mechanics

Despite the presence of a Drug Abatement Act or similar public nuisance statute or ordinance, the municipal attorney must also consider the practical limitations of manpower and time in any successful prosecution of such a complex civil action. San Diego established its own internal Drug Abatement Task Force to assist in the identification and coordination of these civil actions. Our experience has shown that most, if not all of the buildings where illegal drug activities were found contained numerous building, fire, health and zoning violations. Therefore, instead of relying entirely upon the Drug Abatement Act, the civil complaint also incorporated causes of action to enforce municipal code violations at the property. This integrated approach increases the likelihood that a landlord will take more responsibility in the management of his or her property and thereby restore some stability to the neighborhood.<sup>3</sup>

3/ The relationship between criminal activity and dilapidated buildings has been well documented by numerous social psychologists. A great source which briefly summarizes the relationship is an article which appeared in the March 1982 publication of the Atlantic Monthly entitled "Broken Windows" by Professor James Q. Wilson of Harvard and George L. Kelling.



The Task Force is comprised of supervisors from the Police Department's Narcotics Division, City Attorney's Office, City Manager, and the Zoning, Building Inspection and Fire Departments. At its monthly meetings, the Task Force discusses and identifies targets throughout the city for investigation as possible candidates for Drug Abatement. Initially, the Police Department researches the computerized crime history of the location and checks with its Narcotics Division to determine the amount and type of illegal drug activity. If an undercover purchase is made, a search warrant is immediately executed against the tenants. The City Attorney's Office then coordinates a joint inspection with members from various Building, Fire and Zoning Departments when the Police Department executes the search warrant. After the police have secured the building, the inspectors take pictures and document the building, fire and zoning violations on the premises.

Inspection reports from the police and the applicable departments are then evaluated by the City Attorney's Office to determine the most appropriate enforcement action. If the drug activity is significant and demonstrates a continuous pattern, a civil complaint is prepared pursuant to the Drug Abatement Act. Building, fire and zoning violations are included in the complaint as well. If the drug activity is minimal, the departments are instructed to proceed with standard enforcement policies regarding the building, fire and zoning violations while the police continue surveillance for drug activity.

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Since its first meeting in October 1987, the Drug Abatement Task Force has considered nearly thirty (30) properties and has targeted over a dozen single family and multi-family buildings for Drug Abatement. Almost all of these structures exhibit significant housing, fire and zoning violations, thereby providing empirical evidence to support the relationship between crime and dilapidated and abandoned property as explained in the article on the "Broken Window Theory."

One of the initial actions taken by the Task Force was to cross train the narcotics police officers and the department inspectors. Both are now equally familiar with their respective areas and responsibilities. When the officers search a particular building they can now identify some of the basic building, fire and zoning violations. The department inspectors can now recognize some of the signs of the drug culture, i.e., drug paraphernalia, and refer such cases to the Narcotics Division for further investigation.

As part of this training, the City Attorney's Office taught a session on the civil litigation process. Most police officers were unfamiliar with the necessity to reinspect and monitor the property. Unlike standard criminal investigations which focus on the events of a single incident, periodic monitoring is necessary so the court can determine whether the defendants have complied with the terms of the injunctive order. Should the defendants continue to maintain or permit the illegal drug activities, the court could hold them in contempt and even enter the abatement order at the preliminary injunction stage. If the only way to

abate the nuisance is the immediate closure of the building, California Health and Safety Code § 11581 provides this extraordinary relief. People v. Adult World Bookstore, 108 Cal.App.3d 404, 409, 166 Cal.Rptr. 519 (1980) (Redlight Abatement).

One facet of civil litigation which thrilled the police department was the potential ability to recover their costs of investigation. Civil Code § 3496 permits the recovery of investigative costs and attorney's fees in Drug Abatement actions. The owner in the Titus case stipulated to partial payment of the nearly \$3600 in total costs for the police department's investigation. No attorney fees were asserted. Unfortunately, the tenants had little tangible assets worth the time and effort to seize and auction.<sup>4</sup>

<sup>4/</sup> Last October, the City Attorney recouped over \$5000 in costs and another \$5000 in civil penalties for a Redlight Abatement action against two massage parlors where they engaged in acts of prostitution.

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### Results & Comments

Olivewood Terrace is once again a quiet single family neighborhood for the first time in nearly ten years. No more crowds loiter in front of the Titus house. No more drug deals. No more loud parties. No more cars buzzing through the neighborhood.

This first case stirred lots of media attention. The Police Department and City Attorney's Office received numerous requests from landlords and their attorneys for the citation to this "new fangled" law. Some property owners anxiously inquired on whether their property was next. This media attention will also make it easier for the City Attorney to request self-abatement by merely mailing demand letters where landlords have indicated an apparent desire to cooperate.

Drug Abatement actions force a partnership between property owner and government in a joint battle against the proliferation of illegal drugs. It reminds landlords about their responsibilities as property owners. No one expects property owners to monitor the daily lives of their tenants. Yet, property owners cannot ignore the continuous and repeated drug deals which occur on their property.

Last week, the property owner signed a stipulated final judgment in the Titus case to settle this litigation. He agreed to evict the tenants and make the necessary repairs or demolish the structures within ninety (90) days. Meanwhile, the buildings will be boarded per the requirements of the Uniform Fire Code. The judgment allows the owner to transfer the property, but only

if the owner notifies any prospective purchaser about the building, fire and zoning violations. While the judgment technically does not run with the land, a new owner would be placed on notice about the past public nuisance on the property.

After the filing of this civil action, Gloria Davis, the family leader of the drug operation, decided to plead guilty to one of the pending criminal cases against her for possession and sales of rock cocaine. At her sentencing, the judge thoroughly reviewed our civil complaint and declarations. As a result, Ms. Davis will be serving time in county jail instead of being placed on probation.

What about the rest of the Titus family? Will this Drug Abatement action permanently stop these people from dealing in drugs? No. Drug Abatement is not the panacea. Despite all of the optimism and advantages, a civil action under the Drug Abatement Act is not going to permanently solve our nation's drug crisis. Our nation's drug crisis is deeply rooted in a maze of complex economic and cultural norms. While Drug Abatement is not the magic elixir, it can be one of the innovative treatments to isolate this spreading disease from the very heart of our neighborhoods and communities.

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WILLIAM R. ROY, JR.  
 REPRESENTATIVE, FIFTY-THIRD DISTRICT  
 STATE CAPITOL  
 TOPEKA, KANSAS 66612



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: FEDERAL AND STATE AFFAIRS  
 JUDICIARY  
 TAXATION  
 RANKING MINORITY MEMBER: RULES AND  
 JOURNAL

February 23, 1989

TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE

HB 2347 -- PARTY SHACKS

Mr. Chairman and Members of the Committee:

Two short years ago there was a party shack here in the downtown Topeka business district, only a block from the Capitol grounds. After the legally operated taverns and private clubs had closed for the night, a party shack would come alive in the early morning hours in the 1000 block of Kansas Avenue, across the street from a high rise building of senior citizens apartments.

Beginning between 2 and 3 a.m., persons gathered to party until dawn. They fueled their nocturnal activities with drugs and alcohol that were being illegally sold in and around the building. Both in the building and around the building people would carry on in a loud and raucous manner -- music blasting, yelling obscenities, relieving themselves, and threatening any local residents who would dare to challenge their fun or behavior.

The cars of local residents were broken into and vandalized, with stereos and CB radios stolen, and glove compartments ransacked. Cars were also stripped of batteries, alternators and other parts.

Sitting in their cars parked on public streets, persons would engage in sexual activities and -- to state it politely -- would perform acts that were neither modest nor subtle.

Often threats were made. Weapons were brandished. Gunshots were fired. The advice of police to residents in order to avoid being hurt was for residents to stay back from their apartment windows.

This went every Friday and Saturday night for over six months -- residents being harassed, threatened and being unable to sleep -- before law enforcement officials were able to close the place down.

*House Judiciary  
 2/23/89  
 Attachment III*

But closing down this or any other location does not always eliminate the problem. It only causes the problem to move to a new location.

House Bill 2347 is designed both to provide more immediate remedies to shutting down these types of operations and to avoid simply having them relocate elsewhere.

By authorizing removal of all fixtures, musical instruments and other property used in conducting, maintaining, aiding or abetting the nuisance [Section 1(d)], items that are needed for carrying on the nuisance elsewhere are no longer immediately available.

Another advantage to law enforcement under this bill is the lesser burden of proof required for civil actions versus the stricter burden required to establish criminal wrongdoing. The plaintiff's burden is to show by a mere preponderance of the evidence that a public nuisance exists versus the requirement of "beyond a reasonable doubt" in a criminal matter.

Third, this bill reminds landlords about their responsibilities as property owners, increasing their interest in how property is managed and improving neighborhood stability.

Last, by requiring that persons bringing the action post a bond, frivolous or malicious actions will be avoided.

Our nation's drug problems have many sources. While this bill is not a magic wand to eliminating the problems of drugs or party shacks, it provides still another new and better tool to law enforcement to combat these problems.

House Bill 2347 concerns what we in Topeka call the "party shack problem." This bill tries to stop illegal activity. In a party shack liquor and beer are sold at all hours. Gambling and prostitution flourish. Certainly, illegal drug sales are made every day in the party shacks. Gunshots are heard. There are shootings.

The problem is not only crime. All party shacks instill a certain terror in the neighborhood. Neighbors are afraid to come out on their porch at night. They are kept up at night. Neighbors have people urinating in their front lawn. If you object, you are threatened.

Traditional law enforcement mechanisms have so far been unable to meet the problem. Some of the shacks have been raided. They still flourish and are active in our neighborhoods. They are now moving to other neighborhoods in the city. Party shacks are not restricted to poor neighborhoods, and they are beginning to move to any neighborhood where there is a rental house. In one neighborhood an elderly person lives next to the party shack. The house next to them seems to have no water and is heated by a wood-burning stove. It is questionable whether there is electricity in the house. Windows are broken and some are boarded up.

This bill is intended to give our cities, law enforcement, and the public an additional tool to fight illegal activity. It has been tried in other cities and has met with success. The restraining order is the hammer needed to tear down party shacks.

*House Judiciary  
2/23/89  
Attachment IV*





# CITY OF TOPEKA

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Douglas S. Wright, Mayor  
215 E. 7th Street - Room 302  
Topeka, Kansas 66603  
Phone 913-295-3895

I am Doug Wright, Mayor of Topeka. I appear in support of HB 2347.

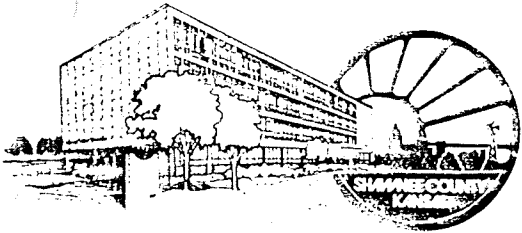
I applaud the introduction of this bill by the 10 members of the Shawnee County delegation in the House. Their action is a direct response to the concerns of citizens of Topeka who are fed up with party shacks in their neighborhood. But, the problem of party shacks is not limited to Topeka alone and, in fact, is experienced in many cities throughout Kansas and the United States. Your support is needed to make HB 2347 the law of the State of Kansas.

As Mayor of Topeka, I hear firsthand the anger and despair felt by these citizens who complain about these party shacks. Our police department encourages citizens to help them fight crime, but we find that party shacks present problems which can't be remedied quickly, at least with existing criminal statutes. I share the desire of the neighbors who have party shacks in their neighborhoods and the law enforcement authorities who want to do something to be able to take action to abate the problem. HB 2347 provides us with what is needed.

HB 2347 would allow the City Attorney to file a civil action to declare a property to be a nuisance and have it padlocked for up to 1 year. Now, the police must build a criminal case, something it is increasingly more time-consuming and difficult to do. As a lawyer and former Assistant City Attorney, it is my opinion that HB 2347 offers property owners appropriate safeguards against the arbitrary or improper seizure of their property, but more importantly, it offers the people whose lives are disrupted by the blight of a party house a way to see that peace and quiet is restored to their neighborhood.

I urge your support of HB 2347. Topeka needs it in order to have another arrow in our quiver as our police department and our people take aim against crime.

*House Judiciary*  
*2/23/89*  
*Attachment V*



Shawnee County  
**Board of Commissioners**

Rm. 205, Courthouse Topeka, Kansas 66603-3970  
(913)291-4040

Winifred Kingman, 1st district  
Velma Paris, 2nd district  
Eric K. Rucker, 3rd district

February 23, 1989

TO: HOUSE JUDICIARY COMMITTEE

Honorable Chairman and members of the Committee, I am David Holstead, Assistant Shawnee County Counselor. On behalf of the Board of County Commissioners of the County of Shawnee, Kansas, I would like to thank you for the opportunity to speak to you about House Bill No. 2347 and urge your favorable consideration of this fine piece of legislation.

Any Shawnee County resident who has read the newspaper regularly for the past year has noticed the numerous raids and arrests that have been carried out on premises known as "party shacks." The number and nature of arrests made during these raids indicate that serious violations of our drinking and drug laws are occurring in neighborhoods throughout Topeka and Shawnee County. This type of activity not only weakens the social fabric of our community, but is a microcosm of the nationwide problem of alcoholism and illegal drug traffic that is currently besieging this Country.

Legislation such as House Bill No. 2347 is an attempt to eradicate from Kansas the unlawful drinking, taking of drugs, gambling and prostitution that occur at these so called "party shacks" and are proving to be a menace to our communities. House Bill No. 2347 gives local government a tool with which to combat the establishment and maintenance of "party shacks" by declaring them a nuisance and providing for their closure.

In summary, the Board of County Commissioners lends its support for House Bill No. 2347 and endorses it as written. The Board of County Commissioners urges the Committee to recommend this bill for adoption by the Legislature.

Any questions? Again, thank you for your time.

*House Judiciary*  
*2/23/89*  
*Attachment VI*



**League  
of Kansas  
Municipalities**

**Municipal  
Legislative  
Testimony**

*An Instrumentality of its Member Kansas Cities. 112 West Seventh Street, Topeka, Kansas 66603 Area 913-354-9565*

To: House Judiciary Committee  
FROM: David Corliss, League of Kansas Municipalities  
RE: House Bill 2347, "Party Shack" Nuisances  
Date: February 23, 1989

By action of the League's State Legislative Committee, the League of Kansas Municipalities appears in support of House Bill 2347. House Bill 2347 would provide an additional tool for city officials to use in combating illegal activities in their community and in responding to their important responsibilities regarding neighborhood safety.

City officials are increasingly concerned about illegal drug and alcohol use in their communities, and the deterioration of neighborhoods with "party shacks" or "rock houses" that shelter illegal activities. It is an appropriate exercise of governmental power to prevent the use of buildings or other structures that are conduit for the illegal sale or use of controlled substances or alcohol.

Cities currently have home rule and statutory authority to abate nuisances that are harmful to the public health and safety, such as condemnation procedures against dangerous structures. State law does not currently provide authority for preventing the use of buildings or property that have been the vehicle for criminal activities. House Bill 2347 provides limited, but clear authority and a straight-forward procedure that can be used to prevent houses or other structures from repeated use by drug and alcohol abusers. Municipal officials in other states, such as California, have successfully used public nuisance laws, similar to House Bill 2347, to reduce "party shack" problems that their communities have experienced.

The League respectfully recommends two amendments to House Bill 2347:

Lines 54:57: The order shall provide for the effectual closing of the building or property against its use for any purpose and for keeping it closed for a period of up to one year.

The attached amendment, recognizing the current authority of cities regarding nuisance abatement, is needed to clarify that the bill is supplemental to current authority.

*House Judiciary  
2/23/89  
Attachment VII*

81 proceeds of such sale shall be applied as provided by subsection (b).

82 (d) If the owner of the building or property has not been guilty  
83 of contempt in the proceedings and appears and pays all fees, costs  
84 and fines enumerated in subsection (b)(1), (2), (3) and (4) and files  
85 a bond in the full value of the building or property conditioned on  
86 the owner's prevention and immediate abatement of any nuisance  
87 that may exist at the building or property within one year thereafter,  
88 the judge, if satisfied as to the owner's good faith, may order that  
89 the building or property be delivered to the owner and that the  
90 injunction be cancelled. The release of the building or property  
91 pursuant to this subsection does not release it from any judgment,  
92 lien, penalty or liability to which it may be subject.

4 ~~93~~ ~~Sec. 3.~~ This act shall take effect and be in force from and after  
94 its publication in the statute book.

Sec. 3. The provisions of this act shall be supplemental to any legal authority cities and counties may exercise in identifying, abating and preventing the conduct, maintenance or permitting of a nuisance.

*Amy Rose Herrick*

# American Family Insurance Group



P.O. BOX 638 • ST. JOSEPH, MISSOURI 64502 • PHONE: (816) 364-1541

AMERICAN FAMILY MUTUAL INSURANCE COMPANY  
AMERICAN STANDARD INSURANCE COMPANY OF WISCONSIN  
AMERICAN FAMILY LIFE INSURANCE COMPANY  
AMERICAN FAMILY FINANCIAL SERVICES, INC.

June 22, 1987

Kenneth W. & Edith L. Lakin  
1707 Hudson  
Topeka, KS 66607

Re: Policy #15-P73738-01  
Homeowners Form 3- 1707 Hudson, Topeka, KS.

Mr. & Mrs. Lakin, as do all insurance companies, we have standards which help us determine whether we can provide insurance in individual cases. To our regret, we have concluded that we must ask you to secure insurance coverage through some other source. Coverage will continue until 12:01 A.M., Standard Time, at the address shown in the policy on July 25, 1987, at which time and date all coverages shall cease.

We feel you are entitled to know the reason for our decision to terminate this insurance. In view of the general condition and maintenance of the property as well as the condition of the adjacent property to the north, we can not continue coverage.

This action does not imply that you are uninsurable, nor does it prevent you from obtaining other insurance. You or your Agent may apply to the Kansas All-Industry Placement Facility for other property insurance. Application may be made by mail or in person to the Kansas All-Industry Placement Facility, 6220 SW 29th St., Topeka, KS 66614.

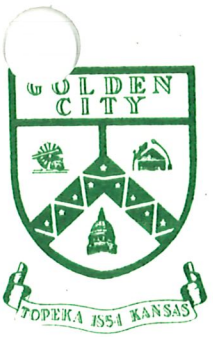
Any refund resulting from this termination will be adjusted through your Agent who will make settlement with you after receiving this information.

James R. Keever- Resident Senior Underwriter  
AMERICAN FAMILY MUTUAL INSURANCE COMPANY

JRK:pm

cc: Gladys Keith

*House Judiciary  
2/23/89  
Attachment VIII*



# CITY OF TOPEKA

Department of Police  
204 W. 5th Street  
Topeka, Kansas 66603  
Phone 913-854-9551

## COMMENTS FOR THE HEARING ON H.B. 2347 SCHEDULED FOR FEBRUARY 23rd, 3:30 P.M.

The Topeka Police Department wishes to thank the Committee for this opportunity to be heard on this piece of legislation.

We believe this bill clearly and fairly addresses a very real problem not only in our community, but in other communities and counties around the State of Kansas. We view the nature of the problem as a priority matter for alleviation of a grave danger to the citizens in the vicinity of these operations.

The Bill as presented does offer a quick and ready response to the problems, and will be of benefit.

1. There is a chilling effect for Law Enforcement if the need to have a bond posted with the granting of a temporary injunction is open-ended. The City (and most probably the District Attorneys) will not be willing to carry forward a case that might leave their jurisdiction open for unknown, unknowable, charges at some later time. Make this an "amount certain" in some reasonable figure...if the persons creating the hazard/nuisance are only open to \$25,000 civil penalty, set the same amount for those trying to eliminate the problems.
2. Innocent third parties may have property such as band instruments on the premises; I think we would utilize good judgement and let them get that out, but might we by subject to criticism if we did so, as those items are subject to sale.
3. Sect. 2, Line 76...is this the owner of the fixtures and instruments and moveable property, or the real property?
4. Line 85..should this be stated as the value with the Appraiser's Office, or fair market value, or may the court set a value?

All said, this is an excellent tool for the abatement of problem locations in ~~every~~ every community afflicted by them...

*Raymond A. Bloxson*

Ray A. Bloxson  
Legal Advisor

*Robert L. Weinkauff*

Robert L. Weinkauff  
Chief of Police

*House Judiciary  
2/23/89  
Attachment IX*