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EXPEDITED EVICTION OF DRUG TRAFFICKERS ACT

House Bill 4267

Sponsor: Rep. Martha Scott

Committee: Judiciary

Complete to 3-17-97

A SUMMARY OF HOUSE BILL 4267 AS INTRODUCED 2-11-97

House Bill 4267 would create the Expedited Eviction of Drug Traffickers Act, which would allow for landlords, tenant organizations, or prosecuting, municipal, county, or state attorneys to bring an action to evict a tenant or restrict another person from rental property due to the individual's involvement in drug-related criminal activity. A tenant organization could not initiate an action under the bill unless the organization were represented by a licensed attorney. If the person who started an action under the bill failed to prosecute the matter with reasonable diligence, the court could appoint another individual who would have been eligible to initiate the action to continue the action, with that person's permission.

An eviction action could be brought under the bill against not only a tenant (a person who had actually signed the lease agreement renting the property) but members of the tenant's household, guests, or residents (people legally living at the property who was had not signed the lease agreement). However, if the action were brought by someone other than the landlord, the owner of the property would also have to be included as a defendant. An agent of the owner could also be included as a defendant and would have the right to appear and participate in all proceedings under the bill.

The bill would provide for two types of evictions: first, a "complete eviction" which would mean the eviction and removal of all members of the tenant's household, and second, a "partial eviction" which would mean the eviction and removal of specific persons other than the tenant from the leased residential premises. Grounds for either type of eviction would have to be established by a preponderance of the evidence.

To begin an action for eviction under the bill, the party seeking the eviction (the plaintiff) would have to personally serve the complaint on all the defendants. However, if he or she were unable to complete service within 20 days after the complaint was filed with the court, the plaintiff could file an affidavit with the court asserting that after reasonable diligence personal service could not be completed. If personal service were unsuccessful, the plaintiff could complete service by certified mail and posting a copy of the complaint on the main entrance to the premises and all entrances of the particular rental property in question. Such service would be considered complete five days after proof was filed with the court that the complaint had been so mailed and posted. If the plaintiff did not know the defendant's real name, an eviction action under the bill could be brought against the defendant under a fictitious name, provided that the complaint stated that the name was fictitious and including a sufficient description of the defendant to identify him or her. There would be no requirement that a tenant be given a notice to vacate the premises

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before a complaint under the bill was filed against him or her. Along with the notice of the suit provided to the defendants, reasonable notice would also have to be provided to all the tenants and residents of the premises so that they might be given an opportunity to be heard at all the hearings on the matter.

The court would be required to schedule a hearing on an action brought under the bill within 15 days after the complaint was filed. No continuances or stays would be granted except for compelling and extraordinary reasons or for good cause if sought by the prosecuting attorney. In addition, the landlord or owner would be entitled to continue to receive rent from the tenant while an expedited eviction action was pending.

In an expedited eviction action the court would be required to order the immediate eviction of a tenant if the court found by a preponderance of the evidence that one or more of the following was true:

- 1) Drug-related criminal activity had occurred on or within the rental unit leased to the tenant.
- 2) The tenant's rental unit was used to further or promote drug-related criminal activity.
- 3) The tenant, any member of the tenant's household, or any guest engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the leased residential premises.
- 4) The tenant knowingly permitted or invited an individual who had been barred under the bill from the leased residential premises to return or re-enter the premises.
- 5) The tenant failed to immediately notify the law enforcement or public housing authorities that an individual who had been barred from the tenant's rental unit had returned or re-entered the rental unit.

If the court found that a member of the tenant's household engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the residential premises, the court would be required to order that person's immediate removal from the premises. If an individual's removal was ordered in this fashion he or she would be barred from returning to or re-entering any portion of the premises. If the individual were not under the court's jurisdiction, was not named as a party, or had not appeared in the action, the court's removal order would have to be directed against the tenant and would require the tenant to refuse entry to the barred individual as a condition of the tenant's tenancy. The tenant would be required to acknowledge in writing that he or she understood the court's order and that failure to comply with the order would result in the termination of the tenancy.

The party that brought the eviction action would be required to enforce the removal or eviction order. However, if the party requested it, the appropriate law enforcement agency would be required to take responsibility for the actual execution of the removal or eviction. Any person authorized to be a plaintiff in an eviction action under the bill could bring a motion to enforce a removal order issued under the bill at any time. Such a motion would have to be heard by the

court on an expedited basis and if the defendant were found to have violated an express term or condition of an order issued by the court under the bill, the court would be required to order the immediate eviction of the tenant.

Proof that the drug-related criminal activity was an isolated incident or had not recurred would not be a defense, nor would proof that the person who actually engaged in the drug-related criminal activity no longer resided in the tenant's rental unit. However, in spite of sufficient evidence to support the eviction of a tenant, the court could find that an affirmative defense existed if the tenant proved all of the following:

- 1) He or she had not been involved in the drug-related criminal activity.
- 2) He or she did not know or have reason to know that the drug-related criminal activity had occurred or that the rental unit was being used to further drug-related activity or that a guest or member of the tenant's household had engaged in drug-related criminal activity on or in the vicinity of any portion of the entire premises.
- 3) He or she had done all that could reasonably be expected under the circumstances to prevent the drug-related criminal activity.
- 4) He or she promptly reported drug-related criminal activity to law enforcement authorities.

If the defendant proved this affirmative defense by a preponderance of the evidence, the court could choose not to order the complete eviction of the tenant.

Furthermore, if the court were convinced by clear and convincing evidence that immediate eviction or removal would be a serious injustice based on the circumstances of the criminal activity and the condition of the tenant, and that the prevention of the injustice overrides the need to protect the rights, safety, and health of the other tenants and residents of the premises, the court could choose not to order the eviction.

Even if the court decided not to order a complete eviction based on one of the grounds listed above, the court would still be required to order the partial eviction of any persons other than the tenant who had engaged in drug-related criminal activity on any portion of the premises. Such persons would be permanently barred from the entire leased residential premises and the tenant would be forbidden from permitting that individual from entering any part of the leased residential property as a condition of continuing his or her tenancy. The tenant would have to acknowledge his or her understanding of the order and the consequences of violating the order (mandatory termination of the tenancy) in writing. If the tenant refused to acknowledge the terms of the order, the court's prior findings in the tenant's favor would be nullified.

The court would also have the authority to grant temporary restraining orders, order preliminary relief, or take other action as needed to enjoin or prevent the commission of drug-related criminal activity on or in the immediate vicinity of leased residential premises or to protect

the rights and interests of the tenants and residents. Anyone who violated a preliminary restraining order or other preliminary relief would be held in civil or criminal contempt.

On the application of the tenant or the individual that was to be removed the court could *suspend* the execution of an order for complete or partial eviction for no more than 10 days for the purpose of referring the tenant or other individual to a licensed substance abuse treatment program or other similar facility for an evaluation to determine whether the person would be a suitable candidate for a stay of execution of eviction to allow him or her to take part in a treatment program. In order for the court to suspend the execution of the eviction, all of the following circumstances would have to exist:

- The individual asserted that he or she was drug dependent, and was willing to participate in a licensed treatment and monitoring program recommended by the substance abuse treatment program and approved by the court, had not previously been placed in a treatment program for as part of a stay of an eviction, and had agreed to participate in the course of treatment recommended; and
- The court was clearly convinced that the temporary suspension of the execution of the eviction order would not endanger the safety of the community or jeopardize the rights or interests of other tenants and residents of the premises.

The suspension of the execution of the eviction would automatically expire after 10 days or on the date fixed by the court, whichever was shorter if a stay was not granted before then. The eviction order would be carried out immediately when the suspension expired unless a stay was granted.

The court could grant a stay to a tenant or to another person subject to removal in order to participate in a treatment program. In order to be granted a stay, the individual would have to establish by clear and convincing evidence that all of the following circumstances existed:

- 1) The person was drug dependent and the drug-related criminal activity was committed to support the person's drug dependency;
- 2) If the person was an adult, there was no evidence that he or she distributed drugs to anyone under 16 years of age;
- 3) There was no evidence that the individual unlawfully used or possessed a firearm on the leased premises, or that the individual used or threatened to use violence during the commission of the acts for which he or she was to be evicted;
- 4) The individual had not previously been granted a stay for treatment purposes under the bill;
- 5) The individual had agreed to participate in the recommended treatment program;

6) The stay would not endanger community safety or otherwise unduly jeopardize the rights or interests of other tenants and residents; and,

7) Participation in the treatment program would benefit the individual by addressing his or her drug dependency and would thereby remove the incentive for him or her to engage in drug-related criminal activity.

When a person applied to the court for a suspension, stay, or discharge of an order of eviction, the court would be required to allow the plaintiff in the underlying eviction action and the tenant organization for the premises in question (whether or not the organization had appeared in the eviction action) an opportunity to be heard on the issue. In addition, both the organization and the plaintiff would also have the right to initiate an action for a violation of the terms of the stay.

If the court granted a stay, the individual would be required to take part in the recommended treatment program and undergo periodic testing as a condition of the stay. The stay would include reasonable terms and conditions in the same fashion as if the person were on probation following a criminal conviction. These terms and conditions would have to include a requirement that the person comply with all rules and regulations of the treatment program. The terms could also include, but would not have to be limited to, a curfew, and restrictions upon the person's associations and places he or she could travel. The terms of the stay could be modified at any time by the court; however, if the court decided to *remove* any significant terms, notice would have to be provided to the plaintiff and the tenants organization.

In order to remain on probationary tenancy, the person would be required to consent to all of the terms and conditions of the stay and would be required to acknowledge in writing that he or she understood and accepted those conditions. If he or she was unwilling to accept or comply with the conditions, the stay would automatically be rescinded and the order of eviction would be immediately enforced. On the other hand, if the individual complied with the conditions, the stay would remain in effect for six months, and the court could extend the stay for an additional six months if recommended by the treatment program.

The individual would be required to begin participation in the treatment program or be placed upon a certified waiting list for the treatment program within ten days of the entry of the court's order granting the stay. If the person were placed on a certified waiting list, he or she would have to submit to regular drug testing, and attend no fewer than five 12-step recovery meetings per week until the treatment program began. If the individual had not begun a treatment program or been placed on a waiting list within the ten days, the stay would automatically be rescinded, unless the court determined that there were extraordinary and compelling reasons to reinstate the stay until the person could participate in the recommended course of treatment by a date set by the court.

The treatment program would agree in writing to report to the court on the individual's progress and compliance, promptly report any significant failure to comply and immediately advise the court if the person ended his or her participation in the treatment program. The

individual would be required to sign or have signed by his or her parent or guardian, if necessary, consent forms to allow the program to release this information to the court.

The county probation agency and, in the case of a juvenile, the Family Independence Agency, could be assigned to assist with monitoring and supervising the individual's participation and compliance in the treatment program. The county probation department could also be given the responsibility of administering periodic drug testing with violations to be reported to the court.

The first time an individual significantly violated the terms or conditions of his or her probationary tenancy, the court could rescind the stay. On any subsequent violation or if the treatment program recommended it, the court would be required to rescind the stay, unless there were extraordinary and compelling reasons not to. After a first significant violation, the court would have to consider the nature and seriousness of the violation related to the individual's progress and the recommendations of the treatment program in deciding whether or not to rescind the stay. Unless the treatment program recommended another course of treatment, the program's decision to discontinue the treatment of an individual would cause the revocation of the person's probationary tenancy and the rescission of the stay. Notwithstanding any other provision, the court could immediately rescind the stay if it found reasonable grounds to believe that the individual had been involved in drug-related criminal activity, whether or not the activity occurred on the premises in question.

During the course of a probationary tenancy, an action for a violation of the terms and conditions could be initiated by anyone who could have initiated an action for eviction under the bill, as well as by the treatment program, any agency assigned to assist in monitoring the probationary tenancy, or by the court. Such an action would be summary in nature and would have to be decided within five days of the court's notice of the violation.

After the term of the probationary tenancy had expired, if the individual had satisfactorily complied with the conditions of the treatment and no longer posed a risk to the other residents and tenants of the leased residential premises, the court could *discharge* the order of eviction and dismiss the underlying action. This would not, however, bar a new action from being instituted at any time.

Before the court could have an individual removed under the bill's provisions, the person would have to be provided with notice of the removal, outreach information, and referral materials on how to obtain treatment for drug and alcohol abuse. No less than ten days before the person's removal, the court would be required to notify the local alcohol and other drug agency, the local child welfare agency if applicable, and other appropriate social services agencies of the removal. Outreach information and referral materials would be prepared by the Office of Substance Abuse Services or its designee to provide information and materials to all the courts that could issue orders in cases brought under the provisions of the bill. The Office of Substance Abuse Services would also be responsible for compensating licensed treatment programs for treatment services provided to individuals who were subject to removal under the bill's provisions. The office would also have the responsibility of creating rules to govern the treatment programs and how they were compensated. Money for compensation would be drawn from the

Treatment for Displaced Residents Fund created in the Drug Nuisance Abatement Act (House Bill 4269).

In an eviction action under the bill, the fact that a criminal prosecution for the drug-related criminal activity had not been started, was not yet complete, or did not result in a conviction or adjudication of delinquency, would not preclude any action or order under the bill. However, if a criminal prosecution for the drug-related criminal activity resulted in a determination of guilt or responsibility, that result would create a rebuttable presumption that the violation occurred and a final conviction or adjudication would bar the defendant or juvenile from denying the essential allegations of the criminal offense in any subsequent civil proceedings under the bill. Any evidence from the adult or juvenile criminal proceedings could be admitted in an action under the bill.

If evidence or records of a criminal proceeding that did not result in an adjudication of delinquency were closed, the court could order those records and evidence opened if it found that the evidence and records were relevant to the fair disposition of an action under the bill.

In an action under the bill, the parties would not be entitled to conduct discovery except by leave of the court and if needed to ensure the fair disposition of the action. However, the plaintiff would be required to provide the tenant and all other named defendants with a reasonable opportunity to examine relevant documents and records within the plaintiff's possession that directly related to the action, unless otherwise protected by the provisions of the bill.

Law enforcement agencies would be required to provide full or edited police and/or forensic records and reports that concerned drug distribution events committed on the involved premises to any person seeking to secure compliance with the provisions of the bill. However, if the agency believed that the information would jeopardize an investigation, prosecution, or other proceeding or would violate federal or state law, the agency could refuse to disclose the information. Law enforcement agencies would also be required to make officers available to testify as fact or expert witnesses.

Further, anyone who in good faith testified, participated, instituted, or encouraged someone to institute, participate, or testify in an action under the bill or provided information relied upon by a person in instituting or participating in a civil action under the bill would be immune from civil liability. A person who provided information would have the same immunity from civil liability with respect to testimony given in a judicial proceeding under the bill.

If their testimony were needed to establish the grounds for the eviction, the court could issue orders to protect certain witnesses who were not police officers where there had been a prior threat of violence or act of violence by the defendant or any other person. In order to protect the witness, the court could bar disclosure of the witness' name, address or other information that could identify the witness.

A tenant organization, prosecuting attorney, attorney general, or a municipal or county attorney that brought an expedited eviction action that was ultimately resolved in its favor would be entitled to recover costs, even if that resolution was the discharge of the eviction order due to

the defendant's successful completion of a treatment program. Costs would be owed by the landlord or owner if he or she had been aware of the grounds for an eviction and refused to bring the action within ten days of having been requested to do so in writing by certified mail. In addition, the landlord or owner would also be responsible for costs incurred by a successful replacement plaintiff, if the court determined that the landlord or owner had initiated the action but then had failed to diligently prosecute the action and had to be replaced. However, notwithstanding any other provision of law, a landlord or owner would not be responsible or liable for relocating anyone who was evicted, removed, or barred under the bill's provisions.

The causes of action created in the bill would be cumulative and in addition to any other causes of action or any other remedies provided for by law or equity. Anyone who knowingly violated an order issued under the bill, or knowingly interfered with, obstructed, impaired, or prevented any law enforcement officer from enforcing an order under the bill would be subject to the criminal contempt power of the court, in addition to any other criminal penalty available.

Tie-bars. The bill is tie-barred to House Bill 4294 (which would amend the juvenile code), 4268 (which would create the Tenant and Neighbor Crime Protection Act), and 4269 (which would create the Drug Nuisance Abatement Act).

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.