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## NUISANCES Places for Unlawful Sexual Purposes: Provide Procedure for Enjoining and Declaring a Nuisance Real Property Which is Used as a Site for Repeated Drug Activity

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## NUISANCES

### *Places Used for Unlawful Sexual Purposes: Provide Procedure for Enjoining and Declaring a Nuisance Real Property Which is Used as a Site of Repeated Drug Activity*

CODE SECTION: O.C.G.A. § 41-3-1.1 (new)  
BILL NUMBER: HB 1287  
ACT NUMBER: 807  
GEORGIA LAWS: 1996 Ga. Laws 666  
SUMMARY: The Act provides that real property may be declared a nuisance when the property owner has actual knowledge that substantial drug activity is occurring on the property. The district attorney or a private citizen may file an action with the court to perpetually enjoin the nuisance.  
EFFECTIVE DATE: July 1, 1996

#### *History*

In August 1995, the DeKalb County Grand Jury noted that a pattern emerged over the course of many hearings, whereby a small number of motels and apartment buildings were repeatedly involved in a high percentage of drug-related activity.<sup>1</sup> The Grand Jury suggested that an effective law enforcement tool might be to enact a law similar to the law providing for abatement of houses used for illicit sexual activity.<sup>2</sup> Under Georgia law, any building or structure used for the purpose of "lewdness, assignation, prostitution, sodomy, the solicitation of sodomy, or masturbation for hire" shall be declared a nuisance if the owner or lessee of the building has actual knowledge of unlawful sexual activity.<sup>3</sup> Georgia law also provides that the building, after being declared a nuisance, may be "enjoined or otherwise abated."<sup>4</sup>

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1. Telephone Interview with Rep. Tom Sherrill, House District No. 62 (May 8, 1996) [hereinafter Sherrill Interview].

2. *Id.* The similarity between this Code section and a related one declaring real property upon which illicit sexual activity occurs to be a nuisance is evidenced by the placement of this law in the Code chapter entitled "Places Used for Unlawful Sexual Purposes." *Id.*; see O.C.G.A. § 41-3-1.1 (Supp. 1996).

3. 1979 Ga. Laws 1025, § 1, at 1026 (codified at O.C.G.A. § 41-3-1(a) (1994)).

4. *Id.*

*HB 1287*

The Act's purpose is to deter real property owners from allowing drug-related activity to occur on their property.<sup>5</sup> To this end, the Act provides a mechanism to insure that enjoining or abatement proceedings may only be commenced against property upon which a repeated pattern of drug activity occurs, and only against property owners having notice of such activity.<sup>6</sup> For a property owner to have actual knowledge of "substantial drug-related activity," the Act requires that the district attorney notify the owner "in writing of three or more *separate* incidents within a 12 month period which result in drug-related indictments" occurring on the property.<sup>7</sup> After notification, nuisance proceedings may be initiated if three additional, but separate indictment-producing, drug-related incidents occur within twelve months of the first incident.<sup>8</sup> Thus, a total of six indictments resulting from separate incidents occurring within a twelve-month period are required before the owner is deemed to have actual knowledge of substantial drug-related activity occurring on the property.<sup>9</sup>

As introduced, however, the bill provided for owner notification by the district attorney after five indictment-producing, drug-related incidents.<sup>10</sup> An additional five indictments were required in order to declare the property a nuisance.<sup>11</sup> Thus, the original bill required a total of ten indictments before the property could be enjoined.<sup>12</sup> In addition, the original version did not require that the indictments stem from separate incidents.<sup>13</sup>

Changes to the original bill were added in the House Special Judiciary Committee.<sup>14</sup> Both the bill's sponsor, Representative Thomas Sherrill of the 62nd District, and a House Special Judiciary Committee member, Representative Kip Klein of the 39th District, attributed the new language, which requires separate drug-related incidents, to a need to ensure that the owner has notice.<sup>15</sup> These changes were a compromise between those who wanted to provide speedier nuisance proceedings by foregoing the separate incident requirement and those who wanted to require ten indictments to ensure the owner adequate notification and an opportunity to rectify the situation.<sup>16</sup> Because a

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5. Sherrill Interview, *supra* note 1.

6. O.C.G.A. § 41-3-1.1(b), (c) (Supp 1996).

7. *Id.* § 41-3-1.1(c) (emphasis added).

8. *Id.*

9. *Id.*

10. HB 1287, as introduced, 1996 Ga. Gen. Assem.

11. *Id.*

12. *Id.*

13. *Id.*

14. HB 1287 (HCS), 1996 Ga. Gen. Assem.

15. Sherrill Interview, *supra* note 1.

16. Telephone Interview with Rep. Kip Klein, House District No. 39 (May 8, 1996)

single police raid could easily produce the requisite number of indictments if separate incidents were not required,<sup>17</sup> that version was not considered an effective deterrent to ongoing drug activity.<sup>18</sup>

The House Special Judiciary Committee also added the qualifier "actual" to the type of knowledge required by the property owner.<sup>19</sup> Therefore, the Act deems a sequence of three separate drug-related indictments, notification of the property owner by the district attorney, three additional separate drug-related indictments, and additional notification as "actual knowledge of substantial drug related activity."<sup>20</sup> Again, this substitution was designed to help ensure that the property owner has knowledge-in-fact of ongoing drug-related activity before his or her property is enjoined.<sup>21</sup> A final committee substitution clarified that the total number of six indictments must occur within twelve months.<sup>22</sup> The Senate passed the bill without change, and it was signed into law by Governor Miller.<sup>23</sup>

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[hereinafter Klein Interview]. Representative Klein stated that House Special Judiciary Chairman Representative Billy Randall suggested decreasing the number of drug-related indictments needed before requiring property owner notification by the district attorney from five to three. *Id.*

17. Sherrill Interview, *supra* note 1; Klein Interview, *supra* note 16.

18. Sherrill Interview, *supra* note 1. During the final House floor vote on the bill, a floor amendment was introduced that lowered the number of indictments needed before declaring the property a nuisance, and thus allowing its injunction, from the final version's total of six to a total of either three or four. *Journal of the House*, 1996 Ga. Gen. Assem., Feb. 15, 1996, at 1042-43. This floor amendment was defeated after the bill's sponsor pointed out that if the six indictment requirement did not deter property owners from allowing drug activity on their properties, the bill could be changed in the next session to lower the total indictments needed. Sherrill Interview, *supra* note 1. The sponsor believed it was better to err on the side of giving notice, due to the possibility of perpetually enjoining the property by mistake. *Id.*

19. HB 1287 (HCS), 1996 Ga. Gen. Assem.

20. O.C.G.A. § 41-3-1.1(c) (Supp. 1996).

21. Sherrill Interview, *supra* note 1.

22. HB 1287 (HCS), 1996 Ga. Gen. Assem.; see O.C.G.A. § 43-3-1.1(c) (Supp. 1996). Earlier language simply stated that the additional, post-notification indictments must occur "within twelve months of the offenses." HB 1287, as introduced, 1996 Ga. Gen. Assem.

23. O.C.G.A. § 41-3-1.1 (Supp. 1996). Governor Miller signed HB 1287 on April 8, 1996. Final Composite Status Sheet, Mar. 18, 1996.