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TENANT AND NEIGHBOR CRIME PROTECTION ACT

House Bill 4268

Sponsor: Rep. Martha Scott

Committee: Judiciary

Complete to 3-12-97

A SUMMARY OF HOUSE BILL 4268 AS INTRODUCED 2-11-97

House Bill 4268 would create the Tenant and Neighbor Crime Protection Act. The bill would allow, or in some cases require, courts to issue removal or restraining orders that would bar a defendant who was convicted or accused of certain crimes from entering the premises where the crime occurred.

Removal or restraining orders. The bill would provide for removal or restraining orders to be issued either post-conviction or before trial, depending upon the circumstances.

If a defendant were convicted of a drug related offense that had taken place on a residential property, the court would be required to issue a removal or restraining order barring that defendant from entering the property where the crime had taken place. This would also apply to juveniles found responsible for drug offenses; however, the court would have the discretion to choose whether or not to issue such an order against a juvenile offender. Regardless of the defendant's age, the prohibition from entering the property where the crime occurred would be in addition to any other penalty provided for by law. Further, the court would retain the authority to take any other actions or issue any other orders needed to protect public safety or to safeguard or enforce the rights of other tenants and residents of the premises involved. In spite of the restrictions of the order, the court could permit the defendant to return to the premises in question in order to remove his or her personal property from the premises. The court could order that the time and duration of this visit be restricted and could require police supervision for the visit as well.

A court would also be required to issue a pretrial removal or restraining order where an individual was accused of having committed a drug related offense or of having violated the laws against unlawful possession or use of a firearm, either as an adult or as a juvenile. A pretrial restraining order could be issued at any time and would be a condition for the individual's release from custody before trial, although it would not limit the court's authority to impose any other restraints or conditions on the individual's pretrial release. A pretrial order would also differ from a post-conviction order in that the court could not use a pretrial order to bar an individual from premises or a location where he or she lawfully resided, had lawful business, or otherwise had a legitimate reason to enter the premises or location, unless the court were clearly convinced that the need to prohibit the accused from the premises or location outweighed the accused's need to return. Furthermore, if a pretrial order was modified, stayed, or vacated, the court would be required to immediately notify the appropriate law enforcement agency in writing.

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Whether the restraining order were issued before trial or after conviction, the defendant would have to be given a copy of the order and acknowledge receipt of the order in writing. A removal or restraining order issued by the court would have to contain a description of the premises from which the defendant had been barred that was sufficient to allow the defendant to guide his or her conduct and to enable law enforcement to enforce the order. (In cases involving pretrial restraining order, the order could also contain a map, if appropriate.) The police department would be required to post a copy of the order in a conspicuous place or at one or more of the principal entrances of the premises for the purpose of informing the public. However, failure of the police to post a copy of the order would not provide an excuse for a violation of that order.

Time period. The court would have the discretion to decide how long a removal or restraining order issued under the bill would remain in effect; however, the period of time could be no less than two years and no more than the maximum term of imprisonment or detention allowed by law for the underlying offense. If the defendant were sentenced to probation, compliance with the court's removal or restraining order would be an express condition of his or her probation. If the defendant were paroled, compliance with the court's removal or restraining order would be an express condition of his or her parole.

Notice. Notice of a post-conviction removal or restraining order would have to be provided to the owner, landlord, or agent of the premises involved and to the police department of the area where the property is located.

Notice of a pretrial restraining order would have to be provided to the prosecutor and to the law enforcement agency that had arrested the individual. If the pretrial order prohibited the individual from entering a building, business premises, school, or other public, private, or commercial premises, notice would have to be provided by the court to the owner of the property or his or her agent, or in the case of a school or government-owned property, to the appropriate administrator and to the tenant association representing the residents of any leased premises.

In addition, whenever an individual (adult or juvenile) was convicted or determined responsible for a drug offense, the prosecutor would be required to determine where the offense took place. If the offense occurred on leased property, the prosecutor would be required to immediately notify the premises' landlord, owner, or agent, as well as the tenant association that represented the tenants or residents of the premises, of the conviction, plea, or adjudication.

Exceptions. The bill provides two exceptions where the court would not be required to issue a post-conviction removal or restraining order. Those exceptions would include: 1) cases where the defendant could show that he or she had not been previously convicted of or adjudicated delinquent for an drug-related offense or for the unlawful use or possession of a firearm and the defendant could prove by a preponderance of the evidence that he or she had not committed the underlying offense for profit; and, 2) cases where the defendant was able to prove by clear and convincing evidence that the issuance of the order would cause undue hardship to innocent persons and would constitute a serious injustice that overrode the need to protect the rights, safety, and health of the other tenants and residents of the property involved.

However, if the court chose not to bar the defendant from the property based on either of these exceptions, the court's sentence would not become final for 10 days in order to allow others to appeal the court's findings.

Violations of the order. If a defendant violated a restraining or removal order issued under the bill, he or she would be subject to criminal contempt, revocation of bail, probation, parole, or a combination of these sanctions. Further, a police officer who had reasonable cause to believe that an individual had violated an order issued under the bill could arrest that individual.

Victims. Whenever an individual was convicted or determined to be responsible for a drug offense, the victims of the offense would be permitted to offer statements for inclusion in the presentence investigation report and would also be permitted to make an oral statement before the sentencing court concerning the impact of the crime. Under the bill, all of the following persons would be considered victims:

- * The landlord or owner of the premise where the offenses occurred.
- * Any tenants or others who resided within 1,000 feet of the place where the offense occurred.
- * Any full- or part-time workers of any business premises within 1,000 feet of the site of the offense.
- * Any owner or operator of a business that was located within 1,000 feet of the site of the offense.

Tie-bar. The bill is tie-barred to House Bills 4267 (which would create the Expedited Eviction of Drug Traffickers Act), 4269 (which would create the Drug Nuisance Abatement Act) and 4294 (which would amend the Probate Code).

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.