



General Assembly

January Session, 2007

**Committee Bill No. 6284**

LCO No. 4854

\*04854HB06284JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

**AN ACT CONCERNING MUNICIPAL JURISDICTION TO ABATE A  
PUBLIC NUISANCE INVOLVING A PATTERN OF CRIMINAL ACTIVITY.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 19a-343 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2007*):

4 (b) The state [has the exclusive right to] or any municipality may  
5 bring an action to abate a public nuisance under this section and  
6 sections 19a-343a to 19a-343h, inclusive, as amended by this act,  
7 involving any real property or portion thereof, commercial or  
8 residential, including single or multifamily dwellings, provided there  
9 have been three or more arrests, or the issuance of three or more arrest  
10 warrants indicating a pattern of criminal activity and not isolated  
11 incidents, for conduct on the property documented by a law  
12 enforcement officer for any of the offenses enumerated in subdivisions  
13 (1) to (11), inclusive, of subsection (c) of this section within the three  
14 hundred sixty-five days preceding commencement of the action.

15 Sec. 2. Section 19a-343a of the general statutes is repealed and the

16 following is substituted in lieu thereof (*Effective October 1, 2007*):

17 (a) The Chief State's Attorney or a deputy chief state's attorney,  
18 state's attorney or assistant or deputy assistant state's attorney on  
19 behalf of the state and a municipal official on behalf of a municipality  
20 may bring an action to abate a public nuisance. Such prosecutor or  
21 official desiring to commence an action to abate a public nuisance shall  
22 attach [his] the proposed unsigned writ, summons and complaint to  
23 the following documents:

24 (1) An application directed to the Superior Court to which the action  
25 is made returnable, for the remedies requested to abate the public  
26 nuisance; and

27 (2) An affidavit sworn to by the [state] prosecutor, municipal official  
28 or any competent affiant setting forth a statement of facts showing by  
29 probable cause the existence of a public nuisance upon the real  
30 property or any portion thereof.

31 (b) The court, or if the court is not in session, any judge of the  
32 Superior Court, may order that a show cause hearing be held before  
33 the court or a judge thereof to determine whether or not the temporary  
34 relief requested should be granted and the court shall direct the state  
35 or the municipality to give notice to any defendant of the pendency of  
36 the application and of the time when it will be heard by causing a true  
37 and attested copy of the application, [the] proposed unsigned writ,  
38 summons, complaint [,] and affidavit and of its order to be served  
39 upon the defendant by some proper officer or indifferent person. Such  
40 hearing shall be scheduled within ten days after service is effected by  
41 the state or the municipality.

42 (c) If in the application, the state or the municipality requests the  
43 issuance of a temporary ex parte order for the abatement of a public  
44 nuisance, the court, or if the court is not in session, any judge of the  
45 Superior Court, may grant a temporary ex parte order to abate the  
46 public nuisance. The court or judge shall direct the state or the

47 municipality to give notice and service of such documents, including a  
48 copy of the ex parte order, in accordance with subsection (b) of this  
49 section. At such hearing, any defendant may show cause why the  
50 abatement order [~~shall~~] should be modified or vacated. No such ex  
51 parte order may be granted unless it appears from the specific facts  
52 shown by affidavit and by complaint that there is probable cause to  
53 believe that a public nuisance exists and the temporary relief requested  
54 is necessary to protect the public health, welfare or safety. Such show  
55 cause hearing shall be scheduled within five business days after  
56 service is effected by the state or the municipality. The affidavit may be  
57 ordered sealed by the court or judge upon a finding that the state's or  
58 the municipality's interest in nondisclosure substantially outweighs  
59 the defendant's right to disclosure. A copy of the state's or the  
60 municipality's application and the temporary order to cease and desist  
61 shall be posted on any outside door to any building on the real  
62 property.

63 (d) Such a public nuisance proceeding shall be deemed a civil action  
64 and venue shall lie in the superior court for the judicial district within  
65 which the real property alleged to constitute a public nuisance is  
66 located. Service shall be made in accordance with chapter 896. In  
67 addition, service of process may be made by an inspector of the  
68 Division of Criminal Justice or a sworn member of a local police  
69 department or the Division of State Police.

70 (e) At the show cause hearing, the court shall determine whether  
71 there is probable cause to believe that a public nuisance exists, and that  
72 the circumstances demand the temporary relief requested be ordered,  
73 or the temporary ex parte order be continued during the pendency of  
74 the public nuisance proceeding. The court may, upon motion by the  
75 state or the municipality or any defendant, enter such orders as justice  
76 requires. The court shall schedule the evidentiary hearing within  
77 ninety days from the show cause hearing.

78 (f) The record owner of the real property, any person claiming an

79 interest of record pursuant to a bona fide mortgage, assignment of  
80 lease or rent, lien or security in the property and any lessee or tenant  
81 whose conduct is alleged to have contributed to the public nuisance  
82 shall be made a defendant to the action, except that the state or the  
83 municipality shall exempt as a defendant any owner, lienholder,  
84 assignee, lessee, tenant or resident who cooperates with the state or the  
85 municipality in making bona fide efforts to abate the nuisance or any  
86 tenant or resident who has been factually uninvolved in the conduct  
87 contributing to such public nuisance. If the state or the municipality  
88 exempts as a defendant any record owner or any person claiming an  
89 interest of record pursuant to a mortgage, assignment of lease or rent,  
90 lien or security in the property, notice of the commencement of a  
91 nuisance proceeding shall be given by certified mail, return receipt  
92 requested, with a copy of such summons and complaint and a notice of  
93 exemption and right to be added as a party to any such person at his  
94 usual place of abode or business. Any such exempted person may, at  
95 his option, enter an appearance and participate in the nuisance  
96 proceeding to protect his property rights. [Notice] If the action is  
97 brought by the state, notice of the commencement of such [a] public  
98 nuisance proceeding shall be given by certified mail to the highest  
99 elected official of the municipality in which the real property is  
100 located.

101 (g) If the defendant is a financial institution and the record owner of  
102 the real property, or if the defendant is a financial institution claiming  
103 an interest of record pursuant to a bona fide mortgage, assignment of  
104 lease or rent, lien or security in the real property and is not determined  
105 to be a principal or an accomplice in the conduct constituting the  
106 public nuisance, the court shall not enter any order against such  
107 defendant. The state or the municipality shall have the burden of  
108 proving by clear and convincing evidence that any such defendant  
109 claiming an interest of record under this subsection is a principal or an  
110 accomplice in the alleged conduct constituting the public nuisance. For  
111 the purposes of this subsection, "financial institution" means a bank, as  
112 defined in subdivision (4) of section 36a-2, an out-of-state bank, as

113 defined in subdivision (44) of section 36a-2, an institutional lender or  
114 any subsidiary or affiliate of such bank, out-of-state bank or  
115 institutional lender that directly or indirectly acquires the real property  
116 pursuant to strict foreclosure, foreclosure by sale or deed-in-lieu of  
117 foreclosure, and with the intent of ultimately transferring the property,  
118 or other lender licensed by the Department of Banking.

119 (h) For any defendant who fails to appear, the court may enter a  
120 default following an evidentiary showing by the state or the  
121 municipality in support of the relief requested, which shall include  
122 affidavits or the testimony of witnesses. When the court enters a  
123 judgment upon default, the court may enter such orders as appear  
124 reasonably necessary to abate the public nuisance.

125 (i) At the evidentiary hearing upon the public nuisance complaint,  
126 the state or the municipality shall have the burden of proving, by clear  
127 and convincing evidence, the existence of a public nuisance upon the  
128 real property as provided in section 19a-343, as amended by this act. If  
129 the state or the municipality presents clear and convincing evidence  
130 that there have been three or more arrests, or the issuance of three or  
131 more arrest warrants indicating a pattern of criminal activity and not  
132 isolated incidents, for conduct on the real property or any portion  
133 thereof documented by a law enforcement officer for any of the  
134 offenses enumerated in subdivisions (1) to (11), inclusive, of subsection  
135 (c) of section 19a-343, within the three hundred sixty-five days  
136 preceding commencement of the action, such evidence shall create a  
137 rebuttable presumption of the existence of a public nuisance. Any  
138 defendant may offer evidence by way of an affirmative defense that  
139 such defendant has taken reasonable steps to abate the public  
140 nuisance, but has been unable to abate the nuisance.

141 Sec. 3. Section 19a-343b of the general statutes is repealed and the  
142 following is substituted in lieu thereof (*Effective October 1, 2007*):

143 In any proceeding to abate a public nuisance, the state or the  
144 municipality may request such remedies or relief as are reasonably

145 necessary to abate the nuisance including, but not limited to, orders for  
146 repair or alteration to the real property or any portion thereof,  
147 temporary orders to cease and desist, orders to cease and desist or  
148 appointment of a receiver of rents. In any such action, the court may  
149 enter any orders necessary and proper to abate the nuisance.

150 Sec. 4. Section 19a-343d of the general statutes is repealed and the  
151 following is substituted in lieu thereof (*Effective October 1, 2007*):

152 (a) The court may, upon application of the state or the municipality,  
153 appoint a receiver to operate and manage the property or any portion  
154 thereof in accordance with the provisions of this section during the  
155 pendency of the public nuisance proceeding and shall include such  
156 powers and duties as the court may direct.

157 (b) The receiver shall with all reasonable speed, remove the  
158 delinquent matters and deficiencies in the property or any portion  
159 thereof constituting a serious fire hazard or a serious threat to life,  
160 health or safety. During the term of the receivership, the receiver shall  
161 repair and maintain the property or any portion thereof in a safe and  
162 healthful condition. The receiver shall have the power to let contracts  
163 therefor in accordance with the provisions of local laws, ordinances,  
164 rules and regulations. Notwithstanding any such laws, ordinances,  
165 rules or regulations, the receiver may let contracts or incur expenses  
166 for individual items of repairs, improvements or supplies without  
167 advertisement or the procurement of competitive bids where the total  
168 amount of any such individual item does not exceed five hundred  
169 dollars or where there exists a condition which constitutes an  
170 imminent and substantial danger to life, health or safety, but in such  
171 event the receiver shall endeavor to obtain contracts on the most  
172 advantageous terms.

173 (c) The receiver shall collect the accrued and accruing rents, issues  
174 and profits of the property or any portion thereof and apply the same  
175 to the cost of removing or remedying such nuisance, to the payment of  
176 expenses reasonably necessary to the proper operation and

177 management of the property, including insurance and the fees of the  
178 managing agent, if any, and to unpaid taxes, assessments, water rents  
179 and sewer rents and penalties and interest thereon.

180 (d) Any excess of income of the property in the hands of the receiver  
181 shall be applied to the necessary expenses in regard to such property  
182 of his office as receiver and then to sums due to mortgagees or lienors.

183 (e) The receiver shall have the power to bring a summary process  
184 action pursuant to the provisions of chapter 832 against any tenant or  
185 occupant of the property.

186 (f) Following appointment, the receiver shall keep complete written  
187 records, including records of all receivership funds on deposit and  
188 records itemizing all receipts and expenditures.

189 (g) The receiver's accounts shall be open to inspection by any  
190 defendant having an ownership interest in the real property, the state,  
191 the municipality, the court or any defendant with a record interest in  
192 the leases or rents.

193 (h) Upon motion by any defendant having an interest in the real  
194 property or by the state or the municipality, or upon its own motion,  
195 the court may direct the receiver to render a periodic accounting to the  
196 court.

197 (i) A receiver shall act until removed by the court. Upon the  
198 termination of the receivership, the receiver shall render to the court a  
199 final accounting of all funds pertaining to the real property on deposit,  
200 as well as records of receipts and expenditures. The receiver shall  
201 deliver ledgers, records and the receiver's files and notes pertaining to  
202 any litigation or claim arising out of management of the real property  
203 to any person designated by the court.

204 (j) A receiver appointed pursuant to this section shall not be liable in  
205 his capacity as receiver to any person except for intentional or wilful  
206 misconduct.

207 Sec. 5. Section 19a-343e of the general statutes is repealed and the  
208 following is substituted in lieu thereof (*Effective October 1, 2007*):

209 (a) If the court finds by clear and convincing evidence that a public  
210 nuisance exists, the court may enter such orders as justice requires to  
211 abate the public nuisance, including but not limited to, an order to  
212 close the real property or any portion thereof. The court shall retain  
213 jurisdiction over the case until it appears that the nuisance no longer  
214 exists. The state or the municipality shall post a copy of any court  
215 order to close the real property or any portion thereof on any outside  
216 door of the premises. The order shall include a notice that any person  
217 who removes, mutilates or defaces the closing order may be punished,  
218 upon conviction, by a fine not to exceed two hundred fifty dollars or  
219 by imprisonment of fifteen days, or both.

220 (b) At any time after entry of an order, any defendant may apply to  
221 the court to have any order vacated or modified for good cause. Prior  
222 to any decision on a defendant's application to vacate or modify an  
223 order, the state or the municipality shall be afforded a reasonable  
224 opportunity to inspect the real property or any portion thereof to  
225 verify that the public nuisance has been abated, and the court shall  
226 provide the state or the municipality with an opportunity to be heard  
227 to contest the defendant's application.

228 (c) Where the court vacates or modifies any order, it may condition  
229 its decision on the posting of a bond in an amount not to exceed the  
230 current fair market value of the real property, as stated in an  
231 independent appraisal by a certified real estate appraiser, as surety  
232 against recurrence of the public nuisance.

233 (d) Where the court finds that real property or any portion thereof  
234 constitutes a public nuisance and enters a final judgment, the state or  
235 the municipality shall record a copy of such judgment and any orders  
236 on the land records in the town in which such real property is located.  
237 At any time after the entry of judgment, any defendant may apply to  
238 the court to modify or vacate any order, including the reduction of the

239 amount of, or release of liability for any bond required pursuant to this  
240 section. The court may grant such application for good cause shown,  
241 which may include, but not be limited to, a showing by such defendant  
242 by clear and convincing evidence that: (1) All court orders have been  
243 complied with, that any named persons have ceased any conduct  
244 constituting a public nuisance upon the real property or any portion  
245 thereof and that the nuisance has abated; (2) the defendant wishes to  
246 refinance or sell the real property to an identified bona fide purchaser  
247 for value whose proposed use for the real property will not constitute  
248 a public nuisance; or (3) the defendant has demolished or razed any  
249 buildings, structures or features upon the real property capable of  
250 supporting a public nuisance. Prior to any decision on a defendant's  
251 application to vacate or modify a final order or release a lien, the state  
252 or the municipality shall be afforded a reasonable opportunity to  
253 inspect the real property or any portion thereof. Any modification to  
254 any order shall be recorded on the land records in the town in which  
255 such real property is located.

256 (e) Where the state or the municipality applies for an order to close  
257 the real property or any portion thereof, the court shall take into  
258 consideration the rights of all interested parties and shall limit the  
259 scope of a closing order to minimize dispossession or dislocation of  
260 tenants or residents who have been factually uninvolved in the  
261 conduct contributing to the public nuisance, unless closure of the  
262 property is necessary to protect public health, safety or welfare.

263 Sec. 6. Section 19a-343f of the general statutes is repealed and the  
264 following is substituted in lieu thereof (*Effective October 1, 2007*):

265 (a) In any case where dispossession or dislocation of tenants or  
266 residents who have been factually uninvolved with the conduct  
267 contributing to such public nuisance is necessary to abate the public  
268 nuisance, the court may impose the reasonable costs of relocating such  
269 tenants or residents upon any defendant determined by the court to be  
270 liable for the public nuisance.

271 (b) In any public nuisance proceeding, the court may impose the  
272 reasonable costs of investigation [,] and prosecution and any  
273 extraordinary expenses incurred in abating the public nuisance upon  
274 any defendant determined by the court to be liable for the public  
275 nuisance. In any public nuisance proceeding, the court may award to  
276 the state or [any] the municipality the reasonable costs of investigation  
277 [,] and prosecution and any extraordinary expenses incurred in abating  
278 the public nuisance. The state or municipality shall submit an affidavit  
279 and such other documents as the court directs in support of a request  
280 for award of costs.

281 (c) The court may authorize the state or the municipality, or its  
282 agents, to make any repairs or alterations to the real property or any  
283 portion thereof to bring it into compliance with applicable state and  
284 local building, fire, health, housing or similar codes. The court may  
285 impose the actual costs of any repairs or alterations upon any  
286 defendant determined by the court to be liable for the public nuisance.  
287 The court shall award the state or the municipality the actual costs of  
288 any such repairs or alterations.

289 (d) In any public nuisance proceeding, any monetary penalty  
290 imposed by the court on a defendant with an ownership interest in the  
291 real property and any award of costs to the state or the municipality  
292 shall constitute a judgment lien on the real property, and shall be  
293 recorded as such on the land records in the town where the property is  
294 located. In addition, the state or the municipality may, at its election,  
295 pursue any remedy under chapter 906.

296 (e) If any defendant in a public nuisance proceeding subject to a  
297 court order to abate the nuisance intentionally violates any such court  
298 order entered in judgment in a public nuisance proceeding under  
299 sections 19a-343 to 19a-343h, inclusive, as amended by this act, the  
300 court may impose a civil penalty of not more than one thousand  
301 dollars for each day the public nuisance is found to have existed after  
302 such order. Upon recovery, such penalty shall be deposited in the

303 General Fund.

304 (f) Any person who was not a defendant in a public nuisance action  
305 who intentionally violates any court order entered in judgment in a  
306 public nuisance proceeding, may be fined not more than one hundred  
307 dollars or imprisoned not more than six months or both.

308 Sec. 7. Section 19a-343g of the general statutes is repealed and the  
309 following is substituted in lieu thereof (*Effective October 1, 2007*):

310 (a) The state may use an inspector of the Division of Criminal Justice  
311 or a state or municipal police officer to assist in the enforcement of any  
312 court order in a public nuisance proceeding. Where a municipal police  
313 officer acts at the direction of a prosecutor, the state shall first obtain  
314 the permission of the municipal chief of police. Where a municipal  
315 police officer acts at the direction of a prosecutor or pursuant to a court  
316 order in a public nuisance matter, the officer and the municipality shall  
317 be indemnified against any losses, damages or liabilities arising within  
318 the scope of such duties, and the police officer shall be deemed an  
319 employee of the state for purposes of indemnification.

320 (b) In any public nuisance proceeding, an order by the court closing  
321 the real property or any portion thereof shall not be deemed to pass  
322 dominion, title, possession or control over the real property to the state  
323 or the municipality.

324 Sec. 8. Section 19a-343h of the general statutes is repealed and the  
325 following is substituted in lieu thereof (*Effective October 1, 2007*):

326 Availability to the state or the municipality of other remedies at law  
327 or equity shall not prevent the granting of relief under sections 19a-343  
328 to 19a-343h, inclusive, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	19a-343(b)

Sec. 2	October 1, 2007	19a-343a
Sec. 3	October 1, 2007	19a-343b
Sec. 4	October 1, 2007	19a-343d
Sec. 5	October 1, 2007	19a-343e
Sec. 6	October 1, 2007	19a-343f
Sec. 7	October 1, 2007	19a-343g
Sec. 8	October 1, 2007	19a-343h

**Statement of Purpose:**

To authorize a municipality to bring an action to abate a public nuisance at a commercial or residential property where there have been three or more arrests in the preceding year for such offenses as murder, manslaughter, assault, sexual assault, prostitution, gambling, illegal sale of drugs, unauthorized sale of alcohol or maintaining a motor vehicle chop shop.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

Co-Sponsors: REP. WALKER, 93rd Dist.

H.B. 6284