

CRIMINAL HOUSING MATTERS PROSECUTION MANUAL



STATE OF CONNECTICUT DIVISION OF CRIMINAL JUSTICE OFFICE OF THE CHIEF STATE'S ATTORNEY

**Prepared by:
Judith R. Dicine
Supervisory Assistant State's Attorney
Housing Matters**

March 2008

Table of Contents

- I. INTRODUCTION**
- II. HOUSING MATTERS PROSECUTION POLICY**
- III. CRIMINAL HOUSING MATTERS DEFINED**
- IV. SOURCES OF CASES**
- V. HOUSING COURT VS. GEOGRAPHICAL AREA JURISDICTION**
- VI. INITIATION AND PROSECUTION OF CRIMINAL
HOUSING MATTERS**
- VII. DISPOSITION OF CRIMINAL HOUSING MATTERS**

I. INTRODUCTION

This manual is structured to highlight for prosecutors those areas in criminal housing prosecution which require a different approach than that followed in traditional prosecutions. All criminal housing cases should be prosecuted in accordance with the policies and guidelines set forth below.

II. CRIMINAL HOUSING MATTERS

PROSECUTION POLICY

It is the over all policy goal of housing prosecution to promote full and prompt compliance with state or municipal housing safety laws and to assure that criminal landlord-tenant laws such as criminal lockout, illegal termination of essential services and criminal damage to landlord's property by a tenant are uniformly, fully and effectively enforced.

In all safety code cases, the primary goal is timely **COMPLIANCE**.

III. CRIMINAL HOUSING MATTERS DEFINED

The following categories of cases shall be deemed criminal housing matters pursuant to CGS sections 51-286b, 51-278(b) (1) (B) and 47a-68:

- (a) All actions involving one or more violations of any state or municipal health, housing, building, electrical, plumbing, fire or sanitation code, including violations occurring in commercial properties, or of any other statute, ordinance or regulation concerned with the health, safety or welfare of any occupant of any housing. (CGS section 47a-68 (f)).
- (b) Willful and intentional failure by owner, lessor, manager, superintendent or other person having charge of a residential, commercial or mercantile rental premises to provide essential services to the tenant which were previously provided by said person through an express or implied agreement. Essential services in CT are defined as to include 65 degree Fahrenheit heat, electric, cooking gas, hot and cold water. (CGS section 19a-109).
- (c) Criminal lockout of a residential tenant by a landlord without a court order. (CGS section 53a-214).

Note: Caution should be made in the application of the criminal lockout statute. To qualify, the parties must be a landlord and a tenant as defined at law. "Landlord" is defined in CGS section 47a-1 as to include an owner, lessor or sublessor of the dwelling unit, the building of which it is a part or the premises. "Tenant" is defined in the same section as to include a lessee, sublessee, person entitled under a rental agreement to occupy a dwelling unit or premises to the exclusion of all others or as is otherwise defined by law. A "Tenant" "as otherwise defined by law" includes tenants "at will" and

tenants “at sufferance”. The existence of a rental agreement, written or oral, is not a prerequisite to the definition of “tenant”. Service of a notice to quit on a tenant terminates a rental agreement, but simultaneously creates a tenancy at sufferance. A tenancy at sufferance is also created when a person comes in to possession of land with rightful permission and thereafter continues in possession wrongfully after the right thereto has been terminated. See O’Brien Properties, Inc. v. Rodriguez, 215 Conn 367. Unless exempted from the obligation to do so by operation of CGS section 47a-2, lawful summary process (eviction) must be used by a landlord to forcibly remove a tenant from a dwelling unit. Failure to do so constitutes a violation of criminal lockout under CGS 53a-214. It should be mentioned that these and other landlord/tenant definitions have been broadly interpreted by the CT courts. For example, tenants entitled to the process of eviction undoubtedly include occupants with oral or written rental agreements, tenants in the process of eviction, former employees now terminated from employment but who had been given a dwelling unit as a benefit or condition of former employment and are still in occupancy, tenants in hotel/motels if they are non-transient occupants (see CGS section 47a-2 for clarification) and persons living in a dwelling unit without any rental agreement but who took occupancy either with the consent of the owner/lessor or with the consent of the tenant of the dwelling unit. This last example applies in situations such as unmarried domestic partners, i.e. boyfriend/girlfriend or parent/child, where one of the two is either the owner or primary tenant of the dwelling unit.

(d) Criminal damage to landlord’s property by a tenant (CGS section 53a-117e-g) or to a tenant’s property by a landlord (CGS section 53a-117a-d).

(e) All other actions of any nature concerning the health, safety or welfare of any occupant of any place used or intended for use as a place of human habitation if any such action arises from or is related to its occupancy or right of occupancy. (CGS section 47a-68 (i)). This includes all other criminal conduct arising directly out of the occupancy or right of occupancy of a place of habitation including but not limited to criminal trespass, criminal damage to landlord’s property by a tenant, breach of peace, criminal mischief and larceny. A criminal violation between two tenants does not constitute a criminal housing matter.

IV. SOURCES OF CASES

Cases will be referred from various law enforcement agencies and, in some situations, directly from an individual landlord or tenant. The prosecutor should meet with all agencies, in the jurisdiction, likely to refer cases for prosecution and encourage the use of such referrals. These would include primarily:

(a) Housing code enforcement agencies (CGS 7-148, 47a-50 et Seq.)

(b) Police departments;

(c) Public health enforcement agencies (CGS 19a-36, 19a-206, 19a-230, 19a-365, and 47a-50, et. Seq.);

- (d) Fire marshals (whom are required to refer unabated violations of the CT Fire code to the office of the state’s attorney pursuant to CGS sections 29-306, 29-295 and 29-310);
- (e) Building officials (CGS sections 29-254a and 29-394 which includes electrical, plumbing and heating codes);
- (f) Zoning officials (CGS 8-12);
- (g) Fair rent commissions (CGS 7-148f);
- (h) CHRO (CGS section 46a-64c (g)). Note: Housing discrimination cases, including discrimination against families with children, should be referred to the CHRO pursuant to CGS sections 46a-64 (c) and 46a-64a (c).
- (I) Licensing complaints from the Department of Consumer Protection (CGS sections 20-341, 20-427(c), 20-482 and other similar sections containing criminal sanctions).
- (j) Department of Banking for security deposit violations. (CGS section 47a-21 (k)).

Note: Complaints involving hazardous waste on premises or nuisance abatement should be referred to the Office of the Chief State’s Attorney.

V. HOUSING COURT VS. GEOGRAPHICAL AREA JURISDICTION

In those jurisdictions in which there is a superior court housing session, all criminal housing matters including commercial code enforcement should be immediately referred to the housing prosecutor for that court. This includes all stages of prosecution from investigation, complaint and warrant application review through court or jury trial. Violations of the following statutes are ordinarily housing matters which should be handled by the housing prosecutor: 7-148f, 8-12, 19a-36, 19a-109, 19a-111 and 111c, 19a-230, 19a-365, 29-318, 29-254a, 29-295, 29-306, 29-394, 29-414, 46a-64, 47a-21, 47a-52, 47a-55, 53a-117e-f, and 53a-214. Violations of other statutes, as described in Part III above, may also be housing matters and should also be referred to a housing prosecutor. In those jurisdictions in which there is no housing court, jurisdiction on criminal housing matters resides in the local geographical area for the subject property or incident. Referral should be made to the State’s Attorney or their designated prosecutor for housing matters for that Geographical Area court.

VI. INITIATION AND PROSECUTION OF HOUSING MATTERS

Housing prosecutors may initiate cases “upon the affidavit of an individual complainant or upon complaint from a state or municipal agency responsible for the enforcement of any law, code or ordinance concerning housing matters” (CGS section 51-278b. Duties re: housing matters). Generally, complaints from the public regarding code violations are best referred back to the appropriate code enforcement agency for investigation and enforcement. Criminal safety code prosecutions require, as a prerequisite, an inspection determining the existence of violations by a

duly certified code official, the issuance of a lawful abatement order and violation of the order by the responsible person.

Generally on a code enforcement case, prosecution is initiated by complaint of a city or state code enforcement official by submission of an affidavit in support of arrest. The judicial form for affidavit in support of arrest warrant application should be used along with the information cover sheet. Most safety code officials have been trained through the Department of Public Safety or State Department of Health on the preparation of arrest warrant applications. Samples are available for code officials through the housing prosecution unit.

Probable cause on an arrest warrant application on housing, health, building, fire, zoning or other code violation may be found when the following three conditions have been met:

1. Inspection- the authorized official has conducted an inspection pursuant to law by either duly authorized consent or administrative search warrant and found one or more violation(s) of a state or municipal code. Consent for an inspection may be given by a tenant.
2. Order- a legal order of said official's agency has been issued to and received by the accused by in hand, abode or other provable method of service (i.e. via U.S. certified mail return receipt requested, Ct State Marshal or his agent, state or local police officer). A legal order is an essential element of the crime and requires that the accused was a proper person to get the order, that the order listed the violation(s) specifically with code citations for each violation, that a reasonable specific time frame is given for compliance with the order and that appeal rights are referenced, where required.
3. Reinspection- after the order expires; a reinspection must be conducted by the authorized code official to determine whether the violations were abated in conformance with the order. The reinspection must again be conducted with either duly authorized consent or an administrative search warrant. If the enforcement official finds that some or the entire list of violations subject of the order has not been complied with in the period set forth in said order, there is probable cause to seek an arrest. The arrest warrant application should be sought within approximately 30 days of the last inspection to ensure that the violations are current. Each cited violation unabated upon the post order inspection constitutes a separate count. If there is continuing violation, each day that the violations remain unabated subsequent to the expiration of the order constitutes grounds for a new offense.

Once probable cause is established, the prosecutor may initiate the case by using any of the following methods he or she decides is most appropriate after review of the arrest warrant application, the accused's prior penal and safety code record, and the status and nature of the violations alleged: bench warrant, prosecutorial summons or a "Prosecutor's letter".

The bench warrant method should be used in police matters when an onsite arrest is inappropriate and in safety code enforcement matters where there is or was a serious risk of injury to person or property, such as no heat or other life threatening health or safety violations. In other cases, bench warrant or prosecutorial summons may be issued. However when the prosecutorial summons is attempted but unanswered, a bench warrant should be immediately sought. Where life

or health threatening violations are alleged to remain unabated, the prosecutor should endeavor to expedite the formal criminal process by using the service method that will allow court docketing as soon as possible. For non-life threatening violations, a prosecutorial summons, or a letter requiring abatement in a defined time frame, called a “prosecutor’s letter”, may be appropriate.

It is important to note that the pendency of a civil or administrative case, such as a foreclosure, bankruptcy, injunction, appeal or an eviction, does not bar criminal prosecution unless specifically disallowed by law. Some of the worst properties referred for housing prosecution are in fact in litigation which has, at best, stalled necessary repairs. Most criminal enforcement cases remain viable and can accomplish at a minimum those life safety interests by requiring necessary repairs and essential service provisions for the occupants of the subject property during the civil litigation. But at any time the enforcement official identifies the case as one where immediate compliance with code is necessary to protect persons or property from serious harm, the official should be encouraged to engage **emergency administrative measures** as provided by their code and by law including but not limited to emergency removal of the occupants by order of condemnation of the structure, or by an immediate referral to the municipal civil attorney for a court injunction. Emergency removal of occupants by order of condemnation requires compliance with the Uniform Relocation Assistance Act, CGS Section 8-266 et seq. See Dukes v. Durante, 192 Conn. 207 (1984). Civil action can in those cases proceed simultaneous to, but not necessarily in lieu of the criminal prosecution. Nothing in the above referenced provisions prevents a code enforcement official from continuing criminal enforcement if the violation(s) still exist during this time.

The **case file** should include:

- (a) Copies of the prosecutorial summons, arrest warrant or prosecutor’s letter;
- (b) A copy of the information (where applicable);
- (c) A certified copy of the relevant property deed from the municipal land records if the case is a code enforcement prosecution. (Note: tax assessor’s information is not necessarily current and is therefore not reliable as proof of ownership).
- (d) An affidavit from the enforcement official establishing probable cause. This should include and incorporate by reference a copy of the order and proof of receipt of the order upon the accused where applicable.
- (e) A certified copy of the relevant code if other than a state statute, for purposes of judicial notice of the court.
- (f) The accused’s prior arrest and/or safety code violation record, if one exists.

Continuances on safety code cases should be considered only when necessary to complete code violation abatement. They should be short in range, generally no more than a few weeks; less if the abatement can be accomplished faster. Urgent violation abatement, such as smoke detection, essential services and egress issues, should be addressed within 1-2 days. On larger abatement projects, the time may necessarily be longer. In this case, the defendant should be required to file a code compliant written plan of abatement with the referring code official in the first week or two, especially if the subject property is occupied. Once approved and if work is being done in accordance with the plan, additional continuances may be considered, as needed. The prosecutor

should request that the code official conduct interim inspections to assure compliance. If the work is not being performed as agreed, then in most cases the prosecution should proceed immediately to trial against the defendant.

VII. DISPOSITION OF HOUSING CASES

Disposition of safety code cases should always involve a requirement of compliance with the relevant code provision; preferably before, but at least as part of, any agreed disposition. If additional violations have been detected during the pendency of the action, the prosecutor should endeavor to make the abatement of those violations an additional condition of disposition. Both the conditions and the time frame for compliance should be set after consultation with the referring code official. The official's reports of the property should be current for these purposes. Disposition of a lockout or termination of essential services case should likewise always involve reinstatement or restitution, as appropriate.

It is highly important that the prosecutor require that compliance on all alleged violations be conducted pursuant to law; including that the abatement include all necessary building or health permits and the use of licensed contractors, where applicable. The prosecutor can request that the code officials confirm these measures throughout the violation abatement.

Also, landlords' and tenant's rights, including as to tenant's continued occupancy and entry by landlord for purposes of making necessary repairs, are to be strictly regarded in accordance with CGS Section 47a-1 et seq. and, in the case of entry specifically, CGS Sections 47a-16 and 47a-18. Additionally, the prosecutor may further routinely request, and should do so in cases where retaliation against the complainant is expected, that during an imposed conditional discharge or probation period, the defendant is prohibited against retaliation against the complainant.

Finally, the prosecutor should consider whether or not the person is a repeat offender for all possible case dispositions.

Sentencing and judgment options:

(a) Nolle:

Prosecutors should not offer a nolle on a case where the defendant refuses to remedy a violation in accordance with law. Full compliance with all known violations in an expedited manner should be required and must be confirmed by the authorized code enforcement agency.

Transfer or abandonment of a building that has not been repaired should **not** by itself be grounds for a nolle. If the city completes the work because of the emergency nature of the circumstances, then the case should be treated as one which the landlord did not make the repairs. If the property is lost by foreclosure, the cooperation of the owner during the ownership period with abatement of at least life safety repairs should be required and may be considered in the prosecutor's offer. It is important for a prosecutor to check this information with the code officials directly, as this and prior code violation records may not be otherwise available.

If a case is nolle, but within thirteen months the defendant is in violation, then a prosecution based on the new violation should be initiated along with the reinitiating of the old file.

The prosecutor may elect to open a new file rather than re-open the old file for the nolle case.

(b) Sanctions:

Sanctions should be used to assure that repairs will be made. A file should not be closed, except in extraordinary cases, until full code compliance has been obtained. Sanctions can consist of a variety of penalties. The accused should be ordered to abate all remaining violations in accordance with the court order as a condition of any suspended sentence by special condition of probation or a conditional discharge. A similar condition can be placed on any accelerated rehabilitation order. If the violation is not abated per the court order, a warrant for a violation of probation, or as otherwise provided at law, should be requested forthwith and brought before the court for action.

Fines should be graduated, depending on the severity of the offense and the extent of delay prior to repairs. The statute provides the applicable fines which ordinarily should not be imposed until the repair work is complete. If this is impractical, then a conditional sentencing should be used (see (e) below). Fines should be structured so that a defendant is not rewarded for delay. A separate fine may be imposed for ongoing violations; each day they remain unabated after issuance and expiration of a lawful order from the duly authorized code enforcement official constitutes a new offense. Repairs do not justify a disposition without a fine, unless the defendant has acted highly promptly. Repeat offenders should receive higher fines than first offenders.

Jail sentences should be imposed in the appropriate cases. Similarly, a defendant may have that sentence suspended with special conditions including full compliance with any outstanding code violations during a period of probation or conditional discharge. A probation or conditional discharge period should contain a relatively short time period for the work to be completed. Additionally, intermittent, partial abatement deadlines should be given in the order to assure that work is in progress. These deadlines should establish certain duties in intervals of no more than two to four weeks, with corresponding official reinspections. If winter weather interferes with repairs, then a conditional work plan may extend the time period for those additional months. The probation/conditional discharge period, however, may extend for a longer time period, up to as allowed by law. Each suspended sentence should be further conditioned upon the fact that the defendant will not commit another violation of any order to abate a state or municipal code on any property owned or managed by the defendant in the state of Connecticut.

The court has discretion as to the other conditions. For example, accelerated rehabilitation (AR), coupled with a charitable contribution and community service, can be an effective sanction.

(c) Arrests for failure to appear:

Only compelling excuses for non-appearance should be accepted. Violations of CGS sections 53a-172 and 53a-173, and of Section 51-164r, if willful, should be prosecuted and an arrest warrant sought. If a person is ordered arrested for failure to appear, then execution of the warrant should be made for the earliest available court date. The prosecutor may ask that abatement of the code violation be set as a condition of the pre-trial release of the defendant, as the failure to abate the violation is an ongoing criminal activity, which may threaten life safety.