



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
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DATE: October 19, 1995
TO: REPRESENTATIVE JOHN LA FAVE
FROM: Don Salm, Senior Staff Attorney
SUBJECT: 1995 Assembly Bill 593 (Five-Day Eviction in Case of Tenants of a Criminal Gang House)

Representative La Fave:

Circumstances beyond my control left me with no time to do a formal memo on this Bill, but the attached materials should help you. They are:

1. A copy of the current law (taken from the *session law* which created the drug nuisance eviction provision -- it has not been changed since enactment) allowing property owners to evict tenants within five days in the case of nuisances related to **DRUGS**.
 - Attached to that copy is a copy of the law with more helpful NOTES on it.
 - The law was enacted in 1993 Wisconsin Act 139, effective March 25, 1994.
 - Assembly Bill 593 just adds criminal gang house tenants to the exact same provisions in the Drug Eviction Law.
 - The Bill is summarized very well in the LRB analysis to Assembly Bill 593.
2. A copy of s. 823.113 relating to drug or *criminal gang house* as a public nuisance and the proceedings relating to such a nuisance action (not an eviction action as under your Bill). The gang-related provisions were created by *1993 Wisconsin Act 98*.
3. The procedure, as set forth in Assembly Bill 593 and the current law relating to drug evictions, is:

- Written notice by local law enforcement agency that a NUISANCE under s. 823.13 (1m) (b) (criminal gang house) exists. Only the written notice appears to be required -- there does not have to be any pre-notice hearing or conviction relating to whether the criminal gang house exists. If the *tenant contests* the basis for the five-day termination, the tenant may do so under the eviction court procedures in small claims court. In such a contest, the tenancy may **NOT** be terminated without proof by the property owner by the greater preponderance of credible evidence of the allegation that such a nuisance exists in the tenant's rental unit or was caused by the tenant [s. 704.17 (1) (c), (2) (c) and (3) (b)].

4. "**Criminal gang building**" or structure which is covered by 1995 Assembly Bill 593 is defined in s. **823.111 (1m) (b)** as any building or structure that is used as a meeting place of a **criminal gang** or that is used to facilitate the activities of a criminal gang.

- "**Criminal gang**," as used in s. 823.11 (1m) (b) is defined in s. 939.22 (9), attached. I have included the definitions of "**criminal gang member**" and "**pattern of criminal gang activity**" because those terms are used in the definition of "CRIMINAL GANG." Also included is the definition of "criminal gang activity" in s. 941.38 (1) (b) since that term is cross-referenced in the definition of "criminal gang member" in s. 939.22 (9g).

5. The immunity provision in the Bill is the same one [s. 895.34] used for drug nuisances. It specifies that no suit may be brought against any city, town or village or any governmental subdivision or agency thereof or against any officer, official, agent or employe of any of those entities who, *in good faith, acts or fails to act* to provide *a notice* to a property owner *that a public nuisance* under s. 823.113 (1) (drugs) *or (1m) (b) (criminal gang house)* exists.

DLS:kja

Attachments

ATTACHMENT

Section 939.22 (9), Stats.

939.22 (9) "Criminal gang" means an ongoing organization, association or group of 3 or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the criminal acts, or acts that would be criminal if the actor were an adult, specified in s. 939.22 (21) (a) to (s); that has a common name or a common identifying sign or symbol; and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

JOHN LA FAVE



STATE REPRESENTATIVE 23RD ASSEMBLY DISTRICT

Press Release
From the office of
State Representative John La Fave

October 16, 1995

TENANTS EVICTED FOR GANG ACTIVITY UNDER LA FAVE BILL

State Representative John La Fave announced today that he has introduced Assembly Bill AB593, designed to help landlords evict tenants who are involved in criminal gang activity.

Currently, landlords are able to give a five-day eviction notice to tenants of a dwelling that has been declared a "drug house" by local authorities. La Fave's bill allows a landlord to also give a five-day eviction notice to tenants when local authorities have declared the dwelling to be a criminal gang house.

The Assembly Housing Committee will hold a public hearing on this legislation on October 19th. AB593 has garnered strong bi-partisan support and has 31 sponsors.

"The law should allow landlords the right to deal as swiftly with a gang activity nuisance as with a drug activity nuisance", Representative La Fave said. La Fave cited one landlord's experience in coping with a tenant involved in criminal gang activity as an illustration of the need for this bill.

"This tenant discharged a firearm in a hallway," Representative La Fave said. "A bullet was shot through another tenant's unit. The landlord reported the setting off of fire alarms in the project, vandalism of cars of project residents, breaking windows, and the stealing of fire extinguishers. Needless to say, such incidents frightened innocent residents of the project.

"The landlord was concerned that he would lose all of the tenants if immediate action to remove the offending tenant was not taken. He related a long history of police contacts, but the problems continued unabated. Since drug activity could not be substantiated, the landlord was not able to expedite the process."

AB593 will provide consistency in the law, give law enforcement agencies another tool in dealing with criminal gangs, give landlords the right to quickly deal with tenants associating with criminal gangs, and give innocent tenants the comfort of knowing that those tenants who associate with criminal gangs will be removed from the premises more swiftly than would otherwise be possible without the expedited procedures.



October 16, 1995

Representative Carol Owens
105-W
P.O. Box 8953
Madison, WI 53708

Dear Representative Owens:

As residential property owners and managers, we are offering our support of A593 and ask that you support it also.

We feel there are many reasons we need to bring the gang problem under control and eventually eradicate the problem from our state. For now, I would like to submit two situations for your review.

One of our members owns property on 19th and Vine in Milwaukee's inner city. He has had severe problems with gangs to the extent that he has just boarded up the building because no matter who he had in the building, gangs would break the windows and threaten to the lives of whoever was inside if they did not leave. The back of the building has also been shot up by shotgun blasts. No one wants to live there and he refuses to allow it to become a have for gang members so he has boarded it up.

Another example is on Milwaukee's near south side on 10th and National. This owner had gang and drug problems in the building so he evicted the tenants. Later, after he got a good family to move in, the original gang came back and moved the family out at gunpoint.

Unbelievable you say? Yes, but it is happening throughout our city and the surrounding suburbs and it's time to take a stand against such criminal behavior. These are just two extreme cases, yet they highlight the problems we are facing every day.

Enclosed is an article from the Milwaukee Journal/Sentinel. This article points out that gangs are no longer an "inner city" problem. This is a problem which is spreading like wildfire to the suburbs and across the state and it is affecting the safety and quality of the all the citizens of Wisconsin.

We anticipate your support on this very troubling issue and look forward to any suggestions or comments you may have.

Sincerely,

Orv Seymer, Legislative Chairman

Gangs/Suburban gains questioned

From page 1

lem was serious. The village this summer experienced a rash of gang graffiti on street signs and buildings, as well as thefts.

"We've identified numerous gang members who either live in Hales Corners or frequent Hales Corners," Krahn said.

Krahn categorized gang activity as being "in the initial stages," and said police would monitor the situation.

Whitnall Superintendent Gene Thieleke, who had not seen McCormack's memo until a reporter showed it to him Wednesday, called it "obviously overstated."

"There are some indicators that there are elements of gangs in the immediate area," he said. "If there is a question mark about them being a horrendous problem, then I'd have to answer it with a 'no.'"

Whitnall High School Principal Gerald Hopfensperger, who also had not seen the memo, expressed surprise at its content but said gang pressure was being felt by most suburban school districts in the Milwaukee area. Whitnall High School is in Greenfield but serves students from that city and Hales Corners.

Greenfield Superintendent William Larkin said:

"I'm a little surprised (by McCormack's memo). I'm not aware of any local gangs that have been identified. We do have 'wannabes.' It's been a quiet year. We try to monitor this very closely."

Evidence of gang activity came to light at the Whitnall High School homecoming football game Sept. 29 when Greenfield police were called to disperse a south side gang. Hop-

fensperger said.

While a gang sign was sprayed onto a pillar of the high school a few weeks ago, he said, those occurrences are rare.

Greenfield Police Chief Francis Springob said Greenfield had a problem with some gang members cruising Highway 100.

Whitnall School District parents will have a chance to talk about the issue of gangs at 7 p.m. Tuesday at the high school, 5000 S. 116th St., during a meeting between school administrators and an advisory group of high school parents. Parents also can be briefed on the problem at 7 p.m. Nov. 1 at the high school during a meeting of school administrators.

WHITNALL SCHOOLS Gangs gain in south suburbs

But officials disagree on the extent, impact

By DARRYL ENRIQUEZ
AND KENNETH R. JAMKE
of the Journal Sentinel staff

South side Milwaukee gangs have gained footholds in Greenfield and Hales Corners, but officials disagree on the extent of activity and its impact on students.

In a confidential memo, one Whitnall School District official warned that gangs are centered in (Whitnall) high school and Greenfield High School. Their activities are centered around tagging (vandalism), drugs, alcohol and sex.

"We have now identified many, many of the sworn gang members through their leaving names and gang symbols on their books, through observation by undercover detectives and frankly through other children giving information to police and to administrators."

The memo was written by Whitnall Middle School Principal Brian McCormack and circulated to his staff Monday. Staff members were told to destroy the memo immediately after reading it.

McCormack declined Wednesday to talk about the memo. Other school and police officials, however, said Wednesday that gang activity in the communities had increased.

Hales Corners Police Chief Michael Krahn said the prob-

Please see **GANGS** page 4

HOW TO DEAL WITH GANGS
SEE STORY ON 4B

To deal with gangs, counselors say, you must understand th

By TOM HELD
of the Journal Sentinel staff

Suburban teachers, parents and authorities must learn about gangs and their culture so they react to gang problems with reason rather than fear, two Milwaukee gang counselors said Wednesday.

Both men, who have spent a decade working with Milwaukee area gangs, found more fear than understanding in a letter regarding gangs that they writ-

to Hales Corners Middle School principal sent to his staff on Monday.

The letter says a Milwaukee-based gang has recruited high school students in Hales Corners and Greenfield.

Jose Flores, who works as a community coordinator with a Milwaukee County juvenile offender program, and Ron Johnson, a counselor with the Youth Opportunities Collaborative, said it was wrong to attribute a rise in gang activity to recruitment by a Milwaukee gang.

"That's an oversimplified explanation of a very complicated social aspect," Johnson said. "To say our kids are being recruited by somebody else is in effect saying somebody else is polluting our children. That's denial."

Johnson said suburban youths join gangs for the same reasons inner-city youths do: They succumb to peer pressure, they need a sense of belonging, they lack a stable family life or they feel a need to rebel.

"You can't be recruited un-

less you're ready to be recruited," Johnson said.

Flores said peer groups had existed in the suburbs for many

years. Some taken on new symbols that identify them



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**YOUR
FUTURE
IS OUR
BUSINESS.**

TO: Assembly Housing Committee

FROM: Michael Theo
Vice President for Public Affairs

DATE: October 19, 1995

RE: AB 593 - Gang House Evictions

**"The purpose
of the
Wisconsin
REALTORS®
Association
is to enhance
the success
of the
real estate
professional."**

The Wisconsin REALTORS Association supports AB 593 - legislation intended to give rental property owners the authority to evict criminal tenants expeditiously and thus help protect law abiding renters.

AB 593 is patterned after 1993 Wisconsin Act 139 which allows landlords to give a five-day eviction notice to tenants of a dwelling which local law enforcement authorities have declared to be a drug house. This bill gives similar authority to landlords to give a five-day notice to evict individuals that use the structure to facilitate criminal gang activities.

Everyone has the right to be safe and secure in their home - whether that home is a single family residential house, condominium, or apartment. AB 593 expands a vital and important partnership between law enforcement officials and rental property owners in addressing criminal activity in multifamily residential dwellings.

This legislation will help protect tenants as well as private property, it has a social as well as an economic benefit, and it sends the right signal to criminals that their actions will not be tolerated. Any legislation that combines these attributes deserves support. We respectfully urge you to recommend passage of AB 593.

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STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

RE: AB-593
Criminal Gang House
5-Day Eviction

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

June 29, 1995

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221

Mr. Andrew Hysell
Legislative Aide
Office of Representative John La Fave
119 Martin Luther King, Jr. Boulevard, Room 305
Madison, Wisconsin 53702

Re: Expansion of Section 704.17(2), Stats.

Dear Mr. Hysell:

You requested our views on the possible expansion of sec. 704.17(2), Stats., which permits eviction of tenants for engaging in gang-related drug activity, to permitting evictions for any criminal gang activity. As we understand it, the purpose of the legislation would be to permit better control by a landlord over his or her rental property if it is being used for any criminal gang activity.

Our staff has looked at this proposal and does not see any obvious constitutional problems with this expansion. Since evictions must be accomplished through the small claims court procedures, there should be adequate due process and procedural safeguards to protect both parties to such eviction actions.

Thank you for the opportunity to comment on this proposal.

Sincerely,

Andrew Cohn
Executive Assistant

AC:MES:dh

**JOHN
LA FAVE**



**STATE REPRESENTATIVE
23RD ASSEMBLY DISTRICT**

AS93

October 25, 1995

TO: Members of Assembly
Housing Committee

FR: Rep. John La Fave

RE: AB593 - Criminal Gang House
Eviction Bill

Attached is a letter from Andrew
Cohn, Department of Justice,
concerning this proposal.



October 25, 1995

State Representative Carol Owens
105 -W
P.O. Box 8953
Madison, WI 53708

Dear Representative Owens:

On October 19th, I testified before the Assembly Housing Committee on AB593, the Criminal Gang House Bill, sponsored by Representative John LaFave. As Legislative Chairman of *The Apartment Association of Southeastern Wisconsin, Inc.*, it is my responsibility to speak on behalf of our members.

I ask for your support of AB593 which will assist property owners and managers in their fight against this particular criminal behavior which is plaguing our society. This is a serious problem which frightens our decent law abiding citizens. Enactment of AB593 would give our tenants some peace of mind.

I understand your concerns about the potential abuse this bill could generate. However, I would like to put your mind at ease by reiterating the steps that must be followed.

First and foremost, there must be an investigation by the local Police Department. Secondly, the police must then send a letter to the owner informing them of the nuisance on their property. Next, the owner must issue a 5-day notice to the tenant along with the letter from the Police Department. Finally, if the tenant feels they have been wrongly accused, they have the opportunity to challenge the eviction in a court of law. As you can see, the potential for abuse is limiting.

Again, I request your support of this bill. Help us eradicate criminal behavior from the State of Wisconsin.

Thank you for your consideration. We look forward to your support.

Sincerely,

Orv Seymer, Legislative Chairman
The Apartment Association of Southeastern Wisconsin, Inc.

**JOHN
LA FAVE**

AB 593



**STATE REPRESENTATIVE
23RD ASSEMBLY DISTRICT**

October 26, 1995

TO: Members of Assembly Housing Committee

FR: Representative John La Fave

RE: AB593

The attached letter from Milwaukee Police Chief Philip Arreola indicates that the Gang Crimes Intelligence Division has clear procedures to identify a criminal gang house and follows Wisconsin statutes in doing so.



Police Department

Philip Arvola
Chief of Police

October 25, 1995

RE: AB-593

Ms. Sheila Ashley
Intergovernmental Relations Division
200 East Wells Street, Room 606
Milwaukee, WI 53202

Dear Ms. Ashley:

This letter is in response to your request to identify a criminal gang house.

At the present time, the Milwaukee Police Department follows the Wisconsin State Statutes in identifying criminal gang members and criminal gang houses. Wisconsin State Statute 939.22(9) defines a criminal gang as an on-going organization, association, or group of three or more persons, whether formal or informal, that has as one of its primary objectives the commission of one or more of the criminal acts, or acts that would be criminal if the actor were an adult, specified in State Statute 939.22(21) (A-S). Wisconsin State Statute 939.22(21) also defines a pattern of criminal gang activity as the commission, attempt to commit or solicitation to commit two or more of a list of several crimes included in that statute. Further, Wisconsin State Statute 823.113(1M)(B) defines a criminal gang house as "any building or structure that is used as a meeting place of a criminal gang, or that is used to facilitate the activities of a criminal gang." Additionally, Wisconsin State Statute 941.38 deals with criminal gang member solicitation and contact.

Presently, these statutes adequately define criminal gang membership, criminal gang activity and criminal gang houses. The Milwaukee Police Department uses these statutes to guide criminal gang related investigations. A criminal gang house is identified based upon actual activities that take place at the house. Generally there is a pattern of activity at a given house before it is classified as a gang house. The criteria that the Gang Crimes Intelligence Division uses to identify a criminal gang house includes:

1. Whether the house is used as a meeting place by gang members for gang activity.
2. What crimes are actually committed at the house.
3. Length of time the house has been used as a meeting place.
4. Who has control of the house and the level of participation and knowledge of gang activity.

Presently the Wisconsin State Statutes adequately defines a criminal gang house and the Milwaukee Police Department follows the statutes in so identifying a criminal gang house.

Should you have any questions regarding this matter, please feel free to contact Captain Phillip Echer of the Office of Management, Analysis and Planning (935-7480).

Sincerely,

**PHILIP ARREOLA
CHIEF OF POLICE**

pa:pme:pr

AB593

STATE OF WISCONSIN

FIRST JUDICIAL DISTRICT



PATRICK T. SHEEDY
Chief Judge
Telephone: (414) 278-5112

THOMAS P. DOHERTY
Deputy Chief Judge
Telephone: (414) 278-5113

RONALD R. WITKOWIAK
District Court Administrator
Telephone: (414) 278-5113

MICHAEL G. NEIMON
Asst. District Court Administrator
Telephone: (414) 278-5113

MILWAUKEE COUNTY COURTHOUSE, ROOM 609

MILWAUKEE, WISCONSIN 53233-1425

FAX: (414) 223-1264

December 22, 1995

State Representative Carol Owens
105W
P.O. Box 8953
Madison, WI 53708

Dear Representative Owens:

I have received a letter from the Apartment Association of Southeastern Wisconsin, Inc. asking me to write you a letter explaining the eviction procedure as it relates to Milwaukee County Small Claims Court as you consider AB593 which relates to Criminal Gang Houses and five-day evictions.

Evictions generally have two parts. The first consists of the landlord asking the Court for an order, called a Writ of Restitution, restoring possession of the premises. The second is a demand for monetary damages.

Currently, all evictions are returnable each afternoon at 2:00. The calendar normally contains at least 50 new evictions and frequently exceeds 100. The clerks call each case, screening them to see if there is proper service of the notice as well as the summons and complaint. If there are deficiencies, the cases are set aside for one of the Judicial Court Commissioners to review with the landlord and tenant should he or she appear. There are currently four Commissioners assigned to Small Claims Court.

If the tenant appears and there are no deficiencies as to service, the clerk will inquire of the defendant as to possible defenses. The clerk will offer a stay of the Writ for up to two days per child in an effort to get the parties to stipulate to a resolution of the first cause of action. If either party objects, the case is set aside by the Commissioner.

As you are aware, Wisconsin Statute 799.206(3) prohibits Commissioners from presiding when either party claims that a contest exists. Therefore, the Commissioners explore the case with both parties and attempt to get them to settle their differences. This generally results in the staying of the Writ until a date in the future so as to enable the tenant to move out peacefully. If the parties cannot agree, the case is transferred forthwith to the

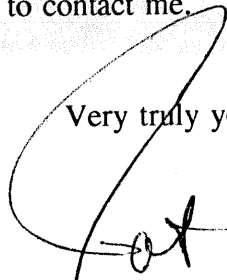
Representative Owens
December 22, 1995
Page Two

Judge assigned to Small Claims Court. If his calendar permits, he holds a hearing to determine whether there are any issues of fact to be decided. If there are, he schedules a trial as soon as possible in order to determine whether or not a Writ should issue. If there are no issues of fact, he issues the Writ immediately.

The issues of fact that a Judge generally has to decide relate to the service of notice, the service of the Summons and Complaint, and the grounds for the eviction. As with the current Drug House Eviction law where the landlord, if taken to a trial, has to prove, with witnesses, that the tenant is keeping a drug house, I would assume that, should AB593 pass, the landlord, if taken to trial, would have to prove, with witnesses, that the tenant is keeping a criminal gang house. Currently, if the tenant demands a trial, claiming that he is not operating a drug house, the landlord has the burden of proof to show that he is. This burden is not satisfied merely by the landlord showing the judge the letter that he has received from the Police Department. A police officer must come to Court and testify as to why the tenant is suspected of keeping a drug house. That officer is subject to cross examination. The same procedure would be followed as to the issue of whether or not a tenant is keeping a criminal gang house.

I trust that this letter gives you an overview as to the procedures that we follow in Milwaukee County regarding evictions. If I can be of any further assistance or answer any other questions, do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Pat', enclosed within a large, loopy oval scribble.

Patrick T. Sheedy
Chief Judge

PTS:kal:078.ltr

cc: O. Seymer, Legislative Chairman
Judge Frank T. Crivello

AB593
CRIMINAL GANG HOUSE EVICTIONS

- I. Must have a letter from the local police stating that there is criminal gang activity on property.**
- II. Owner issues a 5-day notice to tenant along with a copy of letter from Police Department.**
- II. If tenant believes they are wrongfully evicted, they still have recourse. They can go to court and present their case to a judge.**
- IV. Law prohibits lawsuits against owner or public officials who, in good faith, take action because a nuisance exists.**
- V. A criminal gang is clearly defined.**
- VI. This bill will help decent, law abiding tenants by removing the bad ones quickly.**

Please use this summary to write a short note or in conversation with your representative.

**If you have any questions, please don't hesitate to contact The AASEW office:
(414) 276-9637.**

Thank you