

# TELEMASP BULLETIN

## TEXAS LAW ENFORCEMENT MANAGEMENT AND ADMINISTRATIVE STATISTICS PROGRAM

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### Use of Nuisance Abatement Procedures

Many police departments use non-traditional methods to combat illicit activities, including the employment of nuisance abatement and civil statutes to clear areas that are habitually used for drug dealing and prostitution. Civil law, forfeiture statutes, and administrative code enforcement offer powerful tools to police as a supplement to criminal enforcement efforts.

Use of the Texas nuisance abatement statute is examined in this bulletin. A review of abatement activities from departments throughout Texas is included, providing information on how abatement and administrative code enforcement are utilized. The Dallas Police Department's S.A.F.E. Team is featured as an example of how the state's abatement statute, in combination with other administrative codes, can control problem locations.

#### Background

Historically, nuisance statutes were used to control illegal prostitution and gambling (Hayeslip, 1989). Today, police agencies have found that the use of similar abatement procedures are efficient when dealing with properties where illicit activity occurs. Illinois, New York and Texas are just three of the states that allow the use of nuisance abatement statutes (Robinson, 1993; Tyson, 1993).

The U.S. Supreme Court examined a New York nuisance abatement statute against a bookseller in a First Amendment case (*Arcara v. Cloud Books*; 106 S.Ct. 3172, 1986). In *Arcara*, the majority stated that the First Amendment did not protect the closing of the bookstore. The Court reasoned that:

The closure statute is directed at unlawful conduct having nothing to do with books or other expres-

sive activity. Book selling on premises used for prostitution does not confer First Amendment coverage to defeat a statute aimed at penalizing and terminating illegal use of premises (*Arcara v. Cloud Books*, 106 S.Ct. 3173).

The Court's decision in *Arcara* is important because it affords local governments an opportunity to use abatement statutes against continuing problem locations. Potter (1987:192) states that *Arcara v. Cloud Books* "...has provided state and local governments with one small but nevertheless effective weapon against prostitution."

#### Texas Law

Section 125 of the Texas Civil Practice and Remedies Code provides the framework for the abatement of common and public nuisances. Section 125 defines both nuisances and the penalties that can be levied against a person who maintains a common or public nuisance. Under Section 125.001, a common nuisance is defined as a place where people continually go to engage in criminal activities such as gambling, prostitution, organized criminal activity, or to deliver a controlled substance (V.T.C.A., Civil Practice and Remedies Code, Sec. 125.001, Supp. 1994). Section 125 defines a public nuisance as a place that is habitually used for criminal activities such as prostitution, manufacture of obscene materials, gambling or deviant sexual intercourse. By covering a variety of activities, the common and public nuisance statutes allow municipalities to combat unwanted behaviors. From controlling prostitution to addressing membership in a criminal street gang, these statutes provide a different avenue for agencies to pursue when dealing with problem locations. However, the statutes are narrow enough to offer protection to persons engaging in legal activities.

**V.T.C.A. Civil Practice and Remedies Code  
Section 125.001**

**Definition of a Common Nuisance**

A person who knowingly maintains a place to which persons habitually go for the purpose of prostitution or gambling in violation of the Penal Code, for the purpose of reckless discharge of a firearm as described by Section 42.015, Penal Code, or for the purpose of engaging in organized criminal activity as a member of a combination or as a member of a criminal street gang as described by Section 71.02, Penal Code, or for the delivery or use of a controlled substance in violation of Chapter 481, Health and Safety Code, maintains a common nuisance (V.T.C.A., Civil Practice and Remedies Code, Sec. 125.001, Supp. 1994).

**V.T.C.A. Civil Practice and Remedies Code  
Section 125.021**

**Definition of a Public Nuisance**

The habitual use or the threatened or contemplated habitual use of any place for any of the following purposes is a public nuisance:

- (1) gambling, gambling promotion, or communicating gambling information prohibited by law;
- (2) promotion or aggravated promotion of prostitution;
- (3) compelling prostitution;
- (4) commercial manufacture, commercial distribution, or commercial exhibition of obscene material;
- (5) commercial exhibition of live dancers or other acts depicting real or simulated sexual intercourse or deviate sexual intercourse;
- (6) engaging in a voluntary fight between a man and bull if the fight is for a thing of value or a championship, if a thing is wagered on the fight, or if an admission fee for the fight is directly or indirectly charged, as prohibited by law;
- (7) reckless discharge of a firearm as described by Section 42.015, Penal Code; or
- (8) engaging in organized criminal activity as a member of a combination or as a member of a criminal street gang as described by Section 71.02, Penal Code; or
- (9) delivering or using a controlled substance in violation of Chapter 481, Health and Safety Code (V.T.C.A., Civil Practice and Remedies Code, Sec. 125.021, Supp. 1994, p. 138)

According to Section 125.002, "A suit to enjoin and abate a common nuisance may be brought by an individual, by the attorney general, or by a district, county, or city attorney" (V.T.C.A., Civil Practice and Remedies Code, Section 125.002, Supp. 1994, p. 135). This allows almost any interested party the right to bring suit to abate a common or public nuisance.

After an abatement action is filed, a variety of actions are available to take against the property owner if the court rules that a nuisance exists. In common nuisance cases, the court can grant an injunction and order the responsible party to abate the nuisance and forbid those responsible from maintaining the nuisance (V.T.C.A., Civil Practice and Remedies Code, Sec. 125.002, Supp. 1994, p. 135). Courts can also order the nuisance location closed for one year, unless the owner posts an appropriate bond (V.T.C.A., Civil Practice and Remedies Code, Sec. 125.002., Supp. 1994, pp. 135-136).

The penalties for maintaining a public nuisance are the same as those for common nuisances *except* those who violate a court order against maintaining a public nuisance are subject to civil contempt (V.T.C.A., Civil Practice and Remedies Code, Sec. 125.022, Supp. 1994, p.139). Violators can be subject to a fine from \$1,000 to \$10,000 and/or a jail term between 10 and 30 days (V.T.C.A., Civil Practice and Remedies Code, Sec. 125.022, Supp. 1994, p. 139).

Section 125 also addresses membership in a criminal street gang for the purposes of creating a public nuisance. Subchapter D, Section 125.062 states that "A ...criminal street gang that continuously or regularly associates in organized criminal activities as described by Section 71.02, Penal Code is a public nuisance" (V.T.C.A., Civil Practice and Remedies Code, Sec. 125.062, Supp. 1994, p. 142). The next section makes further reference to criminal street gangs by stating that "The habitual use of a place for engaging in organized criminal activity ...is a public nuisance" (V.T.C.A., Civil Practice and Remedies Code, Sec. 125.063, Supp. 1994, p. 142). These statutes are useful tools against street gangs and the properties they use for illegal activities.

**Nuisance Abatement Practices Among Texas Agencies**

This analysis is based on the responses of 24 Texas agencies which reported employment of nuisance abatement procedures. The agencies were asked if their department has a specialized unit, a designated individual, or neither to handle nuisance abatement activities. Eight respondents stated that their department used a specialized unit and eight departments also reported that a designated individual is assigned abatement responsibilities. Another seven departments reported that although they use abatement procedures, they have neither a designated unit nor individual, and one department gave no response.



**Year abatement unit initiated.** Agencies were also asked the year in which they began using abatement procedures or when their abatement unit was formed. A majority of the agencies (17) reported that they started using abatement procedures in the 1990s. Eight agencies reported that they began using abatement procedures or formed a unit in 1994, two departments began abatement procedures in 1991, four departments began in 1992, and three in 1993. As shown in Figure 1, the use of abatement procedures has received more emphasis since 1990. One department, however, reported that abatement procedures had been in effect since 1977.

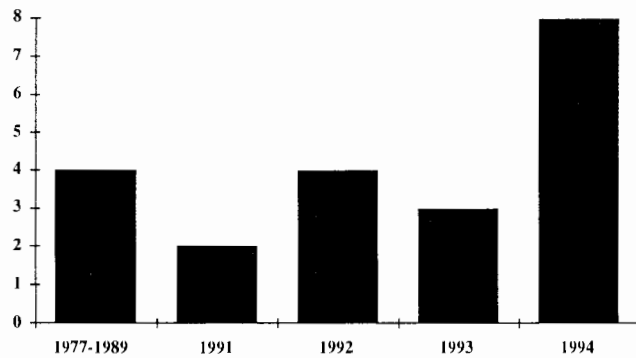


Figure 1

**Year Abatement Unit or Procedures Initially Employed**

**Goals of using abatement procedures.** Respondents were asked to relate the specific goals of using nuisance abatement procedures in their particular departments. Of the 24 agencies that use nuisance abatement procedures, all reported that one of the goals is community improvement. Twenty-one agencies (88%) reported that code enforcement is a goal pursued by the abatement unit. Nineteen agencies (79%) stated that they receive assistance from cooperative owners to abate problem locations, which allows the police to rid the area of unwanted activity without initiating formal procedures against the property owner. Sixteen departments (66%) stated that abating and seizing problem locations is a goal of their unit. Ninety-six percent (23) of the agencies listed improvement of the community as the *most important* goal of abatement procedures (see Figure 2).

**Activities targeted by abatement procedures.** Departments were asked to outline the specific activities that are targeted for abatement procedures. Eighty-eight percent target both common and public nuisances. Twenty agencies (83%) reported that they target buildings that are used for

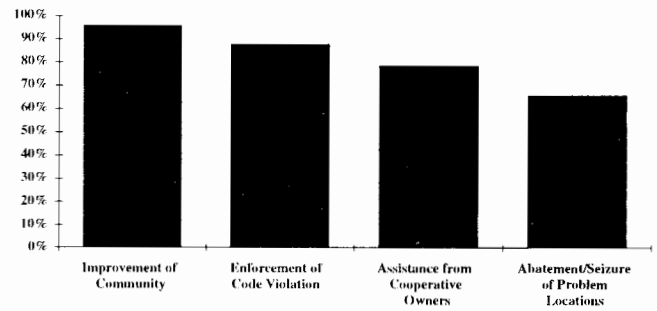


Figure 2

**Goals of Abatement Units**

drug activity, and 14 agencies (58%) reported that they target prostitution offenses. Nine agencies reported that they target fire and building code violations, respectively.

Agencies were also asked which specific criminal activity is a priority as a common or public nuisance statute. Eight agencies (30%) stated that prostitution-related offenses are a priority, and 18 (75%) reported that abatement of buildings used for drug activities is a high priority.

**Legal statutes used for abatement procedures.** When the 24 agencies were asked which statutes they employ in abatement cases, 14 (58%) stated that they use the Texas Civil Practices and Remedies Code, and 12 agencies (50%) use Section 101 of the Texas Alcoholic Beverage Code. Only seven of the agencies (29%) use individual municipal codes in abatement cases.

As a corollary to the previous question, respondents were asked whether the current statutes should be strengthened and, if so, why. Fifteen of the 24 respondents stated that in their opinion the statutes used for nuisance abatement should be strengthened. Of those, many stated that the court process takes too long and should be shortened. Several respondents also stated that the use of abatement procedures should be extended to include other types of criminal activities, such as crimes of violence that occur repeatedly at the same location.

**Assistance from other city departments.** Often the police are not the only city or county agency that has responsibility for nuisance abatement activities. Much of the time they must work in cooperation with other city agencies when abating common and public nuisances. Agencies responding to the survey were asked to list other city agencies from which they receive assistance when using nuisance abatement procedures. Eighty-eight percent (21) of the agencies stated that they receive assistance from building code in-

## Dallas S.A.F.E. Team

In 1991 the Dallas Police Department established its S.A.F.E. (Support, Abatement, Forfeiture, and Enforcement) team to deal with properties where criminal activities occur. The primary goal of the Dallas S.A.F.E. team is the "...revitalization of neighborhoods throughout the city..." (Moss, undated). To accomplish this goal the S.A.F.E. team developed operational methods that:

- Deny criminals use of real property as a base of operations;
- Secure owner cooperation in removing the criminal element;
- Secure owner compliance with building codes;
- Remove or seize blighted property;
- Seize properties purchased with funds from criminal activities;
- Coordinate and file all asset seizure cases dealing with real property.

The S.A.F.E. team targets the property where criminal activity occurs. Instead of returning to the same location repeatedly, the location itself becomes the focus of the S.A.F.E. team. Removing the location of the criminal activity is a major goal of the Dallas S.A.F.E. team.

**The Dallas S.A.F.E. Acronym.** Property owner compliance is obtained by the applicable approach:

**Support** by departments (Cooperative Owners)

**Abatement** (closed) by Civil Court Orders (Complacent Owners)

**Forfeiture** (seized) by Civil Court Orders (Criminally Involved Owners)

**Enforcement** (issuance of city citations for ordinance violations) (Noncompliant Owners)

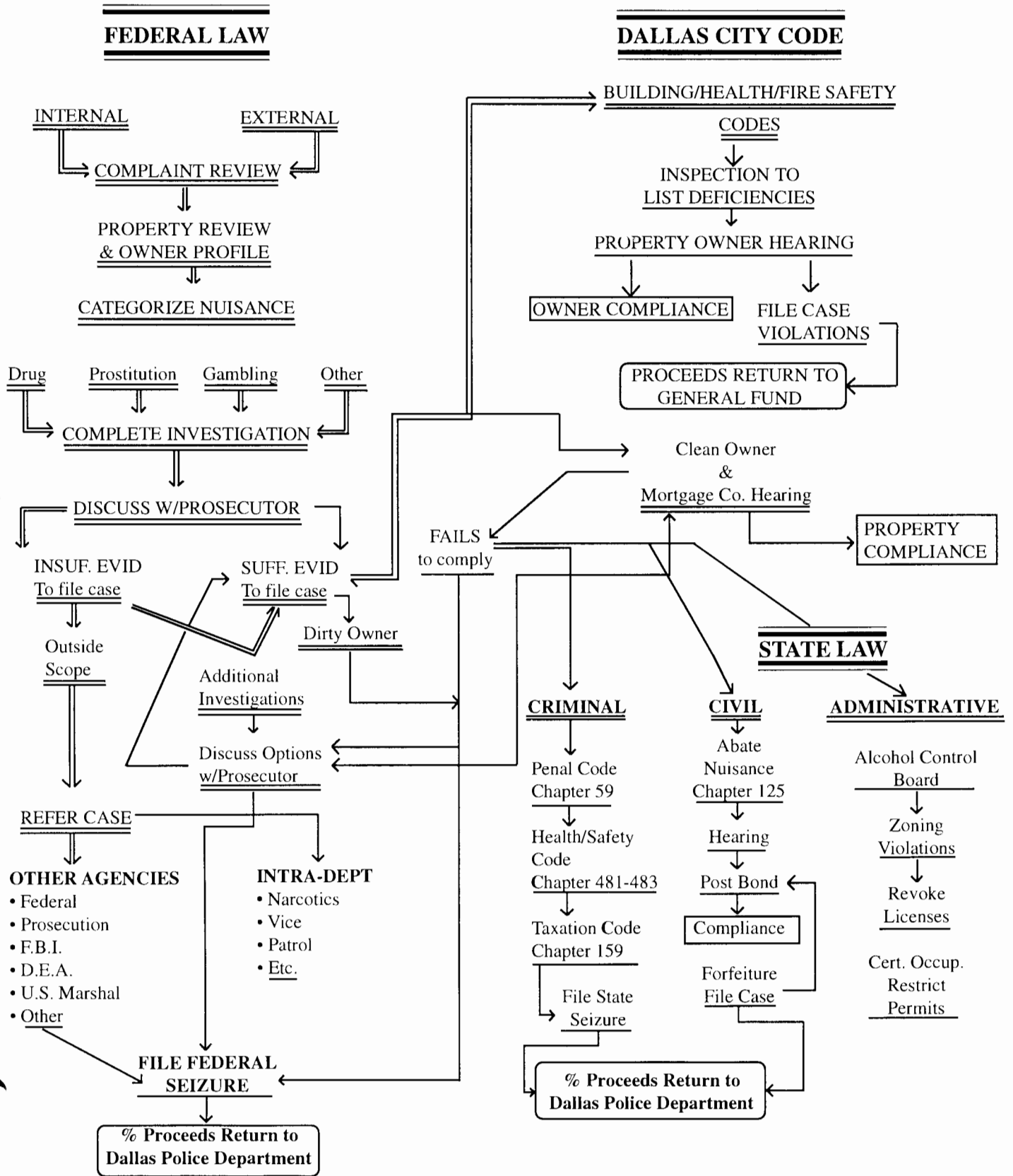
**Makeup and activities of Dallas S.A.F.E. team.** The Dallas S.A.F.E. team consists of personnel from the Dallas Police Department, the city attorney's office, and inspectors from both the fire and housing departments. Combining these resources ensures that the Dallas team has all possible means at their disposal to handle a problem location.

The Dallas S.A.F.E. team engages in four different types of activities. The team supports cooperative owners who wish to solve the problems on their properties. If the team finds that owners will not solve the problem on their property, either self-abatement or court-ordered abatement of the property is sought. The team also uses forfeiture of the property itself if the owner is involved with criminal activities occurring at the location. Finally, the team uses enforcement of building and fire codes to achieve a safer building environment.

Investigations begin once a complaint is received from a citizen or police officer. First, the S.A.F.E. team conducts a preliminary investigation into the history of the property to determine if there is enough evidence to warrant a complete investigation. The S.A.F.E. team then determines what type of action to take and which particular law(s) to use.

Since its inception in 1991, the Dallas S.A.F.E. team has received 1,131 complaints. Of those, 513 cases were opened, and 349 cases were closed. The Dallas S.A.F.E. team has achieved a 98 percent compliance rate for owners who abate nuisance conditions at properties where criminal activity occurs.

## Dallas S. A. F. E. Team NUISANCE ABATEMENT FLOW CHART



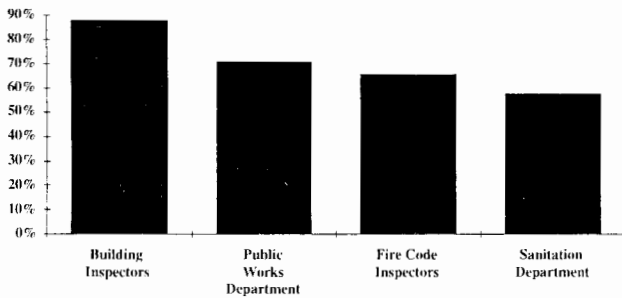


Figure 3

**Additional Resources Used for Abatement**

spectors, 17 agencies (71%) receive assistance from the public works department, 16 agencies (66%) receive assistance from fire code inspectors, and 15 agencies (58%) reported that they receive assistance from the sanitation department (see Figure 3).

**Location targeting.** When asked, "How do properties and activities come to the attention of the police?" all 24 agencies (100%) stated that they receive complaints from individual citizens. Ninety-two percent (22) stated that they receive complaints from police officers, and 15 agencies (63%) stated that they use analysis of calls-for-service to target locations. Nineteen agencies (79%) stated that they use complaints from other city/county departments, and 22 (92%) use complaints from neighborhood groups to target problem locations.

**Community responses to the use of abatement procedures.** Respondents were asked to relate any incidents of community support for the use of abatement procedures or for their specific nuisance abatement unit. For the most part, the respondents stated that the community generally supports the use of abatement procedures to handle problem locations. Several departments reported that media coverage had been positive and that local residents were pleased that the police are doing something about problem locations.

*Overall public support to address public nuisance problems is good. Public nuisances are viewed as being detrimental to the safety and welfare of the general public, reduces the value of property, invites vandalism, creates fire hazards, creates a hazard to the health and safety of minors, and is detrimental to the economic welfare of the community by producing urban blight adverse to the maintenance and continuing development of the city. (Lt. Roger Mangum, Euless Police Department)*

**Future plans for nuisance abatement units/use of procedures.** Survey respondents were asked whether they planned to expand, continue, reduce or eliminate the use of nuisance abatement procedures during the next year. Seven agencies (28%) planned to expand abatement procedures, and 14 agencies (60%) planned to continue using abatement procedures in their jurisdictions. Only one department reported that they will reduce the use of abatement procedures within their jurisdiction (see Figure 4).

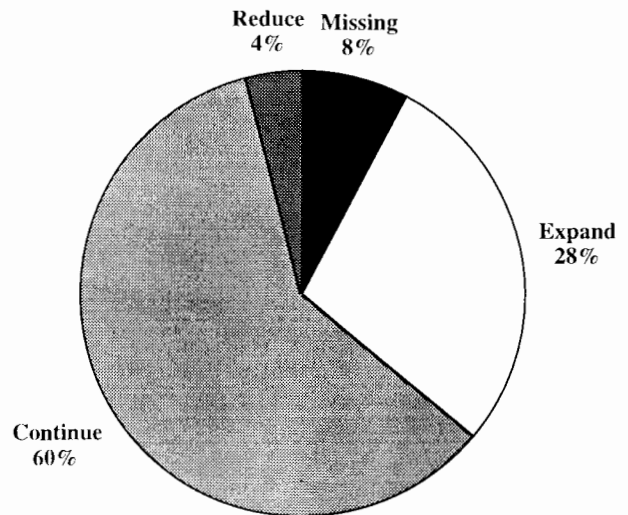


Figure 4

**Future Plans for Nuisance Abatement Unit**

**Summary**

For the most part, agencies that use nuisance abatement procedures view them as effective tools to fight unwanted behavior. Nuisance abatement activities target a variety of troublesome behaviors and are generally supported and welcomed by citizens. Nuisance abatement procedures provide an option to prosecution in criminal court with comparable effectiveness.

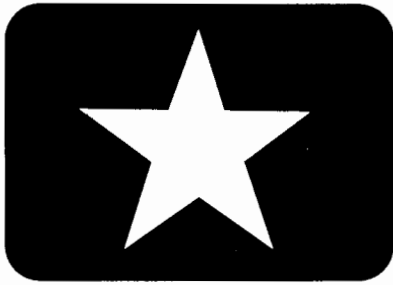
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Special thanks to the Dallas Police Department. Thank you to the following agencies for participating in this month's bulletin.

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Addison Police Department  
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\* Arlington Police Department  
\* Austin Police Department  
\* Beaumont Police Department  
Carrollton Police Department  
\* College Station Police Department  
\* Dallas Police Department  
Dallas County Sheriff's Office  
\* Deer Park Police Department  
Duncanville Police Department  
\* El Paso Police Department  
\* Euless Police Department  
Fort Bend County Sheriff's Office  
\* Fort Worth Police Department  
\* Galveston Police Department  
\* Garland Police Department  
\* Harris County Sheriff's Office  
\* Houston Police Department  
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Mesquite Police Department  
Midland Police Department  
North Richland Hills Police Department  
\* Odessa Police Department  
\* Pasadena Police Department  
Plano Police Department  
Randall County Sheriff's Office  
Richardson Police Department  
\* San Antonio Police Department  
\* Texarkana Texas Police Department  
Texas Department of Public Safety  
Travis County Sheriff's Office  
University of Texas at El Paso Police Department  
\* Waco Police Department  
White Settlement Police Department  
\* Wichita Falls Police Department

\*Indicates department that uses nuisance abatement procedures.



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