



National Institute of Justice

Issues and Practices

Using Civil Remedies for Criminal Behavior

**Rationale, Case Studies, and
Constitutional Issues**

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

Using Civil Remedies for Criminal Behavior

Rationale, Case Studies, and Constitutional Issues

by
Peter Finn
and
Maria O'Brien Hylton

October 1994

Issues and Practices is a publication series of the National Institute of Justice. Each report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion on the subject. The intent is to provide information to make informed choices in planning, implementing, and improving programs and practice in criminal justice.

Foreword

Prosecutors and police have found it difficult to combat successfully a range of criminal activities that include drug dealing, car theft, hate violence, domestic violence, and possession of firearms by the mentally ill. A relatively small number of jurisdictions have found that civil remedies can be an effective means of attacking these and other illegal behaviors.

To be sure, most criminal prosecutors and police departments are unfamiliar with enforcing civil statutes and uncomfortable doing so. However, using civil remedies to address criminal behavior does not involve breaking new ground or tampering with an inviolate principle of separation of criminal and civil law. On the contrary, many civil judgments effectively sanction wrongdoers more severely than the criminal law, while many criminal sanctions involve classic civil features of compensation, community service, and victim restitution.

In fact, using civil remedies is another illustration of a police focus on problem solving as part of community policing

strategies that have shown such promise in curtailing crime in many jurisdictions across the country. One aspect of community policing involves the application of a panoply of innovative and long-term solutions to a criminal problem, and the involvement of other agencies and the community in the solution. These elements of community policing are features of all of the case studies of civil remedies reported in this document.

Using civil statutes to get at hard-to-reach criminal behavior will not, of course, by itself solve most crime problems. However, the case studies make clear that by using civil remedies to attack carefully selected target behaviors, prosecutors and police administrators working collaboratively can begin to make a dent in a number of criminal activities that previously have appeared immune to the criminal law.

Jeremy Travis
Director
National Institute of Justice

Executive Summary

A number of prosecutor offices and police departments have been making use of civil remedies to address criminal behavior. These jurisdictions have found that civil remedies can be easier to use than criminal sanctions for certain types of crime because they often do not require victims to testify, can provide immediate relief (for instance, through injunctions and restraining orders), and avoid the need for a labor-intensive criminal or civil trial. Civil remedies can also be more effective in preventing crime than criminal penalties because they more frequently involve the classic crime deterrent triad of swiftness, certainty, and severity.

Case Studies

Seven case studies present different criminal justice programs that use civil process to target intransigent criminal behavior. Neither a formula for attacking crime with civil statutes nor evaluations of exemplary projects, the case studies instead illustrate different approaches to using civil remedies to combat crime and diverse illegal behaviors for which civil process may be a more effective deterrent than the criminal law.

- *Using civil injunctive relief to prevent domestic violence.* Duluth has mounted a comprehensive community-wide effort to implement the Minnesota domestic violence statute that provides for civil orders of protection enjoining a batterer from further abusing his victim. A shelter advocate assists most victims to complete the petition and accompanies them to court. Judges in Duluth typically issue protection orders that bar or evict the offender from the residence, provide specific conditions for visitation and child custody, and mandate participation in a 30-week program for batterers. A community-based organization monitors violations, and violators are usually jailed at least overnight and prosecuted for the violation.
- *Combating hate crime.* The Massachusetts attorney general, together with the Boston Police Department, uses the Massachusetts Civil Rights Act of 1979 to secure injunctive relief for victims of hate crime. The restraining order typically bars offenders from having

any contact with the victim. The few offenders who have violated the injunction have been arrested quickly, tried for criminal contempt, and sentenced to probation or, more typically, to jail.

- *Confiscating weapons from the mentally ill.* The Los Angeles Police Department, in conjunction with the Los Angeles district attorney, uses two civil statutes to confiscate weapons from the mentally ill even when no crime has been committed and usually without securing a search warrant. Through written agreements, the county health care system participates in the effort by agreeing to accept police referrals for evaluation and installing metal detectors in their facilities to catch patients and visitors trying to enter with firearms.
- *Breaking up "chop shop" operations.* The Arizona attorney general's office in Phoenix relies on police undercover work in combination with a State civil racketeering statute to shut down illegal enterprises that steal and resell cars. After initiating civil racketeering charges and parallel criminal action, the attorney general can obtain liens or pursue civil forfeiture remedies to preserve the enterprise's assets.
- *Evicting drug dealers from apartments.* The Manhattan district attorney applies the New York State Real Property Actions and Proceedings Law to compel landlords to evict tenants who have been involved in drug dealing from their premises. The statute empowers the district attorney to petition for an eviction if the landlord fails to act, and the law permits the court to impose a civil penalty of \$5,000 on landlords who fail to comply.
- *Seizing whole buildings used in the commission of a felony.* The United States Attorney for the Southern District of New York uses a Federal civil forfeiture statute to evict drug dealers from privately owned dwellings by threatening or actually effecting the seizure of entire buildings. Using evidence of drug dealing provided by the police and affidavits from affected neighbors, the U.S. Attorney's Asset Forfeiture Unit secures comparatively quick eviction of drug dealers whom landlords are unwilling or unable to evict.

- *Abating drug-related nuisances.* The city of San Diego, California, uses a provision of the California Health and Safety Code to seek injunctive relief against property owners or tenants for the unlawful sale, manufacture, or use of illegal drugs on the property. In 90 percent of the cases, property owners, after having been notified about the problem, voluntarily put a stop to the activity. In the remaining cases, the city secures a preliminary injunction that requires landlords to halt the drug dealing and correct municipal health and safety code violations.

Making Effective Use of Civil Remedies

There are five key considerations involved in using civil remedies effectively to achieve criminal justice goals.

- *Find appropriate legislation.* Prosecutors and police administrators can (1) search through existing legislation for statutes and ordinances that can be used to address the problem at issue, (2) amend existing civil legislation so it becomes usable for this purpose, or (3) enact usable civil legislation.
- *Secure competent staff.* As with most programs that break from tradition and risk failure, using civil remedies requires an “entrepreneur” to get the program up and running. Highly talented staff are needed to occupy key positions in the effort to establish the program’s credibility and avoid inviting constitutional challenges through inadvisable behavior. Staff training is critical to ensuring program success.
- *Develop close police-prosecutor collaboration.* Using civil remedies normally involves close and ongoing cooperation between police and prosecutor on each

case. Most of the programs used specific alliance-building approaches to achieve and maintain this necessary collaboration.

- *Involve other agencies.* Prosecutors and police should see themselves as part of a team that includes other public and private agencies, including, as appropriate, local building, fire, and zoning departments, human service providers, and victim advocates.
- *Involve the community.* Individual citizens, community-based organizations, advocacy groups, and private sector associations can all be helpful—even essential—for initiating the program, forestalling potential opposition, and identifying, documenting, and preventing the recurrence of criminal activity.

Constitutional Issues in Using Civil Statutes

Programs that use civil remedies to attack criminal behavior are particularly susceptible to constitutional challenge, especially in the areas of forfeiture involving innocent respondents; providing proper notice; coerced self-incrimination; contempt proceedings; and double jeopardy. Every program in the report but one has been challenged at least once—in some cases successfully. However, all the programs have survived the challenges by either adjusting their procedures or amending their civil statute. Programs can protect themselves from successful challenge by taking several specific precautions, including hiring competent staff, minimizing their turnover, and training them thoroughly; pursuing only strong cases and collecting evidence as if each case had to be proven beyond a reasonable doubt; and welcoming legal representation on the part of respondents.