

**Don't Hate It, Abate It!**  
**Turning Words into Action Against Those Pesky Nuisances**

CITY OF MILWAUKEE CITY ATTORNEY'S OFFICE

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- I. Overview of Nuisances
  - 1. Defining a Nuisance
    - a. Legal Definition: A nuisance is an unreasonable activity or use of property that interferes substantially with the comfortable enjoyment of life, health, or safety of others. *State v. Quality Egg Farm, Inc.*, 104 Wis. 2d 506, 311 N.W.2d 650 (1981).
    - b. Factors to Consider
      - 1. Location of the nuisance compared to expectations
      - 2. Injurious to health?
      - 3. Indecent?
      - 4. Offensive to senses?
      - 5. Obstruct lawful use of property?
      - 6. Reasonableness of use of property
    - c. Factors Not to Consider
      - 1. Lawfulness of the property
      - 2. Lawfulness of the business
      - 3. Corrective measures made by the property/business owner
  - 2. Public v. Private Nuisance
    - a. What makes it public or private?
      - 1. Number of people affected
      - 2. Affect a common right? Place where people tend to congregate?
      - 3. Nature of injury
      - 4. Do the people affected constitute a community or a neighborhood?
      - 5. Use of the property
    - b. Why does it matter?
      - 1. Who can sue (i.e. "standing")
      - 2. What are the remedies
        - a. Injunctive relief v. monetary damages
- II. Nuisance Law Options
  - 1. Step 1: show that the person is causing or maintaining the nuisance condition

- a. A person can be liable if:
  1. Intentionally **causing** a nuisance condition
  2. Negligently **maintaining** a nuisance condition
    - a. No need to prove the person caused it
    - b. Just prove they have a duty to fix it
    - c. Must prove the person had constructive or actual notice
    - d. You can plead both alternatively - Wis. Stat. § 802.02(5)(b)
- b. Step 2: Show that the public nuisance condition caused the harm to the public or interfered with a public right
  1. Ongoing criminal or ordinance violations are a public nuisance per se.
    - a. State v. H. Samuels Co., 60 Wis. 2d 631 (1973)
  2. Specific conditions are public nuisances per se
    - a. Dilapidated buildings - Wis. Stat. § 66.0413(1)(k)
    - b. Blighted buildings - Wis. Stat. § 66.0413(2)
    - c. Drugs - Wis. Stat. §§ 823.113 and 961.53

## 2. Starting a Lawsuit

- a. Before you start drafting pleadings...
  1. Many judges are unfamiliar with public nuisance law
  2. You are educating as much as you are advocating
  3. Logically organize your pleadings. We suggest:
    - a. Parties
    - b. Venue
    - c. Subject matter jurisdiction
    - d. Property description
    - e. Cause(s)
    - f. Demand for judgment
- b. Initial considerations
  1. One parcel of land or many?
  2. One owner or several?
  3. Can you find and serve the owner(s)?
  4. How should you arrange pleadings?
- c. What relief are you seeking?
  1. Limits to remedies in municipal court and actions in law
  2. Public nuisance actions are equitable and allow for custom injunctive relief
- d. Drafting Tips
  1. Name all owners as defendants
    - a. All owners have responsibility in nuisance law
    - b. Should you include individual members of LLC owners?
    - c. Unknown owners? File in rem - Wis. Stat. § 801.07(4)

2. Use unnumbered headings and subheadings in the complaint
    - a. Clarifies why you included certain allegations
    - b. Easier for quick reference
    - c. Creates an opportunity to include “legal contentions”
  3. The judgment demanded
    - a. Demand that the activity and/or property be found to be a public nuisance
    - b. Demand that the court make legal findings consistent with any other causes you included
  4. Relief sought
    - a. Injunction
    - b. Receivership
    - c. Custom remedies
3. Cases Studies
- a. Landlord Actions
    1. *Milwaukee v. Choudry* (see exhibits for pleadings)
    2. *Milwaukee v. Rashaed* (see exhibits for pleadings)
  - b. Nuisance Injunction (Wis. Stat. § 823.02)
    1. *Milwaukee v. Maye* (see exhibits for pleadings)
  - c. Drug House Action (Wis. Stat. § 823.113)
    1. *Milwaukee v. Hampton Avenue Group* (see exhibits for pleadings)
  - d. Nuisance Receivership (Wis. Stat. § 823.23)
    1. *Milwaukee v. NTO LLC* (see exhibits for pleadings)

### III. Abatement Methods

1. Nuisance Ordinances (see exhibits for ordinances)
  - a. Chronic Nuisance Premises (80-10)
  - b. After Sets (80-11)
  - c. Retail Establishments Security Measurements (105-91)
2. Alternatives to Prosecution
  - a. Licensing (further detail available at <http://city.milwaukee.gov/cityclerk/license#.WxBJLVVKhQI>)
    1. Licensed Premises Newsletter (see exhibits for most recent publication)
    2. Red Tape Rescue
    3. Pivot Program (licensed premises training)
  - b. OWIs
    1. Place of Last Drink studies
    2. Over-service compliance checks
  - c. **Retail**-based diversions
    1. Overview
      - a. Diversion program aimed at reducing the sale of alcohol and tobacco to minors

- i. If successful completion, no citation issued for violation
      - ii. Enrollment letters sent by police department to licensee, local alderperson and licensing division
    - b. Enrollment process:
      - i. \$250 enrollment fee (Responsible Retailing Forum administers)
      - ii. Less than sale to minor citation
      - iii. 4 mystery shopper inspections in 6 months
      - iv. Must enroll in pivot program
      - v. Cannot have an alcohol/tobacco violation for 6 months
- 2. Programs
  - a. MARTS (see exhibits for fact sheet): tobacco, nicotine, e-cigarettes program
  - b. Respect 21: alcohol program
- 3. Benefits
  - a. Increase compliance
  - b. Accountability for licensee
  - c. Reduce calls for service
    - i. Nearly a 40% decrease in nuisance level police calls for service!
  - d. Improve police-business relations
- 4. Challenges
  - a. Change in state law for service of alcohol to minors
  - b. Need police buy-in (administrative)
  - c. Need licensing and court buy-in (consequences)
  - d. Only targets the retailer
- d. **Individual**-based deferred prosecution agreements
  - 1. Drug and Alcohol Awareness:
    - a. Initiated in summer 2017
    - b. Available for individuals cited for controlled substance and underage alcohol related citations
    - c. Program focuses on harm-reduction and not abstinence
    - d. Program offered through Milwaukee Area Technical College (MATC)
    - e. Dismissal of citation(s) upon completion
  - 2. Defensive Driving Class
    - a. Four hour traffic school
  - 3. Justice Alternative Court
    - a. Retail theft class
  - 4. Responsible Animal Ownership Class
    - a. Class at local animal control for individuals cited with cruelty to animals violation(s)

**DON'T HATE IT, ABATE IT!**

TURNING WORDS INTO ACTION AGAINST  
THOSE PESKY NUISANCES

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### Agenda

- Overview of Nuisances
- Nuisance Law
  - Wisconsin state law
    - Ch. 823
    - Innovative solutions to problem landlords
- Abatement options
  - Nuisance ordinances
  - Alternatives to prosecution

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### What is a nuisance?

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### What is a Nuisance?

■ Legal Definition:

A nuisance is an unreasonable activity or use of property that interferes substantially with the comfortable enjoyment of life, health, or safety of others. *State v. Quality Egg Farm, Inc.*, 104 Wis. 2d 506, 311 N.W.2d 650 (1981).

■ What is it really?

- Loud noise, gun fire, drug dealing, prostitution, after sets, loitering, etc.
- Can be **residential** or **commercial**
- Can be based on **behavior** or **property conditions** (usually both)
- You know it when you see it...

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### What is a nuisance?

■ Factors to consider

- Location of the nuisance compared to expectations
- Injurious to health?
- Indecent?
- Offensive to senses?
- Obstruct lawful use of property?
- Reasonableness of use of property

■ What "factors" do **not** matter?

- Lawfulness of the property
- Lawfulness of the business
- Corrective measures made by the property/business owner

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### Public v. Private Nuisance

■ What makes a nuisance public v. private?

- Number of people affected
- Affect a common right? Place where people tend to congregate?
- Nature of injury
- Do the people affected constitute a community or a neighborhood?
- Use of the property

■ Why does it matter?

- Who can sue (i.e. "standing")
- What are the remedies
  - Injunctive relief v. monetary damages

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## Public Nuisance Law: The Basics

- Everyone's complaining about that one problem you've identified as a public nuisance. Now turn those words into action!
- Step 1: show that the person is causing or maintaining the nuisance condition
- A person can be liable if:
  - Intentionally **causing** a nuisance condition
  - Negligently **maintaining** a nuisance condition
    - No need to prove the person caused it
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    - Must prove the person had constructive or actual notice
- You can plead both alternatively - Wis. Stat. § 802.02(5)(b)

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## Public Nuisance Law: The Basics

- Step 2: Show that the public nuisance condition caused the harm to the public or interfered with a public right
- Ongoing criminal or ordinance violations are a public nuisance per se.
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- Specific conditions are public nuisances per se
  - *Dilapidated buildings* - Wis. Stat. § 66.0413(1)(k)
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## Starting a Lawsuit

- Before you start drafting pleadings...
  - Many judges are unfamiliar with public nuisance law
  - You are educating as much as you are advocating
  - Logically organize your pleadings. I suggest:
    - Parties
    - Venue
    - Subject matter jurisdiction
    - Property description
    - Cause(s)
    - Demand for judgment

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## Starting a Lawsuit

- Initial considerations
  - One parcel of land or many?
  - One owner or several?
  - Can you find and serve the owner(s)?
  - How should you arrange pleadings?
  
- What relief are you seeking?
  - Limits to remedies in municipal court and actions in law
  - Public nuisance actions are equitable and allow for custom injunctive relief

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## Starting a Lawsuit: Drafting Tips

- Name all owners as defendants
  - All owners have responsibility in nuisance law
  - Should you include individual members of LLC owners?
  - Unknown owners? File in rem - Wis. Stat. § 801.07(4)
- Use unnumbered headings and subheadings in the complaint
  - Clarifies why you included certain allegations
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  - Creates an opportunity to include "legal contentions"

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## Starting a Lawsuit: Drafting Tips

- The judgment demanded
  - Demand that the activity and/or property be found to be a public nuisance
  - Demand that the court make legal findings consistent with any other causes you included
- Relief sought
  - Injunction
  - Receivership
  - Custom remedies

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### Case Study: Milwaukee v. Choudry

- Landlord owned 77 parcels (120 units)
  - Average purchase price per parcel: \$9,000
  - Monthly rent revenue: \$65,000 (est.)
- Routinely did not pay taxes, maintain or insure properties, record deeds, or comply with building code orders
- Victims included taxpayers, tenants, and neighbors,
- City sued him and 10 days later obtained a temporary injunction that has been in place for almost 2 years
- Receiver takes in rents and operates business

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### Case Study: Milwaukee v. Rashaed

- Landlord owned 166 parcels (387 units)
  - Monthly rent revenue: \$125,000 (est.)
- Violated DATCP laws regularly; had 50 LLCs; refused to maintain buildings; hired unethical counsel
- City sued him and demanded receiver take over business claiming his "management" caused a public nuisance.
  - Remember: nuisance is unreasonable **activity** or use
  - No need to prove individual nuisance conditions at every property if his **management activity** was the nuisance
- After a long battle, receiver is now managing 300+ units

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TO: Horizon Management Tenants

FROM: Horizon Management

EXHIBIT  
C

You are the best tenants in the world!

We at HORIZON LOVE ♡ YOU and are always thinking of ways to make your life better!

In order to take advantage of these massive discounts and benefits of all rent must be paid in full and your payment must be paid on time each month on or before the 1<sup>st</sup> of the month no exceptions!

- No calls or complaints to the city of Milwaukee.
- Rent must be paid by the 1<sup>st</sup> of the month.
- In 8 months of rental got \$200 off the rent. This is only once a year but every year.
- Upon your one year anniversary and renewal of your lease 1/2 off rent. Only once a year but every year your lease is in effect.

If work repairs are needed it must be in writing to our office located at 2976 N. Dr. Martin Luther King Dr. If a work request has not been completed within 7 days you will receive \$25 off rent. If work request has not been completed in 15 days from written complaint \$50 will be deducted off the rent for the month of the occurrence. If work request is still not done within 30 days \$100 off rent. For the month of the occurrence:

~~Only one amount not to run consecutively~~

No discounts available if rent is not paid by the 1<sup>st</sup> of the month and you must have no RENT balance.

February 1<sup>st</sup> receive \$25 off rent Valentine's Day.

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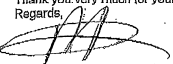
March 1<sup>st</sup> and April 1<sup>st</sup> its tax time super savings months. For every additional and or extra month you pay off each additional rent.

Examples:  
 Pay March 1<sup>st</sup> full rent then April \$100 off, you pay May \$100 off etc.  
 Pay April 1<sup>st</sup> full rent then May \$100 off, you pay June \$100 off etc.

Get \$50 off your rent on one lease holders birthday.

Get \$50 off your rent if full rent is paid on or before December 1<sup>st</sup> for Christmas and you must have a zero balance.

September 1<sup>st</sup> back to school Founders birthday day \$50 off all tenants who have children that are currently enrolled in school. Child must be 5 to 18 years old and enrolled in school. Discount is per household 1 kid or 10 kids same discount. Must have a zero balance to receive the discount.

Thank you very much for your continued residence with us. It means a great deal.  
 Regards,  
  
 Horizon Management & Staff

*Only one discount at a time per month which ever discount is the highest and we reserve the right to change delete or remove discounts at ANYTIME for any reason.*

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### Case Study:

#### Milwaukee v. Golden Marina Causeway LLC

- Abandoned former coke and natural gas manufacturing plant located on a 46-acre parcel sat idle for 15 years
- Remnant structures were attracting vagrants and vandals and would cost about \$300,000 to raze and remove
- Owned by an LLC that lead through another LLC back to an Illinois resident who was in bankruptcy
- Used Wis. Stat. § 66.0413(1) to seek an order to raze the building
- After litigation and an appearance in N. Dist. Ill. Bankruptcy Court, owner paid \$200,000 to raze some buildings and property was sold through bankruptcy court to a new owner

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## NUISANCE ABATEMENT METHODS

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## Nuisance Abatement

- Draw a line down the middle of the page
  - On the left side, draw a circle
- Now imagine there are four partners working on a project
- Each partner has equal shares
  - Imagine it is broken down into units
- Partner A: 25 units
- Partner B: 25 units
- Partner C: 25 units
- Partner D: 25 units
- Divvy up the circle so each partner has 25 units

Think of a "unit" as a share of control (i.e. who is in charge and who gets to take credit)

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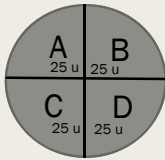
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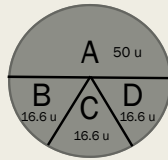
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Now, let's say Stakeholder A demands 50 units. What does that circle look like?



Something like this?

Does your circle look like this?



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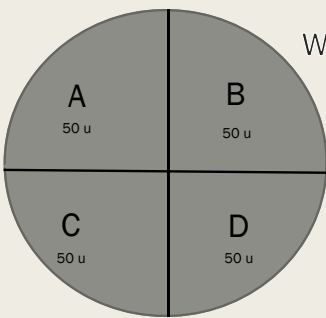
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Why Not This?

Expand the pie!

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## How Do We Address These Issues?

- Informally, through call-ins
  - Individually with landlord, tenant or business owner
  - Collectively with a group
    - Geographically: e.g. police district, aldermanic district
    - Subject matter: All taverns, scrap yards, convenience stores, etc.
- Formally, through correspondence
- Formally, through the legal process
  - Through nuisance ordinances and licensing
  - Through nuisance statutes

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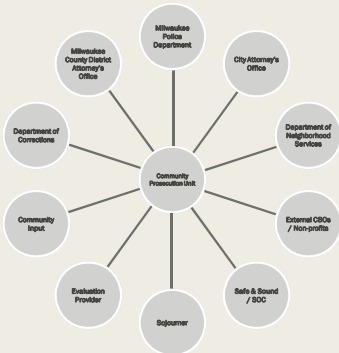
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## Community Prosecution Unit Model



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## Legal Process: Ordinances

- Chronic Nuisance Premises (80-10)
- After Sets (80-11)
- Retail Establishments Security Measurements (105-91)
- Licensing scheme
  - Warning letters, 10-90 day suspensions, non-renewals and revocations



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## Liquor Licenses in Milwaukee

- Population: 595,047
- Alcohol License Regulation: Municipality's common council
  - In Milwaukee: Licenses Committee
- Alcohol Licenses
  - Off Premises: 307 Class "A" licenses
    - Liquor only: 14
    - Liquor and beer: 163
    - Beer only: 130
  - On Premises: 959 Class "B" licenses
    - Beer only: 71
    - Liquor and beer: 888

One license per every 470 people

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## Pro-Licensing Programs

- Licensed Premises Newsletter
- Red Tape Rescue
- Pivot Program




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## Operating while intoxicated in Milwaukee

- OWIs
  - First offense is a municipal citation
  - First offense citations prosecuted by City of Milwaukee
    - 2017: 452
    - 2016: 436
    - 2015: 620
- Citation data (210 reviewed)
  - Average BAC reported: .1646
    - Legal drinking limit: .08
  - Gender:
    - Male: 79%
    - Female: 21%
  - Place of last drink:
 

■ Did Not Answer/Non-Responsive: 54%	■ Store: 3%
■ Tavern: 16%	■ Work: 2%
■ House: 14%	■ Restaurant: 1%
■ Social/Sporting Event: 4%	■ Miscellaneous: 6%

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## Respect 21 and MARTS

- Created in 2015, diversion program aimed at reducing the sale of alcohol (Respect 21) and tobacco (MARTS) to minors
  - Originated from Miller Coors' work with Marquette University
- If successful completion, no citation issued for violation
- Enrollment letters sent by police department to licensee, local alderperson and licensing division




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## Respect 21 and MARTS: Enrollment

- Enrollment process:
  - \$250 enrollment fee (Responsible Retailing Forum administers)
    - Less than sale to minor citation
  - 4 mystery shopper inspections in 6 months
  - Must enroll in pivot program
  - Cannot have an alcohol/tobacco violation for 6 months




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## Respect 21 and MARTS: Enrollment

Enrollment Form

Program Agreement

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## Respect 21 and MARTS: Enrollment

- Enrollment generated by:
  - Respect 21: Undercover buys from Police Aides
  - MARTS: Wisconsin WINS Program
    - 2017 Inspections: 378 stores (19% sold to minors)
      - Down from 23% in 2016
- Respect 21 (alcohol):
  - Offered Enrollment: 94
  - Enrollment Rate: 75.8%
  - Successful Completion: 56.2%
- MARTS (tobacco):
  - Offered Enrollment: 244
    - 215 unique businesses
  - Enrollment Rate: 70.2%
  - Successful Completion: 58.6%




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## MARTS – Calls for Service

- Looked at rate of police calls for service for:
 

PRE-ENROLLMENT PERIOD	Enrollment	Post-Enrollment
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[ -----3 Years----- ] [ 6 months ] [ 6 months ]
- In addition, looked at “priority” level for calls for service
  - Priority 1 – 4 (1 most serious)
- For study, 215 outlets offered enrollment
  - ~11,000 total calls for service analyzed

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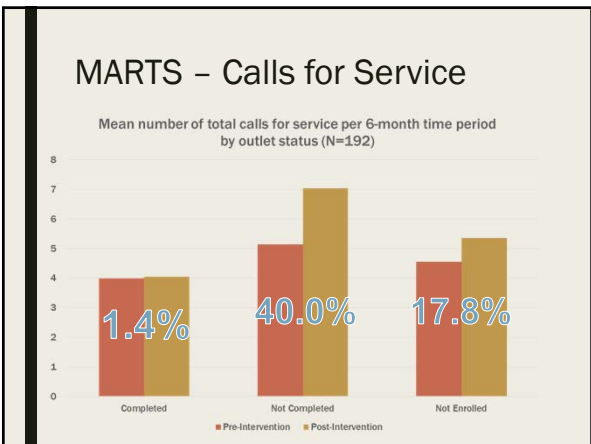
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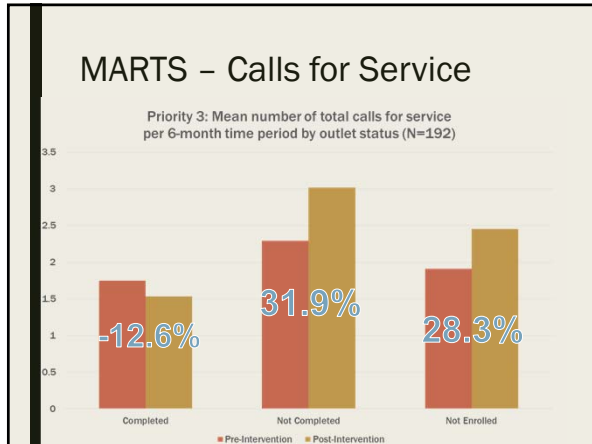
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- ### Respect 21 and MARTS: Take-Aways
- Benefits:
    - Increase compliance
    - Accountability for licensee
    - Reduce calls for service
    - Improve police-business relations
  - Challenges:
    - Change in state law for service of alcohol to minors
    - Need police buy-in (administrative)
    - Need licensing and court buy-in (consequences)
    - Only targets the retailer

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### Drug and Alcohol Awareness Program (DAAP)

- Initiated in summer 2017
- Available for individuals cited for controlled substance and underage alcohol related citations
- Program focuses on harm-reduction and not abstinence
- Program offered through Milwaukee Area Technical College
  - Located across the street from Municipal Court
- Dismissal of citation upon completion



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## Other Programs

- Defensive Driving Class



- Justice Alternative Court (retail theft)



- Responsible Animal Ownership Class



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## Any Questions

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Additional materials provided by the presenters are available on the League's web site under the link to the presentation. The materials contain documents relating to the following:

1. Newsletter
2. Contempt
3. Pleadings
4. Notice of Intent
5. Drug House
6. Landlord action
7. MCO 80-7
8. MCO 80-11
9. MCO 105.79
10. Injunction Motion
11. Application for Receivership
12. Piercing Corporate Veil
13. Landlord action – Choudry
14. MARTS

