

## SENATE BILL No. 612

By Committee on Judiciary

2-15

---

AN ACT concerning controlled substances; relating to methamphetamine enforcement grants; forfeiture proceeds; Kansas criminal justice council, duties; amending K.S.A. 2001 Supp. 60-4117 and 74-9501 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2001 Supp. 60-4117 is hereby amended to read as follows: 60-4117. Except as provided in K.S.A. 2001 Supp. 65-7014, and amendments thereto: (a) When property is forfeited under this act, the law enforcement agency may:

(1) Retain such property for official use or transfer the custody or ownership to any local, state or federal agency, subject to any lien preserved by the court;

(2) destroy or use for investigative or training purposes, any illegal or controlled substances and equipment or other contraband, provided that materials necessary as evidence shall be preserved;

(3) sell property which is not required by law to be destroyed and which is not harmful to the public:

(A) All property, except real property, designated by the seizing agency to be sold shall be sold at public sale to the highest bidder for cash without appraisal. The seizing agency shall first cause notice of the sale to be made by publication at least once in an official county newspaper as defined by K.S.A. 64-101, and amendments thereto. Such notice shall include the time, place, and conditions of the sale and description of the property to be sold. Nothing in this subsection shall prevent a state agency from using the state surplus property system and such system's procedures shall be sufficient to meet the requirements of this subsection.

(B) Real property may be sold pursuant to subsection (A), or the seizing agency may contract with a real estate company, licensed in this state, to list, advertise and sell such real property in a commercially reasonable manner.

(C) No employee or public official of any agency involved in the investigation, seizure or forfeiture of seized property may purchase or attempt to purchase such property; or

(4) salvage the property, subject to any lien preserved by the court.

1 (b) When firearms are forfeited under this act, the firearms in the  
2 discretion of the seizing agency, shall be destroyed, used within the seiz-  
3 ing agency for official purposes, traded to another law enforcement  
4 agency for use within such agency or given to the Kansas bureau of in-  
5 vestigation for law enforcement, testing, comparison or destruction by  
6 the Kansas bureau of investigation forensic laboratory.

7 (c) The proceeds of any sale shall be distributed in the following order  
8 of priority:

9 (1) For satisfaction of any court preserved security interest or lien;

10 (2) thereafter, for payment of all proper expenses of the proceedings  
11 for forfeiture and disposition, including expenses of seizure, inventory,  
12 appraisal, maintenance of custody, preservation of availability, advertising,  
13 service of process, sale and court costs;

14 (3) reasonable attorney fees:

15 (A) If the plaintiff's attorney is a county or district attorney, an assis-  
16 tant, or another governmental agency's attorney, fees shall not exceed  
17 15% of the total proceeds, less the amounts of subsection (c)(1) and (2),  
18 in an uncontested forfeiture nor 20% of the total proceeds, less the  
19 amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees  
20 shall be deposited in the county or city treasury and credited to the special  
21 prosecutor's trust fund. Moneys in such fund shall not be considered a  
22 source of revenue to meet normal operating expenditures, including sal-  
23 ary enhancement. Such fund shall be expended by the county or district  
24 attorney, or other governmental agency's attorney through the normal  
25 county or city appropriation system and shall be used for such additional  
26 law enforcement and prosecutorial purposes as the county or district at-  
27 torney or other governmental agency's attorney deems appropriate, in-  
28 cluding educational purposes. All moneys derived from past or pending  
29 forfeitures shall be expended pursuant to this act. The board of county  
30 commissioners shall provide adequate funding to the county or district  
31 attorney's office to enable such office to enforce this act. Neither future  
32 forfeitures nor the proceeds therefrom shall be used in planning or adopt-  
33 ing a county or district attorney's budget; or

34 (B) if the plaintiff's attorney is a private attorney, such reasonable  
35 fees shall be negotiated by the employing law enforcement agency;

36 (4) repayment of law enforcement funds expended in purchasing of  
37 contraband or controlled substances, subject to any interagency  
38 agreement.

39 (d) *Of any proceeds remaining 20% of such proceeds shall be remitted*  
40 *to the state treasurer in accordance with the provisions of K.S.A. 75-4215,*  
41 *and amendments thereto. Upon receipt of each such remittance, the state*  
42 *treasurer shall deposit the entire amount in the state treasury to the credit*  
43 *of the methamphetamine enforcement fund, which is hereby created.*

1 (e) Any proceeds remaining shall be credited as follows, subject to  
2 any interagency agreement:

3 (1) If the law enforcement agency is a state agency, the entire amount  
4 shall be deposited in the state treasury and credited to such agency's state  
5 forfeiture fund. There is hereby established in the state treasury the fol-  
6 lowing state funds: Kansas bureau of investigation state forfeiture fund,  
7 Kansas highway patrol state forfeiture fund, Kansas department of cor-  
8 rections state forfeiture fund and Kansas national guard counter drug  
9 state forfeiture fund. Expenditures from the Kansas bureau of investi-  
10 gation state forfeiture fund shall be made upon warrants of the director  
11 of accounts and reports issued pursuant to vouchers approved by the  
12 attorney general or by a person or persons designated by the attorney  
13 general. Expenditures from the Kansas highway patrol state forfeiture  
14 fund shall be made upon warrants of the director of accounts and reports  
15 issued pursuant to vouchers approved by the superintendent of the high-  
16 way patrol or by a person or persons designated by the superintendent.  
17 Expenditures from the Kansas department of corrections state forfeiture  
18 fund shall be made upon warrants of the director of accounts and reports  
19 issued pursuant to vouchers approved by the secretary of the department  
20 of corrections or by a person or persons designated by the secretary.  
21 Expenditures from the Kansas national guard counter drug state forfei-  
22 ture fund shall be made upon warrants of the director of accounts and  
23 reports issued pursuant to vouchers approved by the adjutant general of  
24 Kansas or by a person or persons designated by the adjutant general. Each  
25 agency shall compile and submit a forfeiture fund report to the legislature  
26 on or before February 1 of each year. Such report shall include, but not  
27 be limited to: (A) The fund balance on December 1; (B) the deposits and  
28 expenditures for the previous 12-month period ending December 1.  
29 Upon the effective date of this act, the director of accounts and reports  
30 is directed to transfer each agency's balance in the state special asset  
31 forfeiture fund to the agency's new, state forfeiture fund. All liabilities of  
32 the state special asset forfeiture fund existing prior to such date are hereby  
33 imposed on the Kansas bureau of investigation state forfeiture fund, Kan-  
34 sas highway patrol state forfeiture fund and the Kansas department of  
35 corrections state forfeiture fund. The state special asset forfeiture fund is  
36 hereby abolished.

37 (2) If the law enforcement agency is a city or county agency, the  
38 entire amount shall be deposited in such city or county treasury and cred-  
39 ited to a special law enforcement trust fund. Each agency shall compile  
40 and submit annually a special law enforcement trust fund report to the  
41 entity which has budgetary authority over such agency and such report  
42 shall specify, for such period, the type and approximate value of the for-  
43 feited property received, the amount of any forfeiture proceeds received,

1 and how any of those proceeds were expended.

2 (3) Moneys in the Kansas bureau of investigation state forfeiture  
3 fund, Kansas highway patrol state forfeiture fund, Kansas department of  
4 corrections state forfeiture fund, the special law enforcement trust funds  
5 and the Kansas national guard counter drug state forfeiture fund shall not  
6 be considered a source of revenue to meet normal operating expenses.  
7 Such funds shall be expended by the agencies or departments through  
8 the normal city, county or state appropriation system and shall be used  
9 for such special, additional law enforcement purposes as the law enforce-  
10 ment agency head deems appropriate. Neither future forfeitures nor the  
11 proceeds from such forfeitures shall be used in planning or adopting a  
12 law enforcement agency's budget.

13 Sec. 2. K.S.A. 2001 Supp. 74-9501 is hereby amended to read as  
14 follows: 74-9501. (a) There is hereby established the Kansas criminal jus-  
15 tice coordinating council.

16 (b) The council shall consist of the governor or designee, the chief  
17 justice of the supreme court or designee, the attorney general or designee,  
18 the secretary of corrections, the secretary of social and rehabilitation serv-  
19 ices, the commissioner of juvenile justice and the director of the Kansas  
20 bureau of investigation.

21 (c) The director and all existing employees of the Kansas sentencing  
22 commission shall serve as staff to the Kansas criminal justice coordinating  
23 council, while continuing to serve at the will of the Kansas sentencing  
24 commission pursuant to K.S.A. 74-9103 and amendments thereto in the  
25 performance of its duties as outlined in K.S.A. 74-9101, 74-9106 and 21-  
26 4725 and amendments thereto. The director shall attend all meetings of  
27 the council, be responsible for keeping a record of council meetings,  
28 prepare reports of the council and perform such other duties as directed  
29 by the council.

30 (d) The council shall elect a chairperson and vice-chairperson from  
31 among the members of the council.

32 (e) The council shall:

33 (1) Define and analyze issues and processes in the criminal justice  
34 system, identify alternative solutions and make recommendations for  
35 improvements;

36 (2) perform such criminal justice studies or tasks as requested by the  
37 governor, the legislature or the chief justice, as deemed appropriate or  
38 feasible by the council;

39 (3) oversee development and management of a criminal justice da-  
40 tabase including assuming the designation and functions of the state sta-  
41 tistical analysis center currently assigned to the Kansas bureau of inves-  
42 tigation pursuant to K.S.A. 75-712a and amendments thereto. All criminal  
43 justice agencies as defined in subsection (c) of K.S.A. 22-4701 and amend-

1 ments thereto and the department of social and rehabilitation services  
2 shall provide any data or information, including juvenile offender infor-  
3 mation which is requested by the council, in a form and manner estab-  
4 lished by the council, in order to facilitate the development and manage-  
5 ment of the criminal justice council database; ~~and~~

6 (4) develop and oversee reporting of all criminal justice federal fund-  
7 ing available to the state or local units of government including assuming  
8 the designation and functions of administering the United States bureau  
9 of justice assistance grants currently administered through the law en-  
10 forcement antidrug abuse program of the department of administration.  
11 On the effective date of this act any bureau of justice assistance antidrug  
12 abuse federal fund balances in any account and all unclassified positions  
13 authorized for the law enforcement antidrug abuse program of the de-  
14 partment of administration shall be transferred to and budgeted with the  
15 Kansas sentencing commission; *and*

16 (5) *develop and administer a grant program to award grants to local*  
17 *units of government in areas of the state in which a high incidence of*  
18 *methamphetamine manufacture, possession and sale occur to supplement*  
19 *the high costs of methamphetamine enforcement. The grants shall be*  
20 *awarded with emphasis on such local units of government faced with a*  
21 *disproportionate share of methamphetamine illegal activity and a dispa-*  
22 *rate effect on the finances of such local unit of government. The council*  
23 *shall determine the recipients and amount of the grants authorized by*  
24 *this act and make the grants in payments as determined by the council.*  
25 *All expenditures from the methamphetamine enforcement fund shall be in*  
26 *the form of grant payments and shall be made upon warrants of the di-*  
27 *rector of accounts and reports issued pursuant to vouchers approved by*  
28 *the chairperson or a person designated by the chairperson. Each grant*  
29 *received by a local governmental entity under this act shall be expended*  
30 *by such local governmental entity for methamphetamine enforcement and*  
31 *prevention of such illegal activity. The council shall adopt rules and reg-*  
32 *ulations establishing additional requirements for receipt of grants under*  
33 *this act, standards for utilization of grants and performance evaluation of*  
34 *enforcement activity.*

35 (f) The council shall appoint a standing local government advisory  
36 group to consult and advise the council concerning local government  
37 criminal justice issues and the impact of state criminal justice policy and  
38 decisions on local units of government. The advisory group shall consist  
39 of a sheriff, chief of police, county or district attorney, city governing body  
40 and a county commissioner. Appointees to such advisory group shall serve  
41 without compensation or reimbursement for travel and subsistence or any  
42 other expenses.

43 (g) The council shall form a task force to study the consolidation of

1 probation, parole and community corrections services.

2 (h) When analyzing criminal justice issues and performing criminal  
3 justice studies, the council shall form such task groups as necessary and  
4 shall appoint individuals who appropriately represent law enforcement,  
5 the judiciary, legal profession, state, local, or federal government, the  
6 public, or other professions or groups as determined by the council, to  
7 represent the various aspects of the issue being analyzed or studied.  
8 Members of the legislature may be appointed ex officio members to such  
9 task groups. A member of the council shall serve as the chairperson of  
10 each task group appointed by the council. The council may appoint other  
11 members of the council to any task group formed by the council.

12 (i) The council shall review reports submitted by each task group  
13 named by the council and shall submit the report with the council's rec-  
14 ommendations pertaining thereto to the governor, chief justice of the  
15 supreme court, the chief clerk of the house of representatives and the  
16 secretary of the senate.

17 Sec. 3. K.S.A. 2001 Supp. 60-4117 and 74-9501 are hereby repealed.

18 Sec. 4. This act shall take effect and be in force from and after its  
19 publication in the statute book.

20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43