

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 ~~a.m./p.m.~~ on February 9, 1983 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Gaines, Hein, Steineger and Werts.

Committee staff present: Mike Heim, Legislative Research Department

Conferees appearing before the committee:

Senator James Francisco
Sheriff Johnnie Darr, Sedgwick County Sheriffs Department
Jim Clark, Kansas County and District Attorneys Association
Senator Billy McCray
Dr. Lorne Phillips, Commissioner, SRS/Alcohol and Drug Abuse Services

The chairman welcomed the guests visiting the committee today. They are participants in the Close Up Program in Kansas.

Senate Bill 113 - Forfeiture of property used for manufacture or to facilitate the sale of controlled substances.

Senator Francisco, the principal sponsor of the bill, appeared to explain the bill. He explained his first handout is a copy of the Colorado law (See Attachment #1), and the second handout is a copy of an article entitled "Dealers, Dollars and Drugs" (See Attachment #2).

Sheriff Johnnie Darr testified in support of the bill (See Attachment #3). The chairman inquired how extensive the definition was; would it apply to marijuana. Sheriff Darr answered, yes, if there is a felony for sale of marijuana. The chairman inquired what the felony violations are. Sheriff Darr answered, any sale of marijuana. Considerable discussion was had with Sheriff Darr regarding the homestead exemption laws, protection of the innocent mortgagee and getting to the people who are selling out of their houses. A committee member inquired if he would like line 57 of the bill struck, and Sheriff Darr answered, yes. The chairman stated the bill doesn't go to tracing of the funds. Considerable discussion followed with Sheriff Darr. A committee member said he was in sympathy with this concept and inquired about seizing a home that an officer determines has been used for selling drugs. Sheriff Darr answered that he wants that house to be forfeited. Senator Francisco was recognized, and he explained this bill is modeled after the Colorado act.

Jim Clark testified in support of the bill. He referred to the federal provision that deals with the matter mentioned in Senate Bill 51. Senate Bill 51 has been referred to the Public Health and Welfare Committee. He said recently there was a large plane load of marijuana that landed in Dodge City and we need some measures to deal with this problem. He said the seizure idea goes a long way. Mr. Clark stated they object to the homestead provision; being able to get at the homestead is a critical part of this. He explained he is interested in combining the provision in section (6) of Senate Bill 51 with this bill. He said there are federal laws that have the seizure provision but it usually happens at a local level and would enhance our state laws. Committee discussion with him followed. The chairman asked Mr. Clark if he would consider working with the revisor on the homestead portion in redrafting the bill if the committee favors the concept. Mr. Clark said he would welcome the opportunity. A committee member suggested Senate Bill 51 be re-referred to the Judiciary Committee so the committee could work the two bills at the same time. A copy of the federal law to which Mr. Clark referred is attached (See Attachment #4).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~xxx~~ on February 9, 1983

Senate Bill 114 - Mandatory imprisonment for sale of controlled substance to persons under 18.

Senator Francisco, the principal sponsor of the bill, explained the bill to the committee.

Senator McCray, the co-sponsor of the bill, stated he is a member of the Advisory Committee on Drug and Alcohol Abuse for the state of Kansas, and this bill contains stronger penalties. He thinks penalties are needed that meet the crime. He said he also supports the concept of Senate Bill 113.

Jim Clark testified his association supports the concept of the bill. He stated selling drugs to minors is a tremendous problem. As a practical prosecution prospective, the person that gets caught is at the weakest link. He said he would prefer some discretion such as is contained in the Habitual Criminal Act. The chairman inquired if he would agree to an amendment to provide upon request of the prosecutor, the judge would have to impose the prison sentence. Mr. Clark answered, yes, rather than straight mandatory penalty.

Sheriff Johnnie Darr testified in support of the bill. A copy of his remarks is attached (See Attachment #5). The chairman inquired if he would support the amendment he and Mr. Clark discussed. Sheriff Darr answered, yes.

Dr. Lorne Phillips testified in support of the bill. A copy of his statement is attached (See Attachment #6). He said they don't get involved in the supply side issues, however, they feel they should speak in favor of bills such as this. There are various activities that can be done with the supply side, such as getting tougher with the pushers. The chairman inquired if he supports the amendment he and Mr. Clark discussed, to leave the discretion with the prosecutor. Dr. Phillips answered, yes, as long as it is the rule and not the exception.

The chairman announced Malinda Irvin was unable to attend the meeting to testify on Senate Bill 114. The Kansas Pro-family Forum is in support of the bill, and she will mail her statement.

The meeting adjourned.

2-9-83

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

NAME	ADDRESS	ORGANIZATION
Leslie Siebert	400 Summit Manhattan KS	Close-up Kansas
Paige Hunt	1816 Denholm Manhattan, KS	Close-up Kansas
Jo Chung	200 Castlewood Manhattan, Mo.	Close-up Kansas
Lori Noelomon	3104 Payne Dr. Manhattan, KS	" "
BRIAN WAFZIGER	232 Summit Manhattan, KS.	" "
Lynn B. Pollock	TOPEKA	SRS/ADAS
Robert Sachs	Manhattan KS	SRS/ADAS
Jim Clarke	Topeka	KCOAA
Judy W...	Lawrence	KU
Peri Nutsch	Manhattan	Close-up KS
Red Seaton	Manhattan	"
Erick Vardon	Manhattan	"
Kevin Smith	Hugoton, KS.	"
Greg Dean	Buhler, KS	Close-up KS
Jerry Kroeker	Buhler, KS	Close-up Kansas
Greg Matson	Lawrence	Steiniger
Larry D HUNES	Staff	Steiniger
Bekky Roberts	Intern	Johnston
Rachel Flood	Hays, KS	Close-up Ki.
Roger Hoff	Hays, KS.	Close-up KS.
Denise Hull	Hays, KS	Close-up KS.
Shawn Legere	Hays, KS.	Close-up KS.
Mark Jacobs	Doddard, KS	Close-up KS
Robert Penn	Meade, KS	" " "
Bert Centnell	Topeka KS	Gov. Off

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Nicole L. Brinkridge	Wichita, Ks.	Close-Up Kansas
Menise Kerscher	Goddard, Ks.	" "
Warren S. Kosman	Wichita, Ks.	" "
Miko Pagnell	Goddard Ks.	" "
Chandra Patel	Wichita Ks.	" "
Kay Somlin	Wichita, Ks.	Close-Up Kansas

not affect the other provisions of this article which may be given effect with the invalid provision or application, and, to this end, the provisions of this article are declared to be severable.

Source: Added, L. 81, p. 1014, § 1.

ARTICLE 17

Colorado Organized Crime Control Act

18-17-101.	Short title.	18-17-106.	Civil remedies.
18-17-102.	Legislative declaration.	18-17-107.	Civil investigative demand.
18-17-103.	Definitions.	18-17-108.	Construction of article.
18-17-104.	Prohibited activities.	18-17-109.	Severability.
18-17-105.	Criminal penalties.		

18-17-101. Short title. This article shall be known and may be cited as the "Colorado Organized Crime Control Act".

Source: Added, L. 81, p. 1015, § 1.

18-17-102. Legislative declaration. The general assembly hereby finds that organized crime in the state of Colorado, as well as nationwide, is a highly sophisticated, diversified, and widespread activity that annually consumes millions of dollars locally and billions of dollars nationally from this state's and the nation's economy through unlawful conduct and the illegal use of force, fraud, and corruption. Organized crime derives a major portion of its power through money procured from such illegal endeavors as syndicated and organized gambling, loan-sharking, the theft of property and fencing of stolen property, the illegal importation, manufacture, and distribution of drugs and other controlled substances, and other forms of social exploitation. This money and power are increasingly being used to infiltrate and corrupt legitimate business and labor organizations and to subvert and corrupt our democratic processes. Organized crime activities within this state weaken the stability of this state's and the nation's economy, harm innocent investors and competing organizations, impede free competition, threaten the peace and health of the public, endanger the domestic security, and undermine the general welfare of the state and its citizens. The general assembly further finds that organized crime continues to grow and flourish because of defects in the evidence-gathering process of the law which inhibits the development and use of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies presently available to the state are unnecessarily limited in scope and impact. Therefore, the general assembly declares that it is the purpose of this article to seek the eradication of organized crime in this state by strengthening the legal

tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime. #

Source: Added and amended, L. 81, pp. 1015, 2032, § 1, 47.

18-17-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other functionally similar tangible item.

(2) "Enterprise" means any individual, sole proprietorship, partnership, corporation, trust, or other legal entity or any chartered union, association, or group of individuals, associated in fact although not a legal entity, and shall include illicit as well as licit enterprises and governmental as well as other entities.

(3) "Pattern of racketeering activity" means engaging in at least two acts of racketeering activity which are related to the conduct of the enterprise, if at least one of such acts occurred in this state after July 1, 1981, and if the last of such acts occurred within ten years (excluding any period of imprisonment) after a prior act of racketeering activity.

(4) "Person" means any individual or entity holding or capable of holding a legal or beneficial interest in property.

(5) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any conduct defined as "racketeering activity" under 18 U.S.C. 1961 (1) (A), (1) (B), (1) (C), and (1) (D); or

(b) Any violation of the following provisions of the Colorado statutes or any criminal act committed in any jurisdiction of the United States which, if committed in this state, would be a crime under the following provisions of the Colorado statutes:

(I) Offenses against the person, as defined in sections 18-3-102 (first degree murder), 18-3-103 (second degree murder), 18-3-104 (manslaughter), 18-3-202 (first degree assault), 18-3-203 (second degree assault), 18-3-204 (third degree assault), 18-3-206 (menacing), 18-3-207 (criminal extortion), 18-3-301 (first degree kidnapping), and 18-3-302 (second degree kidnapping);

(II) Offenses against property, as defined in sections 18-4-102 (first degree arson), 18-4-103 (second degree arson), 18-4-104 (third degree arson), 18-4-105 (fourth degree arson), 18-4-301 (robbery), 18-4-302 (aggravated robbery), 18-4-303 (aggravated robbery of controlled substances), 18-4-401 (theft), 18-4-402 (theft of rental property), 18-4-409 (aggravated motor vehicle theft), 18-4-410 (theft by receiving), and 18-4-501 (criminal mischief);

(III) Offenses involving computer crime, as defined in article 5.5 of this title;

(IV) Offenses involving fraud, as defined in sections 18-5-102 (first degree forgery), 18-5-103 (second degree forgery), 18-5-105 (criminal possession of first degree forged instrument), 18-5-109 (criminal possession of forgery

Atch. 1

devices), 18-5-115 (charitable fraud), 18-5-206 (defrauding a secured creditor or debtor), and 18-5-403 (bribery in sports);

(V) Offenses involving the family relation, as defined in section 18-6-403 (sexual exploitation of children);

(VI) Offenses relating to morals, as defined in sections 18-7-104 (promotion of aggravated obscene materials or an aggravated obscene performance), 18-7-106 (promotion of aggravated sadomasochistic performance), 18-7-203 (pandering), 18-7-206 (pimping), 18-7-402 (soliciting for child prostitution), 18-7-403 (pandering of a child), 18-7-404 (keeping a place of child prostitution), and 18-7-405 (pimping of a child);

(VII) Offenses involving governmental operations, as defined in sections 18-8-302 (bribery), 18-8-303 (compensation for past official behavior), 18-8-306 (attempt to influence a public servant), 18-8-402 (misuse of official information), 18-8-502 (first degree perjury), 18-8-503 (second degree perjury), 18-8-602 (bribing a witness), 18-8-603 (bribe-receiving by a witness), 18-8-604 (intimidating a witness), 18-8-605 (tampering with a witness), 18-8-606 (bribing a juror), 18-8-608 (intimidating a juror), 18-8-609 (jury-tampering), and 18-8-610 (tampering with physical evidence);

(VIII) Offenses against public peace, order, and decency, as defined in sections 18-9-303 (prohibited wiretapping) and 18-9-304 (prohibited eavesdropping);

(IX) Gambling, as defined in sections 18-10-103 (2) (professional gambling), 18-10-105 (possession of a gambling device or record), 18-10-106 (transmission of receipt of gambling information), and 18-10-107 (maintaining gambling premises);

(X) Offenses relating to firearms and weapons, as defined in sections 18-12-102 (possessing an illegal and dangerous weapon) and 18-12-109 (possession, use, or removal of explosives or incendiary devices or the possession of components thereof);

(XI) Offenses involving the making, financing, or collection of loans, as defined in sections 18-15-102 (extortionate extension of credit), 18-15-104 (engaging in criminal usury), 18-15-105 (financing extortionate extensions of credit), 18-15-106 (financing criminal usury), 18-15-107 (collection of extensions of credit by extortionate means), and 18-15-108 (possession or concealment of records of criminal usury);

(XII) Fraud upon the department of revenue, as defined in section 39-21-118, C.R.S. 1973;

(XIII) Securities offenses, as defined in sections 11-51-105 and 11-51-124 (registration of brokers and dealers), 11-51-107 and 11-51-124 (registration of securities), and 11-51-123 and 11-51-124 (fraudulent and other prohibited practices), C.R.S. 1973;

(XIV) Offenses relating to controlled substances (part 3 of article 22 of title 12, C.R.S. 1973, and article 18 of this title); and

(XV) Offenses relating to taxation, as defined in section 39-22-621, C.R.S. 1973.

(6) "Unlawful debt" means a debt incurred or contracted in an illegal gambling activity or business or which is unenforceable under state or federal law in whole or in part as to principal or interest because of the law relating to usury.

Source: Added and (5)(b)(XIV) amended, L. 81, pp. 1016, 2032, § § 1, 48; (5)(b)(II) and (5)(b)(XIII) amended, L. 82, pp. 254, 623, § § 11, 19.

18-17-104. Prohibited activities. (1) (a) It is unlawful for any person who knowingly has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds or the proceeds derived from the investment or use thereof in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(b) A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection (1) if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to knowingly acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) It is unlawful for any person employed by, or associated with, any enterprise to knowingly conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), (2), or (3) of this section.

Source: Added, L. 81, p. 1018, § 1.

18-17-105. Criminal penalties. (1) Any person convicted of engaging in activity in violation of the provisions of section 18-17-104 commits a class 2 felony and, upon conviction thereof, shall, in addition to the penalty provided for in section 18-1-105:

(a) Be fined not more than twenty-five thousand dollars; and

(b) Forfeit to the state any interest, including proceeds, he has acquired or maintained in violation of section 18-17-104 and any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which has established, operated, controlled, conducted, or participated in the conduct of in violation of section 18-17-104.

(2) In lieu of the fine authorized by paragraph (a) of subsection (1) of this section, any person convicted of engaging in conduct in violation of the provisions of section 18-17-104, through which he derived pecuniary value, or by which he caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(3) The court shall hold a hearing to determine the amount of the fine authorized by subsection (2) of this section.

(4) For the purposes of subsection (2) of this section, "pecuniary value" means:

(a) Anything of value in the form of money, a negotiable instrument, or commercial interest or anything else, the primary significance of which is economic advantage; or

(b) Any other property or service that has a value in excess of one hundred dollars.

(5) In any action brought under this section, the district court may, at any time, enter such injunctions, prohibitions, or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as the court may deem proper.

(6) Upon conviction of a person under this article, the district court shall authorize the district attorney or the attorney general to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. The state shall dispose of all property or other interest seized under this section as soon as feasible, making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the state, it shall expire and shall not revert to the convicted person. The disposition of seized property shall be as follows:

(a) Any personal property which is required by law to be destroyed, or the possession of which is illegal, or which, in the opinion of the court is not properly the subject of a sale may be destroyed pursuant to a warrant for the destruction of personal property, issued by the district court, directed to the sheriff, and returned by the sheriff upon execution thereof. The district court shall stay the execution of any such warrant during the period in which the property is used as evidence in any pending criminal or civil proceeding.

(b) Any personal property seized and forfeited under the provisions of this section shall be sold by the sheriff in the manner provided for sales on execution. In lieu of ordering the sale of such property, the court may, if it finds that it can be used by a law enforcement agency, order it delivered to a law enforcement agency for such use.

(c) As to any real property, the district court shall enter a permanent order of abatement. The order of abatement shall direct the sheriff to sell such building or place and the ground upon which it is situated, to the extent of the interest, direct or indirect, of such person convicted under this article, at public sale in the manner provided for sales of property upon execution.

(d) The proceeds realized from such sales shall be applied as follows:

(I) To the fees and costs of sale;

(II) All costs and expenses of investigation and prosecution, including, but not limited to, costs of resources and manpower incurred in investigation and prosecution;

(III) The balance, if any, to the general fund of the state.

Source: Added, L. 81, p. 1018, § 1.

18-17-106. Civil remedies. (1) Any district court may, after making due provision for the rights of innocent persons, enjoin violations of the provisions of section 18-17-104 by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering any defendant to divest himself of any interest in any enterprise, including real property;

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he was engaged in violation of the provisions of section 18-17-104;

(c) Ordering the dissolution or reorganization of any enterprise;

(d) Ordering the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any agency of the state;

(e) Ordering the forfeiture of the charter of a corporation organized under the laws of this state or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of section 18-17-104 and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

(2) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the provisions of section 18-17-104 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. The disposition of seized property shall be as follows:

(a) Any personal property which is required by law to be destroyed, or the possession of which is illegal, or which, in the opinion of the court is not properly the subject of a sale may be destroyed pursuant to a warrant for the destruction of personal property, issued by the district court, directed to the sheriff, and returned by the sheriff upon execution thereof. The district court shall stay the execution of any such warrant during the period in which the property is used as evidence in any pending criminal or civil proceeding.

(b) Any personal property seized and forfeited under the provisions of this section shall be sold by the sheriff in the manner provided for sales on execution. In lieu of ordering the sale of such property, the court may, if it finds that it can be used by a law enforcement agency, order it delivered to a law enforcement agency for such use.

(c) As to any real property, the district court shall enter a permanent order of abatement. The order of abatement shall direct the sheriff to sell such building or place and the ground upon which it is situated, to the extent of the interest, direct or indirect, of such person convicted under this article, at public sale in the manner provided for sales of property upon execution.

(d) The proceeds realized from such sales shall be applied as follows:

(I) To the fees and costs of sale;

(II) All costs and expenses of investigation and prosecution, including, but not limited to, costs of resources and manpower incurred in investigation and prosecution;

(III) The balance, if any, to the general fund of the state.

(3) Property subject to forfeiture under this section may be seized by a law enforcement officer upon court process. Seizure without process may be made if:

(a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) In the event of a seizure under subsection (3) of this section, a forfeiture proceeding shall be instituted promptly. Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the law enforcement officer making the seizure, subject only to the order of the court. When property is seized under this section, pending forfeiture and final disposition, the law enforcement officer may:

(a) Place the property under seal;

(b) Remove the property to a place designated by court;

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(5) The attorney general or district attorney may institute civil proceedings under this section. In any action brought under this section, the district court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the district court may, at any time, enter such injunctions, prohibitions, or restraining orders or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(6) Any aggrieved person may institute a proceeding under subsection (1) of this section. In such proceeding, relief shall be granted in conformity with the principles that govern that granting of injunctive relief from threatened loss or damage in other civil cases; except that no showing of special or irreparable damage to the person shall have to be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

(7) Any person injured by reason of any violation of the provisions of section 18-17-104 shall have a cause of action for threefold the actual damages sustained. Such person shall also recover attorney fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred; except that:

(a) The defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this section; and

(b) Any injured person shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds.

(8) A final judgment or decree rendered in favor of the people in any criminal proceeding under this article shall estop the defendant in any subsequent civil action or proceeding as to all matters as to which such judgment or decree would be an estoppel as between the parties.

(9) The application of one civil remedy under any provision of this article shall not preclude the application of any other remedy, civil or criminal, under this article or any other provision of law. Civil remedies under this article are supplemental and not mutually exclusive.

18-17-107. Civil investigative demand. (1) Whenever the attorney general or the district attorney has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(2) Each such demand shall:

(a) State the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(b) Describe the class or classes of documentary material demanded thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(c) State that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction;

(d) Identify the custodian to whom such material shall be made available; and

(e) State an advisement of rights, available under the provisions of this article, in addition to any appropriate constitutional rights advisement.

(3) No such demand shall:

(a) Contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the state in aid of a grand jury investigation of such alleged racketeering violation; or

(b) Require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the state in aid of a grand jury investigation of such alleged racketeering violation.

(4) Service of such demand or any petition filed under this section may be made upon a person by:

(a) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person or upon any individual person;

(b) Delivering a duly executed copy thereof to the residence, principal office, or place of business of the person to be served; or

(c) Depositing such copy in the United States mail, by registered or certified mail, duly addressed to such person at its residence, principal office, or place of business.

(5) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post-office receipt of delivery of such demand.

(6) (a) The attorney general or district attorney shall designate an investigator to serve as racketeer document custodian and such racketeering investigators as he shall determine to be necessary to serve as deputies to such officer.

August (Gus) Bogina Jr.
Sen. 10th District
13518 West 95th Place,
Lenexa, Kansas 66215

SB 51 2-9-83

#2

San Francisco 136 N



Dealers, Dollars and Drugs

Drug Law Enforcement's Promising New Three-Dimensional Program

Harry L. Myers

Assistant Chief Counsel
Drug Enforcement Administration
and

Joseph P. Brzostowski

Special Agent
Financial Investigative Section
Drug Enforcement Administration

NEW YORK—Federal agents arrest twelve drug traffickers; seize 11,600 pounds of hashish, 1.5 pounds of Thai sticks and 5,000 units of LSD; and confiscate \$400,000 in cash, a painting valued at \$1,000,000, gold and jewelry worth \$100,000 and a Mercedes Benz. . .

SAN FRANCISCO—Federal agents arrest two drug traffickers, seize 23.5 pounds of cocaine, and confiscate a bank account containing \$212,000, stocks worth \$15,000 and a mansion on an estate valued at \$750,000. . .

MIAMI—Federal agents arrest one of the biggest financiers of drug trafficking in the United States, seize 44 pounds of pure cocaine, confiscate \$1,000,000 in cash and notify Swiss authorities to freeze the drug dealer's secret bank accounts. . .

News like this is all too common in America. Every day we hear reports of more drug arrests and more drug seizures. Yet something about these three reports is different. An important new dimension has been added to the drug enforcement picture they describe: Money! Law enforcement has begun to seize the profits of crime.

Staking \$80 Billion

Drug trafficking is big business. It is organized to earn huge profits. Each year Americans spend almost \$80 billion to buy illicit drugs. The statistics are staggering. Like all other businesses, drug trafficking organizations have three elements:

- Workers and managers;
- Products and services;
- Money and other assets.

Historically, we have attacked criminal businesses by arresting and punishing their workers and managers. And we have attacked them by seizing their illegal products, such as narcotics and other dangerous drugs. But we have ignored their third dimension. For too long we did not attack the money, property or assets of these illegal companies.

***“It seems probable
that drug law enforcement
will eventually pay its own way.”***

All businesses need money and property to create products, to deliver them to their customers, to promote sales and to grow. Criminal businesses are no different. Drug dealers need money and property to produce and market their contraband goods. They need money to buy silence from witnesses, to pay bribes, to expand into other illegal activities, to move into new towns and cities, to seduce more citizens into joining their ranks, and to pay for all their other illegal expenses.

Money and property are at the heart of all businesses. As long as assets and profits go untouched, lost workers and lost products can always be quickly replaced. Even with leaders in jail, confederates continue the dangerous and deadly business of drug trafficking by using the wealth and property left behind. And those imprisoned quickly return to drug dealing after being released, because criminals making huge profits see jail as an acceptable risk as long as they get to keep their earnings. They can invest their illegal fortunes while in jail, and the money will be waiting for them, with interest, when they get out.

The Drug Enforcement Administration is implementing an enforcement program that strikes at all three dimensions of drug trafficking. We are continuing to improve upon our traditional objectives of arresting major dealers and seizing large amounts of drugs. But, as the reports at the beginning of this article indicate, we are now seizing the ill-gotten profits and property of these criminals.

Today's drug agents can no longer confine themselves to the "who, what, where, when and why" of drugs and drug dealers. During every phase of their investigations they must now ask: "What about the dollars?" If we are ever to be successful against drug traffickers, we must raid their treasuries, we must confiscate their ill-gotten wealth.

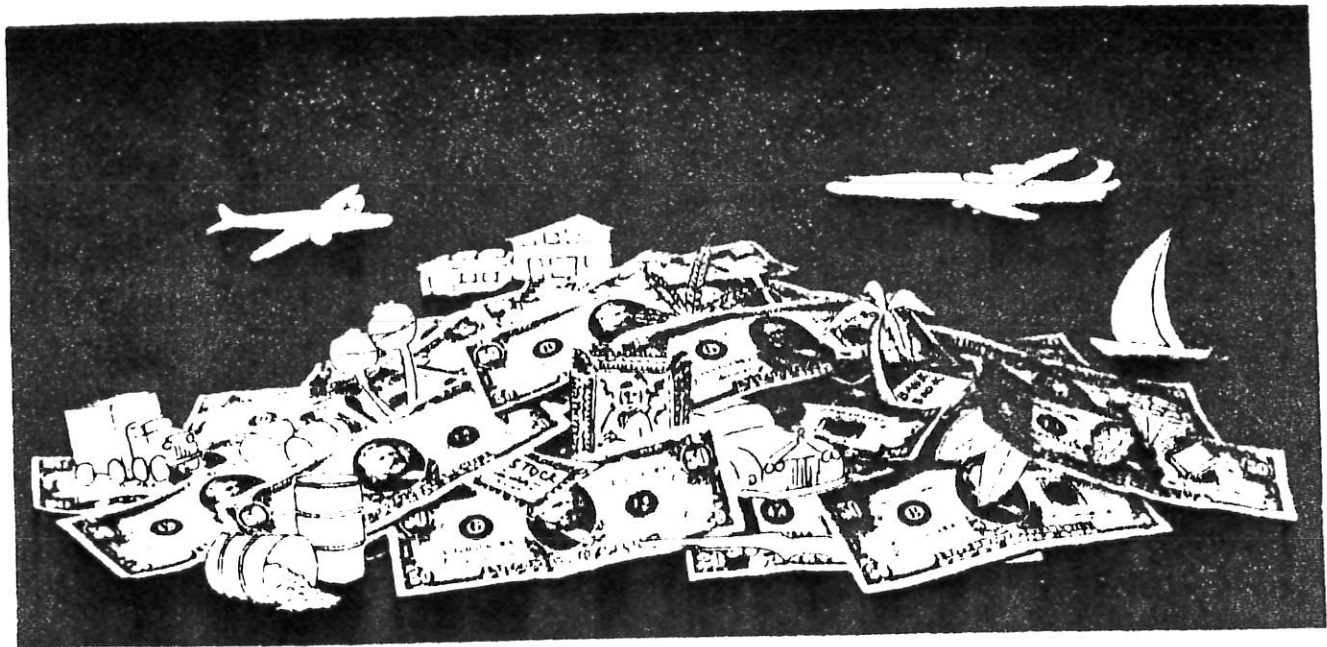
The Power of Forfeiture

The power to confiscate the financial resources of criminals exists in the ancient Law of Forfeiture. Since the days of Moses civiliza-

tions throughout the world have recognized the inherent right of government to confiscate, or "forfeit," anything used illegally, acquired illegally or dangerous to society.¹ Government does not pay for forfeitable property; it is simply confiscated and disposed of. While this may seem harsh, American courts have repeatedly upheld it as constitutional.² The power of forfeiture was approved and practiced by the American Colonies.³ It was used by the First Congress of the United States to confiscate pirate ships, smuggling ships and slave ships.⁴ Hundreds of forfeiture laws are now enforced by both the Federal Government and the states.

The first use of the forfeiture power to confiscate the profits and other assets of drug dealers occurred in 1970. Persons convicted of operating large drug-trafficking organizations, in violation of the Federal Controlled Substances Act, were required to forfeit: all their illegally acquired profits, all their capital in the illegal business, and all their other property that helped them operate illegally.⁵ Forfeiture of this property was made a part of the punishment for the crime. A similar (but not identical) provision, designed to forfeit the assets of all convicted organized criminals, was passed, at the same time, in the Racketeer Influenced and Corrupt Organizations Act.⁶

Despite the best efforts of agents and prosecutors, relatively little was seized from drug dealers under these criminal forfeiture laws.⁷ Congress reacted in 1978 with a bold new approach. It passed a civil law declaring that all moneys used in, and all assets acquired from, the illicit drug trade belong to the United States Government and are subject to civil seizure under the forfeiture power.⁸ In effect, Congress authorized federal attorneys to file civil lawsuits asserting the Government's right to such property. Although the same evidence gathered in a criminal investigation can be used in these civil suits, they are independent of any criminal trials.⁹ Dismissal of criminal charges against an owner due to some technicality does not prevent the Government from civilly suing for return of the property.¹⁰ Civil forfeiture suits are



not burdened by the complex procedures followed in criminal cases.¹¹ The level of proof needed in civil forfeiture suits is significantly less than the "proof beyond a reasonable doubt" required in criminal trials.¹² And the Government can introduce more kinds of evidence in these civil cases.¹³

Results under the 1978 civil forfeiture law have been impressive. In 1979, the first full year of implementing the law, DEA alone seized \$9.8 million in assets. In 1980, DEA civilly seized \$34.5 million in assets. And in 1981 DEA civilly seized \$54.4 million in assets. Seizures made by other agencies based upon information and assistance provided by DEA amounted to \$154.2 million. DEA seizures of drug-related assets under the 1970 criminal statutes totaled \$14.75 million for this same period. In all, DEA agents captured \$268 million from drug dealers in just three years.

This is only the beginning. It takes time—a long time—to educate thousands of agents, prosecutors and judges in the intricacies of new laws. As the educational process on forfeiture continues, the dollar value and the variety of assets seized should dramatically increase. It seems probable that drug law enforcement will eventually pay its own way. We should reach a point where the costs to taxpayers will be offset by the fortunes seized from drug dealers. Although the federal program is still in its infancy, it is already producing vast amounts of revenue.

While all states arrest drug dealers and seize

drugs, fewer than ten states seize drug profits. Most have neglected to pass laws attacking the finances of drug traffickers. To help correct this, DEA has developed a Model Act based upon the 1978 federal forfeiture law. It consists of an amendment to the civil forfeiture section of the Uniform Controlled Substances Act, now enforced in forty-seven states.¹⁴

Model Forfeiture of Drug Profits Act

SECTION (insert designation of the civil forfeiture section) of the Controlled Substances Act of this State is amended by adding the following paragraph after paragraph (insert designation of the last category of forfeitable property):

() Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this Act (meaning the Controlled Substances Act of this State), all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this Act; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

Rebuttable Presumption: All moneys, coin and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof is upon claimants of the property to rebut this presumption.

Put simply, this Model Act would permit states to seize, civilly forfeit, and deposit in their treasuries:

1. All moneys and other property used to buy contraband drugs,
2. All property bought with the profits from drug dealing, and
3. All moneys used to facilitate any drug law violation.

States adopting this provision should seriously consider allocating the moneys forfeited under it to the drug enforcement, education, prevention and treatment agencies within their jurisdictions. Variations in state finance laws preclude drafting a model provision dedicating forfeited property. Nevertheless, every state should amend its laws to devote a substantial portion of forfeited drug profits to the fight against drug abuse.

Drug Agents' Guide to Forfeiture of Assets

Until recently, the Law of Forfeiture played a very insignificant role in our struggle with crime. Although it is a well-established legal doctrine, up to now it has been ignored by most legal scholars. No books have been written on forfeiture law. No schools offer courses in forfeiture. Few legal experts exist in the area. Only a relative handful of police, lawyers and citizens are even aware of the concept.

As a result, states adopting the Model Forfeiture of Drug Profits Act will face the immediate challenge of educating their officials in this area. Fortunately, DEA has just completed a training manual on forfeiture. The text,

entitled the **Drug Agents' Guide to Forfeiture of Assets**, is approximately 400 pages long and contains over 800 citations to state and federal forfeiture cases. The first seven chapters explain all aspects of civil forfeiture law, including a comprehensive analysis of the 1978 federal law on which the Model Forfeiture of Drug Profits Act is based. The eighth chapter discusses criminal forfeiture law, including the provisions of both the Racketeer Influenced and Corrupt Organizations Act and the Continuing Criminal Enterprise Offense of the Federal Controlled Substances Act. The ninth chapter probes the practical problems facing agents investigating cases involving substantial drug-related assets. And the tenth chapter contains the Model Forfeiture of Drug Profits Act, with a Prefatory Note and Comment.

The guide is available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. At present, it sells for \$9.50, which includes postage and handling. The GPO Stock Number is 027-004-00034-2.

Conclusion

Thanks to the Law of Forfeiture, drug agents now have the potential of seizing more money than they spend. With tax dollars becoming scarce, the Law of Forfeiture holds the promise of dramatically improving drug law enforcement while profiting the public treasuries. The long-range implications are enormous. The Drug Enforcement Administration sincerely believes that no state can afford to ignore the modern potential of this ancient legal doctrine.

Footnotes

¹ Finklestein, *The Goring Ox: Some Historical Perspectives On Deodands, Forfeitures, Wrongful Death And The Western Notion of Sovereignty*, 46 Temple Law Quarterly 169 (1973).

² *Calero-Toledo v. Pearson Yacht Leasing Company*, 94 S.Ct. 2080 (1974).

³ Surrency, *The Courts In The American Colonies*, 11 Am. Jour. Legal History 253 at 261 (1967).

⁴ *Supra* Note 2, at 2092.

⁵ 21 U.S.C. 848.

⁶ 18 U.S.C. 1962, 1963.

⁷ *Asset Forfeiture—A Seldom Used Tool In Combatting Drug Trafficking*, General Accounting Office, GGD-81-51, April 10, 1981.

⁸ 21 U.S.C. 881(a)(6).

⁹ *The Palmyra*, 12 Wheat. 1, 6L.Ed. 531 (1827).

¹⁰ *United States v. One Clipper Bow Ketch Nisku*, 548 F.2d 8 (1 Cir. 1977).

¹¹ See, e.g., *United States v. 110 Bars of Silver*, 508 F.2d 799 (5 Cir. 1975).

¹² 19 U.S.C. 1615; *One Lot of Emerald Cut Stones v. United States*, 93 S. Ct. 489 (1972).

¹³ Rule 1101(e), Federal Rules of Evidence (28 U.S.C.); See, e.g., *United States v. One Twin Engine Beech Airplane*, 533 F.2d 1106 (9 Cir. 1976).

¹⁴ Volume 9, Uniform Laws Annotated, Table of Jurisdictions.

SENATE JUDICIARY COMMITTEE

ROOM 5145

FEBRUARY 9, 1983

10:00 AM

THIS BILL IS DESIGNED TO BROADEN K.S.A. 65-4135.

UNDER THE EXISTING STATUTE EQUIPMENT MATERIALS, AIRCRAFT, VEHICLES, VESSELS, ETC., ARE SUBJECT TO FORFEITURE WHEN USED IN THE MANUFACTURE AND SALE OF CONTROLLED SUBSTANCES. THIS PROPOSAL WOULD INCLUDE REAL PROPERTY, BUILDINGS.

THE NEW LANGUAGE STARTS ON LINE 54 THROUGH LINE 66, AND IT PROVIDES FOR THE NECESSARY PROTECTION FOR OWNERS THAT DO NOT HAVE KNOWLEDGE OF THEIR BUILDING BEING USED IN THE DRUG BUSINESS AS WELL AS PROTECTION FOR PERSONS HAVING A MORTGAGE ON THE PROPERTY.

THIS IS PATTERNED AFTER A SIMILAR LAW IN COLORADO. THEY HAVE HAD GOOD SUCCESS WITH THEIR LAW. IN 72 CASES THEY HAVE WON 71 OF THEM.

THIS IS NOT AIMED AT PUTTING LAW ENFORCEMENT IN THE REAL ESTATE BUSINESS. IT IS DIRECTED TOWARD PREVENTING SOMEONE FROM HAVING MATERIAL GAINS FROM ILLEGAL ACTIVITIES.

THESE DRUG HOUSES ARE OFTEN A PUBLIC NUISANCE AS THEY HAVE CASES OF OVERDOSES, ASSAULTS, ETC., THIS ACT WOULD HELP IN CLOSING DEALER HOUSES.

Atch. 3

SOME OF THESE DEALERS, ESPECIALLY COCAINE DEALERS, ARE BUYING EXPENSIVE HOUSES FROM THEIR ILLEGAL PROFITS AND I CERTAINLY DO NOT THINK WE SHOULD PROTECT THESE PEOPLE'S HOUSES OR OTHER PROPERTY FROM FORFEITURE.

10. Suppression of evidence

Where inspection of defendant's premises was conducted following issuance of inspection warrant under this section, inspection was limited to administrative inspection and was conducted in accordance with this section, any matters revealed by such inspection were not subject to suppression in criminal proceeding. U. S. v. Prendergast, D.C.Pa.1977, 436 F.Supp. 931, affirmed 585 F.2d 69.

Where subsequent statements made by defendant were directly related to information gathered by Drug Enforcement Agency compliance officers as result of illegal search of defendant's pharmacy, defendant was entitled to suppression of such statements. U. S. v. Enserro, 1st N.Y.1975, 401 F.Supp. 460.

§ 881. Forfeitures

Property subject

(a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this subchapter.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this subchapter.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this subchapter or subchapter II of this chapter; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter.

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any

2-9-83
P. Clark

person in exchange for a this subchapter, all proceeds, all moneys, negotiable instruments, intended to be used to facilitate, except that no property shall be to the extent of the interest or omission established by or omitted without the knowledge

Seizure pursuant to S Admiralty

(b) Any property subject to this subchapter may be seized issued pursuant to the Supplemental and Maritime Claims by any court having jurisdiction over the property process may be made when—

(1) the seizure is incident to a search warrant or an inspection warrant;

(2) the property subject to prior judgment in favor of the government or forfeiture proceedings;

(3) the Attorney General certifies that the property is directly related to the safety; or

(4) the Attorney General certifies that the property has been used in violation of this subchapter.

In the event of seizure pursuant to this subsection, proceedings under this section shall be instituted promptly.

Custody

(c) Property taken or detained under this section shall be deposable, but shall be deemed to be in the custody of the Attorney General, subject only to the provisions of this section, by any official having jurisdiction under the provisions of this section.

(1) place the property in the custody of the Attorney General;

(2) remove the property from the jurisdiction of the court;

(3) require that the property be held in the custody of the Attorney General for disposition in accordance with the provisions of this section.

Other laws

(d) The provisions of this section shall not apply to judicial forfeiture, and do not

Atch. 4

Where subsequent statements made by defendant were directly related to information gathered by Drug Enforcement Agency compliance officers as result of legal search of defendant's pharmacy, defendant was entitled to suppression of such statements. U. S. v. Enserro, D.C. N.Y. 1975, 401 F.Supp. 460.

Subject

Property subject to forfeiture to the United States in them:

Property which have been manufactured, produced, or imported in violation of this subchapter.

Property, tools, and equipment of any kind used or intended for use, in manufacturing, importing, or exporting any controlled substance of this subchapter.

Property, or intended for use, as a common carrier under paragraph (1) or (2).

Property, including aircraft, vehicles, or vessels, used or intended for use, to transport, or in any way to facilitate, the production, sale, receipt, possession, or distribution of any controlled substance described in paragraph (1) or (2),

Property owned or controlled by any person as a common carrier or as a business as a common carrier under the provisions of this section unless the owner or other person in possession of the property was a consenting party or privy under this subchapter or subchapter II of this chapter.

Property to be forfeited under the provisions of any act or omission established to have been committed or attempted by or for the benefit of or in the possession of a person in violation of the criminal laws of the State.

Property, including formulas, mixtures, or intended for use, in the production, sale, receipt, possession, or distribution of any controlled substance.

Property, including instruments, securities, or other property, intended to be furnished by any person in violation of this subchapter.

person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims

(b) Any property subject to forfeiture to the United States under this subchapter may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this subchapter;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property has been used or is intended to be used in violation of this subchapter.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

Custody of Attorney General

(c) Property taken or detained under this section shall not be releasable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this subchapter, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Other laws and proceedings applicable

(d) The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of

the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this subchapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

Disposition of forfeited property

(e) Whenever property is forfeited under this subchapter the Attorney General may—

- (1) retain the property for official use;
- (2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;
- (3) require that the General Services Administration take custody of the property and remove it for disposition in accordance with law; or
- (4) forward it to the Drug Enforcement Administration for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

The proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in the general fund of the United States Treasury any amounts of such moneys and proceeds remaining after payment of such expenses.

Forfeiture of schedule I substances

(f) All controlled substances in schedule I that are possessed, transferred, sold, or offered for sale in violation of the provisions of this subchapter shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

Plants

(g)(1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this subchapter, or of which the owners or cul-

tivators are unknown, or which are summarily forfeited to the United States.

(2) The failure, upon demand by an authorized agent, of the person in possession of such property to produce an appropriate receipt, shall constitute a forfeiture.

(3) The Attorney General, or any person authorized by him, shall have authority to enter upon any premises upon which such specific plants are growing, to cut, remove, and destroy such plants.

Pub.L. 91-513, Title II, § 511, (1970), 84 Stat. 1242, and Pub.L. 95-633, Title III, § 301(a), Nov. 13, 1978, 92 Stat. 3601, 93 Stat. 1.

Histo

References in Text. "This subchapter" referred to in text, was in the original Code, "this title" which is Title II of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

"Subchapter II of this chapter", referred to in subsec. (a)(4)(A), was in the original Code, "title III", meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1109 of Title III, see Tables volume.

The criminal laws of the United States referred to in subsec. (a)(4)(B), are classified generally to Title 18, Crimes and Criminal Procedure.

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsec. (b), are set out in Title 1, Judiciary and Judicial Procedure.

The customs laws, referred to in subsec. (d), are classified generally to Title 19, Customs Duties.

Schedules I and II, referred to in subsecs. (f) and (g)(1), are set out in section 812(c) of this title.

Codification. "Drug Enforcement Administration" was substituted for "Bureau of Narcotics and Dangerous Drugs" in section 812(c) of this title.

Contraband articles, including narcotics, transported, see section 781. Narcotic drug defined, see section 781.

such property or the proceeds or mitigation of such forfeitures shall apply to seizures and have been incurred, under the as applicable and not in- except that such duties as are any other person with respect erty under the customs laws zures and forfeitures of prop- icers, agents, or other persons that purpose by the Attorney ch duties arise from seizures officer.

Property

under this subchapter the At-

al use;

which is not required to be de- mful to the public;

Services Administration take e it for disposition in accord-

forcement Administration for e medical or scientific use to r regulations of the Attorney

paragraph (2) and any moneys be used to pay all proper ex- e and sale including expenses advertising, and court costs. e the Treasurer of the United of the United States Treasury eds remaining after payment

Substances

chedule I that are possessed, violation of the provisions of band and seized and summa- Similarly, all substances in to the possession of the Unit- known, shall be deemed con- United States.

hich controlled substances is h have been planted or cult- of which the owners or cul-

tivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

Pub.L. 91-513, Title II, § 511, Oct. 27, 1970, 84 Stat. 1276; Pub.L. 95-633, Title III, § 301(a), Nov. 10, 1978, 92 Stat. 3777; Pub.L. 96-132, § 14, Nov. 30, 1979, 93 Stat. 1048.

Historical Note

References in Text. "This subchapter", referred to in text, was in the original "this title" which is Title II of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the "Controlled Substances Act". For complete classification of Title II to the Code, see Short Title note set out under section 801 of this title and Tables volume.

"Subchapter II of this chapter", referred to in subsec. (a)(4)(A), was in the original "title III", meaning Title III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see Tables volume.

The criminal laws of the United States, referred to in subsec. (a)(4)(B), are classified generally to Title 18, Crimes and Criminal Procedure.

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsec. (b), are set out in Title 28, Judiciary and Judicial Procedure.

The customs laws, referred to in subsec. (d), are classified generally to Title 19, Customs Duties.

Schedules I and II, referred to in subsecs. (f) and (g)(1), are set out in section 812(c) of this title.

Codification. "Drug Enforcement Administration" was substituted for "Bureau of Narcotics and Dangerous Drugs"

in subsec. (e)(4) to conform to congressional intent manifest in amendment of section 802(4) of this title by Pub.L. 96-132, § 16(a), Nov. 30, 1979, 93 Stat. 1049, now defining term "Drug Enforcement Administration" as used in this subchapter.

1979 Amendment. Subsec. (d). Pub.L. 96-132 substituted "The provisions" for "All provisions", and struck out "and the award of compensation to informers in respect of such forfeitures" following "compromise of claims".

1978 Amendment. Subsec. (a)(6). Pub.L. 95-633, § 301(1), added par. (6).

Subsec. (e). Pub.L. 95-633, § 301(a)(2), (3), struck out of cl. (2) provisions relating to use of proceeds of sale and added provision relating to the forwarding by the Attorney General of money and proceeds remaining after payment of expenses.

Effective Date. Section effective Oct. 27, 1970, see section 704(b) of Pub.L. 91-513, set out as an Effective Date note under section 801 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-513, see 1970 U.S. Code Cong. and Adm. News, p. 4566. See, also, Pub.L. 95-633, 1978 U.S. Code Cong. and Adm. News, p. 9496; Pub.L. 96-132, 1979 U.S. Code Cong. and Adm. News, p. 2003.

Cross References

Contraband articles, including narcotic drugs, seizure and forfeiture of carriers transporting, see section 781 et seq. of Title 49, Transportation.
Narcotic drug defined, see section 787 of Title 49.

2-9-83
nan
#5

SENATE JUDICIARY COMMITTEE

ROOM 5145

FEBRUARY 9, 1983

10:00 AM

SENATE BILL No. 114 WILL PROVIDE MORE STRICT SENTENCING FOR ADULTS SELLING A CONTROLLED SUBSTANCE TO MINORS.

A MINOR IS OFTEN MORE EASILY PERSUADED TO EXPERIMENT WITH OR PURCHASE DRUGS THAN SOMEONE OLDER AND MORE MATURE. IT IS NOT UNCOMMON FOR 13, 14, AND YOUNGER CHILDREN TO BE EXPOSED TO DRUG TRAFFICKING. WE FEEL WE SHOULD TRY TO OFFER AS MUCH PROTECTION AS POSSIBLE TO AVOID AS MUCH EXPOSURE AS POSSIBLE AND IT SEEMS THIS PROPOSAL MAY HELP AS IT WOULD MAKE MANDATORY IMPRISONMENT FOR THOSE CONVICTED OF SELLING TO MINORS.

I WOULD RECOMMEND CONSIDERATION BE GIVEN TO INCLUDE MANDATORY IMPRISONMENT TO ANYONE OVER 18 CONVICTED OF GIVING OR DISTRIBUTING CONTROLLED SUBSTANCE TO PERSONS UNDER 18 YEARS OF AGE. THE PROPOSAL BEFORE YOU JUST COVERS SALE AND IT WOULD BE DESIRABLE IF IT INCLUDED GIVING AND DISTRIBUTING.

Atch. 5

2-9-83
#6

To: Senate Committee on Judiciary
From: Dr. Lorne A. Phillips, Commissioner
SRS/Alcohol and Drug Abuse Services
Date: February 9, 1983
RE: SB 114

It is time to show everyone that Kansas will not be lenient to adults who sell drugs to persons under the age of 18. Senate Bill 114 provides tougher penalties for these type of persons and I feel this bill is needed to attempt to protect the young persons of our State from adults selling drugs.

Even though this bill in and of itself will not solve the problem of drug abuse, it is a step in the right direction to apply appropriate penalties.

There are two approaches to solving the substance abuse problem in Kansas. The first at which this bill is aimed, is to attach the supply side of the problem; to make the penalties sting enough so that persons may not choose to sell the drugs. The second approach is to diminish the demand for these substance; to provide the Citizens of Kansas with the proper tools to make informed decisions so they may choose not to use drugs. Prevention and educational services are the only approach to solve this problem in the long run and we must assure that all Kansans are afforded the opportunity to receive these services.

This bill is needed to apply pressure on the supply side of the complex problem and I support this bill and encourage its passage.

ALch. 6