

Approved February 4, 1986  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

10:00 a.m./~~p.m.~~ on January 27, 1986 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Frey, Hoferer, Burke, Gaines,  
Langworthy, Steineger, Winter and Yost.

Committee staff present:

Mike Heim, Legislative Research Department  
Mary Hack, Office of Revisor of Statutes

Conferees appearing before the committee:

Charles Simmons, Department of Corrections  
Elwaine Pomeroy, Kansas Parole Board  
Jim Clark, Kansas County and District Attorneys Association  
Tom Kelly, Kansas Bureau of Investigation

Charles Simmons, Department of Corrections, presented a request for a committee bill concerning contributions to the crime victims reparations fund by inmates employed in private industry programs. Senator Gaines moved to introduce the bill. Senator Steineger seconded the motion, and the motion carried. (See Attachment I)

Charles Simons presented a request for a committee bill concerning transportation of inmates/parolees. Following his explanation of the proposal, Senator Steineger moved to introduce the bill. Senator Gaines seconded the motion, and the motion carried. (Attach. II)

Elwaine Pomeroy, Kansas Parole Board, presented a request for a committee bill concerning restitution. He explained the problem they have is the requirement in the statute for the condition of parole, that the parole board order restitution. The board needs a mechanism for seeing that it is paid, and this is not in the statute. Mr. Pomeroy pointed out another problem is when the court ordered restitution and did not determine the amount of restitution, and years later the board tries to determine that amount. He suggested a provision to require, in all cases, the courts determine the amount of restitution. Another problem they run into is when the person that is entitled to the restitution has moved away and can't be located. What should the policy be in that case? Is restitution to make the victim whole monetarily or is restitution used as additional punishment. He said the board needs statutory authority as to what would happen to that money; the statute is silent on that. Committee discussion with Mr. Pomeroy followed.

The chairman appointed Senator Yost to follow the drafting of the proposed bill to see that it contains the provisions that Mr. Pomeroy brought to their attention. If the committee members have any recommendations, bring them to Senator Yost's attention.

The chairman presented a request for a bill concerning child visitation orders. Following his explanation, Senator Burke moved to introduce the bill. Senator Gaines seconded the motion, and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m.~~p.m.~~ on January 27, 1986

The chairman presented two requests for bills concerning the Kansas Procedure Act. Following the explanation, Senator Yost moved to introduce the two bills. Senator Burke seconded the motion, and the motion carried.

The chairman presented a request for a bill concerning the court of appeals to increase the number of judges. Following the explanation, Senator Steineger moved to introduce the bill. Senator Burke seconded the motion, and the motion carried.

The chairman presented a request for a bill concerning judicial review and civil enforcement of state agency actions. Following the explanation, Senator Gaines moved to introduce the bill. Senator Burke seconded the motion. The motion carried.

The chairman presented a request for a bill concerning attorneys that relates to a client's money. Following the explanation, Senator Burke moved to introduce the bill. Senator Yost seconded the motion, and the motion carried.

Senator Burke discussed a concept for a bill concerning contraband. He suggested staff check Florida's system and also look at the system the federal government uses.

Senate Bill 277 - Application of Tort Claims Act to certain persons training to inmates.

Charles Simmons, Department of Corrections, appeared to testify on the bill. He stated the issue is whether the Kansas Tort Claims Act should be amended to permit the state to provide legal representation in defending a lawsuit filed by an inmate against a teacher or instructor who is under contract with the Department of Corrections to provide that service. A copy of his remarks is attached (See Attachment III). Committee discussion with Mr. Simons followed.

Senate Bill 278 - Forfeiture of property used in violation of controlled substances act.

Jim Clark, Kansas County and District Attorneys Association, testified in support of the bill. A copy of "Use of Forfeiture Sanctions in Drug Cases" was passed out to committee members (See Attachment IV). Mr. Clark stated a bill like this will put landlords on notice to people who are growing these things. He pointed out the amendment in the bill in Section 7, line 70, that real estate has been added. A copy of a letter from Benjamin L. Burgess, Jr., and a copy of a model State Asset Forfeiture Bill, U.S. Department of Jusices, are attached (See Attachments VI, VII). (No attachment V)

Tom Kelly, Kansas Bureau of Investigation, testified in support of the bill. He stated the bureau has to work with task forces because sharing of resources is the only way they can operate to make any impact on drug traffic in this state. They may share in forfeit proceeds. He stated the bill is effective. It goes after funds the drug dealer has paid defense attorneys, and this is subject to forfeiture. He said there are laboratories that are being set up to make synthetic cocaine and heroin. The bureau is having trouble tracking down laboratories. The biggest damage they can do to an operation is seize instruments of the crime. He said the drug dealers are sent to prison usually with a very light sentence. The dealers can afford good representation in the courts.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 27, 1986

Senate Bill 278 continued

They need to hit drug dealers any way they can; the profits are what the bureau is after. He said there is drug money in farms growing marijuana, and if those things are taken away, the dealers can be put out of business. Funds that are taken as seize and forfeiture property goes to the general fund, however, most units of government do not have buy money funds. They must have money to buy funds. He reported one ounce of cocaine costs twenty-two hundred dollars and one gram costs one hundred to one hundred twenty dollars.

The meeting adjourned.

A copy of the guest list is attached (See Attachment VIII).

# GUEST LIST

 COMMITTEE: SENATE JUDICIARY COMMITTEE

 DATE: 1-27-86

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Charles Simmons	Topeka	Dept. of Corrections
TERRY L. STEVENS	TOPEKA	TOPEKA POLICE DEPT.
PATRICIA HENSHALL	TOPEKA	CISA
George Barber	Topeka	KVA
Janet Stubbs	"	KBAK
Kathy J. Murray	"	INCAK
Christine J. Ramsey	"	K.S. People Bd.
Ann L. Clark	"	K Co Insurance
Ed Van Datta	"	KBI
Ron Smith	"	KBA
KAREN McCLAIN	"	KS REALTORS
Tom Kelly	"	KBI
WALT DARLING	TOPEKA	DIV. OF BUDGET

LEGISLATIVE PROPOSAL NO. \_\_\_\_\_

Revisor of Statutes No. \_\_\_\_\_

BILL NO. \_\_\_\_\_

DRAFT NO.	DATE
1	11-15-85

"CLEAN-UP"

"SUBSTANTIVE"

INTRODUCE THROUGH \_\_\_\_\_

APPROVED BY GOVERNOR  YES

NO

NOTES AND COMMENTS

DOC PERSONELL TO FOLLOW UP:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AN ACT CONCERNING: contributions to the crime victims reparations fund by inmates employed in private industry programs; amending K.S.A. 75-5211, 74-7317 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 75-5211 is hereby amended to read as follows:

2 (a) The secretary of corrections shall provide employment oppor-

3 tunities, work experiences, educational or vocational training for

4 all inmates capable of benefiting therefrom. Equipment, management

5 practices and general procedures shall, to the extent possible, ap-

6 proximate normal conditions of employment which includes a forty-hour

7 work week for every inmate who is available, willing and able to

8 participate. Such work week may include schooling, vocational train-

9 ing, employment at private industry, treatment or other activities

10 authorized by the secretary. For all purposes under state law, no

11 inmate shall be deemed to be an employee of the state or any state

12 agency. The secretary of corrections shall credit to each inmate

13 as a reward for such employment, an amount which shall be set by

14 the governor but shall not be less than \$.25 per day. Any inmate who

15 is gainfully employed under the work release provisions of K.S.A.

16 75-5267 and 75-5268, and amendments thereto, or who is gainfully

17 employed by a private business enterprise operating on the grounds

18 of a correctional institution under K.S.A. 75-5288 and amendments

19 thereto, or any other private business at which inmates are permitted

20 to be gainfjllly employed, and any inmate who is incarcerated at the

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Kansas reception and diagnostic center for the purpose of receiving diagnosis and any inmate on disciplinary segregation status shall not be eligible to receive compensation as provided in this subsection.

(b) The secretary of corrections shall establish programs and prescribe procedures for withdrawing amounts from the compensation paid to inmates from all sources for the same purposes as are prescribed for K.S.A. 75-5268 and amendments thereto for moneys of work release participants- *except that any inmate employed in a private industry program, other than work release, shall, in addition to the deductions specified in K.S.A. 75-5268 and amendments thereto, have deduction of five percent of monthly gross wages paid to the crime victim reparations board for the purpose of victim compensation. The department of corrections is authorized to make this deduction and payment to the crime victims reparations board.*

(c) Upon the release of any inmate on parole, conditional release or expiration of the inmate's maximum sentence, the inmate shall be provided with suitable clothing and a cash payment of \$100. Any inmate who is gainfully employed under the work release provisions of K.S.A. 75-5267 and 75-5268, and amendments thereto, or who is gainfully employed by a private business enterprise operating on the grounds of a correctional institution under K.S.A. 75-5288 and amendments thereto, or any other private business at which inmates are permitted to be gainfully employed or any inmate paroled to a detainer shall not be eligible to receive this cash payment.

An inmate released on ~~conditional-release-or~~ expiration of the inmate's maximum sentence shall be provided public transportation, if required, to the inmate's home, if within the state, or, if not, to the place of conviction or to some other place not more distant, as selected by the inmate. An inmate released on parole or conditional release shall be provided public transportation, if required, to the place to which the inmate was paroled or conditionally released.

Section 2. K.S.A. 74-7317 is hereby amended to read as follows:

(a) There is hereby established in the state treasury the crime victims reparations fund.

(b) Moneys in the crime victims reparations fund shall be used only for the payment of reparations pursuant to K.S.A. 74-7301 et seq. Payments from the fund shall be made upon warrants of the director of

1 accounts and reports issued pursuant to vouchers approved by the  
2 chairperson of the board or by a person or persons designed by the  
3 chairperson.

4 (c) The crime victims reparations board may apply for, receive  
5 and accept monies from any source, including financial contributions  
6 from inmates as provided by 75-5211(b) and any amendments thereto;  
7 for the purposes for which monies in the crime victims reparations  
8 fund may be expended. Upon receipt of any such moneys, the chair-  
9 person of the board shall remit the entire amount at least monthly  
10 to the state treasurer who shall deposit it in the state treasury  
11 and credit it to the crime victims reparations fund.

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13 Section 3. K.S.A. 75-5211 and K.S.A. 74-7317 are hereby repealed.

14 Section 4. This act shall take effect and be in force from and  
15 after its publication in the statute book.

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DEPARTMENT OF CORRECTIONS  
STATE OF KANSAS

LEGISLATIVE PROPOSAL NO. \_\_\_\_\_

Revisor of Statutes No. \_\_\_\_\_

\_\_\_\_\_ BILL NO. \_\_\_\_\_

"CLEAN-UP"

"SUBSTANTIVE"

DRAFT NO.	DATE
1	1-15-86

INTRODUCE THROUGH \_\_\_\_\_

APPROVED BY GOVERNOR  YES

NO

NOTES AND COMMENTS

DOC PERSONELL TO FOLLOW UP:  
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=====  
AN ACT CONCERNING: Transportation of inmates/parolees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

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(1) The secretary of corrections may contract with qualified individuals, partnerships, or corporations for the purpose of transporting individuals in the secretary's custody, including the exchange of inmates with other states and the return of individuals who have violated the conditions of their parole or conditional release.

(2) The secretary of corrections shall require that any party desiring to enter into such a contract have adequate levels of liability insurance.

(3) The secretary of corrections shall require the contracting party to present evidence of training for its employees prior to transporting any individual.

(4) An individual engaged in transportation pursuant to a contract with the secretary of corrections shall have the authority of a person assisting a law enforcement officer as provided in K.S.A. 21-3215 and amendments thereto.

(5) This act shall take effect and be in force from and after its publication in the statute book.

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Attach. II



SENATE BILL 277

DEPARTMENT OF CORRECTIONS

TOPIC: REPRESENTATION OF CONTRACT PERSONNEL

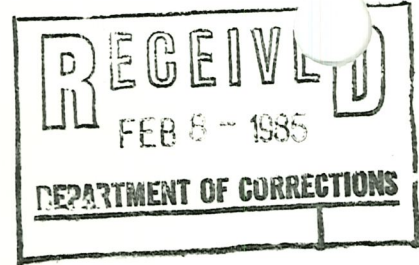
**ISSUE:** Should the Kansas Tort Claims Act be amended to permit the State to provide legal representation in defending a lawsuit filed by an inmate against a teacher or instructor who is under contract with the Department of Corrections to provide that service?

**BACKGROUND:** Current law, K.S.A. 75-6102(d), excludes independent contractors from coverage under the Kansas Tort Claims Act. This would include teachers and instructors employed by institutions under contract to the Department of Corrections to provide educational and vocational training services. Thus, if one of these individuals was sued by an inmate as a result of an action taken in fulfilling his or her contract duties, the State could not provide legal representation in defending the suit. The cost for such representation would fall upon the school or individual teacher. Such a result seems difficult to justify in a prison setting where the Department asks the teachers and instructors to enforce the rules the same as other employees. In a prison setting, this can prompt an inmate initiated lawsuit against the teacher. It is even more difficult to justify when 90 percent of such lawsuits are frivolous.

**RECOMMENDATION:** It is recommended that K.S.A. 75-6102(d) be amended to permit the State to provide legal representation to teachers or instructors who are under contract with the Department of Corrections to provide educational or vocational training services.

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1-27-86

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

February 8, 1985

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

Mr. Michael Barbara, Secretary  
Department of Corrections  
700 Jackson  
Topeka, Kansas 66603

Dear Secretary Barbara:

I acknowledge your letter of January 28, 1985, and understand the problem outlined in your letter.

I agree that the individual teachers work for an independent contractor and not the State while they are providing educational services to the inmates. In this capacity, the teachers have neither the defenses available to them under the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.) nor the benefits of defense and payment of judgments given to Kansas employees by that act. This office also recognizes the ever-increasing propensity of inmates to litigate every conceivable initiation they may or may not experience while confined.

Two possible solutions come to mind with regard to your problem. First, in your contracts with Kansas City Area Vocational-Technical School, Andrea, Inc., St. Mary College, and other vocational and educational providers, you could require insurance to be purchased by the vendor to fully cover such reasonably predictable inmate lawsuits. Such a course would cause an increase in cost to the State of obtaining such educational services.

My second suggestion would be to request the Legislature to amend K.S.A. 75-6102(d) as follows:

(d) "Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or



appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation. "Employee" does not include an independent contractor under contract with a governmental entity, except for independent contractors providing educational programs or services to the Kansas department of corrections who shall be considered an "employee" for the purposes of this act. "Employee" does include former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity.

This office believes such an amendment would provide the teachers working inside a Department of Corrections institution with the defenses and benefits of the Kansas Tort Claims Act and K.S.A. 75-6116. Basically, we believe this would not raise any additional cost to the State, because the defense would be provided by attorneys already employed by your department or my office. As your letter states, most of the lawsuits filed by inmates are frivolous, and, therefore, the odds of a judgment involving expenditure of State funds is small.

This office would be glad to support an amendment to K.S.A. 75-6102(d) as outlined above.

If I may be of further assistance, please contact me.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General

MC

National Institute  
of Justice

Research in Brief

July 1985

# Use of Forfeiture Sanctions in Drug Cases

Lindsey D. Stellwagen

Forfeiture, the ancient legal practice of government seizure of property used in criminal activity, may prove a particularly useful weapon against illicit narcotics trafficking.

Federal prosecutors have used forfeiture successfully in several major cases. In 1983, for example, more than

\$100 million in cash and property was forfeited to the Government by convicted criminals. The Comprehensive Crime Act of 1984 increased existing Federal forfeiture powers.

Although a National Institute of Justice survey showed that State and local prosecutors and police administrators

rank the drug traffic as their most serious law enforcement problem, use of forfeiture at the State and local levels is still relatively limited. Thus, the potential remains for greater State use of forfeiture to disrupt the illegal drug trade by denying traffickers their prof-

*Chart follows on next three pages.  
Text continues on page 5.*

## From the Director

We know that fighting drug abuse is fighting crime. Research has shown, as highlighted in two earlier publications in the *Research in Brief* series, that intensive drug abusers are heavily involved in crime, much of it violent.

Without a readily available supply of drugs, however, use of narcotics would dwindle. That is why this Administration has focused enforcement efforts so heavily against those sophisticated criminals who make up the drug trafficking networks. This *Brief* examines an often overlooked legal weapon that could help cripple many drug operations by depriving traffickers of the fruits of their criminal activity.

Federal authorities, as well as police and prosecutors in several States, are using an ancient legal procedure—*forfeiture*—against today's drug traffickers. Forfeiture enables the government to seize property used in the commission of a crime.

As a law enforcement strategy, forfeiture can be used under Federal law to break up a continuing criminal enterprise. Foreign and domestic bank accounts can be seized, together with planes, vessels, cars, and luxury items

like jewelry or resort homes purchased with proceeds from the illicit drug trade. Seizure of such assets disrupts the "working capital" of criminal organizations and perhaps diminishes the motivation to traffic in drugs.

Forfeiture is also a deterrent. For example, a recent Federal case employed forfeiture to confiscate land used to grow marijuana. While a drug seller might be willing to risk loss of his harvest and a conviction for producing marijuana, the danger of losing prime California real estate should give him second thoughts about choosing to grow an illegal crop.

At a time when criminal justice agencies are striving to stretch resources and avoid burdening the taxpayer, forfeiture is a practical option. Forfeiture can be used to recoup some of the money the public spends on pursuing drug traffickers. Not only law enforcement may gain; victim compensation funds, hospitals, and drug treatment centers may also benefit.

Among the States, Florida has been highly successful in its use of forfeiture. While Florida's success is widely known, other States, notably Maryland and Michigan, have also demonstrated

forfeiture can be an effective tool for local police and prosecutors.

In preparing this *Brief*, researchers for the National Institute of Justice constructed a detailed chart showing forfeiture provisions as they apply to drug cases in the laws of all 50 States. They also interviewed some 50 prosecutors nationwide on how they use the forfeiture provisions.

Police and prosecutors will be interested in comparing details of their own State's forfeiture laws with those of other States. Policymakers may wish to consider legislation that encompasses the best features of the Federal forfeiture statutes and the stringent provisions used by States such as Florida.

Many other felonies, particularly those committed by organized crime, can be successfully attacked through appropriate forfeiture provisions. Drug traffickers, however, are particularly appropriate targets for such laws. Effective use of forfeiture can help make a difference in the campaign against drug abuse.

James K. Stewart  
Director  
National Institute of Justice

Continued from page 1.

its, working capital, and means of doing business.

This *Research in Brief* analyzes major provisions of State forfeiture laws as they apply specifically to narcotics problems. It also reports on a survey of 50 prosecutors nationwide and recommends practical steps for expanding use of this legal tool. Included is a chart showing a State-by-State breakdown of drug-related forfeiture provisions. Typically, however, forfeiture provisions applying to crimes other than drug offenses are scattered through a State's criminal code; the chart does not cover these statutes.

### Criminal activities targeted

Virtually all States authorize forfeiture in connection with drug trafficking and manufacture; four States also mention cultivation of drugs. Other States group drug crimes, for purposes of forfeiture, with other offenses such as gambling and hazardous waste violations.

In addition, Illinois and Louisiana have enacted, and other States are considering, special drug racketeering statutes to address large criminal enterprises engaged in organized narcotics traffic. This new direction suggests a State strategy of focusing on a few large cases. This approach holds the potential for a greater impact on public safety than pursuit of many "street level" cases.

### Types of property seized

Once a State defines the type of criminal activity for which forfeiture may be invoked, it must define what property can be seized. All States authorize forfeiture of drugs themselves. Statutes also define properties that may not be illegal per se but may be seized because they were used to commit the crime.

Common provisions permit seizure of these types of property:

- **Conveyances** (aircraft, vessels, vehicles) used to transport, conceal, or facilitate the crime (47 States).
- **Raw materials, products, and equipment** used in manufacturing, trafficking, or cultivation (42 States) and the **containers** used to store or transport drugs (38 States).

- **Drug paraphernalia** used to consume or administer the controlled substance (19 States).

- **Criminal research and records**, including formulas, microfilm, tapes, and data that can be used to violate drug laws (38 States).

In practice, vehicles and cash are the most frequent forfeiture targets; a few States also authorize pursuit of real and personal property. A growing number of States are adding "traceable assets" (purchased with drug profits) such as jewelry and houses. A financial investigation is often required to link such assets to drug profits. The investigative expense may be cost effective, however, because the property is valuable and the potential for disrupting the criminal organization is high.

A number of prosecutors surveyed pointed out that a *broad* definition of property subject to forfeiture increases the effectiveness of the sanction by reducing the offenders' opportunity to convert profits into nonforfeitable assets.

### Disposition of forfeited property

An important and controversial aspect of a forfeiture law involves the disposition of forfeited property. Most State statutes provide that outstanding liens be paid first. Next come the administrative costs of forfeiture, such as storing, maintaining, and selling the property. Some States require that, after administrative costs are reimbursed, the costs of law enforcement and prosecution must be paid.

More than half the States provide that confiscated property goes to the State or local treasury, or part to each. In some States, however, law enforcement agencies may keep the property for official use. If the property is sold or if it is cash, then the money goes to the State or local treasury. In eight States, law enforcement agencies can keep all property, cash, and sales proceeds.

The legislative rationale for allowing law enforcement agencies to benefit from forfeiture seems clear. It is the belief that police departments will be more likely to commit resources to pursue forfeiture of criminal property if the department can gain an automo-

bile for undercover work or cash to supplement the drug "buy fund." Indeed, a few statutes not only allow the police department to keep all forfeited property but explicitly state that forfeited moneys and property cannot be used to reduce appropriations for the police budget.

In addition to allocating forfeiture proceeds to government treasuries and to law enforcement agencies, legislatures have provided for other interests to benefit. A few States earmark a percentage of forfeitures for drug rehabilitation and prevention programs. New York's law provides funds for restitution to victims, while Washington State allocates 50 percent of proceeds to its Criminal Justice Training Fund.

### Limitations to forfeiture provisions

Because it involves surrender of property rights, forfeiture is a severe penalty. For this reason, legislatures often include exceptions to forfeiture laws, most of them designed explicitly to prevent innocent people from losing their property.

The most common of such provisions concern forfeiture of conveyances; they protect innocent owners, lienholders, and common carriers. Exceptions are invoked for a person with interest in the property who neither knew of nor consented to its illegal use.

A number of States explicitly limit application of forfeiture to serious drug offenses. Nine States exclude the offense—usually only a misdemeanor—of possessing a controlled or counterfeit drug without a valid prescription. (A counterfeit drug is a substance falsely portrayed as a drug or as a different drug.)

A number of States exclude drug offenses involving a specified minimum amount of drugs, although the minimum varies. For example, Kentucky states that conveyances are not subject to forfeiture for "any offense relating to marijuana"; Pennsylvania provides that a conveyance shall not be confiscated for possession or distribution of a small amount of marijuana (as opposed to sales); California sets minimum amounts for possession of drugs ranging from marijuana to heroin.



U.S. Department of Justice

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January 14, 1985

Honorable Robert T. Stephan  
Attorney General  
Kansas Judicial Center  
301 W. Tenth  
Topeka, Kansas 66612

Thomas E. Kelly, Director  
Kansas Bureau of Investigation  
1620 Tyler  
Topeka, Kansas 66612

Mr. Jim Clark  
Executor Director  
Kansas County & District  
Attorneys Association  
827 S. Topeka Boulevard  
Topeka, Kansas 66612

Re: Model State Asset Forfeiture Bill

Gentlemen:

I recently received from the Department of Justice Asset Forfeiture Office, the enclosed copy of a Model State Asset Forfeiture Bill. As noted in the letter from Brad Cates, Director, Asset Forfeiture Office, much of the language has been derived from the recently passed Federal Crime Control Act but modified to use state legislative drafting style.

Knowing that often one of the most effective law enforcement approaches is to hit the criminals where it hurts most, in the pocket book, and with the Kansas Legislature now beginning their session, I felt that this information might be of benefit to you.

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Honorable Robert Stephan  
Thomas E. Kelly, Director  
Jim Clark, Executive Director  
Page Two  
January 14,, 1985.

This office, of course, heartily endorses Asset Forfeiture provisions and stand ready to assist in any way that we can in enacting state provisions comparable to the Federal Forfeiture statutes.

Please feel free to contact me if I, or anyone in my office, can assist in any way.

Very truly yours,



BENJAMIN L. BURGESS, JR.  
United States Attorney

BLB:hs  
Encl.  
cc:w/encl:  
Amanda Meers  
Kurt Shernuk

SUMMARY  
MODEL ASSET FORFEITURE BILL  
U. S. DEPARTMENT OF JUSTICE

While the threat of imprisonment is certainly a powerful deterrent to many types of criminal conduct, it has become apparent in recent years that the "profit" in crime is the force that sustains criminal enterprises.

Over the last century, the concept of "asset forfeiture" has developed from the common law of admiralty. Currently, there are nearly 100 assorted federal "forfeiture" statutes, and many state ones as well.

However, beginning some 10 years ago, a modern scheme of criminal and civil forfeiture law, albeit mostly for drug offenses, has developed.

Because of President Reagan's recent initiatives in this area, including the Comprehensive Crime Control Act of 1983, as well as many state initiatives, the U.S. Department of Justice was asked to develop a model bill. In so doing, the Department studied the numerous federal statutes, the President's proposals, numerous state laws, and court decisions.

While of course the basic concept of the model bill is the confiscation of the profits and devices of criminal activity, the mechanism is twofold: criminal forfeiture and civil forfeiture.

The criminal forfeiture section focuses on the individual committing the crime and provides a means for the judge in the defendant's sentencing process to locate and confiscate the profits of crime.

However, because of technical legal and evidentiary reasons, as well as the ease of international travel and electronic asset transfer, experience has shown that something more is needed.

Thus, the civil forfeiture section focuses on the res, the thing, rather than the person. Is that money criminally derived? Is that aircraft used in crime? Is that business a "laundry" for corrupt funds?

The District Attorney may proceed administratively against the res without regard to any particular criminal, or he may proceed in civil court.

This forfeiture legislation is an important and powerful tool in the fight against not just organized crime, drugs, and international schemes, but will strike at the heart of many local, yet profitable, criminal activities.

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The bill also provides alternative provisions for the use of the confiscated funds. Such uses include victim restitution, aid to local police departments and governments, crime control programs, etc.

The language of this draft is written in a generic fashion to accommodate the disparate state and federal statutes. Care should be taken to conform this model to existing statutes, procedures, and court decisions in your state.