Approved March 6, 1987
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~a.m.~~/p.m. on February 26, 1987 in room 313-S of the Capitol.

All members were present except: Representatives Bideau, Duncan and Peterson, who were excused.

Committee staff present:
Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Mary Jane Holt, Secretary

Conferees appearing before the committee: Representative Fox
Captain Don Pickert, Highway Patrol
Loren Taylor, Legal Officer, Kansas City Police Department
Dr. Robert Hale, Superintendent, Turner School District
Rev. E. S. Alexander, Kansas City
John Ballavance, Unification Church
Myron E. Scafe, Chief of Police, Overland Park
George Barbee, Kansas Consulting Engineers
Bill Henry, Kansas Engineering Society
Ron Smith, Kansas Bar Association
Ralph Skoog, Kansas Trial Lawyers Association

Hearing on H.B. 2240 - Forfeitures, controlled substances and drug paraphernalia

Representative Fox stated this bill addresses forfeitures under Kansas law with respect to controlled substances and drug paraphernalia. The homestead is not subject to forfeiture unless the claimant of the homestead has been convicted of a violation of K.S.A. 65-4127a and 65-4126b. He said it was his intent that the proceeds, if any, would go to the law enforcement agency or agencies involved in effecting the forfeiture.

Mike Heim reviewed the bill for the Committee.

Captain Pickert testified in support of H.B. 2240. The proposed amendments to the Kansas statutes are very important to law enforcement. He proposed an amendment on line 101 by adding that a law enforcement officer could seize when legally conducting an inventory search of a legally seized vehicle. He also requested the bill be amended so any proceeds of forfeitures involving a state agency be placed in a special fee fund for the exclusive use of the involved agency, (see Attachment I).

Loren Taylor distributed a Point Paper on Forfeitures in Kansas.He said it was the position of the Kansas City Police Department that statutory coverage of contraband should be reviewed and enhanced to reflect the realities of the growing problems of drug racketeering. He would prefer a "mini RICO Act" , (Racketeer Influence and Corrupt Organization Act). He used the present statutes of the state of Florida as an example, from which to pattern Kansas statutes, (see Attachment II). He also stated he preferred the language "the owner knew or should have know" that the property was involved.

Dr. Robert Hale spoke in favor of H.B. 2240. He said he was the Chairman of the Wyandotte County Coalition on Alcohol and Drug Abuse.

Rev. Alexander thanked the Committee for considering H.B. 2240.

John Ballavance said he supports H.B. 2240. He also recommended a committee be established to decide how the proceeds would be distributed and used and by whom, such as schools for prevention and education, the police department, etc.

Myron Scafe testified in support of H.B. 2240 and recommended the Committee give the bill favorable consideration, (see Attachment III).

Prepared testimony in support of H.B. 2240 was received from Richard E. LaMunyon,

Chief of Police, Wichita, who did not appear, (see Attachment IV).

The hearing was closed on H.B. 2240.

Hearing on H.B. 2419 - Civil procedure relating to certain professional liability actions

George Barbee testified H.B. 2419 would provide for screening panels for professional malpractice actions against professional licensees other than health care providers. He urged the Committee to act favorably on this bill, (see Attachment V).

Bill Henry spoke in favor of H.B. 2419. He said the admissibility of the screening panel findings would be advantageous to the plaintiff as well as to the defendant.

Ron Smith statedthe Kansas Bar Association supported the medical malpractice screening panels last year. They do not support or oppose this bill.

Ralph Skoog appeared in opposition to H.B. 2419. He stated this bill would not reduce the problems of the professional licensee.

The hearing was closed on H.B. 2419.

The Committee considered the following bills:

Representative Buehler moved to amend line 31 of H.B. 2251 to include a reference that you couldn't get credit for any future payments until all past due support payments were current. Representative Douville seconded and the motion passed.

A motion was made by Representative Solbach and seconded by Representative Whiteman to table H.B. 2251. The motion failed.

Representative Buehler moved to report H.B. 2251 favorably for passage, as amended. The motion was seconded by Representative Douville. The motion passed, yeas 6 and nays 5.

A motion was made by Representative Solbach to report H.B. 2269 favorably for passage. Representative O'Neal seconded and the motion passed.

Representative Sebelius moved to report H.B. 2218 favorably for passage. The motion was seconded by Representative Jenkins. The motion passed.

A motion was made by Representative Snowbarger to recommend Substitute H.B. 2024 favorably for passage. Representative O'Neal seconded and the motion passed.

Representative O'Neal moved to report H.B. 2296 favorably for passage. Representative Buehler seconded the motion. The motion passed.

The Chairman announced the Committee would meet upon adjournment of the House Friday, February 27, 1987.

The meeting was adjourned at 5:10 p.m.

GUEST REGISTER

DATE Feb 26, 1987

HOUSE JUDICIARY

NAME	ORGANIZATION	ADDRESS
Rev E.S. Alexander		2911 No 13 ~~1st~~ K. C K 66104
Alice Martin	J, G T A	1993 North 1st K.C.K 66101
Catherine Johnson - Esq	Juniper Gardens Tenants Association	2049 N 1st Street Kansas City Kansas
Clementine Mathews	Juniper Garden association	1950 N 10th St Kansas City Kansas
KENN ROBERTSON	KS CONSULTING ENGINEERS	TOPEKA
GEORGE BARBEE	KS CONSULTING ENGINEERS	TOPEKA
T.C Anderson	KSCPA	Topeka

SUMMARY OF TESTIMONY

Before the House Judiciary Committee

House Bill 2240

Presented by the Kansas Highway Patrol

(Captain Don Pickert)

February 26, 1987

Appeared in Support

The Patrol supports House Bill 2240 and feels the proposed amendments add substance to a very important and contemporary area of law enforcement and this supporting statute.

We would, however, respectfully request an amendment in new section 6 on page 13 of the bill. Subsection (a), line 0469 directs the proceeds of forfeitures involving a state agency be paid into the state general fund, while allowing those involving county and municipal agencies to be placed in a special law enforcement trust fund.

We request that state agencies be allowed this same application and any involved funds be placed in a special fee fund for the exclusive use of the involved agency. Our request is based on the fact federal agencies which "adopt" the involved state agency will allow for a 90% pay back to the state agencies retaining only 10% for administrative costs, but require these funds be used for law enforcement purposes and must supplement the agency's operating budget. (see attachment)

To place the matter in its proper perspective -

*In November of 1986, selected patrol supervisors and troopers were schooled in criminal interdiction methods, under the sponsorship of the federal Drug Enforcement Agency (DEA), by the New Mexico and Louisiana State Police, both of whom have been very successful in this area.

*During our in-service training, now in session, all Patrol members will be trained in this area and we would anticipate highly increased activity in this regard.

*By virtue of the original training our troopers have already effected two seizures which will result in forfeitures amounting to approximately $10,000. This is the tip of the iceberg. Recently, Missouri and Wyoming troopers, respectively, made interceptions which will result in forfeitures of cash exceeding $200,000 each.

Attachment I
House Judiciary 2/26/87

*This illegal industry is estimated by federal authorities to gross over $8 billion annually.

*Kansas is not exempt and our geographic position and highways provide a natural corridor for this activity.

*The contraband goods and funds must be transported and a mule (drug courier) can earn $5,000 to $10,000 or more for a single coast to coast delivery. They deal in cash for obvious reasons.

*The federal government is very supportive of state involvement, also for obvious reasons, including the prosecution of these criminals which can and often does preclude very costly prosecutions on the state level and have established expertise in this area.

*Establishment and administration of the requested fund would allow our agency to furnish our officers with badly needed equipment at no cost to the state, a bonus considering the present economic factors.

*The only law enforcement use of the funding which is prohibited at the federal level is the hiring of new personnel.

For these stated reasons we would ask your favorable consideration of our requested amendments and House Bill 2240.

CONNECTICUT

DEPARTMENT OF JUSTICE ASSETS FORFEITURE SHARING

Recent action by the Attorney General of the United States provides for equitable distribution of forfeited assets of real benefit to state and local law enforcement. In those localities with weak or non-existent forfeiture procedures, it provides a means of both providing a real penalty to the offender and increasing law enforcement resources at the same time.

The Comprehensive Crime Control Act of 1984 sets forth the parameters under which forfeiture actions may be instituted. Items subject to forfeiture include cash, vehicles, and real property. Provisions are also made for the proceeds of the sale of the properties to be forfeited and shared.

The key to effectively utilizing these procedures is a good day-to-day working relationship with the Federal Investigative Bureau. The law allows the Federal agency to "adopt" state and local seizures for forfeiture also.

Guidelines published by the Attorney General provide for varying decision-making authority for determining the sharing based on the value of the asset. Generally speaking, assets appraised at under $100,000 will be determined by the head of the Federal Investigative Bureau. Assets are shared based upon the requesting agencies participation in the investigation which led to the seizure.

The State of Connecticut, and in particular the Statewide Narcotics Task Force, has made extensive use of these procedures. To date in excess of $125,000 has been forfeited to the state along with five (5) vehicles. Currently pending is the seizure of two (2) residences seized as a result of marijuana cultivation investigations. These assets, once turned over to the state or local law enforcement agency, must supplement the operating budget and must be used for law enforcement purposes. An example of the use we intend to make of the assets is the purchase of a new mobile surveillance studio, and the refurbishment of a house as a field office for the Narcotics Task Force. Additionally, we are purchasing replacements for some of our outdated equipment. In these times of budget constraints this process allows us to maximize the impact of the taxpayers dollars.

(EXCERPT FROM STATE REPORTS AT STATE AND PROVINCIAL POLICE PLANNING OFFICERS CONFERENCE, 1986.)

Kansas City, Kansas Police Department
Police Legal Unit

Point Paper On Forfeitures In Kansas

We might note that the International Association of Chiefs of Police has taken the position that "law enforcement agencies throughout the nation must recognize the high level of trafficking of illegal and dangerous drugs such as cocaine and heroin, which poses as serious a challenge as has ever been faced by law enforcement, and must deploy their resources creatively and actively to prevent and deter drug trafficking and apprehend such drug traffickers. State and local governments must recognize that the resources currently devoted to preventing and deterring such drug trafficking, apprehending and prosecuting drug traffickers are woefully insufficient. Federal, state and local governments must make significant additional resources available to law enforcement and other agencies for sophisticated, realistic and effective efforts to combat this emerging situation."

It is the position of the Kansas City, Kansas Police Department that Kansas statutory coverage of forfeiture of contraband, although having made improvement, should be reviewed and enhanced to reflect the realities of the growing problems of drug racketeering. Statutory coverage should include the forfeiture of real and personal property that is used in the course of, intended for use in the course of, derived from, or realized through racketeering. This would be a state "mini RICO Act." (Racketeer Influence and Corrupt Organization Act) There should also be extended seizure and forfeiture of cash and personal property used in the commission of a felony. These could be patterned after the present statutes of the state of Florida. These statutes have withstood numerous court tests and have proven their worth in the fight against drug and other racketeering.

We should first directly face the question of why forfeiture? The primary reason for forfeitures is the recognition of the continuing and growing problem, in Kansas, of drug trafficking and as well as other forms of racketeering. There has grown a need for remedies other than traditional criminal law penalities. Drug trafficking does not exist in a vacuum. There are intricate systems of racketeering involved in the movement and sale of narcotics. The cost of enforcement of the law in this area is in/direct proportion to the growing sophistication and complexity of the problem.

Attachment II
House Judiciary 2/26/87

We should not, therefore, forgo the possiblity of the offenders partial "funding" of the law enforcement efforts to regulate the drug trafficking activities. In the process we could do much to alleviate the growing frustration of law enforcement agencies and the law enforcement community as they approach the growing complexity of drug trafficking. We must strike the drug community in it's collective pocketbook.

We might note that federal authorities, as well as police and prosecutors in several states, are using this ancient legal procedure - forfeiture - against today's drug trafficker's. Forfeiture enables the government to seize property used in the commission of a crime. As example, federal agencies, as a law enforcement strategy, use forfeiture under federal law to break up a continuing criminal enterprise. Foreign and domestic bank accounts are seized. This is 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 disrupt the "working capital" of criminal organizations and 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 in a conviction for producing marijuana, the danger of losing prime real estate would give him second thoughts about choosing to grow an illegal crop. At a time when criminal justice agencies are striving to stretch resource's and avoid burdening the tax payer, 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; victims compensation funds, hospital and drug treatment center's may also benefit. As noted, Florida has been highly successful in it's use of forfeiture. While Florida success is widely known, other states notably Maryland and Michigan, have also demonstrated forfeiture can be an effective tool for local police and prosecutors.

For background we should remember that forfeiture statutes are premised upon the concept that the thing to be forfeited has itself offended society, either because it is contraband or has been used in the violation of laws deemed of special and social importance. Note State v. Motion Picture entitled "The Bet," 547 P.2d 760 (1976). Unless the forfeiture statutes specifically requires it, a criminal conviction is not a prerequisite to forfeiture. Note State v. McManus, 70 P. 700 (1902); The Palmyra, 25 US 1, 14-15, 6 L.Ed. 531 (1927). Although enforced through proceedings in rem,

forfeiture are penal in nature. Note U.S. v. U.S. Coin and Currency, 401 US 715, 91 S.Ct. 1041, (1971).

We might wish to note that as far as the revenue generation portion of our approach we might:

a. create law enforcement funding sources apart from tax dollars;

b. create a trust fund system, such as funding special projects in the continuing fight against drug trafficking.

We should also remember that there are numerous remedies that can be made available through appropriate statutory coverage. These remedies include, but are not limited to:

1. Injunctive measures

2. Forfeiture action

3. Administrative remedies

We should note that in determining what "offending property" should be forfeited, the legislature should also determine whether, and to what extent, to protect the rights of those having an "innocent interest" in the property. Note U.S. v. One Ford Coup, 272 US 321, (1926). It was therein held that a vehicle used to transport untaxed liquor could be forfeited under the federal revenue laws even though the owner had no guilty knowledge that it was to be used for a illegal purpose. This was in contrast to the protection afforded innocent owners in certain vehicle forfeitures under the Prohibition Act. Under current Kansas law our legislature, in adopting the Uniform Controlled Substance Act, obviously adopted for protection of the innocent interest, possibly overly so. This should be an area for further review. Note the past Kansas case of State of Kansas v. One 1978 Chevrolet Corvett, 667 P.2d 894.

Concerning the matter of vehicle forfeitures, one primary difference between the U.S. Code and the Kansas State Statute is the criteria specified for subjecting such vehicles to forfeiture, to wit:

* 21 U.S.C. 881(a) (4) authorizes forfeiture for 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).

* K.S.A. 65-4135 (A) (4) authorizes forfeiture for all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in paragraph (1) or (2).

The Federal Code is much more liberal in allowing vehicles or conveyances to be subject to forfeiture. Note that the Federal Code authorizes the forfeiture of vehicles or conveyances that are used to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property; while the Kansas State Statute merely authorizes the subjecting of forfeiture for vehicles or conveyances that are used or intended to transport or facilitate the transportation for the purpose of sale or receipt of property.

In the majority of cases presently pending, provable cases of using the vehicles or conveyances for actually selling or receiving drug contraband are limited at best, while the preponderance of pending cases would have little or no problem proving the possession or concealment of drug contraband. The additional deterrent effect of this more liberal forfeiture wording would have invaluable benefits.

In Florida, as example, property is not forfeited if the owner of such property neither knew, nor should have known, after a reasonable inquiry that such property was being employed or likely to be employed in criminal activity. It is also noted that no bonafide lienholder's interest should be forfeited under the provisions of the act if such lienholder establishes that he neither knew, nor should have known after reasonable inquiry, that such property was being used or was likely to be used in criminal activity; such use was without his consent, express or implied; and that the lien had been perfected in a manner prescribed by law prior to the seizure. If it appears to the satisfaction of the court that a lienholder's interest satisfies the above requirements for exemption such lienholder's interest would be preserved by the court, by ordering the lienholder's interest to be paid from such preceding's of the sale.

We might point to Florida as example where there are two proven primary levels of forfeiture coverage:

1. Seizure and forfeiture of cash and personal property used in the commission of a felony, generally a distinct offense; Florida Contraband

Forfeiture Act, Section 932.701 et. seq., Florida statutes (1985).

2. Forfeiture of real and personal property that is used in the course of, intended in the use of, derived from, realized through racketeering; their RICO Act (Chapter 895, Florida statutes) (1985).

Inasmuch as programs of this type require evaluative experience of professional investigators and attorneys, it is suggested that the Attorney General's office become the center for information on forfeiture actions. This might well follow the excellent example of the state of Florida.

In review of the Florida State statutes we might note that their approach to the definition of racketeering is very broad. They have made it unlawful for any person who has, with criminal intent, 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 and real property or in the establishment for operation of any enterprise. It is also unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property. It is also unlawful for any person employed by, or associated with, any enterprised to conduct or participate directly or indirectly, in such enterprise through a pattern of racketeering actively or the collection of an unlawful debt.

We might also specifically note the Florida definition of "PATTERN OF CRIMINAL ACTIVITY" which means engaging in at least two incidents of criminal activity that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents; provided that the last of such incidents occurred within five years after a prior incident of criminal activity. For the purpose of their statute, the term "PATTERN OF CRIMINAL ACTIVITY" does not include two or more incidents of fraudulent conduct arising out of a single contract or transaction against one or more related persons.

The above is particularly important when noting the extent to which "CRIMINAL

ACTIVITY" was defined to mean, to commit or to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

a. Any crime which is chargeable by indictment or information under any of the following provisions of the Florida statutes:

1. Relating to a evasion of payment of cigarette taxes;
2. Relating to public assistance fraud;
3. Relating to security transactions;
4. Relating to dog racing, horse racing, and jai alai frontons;
5. Relating to jai alai frontons;
6. Relating to the manufacture, distribution, and use of explosives;
7. Relating beverage law enforcement;
8. Relating to interest and usurious practices;
9. Relating to real estate time share plans;
10. Relating to homicide;
11. Relating to assault and battery;
12. Relating to kidnapping;
13. Relating to weapons and firearms;
14. Relating to prostitution;
15. Relating to arson;
16. Relating to theft, robbery, and related crimes;
17. Relating to computer related crimes;
18. Relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes;
19. Relating to commercial sexual exploitation of children;
20. Relating to forgery and counterfeiting;
21. Relating to issuance of worthless checks and drafts;
22. Relating to extortion;
23. Relating to perjury;
24. Relating to bribery and misuse of public office;
25. Relating to obstruction of justice;
26. Relating to obscene literature and profanity;
27. Relating to gambling;
28. Relating to drug abuse prevention and control;
29. Relating to victims, witnesses, or informants;
30. Relating to tampering with jurors and evidence.

b. Any conduct which is subject to indictment or information as a criminal offense listed in 18 USC 1961 (1) (A), (B), (C), (D).

We might also take specific note of their definition of "unlawful debt" which they define as, any money or thing of value constituting principle or interest of a debt that is legally unenforceable in Florida in whole or in part because the debt was incurred or contracted:

a. In violation of anyone of the following provisions of law:

1. Related to dog racing, horse racing, and jai alai frontons.

2. Related to criminal usery, loan sharking, shylocking.

3. Relating to gambling.

b. In gambling activities and violation of federal law or in the business of lending money at a rate userous or if punishable as a crime under state or federal law.

From the above we can see the obvious interrelating responses to the developing structure of racketeering and associated endeavors. It may also be noted that it is wise to face their potential area of coverage prior to commencement, of legal gambling in the state of Kansas.

CONTRABAND FORFEITURE ACT

We might wish to note that Florida has taken a far broader view of forfeiture than Kansas. It includes areas, as of yet, not covered under Kansas law. Along with controlled substances, device, paraphernalia, currency or other means of exchange which has been, is being, or intended to be used in violation of any provision of our narcotics laws, it includes any gambling paraphernalia, lottery tickets, money, currency used or intended to be used in the violation of the gambling laws of that state. It also includes; any equipment, liquid or solid, which is being used or intended to used in violation of the beverage or tobacco laws of that state as well as any motor fuel upon which motor fuel up tax has not been paid as required by law, any personal property, including, but not limited to any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, or currency which has been or is being employed as an instrument in the commission of, or in aiding or abetting the commission of any felony.

Another matter of concern in the overall subject of drug laws is the misdirected attitude of legislatures towards all controlled substances except the opiates and cocaine.

Presently, Kansas law prescribes a felony under 65-4127(a) for the mere possession of cocaine and the opiates (heroin, morphine, codeine, opium, etc.) However, the mere possession of any other drug is prescribed as a misdemeanor. While it would be foolish to recommend the upgrading of the Kansas law to prescribe a felony violation for the possession of any contraband drug substances, it is recommended that certain more addictive, costly, and potentially dangerous drug substances be upgraded to felonies for mere possession. For example, Phencyclidine (PCP) is widely available in Kansas City, Kansas in liquid and powder form. It is expensive, always clandestinely made, and illegal in any form on the street. It's proven violent reactions to those who use it, it's high cost (currently $30.00 for a cigarette dipped in PCP), and the commensurate need to commit crimes of theft, burglary, or robbery to supplement this costly habit. Additionally, Lysergic Acid Diathylamide (LSD), is also widely available in Kansas City, Kansas, in various forms including blotter acid, window panes, or micro-dots. These types generally sell for about $6.00 per dosage unit and it has proven to be a cause of violent, abberant behavior in the user. Substantial documentation concerning LSD overdosing, bad trips, rampages, bizarre or macabre deeds committed while under the influence of this drug, all lend credence to the fact that its mere possession should be harshly judged. It isn't necessarily cost prohibitive, however, the dangers associated with the taking of this drug warrant inconclusion as a felony. Methamphetamin is another drug that is becoming fairly common in Kansas City, Kansas. It cost about the same amount of money as cocaine (approximately $100.00 - $125.00 per gram, or about $2000.00 to $2200.00 per ounce). It's extremely addictive nature, and it's high cost leads to crime patterns to support the user's habit. It therefore follows that we must make effort to deter its use by upgrading its possession to a felony classification.

ADDITIONAL THOUGHTS ON CIVIL ACTION

Although it is a more controversial area, the 1986 session of the Florida legi-

slature enacted a statute that allowed any person who proves by clear and convincing evidence that he/she has been injured by reason of any violation or the provisions of the "mini Florida RICO Act" shall have a cause of action for threefold the actual damages sustained and, in any action, is entitled to minimum damages in the amount of $200.00, and reasonable attorneys fees and court costs in the trial and appellate courts. It might be noted that in no event will punitive damage be awarded under this section. The attorney is entitled to recover reasonable attorneys fees and court costs in the trial and appellate courts upon finding the claimant raised a claimed which was without substantial fact or legal support. In awarding the attorneys fees and costs under this new section the court considers the ability of the opposing party to pay such fees and costs. There is also a civil remedy for theft. Any person who proves by clear and convincing evidence that he/she has been injured in any fashion by reason of any violation of the provisions of the new act, has a cause of action for threefold actual damages sustained and, in any such action is entitled to a minimum damage in the amount of $200.00 and reasonable attorneys fees and court costs in the trial and appellate courts.

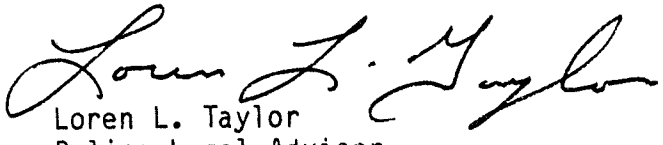
We might point to the state of Missouri for additional thoughts on this legislation entitled "The Criminal Activity Forfeiture Act." It appears that Missouri has, for a period of time, developed use of this procedure far beyond that envisioned in our current legislation. In their statutes all property of every kind used or intended for use in the course of, derived from, or realized through criminal activity is subject to civil forfeiture. Civil Forfeiture under their statutes "shall be had by a civil procedure known as the CAFA Forfeiture Proceeding." Their action, a in rem "CAFA Forfeiture Proceeding" which is instituted by petition by the prosecuting attorney of the county in which the property is located or by the Attorney General's Office. The proceeding may be commenced before or after seizure of the property. If the petition is filed before seizure, it shall state what property is sought to be forfeited, that the property is within the jurisdiction of court, the grounds for forfeiture, and the names of all persons known to have or claim an interest in the property. The court shall determine ex parte whether there is reasonable cause to believe that the property is subject to forfeiture and that notice to those persons having or claiming an interest in the property prior to seizure would cause the loss or destruction of the property.

We should note that Missouri has also taken a broad view as to the definition of "criminal activity" for purposes of this statute. According to Missouri statutes, criminal activity is the commission, attempted commission, conspiracy to commit, or the solicitation, coercion or intimidation of another person to commit any crime which is chargeable by indictment or information under the following Missouri laws:

(a) relating to drug regulations;
(b) relating to defenses against the person;
(c) relating to sexual offenses;
(d) relating to offenses against the family;
(e) relating to robbery, arson, burglary and related offenses;
(f) relating to stealing and related offenses;
(g) relating to prostitution;
(h) relating to pornography and related offenses;
(i) relating to offenses against public order;
(j) relating to offenses against the administration of justice;
(k) relating to witnesses;
(l) relating to gambling;
(m) chapter 311, RSMo, but relating only to felony violation of their chapter committed by persons not duly licensed by the supervisor of liquor control;
(n) relating to weapon offenses;
(o) relating to regulation of securities;
(p) relating to regulation and licensing of motor vehicles;

If further thoughts or additional materials are desired please feel free to contact this office at your earliest convenience. I will be available to meet with your representatives at any time in this matter. I have had the opportunity to have contact with key persons involved in this procedure in the state of Florida and other states.

Yours truly,



Loren L. Taylor
Police Legal Advisor
Kansas City, Kansas Police Department

Overland Park

Department of Police
Myron E. Scafe, Chief of Police
Emergency 9-1-1 or 648-6200
Administrative 381-5252

TESTIMONY TO HOUSE JUDICIARY COMMITTEE

February 26, 1987

RE: HOUSE BILL 2240

Early forfeiture statutes in this country, as well as most of their modern counterparts, provide for civil "in rem" proceedings against the offending property (vs. "in personam" or against the person). Therefore the defendant is actually the property under this theory. Although the property may not be illegal per se, such as boats, cars, airplanes, it has become objectionable because it has been used in connection with illegal activity. The right of the property rests in the government the moment the crime is committed.

Several federal statutes exist which apply directly to the forfeiture concept. Among those are the now famous RICO Act (Racketeer Influenced and Corrupt Organizations Act) and the Continuing Criminal Enterprise Statute which is a part of the Controlled Substances Act. Under present federal law, civil and criminal forfeitures co-exist to make forfeiture applicable to a great variety of situations.

Attachment III
House Judiciary 2/26/87

The forfeiture concept is entirely applicable to the problem of drug trafficking. The dramatic increase in drug trafficking and tremendous profits associated with it indicate that current drug laws do not deter and crime does pay. Drug dealers, who accumulate hugh fortunes as a result of illegal drug activities, frequently perceive the financial penalties for drug dealing only as a cost of doing business. Specifically the retail value of illicit drugs sold in 1985 was estimated to be between fifty-five and seventy-three billion dollars, whereas under current federal law the maximum fine for most serious drug offenses is only fifty to one hundred thousand dollars and under state law it is only fifteen thousand dollars.

The purpose, therefore, of forfeiture is to "get them where it hurts", to confiscate the tools of the crime to prevent a continuance of criminal activity, and to prevent criminals from keeping the fruits of their crimes.

The current law on forfeitures in Kansas is contained at K.S.A. 65-4135 (1986 Sessions Laws). It was amended in 1986 to make it virtually identical to the civil provisions of the federal law. It is seldom used as most district attorneys view it as cumbersome and confusing. The civil arena is one with which they are unfamiliar and it takes time out of an already heavy workload. In Johnson County, it has only been used three or four times in the last ten years.

The proposed changes are the same as the current Florida statute that is used quite frequently by the law enforcement agencies in that state and very similar to the New York State Statutes that have been used very successfully.

The benefits of the proposed changes in the current forfeiture statutes are:

1. Outlines clear procedural steps to effectuate the forfeiture. Such details make it easier for district or city attorneys to file necessary papers. Currently many are hesitant to file because it is an arena in which they are unfamiliar and the procedure is unclear.

2. Establishes a law enforcement fund to require the money go back into enforcement activity.

3. Allows seizure based on probable cause without process to prevent property from being removed from the state.

4. Allows service on unnamed claimants but does not require them to be named. Naming them requires them to answer and promotes litigation.

5. Allows forfeiture for drug paraphernalia and simulated controlled substances under same conditions.

The Kansas Association of Chiefs of Police has endorsed these proposed amendments and I speak on their behalf. Also I have talked with Fred Allenbrand, Sheriff of Johnson County, and he is in favor of this legislature.

I respectfully request that this committee give favorable consideration to this bill.

Chief Myron E. Scafe

THE CITY OF WICHITA

POLICE DEPARTMENT
OFFICE OF THE CHIEF OF POLICE
CITY HALL — FOURTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

February 25, 1987

House Judiciary Committee
Bob Wunsch, Chairman

Dear Legislators:

Please accept this letter on behalf of my office in support of House Bill 2240. This proposal represents a progressive effort to bring our law in line with existing Federal legislation, with great potential for benefit to Kansas law enforcement and the residents of Kansas.

Due to the magnitude and finances involved in today's drug trafficking, local resources have become inadequate to conduct comprehensive narcotics investigations. Though restitution for some expenses incurred in these cases is being recovered through the judicial system, the amounts are relatively insignificant and slow in coming. House Bill 2240 offers some respite in this regard.

The establishment of a law enforcement trust fund derived from the seized assets of criminals provides dual benefits. It imposes a distinguishable penalty on the offender in the form of lost property and it turns those ill-gotten gains directly against them by placing those resources in the hands of law enforcement.

The United States Attorney General's Guidelines on Seized and Forfeited Property has proven an exceptional tool in those cases prosecuted federally. I solicit and encourage you to join a number of other States in adopting comparable legislation to facilitate our own war on crime.

Thank you for your consideration.

Richard E. LaMunyon

RICHARD E. LaMUNYON
Chief of Police
Wichita Police Department
Wichita, Kansas

REL:nh

Attachment IV
House Judiciary 2/26/87

KANSAS
CONSULTING
ENGINEERS

GEORGE BARBEE, EXECUTIVE DIRECTOR
1100 MERCHANTS NATIONAL BANK
8TH & JACKSON
TOPEKA, KANSAS 66612
PHONE (913) 357-1824

STATEMENT

DATE: February 26, 1987

TO: House Judiciary Committee

FROM: George Barbee, CAE
Executive Director

RE: HB-2419

Mr. Chairman and members of the committee, my name is George Barbee and I am President of Barbee & Associates, appearing on behalf of Kansas Consulting Engineers (KCE). KCE is a state-wide association of consulting engineering firms. Many of these firms are multi-disciplined and offer architectural, land surveying and landscape architectural services as well as engineering services. The following comments are offered to highlight the severe problem with affordability and availability of professional liability insurance now being faced by consulting engineers, and to expand on at least one solution to the problem as offered in House Bill 2419.

In addition to being individually licensed as engineers so that they can legally offer their services to the public, most firms carry professional liability insurance, either because the client requires it, the competition demands it, or out of pure fear of being sued. The kinds of claims filed against architectural and engineering firms are usually for property damage for things like leaking roofs, sewer systems that need some correction or water systems that have minor but expensive problems.

I was retained by KCE in 1972. By 1980, I had become quite familiar with the problems the members were experiencing with professional liability insurance and the consulting engineers allowed me to form an independent insurance agency to help them in obtaining adequate insurance coverage at affordable prices.

After about three years, through my independent agency, we were able to write policies for KCE members through several major companies. Through the early part of the '80s we were able to provide considerable savings for our members because we had created new competition by causing new companies to come in to Kansas. However, we began to see the market change to its present status beginning in 1984.

Attachment V

First, one company notified us that they would no longer accept applications for new business, but would continue reviewing renewal applications. Then they refused to renew the majority of the applicants for renewal business.

Next, the source for most of our policies at that time began to notify us as each insured's policy expired that they would not renew because of "new underwriting guidelines". As well as not renewing, that company has accepted no new business for the past three years.

In 1985, another of our resources notified us that they would not accept applications from firms that had an annual gross billing of less than $100,000 per year, or more than $5 million per year. In 1986 that company withdrew totally from the market by issuing notices of non-renewal and telling us they would accept no new business. Well, at least they bothered to tell us which is more than some of the other companies did.

I presently have twenty engineering or architectural firms insured through the KCE in-house agency. Availability of coverage is now so restricted that the one admitted carrier we have left that offers broad coverage for architects and engineers is acknowledging receipt of applications by letter, stating that it may be several weeks before they can respond. There are other sources but most of them are not "admitted" carriers which means the company has not proven its financial stability to the State Department of Insurance and, therefore, an additional surplus lines tax is added to the policy premiums of these companies. Naturally, that added tax is paid by the insured. And the premiums for renewal or for the placement of new business with any company continue to climb dramatically, while the coverage continues to decrease.

Increases in premium amounts have run as high as 400% for some firms. The average premium of our insureds is now $27,043. Just one year ago that average was just over $20,000.

Coverage has decreased in several ways. Asbestos or pollution coverage is no longer available from any company. As the premiums have gone up, in many cases, the coverage aggregate limits have gone down. And, nearly every company is now including the cost of defense within the aggregate limit amount of coverage.

Many policy holders have tried to control the increased premiums by raising their deductible amount, so what this means is the policy holders are paying more and more of the defense costs. The average deductible amount paid by the firms with which our agency deals is $15,600. That is why screening panels are especially important to us. Defense cost has become as great a problem to us as affordability and availability of insurance. Defense costs are incurred on any claims whether the suit is settled, dropped or ends up in court, and for that matter whether or not the defendant is insured.

This past summer Paul Genecki appeared before the interim committee on tort reform. He is a Senior Vice President with Victor O. Schinnerer and Company, the General Managing Agency for the Continental Casualty Insurance program for architects and engineers. That is the one admitted carrier that is our best resource for coverage at this time. They have been writing insurance for our industry since 1957 and Mr. Genecki was able to share some statistics with the interim committee. He stated that in 1960 there were 12.5 claims filed per 100 firms but that the number increased in 1982 to 44 claims per 100 firms and has been at that number for the past four years. He told the committee that of the 44, 9.5 of those claims required a settlement or judgment payment. The remaining 33.5 claims per 100 firms did not require settlement payment but <u>did</u> require defense costs.

You have been told that in the current asbestos settlements, 67 cents of every settlement dollar goes to the cost of defense, while the injured party gets 33 cents. That fits with what we are told by our insurance carriers who allege that for every dollar paid in settlements and judgments, two dollars are spent on cost of defense.

HB-2419 would provide for screening panels for professional malpractice actions against professional licensees other than health care providers. Among others, the bill includes engineers, architects, land surveyors and landscape architects. When a malpractice action is filed with the district court, either the plaintiff or the defense can request a screening panel of four persons to be convened or the request can also be made when the claim is made but has not been formalized by filing of a petition.

The panel consists of one licensed professional selected by the defendant; one licensed professional selected by the plaintiff; one licensed professional selected by both sides; and an attorney selected by a judge. The attorney chairs the panel.

The panel will determine whether there was a departure from the standard practice of the profession involved and whether a casual relationship existed between the damages suffered by the claimant and any such departure.

The panel will prepare a written report that shall be admissable evidence in any subsequent legal proceedings.

The use of screening panels is not mandated but available upon request and when used will help to weed out speculative action and will aid in the prompt settlements and payments of claims when professional malpractice has, in fact, occurred. It is necessary for this panel to be composed of professionals licensed in the same practice because they can best determine whether the appropriate standard of care was breached.

In handling malpractice actions, too much time, money and other resources are spent on litigation. As previously mentioned, approximately 60 - 65% of total amounts expended go to cost of defense while approximately one third go to actual settlements.

This piece of tort reform should have the impact of eliminating many speculative actions and defenses. Nationally, as mentioned before, about 75% of all malpractice cases are closed without payment. This seems to indicate that a number of speculative malpractice claims are being filed. However, even in those cases, the defendant must pay the cost of legal defense. These costs can amount to thousands of dollars per case and by giving an early indication that no malpractice has occurred, the pre-screening panel would aid in eliminating the cost resulting from the handling of some of these lawsuits.

On the other hand, the use of a pre-screening panel could also speed up payment to a wronged party that has a legitimate claim. By establishing at the outset that negligence had occurred, the screening panel system creates an incentive for defendants to settle these cases quickly.

In medical malpractice cases, this process has demonstrated that ability to speed up disposition of malpractice cases. For example, in Michigan, it currently averages 36 months from the filing of a lawsuit to the final resolution, but in states with a pre-screening panel, the average is only 24 months. In fact, in Indiana, which recently adopted a pre-screening panel act, it takes 18 months -- one-half the time required in Michigan. Needless to say, the longer it takes to close a case, the more it will cost in legal fees and costs to handle it.

In the 1985 interim committee report on medical malpractice, there was a minority report that took exception to screening panels for doctors. The Legislators opposed seemed to be mainly concerned with the mandatory provisions in utilizing screening panels. Let me point out that the utilization of screening panels is available on request or if the judge determines the need. It is not automatically implemented.

In the sense of fair play, it seems that others ought to have the same considerations that have been extended to the health care providers that allow them to utilize screening panels. We believe that it's working for them and certainly has merit for the cases we're involved in. It seems easiest to define the bill to be applicable to professionals as defined in the professional corporation statutes because they refer to those professionals that require a license to practice.

Mr. Chairman, on behalf of Kansas Consulting Engineers, we'd like to thank you for the opportunity to present our feelings on the support of this bill and would urge you to act favorably on House Bill 2419.

I would be glad to attempt to answer any questions that you might have.