

Approved March 25, 1988
Date

SUB-
MINUTES OF THE SENATE COMMITTEE ON JUDICIARY #3

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

10:00 a.m./~~pm~~ on March 22, 1988 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Langworthy and Steineger

Committee staff present:

Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Representative Elaine Wells
James Lusk, Osage County Attorney
Mike Santos, Overland Park Police Legal Adviser
James Clark, Kansas County and District Attorneys Association

House Bill 2917 - Allowing issuance of citations in DUI cases.

Representative Elaine Wells, sponsor of the bill, explained the intent of this bill is to correct a procedural problem particularly in a DUI traffic violation. This bill is a technical cleanup to require those certain violations to be addressed as those requiring proper prosecution. A copy of her statement is attached (See Attachment I).

James Lusk, Osage County Attorney, testified this bill will not only help the prosecutors, it will benefit the accused. On a weekend when a person is arrested for driving under the influence, a ticket is written on a long form complaint and transferred to a long form complaint, and that is filed in the court. This is unnecessary amount of paper work. It only transfers information from ticket to long form complaint. This change would result in less paper work, and would have much greater likelihood for the matter to be taken care of in a speedy manner. The chairman inquired, this would speed up the process of the notice to appear, and won't have to wait until Monday morning to have long form typed up? Mr. Mullin replied, yes. Another committee member inquired about the arresting officer taking the driver's license? Jim Clark, Kansas County and District Attorneys Association, replied this whole problem started when started traffic infraction scheme. This is just a cleanup. The committee member inquired about the language "law enforcement officer"? Mr. Clark replied, the language "law enforcement officer" is a more generic term. Another committee member inquired why lines 127 through 132 were stricken? Mr. Lusk replied, the citation is in a long form complaint. The notice to appear is in another part of the bill, p.5, item 8. You can have a notice to appear as your complaint. You have option of doing it either way they are saying citation is adequate.

Staff will check with revisor who drafted the bill and make sure it is drafted to do what it is intended to do.

House Bill 2240 - Forfeitures; controlled substances, simulated controlled substances and drug paraphernalia.

Staff explained the bill was redrafted to correct the technical

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Mullin #3

CONTINUATION SHEET

MINUTES OF THE SENATE SUB COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on March 22, 1988

House Bill 2240 continued

errors. There is are no substantive changes in the draft of the proposed substitute for House Bill 2240. It is to make it easier for committee to review. The chairman explained the proposed amendments we would add will be to the proposed draft (See Attachment II). The chairman referred the committee to the memorandum prepared by the Legislative Research Eepartment (See Attachment III). Mike Santos, Overland Park Police Legal Advisor, stated they agree with the first concern listed in the memo concerning time frame language.

Considerable discussion was held concerning the language "within 90 days" and the word "promptly". Mr. Santos suggested to bring the word "promptly" in compliance with the 90 days. Jim Clark said he thinks it is consistent and easier to read by striking the 90 days and insert "promptly". Mr. Santos said either is fine, 90 days or promptly. Senator Steineger moved to recommend to the full committee that the standard language would be inserting the word "promptly" in the bill. Senator Langworthy seconded the motion. The recommendation was accepted by the subcommittee.

In regard to the search and seizure section of the bill, Mr. Santos stated, we feel it is essential to maintain that standard of probable cause. They want the ability to get the vehicle after the fact. A committee member felt strongly section 4 should be left in and not do as the interim committee recommended. Senator Steineger moved to recommend amending the bill on page 3, Section (b)(4) by striking the language "or intended" and make similar changes in the rest of the bill to conform, and strike subsection 3. Senator Langworthy seconded the motion. The motion carried.

House Bill 2881 - Time at which sentence or punishment under a criminal code may be modified.

The chairman explained this is Representative Heinemann's bill, and the change appears in lines 82 and 83 of the bill, that you wouldn't have a 120 day recall. Jim Clark explained it is only happening in Finney County to avoid two different call back appearances.

The chairman announced the subcommittee will continue working on House Bill 2240 at another meeting.

The meeting adjourned.

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

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-22-88

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
LT. BILL JACOBS	TOPEKA	K. H. P.
James Lusk	Lyndon Ks.	Osage County Attorney
Jim Clark	Topeka	KC D-7A
Ken Bras	Topeka	Hickok Dist
Major J. Van Buren	Topeka	OSA
Laurie Hartman	Topeka	KBA
Alan E. Sims	Overland Park	City of Overland Park
Karen Arnold-Burger	Overland Park	City of Overland Park
MICHAEL SANTOS	Overland Park	City of Overland Park
MYRON SCAFE	OVERLAND PARK	CITY OF O.P.
Rep. Glenn Mills	Overland	Legislator
DALE FINGER	TOPEKA	KBI
Matt Truell	Topeka	AP
BARB KEINERT	"	KPOA
John W. Smith	Topeka	KDOR
Tony Purcell	Topeka	Ks. Sheriffs Assoc.
Danni Sholly	KCK	CITY OF KCK

3-22-88

STATE OF KANSAS

ELAINE L. WELLS
REPRESENTATIVE, THIRTEENTH DISTRICT
OSAGE AND NORTH LYON COUNTIES
R.R. 1, BOX 166
CARBONDALE, KANSAS 66414
(913) 665-7740



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL BUSINESS
INSURANCE
PUBLIC HEALTH AND WELFARE

March 22, 1988

TESTIMONY ON H.B. 2917

Thank you Mr. Chairman and members of the sub-committee.

The intent of this bill is to correct a procedural problem particularly in a DUI traffic violation. It was recommended by the Attorney General's office this past summer following a case involving an Osage County man.

It simply requires that certain traffic infractions be taken before a judge. These are listed in line 34.

They include:

- KSA 8- 262 Driving while license cancelled, suspended or revoked.
- 8-1567 Driving under influence of alcohol or drugs.
- 8-1568 Fleeing or attempting to elude a police officer.
- 8-1602 Accident involving death or injury.
- 8-1603 Accident involving damage to vehicle or property.
- 8-1604 Duty of driver to give information and aid after accident.

There have been certain cases including the one this past summer where a traffic citation was issued which included driving while intoxicated. Because a citation was issued rather than the formal complaint, the charge was dropped.

This bill is a technical clean-up to require those certain violations to be addressed as those requiring proper prosecution. This is accomplished in lines 128 through 133 stating the citation is a law-

Att. I

ful complaint when filed with the court for the purpose of prosecution for the violation specified. It is further implemented by striking the words in line 067 and 068.

Amendments recommended by the District Attorney's office in Sedgwick County that were added in the House committee were: using the words "law enforcement officer" rather than police officer and adding "the signature of the law enforcement officer" in line 089.

Again, thank you Mr. Chairman. I'd be happy to respond to any questions.

Proposed Senate Substitute for HOUSE BILL NO. 2240

AN ACT relating to forfeiture of property and disposition thereof; amending K.S.A. 65-4136 and 65-4156 and K.S.A. 1987 Supp. 65-4135 and repealing the existing sections.

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

Section 1. K.S.A. 1987 Supp. 65-4135 is hereby amended to read as follows: 65-4135. (a) The following are subject to forfeiture:

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

(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 act;

(3) all property which is used or intended for use as a container for property described in paragraph subsection (a)(1) or (2);

(4) 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,~~ sale, receipt, possession, concealment, purchase, exchange or giving away of property described in paragraph subsection (a)(1) or (2), but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act;

(B) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner

Att. II

thereof to have been committed or omitted without the owner's knowledge or consent;

(C) a conveyance is not subject to forfeiture for a violation of subsection (c) of K.S.A. 65-4123 and amendments thereto; and

(D) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party or parties;

(5) all books, records and research products and materials, including formulas, microfilm, tapes and data which are used or intended for use in violation of this act;

(6) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the uniform controlled substances act, 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 the uniform controlled substances act, except that no property shall be forfeited under this paragraph subsection (a)(6), to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent. 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 disposition of controlled substances, are presumed in the manner provided in K.S.A. 60-414 and amendments thereto to be forfeitable under this paragraph subsection (a)(6). Under this paragraph subsection (a)(6), the burden of proof shall be upon claimants of the property to rebut this presumption; and

(7) all real property, including any building or structure thereon, which is used or intended for use in violation of this act, except:

(A) A homestead shall not be subject to forfeiture under this section unless the claimant of the homestead has been

convicted of a violation of K.S.A. 65-4127a and 65-4127b and amendments thereto which involves the unlawful manufacturing, compounding, selling, offering for sale, possessing with intent to sell, processing, importing or exporting of a controlled substance, or has been convicted of conspiracy or attempt to commit such a violation. The homestead shall be subject to forfeiture under this section if the forfeiture proceedings and the conviction arise from the same violation, act, conduct or transaction and, in that event, the claimant so convicted shall be presumed to have consented to the forfeiture of the homestead by commission of the violation;

(B) real property is not subject to forfeiture under this section by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(C) real property is not subject to forfeiture for a violation of subsection (c) of K.S.A. 65-4123 and amendments thereto; and

(D) a forfeiture of real property encumbered by a bona fide mortgage or lien is subject to the interest of the secured party or parties.

(b) Property subject to forfeiture under this act may be seized by any law enforcement officer upon process issued by any district court having jurisdiction over the property. Seizure by a law enforcement officer may be made without process if:

(1) The seizure is incident to an arrest or a search under a search warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state or municipality under this act;

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

(4) there is probable cause to believe that the property was used or intended to be used in violation of this act.

(c) In the event of seizure pursuant to subsection (b), ~~proceedings under subsection (d) shall be instituted promptly~~

pursuant to section 4 shall be instituted within 90 days after the date of the seizure.

(d) 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 agency seizing it subject only to the orders of the district court having jurisdiction over the forfeiture proceedings. When property is seized under this act, the law enforcement agency seizing it may:

- (1) Place the property under seal;
- (2) remove the property to a place designated by it; or
- (3) require the board to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

~~(e) When property is forfeited under this act, the law enforcement agency having custody of it may:~~

- ~~(1) Retain it for official use;~~
- ~~(2) sell that which is not required to be destroyed by law and which is not harmful to the public;~~
- ~~(3) transfer it for medical or scientific use to any state agency in accordance with the rules and regulations of the board;~~
- ~~(4) require the sheriff of the county in which the property is located to take custody of the property and remove it to an appropriate location for disposition in accordance with law;~~
- ~~(5) if the property is a controlled substance, transfer it to another law enforcement agency for use in training canines for detection of controlled substances so long as a record is kept of the substance similar to that required in a chain of custody for evidence handling; or~~
- ~~(6) forward it to the bureau for disposition.~~

~~The proceeds from the sale under paragraph (2) and any moneys forfeited under this section 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 proceeds from such sale and any moneys forfeited under this section remaining after payment of such~~

~~expenses shall be transferred to the general fund of the unit of government having custody of the forfeited property or money.~~

~~(f)~~ (e) Controlled substances listed in schedule I that are possessed, transferred, sold or offered for sale in violation of this act are contraband and shall be seized and summarily forfeited to the Kansas bureau of investigation. Controlled substances listed in schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the Kansas bureau of investigation.

~~(g)~~ (f) 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 act, or of which the owners or cultivators are unknown or which are wild growths may be seized and summarily forfeited to the state.

~~(h)~~ (g) The failure, upon demand by the law enforcement agency having jurisdiction, of the person in occupancy or in control of land or premises upon which the species of plants described in subsection (f) are growing or being stored, to produce an appropriate registration, or proof that such person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

Sec. 2. K.S.A. 65-4136 is hereby amended to read as follows:
65-4136. (a) It is not necessary for the state or a law enforcement agency seeking forfeiture of property pursuant to K.S.A. 65-4135 and amendments thereto to negate any exemption or exception in this act in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this act. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration ~~or order form issued under this act,~~ he is presumed, title, deed, lien, mortgage or security interest, such person is presumed in the manner provided in K.S.A. 60-414 and amendments thereto not to be

the holder of the registration ~~or--form~~, title, deed, lien, mortgage or security interest. The burden of proof is upon him the claimant to rebut the presumption.

(c) No liability is imposed by this act upon any authorized state, county or municipal officer engaged in the lawful performance of his such officer's duties.

Sec. 3. K.S.A. 65-4156 is hereby amended to read as follows: 65-4156. (a) ~~All--drug--paraphernalia-and-simulated-controlled substances~~ The following are subject to forfeiture ~~as--provided--in this-section:~~

(1) All drug paraphernalia and simulated controlled substances;

(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 drug paraphernalia or simulated controlled substance in violation of this act;

(3) all property which is used or intended for use as a container for property described in subsection (a)(1) or (2);

(4) all conveyances, including aircraft, vehicles or vessels, which are used or intended for use to transport or in any manner to facilitate the transportation, sale, receipt, possession, concealment, purchase, exchange or giving away of property described in subsection (a)(1) or (2), but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act;

(B) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent; and

(C) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party

or parties;

(5) all books, records and research products and materials, including formulas, microfilm, tapes and data which are used or intended for use in violation of this act; and

(6) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this act, 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 subsection (a)(6), to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent. All moneys, coin and currency found in close proximity to property described in subsection (a)(1) or (2) or to forfeitable records of the importation, manufacture or disposition of property described in subsection (a)(1) or (2), are presumed, in the manner provided in K.S.A. 60-414 and amendments thereto to be forfeitable under this subsection (a)(6). Under this subsection (a)(6), the burden of proof shall be upon claimants of the property to rebut this presumption.

(b) Property subject to forfeiture under this section may be seized by any law enforcement officer upon process issued by any district court having jurisdiction over the property. Seizure by a law enforcement officer may be made without process if:

(1) The seizure is incident to an arrest or a search under a search warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state or municipality under this act;

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

(4) there is probable cause to believe that the property was used or intended to be used in violation of this act.

(c) In the event of seizure pursuant to subsection (b),

proceedings under subsection (d) shall be instituted promptly pursuant to section 4 shall be instituted within 90 days after the date of the seizure.

(d) 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 agency seizing it, subject only to the orders of the district court having jurisdiction over the forfeiture proceedings. When property is seized under this section, the law enforcement agency seizing it may:

- (1) Place the property under seal;
- (2) remove the property to a place designated by it; or
- (3) require the state board of pharmacy to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

~~(e) When property is forfeited under this section the law enforcement agency having custody of it may:~~

- ~~(1) Retain it for official use;~~
- ~~(2) sell that which is not required to be destroyed by law and which is not harmful to the public, with the proceeds to be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;~~
- ~~(3) transfer it for medical or scientific use to any state agency;~~
- ~~(4) require the sheriff of the county in which the property is located to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or~~
- ~~(5) forward it to the Kansas bureau of investigation for disposition.~~

New Sec. 4. (a) The county or district attorney within whose jurisdiction there is property which is sought to be forfeited pursuant to K.S.A. 65-4135 or 65-4156, and amendments thereto, or such attorney as employed by the law enforcement agency seeking forfeiture of such property, shall promptly proceed against the property by filing in the district court having jurisdiction of

such property a petition for an order to show cause why the court should not order forfeiture of such property. The petition shall be verified and shall set forth: (1) A statement that the action is brought pursuant to section 4; (2) the law enforcement agency bringing the action; (3) a description of the property sought to be forfeited; (4) a statement that (A) on or about a date certain the property was used or intended to be used in violation of this act or a violation of this act took place in, upon or by means of the property or (B) the property is a controlled substance as defined in K.S.A. 65-4101 and amendments thereto, a simulated controlled substance as defined in K.S.A. 65-4150 and amendments thereto or drug paraphernalia as defined in K.S.A. 65-4150 and amendments thereto and determined pursuant to K.S.A. 65-4151 and amendments thereto; (5) a statement detailing the facts in support of subsection (a)(5); and (6) a list of all persons known to the law enforcement agency, after diligent search and inquiry, that may claim an ownership interest in the property by title, registration or deed or by virtue of a lien allegedly perfected in the manner prescribed by law.

(b) Upon receipt of a petition complying with the requirements of subsection (a), the judge of the district court shall issue an order to show cause setting forth: (1) A statement that the controlling statutes are K.S.A. 65-4135, 65-4156 and section 4, and amendments thereto; and (2) a general description of the property and the date on or about which it was allegedly used in violation of the uniform controlled substances act or the provisions of K.S.A. 65-4150 through 65-4157, and amendments thereto. In addition, the order shall set a date at least 41 days from the date of first publication of the order pursuant to subsection (c) for all persons claiming an interest in the property to file such pleadings as they desire as to why the court should not order the forfeiture of such property to use, sale or other disposition by the law enforcement agency seeking forfeiture of the property. The court shall further order that all persons who do not appear on that date are deemed to have

defaulted and waive any claim to the subject property.

(c) The county or district attorney, or such attorney as employed by the law enforcement agency seeking forfeiture, shall give notice of the forfeiture proceedings by:

(1) Causing to be published a copy of the order to show cause once each week for three consecutive weeks in a newspaper having general circulation in the county where the property is located and meeting the requirements of K.S.A. 64-101 and amendments thereto; and

(2) sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of or a security interest in the property if (A) the property is of a type for which title, registration or deed is required by law; (B) the owner of the property is known in fact to the law enforcement agency at the time of seizure; or (C) the property is subject to a security interest perfected in accordance with the uniform commercial code. The law enforcement agency shall be obligated only to make diligent search and inquiry as to the owner of the property and if, after diligent search and inquiry, such agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interest in the property shall not be applicable.

(d) At the hearing on the matter, the petitioner shall have the burden to establish by clear and convincing evidence that the property is subject to forfeiture as provided in K.S.A. 65-4135 and amendments thereto. In addition to the presumptions found in K.S.A. 65-4135 and 65-4136, and amendments thereto, it shall be presumed in the manner provided in K.S.A. 60-414 and amendments thereto that any vessel, motor vehicle, aircraft or other personal or real property, in or upon which controlled substances are located at the time of the seizure, was being used or intended for use to transport or in any manner to facilitate the transportation, sale, receipt, possession, concealment, purchase, exchange or giving away of a controlled substance. The burden of

proof shall be on the claimants of the property to rebut this presumption.

(e) The final order of forfeiture by the court shall perfect in the law enforcement agency right, title and interest in and to such property and shall relate back to the date of the seizure.

(f) Physical seizure of property shall not be necessary in order to allege in a petition under this section that property is forfeitable. Upon filing the petition, the county or district attorney or the attorney for the law enforcement agency seeking forfeiture may also seek such protective orders as necessary to prevent the transfer, encumbrance or other disposal of any property named in the petition. If the property alleged to be forfeitable is real property, the county or district attorney or the attorney for the law enforcement agency seeking forfeiture shall cause to be recorded a lis pendens on the property in the county in which the property is located.

(g) Unless otherwise stated, proceedings brought pursuant to this section are separate and distinct from and in no way supplemental to or dependent upon the outcome of any criminal charges, indictment, complaint or information.

New Sec. 5. (a) Subject to the provisions of subsection (c), if property forfeited pursuant to section 4 is harmful to the public or required by law to be destroyed, the law enforcement agency to which the property is forfeited shall:

(1) Require the sheriff of the county to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(2) forward it to the Kansas bureau of investigation for disposition.

(b) Subject to the provisions of subsection (c), if property forfeited pursuant to section 4 is not harmful to the public and is not required by law to be destroyed, the law enforcement agency to which the property is forfeited shall:

(1) Sell the property in accordance with subsection (c);

(2) if the property is not subject to a lien which has been

preserved by the court, retain the property for official use or transfer it to a public agency or nonprofit organization.

(c) If the property is a controlled substance, transfer it to another law enforcement agency for use in training canines for detection of controlled substances so long as a record is kept of the substance similar to that required in a chain of custody for evidence handling.

(d) If a law enforcement agency desires to sell property forfeited to it pursuant to section 4, the agency shall first cause notice of the sale to be made by publication at least once a week for three consecutive weeks in a newspaper having general circulation in the county and meeting the requirements of K.S.A. 64-101 and amendments thereto. Such notice shall include the time, place and conditions of the sale and a description of the property to be sold. The property shall then be disposed of at public auction to the highest bidder for cash without appraisal.

(e) In lieu of the sale of property ordered forfeited pursuant to section 4, if the head of the law enforcement agency considers it necessary or expedient, the property may be salvaged or transferred to any public or nonprofit organization unless such property is subject to a lien preserved by the court.

(f) Upon the sale of any vessel, motor vehicle or aircraft pursuant to this section, the state shall issue a title certificate to the purchaser. Upon the request of any law enforcement agency which elects to retain titled property after forfeiture, the state shall issue a certificate of title for such property to the agency.

New Sec. 6. The proceeds of any sale pursuant to section 5 and any moneys forfeited pursuant to section 4 shall be applied: first, to payment of the balance due on any lien preserved by the court in the forfeiture proceedings; second, to payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security and forfeiture of the property; third, to payment of the costs incurred by the county or district attorney or attorney for the law enforcement agency to which the

property is forfeited; and fourth, to payment of costs incurred by the court. The remaining proceeds or moneys shall be disposed of as follows: (a) If the law enforcement agency to which the property is forfeited is a state agency, the entire amount shall be deposited in the state treasury and credited to the state general fund; (b) if such agency is a county agency, the entire amount shall be deposited in the county treasury and credited to a special law enforcement trust fund in the county treasury; and (c) if such law enforcement agency is a city agency, the entire amount shall be deposited in the city treasury and credited to a special law enforcement trust fund in the city treasury. Moneys in the special law enforcement trust fund in the county or city treasury shall be expended only upon appropriation to the sheriff's office or police department, by the respective board of county commissioners or governing body of the city, to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other law enforcement purposes as the respective board of county commissioners or governing body of the city deems appropriate and shall not be considered a source of revenue to meet normal operating expenses.

New Sec. 7. If more than one law enforcement agency is substantially involved in effecting a forfeiture pursuant to section 4, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the property among such agencies. Any forfeited moneys, or any proceeds remaining after the sale of the property, shall be equitably distributed to the board of county commissioners or the governing body of the city having budgetary control over such agencies for deposit in the respective county or city treasury and credit to the law enforcement trust fund provided in section 6.

New Sec. 8. Any law enforcement agency receiving forfeited property or proceeds from the sale of forfeited property in accordance with this act shall submit a quarterly report to the entity which has budgetary authority over such agency, which

report shall specify, for such period, the type and approximate value of the property received and the amount of any proceeds received. Neither the law enforcement agency nor the entity having budgetary control shall anticipate future forfeitures or proceeds therefrom in the adoption and approval of the budget for the law enforcement agency.

Sec. 9. K.S.A. 65-4136 and 65-4156 and K.S.A. 1987 Supp. 65-4135 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

MEMORANDUM

March 1, 1988

TO: Senate Committee on Judiciary
FROM: Kansas Legislative Research Department
RE: Suggested amendments to H.B. 2240

Concerns identified by the 1987 Interim Committee on Proposal No. 17 -- Seizure and Forfeiture for special consideration by the Senate Judiciary Committee are as follows:

1. that the time frame language regarding institution of proceedings contained in the bill be consistent, whether it be "promptly," "within 90 days," "property can be kept as long as necessary," or "after the conclusion of the criminal case, if one is pending;"
2. that language in Section 1(b)(1) of H.B. 2240 be changed to read "the seizure is incident to a lawful arrest or a lawful search conducted by a law enforcement officer," delete subsections (b)3 and (b)4, and, in new section 4 amend the language so that the attorney employed by the law enforcement agency must be approved by the local prosecutor;
3. that in the disposition of forfeited property section, the provision regarding transfer of confiscated property to nonprofit organizations be changed to allow property to be sold and the resultant monies be deposited as state surplus funds and made available to nonprofit organizations;
4. that all involved state agencies be placed on equal footing and treated the same regarding the proceeds of forfeiture and sale of property;
5. that prosecutors be added to those local law enforcement entities that could receive a share of the proceeds; and
6. provision on seizure and forfeiture contained within the bill be made applicable only to felony violations.

As a result of a hearing in Senate Judiciary Committee, additional recommendations by conferees was offered as follows:

7. Colonel Donald Pickert, Kansas Highway Patrol -- that New Section 6 subsection (a) be amended so funds from forfeiture involving a state agency, would be set aside for the exclusive use of the agency. This provision would parallel that of county and city agencies as well as the receipt of funds in a federal prosecution.

Att. III

8. Mike Santos, Legal Advisor for Overland Park Police Department urged the retention of Section 1(b)(4) which would have been deleted according to interim suggestion No. 2.
9. Tony Purcell, Kansas Sheriff's Association would support the deletion recommended in No. 6.
10. Dale Finger, Kansas Bureau of Investigation agrees with No. 7 and, in addition, that the proceeds for a state law enforcement agency be available for use by that state agency as a "no limit" expenditure fund to support that agency's drug enforcement effort.
11. Kyle Smith, Assistant Attorney General assigned to K.B.I. suggested that in I. 80 K.S.A. 65-4127a or 4127b be expanded to include other convictions.
12. Elizabeth Taylor, Kansas Alcohol and Drug Program Director, asked that a portion of the proceeds be targeted for treatment programs.

HB2240.JAD/sls