

Approved April 25, 1990
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./p.m. on February 22, 1990 in room 514-S of the Capitol.

All members were present ~~xxxxx~~:

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Helen Stephens, Kansas Peace Officers Association
Attorney General Robert T. Stephan
Galen Davis, Special Assistant to the Governor on Drug Abuse
Myron Scafe, Overland Park Chief of Police
Lt. Bill Jacobs, Kansas Highway Patrol
James Clark, Kansas County & District Attorneys Association

The Chairman opened the meeting by stating that the major block of bills being heard are recommended by the Attorney General as a result of his report on the current drug problem. The Chairman further stated that bills not passed during the 1990 Session would be recommended for an interim study because of the importance of the problem in our state.

The hearings were opened on the drug enforcement measures:

- SB 472 - concerning vehicles; providing for the suspension of driving privileges under certain circumstances related to presence of illegal drugs in such vehicle and other penalties.
- SB 683 - concerning controlled substances; relating to forfeiture of property; disposition of proceeds.
- SB 684 - concerning crimes and punishment; relating to anticipatory crimes; when adult uses child in certain crimes.
- SB 685 - concerning controlled substances; relating to forfeitures of property.
- SB 702 - concerning crimes and punishments; relating to fines, dispositions and forfeitures; creating the Kansas bureau of investigation special asset forfeiture fund and the Kansas highway patrol special asset forfeiture fund.
- SB 703 - concerning criminal procedures; relating to diversion agreements; when prohibited.
- SB 704 - concerning crimes and punishment; relating to classification of penalties; sentencing.
- SB 705 - concerning crimes and punishment; relating to the use of firearms in drug offenses.
- SB 706 - concerning the uniform controlled substances act; relating to definition of sell.
- SB 707 - concerning the uniform controlled substances act; creating a separate offense for unlawful manufacture of controlled substances.

Helen Stephens, Kansas Peace Officers Association, testified in support of the package of drug enforcement measures proposed by the Attorney General. (ATTACHMENT I)

Attorney General Robert T. Stephan presented the committee with an overview in support of the package of bills being heard on this date. (ATTACHMENT II) When questioned

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on February 22, 1990.

by the committee as to which of the bills being heard were of the highest priority to his office, General Stephan responded that, although they would prefer to have all the legislation passed, their current priorities were SB 472, HB 2782, HB 2770, SB 702, SB 704, and SB 707.

Galen Davis, Special Assistant to the Governor on Drug Abuse, presented the committee members with a copy of Attorney General Robert Stephan's report to Governor Mike Hayden outlining needed changes in Kansas drug laws, Kansas Drug Law and Enforcement Initiatives. (Copy on file in the Attorney General's office.)

Senator Bond, as primary sponsor, presented SB 472 to the committee.

Myron Scafe, Overland Park Chief of Police, testified in support of SB 472.
(ATTACHMENT IV)

Lt. Bill Jacobs, Kansas Highway Patrol, testified in support of the drug enforcement package being heard on this date. Lt. Jacobs stated that SB 702 is at the top of their priority list as counties and cities already have the ability of retaining forfeiture properties; the KBI and KHP are only asking to be included in that ability. Lt. Jacobs further added that passage of SB 702 would increase the incentives for the agencies and enhance their funding capabilities.

James Clark, Kansas County and District Attorneys Association Executive Director, testified in support of SB 683 (ATTACHMENT V), and SB 685 (ATTACHMENT VI). Mr. Clark added that his Association would also support SB 684, SB 707 and SB 708.

The Chairman adjourned the meeting with the announcement that the committee would meet again on adjournment of the Senate in Room 254-E.

There is no ATTACHMENT III to this day's minutes.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: FEBRUARY 22, 1990

10:00

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Heather Gentry	303 S. Meosno Council Grove, KS	page
Tanya Taylor	Box 153 Emporia, KS 66801	page
Tracy Michaelis	134 Lake Side Dr. Council Grove, KS	Page
Bridgett Price	2802 Miller Drive	
Alicia Teoman	RT #1 Box 194 B	
Nikki Klink	1200 Almura	
Justin Simpson	109 West 20th Topeka, KS	
Joan Ulmick	RR5 Box 227 Lawrence, KS	
Larry Hatfield	2131 Massachusetts, KS	
Darius W. Bulis	1725 Kentucky, Lawrence, KS	
Jami Wy	RR #1 Box 281 Meriden, KS	St Francis Hosp/Med Center
Marilyn Bogg	6236 SW 21st Topeka, KS	St Mary of Plains
Ethel McDaniel	P.O. Box 84 Cambridge	St Mary of Plains College
Theresa Garner K	RR #1 Box 108 Cambridge, KS	St Mary of the Plains College
Walt A. Singer	Topeka	KBI
Paul Miller	"	SRSLADAS
DAVID HURNBARER	"	KHP
Paul Shelby	Topeka	CSA
Claudio Beny	Topeka	St. Mary of the Plains College
Melissa A. Transill	11601 Rhode Island Lawrence	St. Mary of the Plains College
Bill Williams	1515 30th St #8 Topeka	
Leah Schmitt	4017 SW 35th Ter	SMPC
Patricia Brinkley	2730 NE Spring Creek Dr ⁶⁶⁶⁰⁷	SMPC
Paul Gatto	Topeka	KASB
L.T. BILL JACOBS	TOPEKA	K.H.P.

February 22, 1990

Page 1 of 3

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: Feb. 22, 1990

-2-

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Myron E. Soafe	8500 Antioch	City of Overland Park
MICHAEL SANTOS	8500 Antioch	City of Overland Park
REBECCA J. COGGINS	625 Sunnyside Ave Lawrence, KS	Central Jr. High School
Hilary Padget	825 Illinois / Lawrence K.S.	Central Jr. High School
Keritra Jones	255 W. Michigan / Lawrence, KS	Central Tr. High School
Kirsten Magnuson	Rt. 7 Box 245 B / Lawrence	CJHS
Red Griffin	Lawrence	University Daily Kansan
CHRIS ERB	511 Ohio Lawrence	CJHS
Matthew D. Newton	743 Illinois, Lawrence	Central Junior High
DAVID REEVES	2101 OHIO, LAWRENCE	CJHS
Danielle Rand	1205 New Jersey, Lawrence	Central Tr. High School
SARAH FINNEY	821 OHIO, LAWRENCE	CJHS
Mike Miller	Topeka	City of Topeka
Viola Bence	Topeka	KSNA
Tamara S. Chuthrow	Sanctin City	KSNA
Lueth Gogolski	Topeka	KSNA
Margaret A. Bam	Topeka	K.S.N.A. #1
Michelle Badine	Topeka	KSNA #1
Barbara M'Elkinner	Topeka	KSNA #1
Shirley Voss	Topeka	KSNA #1
Lynn EDWARDS	EMPORIA	KSNA
John Van Meke	Topeka	NOVA
KIRK THOMPSON	TOPEKA	KBI
ANNE HESSE	TOPEKA	KDOT
Mary Houch	Topeka	A.G.'s Office

February 22, 1990

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KANSAS PEACE OFFICERS ASSOCIATION
February 22, 1990

Attorney General's Drug Package

Mr. Chairman and members of the Committee:

Thank you for this opportunity to speak to you today.

My name is Helen Stephens, representing the approximately 7000 members of the Kansas Peace Officers Association.

We support the Attorney General's drug legislation. This ever-growing problem is attacking all segments of our society and this legislation is necessary if we are to succeed.

We strongly urge your support for this package.

Attachment I
2-22-90



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

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A SUMMARY OF KANSAS DRUG LAW
AND ENFORCEMENT INITIATIVES 1990

A Report to Governor Mike Hayden

Presented by Attorney General Robert T. Stephan
Before the Senate Judiciary Committee
February 22, 1990

In response to a request by Governor Mike Hayden, I prepared the attached report and delivered it to the Governor February 7th of this year. The report outlines what I believe to be appropriate law enforcement initiatives to more effectively fight the war on drugs. After consultation with your chairman, a number of bills were introduced by this committee which would implement certain of the proposals set out in the report. I will briefly review those bills here, discuss bills otherwise introduced and referred which would appear to implement other provisions of this plan and I will also note certain elements of the plan which I recommend be placed in interim study.

State Drug Strike Force

Before beginning this review, I will first discuss the recommendation to create a drug strike force within the Kansas Bureau of Investigation. Despite marked growth in drug arrests in Kansas in recent years, there has been no increase authorized in personnel at the Kansas Bureau of Investigation to deal with the increasing narcotics threat in our state. In fact, the KBI continues today to have a staff of fourteen narcotics special agents and a supervisor, as it did fifteen years ago.

The plan addresses this issue, seeking to establish a strike force within the KBI which would double the number of sworn personnel and add additional support and legal staff. This would provide the KBI with staff to better coordinate with local law enforcement agencies to conduct sophisticated investigations, such as undercover operations and electronic surveillance, as well as provide the expertise necessary to deal with clandestine drug laboratories. It is also hoped the additional staff would

Attachment II

2-22-90

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allow the state to become more involved in financial investigations more effectively attacking the profits of drug dealers. A chart shown as Appendix D in the report demonstrates how Kansas has fallen behind other states with respect to the number of narcotics officers assigned to state investigative bureaus. Page four of Appendix C states that the fiscal impact of such strike force is estimated by the KBI as \$1,123,087 in its year of implementation. Of that sum, \$350,613 is considered to be first-year start-up costs.

I recognize the budgetary constraints the state faces next fiscal year. There is a strong need for enhancement of the KBI's narcotics enforcement capabilities; however, the strike force is presented, due to budget shortfalls, as a goal for attainment in the near future. If it cannot be funded for Fiscal Year 1991, I would hope that this goal could be reached in the very near future.

Legislation Before This Committee

The following bills have been introduced by your committee in response to the drug initiatives which I presented to the Governor. I will review each one briefly and I urge their favorable recommendation.

Senate Bill No. 702

A major goal of the drug plan presented to the Governor is to do everything we can to take the profit out of drug trafficking. Frankly, many times the profits are so great from drug trafficking that even when caught and prosecuted, a drug dealer finds the rewards outweigh the potential punishment. This bill seeks first to raise the possible fines which can be assessed by a judge for all felonies. We make the recommendation, however, primarily so that such fines could be assessed in drug cases where lucrative profits have been made. The bill would raise the possible fine for a class D or E felony from \$10,000 to \$100,000; for a class B or C felony, from \$15,000 to \$300,000; for a class A felony, from the present situation where no fine is provided to up to \$500,000. The bill also makes several changes to our forfeiture statutes including allowing for forfeiture in state court where a federal prosecution has occurred, establishing a rebuttable presumption that any property of a person involved with illegal drugs is subject to forfeiture if there is no other likely source for the property other than profits made through drug violations; changing the burden of proof from clear and convincing evidence to the more standard civil burden of a preponderance of the evidence; and establishing that the Kansas Bureau of Investigation and the Kansas Highway Patrol may place proceeds from forfeitures into special funds for use in defraying the costs of further investigations.

Senate Bill No. 703

Stiff and/or mandatory penalties for drug violations do no good when the defendant is placed on diversion. For that reason, this bill is recommended which would prohibit diversion for drug violations.

Senate Bill No. 704

1989 Senate Bill 49, which was adopted to address various prison overcrowding concerns, inadvertently, I believe, weakened possible penalties in certain drug cases. This bill would correct those situations. The bill would generally include the statutes which establish the more serious of drug offenses along with those Article 34, 35 and 36 statutes which generally were exempted from more lenient treatment under 1989 Senate Bill 49's provisions. It also makes it clear that attempts to commit the same crimes are not subject to the more lenient provisions of Senate Bill 49.

Senate Bill No. 705

More and more frequently arsenals of weapons are found in the possession of persons apprehended for violations of drug laws. Drug dealing is indeed becoming a violent crime. The bill would establish a separate crime for the use or possession of a firearm in relation to a felony drug offense. Such a crime would carry an additional mandatory five-year sentence to run consecutive to that of the underlying crime.

Senate Bill No. 706

A defense utilized by many involved in assisting in the sale of illegal drugs has become known as the procuring agent defense. The defendant argues that he did not aid the seller of the illegal drug, but instead was simply aiding the purchaser in the possession of such drug. This bill would make it clear that such conduct, whether it is maintained it was on behalf of the purchaser or seller, falls within the meaning of the term sell.

Senate Bill No. 707

The manufacture of methamphetamines has moved across the country from California to Texas to Oklahoma and into Kansas. As these methamphetamine labs have moved across the country, the states where they have proliferated have generally adopted stiff mandatory sentences for the unlawful manufacture of drugs. We are beginning to see more and more of such clandestine laboratories in Kansas, and in fact there is evidence that druggers are being advised by their attorneys that Kansas is a good place to manufacture such drugs because of our relatively light penalties. The bill would follow the lead of the states of California, Texas and Oklahoma by establishing stiff mandatory sentencing for the manufacture of such illegal drugs. The sentence specified in the bill is not less than 20 years and a fine of not more than \$300,000. Current law would make such drug manufacture a class C felony, which realistically today results in time served of only approximately 1 1/2 years. If we don't take such action, I believe more and more such labs will move to Kansas. They not only spread deadly drugs, but also can explode and must be treated as a hazardous waste site for cleanup by the state upon their discovery. The bill also would assess all costs and expenses resulting from cleanup of such sites against the defendant. It would place methamphetamines under the provisions of K.S.A. 1989 Supp. 65-4127a, the same as cocaine. As such, possession of methamphetamines would be a class C felony instead of a class

A misdemeanor. Finally, the bill also makes it clear that cultivation of a controlled substance is equivalent to sale or manufacture, thus, invoking the more serious penalties without requiring the necessity of proving intent to sell.

Senate Bill No. 708

Much time of narcotics agents and lab personnel is wasted while waiting to be called as witnesses in preliminary hearings. There is no constitutional reason why these individuals must personally be available for preliminary hearing, in that hearsay evidence is constitutionally permissible at preliminary hearing. The bill would establish that hearsay evidence may be so admitted.

Senate Bill No. 709

It is frequently the case in drug investigations that many individuals involved in the chain of sale of illegal controlled substances so shield themselves from the actual transaction that it is only possible to charge them with conspiracy to commit a violation of the drug laws. Presently, conspiracy to commit a class C felony is a class E felony. The bill would make conspiracy to violate drug laws subject to the same penalties as the underlying crime.

Senate Bill No. 710

The bill would specifically define first degree murder to include a death resulting out of the perpetration, attempt to perpetrate or as a result of a felony drug offense.

Senate Bill No. 686

The bill would extend the statute of limitations for all crimes to five years. This is particularly pertinent to drug crimes in that complex financial investigations resulting from drug cases may exceed the current two-year statute of limitations. This would bring Kansas in line with the federal government with regard to its statute of limitations and allow us to delve deeper into illegal financial activity attendant to drug trafficking.

Requested Interim Study

In addition to Senate Bill No. 702 which is designed to cut into drug profits, the plan I presented to the Governor also includes proposals relating to money laundering, a continuing criminal enterprise act (CCE) and a racketeer influenced and corrupt organization law (RICO). These would be major legislative enactments and I believe require further study than can be given them in this legislative session. Each bill would be designed in its own way to attack drug profits. I would suggest that these issues be placed in interim study and would certainly provide the support of my office in examining statutes from other states, federal law and the proposed uniform controlled substances act in regard to these proposals.

Another proposal which I would suggest referring to interim study is the question of how we can best continue to keep up to date with new drugs as they are designed and manufactured by chemists operating clandestine drug labs. One tact taken by some states has been to incorporate by reference into their own drug statutes the schedules which are administratively adopted by the federal government. This is an issue which I believe should receive further study to determine whether we want to adopt such a model or perhaps develop another means in Kansas for keeping current on new drugs as they are developed.

Other Bills Under Consideration

Finally, I would note that there are a number of bills, which are components of the drug plan I presented to the Governor, which are already being considered within the legislative process. Those include the required seizure of drivers licenses from operators in motor vehicles when illegal drugs are present (I strongly endorse Senate Bill No. 472, also scheduled for hearing today, which accomplishes this goal. House Bill No. 2769, requested by the Governor, also contains a similar provision.); amendment of the drug tax stamp act to more clearly set out standards for growing marijuana plants (Senate Bill No. 495); distribution of drugs near schools, requested by the Governor (House Bill No. 2782); and utilizing of juveniles in drug transactions, requested by the Governor (House Bill No. 2770).

NO
ATTACHMENT III

2-22-90

MY NAME IS MYRON SCAFE AND I AM CHIEF OF POLICE OF OVERLAND PARK, KANSAS. IT IS MY PLEASURE TO APPEAR BEFORE YOU TODAY TO SPEAK IN SUPPORT OF SENATE BILL NO. 472. THIS BILL IS DIRECTED TOWARD PROVIDING ADDITIONAL PENALTIES AGAINST AN INDIVIDUAL WHO KNOWINGLY TRANSPORTS ILLEGAL DRUGS ANYWHERE WITHIN A VEHICLE UPON A STREET OR HIGHWAY. UPON A FINDING OF A VIOLATION OF THIS SECTION, THE MOTOR VEHICLE DEPARTMENT WOULD BE DIRECTED TO SUSPEND THAT PERSON'S DRIVING PRIVILEGES FOR A PERIOD OF ONE YEAR.

OUR EXPERIENCE HAS BEEN THAT IT IS VERY COMMON FOR INDIVIDUALS TO TRANSPORT ILLEGAL NARCOTICS IN AUTOMOBILES AND OTHER VEHICLES DRIVEN UPON OUR HIGHWAYS. THIS BILL WOULD SEND A CLEAR MESSAGE TO ALL OF THOSE INDIVIDUALS THAT THIS TYPE OF CONDUCT SIMPLY IS NOT ACCEPTABLE. IT IS MY OPINION THAT THIS TYPE OF PENALTY WOULD ASSIST LAW ENFORCEMENT OFFICERS IN REMOVING ILLEGAL NARCOTICS FROM OUR STREETS AND HIGHWAYS. IN ADDITION, THIS BILL IS AN EFFECTIVE WEAPON IN OUR WAR AGAINST DRUGS THAT DOES NOT GENERATE A NEED FOR ADDITIONAL JAIL SPACE.

ALSO, THIS TYPE OF LEGISLATION WOULD HAVE A SIGNIFICANT IMPACT UPON YOUNG PEOPLE TO WHOM THE

Attachment IV

2-22-90

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ACQUISITION AND POSSESSION OF A DRIVER'S LICENSE IS EXTREMELY IMPORTANT. IN JANUARY OF THIS YEAR OUR DEPARTMENT ARRESTED 49 INDIVIDUALS FOR POSSESSION OF ILLEGAL NARCOTICS WHILE THEY WERE DRIVING A MOTOR VEHICLE. APPROXIMATELY ONE HALF OF THOSE INDIVIDUALS WERE UNDER THE AGE OF 18. IN 1989, OUR DEPARTMENT ARRESTED MORE THAN 280 INDIVIDUALS FOR BEING IN POSSESSION OF ILLEGAL NARCOTICS. IN EACH OF THOSE CASES THE INDIVIDUALS INVOLVED WERE ALSO OPERATING A MOTOR VEHICLE. APPROXIMATELY 40 PERCENT OF THOSE INDIVIDUALS WERE UNDER THE AGE OF 18.

IT IS MY OPINION THAT THIS LEGISLATION WOULD GO A LONG WAY TOWARD REMOVING A SERIOUS PROBLEM FROM OUR STREETS AND HIGHWAYS. I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS THAT THE MEMBERS OF THE COMMITTEE MIGHT HAVE.

OFFICERS

Terry Gross, President
Rodney Symmonds, Vice-President
Gene Porter, Sec.-Treasurer
James Puntch, Jr., Past President



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Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

SENATE BILL 683

The Kansas County and District Attorneys Association appears in support, and in fact requested, Senate Bill 683. The purpose of the bill is to clarify that the county or district attorneys office, as a part of law enforcement, is entitled to some portion of the proceeds in drug forfeiture cases.

The bill is in direct response to Attorney General Opinion No. 90-7, which is attached, which concludes that without specific statutory authority, the district or county attorney may not retain a portion of the sale proceeds.

The costs of drug investigations, especially those involving complex operations, and subsequent asset forfeiture actions are high. In addition to expenses to police, there are expenses to prosecutor offices which are involved in tracing of assets, such as the hiring of experts (i. e. accountants), the cost of copies of bank records, wiretaps, computers and software programs. These are in addition to the added attorney and clerical time involved in processing a forfeiture case, and are of such a sensitive and expeditious nature that the normal county voucher system is both too slow and too public.

The provisions of this bill also represent a cost savings to law enforcement agencies. Without some ability to defray these additional costs, most busy prosecutors will defer such cases to the attorney hired by the law enforcement agency, at a rate which is almost certain to exceed the 10% figure in this bill.

In conclusion, the provisions of this bill are not a change in state policy, but merely a clarification of existing practice. And a recognition that the growing volume of drug cases also affects the offices of the county and district attorneys.

Attachment V
2-22-90

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 12, 1990

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ATTORNEY GENERAL OPINION NO. 90- 7

Mr. Gene Porter
Barton County Attorney
Barton County Courthouse
P.O. Box 881
Great Bend, Kansas 67530

Re: Public Health -- Controlled Substances;
Forfeitures; Procedure -- Forfeitures of Property;
Disposition of Proceeds; Retention of Fee by County
or District Attorney

Counties and County Officers -- County Attorney --
Duties; Fees, When Allowed

Synopsis: K.S.A. 19-705, 28-175 and general definitions of
the term "costs" preclude the district or county
attorney from retaining a portion of the sale
proceeds as a fee for services rendered pursuant to
K.S.A. 65-4173. Cited herein: K.S.A. 19-701;
19-705; 28-175; K.S.A. 1988 Supp. 65-4135; 65-4156;
65-4171; 65-4173.

* * *

Dear Mr. Porter:

As Barton County Attorney you request our opinion on the
following:

"Does the language of K.S.A. 65-4173 authorizing payment of
the costs incurred by a County or District Attorney in a
drug-related forfeiture action permit a County or District

V 2/5

Attorney to retain a portion of the sale proceeds as a "fee" for services rendered?"

K.S.A. 1988 Supp. 65-4171 et seq. provide for forfeiture of property under K.S.A. 1988 Supp. 65-4135 or 65-4156. Once such a forfeiture occurs and forfeited property is sold, K.S.A. 1988 Supp. 65-4173 sets forth how any moneys or proceeds from sales 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 approved by the county and district attorney to which the property is forfeited; and fourth, to payment of costs incurred by the court."
(Emphasis added).

Thus, as you note, the issue becomes whether the statutory authorization of payment of "costs" includes "not only necessarily incurred litigation expenses, but also a fee for services rendered."

As discussed in Attorney General Opinions No. 89-102, 89-105, 88-28, 84-32, 81-186, 73-367 and 61-27, a county attorney must perform certain statutorily required services or duties. K.S.A. 19-701 et seq. generally establish the office of county attorney and discuss the duties and authority of that county official. In addition to K.S.A. 19-701 et seq. specific statutory authority may expand the services required of a county attorney. For example, K.S.A. 1988 Supp. 65-4171(a) provides that the county or district attorney, or such attorney as employed the law enforcement agency, shall when appropriate proceed with a forfeiture case. Thus, if a county or district attorney represents the county in a forfeiture proceeding, that representation results from the performance of an official duty.

K.S.A. 19-705 prohibits a county or district attorney from receiving fees for the performance of official duties or services rendered to the county, unless otherwise specifically allowed by law. See also Attorney General Opinions No.

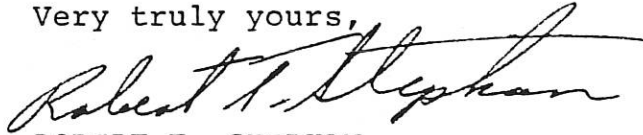
88-50 and 87-179. K.S.A. 28-175 further provides that no county officer or employee shall receive fees paid to such an officer by reason of his or her performance of the duties or obligations of the county office, unless such fees are specifically allowed to them by law. The issue therefore becomes whether K.S.A. 1988 Supp. 61-4173 specifically authorizes the county or district attorney to retain a fee for the performance of official duties connected with forfeiture cases.

K.S.A. 1988 Supp. 65-4173 authorizes the recovery of "costs incurred." "Costs" is defined as "a pecuniary allowance, made to the successful party . . . for his expenses in prosecuting or defending an action . . . generally, 'costs' do not include attorney fees unless such fees are by a statute denominated costs or are by statute allowed to be recovered as costs in the case." Blacks Law Dictionary 312 (5th ed. 1979). By comparison, "fee" is defined as "a charge fixed by law for services of public officers or for use of a privilege under control of the government. [citation omitted] A recompense for an official or professional service or a charge or emolument or compensation for a particular act or service. A fixed charge or prerequisite charged as recompense for labor; reward, compensation, or wage given to a person for performance of services or something done or to be done." Id. at 553. "In the absence of a valid and applicable statute, agreement or stipulation expressly authorizing the allowance or taxation of attorneys fees as costs, they are not allowable or taxable as costs and are not included within the word costs as used in a statute. . . ." 20 C.J.S. Costs § 218 (194). The costs of reasonable expense of litigation may include attorneys fees when such fees are specifically permitted by statute. See Cooper Liquor, Inc. v. Adolph Coors Co., 684 F.2d 1087, 1098 (C.A. Tex. 1982). Absent such a statutory provision, costs do not generally include attorneys fees. Moreover, because such fees would be recovered for the performance of an official duty, K.S.A. 19-705 and 28-175 could preclude retention of such fees by the county attorney.

It is our opinion that that pursuant to the general definition of the term "costs" and the failure of the statutes to specifically provide that "costs incurred" include attorneys

fees, K.S.A. 1988 Supp. 65-4173 does not permit the district or county attorney to retain a portion of the sale proceeds as a fee for services rendered.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas

OFFICERS

Terry Gross, President
Rodney Symmonds, Vice-President
Gene Porter, Sec.-Treasurer
James Puntch, Jr., Past President



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EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

Testimony in Support of

SENATE BILL 685

The Kansas County and District Attorneys Association also appears in support of Senate Bill 685, which we also requested.

The provisions of the bill affect the time when title of forfeited property vests in the agency doing the forfeiture. Present law establishes vesting at the time the property is seized. This may be adequate when it concerns the runner, or mule, involved in an organized drug ring, if that person owns the vehicle. However, in most such cases, the vehicle involved is rented, or heavily mortgaged. In the meantime, property obtained as a direct profit of a drug operation, such as houses, boats, securities, race horses, etc. is rarely directly seized by law enforcement officers, because there is no obvious connection to a drug transaction. The connection of such property is only made after an extensive investigation. Too often, the owners of such property get wind of such investigation and either transfer the property or encumber it to the point where it has no value.

The changes made in the time of vesting allows for the agency involved to claim such property, or its proceeds, as the fruit of an illicit drug transaction. The language of the bill is borrowed directly from the federal language found in 21 U.S.C. Section 881, which is also attached. Such consistency of language is recommended by the White House National Drug Control Strategy of January 1990.

Attachment VI

2-22-90

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§ 881. Forfeitures

Subject property

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

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

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

(3) All property which is used, or intended for use, as a container for property described in paragraph (1), (2), or (9).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9), except that—

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

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

(C) no conveyance shall be forfeited under this paragraph to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

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

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

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(8) All controlled substances which have been possessed in violation of this subchapter.

(9) All listed chemicals, all drug manufacturing equipment, all tableting machines, all encapsulating machines, and all gelatin capsules, which have been imported, exported, manufactured, possessed, distributed, or intended to be distributed, imported, or exported, in violation of a felony provision of this subchapter or subchapter II of this chapter.

Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims; issuance of warrant authorizing seizure

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

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

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

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

(4) the Attorney General has probable cause to believe that the property is subject to civil forfeiture under this subchapter.

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

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.

Custody of Attorney General

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

(1) place the property under seal;

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

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

Other laws and proceedings applicable

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

Disposition of forfeited property

(e)(1) Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may—

(A) retain the property for official use or, in the manner provided with respect to transfers under section 1616a of Title 19, transfer the property to any Federal agency or to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property;

(B) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(C) require that the General Services Administration take custody of the property and dispose of it in accordance with law;

(D) forward it to the Drug Enforcement Administration for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General); or

(E) transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

(i) has been agreed to by the Secretary of State;

(ii) is authorized in an international agreement between the United States and the foreign country; and

(iii) is made to a country which, if applicable, has been certified under section 2291(h) of Title 22.

(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall be used to pay—

(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

(ii) awards of up to \$100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of Title 28, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A) except that, with respect to forfeitures conducted by the Postal Service, the Postal Service shall deposit in the Postal Service Fund, under section 2003(b)(7) of Title 39, such moneys and proceeds.

(3) The Attorney General shall assure that any property transferred to a State or local law enforcement agency under paragraph (1)(A)—

(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based; and

(B) is not so transferred to circumvent any requirement of State law that prohibits forfeiture or limits use or disposition of property forfeited to State or local agencies.

Forfeiture and destruction of schedule I or II substances

(f)(1) All controlled substances in schedule I or II that are possessed, transferred, sold, or offered for sale in violation of the provisions of this subchapter shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I or II, which are seized or

come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this subchapter under such circumstances as the Attorney General may deem necessary.

Plants

(g)(1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this subchapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

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

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

Vesting of title in United States

(h) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

Stay of civil forfeiture proceedings

(i) The filing of an indictment or information alleging a violation of this subchapter or subchapter II of this chapter, or a violation of State or local law that could have been charged under this subchapter or subchapter II of this chapter, which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

Venue

(j) In addition to the venue provided for in section 1395 of Title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

Agreement between Attorney General and Postal Service for performance of functions

(1)¹ The functions of the Attorney General under this section shall be carried out by the Postal Service pursuant to such agreement as may be entered into between the Attorney General and the Postal Service.

(Pub. L. 91-513, Title II, § 511, Oct. 27, 1970, 84 Stat. 1276; Pub. L. 95-633, Title III, § 301(a), Nov. 10, 1978, 92 Stat. 3777; Pub. L. 96-132, § 14, Nov. 30, 1979, 93 Stat. 1048; Pub. L. 98-473, Title II, §§ 306, 309, 518, Oct. 12, 1984, 98 Stat. 2050, 2051, 2075; Pub. L. 99-570, Title I, §§ 1006(c), 1865, 1992, Oct. 27, 1986, 100 Stat. 3207-7, 3207-54, 3207-60; Pub. L. 99-646, § 74, Nov. 10, 1986, 100 Stat. 3618; Pub. L. 100-690, Titles V, VI, §§ 5105, 6059, 6074, 6075, 6077(a), (b), 6253, Nov. 18, 1988, 102 Stat. 4301, 4320, 4323-4325, 4363.)

¹ So in original.

EDITORIAL NOTES

References in Text. Subchapter II of this chapter, referred to in text, was in the original "title III", meaning Title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of Title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of Title III, see U.S.C.A. Tables volume.

The criminal laws of the United States, referred to in subsec. (a)(4)(B), are classified generally to Title 18, U.S.C.A., Crimes and Criminal Procedure, set out ante.

The Supplemental Rules for Certain Admiralty and Maritime Claims, referred to in subsec. (b), are set out in Title 28, U.S.C.A., Judiciary and Judicial Procedure, and Federal Rules of Civil Procedure pamphlet.

The Federal Rules of Criminal Procedure, referred to in subsec. (b), are in Title 18, U.S.C.A., set out ante.

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

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

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

Effective Date of 1988 Amendment. Amendment by section 6059 of Pub. L. 100-690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub. L. 100-690, set out as a note under section 802 of this title.

Section 6077(c) of Pub. L. 100-690 provided that: "Section 551(e)(3)(B) [probably means 511(e)(3)(B)] of the Controlled Substances Act, as enacted by subsection (a) [subsec. (e)(3)(B) of this section], shall apply with respect to fiscal years beginning after September 30, 1989."

Regulations for Expedited Administrative Forfeiture Procedures. Section 6079 of Pub. L. 100-690 provided that:

"(a) In General. Not later than 90 days after the date of enactment of this Act [Nov. 18, 1988], the Attorney General and the Secretary of the Treasury shall consult, and after providing a 30-day public comment period, shall prescribe regulations for expedited administrative procedures for seizures under section 511(a)(4), (6), and (7) of the Controlled Substances Act (21 U.S.C. 881(a)(4), (6), and (7)); section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a(a)); and section 2 of the Act of August 9, 1939 (53 Stat. 1291; 49 U.S.C. App. 782) for violations involving the possession of personal use quantities of a controlled substance.

"(b) Specifications. The regulations prescribed pursuant to subsection (a) shall—

"(1) minimize the adverse impact caused by prolonged detention, and

"(2) provide for a final administrative determination of the case within 21 days of seizure, or provide a procedure by which the defendant can obtain release of the property pending a final determination of the case. Such regulations shall provide that the appropriate agency official rendering a final determination shall immediately return the property if the following conditions are established:

"(A) the owner or interested party did not know of or consent to the violation;

"(B) the owner establishes a valid, good faith interest in the seized property as owner or otherwise; and

"(C)(1) the owner establishes that the owner at no time had any knowledge or reason to believe that the property in which the owner claims an interest was being or would be used in a violation of the law; and

"(2) if the owner at any time had, or should have had, knowledge or reason to believe that the property in which the owner claims an interest was being or would be used in a violation of the law, that the owner did what reasonably could be expected to prevent the violation.

An owner shall not have the seized property returned under this subsection if the owner had not acted in a normal and customary manner to ascertain how the property would be used.

"(c) Notice. At the time of seizure or upon issuance of a summons to appear under subsection (d), the officer making the seizure shall furnish to any person in possession of the conveyance a written notice specifying the procedures under this section. At the earliest practicable opportunity after determining ownership of the seized conveyance, the head of the department or agency that seizes the conveyance shall furnish a written notice to the owner and other interested parties (including lienholders) of the legal and factual basis of the seizure.

"(d) Summons in Lieu of Seizure of Commercial Fishing Industry Vessels. Not later than 90 days after the enactment of this Act [Nov. 18, 1988], the Attorney General, the Secretary of the Treasury, and the Secretary of Transportation shall prescribe joint regulations, after a public comment period of at least 30 days, providing for issuance of a summons to appear in lieu of seizure of a commercial fishing industry vessel as defined in section 2101(11a), (11b), and (11c) of title 46, United States Code, for violations involving the possession of personal use

quantities of a controlled substance. These regulations shall apply when the violation is committed on a commercial fishing industry vessel that is proceeding to or from a fishing area or intermediate port of call, or is actively engaged in fishing operations. The authority provided under this section shall not affect existing authority to arrest an individual for drug-related offenses or to release that individual into the custody of the vessel's master. Upon answering a summons to appear, the procedures set forth in subsections (a), (b), and (c) of this section shall apply. The jurisdiction of the district court for any forfeiture incurred shall not be affected by the use of a summons under this section.

"(e) Personal Use Quantities of a Controlled Substance. For the purposes of this section, personal use quantities of a controlled substance shall not include sweepings or other evidence of nonpersonal use amounts."

Code of Federal Regulations

Administrative policies, practices, and procedures, see 21 CFR 1316.01 et seq.

Inspection, search, and seizure, see 19 CFR 162.0 et seq.

individual gang members are difficult to track and the gangs are difficult to infiltrate. Federal drug enforcement officials will also provide training and technical assistance to local police and investigators so that they can bring a higher level of sophistication and expertise to their activities.

Money Laundering. By transferring large sums of drug money through domestic and foreign banks, the leaders of drug trafficking organizations are able to retain the profits of the drug trade without detection. The various enforcement agencies charged with disrupting money laundering schemes can undermine drug trafficking by both attacking its finances and eventually identifying and arresting the key operatives. The Departments of Justice and Treasury and their subordinate agencies conduct investigations in this area to uncover illegal financial transactions related to drugs. A more detailed discussion of money laundering control efforts continues in a subsequent chapter of this report ("International Initiatives").

Asset Seizure and Forfeiture. Seizing the assets of drug criminals broadens our array of civil and criminal sanctions and helps dismantle larger criminal organizations that depend on revenue generated by drug activity. When the Federal and State enforcement agencies treat prosecution and asset forfeiture as an integrated, two-stage endeavor, they successfully deliver critical blows to drug organizations by taking away not only their liberty, but also their property and money. In the coming fiscal year, an additional 11,000 drug-related property seizures are expected. But for the asset forfeiture tool to work more effectively, States are encouraged to model their laws after the Federal statutes. Several States have already done so, and others are strongly encouraged to follow suit.

Last fall, the President proposed legislation to speed the transfer of residual forfeiture funds from the Department of Justice Assets Forfeiture Fund to the ONDCP Special Forfeiture Fund. This legislation would have permitted ONDCP to receive quarterly transfers instead of yearly transfers, thus speeding up the process by which such funds could be re-transferred to drug program agencies. Although Congress has thus far failed to enact this legislation, the Administration will urge Congress to take it up again in the coming months.

Intelligence. Drug enforcement relies on intelligence to learn about the character of criminal organizations, their structures, their activities, their bases of operation, and sometimes the movements of individual members. To respond to the need for a broad range of drug-related intelligence information, a National Drug Intelligence Center will be created to provide strategic, organizational, and financial intelligence to the enforcement community. A description of the Center and its objectives appears in the International Initiatives chapter of this report.

Additional funding for the DEA-managed El Paso Intelligence Center (EPIC) to upgrade and expand its Automated Data Processing and

- (1) (1) In the final order of forfeiture, the court shall find and declare that the plaintiff shall have good and clear title in and to such property, things or other interests, and that the attorney for the plaintiff may warrant said title on behalf of the State of Kansas to any subsequent purchaser or transferee and that said title shall be recognized by all courts of this State, by the State of Kansas and by all departments and agencies of this State and all political subdivisions of this State and shall be valid and entitled to full faith and credit by all other states and by the United States.
- (2) All right title and interest in the property, things or other interests forfeited shall vest in the

plaintiff as of the aforesaid date of the commission of the earliest act giving rise to forfeiture. Any such property, things or other interests transferred after said date shall be ordered forfeited unless the transferee establishes at the trial on the petition by a preponderance of the evidence that they are a bonafide purchaser for full value paid by the claimant of such property or by a predecessor in interest each and all of whom at any time did, in fact, not know and had no reason to be aware that the property, things or other interests could be subject to forfeiture; each and all of whom had, in fact, taken every reasonable precaution to prevent any of the activities and/or uses which gave rise to forfeiture; and each and all of whom were not involved in any activity or use in connection with any of the activities or uses which gave rise to the forfeiture.

(m) On entry of a judgment for a claimant or claimants under this section the property, things or other interests which are the subject thereof shall be restored to the claimant or claimants as directed by the court. If it appears that there was probable cause either for the seizure for forfeiture or for the bringing of the

action for forfeiture, or both, the court shall so find and the claimant shall not be, in any such case, entitled to costs, fees or damages, nor shall the seizing or the prosecuting agency, the political subdivision of which either is a part, the officer or officers who made the seizure, the State of Kansas, or the attorney or attorneys for the plaintiff be liable to suit or judgment on account of any such seizure or forfeiture action and each shall be absolutely immune from any such liability.

(n) (1) If any of the property, things or other interests forfeited under this section, as a result of any act or omission of any person criminally involved in any activity or use giving rise to forfeiture, or of any claimant or of any person in concert with any such person or claimant, which act or omission occurred after the date of the earliest act giving rise to the forfeiture, either

(i) Cannot be located upon the exercise of due diligence;

(ii) Has been transferred or sold to, or deposited with, a third party;

(iii) Has been placed beyond the jurisdiction of the court;

(iv) Has been substantially diminished in value;

or,

(v) Has been commingled with other property

which cannot be divided without difficulty, the court shall order the forfeiture of any other property, things or other interests of the said person and/or claimant, or of those in concert with said person and/or claimant, up to the value of any property, things or other interests described in subparagraphs (i) through (v). Said value shall be measured as of the date of the earliest act giving rise to forfeiture or as of the date of the act or omission giving rise to the liability imposed under this paragraph (1) of this subsection (n) of this section, whichever is greater. Plaintiff shall establish this liability by a preponderance of the evidence presented at a hearing held on a motion therefore, with an opportunity for any person or entity against whom said motion is directed to be heard, cross-examine adverse witnesses and present evidence and witnesses.

(2) In addition to any other remedy provided by law, if any property, things or other interests subject to forfeiture is conveyed, alienated, disposed of or otherwise rendered unavailable for forfeiture by any

act or omission of any person named in any illegal enterprises lien or in any lis pendens notice either of which names the forfeiture action or identifies the property, things or other interests which were ordered forfeited, or both; or is rendered unavailable by any person acting in concert with any person so named, which lien or notice was filed before said act or omission occurred, plaintiff may file a civil action in district court against said person or persons and may recover judgment against said person or persons in an amount equal to the fair market value, as of the date of the earliest act giving rise to forfeiture of, or, at plaintiff's election, at the time of the acts or omissions rendering unavailable for forfeiture, the property, things or other interests rendered unavailable, together with the amount of any gain, income and/or other proceeds therefrom, reasonable investigative expenses and attorney fees.

- (3) This subsection (n) does not limit the right of the State to obtain any order or injunction, receivership, attachment, garnishment or other remedy authorized hereunder or otherwise authorized by law.

(o) Unless otherwise stated, the in rem civil claims established by subsection (a) of this section are in addition to the in personam civil claims established by K.S.A. 65-4173 and to the in personam criminal counts established by K.S.A. 65-4174. All said claims and/or counts are cumulative and are not mutually exclusive even though the same or related events, or the same or related property, things or other interests are alleged in one or more such claims and/or counts.

(p) Neither the State of Kansas, any county or other subdivision thereof, nor any agency on whose behalf forfeiture is sought shall be required to post any bonds or other security in connection with filing, prosecuting or collecting of any claim authorized by this section.