

Approved 6-27-90
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 March 12, 1990 in room 514-S of the Capitol.

All members were present except: Senator Feleciano who was excused.

Committee staff present:

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

Conferees appearing before the committee:

Representative George Gomez
Dr. Eric Voth, St. Francis Hospital, Topeka
James Clark, Kansas County and District Attorneys Association
Kyle Smith, Assistant Attorney General
Edwin Van Petten, Deputy Attorney General
Rick Trapp, Douglas County Assistant District Attorney
Delbert Fowler, Derby Chief of Police
Dr. Gordon Risk, American Civil Liberties Union of Kansas
Clifford Hacker, Lyon County Sheriff
Steve Obermeier, John County Assistant District Attorney

The Chairman opened the meeting by announcing the continued hearing on the drug prevention and enforcement bills and stated individuals wishing to appear may address any or all of the measures.

- 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 686 - concerning criminal prosecution; relating to the statute of limitations.
- 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.
- SB 708 - concerning criminal procedure; relating to preliminary examinations.
- SB 709 - concerning crimes and punishments; relating to conspiracy.
- SB 710 - concerning crimes and punishments; relating to murder in the first degree.
- HB 3039 - concerning controlled substances; relating to the forfeiture of property.

Representative George Gomez presented HB 3039 to the committee. He stated that the two changes address the drug forfeiture clause and service of process. Representative Gomez

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.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 12, 1990.

presented the committee with a copy of testimony presented to the House Judiciary Committee by James Brent, Harvey County Assistant County Attorney, in support of HB 3039. (ATTACHMENT I)

Dr. Eric Voth, Medical Director of the Chemical Dependency Treatment Services at St. Francis Hospital in Topeka, presented testimony in support of SB 707. (ATTACHMENT II)

James Clark, Kansas County and District Attorneys Association, testified in support of SB 683 (ATTACHMENT III) and SB 685 (ATTACHMENT IV).

Kyle Smith, Assistant Attorney General, testified in support of SB 684. (ATTACHMENT V)

James Clark, Kansas County and District Attorneys Association, stood to express support SB 684. He added that the bill meets problems they are concerned with in criminal defense.

Edwin Van Petten, Deputy Attorney General, testified in support of SB 686. (ATTACHMENT VI)

Rick Trapp, Douglas County Assistant District Attorney, testified in support of SB 686 on behalf of Jim Flory, Douglas County District Attorney. He stated that the increase in the statute of limitations is more realistic in this age of sophistication and the complex nature of the cases now investigated.

Mr. Trapp testified in support of SB 704. He stated that the bill eliminates what he felt was a previous oversight. Current law prohibits the ability to enhance sentencing for repeat offenders.

Mr. Trapp testified in support of SB 705 by stating that the bill parallels federal law.

Mr. Trapp further testified in support of SB 706 stating that convictions attempted against procuring agents have problems; convictions of purchasing are not possible. SB 706 gives law enforcement another tool in the fight against drugs.

Mr. Trapp expressed support of SB 707 by restating Dr. Voth's testimony.

Mr. Trapp also testified in support of SB 709 by stating that most defendants are not concerned with an E felony charge. The perpetrator has a presumption of probation as illustrated by a case example he described to the committee. He concluded by stating that the bill gives access to those out-of-state individuals involved with unlawful activity.

Delbert Fowler, Derby Chief of Police, on behalf of the Kansas Peace Officers Association testified in support of all the bills being heard on this date, particularly SB 683 and SB 702. (ATTACHMENT VII)

Dr. Gordon Risk, American Civil Liberties Union of Kansas, testified in opposition of SB 703 and SB 708. He further stated they support delaying action on SB 704, SB 705, SB 709, and SB 710 until the Sentencing and Guidelines Commission and the State Judicial Council complete their study currently in progress. (ATTACHMENT VIII)

Clifford Hacker, Lyon County Sheriff, testified in support of all the bills being heard on behalf of the Kansas Sheriffs Association. (ATTACHMENT IX)

Steve Obermeier, Johnson County Assistant District Attorney, testified in support of SB 704. He cited examples of his agencies experiences with out-of-state felons as illustrations of why this measure is needed.

As the time limit for the Committee's meeting had expired, the Chairman adjourned the meeting with the announcement that the hearing would be reconvened on March 13, 1990 at 10:00 a.m. in Room 514-S.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: March 12, 1990

- 1 -

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Danny Belletto	1825 N. Polk	Page
Travis Johnson	8433 Rochester RD	Page
Sarah Adams	3631 NW Shinn	Page
Woyce Brodshaw	3910 Parlington	student
Bob [unclear]	411 Woodhury Ct S.	AG office
W. Slaton	USD 228	Hanston, KS
Hamerson Slaton	Hanston High School	Hanston, KS
Elaine Frisbie	3101 SW MacVicar	KNI / KU
GORDON RISK	TOPEKA	ALL of KS
Travis Buff	Hanston, KS.	student
Steve Senff	Hanston, KS	U.S.P. #228
Keasa Salmans	Hanston, KS.	USD #228
Bonnie Hubin	Hanston, KS.	USD #228
Dodee Quenbach	Hanston, KS	USD #228
Allon Sebes	Hanston, KS	USD #228
Anthony Schaffer	Hanston, KS.	USD #228
Tanya Hendrickson	Hanston, KS.	USD #228
Jan Allen	" "	" "
Mike Sebes	" "	" "
KATHLEEN McMAHON	Gov. OFFICE	Gov. OFFICE
Galen Davis	Governor's Office	Governor's Office
Paul Shelby	Topeka	OJA
Wale Singer	Topeka	KBI
Leonard Shearer	Topeka	KHP
Lt. BILL JACOBS	TOPEKA	KHP

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TESTIMONY IN SUPPORT OF H.B. 3039
JAMES C. BRENT
ASSISTANT COUNTY ATTORNEY
HARVEY COUNTY, KANSAS

I am here today to voice support for House Bill 3039. Forfeiture statutes such as K.S.A. 65-4171, is a solid foundation of any drug enforcement law. Forfeiture statutes allow County and District Attorney's to supplement the criminal prosecution by penalizing an individual who is in violation of Kansas drug laws by hitting the criminal where it hurts, in the pocket book.

The addition of section(h) , gives the County or District Attorneys another option to use in giving notice to individuals that a forfeiture proceeding has commenced. At times it is necessary to immediately seize and forfeit particular property. The statute, as it exists, requires the prosecution to mail notice of the forfeiture petition to each person having ownership in that property. By allowing for personal service two things occur: 1) personal service can be made allowing the forfeiture hearings to commence immediately; and 2) it would bar the use of improper notice as a defense to the forfeiture proceeding.

When the prosecution determines that forfeiture is not an immediate concern but proceeds under the statute at a later date, often it is difficult to give notice by mail because there may be no current address for the owner. Requiring an owner of the property at the time of arrest to provide a current address avoids the problem.

However, the statute could be further strengthened by the addition of language prohibiting an individual giving an address, which is not current or correct, from using improper service as a defense.

Forfeiture of property used or intended to be used in violation of the drug laws in the State of Kansas is an important and effective deterrent. The addition of personal service language in section (2), and section (h) can only strengthen this law. I would urge you to pass H.B. 3039 on to the House and to support its adoption. Thank you.

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TESTIMONY TO THE
SENATE JUDICIARY COMMITTEE

RE: SENATE BILL 707

ERIC A. VOTH, M.D.

Members of the Senate Judiciary Committee:

I am pleased to find that the Kansas legislature is addressing legal parity of amphetamines, drug precursors, and illegal manufacture of drugs of abuse with drugs such as cocaine.

Locally and nationally amphetamines are one of the major drugs of abuse. They are approaching cocaine in popularity and abuse. In Kansas, amphetamines are abused almost as frequently as cocaine. They may be used orally, intravenously, or inhaled. For the most part, the oral amphetamines find their way to addicts by way of diversion from prescriptions or robberies. On the other hand, amphetamines such as "crank" and "crystal" are manufactured in illicit laboratories. These forms of the drug may be inhaled nasally, smoked, or injected. In Kansas we have quite a few active amphetamine laboratories. Obviously, there is virtually no quality control in these laboratories, so serious physical complications can result not only from the drug itself, but also from the contaminants used in the production of the drug.

Amphetamines are not only addictive, but also cause paranoia, acute psychosis, severe agitation, heart damage, and seizures. Depending upon the concentration of the drug used, overdose is also possible. Typically, the amphetamine addict is quite aggressive when intoxicated. Many addicts report involvement in criminal activity and particularly violent crime. Sometimes cocaine and amphetamines are used together. This heightens the potential complications of abuse. Amphetamines have

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in fact been called the "poor man's cocaine." The effects of amphetamines are very similar to those of cocaine, yet cocaine use is given a stronger penalty by state statute.

The amphetamine molecule is also the base for some of the designer drugs such as MDEA and MDMA. They are referred to as "Ecstasy" on the street. These drugs cause severe bizarre behavior and in fact true brain damage. Tougher constraints placed on clandestine laboratories will help limit the availability of such dangerous drugs.

It is essential to provide strong penalties as one of the tools to combat drug abuse. Legal constraints remain an important part in the battle against both adolescent and adult drug use. Adoption of this statute will help strengthen enforcement and will also send a definite message of intolerance of drug abuse, production, and distribution in Kansas.

Eric A. Voth, M.D.
Medical Director,
Chemical Dependency Treatment Services
St. Francis Hospital
Topeka, Kansas

Medical Advisor,
National Federation of Parents for
Drug-Free Youth

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



James Flory
 Randy Hendershot
 Wade Dixon
 John Gillett

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612
 (913) 357-6351 • FAX # (913) 357-6352
 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.

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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

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

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

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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.

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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.

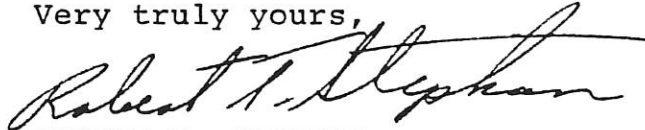
K.S.A. 1988 Supp. 65-4173 authorizes the recovery of "costs incurred." "Costs" is defined as "a pecuniary allowance, made to the successful party . . . for his expenses in prosecuting or defending an action . . . generally, 'costs' do not include attorney fees unless such fees are by a statute denominated 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

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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

(3-12-90)

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Rodney Symmonds, Vice-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.

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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

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE SENATE JUDICIARY COMMITTEE
REGARDING SENATE BILL 684
MARCH 12, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Mr. Chairman and Members of the Committee:

I am here on behalf of Attorney General Stephan to voice support for the amendments proposed in Senate Bill 684 concerning conspiracy and criminal solicitation under the Kansas Criminal Code. Due to language in K.S.A. 38-1601 and court interpretations as in State v. Mohammad, 237 Kan. 850 (1985), there is a terrible gap in law enforcement's ability to apply conspiracy and solicitation law to those operations where juveniles are participating in the criminal operation.

Since criminal acts committed by juveniles are by statute and case law not deemed to be "crimes", without the amendments in Senate Bill 684 it would be impossible to charge with solicitation a drug dealer who solicits twelve year old school children to engage in the drug trade.

One additional amendment that we would recommend the committee consider, is to include, along with a conspiracy and solicitation statute, K.S.A. 21-3205, what is commonly referred to as the aiding and abetting statute in this bill, with similar language amending that statute to deal with this quirk of definitions. This could easily be done by using the

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suggested language found on page 2 of SEnate Bill 684, lines 1 and 2 as paragraph 4 of K.S.A. 21-3205, and by substituting the words "crime and crimes" for the words "felony and felonies".

Thank you for your consideration.

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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

TESTIMONY
EDWIN A. VAN PETTEN, DEPUTY ATTORNEY GENERAL
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE SENATE JUDICIARY COMMITTEE
REGARDING SENATE BILL 686
MARCH 12, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Mr. Chairman and Members of the Committee:

On behalf of the Attorney General, I would urge passage of Senate Bill 686. This bill would extend the statute of limitations for all crimes, except murder, to five years.

Currently, the "standard" is set at two years, but there are numerous exceptions for sex offenses against children, and securities crimes. I note House Bill 2725, which amends the Campaign Finance Act, also suggests a five year statute of limitations.

Complex financial investigations resulting from high level drug cases often exceed the current two year statute of limitations. This amendment could help in these cases against the highest levels of dealers and allow the charging of additional offenses which may be uncovered in the investigative process. Also, advancements in technology such as AFIS and DNA profiling enable us to develop scientific evidence proving criminal conduct for a much longer period of time.

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Besides standardizing and simplifying Kansas law, this would also bring Kansas in line with the federal government which has a standard five year statute of limitations.

While most of our neighboring states have varying limitations, Kansas, with two years is the shortest on major felonies. Quite simply, two years is too short a time, on a growing number of complex investigations.

We appreciate your favorable considerations of Senate Bill 686.

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SENATE JUDICIARY COMMITTEE

HEARING ON SENATE BILLS 683, 684, 685, 686, 702, 703, 704, 705,
706, 707, 708, 709, and 710

March 12, 1990

Testimony of Delbert E. Fowler, Chief of Police, Derby, Kansas

I am Delbert Fowler, Chief of Police of Derby. I am here as an additional member and representative of the Kansas Peace Officers Association. We are in favor of all of the Senate Bills listed above. I will not take the time to expound on all of these bills but would like to highlight a couple of them.

Senate Bill No. 683 is an important bill to us because it allows the County and District Attorneys to get a piece of the pie so to speak. We feel they would be more apt to help us with forfeitures if this bill were enacted. It could allow them more time to spend on forfeitures if they could offset personnel costs.

Senate Bill No. 702 has several aspects of the bill that are of great benefit to the State as well as law enforcement. The first of which is the raising of fines for felony convictions. Of great importance is the establishment of the Kansas Bureau of Investigations and Kansas Highway Patrol special asset forfeiture funds. These funds could help these agencies in the war on drugs by having more funds and equipment at their disposal.

I would like to take this opportunity to thank the Judiciary Committee for allowing me the opportunity to address these bills today.

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S.B.'s #703, 708, 704, 705,
709, and 710

I am Gordon Risk, president of the American Civil Liberties Union of Kansas, here to speak in opposition to S.B.'s #703 and 708.

S.B. #703 would prevent individuals charged with drug related offenses, including simple possession, from participating in diversion programs at the discretion of the county or district attorney. District attorneys will no longer be allowed to decide whether diversion of a defendant may be in the interest of justice and be of benefit to the defendant and the community. People will be indiscriminately saddled with criminal records and thereby hindered from functioning fully in society to their and society's detriment. Drug abuse, like alcohol abuse, is considered by physicians to be an illness, and programs exist for its treatment. Diversion agreements have historically made use of these treatment programs to good effect. I would encourage the legislature not to abandon this approach. As a physician I would hope that you would not criminalize what might be a medical illness.

S.B. #708 would broaden the basis upon which hearsay evidence could be admitted into the probable cause hearing. The fatal flaw is that the hearsay evidence that has provided the basis for the probable cause finding could not subsequently be used at trial, with the result that a greater percentage of individuals who go to trial will ultimately be acquitted. The expense will not be inconsiderable, and individuals will be improperly and unjustly imprisoned and subjected to trial, a greivous violation of their rights.

With regard to S.B.'s #704, 705, 709, and 710, my understanding is that the Sentencing and Guidelines Commission and the State Judicial Council are in the midst of a comprehensive review of the Kansas Criminal Code and will have recommendations in 1991. I would think that you might want to wait until their findings and recommendations are in hand.

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TO: Seante Judiciary Committee
FROM: Clifford F. Hacker, Sheriff of Lyon County
DATE: March 12, 1990

In the interest of time, I will generally address several bills at one time.

I wish to advise the committee I support all of the following Senate Bills: SB683, SB684, SB685, SB686, SB702, SB703, SB704, SB705, SB706, SB707, SB708, SB709 and SB710. The majority of these bills deal with drug law violations which will help deliver the message, "Kansas will not tolerate illegal drugs." If we are to make any gains against illegal drugs, I firmly believe it is a message we must make loud and clear.

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