

Approved: WJW 9/8
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Senator Wint Winter Jr. at 10:05 a.m. on March 31, 1992 in room 514-S of the Capitol.

All members were present.

Committee staff present:
Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
James Clark, Kansas County and District Attorneys Association
Rich Hayse, The Palmer Companies
Ron Smith, Kansas Bar Association

The Chairman called the meeting to order by bringing the Committee's attention to SB 447.
SB 447 - enacting the Kansas criminally influenced and corrupt organizations act.

James Clark, Kansas County and District Attorneys Association, acted as spokesman for a group of interested parties to present suggested amendments to SB 447. (ATTACHMENT 1) He stated that there was a need for this new criminal statute, but they were willing to delay the forfeiture question until another year. He further stated that the parties were not in full agreement on the issue of prior convictions. The Kansas Bar Association prefers convictions while the other law enforcement entities were concerned that the time involved in gaining convictions would allow the 'organization' to move on without the impediments.

Rich Hayse, The Palmer Companies, stated that their concerns were diminished by the balloon offered. They remained concerned about the possible problem of overzealous prosecutors.

Ron Smith, Kansas Bar Association, rose to express their agreement with the balloon offered with the reservations previously stated by Mr. Clark.

Senator Feleciano moved to amend SB 447 by adopting the balloon as offered by Mr. Clark with two exceptions: to strike from subsection (b) on page 3, line 31, to section 20, leaving in severability, and to amend the effective date to publication in the Kansas Register. Senator Oleen seconded the motion. The motion carried.

Senator Feleciano moved to recommend SB 447 favorable as amended. Senator Rock seconded the motion. The motion carried.

SB 665 - creating the crime of stalking.

Senator Moran brought the Committee's attention to SB 665 by reviewing the discussion of the Subcommittee on Criminal Procedures. He reviewed the Douglas County example where the person charged served seven years for a misdemeanor conviction and, while serving that sentence, the correctional facilities were required to secure every telephone to keep him from continuing the behavior that convicted him. He suggested amending the definition of section 1(a) by replacing "or" with "and", and to strike line 27, credible treatment with intent of great bodily harm.

Senator Moran moved to amend SB 665 as explained. Senator Petty seconded the motion. The motion to amend carried.

Senator Parrish moved to amend SB 665 in section (a) line 16, to a Class B misdemeanor. Senator Moran seconded the motion. The motion to amend carried.

Senator Moran moved to recommend SB 665 favorable as amended. Senator Feleciano seconded the motion. The motion appeared to carry; a division was called for. With eight having voted in favor, the motion carried.

SCR 1634 - providing certain constitutional rights for victims of crimes.

Balloon amendments to SCR 1634 were submitted to the Committee by Nancy Lindberg, Kansas Attorney General's office. (ATTACHMENT 2)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:05 a.m. on March 31, 1992.

Mike Heim presented a memorandum and balloon on SCR 1634. (ATTACHMENT 3)

Senator Bond moved to adopt the amendments to SCR 1634 as offered by Ms. Lindberg. Senator Parrish seconded the motion. The motion to amend carried.

Senator Bond moved to amend SCR 1634 by adding in subsection (c), line 34, "a sentence". Senator Rock seconded the motion. The motion to amend carried.

It was noted that the provisions of SCR 1634 exist under current law, but the resolution clarifies that the legislature has the power to authorize damages other than mandatory.

Senator Rock moved to conceptually amend SCR 1634 to clarify that the legislature can fashion other remedies and to clarify the explanatory statement language. (see balloon of Attachment 3, Section 1(b).) Senator Bond seconded the motion. The motion to amend carried.

Senator Martin moved to recommend SCR 1634 favorable as amended. Senator Petty seconded the motion.

Senator Bond made a substitute motion to amend SCR 1634 by adding protection for acquittals in section 1(c), and that SCR 1634 be recommended favorable as amended. Senator Petty seconded the motion. The motion carried.

The meeting was adjourned at 11:03 a.m.

SENATE BILL No. 447

By Committee on Judiciary

4-10

8 AN ACT enacting the Kansas criminally influenced and corrupt or-
9 ganizations act.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. ~~This act shall be known and may be cited as the~~
13 ~~Kansas criminally influenced and corrupt organizations act.~~

→ Add →

This act shall be known and may be cited as the organized
criminal activity act.

14 Sec. 2. The purpose of this act is to curtail criminal activity and
15 lessen criminal activities' economic and political power in the state
16 by establishing crimes and penalties and providing to law enforce-
17 ment and the victims of criminal activity new civil sanctions and
18 remedies.

Add the word "social".

19 ~~Sec. 3. the provisions of this act shall be liberally construed to~~
20 ~~achieve its remedial purpose.~~

Add new Section 3

21 Sec. ^{AS} As used in this act:

This act shall be part of and supplemental to the Kansas
criminal code.

22 (a) ~~"Alien corporation" means a corporation organized under laws~~
23 ~~other than the laws of the United States, or the laws of any state~~
24 ~~of the United States.~~

Add new Section 4

Nothing in this act is intended to create a civil cause of
action or liability.

25 (a) (b) "attorney general" includes the attorney general, any duly
26 authorized assistant attorney general or any assistant to the attorney
27 general that the attorney general may require to assist with the
28 concurrence of the requirements of this act;

29 (b) (c) "beneficial interest includes:

30 (1) The interest of a person as a beneficiary under a trust, in
31 which the trustee of the trust holds legal or recorded title to personal
32 or real property;

33 (2) the interest of a person as a beneficiary under any other trust
34 arrangement under which any other person holds legal or recorded
35 title to personal or real property for the benefit of such person; or

36 (3) the interest of a person under any other form of express
37 fiduciary arrangement under which any other person holds legal or
38 recorded title to personal or real property for the benefit of such
39 person;

40 (c) (d) ~~"civil proceedings" means any civil proceedings begun under~~
41 ~~this act.~~

→ add new subsection (c)

42 (d) (e) "criminal activity" means engaging in, attempting to engage
43 in, conspiring to engage in or soliciting, coercing or intimidating

"Conduct" means performing any activity, or pursuing any
purpose, of any enterprise and includes any such activity or pursuit
by any person or entity in any manner associated with, or employed
by, such enterprise at the highest as well as at the lowest levels
thereof.

Senate Judiciary Committee
March 31, 1992
Attachment 1

any of the crimes

1 another person to engage in a violation of ~~this act~~

2 (e) ~~(f)~~ "criminal activity lien" means the notice as required by this

3 act;

4 (f) ~~(g)~~ "criminal proceeding" means any criminal proceeding begun

5 under this act;

6 (g) ~~(h)~~ "documentary material" means any books, documents, rec-

7 ords, writings, recordings or tangible things;

8 (h) ~~(i)~~ "enterprise" includes any individual, sole proprietorship part-

9 nership, corporation, trust or other legal entity, or any union, as-

10 sociation or group of persons, associated in fact although not a legal

11 entity, and includes illicit as well as licit enterprises and govern-

12 mental as well as other entities;

13 (j) "innocent party" includes bona fide purchasers and victims;

14 (k) "pattern of criminal activity" means two or more occasions of

15 conduct, that:

16 (1) Constitute criminal activity; *conviction?*

17 (2) are related to the affairs of the enterprise; *Smith*

18 (3) are not isolated; and

19 (4) are not so closely related to each other and connected in

20 point of time and place that they constitute a single event; and

21 where at least one of the occasions of conduct occurred after the

22 effective date of this act; and the last of the occasions of conduct

23 occurred within the statutory limits for criminal activity within the

24 state, excluding any period of imprisonment served by any person

25 engaging in the conduct, after a prior occasion of conduct;

26 (l) "pecuniary value" means:

27 (1) Anything of value in the form of money, a negotiable instru-

28 ment or a commercial interest, or anything else, the primary sig-

29 nificance of which is economic advantage; or

30 (2) any other property or service that has a value in excess of

31 \$100;

32 (m) "person" means any individual or entity holding or capable

33 of holding a legal or beneficial interest in property;

34 (n) "personal property" includes any personal property, or any

35 interest in such personal property, or any right, including bank

36 account, debts, corporate stocks, patents or copyrights. Personal

37 property and beneficial interest in personal property shall be deemed

38 to be located where the trustee is, the personal property is, or the

39 instrument evidencing the right is;

40 (o) "principal" means a person who engages in conduct consti-

41 tuting a violation or who is legally accountable for the conduct of

42 another constituting a violation; and

43 ~~(p)~~ "real property" means any real property or any interest in

~~(r)~~

setforth in Chapters 21 and 65 of the Kansas Statutes or

any felony offense that by such offense's terms involves de-
ception or fraud or which one of such offense's statutory elements
is an attempt to defraud.

Nothing in this Act is intended to create jurisdiction
for acts that are not violations of the criminal laws
of the State of Kansas.

→ add new subsection (i)

"Entity" means any individual, partnership, corporation, en-
terprise, association in fact, group or other organization, including
legal as well as illegal, governmental as well as nongovernmental,
and economic as well as noneconomic.

→ add - in no event shall any criminal prosecution
be brought later than ten years after the
occurrence of the predicate crime.

(q) "prosecuting attorney" means the
Attorney General, any Assistant Attorneys
General, any County or District Attorney,
and Deputy or Assistant County or
District Attorney.

"proceeds" means any advantage, property, or other
thing of value, of any kind and in any form, constituting the fruits
of, derived from, or traceable to, directly or indirectly, any violation
of ~~subsection (a) or (b) of section 2, or both~~, or to any commission
of any of the crimes listed in subsection (d) of section 5.

→ add new (p) Fees or other remuneration received by
suppliers in the ordinary course of legal
business activity are not considered
proceeds for the purposes of this Act.

→ add new (q)

add | Sec. 6 (a) It is unlawful for any person to knowingly ~~participate~~

1 real property, including any lease of, or mortgage upon, real prop-
2 erty. Real property and beneficial interest in real property shall be
3 deemed to be located where the real property is located.

4 ~~Sec. 6 (a) It is unlawful for any person employed by, or asso-~~
5 ~~ciated with, any enterprise to conduct or participate, directly or~~
6 ~~indirectly, in the enterprise's affairs through a pattern of criminal~~
7 ~~activity.~~

8 ~~(b) It is unlawful for any person, through a pattern of criminal~~
9 ~~activity, to acquire or maintain, directly or indirectly any interest~~
10 ~~in, or control of, any enterprise or real property.~~

11 ~~(c) It is unlawful for any person who has received any proceeds~~
12 ~~derived, directly or indirectly from a pattern of criminal activity in~~
13 ~~which such person participated as principal, to use or invest, directly~~
14 ~~or indirectly, any part of the proceeds, or any proceeds derived from~~
15 ~~the investment or use of any of these proceeds, in the acquisition,~~
16 ~~of any title to, or any right, interest or equity in, real property, or~~
17 ~~in the establishment or operation of any enterprise.~~

18 ~~(d) It is unlawful for any person to conspire or attempt to violate,~~
19 ~~either directly or through others the provisions of this act.~~

20 (b) (c) It is not unlawful for any person to purchase securities on
21 the open market with intent to make an investment, and without
22 the intent of controlling or participating in the control of the issuer,
23 or of assisting another to do so, if the securities of the issuer held
24 by the purchaser, the members of such purchaser's immediate family,
25 and such purchaser's or their accomplices in any pattern of criminal
26 activity do not amount in the aggregate to 1% of the outstanding
27 securities of any one class and do not confer, either in law or in
28 fact, the power to elect one or more directors of the issuer.

29 Sec. 8.7 (a) Any person convicted of conduct constituting a vio-
30 lation of any provisions of this act shall be guilty of a class C felony.

31 (b) In lieu of the fine authorized by this act any person convicted
32 of conduct constituting a violation of this act, through which such
33 person derived pecuniary value, or by which such person caused
34 personal injury, not including pain and suffering, or property damage
35 or other loss, may be sentenced to pay a fine that does not exceed
36 three times the gross value gained or three times the gross loss
37 caused, whichever is greater, plus court costs and the costs of in-
38 vestigation and prosecution reasonably incurred, less the value of
39 any property ordered forfeited under the provisions of this act. The
40 court having jurisdiction over the provisions of this act shall hold a
41 hearing to determine the fine to be assessed.

42 (c) Any person convicted of conduct constituting a violation of
43 any of the provisions of this act, shall be required to forfeit, according

(1) Establish, participate in or conduct any of the affairs of or pursue any purposes of any enterprise, or acquire or participate in any of the profits of any enterprise, through such person's commission of or aiding and abetting of one or more others to engage in a pattern of criminal activity;

(2) Acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property through a pattern of criminal activity;

(3) Use or invest, directly or indirectly, any part of the proceeds derived, directly or indirectly from a pattern of criminal activity in which such person participated as principal, or any proceeds derived from the investment or use of any of those proceeds, in the acquisition of any title to, or any right, interest or equity in, real property or in the establishment or operation of any enterprise;

(4) Conspire or attempt to violate, either directly or through others, the provisions of this act.

(2) To provide goods or services in connection with any activity found to be ~~to be~~ unlawful, if such the person or persons providing the goods or services does not knowingly participate in the unlawful enterprise or criminal activity. Providers of goods or services who do not knowingly participate in an unlawful enterprise or criminal activity shall not be subject to the criminal forfeiture provisions contained herein.

except that, if the most serious crime committed is a class C felony or higher, then each violation of ~~section (a) (b)~~ shall be one class higher than such most serious crime and if the most serious such crime is a class A felony, then each such violation shall also be a class A felony.

1 to the procedures established herein, to the law enforcement agency^{ies}
 2 involved in the investigation of the violation, any real or personal
 3 property used in the course of, intended for use in the course of,
 4 derived from, or realized through conduct in violation of this act,
 5 including any property constituting an interest in or means of control
 6 or influence over the enterprise involved in the conduct in violation
 7 of this act or any property constituting proceeds derived from the
 8 conduct in violation of this act, including:

9 (1) Any position, office, appointment, tenure, commission or em-
 10 ployment contract of any kind that such person acquired or main-
 11 tained in violation of this act, or through which such person
 12 conducted or participated in the conduct of the affairs of an enterprise
 13 in violation of this act, or that afforded such person a source of
 14 influence or control over the affairs of an enterprise that such person
 15 exercised in violation of this act;

16 (2) any compensation, right or benefit derived from a position,
 17 office, appointment, tenure, commission or employment contract de-
 18 scribed in this act that accrued to such person during the occurrence
 19 of conduct in violation of this act;

20 (3) any interest in, security of, claim against or property or con-
 21 tractual right affording such person a source of influence or control
 22 over the affairs of an enterprise that such person exercised in violation
 23 of this act; or

24 (4) any amount payable or paid under any contract for goods or
 25 services that was awarded or performed in violation of this act.

26 (d) A judgment of criminal forfeiture may not be entered unless
 27 the indictment^{complaint} or the information alleges the extent of property
 28 subject to forfeiture. If the indictment^{complaint} or the information alleges
 29 that property is subject to criminal forfeiture a special verdict shall
 30 be returned as to the extent of the property, if any, subject to the
 31 forfeiture. When a verdict contains a finding of property subject to
 32 a criminal forfeiture, a judgment of criminal forfeiture shall be
 33 entered.

34 ~~(e) If any property included in a special verdict of criminal for-~~
 35 ~~feiture: (1) Cannot be located; (2) has been sold to a bona fide~~
 36 ~~purchaser for value; (3) has been placed beyond the jurisdiction of~~
 37 ~~the court; (4) has been substantially diminished in value by the~~
 38 ~~conduct of the defendant; (5) has been commingled with other prop-~~
 39 ~~erty that cannot be divided without difficulty or undue injury to~~
 40 ~~innocent persons; or (6) is otherwise unreachable without undue~~
 41 ~~injury to innocent person; the court may order forfeiture of any other~~
 42 ~~property of the defendant up to the value of the property that is~~
 43 ~~unreachable.~~

1 (e) Upon the filing of an indictment, ^{complaint or information} the court, after a hearing
 2 with respect to which any person who will be affected has been
 3 given reasonable notice and opportunity to participate, but at which
 4 the usual rules of evidence shall not apply, may, based on the
 5 indictment ^{complaint or information}

- 6 (1) Enter a restraining order or injunction;
- 7 (2) require the execution of a satisfactory performance bond; or
- 8 (3) take any other action, including the appointment of a receiver,
- 9 that the investigating law enforcement agency shows by a prepon-
- 10 derance of the evidence is necessary to preserve the reachability of
- 11 property subject to criminal forfeiture.

12 (f) If no indictment ^{complaint or information} has been filed, the ~~investigating law en-~~ ^{prosecuting attorney}
 13 ~~forcement agency~~, in addition to the showing made in the hearing

- 14 otherwise specified by this act, shall similarly show that:
- 15 (1) There is probable cause to believe that the property with
- 16 respect to which the order is sought would, in the event of a con-
- 17 viction, be subject to criminal forfeiture under this act; and
- 18 (2) the requested order would not result in substantial and ir-
- 19 reparable harm or injury to the party against whom the order is to
- 20 be entered that outweighs the need to preserve the reachability of
- 21 the property.

22 No order so entered shall be effective for more than 90 days,
 23 unless it is similarly extended by the court for good cause shown
 24 or unless an indictment ^{complaint or information} is returned alleging that the property is
 25 subject to forfeiture.

26 (g) Upon application by the ^{prosecuting attorney} ~~investigating law enforcement~~
 27 ~~agency~~, a temporary restraining order to preserve the reachability
 28 of property subject to criminal forfeiture under this act may be
 29 granted without notice to any party, if:

- 30 (1) An indictment ^{complaint or information} alleging that property is subject to criminal
- 31 forfeiture has been filed or if the court determines that there is
- 32 probable cause to believe that property with respect to which the
- 33 order is sought would, in the event of a conviction, be subject to
- 34 criminal forfeiture under this act;
- 35 (2) the property is in the possession or control of the party against
- 36 whom the order is to be entered; and
- 37 (3) the court determines that the nature of the property is such
- 38 that it can be concealed, disposed of or placed beyond the jurisdiction
- 39 of the court before any party may be heard in opposition.

40 A temporary restraining order granted without notice to any party
 41 under this act shall expire within such time, not to exceed 10 days,
 42 as the court fixes, unless extended for good cause shown, or unless
 43 the party against whom it is entered consents to an extension for a

1 longer period. If a temporary restraining order is granted under this
2 act without notice to any party, a hearing concerning the entry of
3 an order under this act shall be held at the earliest practicable time
4 and prior to the expiration of the temporary order.

5 (h) Following the entry of a judgment that includes a fine or an
6 order of criminal forfeiture under this act, or both, the court may
7 enter a restraining order or injunction, require the execution of a
8 satisfactory performance bond, or take any other action, including
9 the appointment of a receiver, that the court deems proper to protect
10 the interests of the parties or an innocent party.

11 (i) An order of criminal forfeiture entered under this act shall
12 authorize the investigating law enforcement agency to seize the prop-
13 erty declared forfeited under this act upon such terms and conditions,
14 relating to the time and manner of seizure, as the court shall deem
15 proper. The investigating law enforcement agency shall direct the
16 disposition of the property in accordance with the provisions of this
17 act.

18 (j) Fines collected under this act shall be applied to the costs
19 and expenses of investigation and prosecution, including costs of
20 resources and personnel incurred in investigation and prosecution.

21 (k) Criminal penalties and fines under this act are supplemental
22 and not mutually exclusive, except where designated, and shall not
23 preclude the application of any other criminal or civil remedy under
24 this act or any other provision of law. Ad J

25 (m) In any settlement discussions or prior to the imposition of
26 any sentence under this act the court, in addition to any other
27 appropriate matter, shall vigorously advocate full and complete res-
28 titution to any aggrieved person, and the court, prior to the ac-
29 ceptance of a plea or after a verdict, but prior to the imposition of
30 any sentence under this act shall not consider any matter in miti-
31 gation until full and complete restitution has been duly affected or
32 a satisfactory explanation of why it is impractical has been made to
33 the court.

34 ~~Sec. 7. (a) The investigating law enforcement agency may in-
35 stitute civil proceedings against any enterprise other than an individual
36 in the appropriate jurisdiction seeking relief from conduct consti-
37 tuting a violation or to prevent or restrain a violation of this act. If
38 the plaintiff in such a proceeding proves the alleged violation by a
39 preponderance of the evidence, the court, after making due provision
40 for the rights of innocent persons, may grant relief by entering any
41 appropriate order or judgment, including:~~

42 ~~(1) Ordering any defendant to divest oneself of any interest in
43 any enterprise, or in any real property;~~

(1)

Any defendant may be convicted of a violation of subsection (a) (1), (a) (2), ^{(a) (3) and (a) (4)} ~~subsec-
tion (c), (d), and (e)~~, one or more predicate crimes, or any grouping of the above, and may be sentenced for all consecutively, concurrently, or as otherwise provided by law.

1-6/21

1 ~~(2) imposing reasonable restrictions upon the future activities or~~
2 ~~investments of any defendant, including prohibiting any defendant~~
3 ~~from engaging in the same type of endeavor as the enterprise in~~
4 ~~which the defendant was engaged in violation of this act;~~

5 ~~(3) ordering the suspension or revocation of a license, permit or~~
6 ~~prior approval granted to any enterprise by any agency of the state;~~

7 ~~(4) ordering the dissolution or reorganization of any enterprise;~~
8 ~~or~~

9 ~~(5) ordering the surrender of the charter of a corporation orga-~~
10 ~~nized under the laws of this state or the revocation of a certificate~~
11 ~~authorizing a foreign corporation to conduct business within the state,~~
12 ~~upon finding that the board of directors or a managerial agent acting~~
13 ~~on behalf of the corporation in conducting the affairs of the corpo-~~
14 ~~ration, has authorized or engaged in conduct made unlawful by this~~
15 ~~act, and that, for the prevention of future criminal conduct, the~~
16 ~~public interest requires the charter of the corporation dissolved or~~
17 ~~the certificate revoked.~~

18 ~~In a proceeding initiated under this subsection, injunctive relief~~
19 ~~shall be granted in conformity with the principles that govern the~~
20 ~~granting of relief from injury or threatened injury in other cases,~~
21 ~~but no showing of special or irreparable injury shall have to be~~
22 ~~made. Pending final determination of a proceeding initiated under~~
23 ~~this subsection, a temporary restraining order or a preliminary in-~~
24 ~~junction may be issued upon a showing of immediate danger of~~
25 ~~significant injury, including the possibility that any judgment for~~
26 ~~money damages might be difficult to execute. If the court issues an~~
27 ~~injunction, or grants other relief under this subsection, or the plaintiff~~
28 ~~otherwise substantially prevails, the plaintiff shall also recover rea-~~
29 ~~sonable attorney fees in the trial and appellate courts and costs of~~
30 ~~investigation and litigation reasonably incurred.~~

31 ~~(b) Notwithstanding any other provision of law, any pleading,~~
32 ~~motion or other paper filed in connection with a proceeding or action~~
33 ~~under subsection (a) shall be verified. Where such pleading, motion~~
34 ~~or other paper includes an allegation of fraud, coercion or accomplice~~
35 ~~or conspiratorial accountability, it shall state, insofar as practicable,~~
36 ~~the circumstances with particularity. The verification by an aggrieved~~
37 ~~party and the signature of an attorney required by this subsection~~
38 ~~shall constitute a certification by such party and attorney that such~~
39 ~~party and attorney have carefully read the pleading, motion or other~~
40 ~~paper and based on a reasonable inquiry, believes that:~~

41 ~~(1) It is well grounded in fact;~~

42 ~~(2) it is warranted by existing law, or a good faith argument for~~
43 ~~the extension, modification or reversal of existing law; and~~

1 ~~(3) it is not made for any improper purpose, including to harass,~~
2 ~~to cause unnecessary delay, to impose a needless increase in the~~
3 ~~cost of litigation, or to force an unjust settlement through the serious~~
4 ~~character of the allegation.~~

5 ~~If a pleading, motion or other paper is verified or signed in vi-~~
6 ~~olation of the certification provisions of this subsection the court,~~
7 ~~upon motion or upon its own initiative, after hearing and appropriate~~
8 ~~findings of fact, shall impose upon the person who verified such~~
9 ~~pleading, motion or other paper or the attorney who signed such~~
10 ~~pleading, motion or other paper, or both, a fit and proper sanction,~~
11 ~~which may include an order to pay to the other party or parties the~~
12 ~~amount of the reasonable expenses incurred because of the pleading,~~
13 ~~motion or other paper, including reasonable attorney fees. If the~~
14 ~~court determines that the filing of the pleading, motion or the paper~~
15 ~~was frivolous, the court shall award treble actual expenses, including~~
16 ~~attorney fees.~~

17 ~~(e) The law enforcement authority may institute proceedings~~
18 ~~against any enterprise other than an individual to recover a civil~~
19 ~~penalty to be imposed in the discretion of the court for conduct~~
20 ~~constituting a violation of any provision of section 5. The civil penalty~~
21 ~~shall not exceed \$100,000 less the value of any property criminally~~
22 ~~forfeited or any fine imposed under section 7. Penalties collected~~
23 ~~under this subsection shall be applied to the costs and expenses of~~
24 ~~investigation and prosecution, including costs of resources and per-~~
25 ~~sonnel incurred in investigation and prosecution, and the balance,~~
26 ~~if any, to the racketeering investigation and prosecution fund estab-~~
27 ~~lished under section 9.~~

28 ~~(d) Upon the filing of a civil proceeding or action under sub-~~
29 ~~section (a), a law enforcement authority shall immediately notify the~~
30 ~~attorney general of the filing. The attorney general, upon timely~~
31 ~~application, may intervene in any civil proceeding or action brought~~
32 ~~under subsection (a) if the attorney general certified that, in the~~
33 ~~opinion of the attorney general, the proceeding or action is of general~~
34 ~~public importance.~~

35 ~~(e) Notwithstanding any other provision of law providing a shorter~~
36 ~~statute of limitations, a civil proceeding or action under this section~~
37 ~~may be commenced within five years after the conduct made unlawful~~
38 ~~under section 5 or when the cause of action otherwise accrues or~~
39 ~~within any longer statutory period that shall be applicable. If a~~
40 ~~criminal proceeding or civil action or other proceeding is brought~~
41 ~~or intervened in by the attorney general to punish, prevent or re-~~
42 ~~strain any activity made unlawful under section 5, the running of~~
43 ~~the period of limitations prescribed by this subsection with respect~~

1 ~~to any other cause of action of an investigating law enforcement~~
2 ~~agency under subsection (a), based in whole or part upon any matter~~
3 ~~complained of in any such prosecution, action or proceeding, shall~~
4 ~~be suspended during the pendency of such prosecution, action or~~
5 ~~proceeding and for two years following its termination.~~

6 ~~Sec 7. (f)~~ Notwithstanding any other provision of this section, any person
7 who has perfected a security interest in personal or real property
8 or a beneficial interest in personal or real property for the payment
9 of an enforceable debt or other similar obligation prior to the filing
10 of a criminal activity lien notice ~~or a lis pendens~~ in reference to
11 such property or interest may foreclose such interest as otherwise
12 provided by law. The foreclosure of such interest shall, insofar as it
13 is practicable, be made in such a fashion that such foreclosure will
14 not otherwise interfere with a forfeiture under this act.

15 ~~(g) Personal service of any process in a proceeding or action under~~
16 ~~this section may be made upon any person outside this state if the~~
17 ~~person was a principal in any conduct constituting a violation of this~~
18 ~~act in this state. The person shall be deemed to have thereby sub-~~
19 ~~mitted to the jurisdiction of the courts of this state for the purposes~~
20 ~~of this section.~~

21 ~~(h) The application of any civil remedy under this section shall~~
22 ~~not preclude the application of any other civil or criminal remedy~~
23 ~~under this act or any other provision of law. Civil remedies under~~
24 ~~this section are supplemental and not mutually exclusive.~~

25 Sec. 8. (a) The investigating law enforcement authority shall dis-
26 pose of all property ordered forfeited in any criminal proceeding
27 under this act as soon as feasible, making due provisions for the
28 rights of innocent persons by:

- 29 (1) Public sale;
30 (2) transfer to a state governmental agency for official use;
31 (3) sale or transfer to an innocent person; or
32 (4) destruction, if the property is not needed for evidence in any
33 pending criminal or civil proceeding.

34 (b) Any interest in personal or real property not exercisable by,
35 or transferable for value by the law enforcement agency shall expire
36 and shall not revert to the defendant. No defendant or any person
37 acting in concert with such defendant or on such defendant's behalf
38 shall be eligible to purchase forfeited property from the law en-
39 forcement agency.

40 (c) With respect to property ordered forfeited, fine imposed or
41 civil penalty imposed in any criminal ~~or civil~~ proceeding under this
42 act, the court may, upon petition of law enforcement authority or
43 any other person authorize:

- 1 (1) The compromise of claims;
- 2 (2) the awarding of compensation to persons providing informa-
- 3 tion resulting in a forfeiture under this act;
- 4 (3) the granting of petitions for mitigation or remission of for-
- 5 feiture or fines, restore forfeited property or imposed fines to victims
- 6 ~~of a violation of section 5, or~~
- 7 (4) the taking of any other action to protect the rights of innocent
- 8 persons that is in the interest of justice and that is consistent with
- 9 the purposes of this act.

10 (d) The proceeds of any sale or other disposition of forfeited
 11 property imposed under this act, whether by final judgment, set-
 12 tlement or otherwise, shall be applied as follows:

- 13 (1) To the fees and costs of the forfeiture and sale, including
- 14 expenses of seizure, maintenance and custody of the property pend-
- 15 ing the property's disposition, advertising and court costs;
- 16 (2) to all costs and expenses of investigation and prosecution,
- 17 including costs of resources and personnel incurred in investigation
- 18 and prosecution; and
- 19 (3) the balance to the credit of the law enforcement authority in
- 20 such proportions as are represented by the costs and expenses of
- 21 investigation and prosecution in the criminal activity investigation
- 22 and prosecution fund established by section 9.

23 Sec. 9. (a) The proceeds of all forfeitures ordered or fines ~~or~~
 24 ~~civil penalties~~ imposed under this act shall be remitted to the state
 25 treasurer for deposit in the state treasury and credit to the criminal
 26 activity investigation and prosecution fund of the law enforcement
 27 agency conducting the investigation or making application pursuant
 28 to this act.

29 (b) There is hereby established in the state treasury the criminal
 30 activity investigation and prosecution fund. Moneys in the criminal
 31 activity investigation and prosecution fund shall be used for the costs
 32 and expenses of investigation and prosecution, ~~whether criminally~~
 33 ~~or civilly~~, of conduct made unlawful by this act, including costs of
 34 resources and personnel.

35 Sec. 10. (a) Upon the institution of any criminal ~~or civil pro-~~
 36 ~~ceeding or action~~ under this act, the ~~law enforcement authority~~ ^{Prosecuting Attorney} then
 37 or at any time during the pendency of the proceeding may file in
 38 the official records of any one or more counties a criminal activity
 39 lien notice. No filing fee or other charge shall be required as a
 40 condition for filing the criminal activity lien notice, and the clerk of
 41 the court, upon the presentation of a criminal activity lien notice,
 42 shall immediately record such lien in the official records.

43 (b) The criminal activity lien notice shall be signed by the law

1-10/21

prosecuting attorney

1 ~~enforcement authority.~~ The notice shall be in such form as the
2 attorney general prescribes and shall set forth the following
3 information:

4 (1) The name of the person against whom the criminal *prosecution*
5 ~~proceeding or action~~ has been brought. In its discretion, the ~~law~~
6 ~~enforcement authority~~ *prosecuting attorney* may name in the criminal activity lien notice
7 any other aliases, names or fictitious names under which the person
8 may be known. In its discretion, the ~~law enforcement authority~~ *prosecuting attorney* may
9 name in the criminal activity lien notice any corporation, partnership
10 or other entity that is either controlled by or entirely owned by the
11 person;

12 (2) if known to the ~~law enforcement authority~~ *prosecuting attorney*, the current res-
13 idence and business addresses of the person named in the criminal
14 activity lien notice and of the other names set forth in the criminal
15 activity lien notice;

16 (3) a reference to the criminal ~~or civil proceeding or action~~ stating
17 that a proceeding under this act has been brought against the person
18 named in the criminal activity lien notice, the name of the court
19 where the proceeding or action has been brought and, if known to
20 the ~~law enforcement authority~~ *prosecuting attorney* at the time of filing the criminal
21 activity lien notice, the case number of the proceeding or action;

22 (4) a statement that the notice is being filed pursuant to this act;
23 and

24 (5) the name and address of the ~~law enforcement authority~~ *prosecuting attorney* filing
25 the criminal activity lien notice and the name of the individual
26 signing the criminal activity lien notice.

27 A criminal activity lien notice shall apply only to one person and,
28 to the extent applicable, any aliases, fictitious names or other names,
29 including names of corporations, partnerships or other entities, to
30 the extent permitted in this section. A separate criminal activity lien
31 notice shall be filed for any other person against whom the ~~law~~
32 ~~enforcement authority~~ *prosecuting attorney* desires to file a criminal activity lien notice
33 under this section.

34 (c) The ~~law enforcement authority~~ *prosecuting attorney*, as soon as practicable after
35 the filing of each criminal activity lien notice, shall furnish to the
36 person named in the notice by certified mail, return receipt re-
37 quested, to the last known business or residential address, either a
38 copy of the recorded notice or a copy of the notice with a notation
39 on it of the court in which the notice has been recorded. The failure
40 of the ~~law enforcement authority~~ *prosecuting attorney* to furnish a copy of the notice
41 under this section shall not invalidate or otherwise affect the notice.

42 (d) The filing of a criminal activity lien notice creates, from the
43 time of the filing, a lien in favor of the lienholder on the following

1 property of the person named in the notice and against any other
2 names set forth in the notice:

3 (1) Any personal or real property situated in the county where
4 the notice is filed then or thereafter owned by the person or under
5 any of the names; and

6 (2) any beneficial interest in it located in the county where the
7 notice is filed then or thereafter owned by the person or under any
8 of the names.

9 The lien shall commence and attach as of the time of filing of the
10 criminal activity lien notice and shall continue thereafter until ex-
11 piration, termination or release. The lien created in favor of the
12 lienholder shall be superior and prior to the interest of any other
13 person in the person or real property or beneficial interest in it, if
14 the interest is acquired subsequent to the filing of the notice.

15 (e) In conjunction with any civil proceeding or action:

16 ~~(1) The law enforcement authority may file without prior court~~
17 ~~order in any county lis pendens under the provisions of state law~~
18 ~~and, in such case, any person acquiring an interest in the real~~
19 ~~property or beneficial interest in such real property, if the real~~
20 ~~property or a beneficial interest in such real property is acquired,~~
21 ~~subject to the filing of the lis pendens, shall take the interest~~
22 ~~subject to the civil proceeding or action and any subsequent judg-~~
23 ~~ment of forfeiture, and~~

24 ~~(2) if a criminal activity lien notice has been filed, the law en-~~
25 ~~forcement authority may name as defendants, in addition to the~~
26 ~~person named in the notice, any person acquiring an interest in the~~
27 ~~personal or real property or beneficial interest in such personal or~~
28 ~~real property subsequent to the filing of the notice. If a judgment~~
29 ~~of forfeiture is entered in the proceeding or action in favor of the~~
30 ~~plaintiff, the interest of any person in the property that was acquired~~
31 ~~subsequent to the filing of the notice and judgment of forfeiture~~
32 ~~shall be subject to the notice and judgment of forfeiture.~~

33 (f) Upon the entry of a final judgment of forfeiture in favor of
34 the plaintiff, the title to the forfeited property shall:

35 (1) In the case of real property, or a beneficial interest in such
36 real property, relate back to the date of filing of the criminal activity
37 lien notice in the official records of the county where the real prop-
38 erty or a beneficial interest in such real property is located; and if
39 no criminal activity lien notice is filed, then to the date of the filing
40 of any notice of lis pendens under subsection (e) in the official records
41 of the county where the real property or a beneficial interest in such
42 real property is located; and, if no criminal activity lien notice or
43 notice of lis pendens is filed, then to the date of recording of the

of an indictment or complaint seeking criminal forfeiture.

1-12/21

1 final judgment of forfeiture in the official records of the county where
 2 the real property or a beneficial interest in such real property is
 3 located; and

4 (2) in the case of personal property or a beneficial interest in
 5 such personal property, relate back to the date the personal property
 6 or the beneficial interest in it was seized by the law enforcement
 7 agency, or the date of filing of a criminal activity lien notice in the
 8 official records of the county where the personal property or a ben-
 9 efiticial interest in such personal property is located, but if the prop-
 10 erty was not seized or no criminal activity lien notice was filed, then
 11 to the date of the recording of the final judgment of forfeiture in
 12 the official records of the court where the personal property or a
 13 beneficial interest in such personal property is located.

14 ~~(g) If personal or real property or a beneficial interest in such~~
 15 ~~personal or real property subject to forfeiture is conveyed, alienated,~~
 16 ~~disposed of or otherwise rendered unavailable for forfeiture after the~~
 17 ~~filing of a criminal activity lien notice, or after the filing of a civil~~
 18 ~~proceeding or action or criminal proceeding, whichever is earlier,~~
 19 ~~the claimant may institute an action in any court against the person~~
 20 ~~named in the criminal activity lien notice or the defendant in the~~
 21 ~~civil proceeding or criminal proceeding, and the court shall enter~~
 22 ~~final judgment against the person named in the criminal activity lien~~
 23 ~~notice or the defendant in the civil proceeding or action or criminal~~
 24 ~~proceeding in an amount equal to the fair market value of the prop-~~
 25 ~~erty or any beneficial interest in such personal or real property~~
 26 ~~together with investigative costs and attorney fees incurred by the~~
 27 ~~plaintiff in the action. If a civil proceeding or action is pending, such~~
 28 ~~action shall be filed only in the court where such civil proceeding~~
 29 ~~or action is pending.~~

30 (s) ~~(h)~~ If personal or real property or a beneficial interest in such
 31 personal or real property subject to forfeiture is conveyed, alienated
 32 or otherwise disposed of after the filing of a criminal activity lien
 33 notice or after the filing of a civil proceeding or action or criminal
 34 proceeding, whichever is earlier, the court may treat such convey-
 35 ance, alienation or disposition as a fraudulent and preferential
 36 conveyance.

37 (h) ~~(i)~~ A trustee, who acquires actual knowledge that a criminal ac-
 38 tivity lien notice or a ~~civil proceeding or action~~ or criminal proceeding
 39 has been filed against any person for whom the trustee holds legal
 40 or recorded title to personal or real property, shall immediately
 41 furnish to the law enforcement authority the following:

- 2 (1) The name and address of the person, as known to the trustee;
- 3 (2) the names and addresses, as known to the trustee, of all other

1 persons for whose benefit the trustee holds title to the personal or
2 real property; and

3 (3) if requested by the ^{prosecuting attorney} law enforcement authority, a copy of the
4 trust agreement or other instrument under which the trustee holds
5 legal or record title to the personal or real property. ~~Any trustee~~
6 ~~who fails to comply with the provisions of this section is guilty of a~~
7 ~~violation of this act.~~

8 ~~(j) Any trustee who transfers or conveys title to personal or real~~
9 ~~property for which a criminal activity lien notice has been filed at~~
10 ~~the time of transfer or conveyance in the county where the personal~~
11 ~~or real property is located naming a person who holds a beneficial~~
12 ~~interest in personal or real property, if the trustee has actual notice~~
13 ~~of the criminal activity lien notice, shall be liable to the law en-~~
14 ~~forcement authority for the greater of:~~

15 ~~(1) The amount of proceeds received directly by the person~~
16 ~~named in the criminal activity lien notice as a result of the transfer~~
17 ~~or conveyance;~~

18 ~~(2) the amount of proceeds received by the trustee as a result~~
19 ~~of the transfer or conveyance and distributed to the person named~~
20 ~~in the criminal activity lien notice; or~~

21 ~~(3) the fair market value of the interest of the person named in~~
22 ~~the criminal activity lien notice in the personal or real property or~~
23 ~~conveyance; but if the trustee transfers or conveys the personal or~~
24 ~~real property for at least its fair market value and holds the proceeds~~
25 ~~that would otherwise be paid or distributed to the beneficiary or at~~
26 ~~the direction of the beneficiary or such beneficiary's designee, the~~
27 ~~trustee's liability shall not exceed the amount of the proceeds held~~
28 ~~for so long as the proceeds are held by the trustee.~~

29 ~~(i) The filing of a criminal activity lien notice shall not constitute~~
30 ~~a lien on the recorded title to personal or real property as owned~~
31 ~~by the trustee except to the extent the trustee is named in the~~
32 ~~criminal activity lien notice. The law enforcement agency may bring~~
33 ~~a civil proceeding in any court against the trustee to recover from~~
34 ~~the trustee the amounts set forth in subsection (g), and the law~~
35 ~~enforcement authority shall also be entitled to recover investigative~~
36 ~~costs and attorney fees incurred by the law enforcement authority.~~

37 ~~(j) The filing of a criminal activity lien notice shall not affect the~~
38 ~~use to which personal or real property or a beneficial interest in it~~
39 ~~owned by the person named in the criminal activity lien may be~~
40 ~~put or the right of the person to receive any ~~avails~~, rents or other~~
41 ~~proceeds resulting from the use and ownership, but not the sale, of~~
42 ~~the property, until a judgment of forfeiture is entered.~~

43 ~~(k) (1) The provisions of this section shall not apply to any trans-~~

1 fer or conveyance by a trustee under a court order, unless the court
2 order is entered in an action between the trustee and the beneficiary.

3 (2) Unless the trustee has actual knowledge that a person owning
4 a beneficial interest in the trust is named in a criminal activity lien
5 notice or is otherwise a defendant in a civil proceeding or action,
6 this section shall not apply to:

7 (A) Any conveyance by a trustee required under the terms of
8 any trust agreement, where trust agreement is a matter of public
9 record prior to the filing of any criminal activity lien notice; or

10 (B) any transfer or conveyance by a trustee to all of the persons
11 who own a beneficial interest in the trust.

12 (i) ~~(m)~~ The term of a criminal activity lien notice shall be for a period
13 of six years from the date of filing unless a renewal criminal activity
14 lien notice has been filed by the law enforcement authority and, in
15 such case, the term of the renewal lien notice shall be for a period
16 of six years from the date of this filing. The law enforcement authority
17 shall be entitled to only one renewal of the criminal activity lien
18 notice.

19 ~~(m)(e)~~ ^{prosecuting attorney} The ~~law enforcement authority~~ filing the criminal activity lien
20 notice may release in whole or in part any criminal activity lien
21 notice or may release any personal or real property or beneficial
22 interest in such personal or real property from the criminal activity
23 lien notice upon such terms and conditions as such authority may
24 determine. Any release of a criminal activity lien notice executed
25 by the law enforcement authority may be filed in the official records
26 of any court. No charge or fee shall be imposed for the filing of any
27 release of a criminal activity lien notice.

28 ~~(n)(p)~~ ~~If no civil proceeding or action has been instituted by the~~
29 ~~law enforcement authority seeking a forfeiture of any property owned~~
30 ~~by a person named in the criminal activity lien notice, the acquittal~~
31 ~~in the criminal proceeding of the person named in the criminal~~
32 ~~activity lien notice or the dismissal of the criminal proceeding shall~~
33 ~~terminate the criminal activity lien notice and, in such case, the~~
34 ~~filing of the criminal activity lien notice shall have no effect. If a~~
35 ~~civil proceeding has been instituted, in the event the criminal pro-~~
36 ~~ceeding has been dismissed or the person named in the criminal~~
37 ~~activity lien notice has been acquitted in the criminal proceeding,~~
38 ~~the criminal activity lien notice shall continue for the duration of~~
39 ~~the civil proceeding.~~

40 (o) ~~(q)~~ If no criminal or ~~civil proceeding~~ or action under this act is
41 then pending against the person named in a criminal activity lien
notice, any person named in a criminal activity lien notice may
institute an action against the ~~law enforcement authority~~ filing the

^{prosecuting attorney}

1 notice, in the jurisdiction where the notice has been filed, seeking
2 a release or extinguishment of the notice and, in such case:

3 (1) The court, upon the motion of the person, shall immediately
4 enter an order setting a date for hearing, which date shall be not
5 less than five nor more than 10 days after the suit has been filed,
6 and the order along with a copy of the complaint shall be served
7 on the law enforcement authority within three days after the insti-
8 tution of the suit. At the hearing, the court shall take evidence on
9 the issue of whether any personal or real property or beneficial
10 interest in it owned by such person is covered by the criminal activity
11 lien notice or otherwise is subject to forfeiture under this act and,
12 if such person shows by the preponderance of the evidence that the
13 criminal activity lien notice is not applicable to such person or that
14 any personal or real property or beneficial interest in such personal
15 or real property owned by such person is not subject to forfeiture
16 under this act, the court shall enter a judgment extinguishing the
17 criminal activity lien notice or releasing the personal or real property
18 or beneficial interest in such personal or real property from the
19 criminal activity lien notice;

20 (2) the court shall immediately enter its order releasing from the
21 criminal activity lien notice any specific personal or real property or
22 beneficial interest in such personal or real property, if a sale of the
23 personal or real property or beneficial interest in such personal or
24 real property is pending and the filing of the notice prevents the
25 sale of the property or interest, but the proceeds resulting from the
26 sale of the personal or real property or beneficial interest in such
27 personal or real property shall be deposited into the registry of the
28 court, subject to the further order of the court; and

29 (3) at the hearing set forth in subsection (1), the court may
30 release from the criminal activity lien notice any personal or real
31 property or beneficial interest in such personal or real property upon
32 the posting by such person of such security as is equal to the value
33 of the personal or real property or beneficial interest in such personal
34 or real property owned by such person.

35 ~~(r) In the event a civil proceeding is pending against a person~~
36 ~~named in a criminal activity lien notice, the court upon motion by~~
37 ~~the person may grant the relief set forth in this section.~~

38 ~~Sec 11 (a) Each alien corporation desiring to acquire of record~~
39 ~~any personal or real property in this state shall have, prior to ac-~~
40 ~~quisition, and shall maintain continuously in this state during any~~
41 ~~year thereafter in which the personal or real property is owned by~~
42 ~~the alien corporation;~~

43 ~~(1) A registered office, and~~

1 ~~(2) a registered agent, which agent may be either: (A) An indi-~~
 2 ~~vidual resident in the state whose business office is identical with~~
 3 ~~the registered office; or (B) another corporation authorized to transact~~
 4 ~~business in this state having a business office identical with the~~
 5 ~~registered office.~~

6 ~~(b) Each registered agent appointed under this section, on whom~~
 7 ~~process may be served, shall file a statement in writing with the~~
 8 ~~official accepting the appointment as registered agent simultaneously~~
 9 ~~with being designated.~~

10 ~~(c) Each alien corporation shall file with the official no earlier~~
 11 ~~than January 1 and no later than July 1 of each year, a sworn report~~
 12 ~~on such forms as the official shall prescribe setting forth:~~

13 ~~(1) The name of the alien corporation;~~

14 ~~(2) the street address of the principal office of the alien~~
 15 ~~corporation;~~

16 ~~(3) the names and street addresses of each officer and each di-~~
 17 ~~rector of the alien corporation;~~

18 ~~(4) the names and street addresses of the registered agent and~~
 19 ~~registered office of the alien corporation;~~

20 ~~(5) the signature of the corporate president, vice president, sec-~~
 21 ~~retary, assistant secretary or treasurer attesting to the accuracy of~~
 22 ~~the report as of the day immediately preceding filing of the report.~~

23 ~~(d) The official shall collect a filing fee of \$15 for each such report~~
 24 ~~filed and a fee of \$20 plus the past year's fee for a late filing.~~

25 ~~(e) The official shall record the status of any alien corporation~~
 26 ~~that fails to comply with the requirements of this section.~~

27 ~~(f) Each alien corporation that fails to file a report as required~~
 28 ~~by this section or fails to maintain a registered office and a registered~~
 29 ~~agent as required by this section shall not be entitled to own, pur-~~
 30 ~~chase or sell any personal or real property in this state and shall~~
 31 ~~not be entitled to sue or defend in the courts of this state until such~~
 32 ~~requirements have been complied with.~~

33 ~~(g) The filing of a report by a corporation as required by this~~
 34 ~~section shall be solely for the purposes of this act and shall not be~~
 35 ~~used as a determination of whether the corporation is actually doing~~
 36 ~~business in this state.~~

37 ~~Sec. 12.11 (a) Whenever any person has engaged in, is engaging~~
 38 ~~in or is about to engage in any conduct constituting a violation of~~
 39 ~~any of the provisions of section 5, the attorney general may conduct~~
 40 ~~an investigation of the conduct. The attorney general is authorized~~
 41 ~~before the commencement of any civil or criminal proceeding or~~
 42 ~~action under this act to subpoena witnesses, compel their attendance,~~
 43 ~~examine them under oath or require the production of any books,~~

1 documents, records, writings, recordings or tangible things.
2 (b) Service of subpoena of the attorney general under this section
3 may be made by:
4 (1) Delivery of a duly executed copy of the subpoena to the
5 person served, or if a person is not a natural person, to the principal
6 place of business of the person to be served; or
7 (2) mailing by certified mail, return receipt requested, a duly
8 executed copy of the subpoena addressed to the person to be served
9 at such person's principal place of business in this state or, if the
10 person has no place of business in this state of such person's principal
11 place of business.
12 (c) any subpoena issued by the attorney general under this section
13 shall contain the following information:
14 (1) The nature of the conduct constituting the alleged violation
15 that is under investigation and the provision of law applicable to
16 such violation;
17 (2) the date, not less than 10 days from the date of service of
18 the subpoena, and place where the person is required to appear or
19 produce documentary material in such person's possession, custody
20 or control; and
21 (3) a description by class of any documentary material required
22 to be produced that indicates the material demanded.
23 (d) When documentary material is demanded by subpoena, the
24 subpoena shall not:
25 (1) Contain any requirement that would be unreasonable or im-
26 proper if contained in a subpoena duces tecum issued by a court of
27 this state; or
28 (2) require the disclosure of any documentary material that would
29 be privileged, or that for any other reason would not be required
30 by a subpoena duces tecum issued by a court of this state.
31 (e) The production of documentary material in response to a
32 subpoena served under this section shall be made under a sworn
33 certificate, in such form as the subpoena designates, by a sworn
34 certificate, if a natural person, to whom the demand is directed or,
35 if not a natural person, by a person having knowledge of the facts
36 and circumstances relating to the production, to the effect that all
37 of the documentary material required by the demand and in the
38 possession, custody or control of the person to whom the demand
39 is directed has been produced and made available to the custodian.
40 (f) The attorney general may require the production under this
41 section of documentary material prior to the taking of any testimony
42 of the person subpoenaed. The required documentary material shall
43 be made available for inspection or copying during normal business

1-18/21

1 hours at the principal place of business of the person served, or at
2 such other time and place as may be agreed upon by the person
3 served and the attorney general.

4 (g) The examination of all witnesses under this section shall be
5 conducted by the attorney general before an officer authorized to
6 administer oaths in this state. The testimony shall be taken steno-
7 graphically or by a sound recording device and shall be transcribed.
8 The attorney general shall exclude from the place where the ex-
9 amination is held all persons except the person being examined, such
10 person's counsel, the officer before whom the testimony is to be
11 taken, and any stenographer taking such testimony. Any person com-
12 pelled to appear under a demand for oral testimony under this act
13 may be accompanied, represented and advised by counsel. The ex-
14 amination shall be conducted in a manner consistent with the rules
15 of this state dealing with the taking of depositions.

16 (h) While in the possession of the attorney general and under
17 such reasonable terms and conditions as the attorney general shall
18 prescribe:

19 (1) Documentary material shall be available for examination by
20 the person who produced the material or by any duly authorized
21 representative of the person; and

22 (2) transcripts of oral testimony shall be available for examination
23 by the person who produced such testimony, or such person's
24 counsel.

25 Except as otherwise provided in this section, no documentary
26 material, transcripts, oral testimony or copies of the foregoing, in
27 the possession of the attorney general shall be available for exami-
28 nation by any individual other than another law enforcement official
29 without the consent of the person who produced the material or
30 transcript.

31 (i) No person served with a subpoena by the attorney general
32 under this section shall be paid the same fees and mileage as paid
33 witnesses in the court of this state.

34 (j) No person shall, with intent to avoid, evade, prevent or ob-
35 struct compliance in whole or in part by any person with any duly
36 served subpoena of the attorney general under this section, know-
37 ingly remove from any place, conceal, withhold, destroy, mutilate,
38 alter or by any other means falsify any documentary material that
39 is the subject of the subpoena. The attorney general shall investigate
40 suspected violations of this section and shall commence and try all
41 prosecutions under this section.

(k) In the event a witness served with a subpoena by the attorney
general under this section fails or refuses to appear or to produce

1 documentary material as provided by the subpoena, or to give tes-
2 timony relevant or material to the investigation, the attorney general
3 may petition the court, of the county where the witness resides, for
4 an order requiring the witness to attend and to testify or to produce
5 the documentary material. Any failure or refusal by the witness to
6 obey an order of the court may be punishable by the court as
7 contempt.

8 Sec. 13.12 (a) If a person is or may be called to produce evidence
9 at a hearing or trial under this act or at an investigation brought by
10 the attorney general under section 12 the court for the judicial district
11 in which the hearing, trial or investigation is or may be held, upon
12 certification in writing of a request of the law enforcement authority
13 for the judicial district, or any person in a hearing or trial, shall
14 issue an order, ex parte or after a hearing, requiring the person to
15 produce evidence, notwithstanding such person's refusal to do so on
16 the basis of privilege against self-incrimination.

17 (b) The ~~law enforcement authority~~ ^{Prosecution Authority} may certify in writing a re-
18 quest for an ex parte order under this section if in ~~such authority's~~ ^{his or her}
19 judgment:

20 (1) The production of the evidence may be necessary to the public
21 interest; and

22 (2) the person has refused or is likely to refuse to produce evi-
23 dence on the basis of such person's privilege against self-
24 incrimination.

25 ~~(c) Any person in a hearing or trial may certify in writing a~~
26 ~~request for an order under this section to be issued after an immunity~~
27 ~~hearing and the due service of the certification. A copy of such~~
28 ~~person's certification shall be served on the clerk of the court in~~
29 ~~which the hearing or trial is or may be held 90 days before the~~
30 ~~immunity hearing. The court shall grant the requested order of~~
31 ~~immunity where:~~

32 ~~(1) The production of the information is necessary to a fair de-~~
33 ~~termination of the matter pending at the hearing or trial;~~

34 ~~(2) the person has refused or is likely to refuse to produce the~~
35 ~~information on the basis of such person's privilege against self-in-~~
36 ~~crimination; and~~

37 ~~(3) no objection to the order is made by the law enforcement~~
38 ~~authority.~~

39 (c) ~~(d)~~ If a person refuses, on the basis of such person's privilege
40 against self-incrimination, to produce evidence in any proceeding
41 described in this section, and the presiding officer informs the person
42 of an order issued under this section, the person may not refuse to
43 comply with the order on the basis of such person's privilege against

1 self-incrimination. If the person refuses to comply with the order,
2 such person may be punished by the court issuing an order for
3 contempt.

4 (e) The production of evidence compelled by order issued under
5 this section, and any information directly or indirectly derived from
6 such evidence, may not be used against the person in a subsequent
7 criminal case, except in a prosecution for perjury, false swearing, or
8 an offense otherwise involving a failure to comply with the order.

9 ~~Sec. 14. The attorney general may bring a civil proceeding or
10 action on behalf of this state in federal court for civil relief under
11 any comparable provision of federal law. No civil proceeding or action
12 brought by the attorney general under this section shall impair the
13 authority of any county, municipality, township or political subdi-
14 vision to bring a proceeding or action on its own behalf or impair
15 its authority to engage its own counsel in connection with the pro-
16 ceeding or action.~~

17 ~~Sec. 15. When the language of this act is the same or similar
18 to the language of title IX of public law 91-452 (18 U.S.C. § 1961
19 et seq.), the courts of this state in construing this act shall follow
20 the construction given to federal law by the United States supreme
21 court or the United States court of appeals of the tenth circuit.~~

22 Sec. 16. If any provision of this act or the application of it to
23 any person or circumstance is held to be invalid or unconstitutional,
24 it shall be conclusively presumed that the legislature would have
25 enacted the remainder of this act without such invalid or unconsti-
26 tutional provision.

27 Sec. 16. This act shall take effect and be in force from and after
28 its publication in the statute book.

→ New Section 13 The criminal forfeiture provisions contained in this Act are intended to be new and additional law enforcement remedies. Nothing in this Act is intended to reduce or restrict the civil forfeiture procedures set forth in Chapter 65 of the Kansas Statutes or any other forfeiture procedures, whether enacted by the State of Kansas or the Federal Government.

Senate Concurrent Resolution No. 1634

By Committee on Judiciary

2-6

This balloon version would be acceptable by the Attorney General and his Victims Rights Task Force.

8 A PROPOSITION to amend article 15 of the constitution of the state
9 of Kansas by adding a new section thereto, prescribing certain
10 rights for victims of crime.

11
12 *Be it resolved by the Legislature of the State of Kansas, two-thirds*
13 *of the members elected (or appointed) and qualified to the Senate*
14 *and two-thirds of the members elected (or appointed) and qualified*
15 *to the House of Representatives concurring therein:*

16 Section 1. The following proposition to amend the constitution
17 of the state of Kansas shall be submitted to the qualified electors of
18 the state for their approval or rejection: Article 15 of the constitution
19 of the state of Kansas is amended by adding a new section thereto
20 to read as follows:

21 "§ 15. Victims' rights. (a) Victims of crime shall be entitled to _____ as defined by law
22 certain basic rights, including the right to be informed of, to be _____ and
23 present at, ~~and to be heard at all critical stages of the criminal~~ _____ and
24 justice process, to the extent that these rights do not interfere _____ public hearings, as defined by law,
25 with the constitutional rights of the accused. _____ and to be heard at sentencing or at any
26 other time deemed appropriate by
27 the court,

28 "(b) Nothing in this section shall be construed as creating a
29 cause of action for money damages against the state, a county, a
30 municipality, or any of the agencies, instrumentalities, or em-
31 ployees thereof, ~~provided that the legislature may, by statutory~~
32 ~~enactment, reverse, modify or supersede any judicial decision or~~
33 ~~rule arising from any cause of action brought pursuant to this~~
34 ~~section.~~

35 "(c) Nothing in this section shall be construed to authorize a
36 court to set aside or to void a finding of guilt, or an acceptance
37 of a plea of guilty in any criminal case."

38 Sec. 2. The following statement shall be printed on the ballot
39 with the amendment as a whole:

40 "*Explanatory statement:* This amendment would prescribe that
41 victims of crime would be guaranteed certain basic rights during
42 the criminal justice process as long as they do not interfere with
43 the constitutional rights of the accused. Such rights include the
right to be informed, be present and be heard at all stages of
the criminal justice process. This amendment does not provide

Senate Judiciary Committee
March 31, 1992
Attachment 2

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N – Statehouse

Phone 296-3181

March 3, 1992

TO: Senator Wint Winter, Jr.

Office No. 120-S

RE: Suggested Amendments to S.C.R. 1634

The attached marked up copy of S.C.R. 1634 represents possible amendments which the Committee may wish to make to address the concerns which you asked be looked at. The suggested changes are a result of a meeting between Julene Miller, Deputy Attorney General, Juliene Maska, Attorney General's office, Jim Clark, Kansas County and District Attorneys Association, and myself. This group was requested to look at the following concerns:

1. definition of victim;
2. limitation to person and/or violent crimes only;
3. clarification that "critical stages" are public court proceedings;
4. requirement of court review or approval for victim input;
5. elimination of questionable language regarding the ability of the legislation to overrule Supreme Court's interpretation of this constitutional amendment; and
6. any other necessary changes.

The amendments discussed below are offered to address the above concerns. These changes are not necessarily endorsed by the Attorney General's Office or the Kansas County and District Attorneys Association. The following is a brief discussion of the possible changes.

1. **Definition of Victim.** The suggestion is to provide for this definition by law (see line 21, S.C.R. 1634) rather than define the term in the *Constitution* or leave the term to be defined by the court. The latter two items, however, are options also. See K.S.A. 74-7301(m) for the current statutory definition of victim.

Senate Judiciary Committee
March 31, 1992
Attachment 3 1/5

2. **Requirement of Court Approval of Victim Input.** The suggestion is to add the words "when relevant" to line 23, S.C.R. 1634 to insure that a court may control victim input.
3. **Clarify Critical Stages.** Three options are presented: (a) leave S.C.R. 1634 as is; (b) limit victim input to sentencing only; or (c) provide victim input at all public hearings as defined by law. See K.S.A. 74-7335(b)(1) for the definition of public hearing.
4. **Eliminate Questionable Language.** See lines 29 to 32, S.C.R. 1634 which are deleted.
5. **Other Changes.** Concern was expressed by Mr. Clark that lines 26 to 29 of S.C.R. 1634 imply a victim would have other rights to bring suit such as a mandamus or injunction against a judge or prosecutor. One possible way to address this concern is to add language that permits the Legislature to provide for other remedies to insure adequate enforcement of the section.

I hope this is useful.



Mike Heim
Principal Analyst

92-1104/mh

Enclosed

Senate Concurrent Resolution No. 1634

By Committee on Judiciary

2-6

A PROPOSITION to amend article 15 of the constitution of the state of Kansas by adding a new section thereto, prescribing certain rights for victims of crime.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Article 15 of the constitution of the state of Kansas is amended by adding a new section thereto to read as follows:

“§ 15. Victims’ rights. (a) Victims of crime shall be entitled to certain basic rights, including the right to be informed of, to be present at, and to be heard at ~~all critical stages~~ of the criminal justice process, to the extent that these rights do not interfere with the constitutional rights of the accused.

as defined by law

when relevant

(1) all critical stages;

(2) at sentencing;

(3) at sentencing or at any other time deemed appropriate by the court; or

(4) all public hearings as defined by law

“(b) Nothing in this section shall be construed as creating a cause of action for money damages against the state, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof, ~~provided that the legislature may, by statutory enactment, reverse, modify or supersede any judicial decision or rule arising from any cause of action brought pursuant to this section.~~

“(c) Nothing in this section shall be construed to authorize a court to set aside or to void a finding of guilt, or an acceptance of a plea of guilty in any criminal case.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

“*Explanatory statement:* This amendment would prescribe that victims of crime would be guaranteed certain basic rights during the criminal justice process as long as they do not interfere with the constitutional rights of the accused. Such rights include the right to be informed, be present and be heard at all stages of the criminal justice process. This amendment does not provide

The legislature may provide for other remedies to insure adequate enforcement of this section.

(j) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage.

(k) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income, but for the benefit of self or family, if such person had not been injured.

(l) "Work loss" means loss of income from work the injured person would have performed if such person had not been injured, and expenses reasonably incurred by such person in obtaining services in lieu of those the person would have performed for income, reduced by any income from substitute work actually performed by such person or by income such person would have earned in available appropriate substitute work that the person was capable of performing but unreasonably failed to undertake.

(m) "Victim" means a person who suffers personal injury or death as a result of: (1) Criminally injurious conduct; (2) the good faith effort of any person to prevent criminally injurious conduct; or (3) the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

History: L. 1978, ch. 130, § 1; L. 1986, ch. 306, § 1; L. 1989, ch. 239, § 9; July 1.

Research and Practice Aids:

Criminal Law — 1220.
C.J.S. Criminal Law §§ 1759 to 1786.

Attorney General's Opinions:

State's subrogation rights; criminal restitution. 90-65.

74-7302. Compensation for crime victims economic loss, when. Within the limits of appropriations therefor, the board shall award compensation for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

History: L. 1978, ch. 130, § 2; L. 1985, ch. 263, § 1; L. 1989, ch. 239, § 10; July 1.

Attorney General's Opinions:

Crime victims reparations board; reparations and funding limitations. 88-10.

74-7303. Crime victims compensation board; appointment; terms; chairperson; compensation and expenses. (a) There is hereby established in the executive department under the jurisdiction of the attorney general a crime victims compensation board, consisting of three members appointed by the attorney general, subject to confirmation by the senate as pro-

vided in K.S.A. 75-4315b and amendments thereto. Members of the crime victims reparations board who hold such position on the effective date of this act shall serve until the expiration of such member's term of office. At least one member of the board shall be a person regularly admitted to practice law in this state. Each member of the board shall be appointed for a term of four years and until a successor is appointed and qualified. Upon the expiration of any term of office of any member, the attorney general shall appoint a qualified successor. In case of a vacancy on the board prior to the expiration of a term, the attorney general shall appoint a successor of like qualifications to fill the unexpired term.

(b) The attorney general shall designate a member of the board who is regularly admitted to practice law in this state to serve as chairperson at the pleasure of the attorney general. Members of the board shall receive compensation, subsistence allowances, mileage and expenses as provided by K.S.A. 75-3223 and amendments thereto.

History: L. 1978, ch. 130, § 3; L. 1982, ch. 347, § 47; L. 1989, ch. 239, § 11; July 1.

74-7304. Same; powers and duties. In addition to the powers and duties specified elsewhere in this act, the board shall have the following powers and duties:

(a) The duty to establish and maintain a principal office and other necessary offices within this state, to appoint employees and agents as necessary and to prescribe their duties and compensation, all within the limitations and conditions of appropriations made therefor;

(b) the duty to adopt by rule and regulation a description of the organization of the board, stating the general method and course of operation of the board;

(c) the duty to adopt rules and regulations to carry out the provisions of this act, and the property crime restitution and compensation act[,] including rules for the allowance of attorney fees for representation of claimants; and to adopt rules and regulations providing for discovery proceedings, including medical examination, consistent with the provisions of this act relating thereto. Rules and regulations adopted by the board shall be statements of general applicability which implement, interpret or prescribe policy, or describe the procedure or practice requirements of the board;

he purposes for which moneys in the crime victims assistance fund may be expended. Upon receipt of any such moneys, the attorney general shall remit the entire amount at least monthly to the state treasurer, who shall deposit it in the state treasury and credit it to the crime victims assistance fund.

(d) The attorney general shall adopt rules and regulations establishing standards for eligibility and accountability for grants made pursuant to this section.

History: L. 1989, ch. 239, § 29; July 1.

*Phrase referring to forfeiture pursuant to 8-2107 has application to provisions of this section and should be omitted.

74-7335. Victim of crime; notification of public hearing. (a) The victim of a crime or the victim's family shall be notified of the right to be present at any public hearing where the accused or the convicted person has the right to appear and be heard.

(b) As used in this section: (1) "Public hearing" means any court proceeding or administrative hearing which is required to be open to the public and shall include but not be limited to the:

- (A) Preliminary hearing;
- (B) trial;
- (C) sentencing;
- (D) sentencing modification;
- (E) public comment sessions, pursuant to K.S.A. 22-3717, and amendments thereto; and
- (F) expungement hearing.

(2) "Victims' family" means a spouse, surviving spouse, children or parents.

(c) Notification shall be made to any victim of the crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney.

(d) Costs of transportation for the victim to appear shall be borne by the victim unless the appearance is required pursuant to a subpoena or other order of the court.

History: L. 1989, ch. 239, § 30; July 1.

Attorney General's Opinions:
Notification of public hearing to crime victim; juvenile offenders aged 16 or over. 90-54.

74-7336. Crime victims compensation fund; crime victims assistance fund; county money to aid witnesses and victims of crime. Of the remittances of fines, penalties and forfeitures received from clerks of the district court, at least monthly, the state treasurer shall

credit 19% to the crime victims compensation fund and 4% to the crime victims assistance fund. The remainder of the remittances shall be credited to the state general fund.

(b) The county treasurer shall deposit grant moneys as provided in subsection (a), from the crime victims assistance fund, to the credit of a special fund created for use by the county or district attorney in establishing and maintaining programs to aid witnesses and victims of crime.

History: L. 1989, ch. 239, § 31; July 1.

74-7337. Victims rights coordinator; duties. The attorney general shall appoint a victims rights coordinator. It shall be the duty of the victims rights coordinator to:

(1) Create, coordinate and assist in the operation of local victim-witness programs throughout the state;

(2) respond to a statewide victims rights telephone hotline; and

(3) administer the Kansas crime victims assistance fund.

History: L. 1989, ch. 239, § 32; July 1.

74-7338. Victim of crime; public comment sessions; notice. (a) Notwithstanding the provisions of K.S.A. 74-7335 and amendments thereto, in the case of any inmate convicted of a class A felony, the secretary of corrections shall give written notice of the time and place of the public comment session pursuant to K.S.A. 22-3717 and amendments thereto for such inmate, at least one month preceding the public comment session, to any victim or the victim's family pursuant to subsection (b).

(b) Any victim, or a member of the victim's family of a crime, if such victim requests notice of the public comment session, shall give the secretary of corrections such victim's name and current address or the name and current address of the victim's family. It shall be the duty of the victim or the victim's family to provide the secretary with any change in name or address or change in the person to be notified pursuant to this section.

(c) The secretary of corrections shall keep a record of all victims and their current addresses or such victims' family and their current addresses, who give the secretary such victim or victims' family name pursuant to subsection (b), and shall update such record as notified by the victims or the victims' family. Such record shall be kept confidential and separate from all other records and shall not be

3 - 5/5