

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. On March 12, 2001 in Room 313-S of the Capitol.

All members were present except:

Representative Geraldine Flaharty - Excused  
Representative Andrew Howell - Excused  
Representative Rick Rehorn - Excused  
Representative Daniel Williams - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes Office  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Ralph Tanner  
Rich Hayse, Kansas Bar Association  
Kyle Smith, Kansas Bureau of Investigation  
Tony Cruz, Assistant Geary County Attorney  
Dan Dunbar, Assistant Douglas County Attorney  
Captain David Burger, Kansas Peace Officers Association  
Sheriff John Foster, Kansas Sheriffs Association

Hearings on **HB 2405 - asset seizure & forfeiture**, were opened.

Representative Ralph Tanner appeared as the sponsor of the proposed bill. He explained that forfeiture was an attempt to deal with drug abuse & trafficking. He is concerned about the seizures and the items that are bought with the profits. He also believes that forfeiture violates due process. (Attachment 1)

Rich Hayse, Kansas Bar Association, commented that the bill attempts to address the problems with the current forfeiture statutes which are not requiring a conviction for forfeiture and turning property over to federal government to skirt Kansas law. (Attachment 2)

Kyle Smith, Kansas Bureau of Investigation, appeared as an opponent of the bill. He stated that the courts have never ruled forfeiture unconstitutional. Legislative Post Audit did an audit last year that concluded law enforcement agencies have not misused funds or property of seized items. Public safety is important and the KBI has had budget cuts for the past two years along with no increase in this years budget and it's hard to find money to purchase additional items that law enforcement needs without budget increases. About half of the profits from seizures have gone to buy computers and the rest has been used for cameras, vest and guns. (Attachment 3)

Tony Cruz, Assistant Geary County Attorney, commented that this bill is a way to help fund education and that it is not the correct way to go about funding such an important public need. The dollar amount from forfeited items would not be dependable or a consistent amount to count on. (Attachment 4)

Dan Dunbar, Assistant Douglas County Attorney, informed the committee that the most troubling part of the bill would be the loss of revenue to law enforcement. KBI uses the money to send agents to meth lab schools for training. (Attachment 5)

Captain David Burger, Kansas Peace Officers Association, told the committee that the monies have been used for body armor, equipment & materials for DARE program, K-9 unit equipment and support, computers and high tech equipment. (Attachment 6)

Sheriff John Foster, Kansas Sheriffs Association, stated that law enforcement does not profit from seizures and forfeitures the people of Kansas do. (Attachment 7)

Kansas Highway Patrol did not appear before the committee but requested their written testimony in opposition of the bill be included in the minutes. (Attachment 8)

Hearings on **HB 2405** were closed.

The committee meeting adjourned at 4:45 p.m. The next meeting is scheduled for March 13, 2001.

STATE OF KANSAS  
House of Representatives

TOPEKA ADDRESS:  
STATE CAPITOL—426-S  
TOPEKA, KANSAS 66612-1504  
(785) 296-7654  
TOPEKA HOTLINE  
DURING SESSION - 1-800-432-3924  
BALDWIN CITY ADDRESS:  
1201 NINTH ST., P.O. Box 647  
BALDWIN CITY, KANSAS 66006  
(785) 594-3502  
E-Mail: [mtanner@ink.org](mailto:mtanner@ink.org)  
CELLULAR PHONE (785) 979-7977



THE CAPITOL

RALPH TANNER  
Representative, Tenth District

COMMITTEE ASSIGNMENTS

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TESTIMONY ON HB 2405

before the Judiciary Committee

March 11, 2001

Mr. Chairman and members of the Committee:

I am honored to appear before you today as a proponent of HB 2405 which, if passed into law, will return the state of Kansas to that company of states of the union which holds dear the guarantees of a rule of law.

Several years ago, Kansas, along with some other states, found themselves caught up in a wave of criminality that threatened the core of our society. The conduct at that time, and since, was the threat of degradation that drug abuse and drug trafficking had generated among us.

And so we clothed our enactment of laws to deal with this insidious and heinous activity with

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virtue said to be “vested in the public interest.” I can almost hear our counterparts of a former day – and perhaps some of you – saying, “. . . let the punishment fit the crime.” We passed law that gave virtually unlimited authority over persons and property to officers without a concomitant surety of due process. That, Mr. Chairman and members of the Committee, is the thrust of my testimony – guarantees of due process.

I could argue – probably without much effect – that the current law affecting asset forfeiture constitutes a *bill of attainder* – “. . . a legislative act which inflicts punishment without a judicial trial.” (Definition offered by Justice Black in *Cummings v. Missouri*) I do not see an arbiter – a magistrate – a guarantor – anywhere in our current law regarding the right of due process. Yet this thing called due process is one of the more hallowed notions in Anglo-American jurisprudence.

Indulge me for a moment – if you will – for a brief recital of constitutional comment on this issue. The Kansas Constitution is not silent on basic rights which, I will argue, are extended in due process. Restraint on the execution of law is mandated in Section 9 of the Bill of Rights as it forbids excesses in bail, fines, and cruel or unusual punishment. Section 12 insists “. . . No conviction within the state shall work a forfeiture of estate. . . .” And this section says “conviction” which presumes adjudication. Section 15 provides a security for members of our society in their persons and property against unreasonable searches and seizures, and speaks of



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this right as “inviolate.”

In the U. S. Constitution basic civil rights are recited and made a part of the rule of law in the nation. Amendments Four, Five, Six, Seven, Eight, and Fourteen – it could be argued – are violated by the asset forfeiture proviso of Kansas law.

Let me cut to the chase. Constitutional scholars have argued that the so-called Bill of Rights of the U. S. Constitution was not really applicable in the arena of state law in the early years. It was not until the adoption of the Fourteenth Amendment – it is said – that the guarantees of the early amendments of the document began to flow into state law. The fourteenth, you see, gave citizenship in the states *and* the United States. This doctrine was used by the court in 1932 as Justice Sutherland spoke for a majority of seven in *Powell v. Alabama* to extend federal due process rights to the states. The rights of dual citizenship to extend the federal Bill of Rights to the States fell into disuse until after WW II and reemerge in *Adamson v. California* (1948) in dicta by Justice Black as he wrote, “. . . My study of the historical events that culminated in the Fourteenth Amendment . . . persuades me that one of the chief objects of the provisions of the amendment’s first section, separately, and as a whole, was to make the Bill of Rights applicable to the states.” But Mr. Black was found to be premature by a majority of the court in *Adamson*, and it was not until later that an extension of U. S. citizenship became real in terms of guarantees of civil liberties which now we hold dear.

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But lest I offend you with too much historical detail, let me say – quite simply – that today there is no doubt that all of the guarantees of due process contained in those majestic passages inspired by the language of George Mason of Virginia are ours in Kansas.

And so, members of the Committee, you have a precious opportunity before you. In passing this bill, you can restate the very nature of the rule of law within our borders. You can return law enforcement to the high responsibility and duty which the rule of law intends by removing a sadly misplaced conflict-of-interest in the current law. You can restore the rule of law by putting a judge in there somewhere. You can recommit our state to the ancient doctrine of “innocence until proved guilty.”

Thank you Mr. Chairman and members of the committee. I will stand for questions.



**KANSAS BAR  
ASSOCIATION**

1200 SW Harrison St.  
P.O. Box 1037  
Topeka, Kansas 66601-1037  
Telephone (785) 234-5696  
FAX (785) 234-3813  
Email: ksbar@ink.org

**TESTIMONY OF RICHARD F. HAYSE  
ON BEHALF OF THE KANSAS BAR ASSOCIATION  
IN SUPPORT OF H.B. 2405**

**Kansas House Judiciary Committee  
March 12, 2001**

H.B. 2405 is a belated attempt to cure some of the structural deficiencies in the present Kansas Asset Seizure and Forfeiture Act, which is a criminal law tool found in the civil procedure chapter of Kansas Statutes Annotated. The clear and intended effect of the current Act is to punish someone by taking their property without providing the personal protections mandated by the system of criminal justice. The current Act, which sidesteps these fundamental rights, has been justified in the past by looking the other way whenever law enforcement utters the magic words "war on drugs."

**THE PROBLEM**

Here is the heart of the problem: Under present law, a person can have his or her private property seized by the power of the state simply because a law enforcement officer says there is probable cause to believe that the property was somehow connected to "conduct giving rise to forfeiture."

It is immaterial whether that conclusion is true or false. It is immaterial whether the property owner is ever convicted, charged or even accused of committing a criminal act. It is immaterial whether the property owner is, in fact, found innocent of the very criminal conduct which is said to justify seizure.

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Once the government seizes this person's property, the owner is faced with months of costly court battles to try to recover it. One alternative is legalized extortion: the owner must negotiate a payment to the law enforcement agency in order to secure the return of his or her rightful property, without regard to any outmoded concepts such as guilt and innocence.

Of course, there are other alternatives as well. The seizing agency may decide without any legal or court authority to simply turn the property over to the federal government, which takes the position that it is not bound by any of the niceties of state law on such subjects. For instance, the feds believe they are not required to respect one of the most cherished principles of Kansas constitutional law, the homestead exemption. Heaven help the family with marijuana (a noxious weed commonly found in Kansas) growing on the family farm.

And even if the rightful property owner initially prevails in court by meeting the burden of proof that there was no probable cause for seizure, his property is returned to him on the condition that he hold it as a custodian for the court pending further proceedings, which may take months or years.

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Further, even if it is finally concluded by a court that the government was totally without justification or authority to seize the property, there is no provision for the owner to recoup his or her legal costs from the seizing agency or any other source.

### A SOLUTION

This bill would install at least three fundamental safeguards to avoid some of the abuses sanctioned by the present Act. First, the bill would require all property seized by any Kansas law enforcement agency to be turned over to a public trustee to hold until final disposition of proceedings. This is intended to avoid the abuses inherent in allowing Kansas law enforcers to hand off property to federal agents in order to skirt Kansas law.

Second, the bill would require a determination of guilt for the underlying conduct before governmental seizure of private property. This would eliminate all of the inherent abuses in the current system which can permit the state to deprive an owner of property, either indefinitely or for an extended period, without any valid justification.

Third, the bill would require the proceeds of forfeitures to be utilized for educational purposes instead of allowing the seizing agency to profit directly from its booty. The official position of the Kansas Bar Association is that the Act should be amended so that law enforcement agencies do not directly profit from the property seizures which they make under the Act. We feel such a change is essential to remove the incentive for over-zealous application of the asset seizure laws.

While the Bar Association appears today in support of this bill, the KBA is not wedded to any particular solution to the threats to individual rights posed by existing law, so long as those threats are addressed in a meaningful fashion. As always, the lawyer members of the Kansas Bar Association stand ready to serve this body as a professional, technical resource for questions of law as they arise, including any issues posed by this proposed legislation.

One final word. The March, 2001 issue of the Journal of the Kansas Bar Association includes an article praising the current law by Colin Wood, a senior special agent of the KBI. That this article was published in the KBA Journal demonstrates that the Bar is nothing if not ecumenical, because Agent Wood's views are most certainly not in agreement with the official position of the Association.

In addition, that article is based on the premise that property itself is being punished for bad conduct committed by the property. While this is an amusing literary device, it would be patent nonsense to be lulled into believing there is any literal truth to this view.

The Kansas Asset Seizure and Forfeiture Act is intended to punish people. The KBA suggests to this body that people still have rights which deserve protection, no matter what the excuse for action, and no matter what vehicle is used to exert the power of the state over its citizens.



## Kansas Bureau of Investigation

Larry Welch  
*Director*

Carla J. Stovall  
*Attorney General*

Testimony before the House Judiciary Committee  
In opposition to HB 2405  
March 12, 2001  
Kyle Smith  
Kansas Bureau of Investigation

Chairman O'Neal and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation in strong opposition to HB 2405, as unnecessary, ineffective and unwise.

I served as the chair of the task force that Attorney General Stephan formed in 1992 to look into the need for legislative reform of forfeiture laws. The task force, which did have representation from the defense bar, drafted the legislation that eventually became the KSASF. Our task force based the Kansas bill on model legislation proposed by a presidential commission appointed by the first President Bush. The Presidential commission consisted of state legislators, educators, defense attorneys, treatment professionals and representatives of law enforcement. The reform act was passed in 1994 after consideration and debate over two legislative sessions and an interim study. Various options were weighed, and views heard before the final product was produced.

I honestly believe that Kansas has the best asset forfeiture act in the nation, both for protecting individual rights and for effective enforcement. Perhaps elsewhere there may be problems, but, in Kansas, there is nothing broke that needs fixed. Obviously, you may think I am somewhat biased due to my role in the legislation and my employment. The best proof, however, isn't in my opinion, but in three examples from outside the law enforcement community.

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First, look at the advertisement on the lower right corner of the page copied from the Journal of the Kansas Bar. The Kansas Judicial Council ran the ad in the summer of 1999, inviting members of the bar and bench to make "suggestions or comments regarding the civil forfeiture statutes, especially as to any problem". Guess how many suggestions or comments the Kansas Judicial Council received? One. And that was a complaint from a city attorney that the statutes are too restrictive and should be expanded to allow city prosecutors to also file forfeitures.

Second, the federal government has been looking long and hard at civil forfeiture for the last five years. Last year, a variation of Representative's Henry Hyde bill was passed, and their product copies the Kansas law in adopting many of our safeguards. For instance, congress followed our lead in adopting specific time limitations, no cost bond, burden of proof raised from probable cause to preponderance of the evidence and a general innocent owner defense while rejecting the idea that a conviction should be required or that the money could be better spent than on law enforcement. This Legislature, and Chairman O'Neal in particular, should take great pride in the leadership role our forfeiture law has played in this area.

Third, last summer Kansas Legislative Post Audit conducted a performance audit on asset forfeiture in Kansas. Post Audit sent a survey to every Kansas law enforcement agency and did in depth reviews of two state and 4 local agencies. While some procedural issues were raised, *not one misuse of forfeited money or property was discovered*. Basically Kansas has a good law and it is being followed.

I think these three testimonials prove that the forfeiture law reforms are working. Other examples of safeguards found in Kansas include a requirement that all settlements have to be approved by a judge in Kansas, which prevents the irregularities that have caused such concern in Missouri; contrary to references in the press, cars and homes can only be forfeited for felonies, not simple marijuana possession; and a person wanting to challenge the seizure of their property in Kansas has the absolute right to force the state to establish probable cause for the seizure within 10 days, as opposed to having to wait until the actual hearing which might take months or years.

Asset seizure and forfeiture is a strange concept for many people. Yet, the concept that offenders should not benefit from wrongdoing and the property used to cause the harm should be taken for the common good goes back at least to the Bible. People question the constitutionality of forfeiture and worry about infringing on constitutional rights, yet it was the same session of Congress that passed the Bill of Rights that passed the first asset forfeiture law. Kansas has had forfeiture laws (with no conviction required, I might add) since 1861 and even before that territorial law allowed the taking and destruction of gambling devices.



I think we need to see clear problems before we just chuck public policy that has stood for over 200 years.

There are allegations of conflict of interest in allowing law enforcement agencies to use the proceeds from forfeiture. I think everyone wants officers to be aggressive, but within the law, in pursuing drug dealers (with the possible exception of the drug dealers and their attorneys). All searches and other investigative techniques in both criminal and forfeiture cases are still held up to rigorous scrutiny by the courts for statutory and constitutional validity. Further, the Kansas law prohibits forfeiture funds from being used to supplant general funds so that agency operations, including the individual officer's salary, aren't affected by the number or kind of forfeitures. Young officers may be overly enthusiastic in any investigation. But the courts are there to correct any mistakes or inappropriate applications of forfeiture law. There is no conflict of interest.

Forfeiture is a separate civil action, completely independent of the criminal case. Take the example of OJ Simpson: If you are harmed by criminal action, say the killing of a loved one, you may still seek civil remedy to your harm, regardless of whether the perpetrator was convicted. The same is true of forfeiture. Only four states require a conviction to proceed with a forfeiture, and as noted above, the US Congress rejected the idea of requiring conviction in last year's federal forfeiture reform bill. We don't let a bank robber keep his illegal proceeds, why should a drug dealer? If a defendant skips bond, so no conviction results, should we give the money to his associates or family? Or take the case in Colby last year, where a very large scale marijuana dealer took his own life rather than face prison again. Should the \$2.7 million of drug proceeds in the trunk of his car go to his partner?

HB 2405 also prohibits forfeiting of homesteads. Both the pre – 1993 Kansas Forfeiture Statute, K.S.A. 65-4135(a)(7)(A), and the Reform act that went into effect in 1994, K.S.A. 60-4105(f), specifically allow the forfeiture of homesteads, albeit with some restrictions. Should the marijuana grower or meth lab operator keep his land so he, or his associates, can continue production? Under appropriate circumstances, forfeiture is appropriate. Sometimes this is accomplished by the Kansas law enforcement agency requesting federal adoption, specifically authorized under K.S.A. 60-4107(j). I would suggest that there is no "circumventing" legislative intent in the forfeiture of homesteads, whether under Kansas State law or Federal law.

No one in this room is against education. Indeed, several agencies, as evidenced in today's article in the Kansas City Star, are devoting some of their forfeiture proceeds to educational efforts. But is education more important than public safety? Is there a crisis in education more pressing than the explosion in methamphetamine labs? Do the universities have to deal with the costs of investigating and prosecuting well-funded criminal organizations in the drug trade? Do they need to hire accountants to decipher the money laundering involved? Illegal drugs cause a major drain of law enforcement resources.

I note that the House subcommittee on Public safety is reporting to the full committee this week. Guess what additional resources, given the 15,000% increase in meth labs over the last 7 years, the KBI is getting to fight meth this year? I think you know the answer. Yet, this bill would take even more resources, erratic as they may be, away from the KBI and every law enforcement agency.

Nor would this bill really help education. As noted in the Post Audit report, money from forfeiture is extremely erratic. You can't rely upon it for salaries or other regular expenses, or do you try to hire someone this year and fire them the next?

Given human nature and the fact that resources for law enforcement are extremely tight, it is unlikely that law enforcement agencies would spend resources doing complicated financial investigations necessary to put together a forfeiture case. If you passed a law requiring all grants obtained by universities be given to public safety agencies, does anyone think that the professors would spend a lot of their time searching, applying for, and administrating such grants?

And the professors aren't risking their lives in doing their jobs.



David L. Mill, President  
 Jerome A. Goetz, Vice-President  
 John M. Settle, Secretary-Treasurer  
 Julie McKenna, Past President  
 Steven F. Kearney, Executive Director



Edmond D. Brancart  
 Thomas J. Drees  
 Christine K. Tonkovich  
 Gerald W. Woolwine

## Kansas County & District Attorneys Association

1200 W. 10th Street  
 Topeka, KS 66604  
 (785) 232-5822 • Fax: (785) 234-2433

March 12, 2001

To: Chairman O'Neal and Members of the House Judiciary Committee  
 From: The Kansas County and District Attorney's Association  
 Re: Opposition to House Bill 2405

My name is Tony Cruz and I am an assistant Geary County Attorney in Junction City, Kansas. My main responsibility is the prosecution of drug cases and I handle all of the civil asset forfeiture cases. Despite its relatively small size, Geary County has a drug problem, which is exacerbated by our location on I-70 and our demographics, which includes a youthful and highly transient population. Our domestic drug dealers have come from New York, Philadelphia, Detroit, and our imports include dealers from the U.S. Virgin Islands, Jamaica and Haiti. It has been our experience that the more drug dealers there are in a community, the more violent crimes there are.

The language proposed in House Bill 2405 would benefit criminals and drug dealers and in turn, increase violent crime, while discouraging law enforcement from seizing criminal assets. The bill would also affect the prosecution of criminal cases by creating Double Jeopardy and 8<sup>th</sup> Amendment issues.

1). Discouragement of local law enforcement from seizing property subject to forfeiture.

The proposed bill's intent is to make it more difficult to forfeit property and remove seized property that is subject to forfeiture from local law enforcement and to give the proceeds to education. As a practical matter, law enforcement is aggressive in seizing property from those accused or suspected of committing crimes that warrant the defendant's property to be forfeited (usually drugs). By mandating that the State receive the proceeds from the auctioning of seized property, local law enforcement loses its incentive to seize illegal property, as they are not rewarded or compensated for their actions. These officers do not personally gain from the seizures, however, their respective law enforcement agencies do benefit from these seizures. My experience is that officers take great pride and are interested in their work. I see this as a great advantage. I have officers who are willing to come in on their days off to work a case, to reschedule vacations or family functions and essentially to be on call anytime and anywhere. The commitment that these officers make to their cases is enhanced by the satisfaction of not only making the arrest, but also having the ability to hit criminals (in my case drug dealers) where it hurts, in their pocket books.

Asset forfeitures, in general, are intended to do one thing and that is to make criminal conduct unprofitable. Drug dealers are criminals, but also businessmen. The ability to seize assets discourages criminals from committing crimes and has the inverse affect of

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encouraging law enforcement to seize those assets. It is our direct experience, that when drug forfeitures are up, drug trafficking goes down, as does crime in general. By passing the proposed changes in H.B. 2405, local law enforcement will not see any benefit for seizing property, as it will all be turned over to the State. The practical effect will be fewer seizures and forfeitures, more drug trafficking and more crime.

2). Interference with the prosecution of criminal cases.

Another dilemma created by this bill, is that seized property is also usually evidence in the underlying criminal case (which is actually required by this bill). By turning the property over to the State, the prosecution is severely burdened in its ability to effectively prosecute the criminal case, as the evidence is not readily available. Imagine the State serving as custodian for property needed in hearings throughout the State. Who will transport these items back and forth? Where will it be kept? Of course these problems will only be compounded by cases with multiple co-defendants and multiple court dates.

3). Conversion from civil to criminal.

The amendments in H.B. 2405 clearly indicate intent to connect civil asset forfeitures to criminal asset forfeitures. This is evident in the change in K.S.A. 60-4102 (c) under "covered offenses" now requiring a criminal conviction. The proposed changes also prevent the filing of an asset forfeiture case unless a criminal case is filed and mandates a dismissal of the forfeiture case if the criminal case is dismissed or if the defendant is acquitted. Again, the bill is attempting to increase the nexus between the criminal case and the asset forfeiture case. The Kansas Standard Asset Seizure Forfeiture Act is intended to be civil in nature, the rules of civil procedure govern the act and therefore the burden of proof is not proof beyond a reasonable doubt, but by a preponderance of the evidence.

There are substantial protections in place for legitimate property owners. The current case law on civil asset forfeitures, both state and federal, vehemently emphasizes the distinction between criminal asset forfeitures and civil asset forfeitures.

4). Constitutional Issues Will Arise.

As it stands, civil asset forfeiture cases have been held not to violate the Double Jeopardy Clause due to the fact that they are deemed civil in nature. By allowing the proposed amendments to be enacted, the legislature will tie asset forfeitures in Kansas to criminal cases and by doing that, defendants will again litigate not only Double Jeopardy claims but also raise 8th Amendment claims.

5). Changes will not increase the state's budget for education.

While this bill may have been drafted as an education bill, this is a bill that only helps criminals and drug dealers. I do not know how much money the proponents of this bill perceive will be forfeited to the State, but I would suspect that most, if not all, local law enforcement agencies will stop seizing property for asset forfeiture once they realize that the proceeds will go to the State for education. It would appear that this bill would allow the State to do what the asset forfeiture code prevents local municipalities and counties from doing, and that is supplementing their general budget with seized property.

6). The proposed bill raises a number of questions.

- A). What benefit will local law enforcement receive from this bill?
- B). Are local officers/deputies acting as state agents when seizing property? If so, what protections do they have from civil suit? Who will defend them? Who will prosecute them for misconduct? Will the Attorney General's Office have a conflict in the representation of the officer/deputy?
- C). Where will the seized property be stored?
- D). Who will be responsible for getting the evidence to and from court? How much notice is needed for transport? What happens to damaged or destroyed property during transit prior to the court forfeiting the property to the State?
- E). How much access will prosecutors have to the evidence?
- F). If the State is responsible for storing the property, will the cost of storing such property be increased to the extent it will no longer be "profitable" for prosecutors to file forfeiture cases?
- G). What kind of facility will be used to store these seized items? Who will have access to the facility?

7). The "What If ?" Situations.

A). A police officer attempts to conduct a traffic stop for a traffic violation and during the stop; all the occupants flee on foot and escape. The officer searches the car (lawfully) and finds a couple of kilos of cocaine and \$1 million in cash. There are no arrests and thus no underlying criminal case filed, what happens to the money since it is obviously drug money?

B). A search warrant is executed at a defendant's house, drugs seized and the defendant is arrested. Local officers seize property including a new vehicle, as a substitute asset. The defendant makes bond and absconds for several years. The State cannot file a forfeiture case due to the lack of a conviction. What happens to the property in the mean time? What if the car dealer wants the car back? Is the State going to reimburse the dealer for the loss of the car's value? What happens if the defendant is killed and the State dismisses the charges? Then, who gets the property?

C). During a conspiracy case one of the defendant's turns State's evidence and testifies for the State. The State agrees to dismiss the criminal case. Should the defendant get back all his property, éven if it's clearly drug proceeds?

D). Evidence in a case gets suppressed. The State appeals but loses. A forfeiture case cannot be filed despite clear evidence the property is subject to asset forfeiture?

I am gravely concerned with the proposed bill and would strongly argue against the enactment of the proposed changes. Defense attorneys advocate this bill for criminals and drug dealers. The only result of the passing of this bill is more drugs, more crime and more drug money. This is not an education-funding bill, this is a criminal and drug dealer-funding bill.

Thank you for taking the time to hear my concerns with HB 2405.

Tony Cruz  
 Assistant Geary County Attorney  
 (785) 762-4343



**OFFICE OF THE DISTRICT ATTORNEY**

SEVENTH JUDICIAL DISTRICT  
JUDICIAL & LAW ENFORCEMENT CENTER  
111 E. 11th STREET • LAWRENCE, KS 66044-2909

**CHRISTINE K. TONKOVICH**  
DISTRICT ATTORNEY  
DOUGLAS COUNTY, KANSAS

TELEPHONE (785) 841-0211  
FAX (785) 832-8202

March 12, 2001

Honorable Michael O'Neal  
House Judiciary Committee Chairperson

Re: HB 2405

Honorable O'Neal:

Please accept this letter as my testimony regarding HB 2405. I am currently an Assistant District Attorney for Douglas County, Kansas. I have been a prosecutor since 1993. More importantly, I have been a felony drug prosecutor and advisor to the local Drug Enforcement Unit since 1993.

In reading HB 2405 I have identified basically two major changes. First, it requires a criminal conviction in order to initiate a forfeiture proceeding or at a minimum a criminal conviction in order to succeed in a forfeiture proceeding. Second, and more importantly, the seizing agency no longer receives any proceeds from the action.

Regarding the requirement of a criminal conviction. Currently, the burden in a civil action is a "preponderance". By requiring a criminal conviction, that burden increases to "beyond a reasonable doubt", which is a much higher burden.

The most troubling amendment is the loss of revenue to local law enforcement. Local law enforcement relies heavily on proceeds from these actions in order to purchase necessary equipment, attend training seminars, and fund their "buy" accounts in order to make "controlled" purchases of illicit drugs. By making the "State" the Plaintiff and directing proceeds to the state general fund to be used to fund education would have the net effect of eliminating forfeiture actions and stripping local agencies of these necessities. The question becomes, why would a local law enforcement agency seize property for forfeiture, subject themselves to additional investigations, hearings, and possible civil liability when they do not receive any of the proceeds? The answer is, they will not.

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Although funding local education is important, the net effect is, this bill will not accomplish that task. In addition, local law enforcement will no longer engage in forfeiture investigations thereby reducing or eliminating forfeiture actions entirely. Therefore, local education will not receive the desired revenue and local law enforcement will have to either increase their budgets or do without necessary equipment, training, and "buy" money, a result that would have a negative impact not only on law enforcement, but local communities.

I have attached a printout of revenues generated by local law enforcement through forfeiture actions. As you can see, the revenue is not substantial, but the amount of training and equipment that is purchased from these funds allows for more effective investigations which result in more convictions and a safer community.

Therefore, on behalf of Douglas County District Attorney's Office, we strongly oppose HB 2405.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Dunbar', with a stylized flourish at the end.

Dan Dunbar

Revised: June 19, 2000

<u>CASE</u>	<u>DEFENDANT'S</u>	<u>CASE #</u>	<u>COSTS</u>	<u>SEIZING AGENCY SHARE</u>	<u>DA SHARE</u>	<u>RETURNED TO DEFENDANT</u>
\$951	Josh Copp	96CR44 96CR43	n/a	\$475.50 (DEU)	0	\$475.50
\$3,430	Dan Pressgrove	97C437	\$154.02	\$2,784.58 (TPD)	\$491.40	0
\$1,213	Micky Kimball	98C274	\$154.02	\$900.13 (DEU)	\$158.85	0
\$4,100	Robert Jadake	98C111	\$69.02	\$3,224.78 (Caddilac FrCo)	\$806.20	0
\$2,980	Richard Wiley	98C251	\$154.02	\$2,402.80 (DEU/LPD)	\$423.90	0
\$3,238	Karen Keogh	98C250	\$154.02	\$2,621.38 (DEU)	\$462.60	0
\$3,187	Gamblers	97C436	\$171.66	\$2,563.04 (LPD)	\$452.30	0
\$1,590	Felix Milman	97C344	\$154.02	\$1,220.58 (LPD)	\$215.40	0
\$3,840	Adam Call	n/a	\$87.52	\$2,340 (DEU)	\$412.48	\$1,000
\$734.48	Andrea Williams	n/a	(\$154.02)	\$300 (buy \$)	0	\$434.48
\$2,817	Frank Diggs	98C275	\$154.02	\$2,263.53 (DEU)	\$399.45	0
\$2,590	Adam Harris	98C252	\$151.92	\$2,070.59 (DEU)	\$365.40	0
\$28,165	David Hippen	98C326	\$152.17	\$23,810.91 (DEU/TPD)	<u>\$4,201.92</u>	0
\$2,504	Wisler/Silber	98C 32	\$90.30	\$2051.87 (DEU)	\$362.09	0
\$8,312.00	Beebe, Richard	99C513	\$87.27	\$6991.02 (LPD)	\$1233.71	certain property
\$11,115	Don Washington	00C		(DEU)		P
\$4,730	Matt Carroll	00C		(LPD)		E
\$649	P. Franklin	00C		(DEU)		N
\$1,397	Edgar/Clark et. al	00C		(LPD)		D
1994	L. Petterson Chevy Pickup	00C		(LPD)		I
1991	T. Sutton Dodge Stealth	00C		(LPD)		N G

<u>DEU</u>	<u>LPD</u>	<u>TPD</u>	<u>FR</u>	<u>DA</u>	<u>RETURNED</u>
\$25,245.44	\$10,774.64	\$12,904.03	\$3,224.78	\$5,685.78	\$1,909.48



CHUC MERY, President  
Wichita State Police Department  
Wichita, Kansas 67260

DAVE BURGER, President-Elect  
Lenexa Police Department  
Lenexa, Kansas 66215

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Clay Center, Kansas 67432

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Kansas Peace Officers' Association  
Wichita, Kansas 67201

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Sergeant at Arms  
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Arkansas City, Kansas 67005

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Ottawa, Kansas 66067

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Junction City, Kansas 66441

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Clay Center, Kansas 67432

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Hays, Kansas 67601

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Norton, Kansas 67654

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Kansas Bureau of Investigation  
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Lakin, Kansas 67860

TERRY GROPP  
KS Dept. of Wildlife and Parks  
Scott City, Kansas 67871

DAVID RUPP  
Garden City Police Department  
Garden City, Kansas 67846

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Barton County Sheriff's Office  
Great Bend, Kansas 67530

BOYCE MOSES  
Kansas Law Enforcement Training Center  
Hutchinson, Kansas 67504

VERNON "SONNY" RALSTON  
St. John Police Department  
St. John, Kansas 67576

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Winfield, Kansas 67156

TOM PRUNIER  
Derby Police Department  
Derby, Kansas 67037

SCOTT MAYFIELD  
Kansas Highway Patrol  
Valley Center, Kansas 67147

#### DISTRICT 8

LOWELL PARKER  
Greenwood County Sheriff  
Eureka, Kansas 67045

JAMES J. KILBY  
Iola Police Department  
Iola, Kansas 66749

CHARLES D. WARD  
KS Dept. of Wildlife and Parks  
Chanute, Kansas 66720

# Kansas Peace Officers' Association

INCORPORATED

TELEPHONE 316-722-8433

FAX 316-722-1988

P.O. BOX 2592 • WICHITA, KANSAS 67201



March 12, 2001

TO: Kansas House of Representatives  
Committee on the Judiciary, in Hearing  
Honorable Representative Michael O'Neal, Chair

SUBJ: Testimony of Captain David A. Burger,  
Lenexa, Kansas Police Department,  
President-Elect, Kansas Peace Officers' Association  
Concerning House Bill #2405 – Opposed.

To explain my perspective, I'd like to give a little background on myself. I have served as a municipal law enforcement officer in Shawnee and Lenexa, Kansas for twenty-nine years. Twenty-one of those years were spent as an investigator and various supervisory investigative roles.

You don't do anything that long without learning a few things and developing a few insights. Among those that I've learned is that all cases are not drug cases...but a majority of them are. People steal to get drugs. They commit forgeries to get drugs. They run every manner of scam to get drugs. They rape, assault and kill others and themselves because they're on drugs. These factors turn up in investigations in Kansas every single day.

Drug investigations, and now to a growing extent, high tech crimes like high speed, high volume financial schemes or child predators lurking on the Internet require technically trained, well equipped investigators operating in a proactive mode.

House Judiciary

3-12-01

Attachment 6

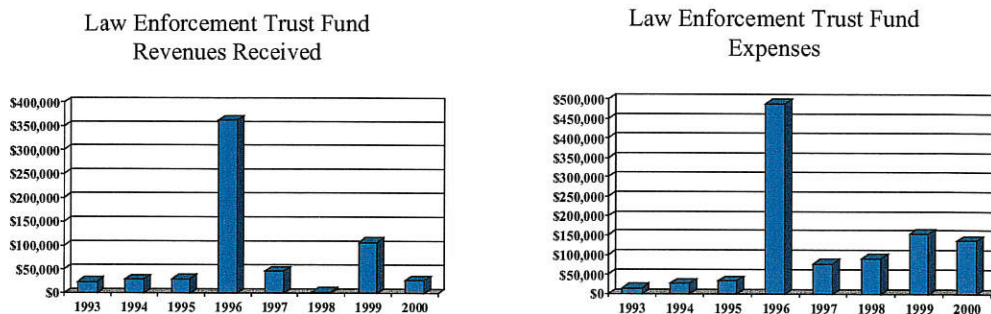
*In Unity There Is Strength*

Drug dealers and child pornographers have to be caught in the act, or no charge will stand. That's what proactive investigations are geared to do. It takes a lot of time and sophisticated equipment to develop informants, complicated Court filings, and the expertise to be able to describe in sufficient particularity the elements of probable cause that exist to support a charge. All of that equates to a lot of money; money that ordinary County or City budgets do not have on a continuing basis.

We can apply for grants for some of this equipment. Ironically, some jurisdictions in Kansas can't afford to accept certain federal grants because they can't come up with the required match that ranges from 10 to 50%. Then, too, the grant might not be approved, and the need would still be there. Grant matching funds is an authorized use of Special Law Enforcement Trust Funds.

I would not wish a serial killer investigation on anybody, but they happen. The Richard Grissom multiple murder case and the John E. Robinson multiple murder case each landed in Lenexa. Both were protracted, unplanned-for, and extremely expensive. Both would have impacted more than one City's budget and in both cases, the extraordinary expenses were offset with money from the Special Law Enforcement Trust Fund.

Body armor for patrol officers, equipment and materials for the DARE program, K-9 unit equipment and support, computers and high tech equipment that you need but can't necessarily afford when you need it; these are all examples of what we do with forfeiture proceeds.



These two bar graphs illustrate the actual performance of the Lenexa Special Law Enforcement Trust Fund for an eight-year period ending 12/31/2000. Although exceptions to this scenario probably exist, the law enforcement professionals I've had contact with over the years indicate that this is typical of the general performance of Special Law Enforcement Trust Funds.

Sound management principles dictate that a reserve be maintained sufficient to absorb the impact of a typical year's extraordinary expenses or opportunities.



That reserve is the source of the funds that pay the up front costs of an extraordinary investigation. Telephone line charges, car rentals, informant fees, charges for subpoenaed materials, computer hardware and software; the list goes on. As the criminals get smarter and the forfeiture laws erode, those reserves shrink.

There is be a point in the not too distant future when, absent deposits to the fund, there will be no more front money and these investigations and extra services will impact the taxpayer in a negative sense. Either the investigation will not proceed, or it will proceed at a direct cost that is not there today.

The point of all of this is that law enforcement is not misusing these funds. The Post Legislative Audit done last year even supports that claim. We're not hoarding these funds. They are, in fact, making a large impact on the level of service being delivered to the Kansas taxpayer at no additional taxpayer expense. House Bill 2405, if passed, will make all of this go away.

On behalf of the Kansas Peace Officers' Association, I ask that you vote this bill down. We in Kansas law enforcement are proud of our responsible application of this resource and with your help, the people of Kansas will continue to enjoy the benefits that this sound policy affords.

FOR THE ASSOCIATION

Respectfully Submitted



Captain David A. Burger  
President-Elect

Testimony of John L. Foster  
Sheriff of Johnson County  
Before House Judiciary  
House Bill #2405 – Opposed  
March 12, 2001

The notion that law enforcement agencies profit from forfeitures levied against criminal activity or contraband possession is in a word – **ABSURD**. The true beneficiaries of these forfeitures are the **TAXPAYERS** of Kansas. During my 44 years in law enforcement in Kansas, I have **NEVER** seen or heard of any group or individuals targeted for criminal investigation because of the possibility of asset forfeitures. Those groups or individuals are targeted because there is reasonable suspicion that they are participating in criminal activity.

This committee must understand that these criminal investigations are very expensive. The expenditure of \$25,000 for a drug investigation is not out of the ordinary – as a matter of fact, it would not pay for a protracted investigation. If there happened to be assets gleaned from the criminal enterprise, those assets are used to offset the cost of that investigation and other investigations. The **TAXPAYER** benefits.

I've heard it mentioned, that the legislature needs to address the forfeiture issue in order to prevent law enforcement from being corrupted by forfeiture money. Where was all this concern about corruption when we were forfeiting \$100 here and \$500 there or seizing a vehicle that had 200,000 miles on it? Only since one or two high profile seizures, has the issue of police corruption been mentioned. I find this very curious.

1

If the seizure money is diverted to education, does the State have a plan for the money? Does the Board of Regents have a plan for the money? Does the State Board of Education have a plan for the money?

If all criminal forfeitures are diverted to education, there would not be enough money to make a dent in the problem of funding education in Kansas, but it will retard law enforcement's efforts to initiate and maintain important criminal investigations. This rush to change the law was promulgated in states where law enforcement circumvented the state law. I offer no defense for those agencies. They should have followed the law. Such is not the case in Kansas; the law has been followed. The system is not broken and no fixing is required.

I urge this committee to do the right thing. **KILL THIS BILL!**

# KANSAS HIGHWAY PATROL

*Service—Courtesy—Protection*

Bill Graves  
Governor



Col. Donald W. Brownlee  
Superintendent

**Kansas Highway Patrol  
Summary of Written Testimony  
2001 HB 2405  
House Judiciary Committee  
March 12, 2001**

Mr. Chairman and members of the Committee. The Kansas Highway Patrol appreciates the opportunity to comment on the changes set forth in 2001 House Bill 2405.

It is extremely important to let you all know that current state and federal forfeiture programs have been and continue to be a major benefit to the Patrol, local law enforcement and ultimately, the citizens of Kansas. These programs have allowed the Patrol to modernize and automate many operations. These enhancements have resulted in significant improvements including more effective, efficient and safer officers. Additionally, the Patrol has also utilized these programs to provide necessary specialized services and assistance to local law enforcement agencies. This assistance would have not been possible without these programs.

Forfeiture revenue used by the Kansas Highway Patrol has allowed for the acquisition of aircraft used to search for missing persons and felons, computer systems to increase the effectiveness of our staff, and K-9 dogs used to search buildings following bomb threats. Two x-ray scanners were purchased to scan mail and packages delivered to offices in the Capitol Building and Judicial Center, as well as several automated external defibrillators for use in the Capitol Complex, should someone fall victim of a heart attack. These monies have allowed our agency to increase the quality of bulletproof vests worn by officers, provide in-car cameras to document the activities of our officers and customers, and replace worn-out weapons with lighter, more accurate weapons. Additionally, this revenue has paid for the cost of federal audits, which are performed routinely on the operation of the fund. The Patrol is proud to point out that these audits have found its funds and use thereof to be above reproach.

House Bill 2405 proposes to eliminate the authority for state and local law enforcement agencies to oversee forfeiture procedures. Instead, this authority would be granted to the State Treasurer. Forfeitures would be prohibited until after a conviction of a person. Once conviction was complete, the State Treasurer could initiate forfeiture proceedings. All monies accumulated through the forfeiture of property by the State Treasurer would be credited to the State General Fund. Based on a report due annually of the State Treasurer, the amount received would be used to finance expenses of educational institutions as outlined in the bill.

122 SW SEVENTH STREET  
TOPEKA, KANSAS 66603-3847  
(785) 296-6800 FAX (785) 296-5956

House Judiciary  
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Attachment 8



Should forfeiture funding no longer be available to the Patrol, the monies used to purchase tools of the law enforcement trade would be required from another source. The primary source for such items, outside the forfeiture fund, is the State General Fund. Therefore, it is anticipated that additional expenditures from the State General Fund would be required to replace this source of financing. When looking at our past history, the amount required from the State General Fund would range from approximately \$650,000 to over \$2.7 million. Monies spent from the Patrol's asset forfeiture fund over the last 3 years are as follows:

<b>Fund</b>	<b>FY 1998</b>	<b>FY 1999</b>	<b>FY2000</b>
State	\$58,844	\$16,363	\$21,003
Federal	\$1,188,112	\$2,738,945	\$653,914
<b>Total</b>	<b>\$1,246,956</b>	<b>\$2,755,313</b>	<b>\$674,917</b>

As you can clearly see, many improvements have been implemented without expanding our use of monies from the State General Fund. Revenues from the forfeiture fund are relatively small when compared to many state agency budgets, however they are extremely significant to the Patrol. The Patrol's budget is smaller than many other state agencies and forfeiture programs provide an opportunity to make a large impact on our agency. They also have a direct impact on public safety in Kansas.

In closing, it is important to mention that drugs are more prevalent in the United States than at any other time in the history of our nation. Law enforcement agencies are required to operate on limited budgets with the expectation that they will find the way to combat the influx of illicit drugs killing our communities like a disease. Current asset forfeiture laws have assisted our efforts by easing budgetary constraints in purchasing equipment and technology used in providing services to the good people of Kansas.

The Kansas Highway Patrol appreciates the opportunity to provide these comments and respectfully requests the committee keep our comments in mind while addressing 2001 House Bill 2405.