

SESSION OF 2011

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2010**

As Amended by Senate Committee of the Whole

**Brief\***

HB 2010 would add the following crimes to the list of conduct and offenses giving rise to civil forfeiture pursuant to the Kansas Asset Seizure and Forfeiture Act:

- Embezzlement;
- Mistreatment of a dependent adult;
- Giving a worthless check;
- Forgery;
- Making false information;
- Criminal use of a financial card;
- Unlawful acts concerning computers;
- Identity theft and fraud;
- Rape;
- Criminal sodomy (involving a child between 14 and 16 years of age) and aggravated criminal sodomy;
- Indecent liberties with a child and aggravated indecent liberties with a child;
- Unlawful voluntary sexual relations;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Indecent solicitation of a child and aggravated indecent solicitation of a child;
- Electronic solicitation; and
- Sexual exploitation of a child.

It would remove theft of livestock from the list; however, theft, as defined in 2010 Session Laws ch. 136, sec. 87, would remain on the list.

Further, the bill would add a section providing that when a person is committed as a sexually violent predator and files a *habeus corpus* petition, the costs incurred as part of the prosecution and defense of the petition would be assessed to the "county responsible for the costs," which would be defined in the bill as the county where the person was determined to be a sexually violent predator. A county could refuse to approve payment of the costs assessed by the court if it is not the county responsible for the costs and could file a claim against the debtor county, which would have to be paid within 120 days. The county responsible for the costs would be reimbursed for the costs by the Attorney General from the Sexually Violent Predator Expense Fund. The statute governing this fund would be amended to allow for such expenditures. If the fund's balance was insufficient to cover the costs, the county could file a claim against the state for reimbursement.

The bill also would make technical amendments.

## **Background**

The Asset Seizure and Forfeiture Act allows a plaintiff's attorney to file a civil action to seize property of an individual or individuals who are involved in unlawful conduct or offenses. No criminal proceeding is necessary for a plaintiff to bring an action. The Act provides for the disposition of the

forfeited property and the use of the proceeds of the sale of the property. HB 2010 would add to the list of conduct and offenses giving rise to civil forfeiture.

In the House Committee on Judiciary, the Committee heard testimony in support of the bill from Stephen Howe, Tenth Judicial District Attorney, and a representative of the Kansas Office of the Securities Commissioner. The Committee also received written testimony in support of the bill from the Kansas Association of Chiefs of Police, Kansas Sheriff's Association, and the Kansas Peace Officer's Association. No opponents were present at the hearing.

The Senate Committee of the Whole amended the bill by adding the provisions of SB 74, concerning additional crimes that would give rise to civil forfeiture, and SB 217, with amendments proposed by the Attorney General's Office, concerning the payment of costs incurred in association with a *habeus corpus* petition brought by a person committed as a sexually violent predator.

SB 74 was heard in the Senate Committee on Judiciary where Attorney General Derek Schmidt and another representative of his office appeared in support of the bill. A representative of the Office of the Securities Commissioner also spoke in favor of the bill and the Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, the Kansas Peace Officers Association, and the Kansas County and District Attorneys Association (KCDAA) submitted written testimony supporting the bill.

The Senate Committee on Judiciary amended the bill to include offenses requested by the KCDAA: rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy (involving a child between 14 and 16 years of age), aggravated criminal sodomy, indecent solicitation of a child, aggravated indecent solicitation of a child, and unlawful voluntary sexual relations. The Committee recommended the bill be passed as amended.

In the House Committee on Judiciary, a representative of the Attorney General's Office appeared as a proponent of SB 74, and Attorney General Derek Schmidt and the KCDA provided written testimony in support of the bill. The Committee took no action on the bill.

SB 217 was heard in the Senate Committee on Judiciary where the Pawnee County Attorney and Pawnee County Commissioner appeared in support of the bill. The Kansas Association of Counties presented testimony in opposition to the bill. The Pawnee County Attorney indicated the Attorney General's Office would support the bill if it was amended to strike language that would have required the Attorney General to formally determine the "county responsible for costs," and to change from 30 to 120, the number of days allowed to pay a claim for costs. The Committee took no action on the bill.

The fiscal note indicates enactment of HB 2010 as introduced would have no fiscal effect.

The fiscal note for SB 74 as introduced states it would have the potential to increase litigation, but the cost likely would be accommodated within existing resources.

The fiscal note for SB 217 as introduced indicates that the cost to the Office of Judicial Administration would be negligible and could be absorbed within existing resources. The Attorney General estimates that required reimbursements from the Sexually Violent Predator Fund, which has no consistent revenue source, would total \$18,000 to \$50,000 per year.