

**REPORT OF THE JUDICIAL COUNCIL
CIVIL ASSET FORFEITURE ADVISORY COMMITTEE**

DECEMBER 21, 2017

On February 17, 2017, Representative Blaine Finch and Senator Rick Wilborn requested that the Kansas Judicial Council study the topic of civil asset forfeiture, which had been the subject of a Legislative Post Audit report in July 2016, as well as five House bills and three Senate bills introduced in 2017. When the Judicial Council met on June 2, 2017, it created a new advisory committee to conduct the study.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Civil Asset Forfeiture Advisory Committees are:

Rep. Fred Patton, Chair, District 50 State Representative and practicing attorney; Topeka

Marc Bennett, Sedgwick County District Attorney; Wichita

Rep. Gail Finney, District 84 State Representative and small business owner; Wichita

Vignesh Ganapathy, Director of Policy and the Racial Justice Project at ACLU of Kansas; Overland Park

Sen. David Haley, District 4 State Senator and public affairs counselor; Kansas City

Christopher M. Joseph, practicing attorney; Topeka

Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association; Tecumseh

Benet Magnuson, Executive Director at Kansas Appleseed; Lawrence

Josh Ney, Jefferson County Attorney; Oskaloosa

Hon. Ben Sexton, District Judge in Dickinson County; Abilene

Amanda Stanley, Legal Counsel for the League of Kansas Municipalities; Topeka

Kirk Thompson, Director of the Kansas Bureau of Investigation; Topeka

Melissa Wangemann, General Counsel for the Kansas Association of Counties; Topeka

Sarah Washburn, Legal Counsel for the Kansas Highway Patrol; Topeka

Hon. Marilyn Wilder, District Judge in Harvey County; Newton

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Full LPA report available at: www.kslpa.org/assets/files/reports/r-16-009.pdf

BACKGROUND

The Kansas Standard Asset Forfeiture and Seizure Act (KSASFA) was passed in 1994. Under this act, a Kansas law enforcement agency is authorized to seize property and cash the agency alleges is involved with certain criminal activity. There has been much discussion nationally of civil asset forfeiture, and a number of states have reformed their forfeiture laws in varying ways over the last few years. In 2015 and 2016, three bills were introduced in the Kansas Legislature, 2015 HB 2271 (would have required a criminal conviction before forfeiture), 2016 HB 2638 (would have required a criminal conviction and would change where all forfeiture proceeds are deposited), and 2016 HB 2699 (would have changed where proceeds are deposited, but did not apply to state law enforcement agencies). None of the bills were granted a hearing.

At the request of Representative Gail Finney, Legislative Post Audit (LPA) conducted a performance audit, the report of which was released in July 2016, entitled “Seized and Forfeited Property: Evaluating Compliance with State Law and How Proceeds Are Tracked, Used, and Reported.” LPA evaluated the processes for property seizures and forfeitures of six law enforcement agencies: Kansas Bureau of Investigation, Kansas Highway Patrol, Coffeyville Police Department, Iola Police Department, Salina Police Department, and the Sedgwick County Sheriff’s Office. LPA’s audit reported a few problem areas, including that all six agencies lacked important controls for tracking forfeiture proceeds, and the local law enforcement agencies did not comply with statutory reporting requirements. To remedy this issue, LPA recommended consideration of legislation to require and enforce a more centralized reporting structure or eliminating the reporting requirement altogether. LPA also recommended the Legislature clarify K.S.A. 60-4117(d)(3), relating to whether law enforcement agencies are authorized to use forfeiture proceeds to pay ongoing and recurring operating expenses. Finally, the LPA report discussed a conflict of interest in one county, in which the county attorney declined taking forfeiture cases in his role as county attorney, but agreed to take them instead in his alternative role as a private attorney.

In 2017, five bills were introduced in the Kansas House. Three of the House bills were identical to bills introduced in the Senate. 2017 HB 2001 (same as 2017 SB 1), was introduced by the LPA Committee and would have eliminated the requirement in K.S.A. 60-4117(d)(2) for local law enforcement agencies to annually report the amount of forfeited property received and how

those proceeds were expended. There were no proponents among the conferees testifying on the bill. Three conferees, including LPA, testified as neutral. Opponents of the bill criticized the already insufficient reporting requirements in KSASFA and were opposed to the suggestion that eliminating local law enforcement agencies' duty to report was an appropriate solution to those agencies' noncompliance with existing law.

2017 HB 2003 (same as 2017 SB 3), was introduced by the LPA Committee and would have amended K.S.A. 60-4107(h)(2) to prohibit a county or district attorney from representing a law enforcement agency as a private attorney. The bill would also prohibit representation by any law firm in which the county or district attorney has any affiliation. Two proponents testified in support of the bill, and there were no opponents.

2017 HB 2004 (same as 2017 SB 4) would have amended K.S.A. 60-4117(d)(3) to provide that forfeiture proceeds are not to be used to meet normal operating expenses, *including salaries, benefits, or salary enhancements for permanent employees*. No conferee testified in support of the bill. LPA testified as neutral, and there were a small number of conferees who testified against the bill. The opponents, representing law enforcement agencies and municipalities, testified that the language should allow for payment of salaries and other benefits for employees engaged in special task forces or other special crime suppression operations.

2017 HB 2018 was introduced by Representative Gail Finney and would allow forfeiture only after a criminal conviction. Between oral and written-only testimony, more than thirty people and entities weighed in on the bill. Proponents contended that it is fundamentally unfair and a violation of property rights and the right to due process when the government can take and keep your property based on mere suspicion of illegal activities. Proponents noted the system is particularly unfair to the poor – innocent owners lose their property when they have done nothing wrong, but are unable to afford to retain an attorney to fight the forfeiture. Proponents argued the bill would not impede law enforcement's ability to disrupt criminal activity. Many proponents also opined that civil asset forfeiture creates incentives for “policing for profit” and erodes the public trust in law enforcement. Opponents contended it is often impossible to bring charges, and requiring a conviction first would result in putting illicit proceeds back into the hands of criminals or create a perverse incentive to file charges. It was also noted that property often goes unclaimed because

it was connected to clearly criminal activity. Opponents also argued that KSASFA has sufficient due process and safeguards built in so that the rights of innocent owners are protected. Finally, opponents emphasized the importance of civil asset forfeiture as a tool for fighting crime in Kansas.

2017 HB 2116 would have made a number of amendments to KSASFA. The bill would have eliminated “conduct” as giving rise to forfeiture under K.S.A. 60-4104, leaving only “offenses,” and changing several so that only felony offenses would be included. It also would allow forfeiture only after conviction. The bill would have restricted what property is subject to forfeiture, exempting ownership in real property that is a homestead, motor vehicles having a market value of less than \$10,000, and cash in an amount less than \$200. If an owner or interest holder filed a claim, the bill would shift the burden to the state to prove by clear and convincing evidence that the claimant is not entitled to have the property returned. The bill also established a procedure by which a person from whom property was seized could petition the court at any time after the forfeiture to determine whether the forfeiture was unconstitutionally excessive. Finally, the bill directed all forfeiture proceeds to the state general fund for the purpose of funding K-12 education and established new annual reporting requirements. Proponents of the bill praised the increased due process protections for property owners. The prohibitions against forfeiture of small amounts of cash and cars worth less than \$10,000 were also supported as loss of a vehicle can be devastating to families already struggling to get by. Proponents also discussed how directing all forfeiture proceeds to the state general fund would eliminate the profit motive for law enforcement. Opponents were mixed as to whether they opposed new reporting requirements, but generally opposed the remainder of the bill. Opponents spoke against any change in the burden of proof and were concerned about the ability to challenge constitutionality “at any time” after the forfeiture. The opponents also presented numerous arguments and information regarding the problems created by drug trafficking and other organized crime and drug crime in the state, contending the amendments to KSASFA in the bill would hinder law enforcement’s ability to detect and disrupt criminal enterprise in Kansas.

2017 HB 2001, 2003, 2004, 2018, and 2116 were referred to the House Judiciary Committee. Hearings on the first three bills were held on January 23, 2017, and the remaining two bills were heard on January 24, 2017. There was great public interest in the hearings, with large number of conferees appearing both for and against the bills. The Senate bills were referred to the Senate Judiciary Committee, but no hearings were held.

Representative Blaine Finch, who chairs the House Judiciary Committee, and Senator Rick Wilborn, who chairs the Senate Judiciary Committee, jointly requested that the Judicial Council study the topic of civil asset seizure and forfeiture. Specifically, they asked that the Judicial Council consider and make recommendations regarding the language and policy proposals contained in the 2017 bills, as well as related issues, including:

- Should accountability and reporting requirements be changed;
- Should there be a centralized reporting system and, if so, who should administer the system;
- Is there an improved way to handle proceeds that would increase transparency and avoid the appearance of impropriety;
- Should a conviction be required for forfeiture;
- Are current due process protections regarding civil asset seizure and forfeiture both constitutional and adequate;
- Should counsel be appointed in forfeiture cases for those claimants who cannot afford their own, or are there other measures that could be taken to ensure a claimant gets an opportunity for a fair hearing, such as awarding attorney's fees if successful;
- Is the recommended Legislative Post Audit change to the law regarding private attorneys in HB 2003 and SB 3 sufficient to address that potential conflict of interest issue;
- In making changes to the state forfeiture law, would additional legislation be needed to address or restrict agency participation in equitable sharing in proceeds from federal civil asset forfeiture to ensure that any state forfeiture changes enacted are not avoidable by merely shifting participation from state to federal programs, and would such legislation raise issues under federal preemption principles; and
- Any other recommendations for improving the efficacy, public confidence, and constitutionality of the Kansas civil asset forfeiture system.

METHOD OF STUDY

In forming the Civil Asset Forfeiture Advisory Committee, the Judicial Council invited both proponents and opponents of forfeiture law reform to participate. As always, the Council's goal was to bring people on all sides of the issue to the table in hopes of facilitating communication and consensus.

The Civil Asset Forfeiture Advisory Committee held four all-day meetings and three telephone conferences during the summer and fall of 2017 to study the topic of civil asset seizure and forfeiture. The Committee invited two speakers to the first meeting. Mr. Lee McGrath from the Institute of Justice gave an educational overview of the history of forfeiture law and recent state law reforms. Mr. Bob Myers, Newton City Manager and Senior Legal Counsel also spoke to the Committee about the importance of forfeiture proceeds in fighting drug crime in his community.

In addition to the eight 2017 House and Senate bills and the study request, copies of which are attached to this report, the Committee reviewed the following materials:

- LPA Performance Audit Report dated July 2016: “Seized and Forfeited Property: Evaluating Compliance with State Law and How Proceeds Are Tracked, Used, and Reported.”
- Minutes from the January 23, 2017 hearings on HB 2001, HB 2003, and HB 2004 held by the House Judiciary Committee, and written testimony offered by proponents, opponents, and neutral conferees during the hearings.
- Minutes from the January 24, 2017 hearings on HB 2018 and HB 2116 held by the House Judiciary Committee, and written testimony offered by proponents, opponents, and neutral conferees during the hearings.
- The Kansas Standard Asset Seizure and Forfeiture Act (KSASFA), K.S.A. 60-4101 *et seq.*
- Civil asset forfeiture reform legislation passed in the District of Columbia and a number of states, including: Arizona, Colorado, Connecticut, Florida, Maryland, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, and Virginia.
- Model legislation from the Institute for Justice, including the Criminal Forfeiture Act, the Seizure and Forfeiture Reporting Act, and the Anti-Circumvention Model Act.
- A letter from Colin Wood, an attorney from Caldwell who practices asset forfeiture law, dated October 17, 2017, setting forth Mr. Wood’s thoughts on amendments under consideration by the Committee.

COMMITTEE DISCUSSION

Throughout and following the invited speakers’ presentations at the Committee’s first meeting, the Committee discussed nearly all of the big issues that were raised by the 2017 bills and the questions contained in the study request. The spectrum of possible actions available to the Committee

ranged from recommending no changes at all to eliminating or radically overhauling KSASFA. Because the Committee was well-balanced, it was clear from the outset of discussion that it would not be possible to reach agreement to make recommendations at either end of that spectrum. Thus, the Committee began by focusing on areas of agreement.

The Committee agreed on the need for amendments to create stricter reporting requirements, establish a central repository for forfeiture and seizure data, and clarify guidelines for law enforcement agencies' tracking and use of forfeiture proceeds. The Committee agreed that KSASFA is a complicated act and difficult to understand, even for attorneys, and that it is nearly impossible for unrepresented claimants to navigate the law and effectively defend property from forfeiture. The Committee generally agreed that there is a widespread problem with default judgments due to barriers to defending forfeiture actions. The Committee acknowledged that there is also a problem with access to counsel, especially in cases in which the property has a lower value than what it would cost to challenge the forfeiture. The Committee also agreed K.S.A. 60-4107(h) and (i) should be amended to prohibit a county attorney from referring forfeiture cases to himself or herself or any law firm in which the county attorney has a direct or indirect financial interest. Each of these topics is discussed in more detail below.

Reporting Requirements/Central Repository

The Committee unanimously agreed to recommend a new statute establishing a central repository for asset seizure and forfeiture reporting. The Kansas Bureau of Investigation (KBI) will establish the repository and an associated public website, which will be operational by July 1, 2019. Also by the same date, KBI is required to promulgate rules and regulations to implement the new statute.

On and after July 1, 2019, each seizing agency must report information about each seizure for forfeiture within 60 days after the final disposition of the forfeiture. In deciding what information must be reported, the Committee tried to strike a reasonable balance – ensuring that sufficient data would be collected to meet public policy concerns, while at the same time being cognizant of adding burden and expense for seizing agencies who must comply with the reporting requirements. The Committee also kept in mind that the cost for the KBI to create and maintain the repository increases

the more complex and detailed the data to be collected becomes. The Committee agreed on general questions that must be answered and categories of data that must be collected, which are set forth in Section 1, subsection (a) of the proposed bill. The Committee struggled with how specific the statute should be regarding data points to be collected. Some members wanted the statute to be very detailed to ensure against important data points being left out of the final rules and regulations. Other members argued that it is easier to fine-tune the required data points through the rules process than through future statutory amendments.

A sample Kansas Asset Forfeiture Incident Report, which must be filled out for each seizure for forfeiture, is attached to this report. While this sample is not the exact report form that will be used after the rules and regulations process is completed, it is based on the categories set forth in the proposed statute and gives an idea of the kind of information the Committee believes should be collected to answer public policy questions and ensure transparency.

In addition to the new reporting requirements for individual seizures for forfeiture, the Committee agreed to recommend requiring each law enforcement agency in Kansas to submit an annual forfeiture fund report to the asset seizure and forfeiture repository. Under current law, a city or county law enforcement agency must submit an annual report to the entity that has budgetary authority over the agency. There have been reported compliance problems with this requirement, and even if done appropriately, the reports are not available to the public unless requested individually from every city and county governing body. Under the proposed financial reporting requirements, found in Section 1, subsection (d) of the Committee's proposed legislation, law enforcement agencies must submit a financial report to the repository on or before February, 1, 2020, and annually after that. The report will give beginning balances, total deposits, and an itemized listing of expenditures for the preceding calendar year. A sample Annual Agency Financial Report is attached to this report and indicates each agency must separately account for federal forfeiture funds. The current requirements will remain in place until the new requirements become effective.

The Committee believes the new reporting system will serve multiple purposes. It will create transparency in asset seizure and forfeiture, an area in which transparency is currently lacking. The data that will become available as a result of the new reporting requirements will in the future enable a more focused debate on civil asset forfeiture in Kansas, with arguments based on Kansas data.

Accounting Practices and Use of Forfeiture Proceeds

In addition to discussing how and what should be reported, the Committee discussed issues related to accounting practices and guidelines for permissible uses of forfeiture proceeds. The Committee agreed the LPA's recommended best practices for separately tracking revenue sources to avoid any commingling should be incorporated into KSASFA. The new provision was added as K.S.A. 60-4117(e)(3) and requires tracking three separate categories of proceeds.

The Committee also discussed issues surrounding the use of forfeiture proceeds. Under current law, proceeds can be used for nearly any law enforcement purpose other than normal operating expenses. The Committee agreed current law should be supplemented with an exclusive list of "special, additional law enforcement purposes" for which forfeiture proceeds may be used. The new provisions are adapted from the United States Department of Justice's guidelines governing the use of equitable sharing funds. Some Committee members voiced concerns that the new guidelines are overly broad. While that possibility was conceded, the majority of the Committee was comfortable with the language and countered that there is insufficient data at this time to determine whether proceeds are being spent improperly. Once the new reporting requirements take effect and sufficient data is available regarding how proceeds are being spent, further restrictions can be incorporated if the data reveals a problem.

Leveling the Playing Field

The Committee spent a significant amount of time at every meeting discussing options for improving access to justice issues for forfeiture claimants, especially the so-called "innocent owners." The Committee agreed there are a high number of default forfeiture cases, although it was also acknowledged that there are many reasons why defaults occur and it is impossible to determine how many defaulting claimants are truly innocent owners. The Committee also agreed that KSASFA is complicated and difficult to navigate. After extended discussion and debate, the Committee agreed on several amendments to KSASFA that make it easier for claimants to get their claims heard and eliminate provisions perceived by some to give the plaintiff a built-in advantage in the process.

Affidavit and Forms To be Included With Notice

The Committee agreed to propose amendments to K.S.A. 60-4109(a)(4) that require an affidavit to be sent with the notice of pending forfeiture. The affidavit must describe the “essential facts supporting forfeiture,” which would include a description of conduct that is covered under K.S.A. 60-4104 and facts that establish the property is subject to forfeiture under K.S.A. 60-4105. Under current law, the plaintiff is not required to factually support the forfeiture unless or until an owner or interest holder successfully responds to a notice of pending forfeiture such that the matter ends up in front of a judge. And since most cases end in default, the seizing agency is never required to prove the propriety of most forfeitures. Requiring an affidavit much earlier in the process will compel the plaintiff to prove up the foundation of all cases, not just those that make it to hearing. Law enforcement officers take the signing of affidavits seriously and will carefully evaluate the facts in an affidavit before affixing his or her signature to that document. The new affidavit requirement would also negate any perception that cases can be improperly pursued in hopes of a default and an easy win for the plaintiff.

The Committee proposed another change to the same section, K.S.A. 60-4109(a)(4), which would require that Judicial Council forms be sent along with the notice of pending forfeiture to make it easier for an owner or interest holder to petition for recognition of an exemption under K.S.A. 60-4110 or make a claim under K.S.A. 60-4111. If this proposed change is enacted, the Committee will draft the appropriate forms, which will be easily accessible from the Judicial Council’s website. Receiving forms with the notice of pending forfeiture would make it more practicable for an owner to defend his or her property, especially if the owner cannot afford to retain an attorney.

Easing Claim and Answer Requirements

Pursuant to K.S.A. 60-4111(a), an owner or interest holder can file a claim within 30 days after the effective date of a notice of pending forfeiture. K.S.A. 60-4111(b) provides that the claim and all supporting documents must be in affidavit form, and signed under oath and sworn to before a notary under penalty of perjury. There are also seven subparts itemizing information that must be set forth in the claim. Although the Kansas Supreme Court has never addressed the issue, the Court of Appeals has held many times that the requirements of K.S.A. 60-4111 are mandatory, not directory. See *State v. \$6,618.00 U.S. Currency*, 35 Kan. App. 2d 54, 128 P.3d 413 (2006). An owner who fails

to meet all the requirements of K.S.A. 60-4111 is deprived of standing to file an answer and litigate the claim in the subsequent in rem forfeiture proceeding. *Id.*, at 59. The Court has also recognized that meeting KSASFA's requirements may be difficult for some owners, but noted that "whether it is bad public policy to place these filing requirements on pro se parties is a question properly addressed to the legislature, not this court." *State v. One 1995 Chevrolet Caprice Classic/Impala SS*, 53 Kan. App. 2d 35, 382 P.3d 476 (2016).

Agreeing that the current statutory requirements are a barrier to owners being able to get into the case to litigate their claims, the Committee recommends several amendments to K.S.A. 60-4111(b). First, the Committee recommends deleting the requirement that the claim and all supporting documents be in affidavit form and sworn to before a notary. The Committee agrees it is sufficient that the claim be signed under penalty of perjury, as by an unsworn declaration under K.S.A. 53-601.

As to the seven pieces of information specified in K.S.A. 60-4111(b)(1) through (b)(7), the Committee agrees that these requirements represent a significant hurdle for pro se claimants, and sometimes even attorneys representing claimants. If these requirements are not fully and properly met, the claim can be dismissed, leaving the claimant no reasonable way forward to defend his or her property. After reviewing the seven subsections of K.S.A. 60-4111(b), the Committee recommends retaining (b)(1), (2), and (3), and simplifying (4). Subsection (b)(1) requires the claim to contain the case caption and any identifying number as set forth on the notice of pending forfeiture or complaint. Subsection (b)(2) requires the claimant's mailing address, and subsection (b)(3) requires the claim set forth the nature and extent of the claimant's interest in the property. The Committee recommends reducing the specificity of the requirements in subsection (b)(4) by changing "[t]he date, the identity of the transferor, and a detailed description of the circumstances of the claimant's acquisition of the interest in the property" to require instead "a detailed description of when and how the claimant obtained an interest in the property."

The Committee recommends deleting the requirements in (b)(5), (6), and (7). Subsection (b)(5) currently requires the claimant to set forth the "specific provision of this act relied on in asserting that the property is not subject to forfeiture." Subsection (b)(6) requires the claimant to set forth all "essential facts supporting each assertion," which requires a claimant to prove the entire case in the first pleading filed, which is inconsistent with the usual notice pleading deemed sufficient under the code of civil procedure. Subsection (b)(7) requires the claimant to set forth the specific relief sought.

The Committee agreed simplifying subsection (b)(4) and striking subsections (b)(5), (6), and (7) would make filing a proper claim far more manageable for a pro se owner and would still provide sufficient information to allow the plaintiff to investigate the claim and determine if the property is exempt. Finally, to ensure a more liberal construction of these requirements in the future, the Committee recommends a new subsection (c), which provides that substantial compliance with the requirements in subsection (b) is sufficient.

The Committee recommends the same changes be made to the requirements for filing an answer under K.S.A. 60-4113(d), adding the new substantial compliance provision as subsection (e).

Eliminating Rebuttable Presumptions

K.S.A. 60-4112 contains a number of rebuttable presumptions that benefit the plaintiff. For example, under subsection (j), the fact that money, a phone, a weapon, etc. is found in close proximity to contraband creates a rebuttable presumption that the item is proceeds of conduct giving rise to forfeiture or was used to facilitate the conduct. Since it is presumed under the statute, the plaintiff does not have to introduce any evidence to prove those facts. Subsection (k) creates a rebuttable presumption that makes it easier for the plaintiff to obtain forfeiture of “any property” of a person if the person acquired the property during the same time period as the conduct giving rise to forfeiture and there was no other likely source for the property. In subsection (s), there is a third rebuttable presumption that any property in or upon which controlled substances are located at the time of seizure was being used or intended for use to facilitate an act giving rise to forfeiture.

There was a substantial amount of debate about the necessity for these rebuttable presumptions. Although it was not unanimous, a majority of the Committee agreed the plaintiff should be required to prove its case without the presumptions as written. The recommendation is to strike subsections (j) and (s) completely and to modify subsection (k) to provide that the totality of the circumstances must be considered to determine if property is subject to forfeiture and sets out a number of nonexclusive factors that may be considered in making the determination.

Amendments to Service Provisions

K.S.A. 60-4109(a)(3) provides three options for serving notices under KSASFA. Under subparagraph (a)(3)(A), personal service or mailing by certified mail, return receipt requested, are the authorized means when an owner or interest holder's name and current address are known. If the owner or interest holder's name and address must be on record to perfect an interest in the property, subparagraph (a)(3)(B) provides for mailing by certified mail, return receipt requested, to any address of record with the governmental agency with which the title is recorded. If the owner or interest holder's address is not known and not of record under subparagraph (a)(3)(B), or the owner or interest holder's interest is not known, subparagraph (a)(3)(C) provides for publication notice in the county in which the seizure occurred.

While the Committee did not find the methods of serving notice objectionable, a number of Committee members were troubled by language in the first sentence of K.S.A. 60-4109(a)(4), which governs when service is effective: "Notice is effective upon personal service, publication or the mailing of a written notice, whichever is earlier . . ." Under the code of civil procedure, service by certified mail is effective upon delivery, not upon mailing. Because service is deemed effective upon mailing under K.S.A. 60-4109(a)(4), if no claim has been filed within 30 days, the plaintiff can apply for an order of forfeiture with no proof that the owner or interest holder received the notice. The Committee agreed to several amendments to make these service provisions more consistent with the code of civil procedure.

In subparagraphs (a)(3)(A) and (B), the Committee agreed to clarify that mailing by certified mail, return receipt requested, is done pursuant to the code of civil procedure. This will incorporate the civil code's language that service by that method is effective upon delivery. The Committee acknowledged that this change could create difficulties for plaintiffs because a high number of mailed notices are returned as undeliverable, despite having been sent to addresses obtained from drivers licenses, vehicle registrations, and other such sources. To enable plaintiffs to proceed when a mailed notice is returned without delivery, the Committee also agreed to amend subparagraph (a)(3)(C) to allow for service by publication if service by certified mail under subparagraph (a)(3)(A) or (B) has failed.

Eliminating Barriers to Counsel – Criminal Forfeiture and Fee-Shifting

As indicated by the proposed changes above, the Committee was very concerned about barriers to participation by pro se claimants, who are often innocent owners of property that is seized while in use by, or possession of, another person. Although the changes the Committee has recommended will be helpful when an innocent owner must attempt to negotiate the system alone, the Committee also explored several ideas to improve these claimants' access to legal representation.

The Committee invested a significant amount of time and effort into the possibility of implementing criminal forfeiture for property valued beneath a certain threshold, such as \$25,000 to \$30,000. It does not make financial sense to hire an attorney to defend lower-valued property, and defense attorneys are unlikely to take a case on contingency unless the property is valued above that threshold. Lee McGrath, the speaker from the Institute of Justice who spoke to the Committee at its first meeting, planted the seed for this idea of amending the law to allow only criminal forfeiture for cases below a certain threshold and retaining civil forfeiture for higher-value cases. Mr. McGrath informed the Committee that 20% of forfeiture proceeds are derived from 80% of the total cases, and 80% of the total proceeds are derived from 20% of the cases. Initially, the Committee thought that eliminating civil forfeiture for cases below a specific threshold amount could be a workable compromise. First, the majority of claimants would be represented by counsel in the criminal proceeding, and forfeiture without a conviction would be eliminated for those claimants. In addition, it would leave civil forfeiture in place for 80% of the proceeds, which would keep the majority of that money available to law enforcement for use in fighting crime and improving public safety. However, while the entire Committee generally supported exploring the concept, the Committee was unable to reach consensus on the details of making it work.

The Committee also considered the idea of fee-shifting to eliminate barriers to obtaining counsel in lower-value cases. Generally, the concept would involve the possibility that the plaintiff would have to pay the claimant's attorney fees if the forfeiture case were unsuccessful. This would have two benefits – defense attorneys would be more willing to take on smaller cases, and plaintiffs would be less likely to prosecute marginal cases. After many discussions, however, the Committee was unable to reach consensus on enacting any type of fee-shifting provision.

Prohibiting County Attorneys From Referring Forfeiture Cases to Self

The 2016 LPA Audit uncovered a potential issue with how the Montgomery County Attorney pursued forfeitures for the Coffeyville Police Department. Under K.S.A. 60-4107(h), if the county attorney declines to pursue a forfeiture case, a law enforcement agency may engage a private attorney to pursue the case as long as the county attorney approves. The Montgomery County Attorney was declining forfeiture cases in his capacity as county attorney and taking the cases instead in his capacity as a private attorney. The LPA Audit found this arrangement to present a clear conflict of interest. In the 2017 legislative session, LPA introduced HB 2003 and SB 3 to address the issue. The two identical bills added a sentence to K.S.A. 60-4107(h)(2), which provided that, after declining to represent a law enforcement agency in a forfeiture proceeding, a county or district attorney may not then represent the agency in the proceeding as a private attorney. The prohibition extended to any law firm in which the county or district attorney has an affiliation.

The Committee agreed the statute should be amended to clarify that it is not allowed for a county or district attorney to approve the hiring of himself or herself as a private attorney, or an affiliated law firm. However, the Committee opted to amend the statute in a slightly different fashion. First, the Committee recommends amending language in K.S.A. 60-4107(h) regarding the county or district attorney's duty to accept or decline a law enforcement agency's request for forfeiture. The statute currently provides the county or district attorney "shall have 14 days to accept the request" and goes on to state the law enforcement agency can engage a private attorney if the county or district attorney declines the request or fails to answer. The Committee agreed the "or fails to answer" language must remain or the law enforcement agency would be left with no options should the county or district attorney fail to respond. However, the Committee believes the county or district attorney has a duty to review and respond to each request individually and recommends the language be amended to provide that "the county or district attorney shall accept or decline the request within 14 days."

To address the LPA Audit concern regarding conflict of interest, the Committee recommends language that would also encompass a prohibition against an indirect benefit, such as a county attorney approving a referral to a spouse or a spouse's law firm. The Committee recommends similar amendments to K.S.A. 60-4107(i), which would prohibit the attorney general from approving the engagement of an attorney with whom the attorney general has a direct or indirect interest.

Finally, the Committee recommends adding a new subsection as K.S.A. 60-4107(j), which would prohibit a county attorney, district attorney, or the attorney general from requesting or receiving any referral fee or personal benefit, direct or indirect, from any proceeding conducted under KSASFA.

CONCLUSION

The Committee, comprised of both proponents and opponents of civil asset forfeiture reform, worked together to reach agreement on the KSASFA amendments discussed above. As in any compromise, some Committee members did not favor all of the amendments, and some members hoped for more sweeping changes to asset forfeiture in Kansas. The Committee considers the new centralized reporting requirements to be one of the most important amendments proposed. The main obstacle in making further changes was the lack of any reliable data to support them, and the proposed reporting requirements will enable the collection of data from which further changes may be deemed warranted in the future. Many Committee members were unwilling to throw out the existing system without proof of systemic problems, arguing that changes to Kansas law should be Kansas-focused and based on reliable data as opposed to simply replicating the reforms enacted by other states, having no evidence of similar circumstances. The Committee does not consider its work to be completed. If the Committee's recommendations are enacted, the Committee stands ready to draft forms and instructions and is willing to reconvene in the future to reassess these issues once there are a few years of data available for analysis and review.

COMMITTEE RECOMMENDATION

The Committee does not recommend passage of the bills introduced in 2017 and recommends instead the attached proposed legislation.

AN ACT concerning the Kansas standard asset seizure and forfeiture act; establishing the Kansas asset seizure and forfeiture repository; relating to reporting of seizures for forfeiture; forfeiture fund reports; open records; seizure and forfeiture procedure; amending K.S.A. 60-4101, 60-4106, 60-4110 and 60-4114 and K.S.A. 2017 Supp. 45-220, 60-4107, 60-4109, 60-4111, 60-4112, 60-4113 and 60-4117 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) On or before July 1, 2019, the Kansas bureau of investigation shall establish the Kansas asset seizure and forfeiture repository. The repository shall gather information concerning each seizure for forfeiture made by a seizing agency pursuant to the Kansas standard asset seizure and forfeiture act including, but not limited to, the following:

- (1) The name of the seizing agency or the name of the lead agency if part of a multi-jurisdictional task force;
- (2) the county where the seizure occurred;
- (3) the date and time the seizure occurred;
- (4) any applicable agency or district court case numbers for the seizure;
- (5) a description of the initiating law enforcement activity leading to the seizure;
- (6) a description of the specific location where the seizure occurred;
- (7) the conduct or offense giving rise to the forfeiture;
- (8) a description of the type of property seized and the estimated value;
- (9) a description of the type of contraband seized and the estimated value;
- (10) whether criminal charges were filed for an offense related to the forfeiture and, if so, court and case number information for the criminal charges;
- (11) a description of the final disposition of the forfeiture action, including a

description of the disposition of any claim or exemption asserted under this act;

(12) whether the forfeiture was transferred to the federal government for disposition;

(13) the total cost of the forfeiture action, including attorney fees; and

(14) the total amount of proceeds from the forfeiture action, specifying the amount received by the seizing agency and the amount received by any other agency or person.

(b) On and after July 1, 2019, the Kansas bureau of investigation shall maintain the repository and an associated public website. On or before July 1, 2019, the Kansas bureau of investigation shall promulgate rules and regulations to implement this section.

(c) On and after July 1, 2019, each seizing agency shall report information concerning each seizure for forfeiture to the Kansas asset seizure and forfeiture repository as required by this section and the rules and regulations promulgated pursuant to this section. The prosecuting attorney shall submit information concerning each forfeiture action to the seizing agency within 30 days after the final disposition of the forfeiture. The seizing agency shall submit the required information to the repository within 60 days after the final disposition of the forfeiture.

(d) On or before February 1, 2020, and annually on or before February 1 thereafter, each law enforcement agency shall compile and submit a forfeiture fund report to the Kansas asset seizure and forfeiture repository as required by this section and the rules and regulations promulgated pursuant to this section.

(1) If the law enforcement agency is a state agency, the report shall include, but not be limited to:

(A) The agency's state forfeiture fund balance on January 1 and December 31 of the preceding calendar year; and

(B) the total amount of the deposits and a listing, by category, of expenditures from January 1 through December 31 of the preceding calendar year.

(2) If the law enforcement agency is a city or county agency, the report shall include, but not be limited to:

(A) The agency's special law enforcement trust fund balance on January 1 and December 31 of the preceding calendar year; and

(B) the total amount of the deposits and a listing, by category, of expenditures from January 1 through December 31 of the preceding calendar year.

(3) The report shall separate and account for:

(A) Deposits and expenditures from proceeds from forfeiture credited to the fund pursuant to K.S.A. 60-4117, and amendments thereto;

(B) deposits and expenditures from proceeds from forfeiture actions under federal law; and

(C) amounts held by the agency related to pending forfeiture actions under the Kansas standard asset seizure and forfeiture act.

Sec. 2. K.S.A. 2017 Supp. 45-220 is hereby amended to read as follows: 45-220. (a) Each public agency shall adopt procedures to be followed in requesting access to and obtaining copies of public records, which procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency's essential functions, provide assistance and information upon request and insure efficient and timely action in response to applications for inspection of public records.

(b) A public agency may require a written request for inspection of public records but

shall not otherwise require a request to be made in any particular form. Except as otherwise provided by subsection (c), a public agency shall not require that a request contain more information than the requester's name and address and the information necessary to ascertain the records to which the requester desires access and the requester's right of access to the records. A public agency may require proof of identity of any person requesting access to a public record. No request shall be returned, delayed or denied because of any technicality unless it is impossible to determine the records to which the requester desires access.

(c) If access to public records of an agency or the purpose for which the records may be used is limited pursuant to K.S.A. 45-221 or K.S.A. 2017 Supp. 45-230, and amendments thereto, the agency may require a person requesting the records or information therein to provide written certification that:

- (1) The requester has a right of access to the records and the basis of that right; or
- (2) the requester does not intend to, and will not: (A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.

(d) A public agency shall establish, for business days when it does not maintain regular office hours, reasonable hours when persons may inspect and obtain copies of the agency's records. The public agency may require that any person desiring to inspect or obtain copies of the

agency's records during such hours so notify the agency, but such notice shall not be required to be in writing and shall not be required to be given more than 24 hours prior to the hours established for inspection and obtaining copies.

(e) Each official custodian of public records shall designate such persons as necessary to carry out the duties of custodian under this act and shall ensure that a custodian is available during regular business hours of the public agency to carry out such duties.

(f) Each public agency shall provide, upon request of any person, the following information:

(1) The principal office of the agency, its regular office hours and any additional hours established by the agency pursuant to subsection (c).

(2) The title and address of the official custodian of the agency's records and of any other custodian who is ordinarily available to act on requests made at the location where the information is displayed.

(3) The fees, if any, charged for access to or copies of the agency's records.

(4) The procedures to be followed in requesting access to and obtaining copies of the agency's records, including procedures for giving notice of a desire to inspect or obtain copies of records during hours established by the agency pursuant to subsection (c).

(g) Except for requests of summary data compiled from information submitted by multiple criminal justice agencies or as otherwise provided by law, requests for records submitted to the central repository or any other repositories supporting the criminal justice information system ~~which~~ that are maintained by the Kansas bureau of investigation pursuant to K.S.A. 22-4704 and 22-4705, and amendments thereto, shall be directed to the criminal justice

agency from which the records originated.

~~(h)~~—As used in this ~~section~~ subsection, the terms "central repository," "criminal justice agency" and "criminal justice information system" have the same meanings as defined in K.S.A. 22-4701, and amendments thereto.

(h) Except for requests of summary data compiled from information submitted by multiple law enforcement agencies or as otherwise provided by law, requests for records submitted to the Kansas asset seizure and forfeiture repository that are maintained by the Kansas bureau of investigation pursuant to section 1, and amendments thereto, shall be directed to the law enforcement agency from which the records originated.

Sec. 3. K.S.A. 60-4101 is hereby amended to read as follows: 60-4101. ~~This act~~ K.S.A. 60-4101 through 60-4126 and section 1, and amendments thereto, shall be known and may be cited as the Kansas standard asset seizure and forfeiture act.

Sec. 4. K.S.A. 60-4106 is hereby amended to read as follows: 60-4106. (a) All property, including all interests in property, described in K.S.A. 60-4105, and amendments thereto, is subject to forfeiture subject to all mortgages, deeds of trust, financing statements or security agreements properly of record prior to the forfeiture held by an interest holder except that property specifically exempted hereunder:

(1) No real property or conveyance, or an interest therein, may be forfeited under this act unless the offense or conduct giving rise to forfeiture constitutes a felony.

(2) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this act unless ~~it appears that~~ the owner or other person in charge of the conveyance is a consenting party or privy to a violation of

this act.

(3) No property is subject to forfeiture under this act if the owner or interest holder acquired the property before or during the conduct giving rise to the property's forfeiture, and such owner or interest holder:

(A) Did not know and could not have reasonably known of the act or omission or that it was likely to occur; or

(B) acted reasonably to prevent the conduct giving rise to forfeiture.

(4) No property is subject to forfeiture if the owner or interest holder acquired the property after the conduct giving rise to the property's forfeiture, including acquisition of proceeds of conduct giving rise to forfeiture, and ~~the~~ such owner or interest holder:

(A) Acquired the property in good faith, for value; and

(B) was not knowingly taking part in an illegal transaction.

(5) (A) An interest in property acquired in good faith by an attorney as reasonable payment or to secure payment for legal services in a criminal matter relating to violations of this act or for the reimbursement of reasonable expenses related to the legal services is exempt from forfeiture unless before the interest was acquired the attorney knew of a judicial determination of probable cause that the property is subject to forfeiture.

(B) The state bears the burden of proving that an exemption claimed under this section is not applicable. Evidence made available by the compelled disclosure of confidential communications between an attorney and a client other than nonprivileged information relating to attorney fees, is not admissible to satisfy the state's burden of proof.

(b) Notwithstanding subsection (a), property is not exempt from forfeiture, even though

the owner or interest holder lacked knowledge or reason to know that the conduct giving rise to property's forfeiture had occurred or was likely to occur, if the:

(1) Person whose conduct gave rise to the property's forfeiture had authority to convey the property of the person claiming the exemption to a good faith purchaser for value at the time of the conduct;

(2) owner or interest holder is criminally responsible for the conduct giving rise to the property's forfeiture, whether or not there is a prosecution or conviction; or

(3) owner or interest holder acquired the property with notice of the property's actual or constructive seizure for forfeiture under this act, or with reason to believe that the property was subject to forfeiture under this act.

(c) Prior to final judgment in a judicial forfeiture proceeding, a court shall limit the scope of a proposed forfeiture to the extent the court finds the effect of the forfeiture is grossly disproportionate to the nature and severity of the owner's conduct including, but not limited to, a consideration of any of the following factors:

(1) The gain received or expected to be received by an owner from conduct that allows forfeiture;

(2) the value of the property subject to forfeiture;

(3) the extent to which the property actually facilitated the criminal conduct;

(4) the nature and extent of the owner's knowledge of the role of others in the conduct that allows forfeiture of the property and efforts of the owner to prevent the conduct; and

(5) the totality of the circumstances regarding the investigation.

Sec. 5. K.S.A. 2017 Supp. 60-4107 is hereby amended to read as follows: 60-4107. (a)

Property may be seized for forfeiture by a law enforcement officer upon process issued by the district court. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for the property's forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The court may order that the property be seized on such terms and conditions as are reasonable in the discretion of the court. The order may be made on or in connection with a search warrant. All real property is to be seized constructively or pursuant to a pre-seizure adversarial judicial determination of probable cause, except that this determination may be done ex parte when the attorney for the state has demonstrated exigent circumstances to the court.

(b) Property may be seized for forfeiture by a law enforcement officer without process on probable cause to believe the property is subject to forfeiture under this act.

(c) Property may be seized constructively by:

(1) Posting notice of seizure for forfeiture or notice of pending forfeiture on the property.

(2) Giving notice pursuant to K.S.A. 60-4109, and amendments thereto.

(3) Filing or recording in the public records relating to that type of property notice of seizure for forfeiture, notice of pending forfeiture, a forfeiture lien or a lis pendens. Filings or recordings made pursuant to this act are not subject to a filing fee or other charge, except that court costs may be assessed and, if assessed, shall include the amount of the docket fee prescribed by K.S.A. 60-2001, and amendments thereto, and any additional court costs accrued in the action.

(d) The seizing agency shall make reasonable effort to provide notice of the seizure to

the person from whose possession or control the property was seized and any interest holder of record within 30 days of seizing the property. If no person is in possession or control, the seizing agency may attach the notice to the property or to the place of the property's seizure or may make a reasonable effort to deliver the notice to the owner of the property. The notice shall contain a general description of the property seized, the date and place of seizure, the name of the seizing agency and the address and telephone number of the seizing officer or other person or agency from whom information about the seizure may be obtained.

(e) A person who acts in good faith and in a reasonable manner to comply with an order of the court or a request of a law enforcement officer is not liable to any person on account of acts done in reasonable compliance with the order or request. No liability may attach from the fact that a person declines a law enforcement officer's request to deliver property.

(f) A possessory lien of a person from whose possession property is seized is not affected by the seizure.

(g) When property is seized for forfeiture under this act, the seizing agency shall, within 45 days of such seizure, forward to the county or district attorney in whose jurisdiction the seizure occurred, a written request for forfeiture which shall include a statement of facts and circumstances of the seizure, the estimated value of the property, the owner and lienholder of the property, the amount of any lien, and a summary of the facts relied on for forfeiture.

(h) Upon receipt of a written request for forfeiture from a local law enforcement agency, the county or district attorney shall ~~have 14 days to accept the request. Should such~~ accept or decline the request within 14 days. If the county or district attorney ~~decline~~ declines such request, or ~~fail~~ fails to answer, the seizing agency may:

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(1) Request a state law enforcement agency ~~which~~ that enforces this act to adopt the forfeiture; or

(2) engage an attorney, approved by the county or district attorney, to represent the agency in the forfeiture proceeding, but in no event shall the county or district attorney approve an attorney with whom the county or district attorney has a financial interest, either directly or indirectly.

(i) Upon receipt of a written request for forfeiture from a state law enforcement agency, the county or district attorney shall ~~have 14 days to accept the request. Should such~~ accept or decline the request within 14 days. If the county or district attorney ~~decline~~ declines such request, or ~~fail~~ fails to answer, the seizing agency may engage an assistant attorney general or other attorney approved by the attorney ~~general's office~~ general to represent the agency in the forfeiture proceeding, but in no event shall the attorney general approve an attorney with whom the attorney general has a financial interest, either directly or indirectly.

(j) A county or district attorney or the attorney general shall not request or receive any referral fee or personal financial benefit, either directly or indirectly, in any proceeding conducted under this act.

(k) Nothing in this act shall prevent the attorney general, an employee of the attorney general or an authorized representative of the attorney general from conducting forfeiture proceedings under this act.

~~(k)~~ (l) Nothing in this act shall prevent a seizing agency from requesting federal adoption of a seizure. It shall not be necessary to obtain any order pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized property to a federal agency ~~should~~ if the county

or district attorney ~~approve~~ approves of such transfer.

~~(m)~~ (m) Nothing in this act shall prevent a seizing agency, or the plaintiff's attorney on behalf of the seizing agency, from settling any alleged forfeiture claim against property before or during forfeiture proceedings. Such settlement shall be in writing and shall be approved, if a local agency, by the county or district attorney or, if a state agency, by the attorney general's office and a district court judge. No hearing or other proceeding shall be necessary. The records of settlements occurring prior to commencement of judicial forfeiture proceedings in the district court shall be retained by the county or district attorney for not less than five years.

~~(m)~~ (n) Settlements under this act shall not be conditioned upon any disposition of criminal charges.

Sec. 6. K.S.A. 2017 Supp. 60-4109 is hereby amended to read as follows: 60-4109. (a) Forfeiture proceedings shall be commenced by filing a notice of pending forfeiture or a judicial forfeiture action:

(1) If the plaintiff's attorney fails to initiate forfeiture proceedings by notice of pending forfeiture within 90 days against property seized for forfeiture or if the seizing agency fails to pursue forfeiture of the property upon which a proper claim has been timely filed by filing a judicial forfeiture proceeding within 90 days after notice of pending forfeiture, the property shall be released on the request of an owner or interest holder to such owner's or interest holder's custody, as custodian for the court, pending further proceedings pursuant to this act. Such custodianship shall not exceed 90 days following the release to the owner or interest holder unless an extension is authorized by the court for good cause shown.

(2) If, after notice of pending forfeiture, a claimant files a petition for recognition of

exemption pursuant to K.S.A. 60-4110, and amendments thereto, the plaintiff's attorney may delay filing the judicial forfeiture proceeding for a total of 180 days after the notice of pending forfeiture except that if an interest holder timely files a proper petition documenting the complete nature and extent of such holder's interest, including all of the contractual terms and current status, the plaintiff's attorney may delay filing a judicial forfeiture proceeding only if such attorney provides each such petitioner with a written recognition of exemption within 60 days after the effective date of the notice of pending forfeiture, recognizing the interest of such petitioner to the extent of documented outstanding principal plus interest at the contract rate until paid and any attorney fees ordered by a court pursuant to such contract.

(3) Whenever notice of pending forfeiture or service of an in rem complaint or notice of a recognition of exemption and statement of nonexempt interests is required under this act, notice or service shall be given in accordance with one of the following:

(A) If the owner's or interest holder's name and current address are known, by either personal service by any person qualified to serve process or by any law enforcement officer or by mailing a copy of the notice by certified mail, return receipt requested, to the known address, [pursuant to the code of civil procedure](#);

(B) if the owner's or interest holder's name and address are required by law to be on record with a municipal, county, state or federal agency to perfect an interest in the property, and the owner's or interest holder's current address is not known, by mailing a copy of the notice by certified mail, return receipt requested, to any address of record with any of the described agencies, [pursuant to the code of civil procedure](#); or

(C) if the owner's or interest holder's address is not known and is not on record as

provided in ~~paragraph~~ subparagraph (B), or the owner's or interest holder's interest is not known, or if service by certified mail was attempted pursuant to subparagraph (A) or (B) and was not effective, by publication in one issue of the official county newspaper, as defined by K.S.A. 64-101, and amendments thereto, in the county in which the seizure occurred.

(4) Notice is effective ~~upon personal service, publication or the mailing of a written notice, whichever is earlier~~ pursuant to the code of civil procedure, except that notice of pending forfeiture of real property is not effective until it is recorded. Notice of pending forfeiture shall include a description of the property, the date and place of seizure, the conduct giving rise to forfeiture or the violation of law alleged and a summary of procedures and procedural rights applicable to the forfeiture action. An affidavit describing the essential facts supporting forfeiture shall be included with the notice. Copies of judicial council forms for petitioning for recognition of an exemption pursuant to K.S.A. 60-4110, and amendments thereto, and for making a claim pursuant to K.S.A. 60-4111, and amendments thereto, shall be provided with the notice.

(b) The plaintiff's attorney, without a filing fee, may file a lien for the forfeiture of property upon the initiation of any civil or criminal proceeding relating to conduct giving rise to forfeiture under this act or upon seizure for forfeiture. Court costs may be assessed and, if assessed, shall include the amount of the docket fee prescribed by K.S.A. 60-2001, and amendments thereto, and any additional court costs accrued in the action. A plaintiff's attorney may also file a forfeiture lien in this state in connection with a proceeding or seizure for forfeiture in any other state under a state or federal statute substantially similar to the relevant provisions of this act. The filing constitutes notice to any person claiming an interest in the seized property or in property owned by the named person.

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(1) The lien notice shall set forth the following:

(A) The name of the person and, in the discretion of the lienor, any alias, or the name of any corporation, partnership, trust or other entity, including nominees, that are owned entirely or in part or controlled by the person; and

(B) the description of the seized property, the criminal or civil proceeding that has been brought relating to conduct giving rise to forfeiture under this act, the amount claimed by the lienor, the name of the district court where the proceeding or action has been brought, and the case number of the proceeding or action if known at the time of filing.

(2) A lien filed pursuant to this subsection applies to the described seized property or to one named person, any aliases, fictitious names, or other names, including the names of any corporation, partnership, trust, or other entity, owned entirely or in part, or controlled by the named person, and any interest in real property owned or controlled by the named person. A separate forfeiture lien shall be filed for each named person.

(3) The notice of lien creates, upon filing, a lien in favor of the lienor as it relates to the seized property or the named person or related entities. The lien secures the amount of potential liability for civil judgment, and if applicable, the fair market value of seized property relating to all proceedings under this act enforcing the lien. The notice of forfeiture lien referred to in this subsection shall be filed in accordance with the provisions of the laws of this state relating to the type of property that is subject to the lien. The validity and priority of the forfeiture lien shall be determined in accordance with applicable law pertaining to liens. The lienor may amend or release, in whole or in part, a lien filed under this subsection at any time by filing, without a filing fee, an amended lien in accordance with this subsection which identifies the lien amended.

The lienor, as soon as practical after filing the lien, shall furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection shall not invalidate or otherwise affect the lien.

(4) Upon entry of judgment in the seizing agency's favor, the seizing agency may proceed to execute on the lien as provided by law.

(5) A trustee, constructive or otherwise, who has notice that a notice of forfeiture lien, or a notice of pending forfeiture, or a civil forfeiture proceeding has been filed against the property or against any person or entity for whom the person holds title or appears as record owner, shall furnish within 14 days, to the seizing agency or the plaintiff's attorney all of the following information, unless all of the information is of record in the public records giving notice of liens on that type of property:

(A) The name and address of each person or entity for whom the property is held;

(B) the description of all other property whose legal title is held for the benefit of the named person; and

(C) a copy of the applicable trust agreement or other instrument, if any, under which the trustee or other person holds legal title or appears as record owner of the property.

(6) A trustee with notice who knowingly fails to comply with the provisions of this subsection shall be guilty of a class B nonperson misdemeanor.

(7) A trustee with notice who fails to comply with paragraph (5) is subject to a civil penalty of \$100 for each day of noncompliance. The court shall enter judgment ordering payment of \$100 for each day of noncompliance from the effective date of the notice until the required information is furnished or the seizing agency executes the seizing agency's judgment lien under

this section.

(8) To the extent permitted by the constitutions of the United States and the state of Kansas, the duty to comply with paragraph (5) shall not be excused by any privilege or provision of law of this state or any other state or country which authorizes or directs that testimony or records required to be furnished pursuant to paragraph (5) are privileged, confidential and otherwise may not be disclosed.

(9) A trustee who furnishes information pursuant to paragraph (5) is immune from civil liability for the release of the information.

(10) An employee of the seizing agency or the plaintiff's attorney who releases the information obtained pursuant to paragraph (5), except in the proper discharge of official duties, is guilty of a class B nonperson misdemeanor.

(11) If any information furnished pursuant to paragraph (5) is offered in evidence, the court may seal that portion of the record or may order that the information be disclosed in a designated way.

(12) A judgment or an order of payment entered pursuant to this section becomes a judgment lien against the property alleged to be subject to forfeiture.

Sec. 7. K.S.A. 60-4110 is hereby amended to read as follows: 60-4110. (a) The plaintiff's attorney ~~may~~ shall make an opportunity to file a petition for recognition of exemption available in the following manner:

(1) ~~If the plaintiff's attorney makes an opportunity to file a petition for recognition of exemption available,~~ The plaintiff's attorney shall ~~so indicate~~ acknowledge the opportunity to file a petition for recognition of exemption in the notice of pending forfeiture described in ~~subsection~~

~~(a)~~ of K.S.A. 60-4109(a), and amendments thereto.

(2) An owner of or an interest holder in the property may elect to file a claim within ~~30~~ 60 days after the effective date of the notice of pending forfeiture or a petition for recognition of exemption with the plaintiff's attorney within ~~30~~ 60 days after the effective date of the notice, but no petition may be filed after a court action has been commenced by the seizing agency. The claim or petition shall substantially comply with the requirements for claims in K.S.A. 60-4111, and amendments thereto. The effective date of a notice of pending forfeiture shall be as provided for in K.S.A. 60-4109, and amendments thereto.

(b) The following shall apply if one or more owners or interest holders timely petition for recognition of exemption:

(1) The plaintiff's attorney shall provide the seizing agency and the petitioning party with a written recognition of exemption and statement of nonexempt interests relating to any or all interests in the property in response to each petitioning party within ~~120~~ 90 days after the effective date of the notice of pending forfeiture.

(2) An owner of or interest holder in any property declared nonexempt may file a claim as described in K.S.A. 60-4111, and amendments thereto, within ~~30~~ 60 days after the effective date of the notice of the recognition of exemption and statement of nonexempt interests.

(3) The plaintiff's attorney may elect to proceed as provided herein for judicial forfeiture at any time.

(4) If no petitioning party files a proper claim within ~~30~~ 60 days after the effective date of notice of the recognition of exemption and statement of nonexempt interests, the recognition of exemption and statement of nonexempt interests becomes final, and the plaintiff's attorney

shall proceed as provided in K.S.A. 60-4116 and 60-4117, [and amendments thereto](#).

(5) If a judicial proceeding follows a notice of pending forfeiture making an opportunity to file a petition for recognition of exemption available:

(A) No duplicate or repetitive notice is required. If a proper claim has been timely filed pursuant to subsection (b)(2), the claim shall be determined in a judicial forfeiture proceeding after the commencement of such a proceeding under K.S.A. 60-4113, 60-4114 and 60-4115, [and amendments thereto](#).

(B) The proposed recognition of exemption and statement of nonexempt interests responsive to all petitioning parties who subsequently filed claims are void and will be regarded as rejected offers to compromise.

(c) If no proper petition for recognition of exemption or proper claim is timely filed, the plaintiff's attorney shall proceed as provided in K.S.A. 60-4116 and 60-4117, [and amendments thereto](#).

Sec. 8. K.S.A. 2017 Supp. 60-4111 is hereby amended to read as follows: 60-4111. (a) Only an owner of or interest holder in property seized for forfeiture may file a claim, and shall do so in the manner provided in this section. The claim shall be mailed to the seizing agency and to the plaintiff's attorney by certified mail, return receipt requested, within ~~30~~ 60 days after the effective date of notice of pending forfeiture. ~~No extension of time for the filing of a claim shall be granted except for good cause shown.~~

(b) The claim ~~and all supporting documents~~ shall be ~~in affidavit form~~, signed by the claimant ~~under oath, and sworn to by the affiant before one who has authority to administer the oath~~, under penalty of perjury, K.S.A. 2017 Supp. 21-5903, and amendments thereto, ~~or making~~

~~a false writing, K.S.A. 2017 Supp. 21-5824, and amendments thereto,~~ and shall set forth ~~all of~~ the following:

(1) The caption of the proceedings and identifying number, if any, as set forth on the notice of pending forfeiture or complaint, the name of the claimant, and the name of the plaintiff's attorney who authorized the notice of pending forfeiture or complaint.;

(2) the address where the claimant will accept mail.;

(3) the nature and extent of the claimant's interest in the property. and

(4) ~~The date, the identity of the transferor, and~~ a detailed description of ~~the circumstances of the claimant's acquisition of the~~ when and how the claimant obtained an interest in the property.

~~(5) The specific provision of this act relied on in asserting that the property is not subject to forfeiture.~~

~~(6) All essential facts supporting each assertion.~~

~~(7) The specific relief sought.~~

(c) Substantial compliance with subsection (b) shall be deemed sufficient.

(d) It is permissible to assert the right against self-incrimination in a claim. If a claimant asserts the right, the court, in the court's discretion, may draw an adverse inference from the assertion against the claimant. The adverse inference shall not, by itself, be the basis of a judgment against the claimant.

Sec. 9. K.S.A. 2017 Supp. 60-4112 is hereby amended to read as follows: 60-4112. (a) A judicial forfeiture proceeding under this act is subject to the provisions of this section.

(b) The court, on application of the plaintiff's attorney, may enter any restraining order

or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants or trustees, or take any other action to seize, secure, maintain or preserve the availability of property subject to forfeiture under this act, including a writ of attachment or a warrant for such property's seizure, whether before or after the filing of a notice of pending forfeiture or complaint.

(c) If property is seized for forfeiture or a forfeiture lien is filed without a previous judicial determination of probable cause or order of forfeiture or a hearing under ~~subsection (c)~~ of K.S.A. 60-4114(c), and amendments thereto, the court, on an application filed by an owner of or interest holder in the property within 14 days after notice of the property's seizure for forfeiture or lien, or actual knowledge of it, whichever is earlier, and after complying with the requirements for claims in K.S.A. 60-4109, and amendments thereto, after seven days' notice to the plaintiff's attorney, may issue an order to show cause to the seizing agency, for a hearing on the sole issue of whether probable cause for forfeiture of the property then exists. The hearing shall be held within 30 days of the order to show cause unless continued for good cause on motion of either party. If the court finds that there is no probable cause for forfeiture of the property, or if the seizing agency elects not to contest the issue, the property shall be released to the custody of the applicant, as custodian for the court, or from the lien pending the outcome of a judicial proceeding pursuant to this act. If the court finds that probable cause for the forfeiture of the property exists, the court shall not order the property released.

(d) All applications filed within the 14-day period prescribed by subsection (c) shall be consolidated for a single hearing relating to each applicant's interest in the property seized for forfeiture.

(e) A person charged with a criminal offense may apply at any time before final judgment to the court where the forfeiture proceeding is pending for the release of property seized for forfeiture, that is necessary for the defense of the person's criminal charge. The application shall satisfy the requirements under ~~subsection (b) of~~ K.S.A. 60-4111(b), and amendments thereto. The court shall hold a probable cause hearing if the applicant establishes that:

(1) The person has not had an opportunity to participate in a previous adversarial judicial determination of probable cause;

(2) the person has no access to other moneys adequate for the payment of criminal counsel; and

(3) the interest in property to be released is not subject to any claim other than the forfeiture.

(f) If the court finds that there is no probable cause for forfeiture of the property, the court shall order the property released pursuant to subsection (c). If the seizing agency does not contest the hearing, the court may release a reasonable amount of property for the payment of the applicant's criminal defense costs. Property that has been released by the court and that has been paid for criminal defense services actually rendered is exempt under this act.

(g) A defendant convicted in any criminal proceeding is precluded from later denying the ~~essential allegations~~ elements of the criminal offense of which the defendant was convicted in any proceeding pursuant to this section. For the purposes of this section, a conviction results from a verdict or plea of guilty, including a plea of no contest or nolo contendere.

(h) In any proceeding under this act, if a claim is based on any exemption provided for

in this act, the burden of proving the existence of the exemption is on the claimant, and is not necessary for the seizing agency or plaintiff's attorney to negate the exemption in any application or complaint.

(i) In hearings and determinations pursuant to this section, the court may receive and consider, in making any determination of probable cause or reasonable cause, all evidence admissible in determining probable cause at a preliminary hearing or in the issuance of a search warrant, together with inferences therefrom.

~~(j) The fact that money, negotiable instruments, precious metals, communication devices, and weapons were found in close proximity to contraband or an instrumentality of conduct giving rise to forfeiture shall give rise to the rebuttable presumption, in the manner provided in subsection (a) of K.S.A. 60-414, and amendments thereto, that such item was the proceeds of conduct giving rise to forfeiture or was used or intended to be used to facilitate the conduct.~~

~~(k) There shall be a rebuttable presumption, in the manner provided in subsection (a) K.S.A. 60-414, and amendments thereto, that any~~ The totality of the circumstances shall determine if the property of a person is subject to forfeiture under this act ~~if the seizing agency establishes, by the standard of proof applicable to that proceeding, all of.~~ Factors that may be considered include, but are not limited to, the following:

- (1) The person has engaged in conduct giving rise to forfeiture;
- (2) the property was acquired by the person during that period of the conduct giving rise to forfeiture or within a reasonable time after the period; ~~and~~
- (3) there was no likely source for the property other than the conduct giving rise to

forfeiture: and

(4) the proximity to contraband or an instrumentality giving rise to forfeiture.

~~(H)~~ (k) A finding that property is the proceeds of conduct giving rise to forfeiture does not require proof the property is the proceeds of any particular exchange or transaction.

~~(m)~~ (l) A person who acquires any property subject to forfeiture is a constructive trustee of the property, and such property's fruits, for the benefit of the seizing agency, to the extent that such agency's interest is not exempt from forfeiture. If property subject to forfeiture has been commingled with other property, the court shall order the forfeiture of the mingled property and of any fruits of the mingled property, to the extent of the property subject to forfeiture, unless an owner or interest holder proves that specified property does not contain property subject to forfeiture, or that such owner's or interest holder's interest in specified property is exempt from forfeiture.

~~(n)~~ (m) All property declared forfeited under this act vests in the law enforcement agency seeking forfeiture on the date of commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any such property or proceeds subsequently transferred to any person remain subject to forfeiture and thereafter shall be ordered forfeited unless the transferee acquired the property in good faith, for value, and was not knowingly taking part in an illegal transaction, and the transferee's interest is exempt under K.S.A. 60-4106, and amendments thereto.

~~(o)~~ (n) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this act, nor give rise to any presumption adverse or contrary to any fact alleged by the seizing agency.

~~(p)~~ (o) On motion ~~by the plaintiff's attorney~~, the court shall stay discovery against the criminal defendant and against the seizing agency in civil proceedings during a related criminal proceeding alleging the same conduct, after making provision to prevent loss to any party resulting from the delay. Such a stay shall not be available pending any appeal by a defendant.

~~(q)~~ (p) Except as otherwise provided by this act, all proceedings hereunder shall be governed by the rules of civil procedure pursuant to K.S.A. 60-101 et seq., and amendments thereto.

~~(r)~~ (q) An action pursuant to this act shall be consolidated with any other action or proceeding pursuant to this act or to such other foreclosure or trustee sale proceedings relating to the same property on motion of the plaintiff's attorney, and may be consolidated on motion of an owner or interest holder.

~~(s) There shall be a rebuttable presumption, in the manner provided in subsection (a) of K.S.A. 60-414, and amendments thereto, that any property in or upon which controlled substances are located at the time of seizure, was being used or intended for use to facilitate an act giving rise to forfeiture.~~

Sec. 10. K.S.A. 2017 Supp. 60-4113 is hereby amended to read as follows: 60-4113. (a) A judicial in rem forfeiture proceeding brought by the plaintiff's attorney pursuant to a notice of pending forfeiture or verified petition for forfeiture is also subject to the provisions of this section. If a forfeiture is authorized by this act, it shall be ordered by the court in the in rem action.

(b) An action in rem may be brought by the plaintiff's attorney in addition to, or in lieu of, civil in personam forfeiture procedures. The seizing agency may serve the complaint in the

manner provided by ~~subsection (a)(3) of~~ K.S.A. 60-4109(a)(3), and amendments thereto, or as provided by the rules of civil procedure.

(c) Only an owner of or an interest holder in the property who has timely filed a proper claim may file an answer in an action in rem. For the purposes of this section, an owner of or interest holder in property who has filed a claim and answer shall be referred to as a claimant.

(d) The answer shall be ~~in affidavit form, signed by the claimant under oath, and sworn to by the affiant before one who has authority to administer the oath,~~ under penalty of perjury, K.S.A. 2017 Supp. 21-5903, and amendments thereto, ~~or making a false writing, K.S.A. 2017 Supp. 21-5824, and amendments thereto, and~~ shall otherwise be in accordance with the rules of civil procedure on answers and shall also set forth ~~all of~~ the following:

(1) The caption of the proceedings and identifying number, if any, as set forth on the notice of pending forfeiture or complaint and the name of the claimant~~;~~;

(2) the address where the claimant will accept mail~~;~~;

(3) the nature and extent of the claimant's interest in the property~~;~~ and

(4) ~~The date, the identity of the transferor, and the~~ a detailed description of ~~the circumstances of the claimant's acquisition of the~~ when and how the claimant obtained an interest in the property.

~~(5) The specific provision of this act relied on in asserting that such property is not subject to forfeiture.~~

~~(6) All essential facts supporting each assertion.~~

~~(7) The specific relief sought.~~

(e) Substantial compliance with subsection (d) shall be deemed sufficient.

(f) It is permissible to assert the right against self-incrimination in an answer. If a claimant asserts the right, the court, in the court's discretion, may draw an adverse inference from the assertion against the claimant. The adverse inference shall not, by itself, be the basis of a judgment against the claimant.

(g) The answer shall be filed within 21 days after service of the civil in rem complaint.

~~(f) The seizing agency and any claimant who has timely answered the complaint, at the time of filing such agency's pleadings, or at any other time not less than 30 days prior to the hearing, may serve discovery requests on any other party, the answers or response to which shall be due within 21 days of service. Discovery may include deposition of any person at any time after the expiration of 14 days after the filing and service of the complaint. Any party may move for a summary judgment at any time after an answer or responsive pleading is served and not less than 30 days prior to the hearing.~~

~~(g)~~ (h) The issue shall be determined by the court alone, ~~and the hearing on the claim shall be held within 60 days after service of the petition unless continued for good cause.~~ The plaintiff's attorney shall have the initial burden of proving the interest in the property is subject to forfeiture by a preponderance of the evidence. If the state proves the interest in the property is subject to forfeiture, the claimant has the burden of showing by a preponderance of the evidence that the claimant has an interest in the property which is not subject to forfeiture.

~~(h)~~ (i) If the plaintiff's attorney fails to meet the burden of proof for forfeiture, or a claimant establishes by a preponderance of the evidence that the claimant has an interest that is exempt under the provisions of K.S.A. 60-4106, and amendments thereto, the court shall order the interest in the property returned or conveyed to the claimant. The court shall order all other

property forfeited to the seizing agency and conduct further proceedings pursuant to ~~the provision of~~ K.S.A. 60-4116 and 60-4117, and amendments thereto.

Sec. 11. K.S.A. 60-4114 is hereby amended to read as follows: 60-4114. (a) (1) A judicial in personam forfeiture proceeding brought by the plaintiff's attorney pursuant to an in personam civil action alleging conduct giving rise to forfeiture is also subject to the provisions of this section. If a forfeiture is authorized by this act, it shall be ordered by the court in the in personam action. The action shall be in addition to or in lieu of in rem forfeiture procedures.

(2) In any proceeding pursuant to this section, the court, on application of the plaintiff's attorney, may enter any order authorized by K.S.A. 60-4112, and amendments thereto.

(b) The court may issue a temporary restraining order in an action under this section on application of the plaintiff's attorney, without notice or an opportunity for a hearing, if the plaintiff's attorney demonstrates that:

(1) There is probable cause to believe that in the event of a final judgment, the property involved would be subject to forfeiture under the provisions of this act; and

(2) A provision of notice would jeopardize the availability of the property for forfeiture.

(c) Notice of the issuance of a temporary restraining order and an opportunity for a hearing shall be given to persons known to have an interest in the property. A hearing shall be held at the earliest possible date in accordance with the applicable civil rule and shall be limited to the issues of whether:

(1) There is a probability that the seizing agency will prevail on the issue of forfeiture and that failure to enter the order could result in the property being destroyed, conveyed, alienated, encumbered, further encumbered, disposed of, purchased, received, removed from the

jurisdiction of the court, concealed, or otherwise made unavailable for forfeiture; and

(2) the need to preserve the availability of property through the entry of the requested order outweighs the hardship on any owner or interest holder against whom the order is to be entered.

(d) On a determination of liability of a person for conduct giving rise to forfeiture under this act, the court shall enter a judgment of forfeiture of the property found to be subject to forfeiture described in the complaint and shall also authorize the plaintiff's attorney or any law enforcement officer to seize all property ordered forfeited which was not previously seized or is not then under seizure. Following the entry of an order declaring the property forfeited, the court, on application of the plaintiff's attorney, may enter any appropriate order to protect the interest of the seizing agency in the property ordered forfeited.

(e) Following the entry of an order of forfeiture under subsection (d), the plaintiff's attorney may give notice of pending forfeiture, in the manner provided in K.S.A. 60-4109, [and amendments thereto](#), to all owners and interest holders who have not previously been given notice.

(f) An owner of or interest holder in property that has been forfeited and whose claim is not precluded may file a claim as described in K.S.A. 60-4111, [and amendments thereto](#), within ~~30~~ [60](#) days after initial notice of pending forfeiture or after notice under subsection (e), whichever is earlier. If the seizing agency does not recognize the claimed exemption, the plaintiff's attorney shall file a complaint and the court shall hold the hearing and determine the claim, without a jury, in the manner provided for in rem judicial forfeiture actions in K.S.A. 60-4113, [and amendments thereto](#).

(g) In accordance with findings made at the hearing, the court may amend the order of forfeiture if the court determines that any claimant has established by a preponderance of the evidence that the claimant has an interest in the property and that the claimant's interest is exempt under ~~the provision of~~ K.S.A. 60-4106, and amendments thereto.

(h) Except as provided in ~~subsection (e) of~~ K.S.A. 60-4112 (c), and amendments thereto, no person claiming an interest in property subject to forfeiture under this act may intervene in a trial or appeal of a criminal action or in an in personam civil action involving the forfeiture of the property.

Sec. 12. K.S.A. 2017 Supp. 60-4117 is hereby amended to read as follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments thereto: (a) When property is forfeited under this act, the law enforcement agency may:

(1) Retain such property for official use or transfer the custody or ownership to any local, state or federal agency, subject to any lien preserved by the court;

(2) destroy or use for investigative or training purposes, any illegal or controlled substances and equipment or other contraband, provided that materials necessary as evidence shall be preserved;

(3) sell property which is not required by law to be destroyed and which is not harmful to the public:

(A) All property, except real property, designated by the seizing agency to be sold shall be sold at public sale to the highest bidder for cash without appraisal. The seizing agency shall first cause notice of the sale to be made by publication at least once in an official county newspaper as defined by K.S.A. 64-101, and amendments thereto. Such notice shall include the

time, place, and conditions of the sale and description of the property to be sold. Nothing in this subsection shall prevent a state agency from using the state surplus property system and such system's procedures shall be sufficient to meet the requirements of this subsection.

(B) Real property may be sold pursuant to subsection [\(a\)\(3\)\(A\)](#), or the seizing agency may contract with a real estate company, licensed in this state, to list, advertise and sell such real property in a commercially reasonable manner.

(C) No employee or public official of any agency involved in the investigation, seizure or forfeiture of seized property may purchase or attempt to purchase such property; or

(4) salvage the property, subject to any lien preserved by the court.

(b) When firearms are forfeited under this act, the firearms in the discretion of the seizing agency, shall be destroyed, used within the seizing agency for official purposes, traded to another law enforcement agency for use within such agency or given to the Kansas bureau of investigation for law enforcement, testing, comparison or destruction by the Kansas bureau of investigation forensic laboratory.

(c) The proceeds of any sale shall be distributed in the following order of priority:

(1) For satisfaction of any court preserved security interest or lien, or in the case of a violation, as defined by ~~subsection (h) of~~ K.S.A. 60-4104*(i)*, and amendments thereto, the proceeds shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the medicaid fraud reimbursement fund;

(2) thereafter, for payment of all proper expenses of the proceedings for forfeiture and disposition, including expenses of seizure, inventory, appraisal, maintenance of custody,

preservation of availability, advertising, service of process, sale and court costs;

(3) reasonable attorney fees:

(A) If the plaintiff's attorney is a county or district attorney, an assistant, or another governmental agency's attorney, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be deposited in the county or city treasury and credited to the special prosecutor's trust fund. Moneys in such fund shall not be considered a source of revenue to meet normal operating expenditures, including salary enhancement. Such fund shall be expended by the county or district attorney, or other governmental agency's attorney through the normal county or city appropriation system and shall be used for such additional law enforcement and prosecutorial purposes as the county or district attorney or other governmental agency's attorney deems appropriate, including educational purposes. All moneys derived from past or pending forfeitures shall be expended pursuant to this act. The board of county commissioners shall provide adequate funding to the county or district attorney's office to enable such office to enforce this act. Neither future forfeitures nor the proceeds therefrom shall be used in planning or adopting a county or district attorney's budget;

(B) if the plaintiff's attorney is the attorney general and the conduct and offense giving rise to forfeiture is pursuant to ~~subsection (h) of~~ K.S.A. 60-4104(i), and amendments thereto, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2) in a contested forfeiture. Such fees shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such

remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medicaid fraud prosecution revolving fund. Moneys paid into the medicaid fraud prosecution revolving fund pursuant to this subsection shall be appropriated to the attorney general for use by the attorney general in the investigation and prosecution of medicaid fraud and abuse; or

(C) if the plaintiff's attorney is a private attorney, such reasonable fees shall be negotiated by the employing law enforcement agency;

(4) repayment of law enforcement funds expended in purchasing of contraband or controlled substances, subject to any interagency agreement.

(d) Any proceeds remaining shall be credited as follows, subject to any interagency agreement:

(1) If the law enforcement agency is a state agency, the entire amount shall be deposited in the state treasury and credited to such agency's state forfeiture fund. There is hereby established in the state treasury the following state funds: Kansas bureau of investigation state forfeiture fund, Kansas attorney general's state medicaid fraud forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund and Kansas national guard counter drug state forfeiture fund. Expenditures from the Kansas bureau of investigation state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general. Expenditures from the Kansas attorney general's state medicaid fraud forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general. Expenditures from the Kansas highway patrol state forfeiture

fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the superintendent of the highway patrol or by a person or persons designated by the superintendent. Expenditures from the Kansas department of corrections state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of corrections or by a person or persons designated by the secretary. Expenditures from the Kansas national guard counter drug state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the adjutant general of Kansas or by a person or persons designated by the adjutant general. ~~Each agency shall compile and submit a forfeiture fund report to the legislature on or before February 1 of each year. Such report shall include, but not be limited to: (A) The fund balance on December 1; (B) the deposits and expenditures for the previous 12-month period ending December 1. Upon the effective date of this act, the director of accounts and reports is directed to transfer each agency's balance in the state special asset forfeiture fund to the agency's new, state forfeiture fund. All liabilities of the state special asset forfeiture fund existing prior to such date are hereby imposed on the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas department of corrections state forfeiture fund. The state special asset forfeiture fund is hereby abolished.~~

(2) If the law enforcement agency is a city or county agency, the entire amount shall be deposited in such city or county treasury and credited to a special law enforcement trust fund. ~~Each agency shall compile and submit annually a special law enforcement trust fund report to the entity which has budgetary authority over such agency and such report shall specify, for such~~

~~period, the type and approximate value of the forfeited property received, the amount of any forfeiture proceeds received, and how any of those proceeds were expended.~~

~~(3)~~ (e) (1) Moneys in the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund, the special law enforcement trust funds and the Kansas national guard counter drug state forfeiture fund shall not be considered a source of revenue to meet normal operating expenses. Such funds shall be expended by the agencies or departments through the normal city, county or state appropriation system and shall be used for such special, additional law enforcement purposes specified in subsection (e)(2) as the law enforcement agency head deems appropriate. Neither future forfeitures nor the proceeds from such forfeitures shall be used in planning or adopting a law enforcement agency's budget.

(2) Moneys in the funds described in subsection (e)(1) shall be used only for the following special, additional law enforcement purposes:

(A) The support of investigations and operations that further the law enforcement agency's goals or missions;

(B) the training of investigators, prosecutors and sworn and non-sworn law enforcement personnel in any area that is necessary to perform official law enforcement duties;

(C) the costs associated with the purchase, lease, construction, expansion, improvement or operation of law enforcement or detention facilities used or managed by the recipient agency;

(D) the costs associated with the purchase, lease, maintenance or operation of law enforcement equipment for use by law enforcement personnel that supports law enforcement activities;

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(E) the costs associated with the purchase of multi-use equipment and operations used by both law enforcement and non-law enforcement personnel;

(F) the costs associated with a contract for a specific service that supports or enhances law enforcement;

(G) the costs associated with travel and transportation to perform or in support of law enforcement duties and activities;

(H) the costs associated with the purchase of plaques and certificates for law enforcement personnel in recognition of a law enforcement achievement, activity or training;

(I) the costs associated with conducting awareness programs by law enforcement agencies;

(J) the costs associated with paying a state or local law enforcement agency's matching contribution or share in a state or federal grant program for items other than salaries;

(K) cash transfers from one state or local law enforcement agency to another in support of the law enforcement agency's goals or missions; and

(L) transfers from a state or local law enforcement agency to a state, county or local governmental agency or community non-profit organization in support of the law enforcement agency's goals or missions.

(3) Moneys in the funds described in subsection (e)(1) shall be separated and accounted for in a manner that allows accurate tracking and reporting of deposits and expenditures of the following categories of money:

(A) Proceeds from forfeiture credited to the fund pursuant to this section;

(B) proceeds from pending forfeiture actions under this act; and

(C) proceeds from forfeiture actions under federal law.

~~(+)~~ (f) Moneys in the Kansas attorney general's medicaid fraud forfeiture fund shall defray costs of the attorney general in connection with the duties of investigating and prosecuting medicaid fraud and abuse.

(g) (1) If the law enforcement agency is a state agency, such agency shall compile and submit a forfeiture fund report to the legislature on or before February 1 of each year. Such report shall include, but not be limited to: (A) The fund balance on December 1; and (B) the deposits and expenditures for the previous 12-month period ending December 1.

(2) If the law enforcement agency is a city or county agency, such agency shall compile and submit annually a special law enforcement trust fund report to the entity that has budgetary authority over such agency and such report shall specify, for such period, the type and approximate value of the forfeited property received, the amount of any forfeiture proceeds received and how any of those proceeds were expended.

(3) The provisions of this subsection shall expire on July 1, 2019.

Sec. 13. K.S.A. 60-4101, 60-4106, 60-4110 and 60-4114 and K.S.A. 2017 Supp. 45-220, 60-4107, 60-4109, 60-4111, 60-4112, 60-4113 and 60-4117 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.



**KANSAS BUREAU OF INVESTIGATION
KANSAS ASSET SEIZURE & FORFEITURE REPOSITORY
KANSAS ASSET FORFEITURE INCIDENT REPORT**

ADMINISTRATIVE INFORMATION

Date of report:

ORI of the seizing agency (lead agency if a multi-jurisdictional task force):

Agency Name:

Mailing Address:

City, State, Zip

Name of multi-jurisdictional task force, if applicable:

County of seizure

Date of seizure

Time of seizure

Location of seizure

Agency Case # (criminal)

Agency Case # (forfeiture)

District Court Case # (criminal)

District Court Case # (forfeiture)

Incident Information

Owner/possessor #1

Race **Country of residence**

Gender **State of residence**

Age

Arrested (related to forfeiture) Yes No

Federal prosecution Yes No

State prosecution Yes No

Additional owner/possessor:

Yes

Initiating Law Enforcement Activity

Directed interdiction action Call for service

- Vehicle stop/traffic violation
- Vehicle stop/other
- Investigation
- Pedestrian stop
- Warrant service

Primary Criminal Offense (Seizure)

- Distribution/Manufacturing of Controlled
- Theft
- Sex Offense
- Human Trafficking
- N/A
- Gambling
- Terrorism
- Computer/Cyber Crimes
- Other

Place of Seizure

- Highway/Street
- Residence
- Business/Commercial Property
- Airport
- Public Space
- Other
- Train Station
- Bus Station

Conveyance

- Private vehicle
- Commercial carrier
- Commercial vehicle
- Aircraft
- Train
- N/A

Property Seized for Forfeiture

- Currency
- Vehicles
- Personal Property
- Real Property
- Other

Proceeds Facilitation

\$	\$
\$	\$
\$	\$
\$	\$
\$	\$
\$	\$

Totals

Total of All Property Seized for Forfeiture

\$

Contraband Seized

Controlled Substances

Substance	<input type="text"/>
Quantity (in ounces)	<input type="text"/>
Quantity (in dosage unit)	<input type="text"/>
Estimated street value	\$ <input type="text"/>

Additional Controlled Substances

Yes

Weapons

	<input type="text"/>
Quantity	<input type="text"/>
Estimated value	\$ <input type="text"/>

Additional Weapons

Yes

Other

Description	<input type="text"/>
Quantity	<input type="text"/>
Estimated street value	\$ <input type="text"/>

Concealment Attempt

Contraband

Currency

Other property seized for forfeiture

Describe:

Other

Highway seizure - direction of travel

Source (state) of contraband / property - if known

Destination (state) of contraband or property - if known

Transfer to Federal Agency

- Joint investigation (federal participation)
- Adopted-processing (no federal involvement)
- Federal prosecution

Agency Disposition

- Return to owner
- Declined by prosecutor (forfeiture)
- Filed by prosecutor (forfeiture)

JUDICIAL INFORMATION

Criminal Case Related to Forfeiture

Individual(s) charged criminally with offense related to the forfeiture Yes No

Disposition-Criminal Case Related to Forfeiture

- Dismissed
- Not guilty
- Convicted
- Plea agreement
- Pending

Disposition-Forfeiture Case

- Not filed
- Settlement
- Forfeited - Uncontested/Default
- Forfeited/Contested

Forfeiture Case - Other

Plaintiff's counsel

Owner(s) represented by counsel Yes No

Ownership of forfeited property Claimed Denied

Interest holder identified Yes No
Other person Yes No
Financial institution Yes No
Business Yes No

Forfeiture Disbursements

Currency

Property

Total Forfeited \$ \$

Cost of forfeiture Action

Safekeeping, publications, etc.: \$ \$

Plaintiff's attorneys fees: \$ \$

Shared proceeds:

Agency ORI: \$ \$

(List All):

<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>

Total Costs -\$ -\$

Forfeiture proceeds - agency

Currency forfeited \$

Property forfeited \$

Comments:



**KANSAS BUREAU OF INVESTIGATION
 KANSAS ASSET FORFEITURE REPOSITORY
 KANSAS ASSET FORFEITURE ACT- ANNUAL AGENCY FINANCIAL REPORT**

Calendar Year:
 ORI:
 Agency Name:
 Mailing Address:
 City, State, Zip:

STATE FORFEITURE

Beginning account balance as of January 1:

Total year's deposits to the special law enforcement trust fund/
 forfeiture fund:

Expenditures from the special law enforcement trust fund/forfeiture fund:

Purpose:

<input type="checkbox"/> Training expenses	\$
<input type="checkbox"/> Evidence purchase funds	\$
<input type="checkbox"/> Law enforcement equipment	\$
<input type="checkbox"/> Administrative/multi-use equipment	\$
<input type="checkbox"/> Vehicles	\$
<input type="checkbox"/> LE operations	\$
<input type="checkbox"/> Joint LE/Non-LE use	\$
<input type="checkbox"/> Travel expenses	\$
<input type="checkbox"/> Building & Facilities	\$
<input type="checkbox"/> Employee/Partner/Citizen recognitions	\$
<input type="checkbox"/> Overtime/salary and benefits	\$
<input type="checkbox"/> Professional services	\$
<input type="checkbox"/> Victim programs & support	\$
<input type="checkbox"/> Prevention/awareness programs	\$
<input type="checkbox"/> Grant match	\$

Transfers to other LE agencies

\$

Other

\$

Total year's expenditures:

\$

Ending account balance as of December 31:

\$

Estimated value of property converted to agency use:

\$

PENDING STATE FORFEITURE

Beginning account balance as of January 1:

\$

Total year's deposits

\$

Total year's transfers:

-\$

Ending account balance as of December 31:

\$

Property Pending State Forfeiture:

Estimated value of property held as of December 31

\$

FEDERAL FORFEITURE

Beginning account balance as of January 1:

\$

Total year's deposits:

\$

Total year's expenditures:

Purpose:

Law enforcement operations and investigations

\$

Evidence purchase

\$

Training and education

\$

Law enforcement, public safety and detention facilities

\$

Law enforcement equipment

\$

Vehicles

\$

Joint law enforcement/public safety operations

\$

- Contracting for services
- Law enforcement travel and per diem
- Law enforcement awards and memorials
- Drug, gang, and other education or awareness programs
- Matching grants
- Transfers to other participating LE agencies
- Support of community-based programs
- Non-categorized expenditures/other
- Salaries
- Overtime

\$
\$
\$
\$
\$
\$
\$
\$
\$
\$

Total year's expenditures:

\$

Ending account balance as of December 31:

\$

Estimated value of property converted to agency use:

\$

RANEY L. GILLILAND
Director
MELISSA S. CALDERWOOD
Assistant Director for Research
J. G. SCOTT
Assistant Director for Fiscal Affairs
AMY DECKARD
Assistant Director for Information Management



STAFF
LEGISLATIVE COORDINATING COUNCIL
INTERIM COMMITTEES
STANDING COMMITTEES
LEGISLATIVE INQUIRIES

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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February 17, 2017

Nancy Strouse, Executive Director
Kansas Judicial Council
301 SW 10th Avenue
Topeka, Kansas 66612

Dear Nancy:

We are writing to request Judicial Council study of the topic of civil asset seizure and forfeiture, which was the subject of a recent Legislative Post Audit (LPA) study and report, as well as five bills referred to the House Committee on Judiciary and three bills referred to the Senate Committee on Judiciary during the 2017 Session.

Both Committees heard presentations from LPA staff regarding their study and report. The House Committee held two days of hearings on the House bills and heard testimony from numerous conferees. Given the information presented by LPA and the conferees on the House bills, we believe that a more in-depth consideration of the issues raised by the LPA study and the legislation referred to both Committees would be helpful before the Committees take further action on any of the legislation.

The bills referred to and heard by the House Committee are:

HB 2001, by the Legislative Post Audit Committee, eliminating the reporting requirements for law enforcement agencies concerning civil asset seizures and forfeitures (identical to SB 1);

HB 2003, by the Legislative Post Audit Committee, restriction on county or district attorney (identical to SB 3);

HB 2004, by the Legislative Post Audit Committee, clarifying and limiting discretion for expenditure of proceeds from civil forfeiture (identical to SB 4);

HB 2018, by Representative Finney, requiring conviction before forfeiture of assets; and

HB 2116, by House Committee on Corrections and Juvenile Justice, amendments to the Kansas Standard Asset Seizure and Forfeiture Act.

The bills referred to the Senate Committee are:

SB 1, by the Legislative Post Audit Committee, eliminating the reporting requirements for law enforcement agencies concerning civil asset seizures and forfeitures (identical to HB 2001);

SB 3, by the Legislative Post Audit Committee, restriction on county or district attorney (identical to HB 2003);

SB 4, by the Legislative Post Audit Committee, clarifying and limiting discretion for expenditure of proceeds from civil forfeiture (identical to HB 2004).

These bills contain a variety of proposed changes in policy related to civil asset seizure and forfeiture (including some that would require a choice between alternative approaches contained in different bills), including reporting requirements, central collection of reports, representation of an agency by a private attorney, use of forfeiture proceeds, whether conviction is required for forfeiture, what underlying crimes are subject to forfeiture, what property is subject to forfeiture, and the procedural requirements for forfeiture proceedings.

We would appreciate the Judicial Council's consideration of and recommendations regarding the language and policy proposals contained in these bills and related issues, including:

- Should accountability and reporting requirements be changed;
- Should there be a centralized reporting system and, if so, who should administer the system;
- Is there an improved way to handle proceeds that would increase transparency and avoid the appearance of impropriety;
- Should a conviction be required for forfeiture;
- Are current due process protections regarding civil asset seizure and forfeiture both constitutional and adequate;
- Should counsel be appointed in forfeiture cases for those claimants who cannot afford their own, or are there other measures that could be taken to ensure a claimant gets an opportunity for a fair hearing, such as awarding attorney's fees if successful;
- Is the recommended Legislative Post Audit change to the law regarding private attorneys in HB 2003 and SB 3 sufficient to address that potential conflict of interest issue; and
- In making changes to the state forfeiture law, would additional legislation be needed to address or restrict agency participation in equitable sharing in proceeds from federal civil asset forfeiture to ensure that any state forfeiture changes enacted are not avoidable by merely shifting participation from state to federal programs, and would such legislation raise issues under federal preemption principles.
- Any other recommendations for improving the efficacy, public confidence, and constitutionality of the Kansas civil asset forfeiture system.

Please let us know if we can provide any further information or answer any questions regarding this request.

Thank you.

Sincerely,



Representative Blaine Finch
Chairman, House Committee on Judiciary



Senator Rick Wilborn
Chairman, Senate Committee on Judiciary

HOUSE BILL No. 2001

By Legislative Post Audit Committee

12-5

1 AN ACT concerning the Kansas standard asset seizure and forfeiture act;
2 relating to reports; amending K.S.A. 2016 Supp. 60-4117 and repealing
3 the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 60-4117 is hereby amended to read as
7 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
8 thereto: (a) When property is forfeited under this act, the law enforcement
9 agency may:

10 (1) Retain such property for official use or transfer the custody or
11 ownership to any local, state or federal agency, subject to any lien
12 preserved by the court;

13 (2) destroy or use for investigative or training purposes, any illegal or
14 controlled substances and equipment or other contraband, provided that
15 materials necessary as evidence shall be preserved;

16 (3) sell property which is not required by law to be destroyed and
17 which is not harmful to the public:

18 (A) All property, except real property, designated by the seizing
19 agency to be sold shall be sold at public sale to the highest bidder for cash
20 without appraisal. The seizing agency shall first cause notice of the sale to
21 be made by publication at least once in an official county newspaper as
22 defined by K.S.A. 64-101, and amendments thereto. Such notice shall
23 include the time, place, and conditions of the sale and description of the
24 property to be sold. Nothing in this subsection shall prevent a state agency
25 from using the state surplus property system and such system's procedures
26 shall be sufficient to meet the requirements of this subsection.

27 (B) Real property may be sold pursuant to subsection (A), or the
28 seizing agency may contract with a real estate company, licensed in this
29 state, to list, advertise and sell such real property in a commercially
30 reasonable manner.

31 (C) No employee or public official of any agency involved in the
32 investigation, seizure or forfeiture of seized property may purchase or
33 attempt to purchase such property; or

34 (4) salvage the property, subject to any lien preserved by the court.

35 (b) When firearms are forfeited under this act, the firearms in the
36 discretion of the seizing agency, shall be destroyed, used within the seizing

1 agency for official purposes, traded to another law enforcement agency for
2 use within such agency or given to the Kansas bureau of investigation for
3 law enforcement, testing, comparison or destruction by the Kansas bureau
4 of investigation forensic laboratory.

5 (c) The proceeds of any sale shall be distributed in the following
6 order of priority:

7 (1) For satisfaction of any court preserved security interest or lien, or
8 in the case of a violation, as defined by ~~subsection (h)~~ of K.S.A. 60-
9 4104(i), and amendments thereto, the proceeds shall be remitted to the
10 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
11 amendments thereto. Upon receipt of such remittance, the state treasurer
12 shall deposit the entire amount into the state treasury to the credit of the
13 medicaid fraud reimbursement fund;

14 (2) thereafter, for payment of all proper expenses of the proceedings
15 for forfeiture and disposition, including expenses of seizure, inventory,
16 appraisal, maintenance of custody, preservation of availability, advertising,
17 service of process, sale and court costs;

18 (3) reasonable attorney fees:

19 (A) If the plaintiff's attorney is a county or district attorney, an
20 assistant, or another governmental agency's attorney, fees shall not exceed
21 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in
22 an uncontested forfeiture nor 20% of the total proceeds, less the amounts
23 of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be
24 deposited in the county or city treasury and credited to the special
25 prosecutor's trust fund. Moneys in such fund shall not be considered a
26 source of revenue to meet normal operating expenditures, including salary
27 enhancement. Such fund shall be expended by the county or district
28 attorney, or other governmental agency's attorney through the normal
29 county or city appropriation system and shall be used for such additional
30 law enforcement and prosecutorial purposes as the county or district
31 attorney or other governmental agency's attorney deems appropriate,
32 including educational purposes. All moneys derived from past or pending
33 forfeitures shall be expended pursuant to this act. The board of county
34 commissioners shall provide adequate funding to the county or district
35 attorney's office to enable such office to enforce this act. Neither future
36 forfeitures nor the proceeds therefrom shall be used in planning or
37 adopting a county or district attorney's budget;

38 (B) if the plaintiff's attorney is the attorney general and the conduct
39 and offense giving rise to forfeiture is pursuant to ~~subsection (h)~~ of K.S.A.
40 60-4104(i), and amendments thereto, fees shall not exceed 15% of the total
41 proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested
42 forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)
43 (1) and (2) in a contested forfeiture. Such fees shall be remitted to the state

1 treasurer in accordance with the provisions of K.S.A. 75-4215, and
2 amendments thereto. Upon receipt of each such remittance, the state
3 treasurer shall deposit the entire amount in the state treasury to the credit
4 of the medicaid fraud prosecution revolving fund. Moneys paid into the
5 medicaid fraud prosecution revolving fund pursuant to this subsection
6 shall be appropriated to the attorney general for use by the attorney general
7 in the investigation and prosecution of medicaid fraud and abuse; or

8 (C) if the plaintiff's attorney is a private attorney, such reasonable fees
9 shall be negotiated by the employing law enforcement agency;

10 (4) repayment of law enforcement funds expended in purchasing of
11 contraband or controlled substances, subject to any interagency agreement.

12 (d) Any proceeds remaining shall be credited as follows, subject to
13 any interagency agreement:

14 (1) If the law enforcement agency is a state agency, the entire amount
15 shall be deposited in the state treasury and credited to such agency's state
16 forfeiture fund. There is hereby established in the state treasury the
17 following state funds: Kansas bureau of investigation state forfeiture fund,
18 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas
19 highway patrol state forfeiture fund, Kansas department of corrections
20 state forfeiture fund and Kansas national guard counter drug state
21 forfeiture fund. Expenditures from the Kansas bureau of investigation state
22 forfeiture fund shall be made upon warrants of the director of accounts and
23 reports issued pursuant to vouchers approved by the attorney general or by
24 a person or persons designated by the attorney general. Expenditures from
25 the Kansas attorney general's state medicaid fraud forfeiture fund shall be
26 made upon warrants of the director of accounts and reports issued pursuant
27 to vouchers approved by the attorney general or by a person or persons
28 designated by the attorney general. Expenditures from the Kansas highway
29 patrol state forfeiture fund shall be made upon warrants of the director of
30 accounts and reports issued pursuant to vouchers approved by the
31 superintendent of the highway patrol or by a person or persons designated
32 by the superintendent. Expenditures from the Kansas department of
33 corrections state forfeiture fund shall be made upon warrants of the
34 director of accounts and reports issued pursuant to vouchers approved by
35 the secretary of the department of corrections or by a person or persons
36 designated by the secretary. Expenditures from the Kansas national guard
37 counter drug state forfeiture fund shall be made upon warrants of the
38 director of accounts and reports issued pursuant to vouchers approved by
39 the adjutant general of Kansas or by a person or persons designated by the
40 adjutant general. Each agency shall compile and submit a forfeiture fund
41 report to the legislature on or before February 1 of each year. Such report
42 shall include, but not be limited to: (A) The fund balance on December 1;
43 *and* (B) the deposits and expenditures for the previous 12-month period

1 ending December 1. Upon the effective date of this act, the director of
2 accounts and reports is directed to transfer each agency's balance in the
3 state special asset forfeiture fund to the agency's new, state forfeiture fund.
4 All liabilities of the state special asset forfeiture fund existing prior to such
5 date are hereby imposed on the Kansas bureau of investigation state
6 forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas
7 department of corrections state forfeiture fund. The state special asset
8 forfeiture fund is hereby abolished.

9 (2) If the law enforcement agency is a city or county agency, the
10 entire amount shall be deposited in such city or county treasury and
11 credited to a special law enforcement trust fund. ~~Each agency shall~~
12 ~~compile and submit annually a special law enforcement trust fund report to~~
13 ~~the entity which has budgetary authority over such agency and such report~~
14 ~~shall specify, for such period, the type and approximate value of the~~
15 ~~forfeited property received, the amount of any forfeiture proceeds~~
16 ~~received, and how any of those proceeds were expended.~~

17 (3) Moneys in the Kansas bureau of investigation state forfeiture
18 fund, Kansas highway patrol state forfeiture fund, Kansas department of
19 corrections state forfeiture fund, the special law enforcement trust funds
20 and the Kansas national guard counter drug state forfeiture fund shall not
21 be considered a source of revenue to meet normal operating expenses.
22 Such funds shall be expended by the agencies or departments through the
23 normal city, county or state appropriation system and shall be used for
24 such special, additional law enforcement purposes as the law enforcement
25 agency head deems appropriate. Neither future forfeitures nor the proceeds
26 from such forfeitures shall be used in planning or adopting a law
27 enforcement agency's budget.

28 (4) Moneys in the Kansas attorney general's medicaid fraud forfeiture
29 fund shall defray costs of the attorney general in connection with the
30 duties of investigating and prosecuting medicaid fraud and abuse.

31 Sec. 2. K.S.A. 2016 Supp. 60-4117 is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after its
33 publication in the statute book.

HOUSE BILL No. 2003

By Legislative Post Audit Committee

12-5

1 AN ACT concerning forfeiture; amending the Kansas standard asset
2 seizure and forfeiture act; amending K.S.A. 2016 Supp. 60-4107 and
3 repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 60-4107 is hereby amended to read as
7 follows: 60-4107. (a) Property may be seized for forfeiture by a law
8 enforcement officer upon process issued by the district court. The court
9 may issue a seizure warrant on an affidavit under oath demonstrating that
10 probable cause exists for the property's forfeiture or that the property has
11 been the subject of a previous final judgment of forfeiture in the courts of
12 any state or of the United States. The court may order that the property be
13 seized on such terms and conditions as are reasonable in the discretion of
14 the court. The order may be made on or in connection with a search
15 warrant. All real property is to be seized constructively or pursuant to a
16 preseizure adversarial judicial determination of probable cause, except that
17 this determination may be done ex parte when the attorney for the state has
18 demonstrated exigent circumstances to the court.

19 (b) Property may be seized for forfeiture by a law enforcement officer
20 without process on probable cause to believe the property is subject to
21 forfeiture under this act.

22 (c) Property may be seized constructively by:

23 (1) Posting notice of seizure for forfeiture or notice of pending
24 forfeiture on the property.

25 (2) Giving notice pursuant to K.S.A. 60-4109, and amendments
26 thereto.

27 (3) Filing or recording in the public records relating to that type of
28 property notice of seizure for forfeiture, notice of pending forfeiture, a
29 forfeiture lien or a lis pendens. Filings or recordings made pursuant to this
30 act are not subject to a filing fee or other charge, except that court costs
31 may be assessed and, if assessed, shall include the amount of the docket
32 fee prescribed by K.S.A. 60-2001, and amendments thereto, and any
33 additional court costs accrued in the action.

34 (d) The seizing agency shall make reasonable effort to provide notice
35 of the seizure to the person from whose possession or control the property
36 was seized and any interest holder of record within 30 days of seizing the

1 property. If no person is in possession or control, the seizing agency may
2 attach the notice to the property or to the place of the property's seizure or
3 may make a reasonable effort to deliver the notice to the owner of the
4 property. The notice shall contain a general description of the property
5 seized, the date and place of seizure, the name of the seizing agency and
6 the address and telephone number of the seizing officer or other person or
7 agency from whom information about the seizure may be obtained.

8 (e) A person who acts in good faith and in a reasonable manner to
9 comply with an order of the court or a request of a law enforcement officer
10 is not liable to any person on account of acts done in reasonable
11 compliance with the order or request. No liability may attach from the fact
12 that a person declines a law enforcement officer's request to deliver
13 property.

14 (f) A possessory lien of a person from whose possession property is
15 seized is not affected by the seizure.

16 (g) When property is seized for forfeiture under this act, the seizing
17 agency shall, within 45 days of such seizure, forward to the county or
18 district attorney in whose jurisdiction the seizure occurred, a written
19 request for forfeiture which shall include a statement of facts and
20 circumstances of the seizure, the estimated value of the property, the
21 owner and lienholder of the property, the amount of any lien, and a
22 summary of the facts relied on for forfeiture.

23 (h) Upon receipt of a written request for forfeiture from a local law
24 enforcement agency, the county or district attorney shall have 14 days to
25 accept the request. Should such county or district attorney decline such
26 request, or fail to answer, the seizing agency may:

27 (1) Request a state law enforcement agency which enforces this act to
28 adopt the forfeiture; or

29 (2) engage an attorney, approved by the county or district attorney, to
30 represent the agency in the forfeiture proceeding. *The county or district*
31 *attorney shall not represent the agency in the forfeiture proceeding as a*
32 *private attorney nor shall any law firm represent such agency in the*
33 *forfeiture proceeding in which the county or district attorney has an*
34 *affiliation.*

35 (i) Upon receipt of a written request for forfeiture from a state law
36 enforcement agency, the county or district attorney shall have 14 days to
37 accept the request. Should such county or district attorney decline such
38 request, or fail to answer, the seizing agency may engage an assistant
39 attorney general or other attorney approved by the attorney general's office
40 to represent the agency in the forfeiture proceeding.

41 (j) Nothing in this act shall prevent the attorney general, an employee
42 of the attorney general or an authorized representative of the attorney
43 general from conducting forfeiture proceedings under this act.

1 (k) Nothing in this act shall prevent a seizing agency from requesting
2 federal adoption of a seizure. It shall not be necessary to obtain any order
3 pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized
4 property to a federal agency should the county or district attorney approve
5 of such transfer.

6 (l) Nothing in this act shall prevent a seizing agency, or the plaintiff's
7 attorney on behalf of the seizing agency, from settling any alleged
8 forfeiture claim against property before or during forfeiture proceedings.
9 Such settlement shall be in writing and shall be approved, if a local
10 agency, by the county or district attorney or, if a state agency, by the
11 attorney general's office and a district court judge. No hearing or other
12 proceeding shall be necessary. The records of settlements occurring prior
13 to commencement of judicial forfeiture proceedings in the district court
14 shall be retained by the county or district attorney for not less than five
15 years.

16 (m) Settlements under this act shall not be conditioned upon any
17 disposition of criminal charges.

18 Sec. 2. K.S.A. 2016 Supp. 60-4107 is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its
20 publication in the statute book.

HOUSE BILL No. 2004

By Legislative Post Audit Committee

12-5

1 AN ACT concerning the Kansas standard asset seizure and forfeiture act;
2 relating to expenditure of proceeds; amending K.S.A. 2016 Supp. 60-
3 4117 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 60-4117 is hereby amended to read as
7 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
8 thereto: (a) When property is forfeited under this act, the law enforcement
9 agency may:

10 (1) Retain such property for official use or transfer the custody or
11 ownership to any local, state or federal agency, subject to any lien
12 preserved by the court;

13 (2) destroy or use for investigative or training purposes, any illegal or
14 controlled substances and equipment or other contraband, provided that
15 materials necessary as evidence shall be preserved;

16 (3) sell property which is not required by law to be destroyed and
17 which is not harmful to the public:

18 (A) All property, except real property, designated by the seizing
19 agency to be sold shall be sold at public sale to the highest bidder for cash
20 without appraisal. The seizing agency shall first cause notice of the sale to
21 be made by publication at least once in an official county newspaper as
22 defined by K.S.A. 64-101, and amendments thereto. Such notice shall
23 include the time, place, and conditions of the sale and description of the
24 property to be sold. Nothing in this subsection shall prevent a state agency
25 from using the state surplus property system and such system's procedures
26 shall be sufficient to meet the requirements of this subsection.

27 (B) Real property may be sold pursuant to subsection (A), or the
28 seizing agency may contract with a real estate company, licensed in this
29 state, to list, advertise and sell such real property in a commercially
30 reasonable manner.

31 (C) No employee or public official of any agency involved in the
32 investigation, seizure or forfeiture of seized property may purchase or
33 attempt to purchase such property; or

34 (4) salvage the property, subject to any lien preserved by the court.

35 (b) When firearms are forfeited under this act, the firearms in the
36 discretion of the seizing agency, shall be destroyed, used within the seizing

1 agency for official purposes, traded to another law enforcement agency for
2 use within such agency or given to the Kansas bureau of investigation for
3 law enforcement, testing, comparison or destruction by the Kansas bureau
4 of investigation forensic laboratory.

5 (c) The proceeds of any sale shall be distributed in the following
6 order of priority:

7 (1) For satisfaction of any court preserved security interest or lien, or
8 in the case of a violation, as defined by ~~subsection (h)~~ of K.S.A. 60-
9 4104(i), and amendments thereto, the proceeds shall be remitted to the
10 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
11 amendments thereto. Upon receipt of such remittance, the state treasurer
12 shall deposit the entire amount into the state treasury to the credit of the
13 medicaid fraud reimbursement fund;

14 (2) thereafter, for payment of all proper expenses of the proceedings
15 for forfeiture and disposition, including expenses of seizure, inventory,
16 appraisal, maintenance of custody, preservation of availability, advertising,
17 service of process, sale and court costs;

18 (3) reasonable attorney fees:

19 (A) If the plaintiff's attorney is a county or district attorney, an
20 assistant, or another governmental agency's attorney, fees shall not exceed
21 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in
22 an uncontested forfeiture nor 20% of the total proceeds, less the amounts
23 of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be
24 deposited in the county or city treasury and credited to the special
25 prosecutor's trust fund. Moneys in such fund shall not be considered a
26 source of revenue to meet normal operating expenditures, including salary
27 enhancement. Such fund shall be expended by the county or district
28 attorney, or other governmental agency's attorney through the normal
29 county or city appropriation system and shall be used for such additional
30 law enforcement and prosecutorial purposes as the county or district
31 attorney or other governmental agency's attorney deems appropriate,
32 including educational purposes. All moneys derived from past or pending
33 forfeitures shall be expended pursuant to this act. The board of county
34 commissioners shall provide adequate funding to the county or district
35 attorney's office to enable such office to enforce this act. Neither future
36 forfeitures nor the proceeds therefrom shall be used in planning or
37 adopting a county or district attorney's budget;

38 (B) if the plaintiff's attorney is the attorney general and the conduct
39 and offense giving rise to forfeiture is pursuant to ~~subsection (h)~~ of K.S.A.
40 60-4104(i), and amendments thereto, fees shall not exceed 15% of the total
41 proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested
42 forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)
43 (1) and (2) in a contested forfeiture. Such fees shall be remitted to the state

1 treasurer in accordance with the provisions of K.S.A. 75-4215, and
2 amendments thereto. Upon receipt of each such remittance, the state
3 treasurer shall deposit the entire amount in the state treasury to the credit
4 of the medicaid fraud prosecution revolving fund. Moneys paid into the
5 medicaid fraud prosecution revolving fund pursuant to this subsection
6 shall be appropriated to the attorney general for use by the attorney general
7 in the investigation and prosecution of medicaid fraud and abuse; or

8 (C) if the plaintiff's attorney is a private attorney, such reasonable fees
9 shall be negotiated by the employing law enforcement agency;

10 (4) repayment of law enforcement funds expended in purchasing of
11 contraband or controlled substances, subject to any interagency agreement.

12 (d) Any proceeds remaining shall be credited as follows, subject to
13 any interagency agreement:

14 (1) If the law enforcement agency is a state agency, the entire amount
15 shall be deposited in the state treasury and credited to such agency's state
16 forfeiture fund. There is hereby established in the state treasury the
17 following state funds: Kansas bureau of investigation state forfeiture fund,
18 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas
19 highway patrol state forfeiture fund, Kansas department of corrections
20 state forfeiture fund and Kansas national guard counter drug state
21 forfeiture fund. Expenditures from the Kansas bureau of investigation state
22 forfeiture fund shall be made upon warrants of the director of accounts and
23 reports issued pursuant to vouchers approved by the attorney general or by
24 a person or persons designated by the attorney general. Expenditures from
25 the Kansas attorney general's state medicaid fraud forfeiture fund shall be
26 made upon warrants of the director of accounts and reports issued pursuant
27 to vouchers approved by the attorney general or by a person or persons
28 designated by the attorney general. Expenditures from the Kansas highway
29 patrol state forfeiture fund shall be made upon warrants of the director of
30 accounts and reports issued pursuant to vouchers approved by the
31 superintendent of the highway patrol or by a person or persons designated
32 by the superintendent. Expenditures from the Kansas department of
33 corrections state forfeiture fund shall be made upon warrants of the
34 director of accounts and reports issued pursuant to vouchers approved by
35 the secretary of the department of corrections or by a person or persons
36 designated by the secretary. Expenditures from the Kansas national guard
37 counter drug state forfeiture fund shall be made upon warrants of the
38 director of accounts and reports issued pursuant to vouchers approved by
39 the adjutant general of Kansas or by a person or persons designated by the
40 adjutant general. Each agency shall compile and submit a forfeiture fund
41 report to the legislature on or before February 1 of each year. Such report
42 shall include, but not be limited to: (A) The fund balance on December 1;
43 *and* (B) the deposits and expenditures for the previous 12-month period

1 ending December 1. Upon the effective date of this act, the director of
2 accounts and reports is directed to transfer each agency's balance in the
3 state special asset forfeiture fund to the agency's new, state forfeiture fund.
4 All liabilities of the state special asset forfeiture fund existing prior to such
5 date are hereby imposed on the Kansas bureau of investigation state
6 forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas
7 department of corrections state forfeiture fund. The state special asset
8 forfeiture fund is hereby abolished.

9 (2) If the law enforcement agency is a city or county agency, the
10 entire amount shall be deposited in such city or county treasury and
11 credited to a special law enforcement trust fund. Each agency shall
12 compile and submit annually a special law enforcement trust fund report to
13 the entity which has budgetary authority over such agency and such report
14 shall specify, for such period, the type and approximate value of the
15 forfeited property received, the amount of any forfeiture proceeds
16 received, and how any of those proceeds were expended.

17 (3) Moneys in the Kansas bureau of investigation state forfeiture
18 fund, Kansas highway patrol state forfeiture fund, Kansas department of
19 corrections state forfeiture fund, the special law enforcement trust funds
20 and the Kansas national guard counter drug state forfeiture fund shall not
21 be considered a source of revenue to meet normal operating expenses,
22 *including salaries, benefits or salary enhancements for permanent*
23 *employees*. Such funds shall be expended by the agencies or departments
24 through the normal city, county or state appropriation system and shall be
25 used for such special, additional law enforcement purposes as the law
26 enforcement agency head deems appropriate. Neither future forfeitures nor
27 the proceeds from such forfeitures shall be used in planning or adopting a
28 law enforcement agency's budget.

29 (4) Moneys in the Kansas attorney general's medicaid fraud forfeiture
30 fund shall defray costs of the attorney general in connection with the
31 duties of investigating and prosecuting medicaid fraud and abuse.

32 Sec. 2. K.S.A. 2016 Supp. 60-4117 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its
34 publication in the statute book.

HOUSE BILL No. 2018

By Representative Finney

1-6

1 AN ACT concerning the Kansas standard asset forfeiture act; relating to
2 offenses giving rise to forfeiture; amending K.S.A. 2016 Supp. 60-4104
3 and repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 60-4104 is hereby amended to read as
7 follows: 60-4104. Conduct and offenses giving rise to forfeiture under this
8 act, ~~whether or not there is a prosecution or~~ *only after a conviction* related
9 to the offense, are:

10 (a) All offenses which statutorily and specifically authorize forfeiture;

11 (b) violations involving controlled substances, as described in K.S.A.
12 2016 Supp. 21-5701 through 21-5717, and amendments thereto;

13 (c) theft, as defined in K.S.A. 2016 Supp. 21-5801, and amendments
14 thereto;

15 (d) criminal discharge of a firearm, as defined in K.S.A. 2016 Supp.
16 21-6308(a)(1) and (a)(2), and amendments thereto;

17 (e) gambling, as defined in K.S.A. 2016 Supp. 21-6404, and
18 amendments thereto, and commercial gambling, as defined in K.S.A. 2016
19 Supp. 21-6406(a)(1), and amendments thereto;

20 (f) counterfeiting, as defined in K.S.A. 2016 Supp. 21-5825, and
21 amendments thereto;

22 (g) unlawful possession or use of a scanning device or reencoder, as
23 described in K.S.A. 2016 Supp. 21-6108, and amendments thereto;

24 (h) medicaid fraud, as described in K.S.A. 2016 Supp. 21-5925
25 through 21-5934, and amendments thereto;

26 (i) an act or omission occurring outside this state, which would be a
27 violation in the place of occurrence and would be described in this section
28 if the act occurred in this state, ~~whether or not it is prosecuted in any state;~~

29 (j) an act or omission committed in furtherance of any act or omission
30 described in this section including any inchoate or preparatory offense;
31 ~~whether or not there is a prosecution or conviction related to the act or~~
32 ~~omission;~~

33 (k) any solicitation or conspiracy to commit any act or omission
34 described in this section, ~~whether or not there is a prosecution or~~
35 ~~conviction related to the act or omission;~~

36 (l) terrorism, as defined in K.S.A. 2016 Supp. 21-5421, and

- 1 amendments thereto, illegal use of weapons of mass destruction, as
2 defined in K.S.A. 2016 Supp. 21-5422, and amendments thereto, and
3 furtherance of terrorism or illegal use of weapons of mass destruction, as
4 described in K.S.A. 2016 Supp. 21-5423, and amendments thereto;
- 5 (m) unlawful conduct of dog fighting and unlawful possession of dog
6 fighting paraphernalia, as defined in K.S.A. 2016 Supp. 21-6414(a) and
7 (b), and amendments thereto;
- 8 (n) unlawful conduct of cockfighting and unlawful possession of
9 cockfighting paraphernalia, as defined in K.S.A. 2016 Supp. 21-6417(a)
10 and (b), and amendments thereto;
- 11 (o) selling sexual relations, as defined in K.S.A. 2016 Supp. 21-6419,
12 and amendments thereto, promoting the sale of sexual relations, as defined
13 in K.S.A. 2016 Supp. 21-6420, and amendments thereto, and buying
14 sexual relations, as defined in K.S.A. 2016 Supp. 21-6421, and
15 amendments thereto;
- 16 (p) human trafficking and aggravated human trafficking, as defined in
17 K.S.A. 2016 Supp. 21-5426, and amendments thereto;
- 18 (q) violations of the banking code, as described in K.S.A. 9-2012, and
19 amendments thereto;
- 20 (r) mistreatment of a dependent adult, as defined in K.S.A. 2016
21 Supp. 21-5417, and amendments thereto;
- 22 (s) giving a worthless check, as defined in K.S.A. 2016 Supp. 21-
23 5821, and amendments thereto;
- 24 (t) forgery, as defined in K.S.A. 2016 Supp. 21-5823, and
25 amendments thereto;
- 26 (u) making false information, as defined in K.S.A. 2016 Supp. 21-
27 5824, and amendments thereto;
- 28 (v) criminal use of a financial card, as defined in K.S.A. 2016 Supp.
29 21-5828, and amendments thereto;
- 30 (w) unlawful acts concerning computers, as described in K.S.A. 2016
31 Supp. 21-5839, and amendments thereto;
- 32 (x) identity theft and identity fraud, as defined in K.S.A. 2016 Supp.
33 21-6107(a) and (b), and amendments thereto;
- 34 (y) electronic solicitation, as defined in K.S.A. 2016 Supp. 21-5509,
35 and amendments thereto;
- 36 (z) felony violations of fleeing or attempting to elude a police officer,
37 as described in K.S.A. 8-1568, and amendments thereto;
- 38 (aa) commercial sexual exploitation of a child, as defined in K.S.A.
39 2016 Supp. 21-6422, and amendments thereto;
- 40 (bb) violations of the Kansas racketeer influenced and corrupt
41 organization act, as described in K.S.A. 2016 Supp. 21-6329, and
42 amendments thereto;
- 43 (cc) indecent solicitation of a child and aggravated indecent

1 solicitation of a child, as defined in K.S.A. 2016 Supp. 21-5508, and
2 amendments thereto;

3 (dd) sexual exploitation of a child, as defined in K.S.A. 2016 Supp.
4 21-5510, and amendments thereto; and

5 (ee) violation of a consumer protection order as defined in K.S.A.
6 2016 Supp. 21-6423, and amendments thereto.

7 Sec. 2. K.S.A. 2016 Supp. 60-4104 is hereby repealed.

8 Sec. 3. This act shall take effect and be in force from and after its
9 publication in the statute book.

HOUSE BILL No. 2116

By Committee on Corrections and Juvenile Justice

1-19

1 AN ACT concerning the Kansas standard asset seizure and forfeiture act;
2 relating to offenses giving rise to forfeiture; proceedings; disposition of
3 property; reporting; amending K.S.A. 60-4106 and K.S.A. 2016 Supp.
4 60-4104, 60-4105, 60-4107, 60-4111, 60-4112 and 60-4117 and
5 repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) The attorney general shall maintain a searchable
9 public website that includes the following information about property
10 seized and forfeited pursuant to the Kansas standard asset seizure and
11 forfeiture act:

12 (1) The name of the law enforcement agency that seized such
13 property;

14 (2) the date of the seizure of such property;

15 (3) a description of such property;

16 (4) the location of the seizure;

17 (5) the estimated value of such property;

18 (6) the offense giving rise to forfeiture;

19 (7) the race, ethnicity and gender of the person from whom such
20 property was seized;

21 (8) the case number for the forfeiture; and

22 (9) the total value of all seized and forfeited property held by each
23 law enforcement agency.

24 (b) Each law enforcement agency shall provide the information
25 required by subsection (a) to the attorney general each month.

26 (c) Beginning in 2018 and each year thereafter, at the beginning of
27 each regular session of the legislature the attorney general shall provide a
28 report to the president of the senate and the speaker of the house of
29 representatives containing the information gathered pursuant to subsection
30 (a).

31 (d) The attorney general may adopt rules and regulations to carry out
32 the provisions of this section.

33 (e) This section shall be part of and supplemental to the Kansas
34 standard asset seizure and forfeiture act.

35 Sec. 2. K.S.A. 2016 Supp. 60-4104 is hereby amended to read as
36 follows: 60-4104. ~~Conduct and~~ Offenses giving rise to forfeiture under this

- 1 act, whether or not there is a prosecution or *only after a conviction* related
 2 to the offense, are:
- 3 (a) All offenses which statutorily and specifically authorize forfeiture;
 - 4 (b) *felony* violations involving controlled substances, as described in
 5 K.S.A. 2016 Supp. 21-5701 through 21-5717, and amendments thereto;
 - 6 (c) *felony violations of theft*, as defined in K.S.A. 2016 Supp. 21-
 7 5801, and amendments thereto;
 - 8 (d) *felony violations of criminal discharge of a firearm*, as defined in
 9 K.S.A. 2016 Supp. 21-6308(a)(1) and (a)(2), and amendments thereto;
 - 10 (e) ~~gambling~~, as defined in K.S.A. 2016 Supp. 21-6404, and
 11 ~~amendments thereto~~, and *felony violations of commercial gambling*, as
 12 defined in K.S.A. 2016 Supp. 21-6406(a)(1), and amendments thereto;
 - 13 (f) *felony violations of counterfeiting*, as defined in K.S.A. 2016
 14 Supp. 21-5825, and amendments thereto;
 - 15 (g) unlawful possession or use of a scanning device or reencoder, as
 16 described in K.S.A. 2016 Supp. 21-6108, and amendments thereto;
 - 17 (h) *felony violations of medicaid fraud*, as described in K.S.A. 2016
 18 Supp. 21-5925 through 21-5934, and amendments thereto;
 - 19 ~~(i) an act or omission occurring outside this state, which would be a~~
 20 ~~violation in the place of occurrence and would be described in this section~~
 21 ~~if the act occurred in this state, whether or not it is prosecuted in any state;~~
 - 22 ~~(j) an act or omission committed in furtherance of any act or omission~~
 23 ~~described in this section including any inchoate or preparatory offense,~~
 24 ~~whether or not there is a prosecution or conviction related to the act or~~
 25 ~~omission;~~
 - 26 ~~(k) any solicitation or conspiracy to commit any act or omission~~
 27 ~~described in this section, whether or not there is a prosecution or~~
 28 ~~conviction related to the act or omission;~~
 - 29 ~~(l) (i) terrorism~~, as defined in K.S.A. 2016 Supp. 21-5421, and
 30 amendments thereto, illegal use of weapons of mass destruction, as
 31 defined in K.S.A. 2016 Supp. 21-5422, and amendments thereto, and
 32 furtherance of terrorism or illegal use of weapons of mass destruction, as
 33 described in K.S.A. 2016 Supp. 21-5423, and amendments thereto;
 - 34 ~~(m) (j) unlawful conduct of dog fighting and unlawful possession of~~
 35 ~~dog fighting paraphernalia~~, as defined in K.S.A. 2016 Supp. 21-6414(a)
 36 and (b), and amendments thereto;
 - 37 ~~(n) (k) unlawful conduct of cockfighting and unlawful possession of~~
 38 ~~cockfighting paraphernalia~~, as defined in K.S.A. 2016 Supp. 21-6417(a)
 39 and (b), and amendments thereto;
 - 40 ~~(o) (l) selling sexual relations~~, as defined in K.S.A. 2016 Supp. 21-
 41 6419, and amendments thereto, promoting the sale of sexual relations, as
 42 defined in K.S.A. 2016 Supp. 21-6420, and amendments thereto, and
 43 *felony violations of buying sexual relations*, as defined in K.S.A. 2016

- 1 Supp. 21-6421, and amendments thereto;
- 2 ~~(p)~~ (m) human trafficking and aggravated human trafficking, as
 3 defined in K.S.A. 2016 Supp. 21-5426, and amendments thereto;
- 4 ~~(q)~~ (n) violations of the banking code, as described in K.S.A. 9-2012,
 5 and amendments thereto;
- 6 ~~(r)~~ (o) *felony violations of mistreatment of a dependent adult and*
 7 *felony violations of mistreatment of an elder person*, as defined in K.S.A.
 8 2016 Supp. 21-5417, and amendments thereto;
- 9 ~~(s)~~ (p) *felony violations of giving a worthless check*, as defined in
 10 K.S.A. 2016 Supp. 21-5821, and amendments thereto;
- 11 ~~(t)~~ (q) forgery, as defined in K.S.A. 2016 Supp. 21-5823, and
 12 amendments thereto;
- 13 ~~(u)~~ (r) making false information, as defined in K.S.A. 2016 Supp. 21-
 14 5824, and amendments thereto;
- 15 ~~(v)~~ (s) *felony violations of criminal use of a financial card*, as defined
 16 in K.S.A. 2016 Supp. 21-5828, and amendments thereto;
- 17 ~~(w)~~ (t) *felony violations of unlawful acts concerning computers*, as
 18 described in K.S.A. 2016 Supp. 21-5839, and amendments thereto;
- 19 ~~(x)~~ (u) identity theft and identity fraud, as defined in K.S.A. 2016
 20 Supp. 21-6107~~(a) and (b)~~, and amendments thereto;
- 21 ~~(y)~~ (v) electronic solicitation, as defined in K.S.A. 2016 Supp. 21-
 22 5509, and amendments thereto;
- 23 ~~(z)~~ (w) felony violations of fleeing or attempting to elude a police
 24 officer, as described in K.S.A. 8-1568, and amendments thereto;
- 25 ~~(aa)~~ (x) commercial sexual exploitation of a child, as defined in
 26 K.S.A. 2016 Supp. 21-6422, and amendments thereto;
- 27 ~~(bb)~~ (y) violations of the Kansas racketeer influenced and corrupt
 28 organization act, as described in K.S.A. 2016 Supp. 21-6329, and
 29 amendments thereto;
- 30 ~~(cc)~~ (z) indecent solicitation of a child and aggravated indecent
 31 solicitation of a child, as defined in K.S.A. 2016 Supp. 21-5508, and
 32 amendments thereto;
- 33 ~~(dd)~~ (aa) sexual exploitation of a child, as defined in K.S.A. 2016
 34 Supp. 21-5510, and amendments thereto; and
- 35 ~~(ee)~~ (bb) violation of a consumer protection order as defined in
 36 K.S.A. 2016 Supp. 21-6423, and amendments thereto.
- 37 Sec. 3. K.S.A. 2016 Supp. 60-4105 is hereby amended to read as
 38 follows: 60-4105. *Except as provided in K.S.A. 60-4106, and amendments*
 39 *thereto*, the following property is subject to forfeiture:
- 40 (a) Property described in a statute authorizing forfeiture;
- 41 (b) except as otherwise provided by law, all property, of every kind,
 42 including, but not limited to, cash and negotiable instruments and the
 43 whole of any lot or tract of land and any appurtenances or improvements

1 to real property that is either:

2 (1) Furnished or intended to be furnished by any person in an
3 exchange that constitutes ~~conduct~~ *an offense* giving rise to forfeiture; or

4 (2) used or intended to be used in any manner to facilitate ~~conduct~~ *an*
5 *offense* giving rise to forfeiture, including, but not limited to, any
6 electronic device, computer, computer system, computer network or any
7 software or data owned by the defendant which is used during the
8 commission of an offense listed in K.S.A. 60-4104, and amendments
9 thereto;

10 (c) all proceeds of ~~any conduct~~ *an offense* giving rise to forfeiture;

11 (d) all property of every kind, including, but not limited to, cash and
12 negotiable instruments derived from or realized through any proceeds
13 which were obtained directly or indirectly from the commission of an
14 offense listed in K.S.A. 60-4104, and amendments thereto;

15 (e) all weapons possessed, used, or available for use in any manner to
16 facilitate ~~conduct~~ *an offense* giving rise to forfeiture;

17 ~~(f) ownership or interest in real property that is a homestead, to the~~
18 ~~extent the homestead was acquired with proceeds from conduct giving rise~~
19 ~~to forfeiture;~~

20 ~~(g) (f)~~ contraband, which shall be seized and summarily forfeited to
21 the state without regard to the procedures set forth in this act;

22 ~~(h) (g)~~ all controlled substances, raw materials, controlled substance
23 analogs, counterfeit substances, or imitation controlled substances that
24 have been manufactured, distributed, dispensed, possessed, or acquired in
25 violation of the laws of this state; and

26 ~~(i) (h)~~ any items bearing a counterfeit mark.

27 Sec. 4. K.S.A. 60-4106 is hereby amended to read as follows: 60-
28 4106. (a) All property, including all interests in property, described in
29 K.S.A. 60-4105, *and amendments thereto*, is subject to forfeiture subject to
30 all mortgages, deeds of trust, financing statements or security agreements
31 properly of record prior to the forfeiture held by an interest holder except
32 that property specifically exempted hereunder:

33 ~~(1) No real property or conveyance, or an interest therein, may be~~
34 ~~forfeited under this act unless the offense or conduct giving rise to~~
35 ~~forfeiture constitutes a felony.~~

36 ~~(2) No conveyance used by any person as a common carrier in the~~
37 ~~transaction of business as a common carrier is subject to forfeiture under~~
38 ~~this act unless it appears that the owner or other person in charge of the~~
39 ~~conveyance is a consenting party or privy to a violation of this act~~ *the*
40 *offense giving rise to forfeiture.*

41 (3) No property is subject to forfeiture under this act if the owner or
42 interest holder acquired the property before or during the ~~conduct~~
43 *commission of the offense* giving rise to the property's forfeiture, and such

1 owner or interest holder:

2 (A) Did not know and could not have reasonably known of the act or
3 omission or that it was likely to occur; or

4 (B) acted reasonably to prevent the ~~conduct~~ offense giving rise to
5 forfeiture.

6 (4) No property is subject to forfeiture if the owner or interest holder
7 acquired the property after the ~~conduct~~ commission of the offense giving
8 rise to the property's forfeiture, including acquisition of proceeds of
9 ~~conduct~~ an offense giving rise to forfeiture, and the owner or interest
10 holder acquired the property in good faith, for value and was not
11 knowingly taking part in an illegal transaction.

12 (5) (A) An interest in property acquired in good faith by an attorney
13 as reasonable payment or to secure payment for legal services in a criminal
14 matter relating to violations of this act or for the reimbursement of
15 reasonable expenses related to the legal services is exempt from forfeiture
16 unless before the interest was acquired the attorney knew of a judicial
17 determination of probable cause that the property is subject to forfeiture.

18 (B) The state bears the burden of proving that an exemption claimed
19 under ~~this section~~ subsection (a)(5)(A) is not applicable. Evidence made
20 available by the compelled disclosure of confidential communications
21 between an attorney and a client other than nonprivileged information
22 relating to attorney fees, is not admissible to satisfy the state's burden of
23 proof.

24 (6) *No motor vehicle that has a market value of \$10,000 or less is*
25 *subject to forfeiture under this act.*

26 (7) *No cash in any amount less than \$200 is subject to forfeiture*
27 *under this act.*

28 (8) *No ownership or interest in real property that is a homestead is*
29 *subject to forfeiture under this act.*

30 (b) Notwithstanding subsection (a), property is not exempt from
31 forfeiture, even though the owner or interest holder lacked knowledge or
32 reason to know that the ~~conduct~~ offense giving rise to property's forfeiture
33 had occurred or was likely to occur, if the:

34 (1) Person whose ~~conduct~~ offense gave rise to the property's forfeiture
35 had authority to convey the property of the person claiming the exemption
36 to a good faith purchaser for value at the time of the ~~conduct~~ offense; or

37 (2) ~~owner or interest holder is criminally responsible for the conduct~~
38 ~~giving rise to the property's forfeiture, whether or not there is a prosecution~~
39 ~~or conviction; or~~

40 (3) owner or interest holder acquired the property with notice of the
41 property's actual or constructive seizure for forfeiture under this act, or
42 with reason to believe that the property was subject to forfeiture under this
43 act.

1 (c) Prior to final judgment in a judicial forfeiture proceeding, a court
 2 shall limit the scope of a proposed forfeiture to the extent the court finds
 3 the effect of the forfeiture is grossly disproportionate to the nature and
 4 severity of the owner's conduct including, but not limited to, a
 5 consideration of any of the following factors:

6 (1) The gain received or expected to be received by an owner from
 7 ~~such conduct that allows forfeiture;~~

8 (2) the value of the property subject to forfeiture;

9 (3) the extent to which the property actually facilitated the ~~criminal~~
 10 ~~conduct~~ offense giving rise to forfeiture;

11 (4) the nature and extent of the owner's knowledge of the role of
 12 others in the ~~conduct~~ offense that allows forfeiture of the property and
 13 efforts of the owner to prevent the ~~conduct~~ such offense; and

14 (5) the totality of the circumstances regarding the investigation.

15 Sec. 5. K.S.A. 2016 Supp. 60-4107 is hereby amended to read as
 16 follows: 60-4107. (a) Property may be seized for forfeiture by a law
 17 enforcement officer upon process issued by the district court. The court
 18 may issue a seizure warrant on an affidavit under oath demonstrating that
 19 probable cause exists for the property's forfeiture or that the property has
 20 been the subject of a previous final judgment of forfeiture in the courts of
 21 any state or of the United States. The court may order that the property be
 22 seized on such terms and conditions as are reasonable in the discretion of
 23 the court. The order may be made on or in connection with a search
 24 warrant. All real property is to be seized constructively or pursuant to a
 25 preseizure adversarial judicial determination of probable cause, except that
 26 this determination may be done ex parte when the attorney for the state has
 27 demonstrated exigent circumstances to the court.

28 (b) *Personal* property may be seized for forfeiture by a law
 29 enforcement officer without process on probable cause to believe the
 30 property is subject to forfeiture under this act and:

31 (1) *The seizure of personal property is incident to a lawful arrest or*
 32 *search;*

33 (2) *the personal property has been the subject of a prior judgment in*
 34 *favor of the state; or*

35 (3) *the law enforcement officer has probable cause to believe that a*
 36 *delay in seizure of the personal property will result in the removal or*
 37 *destruction of such property.*

38 (c) Property may be seized constructively by:

39 (1) Posting notice of seizure for forfeiture or notice of pending
 40 forfeiture on the property.

41 (2) Giving notice pursuant to K.S.A. 60-4109, and amendments
 42 thereto.

43 (3) Filing or recording in the public records relating to that type of

1 property notice of seizure for forfeiture, notice of pending forfeiture, a
2 forfeiture lien or a lis pendens. Filings or recordings made pursuant to this
3 act are not subject to a filing fee or other charge, except that court costs
4 may be assessed and, if assessed, shall include the amount of the docket
5 fee prescribed by K.S.A. 60-2001, and amendments thereto, and any
6 additional court costs accrued in the action.

7 (d) The seizing agency shall make reasonable effort to provide
8 *written* notice of the seizure to the person from whose possession or
9 control the property was seized and any interest holder of record within 30
10 days of seizing the property. If no person is in possession or control, the
11 seizing agency may attach the notice to the property or to the place of the
12 property's seizure or may make a reasonable effort to deliver the notice to
13 the owner of the property. The *written* notice shall contain a general
14 description of the property seized, the date and place of seizure, the name
15 of the seizing agency and the address and telephone number of the seizing
16 officer or other person or agency from whom information about the seizure
17 may be obtained.

18 (e) A person who acts in good faith and in a reasonable manner to
19 comply with an order of the court or a request of a law enforcement officer
20 is not liable to any person on account of acts done in reasonable
21 compliance with the order or request. No liability may attach from the fact
22 that a person declines a law enforcement officer's request to deliver
23 property.

24 (f) A possessory lien of a person from whose possession property is
25 seized is not affected by the seizure.

26 (g) ~~When property is seized for forfeiture under this act~~ *the person*
27 *from whose possession or control the property was seized has been*
28 *convicted of the offense giving rise to forfeiture under this act and the*
29 *property is forfeited pursuant to this act*, the seizing agency shall, within
30 45 days of such seizure, forward to the county or district attorney in whose
31 jurisdiction the seizure occurred, a written request for forfeiture which
32 shall include a statement of facts and circumstances of the seizure, the
33 estimated value of the property, the owner and lienholder of the property,
34 the amount of any lien; and a summary of the facts relied on for forfeiture.

35 (h) Upon receipt of a written request for forfeiture from a local law
36 enforcement agency, the county or district attorney shall have 14 days to
37 accept the request. Should such county or district attorney decline such
38 request, or fail to answer, the seizing agency may:

39 (1) Request a state law enforcement agency which enforces this act to
40 adopt the forfeiture; or

41 (2) engage an attorney, approved by the county or district attorney, to
42 represent the agency in the forfeiture proceeding.

43 (i) Upon receipt of a written request for forfeiture from a state law

1 enforcement agency, the county or district attorney shall have 14 days to
2 accept the request. Should such county or district attorney decline such
3 request, or fail to answer, the seizing agency may engage an assistant
4 attorney general or other attorney approved by the attorney general's office
5 to represent the agency in the forfeiture proceeding.

6 (j) Nothing in this act shall prevent the attorney general, an employee
7 of the attorney general or an authorized representative of the attorney
8 general from conducting forfeiture proceedings under this act.

9 (k) Nothing in this act shall prevent a seizing agency from requesting
10 federal adoption of a seizure. It shall not be necessary to obtain any order
11 pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized
12 property to a federal agency should the county or district attorney approve
13 of such transfer.

14 (l) Nothing in this act shall prevent a seizing agency, or the plaintiff's
15 attorney on behalf of the seizing agency, from settling any alleged
16 forfeiture claim against property before or during forfeiture proceedings.
17 Such settlement shall be in writing and shall be approved, if a local
18 agency, by the county or district attorney or, if a state agency, by the
19 attorney general's office and a district court judge. No hearing or other
20 proceeding shall be necessary. The records of settlements occurring prior
21 to commencement of judicial forfeiture proceedings in the district court
22 shall be retained by the county or district attorney for not less than five
23 years.

24 (m) Settlements under this act shall not be conditioned upon any
25 disposition of criminal charges.

26 Sec. 6. K.S.A. 2016 Supp. 60-4111 is hereby amended to read as
27 follows: 60-4111. (a) Only an owner of or interest holder in property
28 seized for forfeiture may file a claim, and shall do so in the manner
29 provided in this section. The claim shall be mailed to the seizing agency
30 and to the plaintiff's attorney by certified mail, return receipt requested,
31 within 30 days after the effective date of notice of pending forfeiture. No
32 extension of time for the filing of a claim shall be granted except for good
33 cause shown.

34 (b) The claim and all supporting documents shall be in affidavit form,
35 signed by the claimant under oath, and sworn to by the affiant before one
36 who has authority to administer the oath, under penalty of perjury, K.S.A.
37 2016 Supp. 21-5903, and amendments thereto, or making a false writing,
38 K.S.A. 2016 Supp. 21-5824, and amendments thereto, and shall set forth
39 all of the following:

40 (1) The caption of the proceedings and identifying number, if any, as
41 set forth on the notice of pending forfeiture or complaint, the name of the
42 claimant, and the name of the plaintiff's attorney who authorized the notice
43 of pending forfeiture or complaint.

1 (2) The address where the claimant will accept mail.

2 (3) The nature and extent of the claimant's interest in the property.

3 (4) The date, the identity of the transferor, and a detailed description
4 of the circumstances of the claimant's acquisition of the interest in the
5 property.

6 (5) The specific provision of this act relied on in asserting that the
7 property is not subject to forfeiture.

8 (6) All essential facts supporting each assertion.

9 (7) The specific relief sought.

10 (c) *After a claim is filed pursuant to this section, the state shall be*
11 *required to prove, by clear and convincing evidence, that the claimant is*
12 *not entitled to have the property returned.*

13 Sec. 7. K.S.A. 2016 Supp. 60-4112 is hereby amended to read as
14 follows: 60-4112. (a) A judicial forfeiture proceeding under this act is
15 subject to the provisions of this section.

16 (b) The court, on application of the plaintiff's attorney, may enter any
17 restraining order or injunction, require the execution of satisfactory
18 performance bonds, create receiverships, appoint conservators, custodians,
19 appraisers, accountants or trustees, or take any other action to seize,
20 secure, maintain or preserve the availability of property subject to
21 forfeiture under this act, including a writ of attachment or a warrant for
22 such property's seizure, whether before or after the filing of a notice of
23 pending forfeiture or complaint.

24 (c) If property is seized for forfeiture or a forfeiture lien is filed
25 without a previous judicial determination of probable cause or order of
26 forfeiture or a hearing under ~~subsection (c) of K.S.A. 60-4114(c)~~, and
27 amendments thereto, the court, on an application filed by an owner of or
28 interest holder in the property within 14 days after notice of the property's
29 seizure for forfeiture or lien, or actual knowledge of it, whichever is
30 earlier, and after complying with the requirements for claims in K.S.A. 60-
31 4109, and amendments thereto, after seven days' notice to the plaintiff's
32 attorney, may issue an order to show cause to the seizing agency, for a
33 hearing on the sole issue of whether probable cause for forfeiture of the
34 property then exists. The hearing shall be held within 30 days of the order
35 to show cause unless continued for good cause on motion of either party. If
36 the court finds that there is no probable cause for forfeiture of the property,
37 or if the seizing agency elects not to contest the issue, the property shall be
38 released to the custody of the applicant, as custodian for the court, or from
39 the lien pending the outcome of a judicial proceeding pursuant to this act.
40 If the court finds that probable cause for the forfeiture of the property
41 exists, the court shall not order the property released.

42 (d) All applications filed within the 14-day period prescribed by
43 subsection (c) shall be consolidated for a single hearing relating to each

1 applicant's interest in the property seized for forfeiture.

2 (e) A person charged with a criminal offense may apply at any time
3 before final judgment to the court where the forfeiture proceeding is
4 pending for the release of property seized for forfeiture, that is necessary
5 for the defense of the person's criminal charge. The application shall
6 satisfy the requirements under ~~subsection (b)~~ of K.S.A. 60-4111(b), and
7 amendments thereto. The court shall hold a probable cause hearing if the
8 applicant establishes that:

9 (1) The person has not had an opportunity to participate in a previous
10 adversarial judicial determination of probable cause.

11 (2) The person has no access to other moneys adequate for the
12 payment of criminal counsel.

13 (3) The interest in property to be released is not subject to any claim
14 other than the forfeiture.

15 (f) If the court finds that there is no probable cause for forfeiture of
16 the property, the court shall order the property released pursuant to
17 subsection (c). If the seizing agency does not contest the hearing, the court
18 may release a reasonable amount of property for the payment of the
19 applicant's criminal defense costs. Property that has been released by the
20 court and that has been paid for criminal defense services actually
21 rendered is exempt under this act.

22 (g) A defendant convicted in any criminal proceeding is precluded
23 from later denying the essential allegations of the criminal offense of
24 which the defendant was convicted in any proceeding pursuant to this
25 section. ~~For the purposes of this section, a conviction results from a verdict~~
26 ~~or plea of guilty, including a plea of no contest or nolo contendere.~~

27 (h) (1) *At any time following forfeiture pursuant to this act, the*
28 *person from whose possession or control the property was seized may*
29 *petition the court to determine whether such forfeiture is*
30 *unconstitutionally excessive.*

31 (2) *The person from whose possession or control the property was*
32 *seized has the burden of establishing that the forfeiture is disproportional*
33 *to the seriousness of the offense giving rise to the forfeiture by a*
34 *preponderance of the evidence at a hearing conducted by the court*
35 *without a jury. Such hearing may be a component of the associated trial*
36 *and not a separate hearing.*

37 (3) *In determining whether the forfeiture is unconstitutionally*
38 *excessive, the court may consider all relevant factors, including, but not*
39 *limited to:*

40 (A) *The seriousness of the offense;*

41 (B) *the extent to which the person whose possession or control of the*
42 *property was seized participated in the offense;*

43 (C) *the extent to which the property was used in committing the*

1 *offense; and*

2 *(D) the sentence imposed for committing the offense giving rise to*
 3 *forfeiture.*

4 *(i) In any proceeding under this act, if a claim is based on any*
 5 *exemption provided for in this act, the burden of proving the existence of*
 6 *the exemption is on the claimant, and is not necessary for the seizing*
 7 *agency or plaintiff's attorney to negate the exemption in any application or*
 8 *complaint.*

9 ~~(j)~~ *(j) In hearings and determinations pursuant to this section, the*
 10 *court may receive and consider, in making any determination of probable*
 11 *cause or reasonable cause, all evidence admissible in determining probable*
 12 *cause at a preliminary hearing or in the issuance of a search warrant,*
 13 *together with inferences therefrom.*

14 ~~(k)~~ *(k) The fact that money, negotiable instruments, precious metals,*
 15 *communication devices, and weapons were found in close proximity to*
 16 *contraband or an instrumentality of conduct giving rise to forfeiture shall*
 17 *give rise to the rebuttable presumption, in the manner provided in*
 18 ~~subsection (a) of K.S.A. 60-414(a), and amendments thereto, that such~~
 19 *item was the proceeds of conduct giving rise to forfeiture or was used or*
 20 *intended to be used to facilitate the conduct.*

21 ~~(l)~~ *(l) There shall be a rebuttable presumption, in the manner*
 22 *provided in ~~subsection (a) K.S.A. 60-414(a), and amendments thereto, that~~*
 23 *any property of a person is subject to forfeiture under this act if the seizing*
 24 *agency establishes, by the standard of proof applicable to that proceeding,*
 25 *all of the following:*

- 26 (1) *The person has engaged in conduct giving rise to forfeiture;*
 27 (2) *the property was acquired by the person during that period of the*
 28 *conduct giving rise to forfeiture or within a reasonable time after the*
 29 *period; and*
 30 (3) *there was no likely source for the property other than the conduct*
 31 *giving rise to forfeiture.*

32 ~~(m)~~ *(m) A finding that property is the proceeds of conduct giving rise*
 33 *to forfeiture does not require proof the property is the proceeds of any*
 34 *particular exchange or transaction.*

35 ~~(n)~~ *(n) A person who acquires any property subject to forfeiture is a*
 36 *constructive trustee of the property, and such property's fruits, for the*
 37 *benefit of the seizing agency, to the extent that such agency's interest is not*
 38 *exempt from forfeiture. If property subject to forfeiture has been*
 39 *commingled with other property, the court shall order the forfeiture of the*
 40 *mingled property and of any fruits of the mingled property, to the extent of*
 41 *the property subject to forfeiture, unless an owner or interest holder proves*
 42 *that specified property does not contain property subject to forfeiture, or*
 43 *that such owner's or interest holder's interest in specified property is*

1 exempt from forfeiture.
 2 ~~(n)~~ (o) All property declared forfeited under this act vests in the law
 3 enforcement agency seeking forfeiture on the date of commission of the
 4 conduct giving rise to forfeiture together with the proceeds of the property
 5 after that time. Any such property or proceeds subsequently transferred to
 6 any person remain subject to forfeiture and thereafter shall be ordered
 7 forfeited unless the transferee acquired the property in good faith, for
 8 value, and was not knowingly taking part in an illegal transaction, and the
 9 transferee's interest is exempt under K.S.A. 60-4106, and amendments
 10 thereto.

11 ~~(o) An acquittal or dismissal in a criminal proceeding shall not~~
 12 ~~preclude civil proceedings under this act, nor give rise to any presumption~~
 13 ~~adverse or contrary to any fact alleged by the seizing agency.~~

14 (p) On motion by the plaintiff's attorney, the court shall stay
 15 discovery against the criminal defendant and against the seizing agency in
 16 civil proceedings during a related criminal proceeding alleging the same
 17 conduct, after making provision to prevent loss to any party resulting from
 18 the delay. Such a stay shall not be available pending any appeal by a
 19 defendant.

20 (q) Except as otherwise provided by this act, all proceedings
 21 hereunder shall be governed by the rules of civil procedure pursuant to
 22 K.S.A. 60-101 et seq., and amendments thereto.

23 (r) An action pursuant to this act shall be consolidated with any other
 24 action or proceeding pursuant to this act or to such other foreclosure or
 25 trustee sale proceedings relating to the same property on motion of the
 26 plaintiff's attorney, and may be consolidated on motion of an owner or
 27 interest holder.

28 (s) There shall be a rebuttable presumption, in the manner provided in
 29 ~~subsection (a) of~~ K.S.A. 60-414(a), and amendments thereto, that any
 30 property in or upon which controlled substances are located at the time of
 31 seizure, was being used or intended for use to facilitate an act giving rise
 32 to forfeiture.

33 Sec. 8. K.S.A. 2016 Supp. 60-4117 is hereby amended to read as
 34 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
 35 thereto: (a) When property is forfeited under this act, the law enforcement
 36 agency may:

37 (1) Retain such property for official use or transfer the custody or
 38 ownership to any local, state or federal agency, subject to any lien
 39 preserved by the court;

40 (2) destroy or use for investigative or training purposes, any illegal or
 41 controlled substances and equipment or other contraband, provided that
 42 materials necessary as evidence shall be preserved;

43 (3) sell property which is not required by law to be destroyed and

1 which is not harmful to the public:

2 (A) All property, except real property, designated by the seizing
 3 agency to be sold shall be sold at public sale to the highest bidder for cash
 4 without appraisal. The seizing agency shall first cause notice of the sale to
 5 be made by publication at least once in an official county newspaper as
 6 defined by K.S.A. 64-101, and amendments thereto. Such notice shall
 7 include the time, place, and conditions of the sale and description of the
 8 property to be sold. Nothing in this subsection shall prevent a state agency
 9 from using the state surplus property system and such system's procedures
 10 shall be sufficient to meet the requirements of this subsection.

11 (B) Real property may be sold pursuant to subsection (A), or the
 12 seizing agency may contract with a real estate company, licensed in this
 13 state, to list, advertise and sell such real property in a commercially
 14 reasonable manner.

15 (C) No employee or public official of any agency involved in the
 16 investigation, seizure or forfeiture of seized property may purchase or
 17 attempt to purchase such property; or

18 (4) salvage the property, subject to any lien preserved by the court.

19 (b) When firearms are forfeited under this act, the firearms in the
 20 discretion of the seizing agency, shall be destroyed, used within the seizing
 21 agency for official purposes, traded to another law enforcement agency for
 22 use within such agency or given to the Kansas bureau of investigation for
 23 law enforcement, testing, comparison or destruction by the Kansas bureau
 24 of investigation forensic laboratory.

25 (c) The proceeds of any sale shall be ~~distributed in the following~~
 26 ~~order of priority:~~

27 ~~(1) For satisfaction of any court preserved security interest or lien, or~~
 28 ~~in the case of a violation, as defined by subsection (h) of K.S.A. 60-4104,~~
 29 ~~and amendments thereto, the proceeds shall be remitted to the state~~
 30 ~~treasurer in accordance with the provisions of K.S.A. 75-4215, and~~
 31 ~~amendments thereto. Upon receipt of such remittance, the state treasurer~~
 32 ~~shall deposit the entire amount into the state treasury to the credit of the~~
 33 ~~medicaid fraud reimbursement fund;~~

34 ~~(2) thereafter, for payment of all proper expenses of the proceedings~~
 35 ~~for forfeiture and disposition, including expenses of seizure, inventory,~~
 36 ~~appraisal, maintenance of custody, preservation of availability, advertising,~~
 37 ~~service of process, sale and court costs;~~

38 ~~(3) reasonable attorney fees;~~

39 ~~(A) If the plaintiff's attorney is a county or district attorney, an~~
 40 ~~assistant, or another governmental agency's attorney, fees shall not exceed~~
 41 ~~15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in~~
 42 ~~an uncontested forfeiture nor 20% of the total proceeds, less the amounts~~
 43 ~~of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be~~

1 deposited in the county or city treasury and credited to the special
2 prosecutor's trust fund. Moneys in such fund shall not be considered a
3 source of revenue to meet normal operating expenditures, including salary
4 enhancement. Such fund shall be expended by the county or district
5 attorney, or other governmental agency's attorney through the normal
6 county or city appropriation system and shall be used for such additional
7 law enforcement and prosecutorial purposes as the county or district
8 attorney or other governmental agency's attorney deems appropriate,
9 including educational purposes. All moneys derived from past or pending
10 forfeitures shall be expended pursuant to this act. The board of county
11 commissioners shall provide adequate funding to the county or district
12 attorney's office to enable such office to enforce this act. Neither future
13 forfeitures nor the proceeds therefrom shall be used in planning or
14 adopting a county or district attorney's budget;

15 (B) if the plaintiff's attorney is the attorney general and the conduct
16 and offense giving rise to forfeiture is pursuant to subsection (h) of K.S.A.
17 60-4104, and amendments thereto, fees shall not exceed 15% of the total
18 proceeds, less the amounts of subsection (e)(1) and (2) in an uncontested
19 forfeiture nor 20% of the total proceeds, less the amounts of subsection (e)
20 (1) and (2) in a contested forfeiture. Such fees shall be remitted to the state
21 treasurer in accordance with the provisions of K.S.A. 75-4215, and
22 amendments thereto. Upon receipt of each such remittance, the state
23 treasurer shall deposit the entire amount in the state treasury to the credit
24 of the medicaid fraud prosecution revolving fund. Moneys paid into the
25 medicaid fraud prosecution revolving fund pursuant to this subsection
26 shall be appropriated to the attorney general for use by the attorney general
27 in the investigation and prosecution of medicaid fraud and abuse; or

28 (C) if the plaintiff's attorney is a private attorney, such reasonable fees
29 shall be negotiated by the employing law enforcement agency;

30 (4) repayment of law enforcement funds expended in purchasing of
31 contraband or controlled substances, subject to any interagency agreement.

32 (d) Any proceeds remaining shall be credited as follows, subject to
33 any interagency agreement:

34 (1) If the law enforcement agency is a state agency, the entire amount
35 shall be deposited in the state treasury and credited to such agency's state
36 forfeiture fund. There is hereby established in the state treasury the
37 following state funds: Kansas bureau of investigation state forfeiture fund,
38 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas
39 highway patrol state forfeiture fund, Kansas department of corrections
40 state forfeiture fund and Kansas national guard counter drug state
41 forfeiture fund. Expenditures from the Kansas bureau of investigation state
42 forfeiture fund shall be made upon warrants of the director of accounts and
43 reports issued pursuant to vouchers approved by the attorney general or by

1 a person or persons designated by the attorney general. Expenditures from
2 the Kansas attorney general's state medicaid fraud forfeiture fund shall be
3 made upon warrants of the director of accounts and reports issued pursuant
4 to vouchers approved by the attorney general or by a person or persons
5 designated by the attorney general. Expenditures from the Kansas highway
6 patrol state forfeiture fund shall be made upon warrants of the director of
7 accounts and reports issued pursuant to vouchers approved by the
8 superintendent of the highway patrol or by a person or persons designated
9 by the superintendent. Expenditures from the Kansas department of
10 corrections state forfeiture fund shall be made upon warrants of the
11 director of accounts and reports issued pursuant to vouchers approved by
12 the secretary of the department of corrections or by a person or persons
13 designated by the secretary. Expenditures from the Kansas national guard
14 counter drug state forfeiture fund shall be made upon warrants of the
15 director of accounts and reports issued pursuant to vouchers approved by
16 the adjutant general of Kansas or by a person or persons designated by the
17 adjutant general. Each agency shall compile and submit a forfeiture fund
18 report to the legislature on or before February 1 of each year. Such report
19 shall include, but not be limited to: (A) The fund balance on December 1;
20 (B) the deposits and expenditures for the previous 12-month period ending
21 December 1. Upon the effective date of this act, the director of accounts
22 and reports is directed to transfer each agency's balance in the state special
23 asset forfeiture fund to the agency's new, state forfeiture fund. All
24 liabilities of the state special asset forfeiture fund existing prior to such
25 date are hereby imposed on the Kansas bureau of investigation state
26 forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas
27 department of corrections state forfeiture fund. The state special asset
28 forfeiture fund is hereby abolished.

29 (2) If the law enforcement agency is a city or county agency, the
30 entire amount shall be deposited in such city or county treasury and
31 credited to a special law enforcement trust fund. Each agency shall
32 compile and submit annually a special law enforcement trust fund report to
33 the entity which has budgetary authority over such agency and such report
34 shall specify, for such period, the type and approximate value of the
35 forfeited property received, the amount of any forfeiture proceeds
36 received, and how any of those proceeds were expended.

37 (3) Moneys in the Kansas bureau of investigation state forfeiture
38 fund, Kansas highway patrol state forfeiture fund, Kansas department of
39 corrections state forfeiture fund, the special law enforcement trust funds
40 and the Kansas national guard counter drug state forfeiture fund shall not
41 be considered a source of revenue to meet normal operating expenses.
42 Such funds shall be expended by the agencies or departments through the
43 normal city, county or state appropriation system and shall be used for

1 such special, additional law enforcement purposes as the law enforcement
 2 agency head deems appropriate. Neither future forfeitures nor the proceeds
 3 from such forfeitures shall be used in planning or adopting a law
 4 enforcement agency's budget.

5 ~~(4) Moneys in the Kansas attorney general's medicaid fraud forfeiture~~
 6 ~~fund shall defray costs of the attorney general in connection with the~~
 7 ~~duties of investigating and prosecuting medicaid fraud and abuse remitted~~
 8 ~~to the state treasurer in accordance with the provisions of K.S.A. 75-4215,~~
 9 ~~and amendments thereto. Upon receipt of each such remittance, the state~~
 10 ~~treasurer shall deposit the entire amount in the state treasury to the credit~~
 11 ~~of the state general fund for the purposes of funding education of students~~
 12 ~~in kindergarten and grades one through 12.~~

13 *(d) Each agency shall compile and submit annually a report to the*
 14 *entity that has budgetary authority over such agency and such report shall*
 15 *specify, for such period:*

16 *(1) The total number and aggregate value of seizures of cash;*

17 *(2) the total number of seizures and the number of items in each class*
 18 *of property seized;*

19 *(3) the market value of each class of property seized; and*

20 *(4) the total number of occurrences of each offense giving rise to*
 21 *asset forfeiture.*

22 Sec. 9. K.S.A. 60-4106 and 60-4117 and K.S.A. 2016 Supp. 60-4104,
 23 60-4105, 60-4107, 60-4111 and 60-4112 are hereby repealed.

24 Sec. 10. This act shall take effect and be in force from and after its
 25 publication in the statute book.

SENATE BILL No. 1

By Legislative Post Audit Committee

12-5

1 AN ACT concerning the Kansas standard asset seizure and forfeiture act;
2 relating to reports; amending K.S.A. 2016 Supp. 60-4117 and repealing
3 the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 60-4117 is hereby amended to read as
7 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
8 thereto: (a) When property is forfeited under this act, the law enforcement
9 agency may:

10 (1) Retain such property for official use or transfer the custody or
11 ownership to any local, state or federal agency, subject to any lien
12 preserved by the court;

13 (2) destroy or use for investigative or training purposes, any illegal or
14 controlled substances and equipment or other contraband, provided that
15 materials necessary as evidence shall be preserved;

16 (3) sell property which is not required by law to be destroyed and
17 which is not harmful to the public:

18 (A) All property, except real property, designated by the seizing
19 agency to be sold shall be sold at public sale to the highest bidder for cash
20 without appraisal. The seizing agency shall first cause notice of the sale to
21 be made by publication at least once in an official county newspaper as
22 defined by K.S.A. 64-101, and amendments thereto. Such notice shall
23 include the time, place, and conditions of the sale and description of the
24 property to be sold. Nothing in this subsection shall prevent a state agency
25 from using the state surplus property system and such system's procedures
26 shall be sufficient to meet the requirements of this subsection.

27 (B) Real property may be sold pursuant to subsection (A), or the
28 seizing agency may contract with a real estate company, licensed in this
29 state, to list, advertise and sell such real property in a commercially
30 reasonable manner.

31 (C) No employee or public official of any agency involved in the
32 investigation, seizure or forfeiture of seized property may purchase or
33 attempt to purchase such property; or

34 (4) salvage the property, subject to any lien preserved by the court.

35 (b) When firearms are forfeited under this act, the firearms in the
36 discretion of the seizing agency, shall be destroyed, used within the seizing

1 agency for official purposes, traded to another law enforcement agency for
2 use within such agency or given to the Kansas bureau of investigation for
3 law enforcement, testing, comparison or destruction by the Kansas bureau
4 of investigation forensic laboratory.

5 (c) The proceeds of any sale shall be distributed in the following
6 order of priority:

7 (1) For satisfaction of any court preserved security interest or lien, or
8 in the case of a violation, as defined by ~~subsection (h)~~ of K.S.A. 60-
9 4104(i), and amendments thereto, the proceeds shall be remitted to the
10 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
11 amendments thereto. Upon receipt of such remittance, the state treasurer
12 shall deposit the entire amount into the state treasury to the credit of the
13 medicaid fraud reimbursement fund;

14 (2) thereafter, for payment of all proper expenses of the proceedings
15 for forfeiture and disposition, including expenses of seizure, inventory,
16 appraisal, maintenance of custody, preservation of availability, advertising,
17 service of process, sale and court costs;

18 (3) reasonable attorney fees:

19 (A) If the plaintiff's attorney is a county or district attorney, an
20 assistant, or another governmental agency's attorney, fees shall not exceed
21 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in
22 an uncontested forfeiture nor 20% of the total proceeds, less the amounts
23 of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be
24 deposited in the county or city treasury and credited to the special
25 prosecutor's trust fund. Moneys in such fund shall not be considered a
26 source of revenue to meet normal operating expenditures, including salary
27 enhancement. Such fund shall be expended by the county or district
28 attorney, or other governmental agency's attorney through the normal
29 county or city appropriation system and shall be used for such additional
30 law enforcement and prosecutorial purposes as the county or district
31 attorney or other governmental agency's attorney deems appropriate,
32 including educational purposes. All moneys derived from past or pending
33 forfeitures shall be expended pursuant to this act. The board of county
34 commissioners shall provide adequate funding to the county or district
35 attorney's office to enable such office to enforce this act. Neither future
36 forfeitures nor the proceeds therefrom shall be used in planning or
37 adopting a county or district attorney's budget;

38 (B) if the plaintiff's attorney is the attorney general and the conduct
39 and offense giving rise to forfeiture is pursuant to ~~subsection (h)~~ of K.S.A.
40 60-4104(i), and amendments thereto, fees shall not exceed 15% of the total
41 proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested
42 forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)
43 (1) and (2) in a contested forfeiture. Such fees shall be remitted to the state

1 treasurer in accordance with the provisions of K.S.A. 75-4215, and
2 amendments thereto. Upon receipt of each such remittance, the state
3 treasurer shall deposit the entire amount in the state treasury to the credit
4 of the medicaid fraud prosecution revolving fund. Moneys paid into the
5 medicaid fraud prosecution revolving fund pursuant to this subsection
6 shall be appropriated to the attorney general for use by the attorney general
7 in the investigation and prosecution of medicaid fraud and abuse; or

8 (C) if the plaintiff's attorney is a private attorney, such reasonable fees
9 shall be negotiated by the employing law enforcement agency;

10 (4) repayment of law enforcement funds expended in purchasing of
11 contraband or controlled substances, subject to any interagency agreement.

12 (d) Any proceeds remaining shall be credited as follows, subject to
13 any interagency agreement:

14 (1) If the law enforcement agency is a state agency, the entire amount
15 shall be deposited in the state treasury and credited to such agency's state
16 forfeiture fund. There is hereby established in the state treasury the
17 following state funds: Kansas bureau of investigation state forfeiture fund,
18 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas
19 highway patrol state forfeiture fund, Kansas department of corrections
20 state forfeiture fund and Kansas national guard counter drug state
21 forfeiture fund. Expenditures from the Kansas bureau of investigation state
22 forfeiture fund shall be made upon warrants of the director of accounts and
23 reports issued pursuant to vouchers approved by the attorney general or by
24 a person or persons designated by the attorney general. Expenditures from
25 the Kansas attorney general's state medicaid fraud forfeiture fund shall be
26 made upon warrants of the director of accounts and reports issued pursuant
27 to vouchers approved by the attorney general or by a person or persons
28 designated by the attorney general. Expenditures from the Kansas highway
29 patrol state forfeiture fund shall be made upon warrants of the director of
30 accounts and reports issued pursuant to vouchers approved by the
31 superintendent of the highway patrol or by a person or persons designated
32 by the superintendent. Expenditures from the Kansas department of
33 corrections state forfeiture fund shall be made upon warrants of the
34 director of accounts and reports issued pursuant to vouchers approved by
35 the secretary of the department of corrections or by a person or persons
36 designated by the secretary. Expenditures from the Kansas national guard
37 counter drug state forfeiture fund shall be made upon warrants of the
38 director of accounts and reports issued pursuant to vouchers approved by
39 the adjutant general of Kansas or by a person or persons designated by the
40 adjutant general. Each agency shall compile and submit a forfeiture fund
41 report to the legislature on or before February 1 of each year. Such report
42 shall include, but not be limited to: (A) The fund balance on December 1;
43 *and* (B) the deposits and expenditures for the previous 12-month period

1 ending December 1. Upon the effective date of this act, the director of
2 accounts and reports is directed to transfer each agency's balance in the
3 state special asset forfeiture fund to the agency's new, state forfeiture fund.
4 All liabilities of the state special asset forfeiture fund existing prior to such
5 date are hereby imposed on the Kansas bureau of investigation state
6 forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas
7 department of corrections state forfeiture fund. The state special asset
8 forfeiture fund is hereby abolished.

9 (2) If the law enforcement agency is a city or county agency, the
10 entire amount shall be deposited in such city or county treasury and
11 credited to a special law enforcement trust fund. ~~Each agency shall~~
12 ~~compile and submit annually a special law enforcement trust fund report to~~
13 ~~the entity which has budgetary authority over such agency and such report~~
14 ~~shall specify, for such period, the type and approximate value of the~~
15 ~~forfeited property received, the amount of any forfeiture proceeds~~
16 ~~received, and how any of those proceeds were expended.~~

17 (3) Moneys in the Kansas bureau of investigation state forfeiture
18 fund, Kansas highway patrol state forfeiture fund, Kansas department of
19 corrections state forfeiture fund, the special law enforcement trust funds
20 and the Kansas national guard counter drug state forfeiture fund shall not
21 be considered a source of revenue to meet normal operating expenses.
22 Such funds shall be expended by the agencies or departments through the
23 normal city, county or state appropriation system and shall be used for
24 such special, additional law enforcement purposes as the law enforcement
25 agency head deems appropriate. Neither future forfeitures nor the proceeds
26 from such forfeitures shall be used in planning or adopting a law
27 enforcement agency's budget.

28 (4) Moneys in the Kansas attorney general's medicaid fraud forfeiture
29 fund shall defray costs of the attorney general in connection with the
30 duties of investigating and prosecuting medicaid fraud and abuse.

31 Sec. 2. K.S.A. 2016 Supp. 60-4117 is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after its
33 publication in the statute book.

SENATE BILL No. 3

By Legislative Post Audit Committee

12-5

1 AN ACT concerning forfeiture; amending the Kansas standard asset
2 seizure and forfeiture act; amending K.S.A. 2016 Supp. 60-4107 and
3 repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 60-4107 is hereby amended to read as
7 follows: 60-4107. (a) Property may be seized for forfeiture by a law
8 enforcement officer upon process issued by the district court. The court
9 may issue a seizure warrant on an affidavit under oath demonstrating that
10 probable cause exists for the property's forfeiture or that the property has
11 been the subject of a previous final judgment of forfeiture in the courts of
12 any state or of the United States. The court may order that the property be
13 seized on such terms and conditions as are reasonable in the discretion of
14 the court. The order may be made on or in connection with a search
15 warrant. All real property is to be seized constructively or pursuant to a
16 preseizure adversarial judicial determination of probable cause, except that
17 this determination may be done ex parte when the attorney for the state has
18 demonstrated exigent circumstances to the court.

19 (b) Property may be seized for forfeiture by a law enforcement officer
20 without process on probable cause to believe the property is subject to
21 forfeiture under this act.

22 (c) Property may be seized constructively by:

23 (1) Posting notice of seizure for forfeiture or notice of pending
24 forfeiture on the property.

25 (2) Giving notice pursuant to K.S.A. 60-4109, and amendments
26 thereto.

27 (3) Filing or recording in the public records relating to that type of
28 property notice of seizure for forfeiture, notice of pending forfeiture, a
29 forfeiture lien or a lis pendens. Filings or recordings made pursuant to this
30 act are not subject to a filing fee or other charge, except that court costs
31 may be assessed and, if assessed, shall include the amount of the docket
32 fee prescribed by K.S.A. 60-2001, and amendments thereto, and any
33 additional court costs accrued in the action.

34 (d) The seizing agency shall make reasonable effort to provide notice
35 of the seizure to the person from whose possession or control the property
36 was seized and any interest holder of record within 30 days of seizing the

1 property. If no person is in possession or control, the seizing agency may
2 attach the notice to the property or to the place of the property's seizure or
3 may make a reasonable effort to deliver the notice to the owner of the
4 property. The notice shall contain a general description of the property
5 seized, the date and place of seizure, the name of the seizing agency and
6 the address and telephone number of the seizing officer or other person or
7 agency from whom information about the seizure may be obtained.

8 (e) A person who acts in good faith and in a reasonable manner to
9 comply with an order of the court or a request of a law enforcement officer
10 is not liable to any person on account of acts done in reasonable
11 compliance with the order or request. No liability may attach from the fact
12 that a person declines a law enforcement officer's request to deliver
13 property.

14 (f) A possessory lien of a person from whose possession property is
15 seized is not affected by the seizure.

16 (g) When property is seized for forfeiture under this act, the seizing
17 agency shall, within 45 days of such seizure, forward to the county or
18 district attorney in whose jurisdiction the seizure occurred, a written
19 request for forfeiture which shall include a statement of facts and
20 circumstances of the seizure, the estimated value of the property, the
21 owner and lienholder of the property, the amount of any lien, and a
22 summary of the facts relied on for forfeiture.

23 (h) Upon receipt of a written request for forfeiture from a local law
24 enforcement agency, the county or district attorney shall have 14 days to
25 accept the request. Should such county or district attorney decline such
26 request, or fail to answer, the seizing agency may:

27 (1) Request a state law enforcement agency which enforces this act to
28 adopt the forfeiture; or

29 (2) engage an attorney, approved by the county or district attorney, to
30 represent the agency in the forfeiture proceeding. *The county or district*
31 *attorney shall not represent the agency in the forfeiture proceeding as a*
32 *private attorney nor shall any law firm represent such agency in the*
33 *forfeiture proceeding in which the county or district attorney has an*
34 *affiliation.*

35 (i) Upon receipt of a written request for forfeiture from a state law
36 enforcement agency, the county or district attorney shall have 14 days to
37 accept the request. Should such county or district attorney decline such
38 request, or fail to answer, the seizing agency may engage an assistant
39 attorney general or other attorney approved by the attorney general's office
40 to represent the agency in the forfeiture proceeding.

41 (j) Nothing in this act shall prevent the attorney general, an employee
42 of the attorney general or an authorized representative of the attorney
43 general from conducting forfeiture proceedings under this act.

1 (k) Nothing in this act shall prevent a seizing agency from requesting
2 federal adoption of a seizure. It shall not be necessary to obtain any order
3 pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized
4 property to a federal agency should the county or district attorney approve
5 of such transfer.

6 (l) Nothing in this act shall prevent a seizing agency, or the plaintiff's
7 attorney on behalf of the seizing agency, from settling any alleged
8 forfeiture claim against property before or during forfeiture proceedings.
9 Such settlement shall be in writing and shall be approved, if a local
10 agency, by the county or district attorney or, if a state agency, by the
11 attorney general's office and a district court judge. No hearing or other
12 proceeding shall be necessary. The records of settlements occurring prior
13 to commencement of judicial forfeiture proceedings in the district court
14 shall be retained by the county or district attorney for not less than five
15 years.

16 (m) Settlements under this act shall not be conditioned upon any
17 disposition of criminal charges.

18 Sec. 2. K.S.A. 2016 Supp. 60-4107 is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its
20 publication in the statute book.

SENATE BILL No. 4

By Legislative Post Audit Committee

12-5

1 AN ACT concerning the Kansas standard asset seizure and forfeiture act;
2 relating to expenditure of proceeds; amending K.S.A. 2016 Supp. 60-
3 4117 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 60-4117 is hereby amended to read as
7 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
8 thereto: (a) When property is forfeited under this act, the law enforcement
9 agency may:

10 (1) Retain such property for official use or transfer the custody or
11 ownership to any local, state or federal agency, subject to any lien
12 preserved by the court;

13 (2) destroy or use for investigative or training purposes, any illegal or
14 controlled substances and equipment or other contraband, provided that
15 materials necessary as evidence shall be preserved;

16 (3) sell property which is not required by law to be destroyed and
17 which is not harmful to the public:

18 (A) All property, except real property, designated by the seizing
19 agency to be sold shall be sold at public sale to the highest bidder for cash
20 without appraisal. The seizing agency shall first cause notice of the sale to
21 be made by publication at least once in an official county newspaper as
22 defined by K.S.A. 64-101, and amendments thereto. Such notice shall
23 include the time, place, and conditions of the sale and description of the
24 property to be sold. Nothing in this subsection shall prevent a state agency
25 from using the state surplus property system and such system's procedures
26 shall be sufficient to meet the requirements of this subsection.

27 (B) Real property may be sold pursuant to subsection (A), or the
28 seizing agency may contract with a real estate company, licensed in this
29 state, to list, advertise and sell such real property in a commercially
30 reasonable manner.

31 (C) No employee or public official of any agency involved in the
32 investigation, seizure or forfeiture of seized property may purchase or
33 attempt to purchase such property; or

34 (4) salvage the property, subject to any lien preserved by the court.

35 (b) When firearms are forfeited under this act, the firearms in the
36 discretion of the seizing agency, shall be destroyed, used within the seizing

1 agency for official purposes, traded to another law enforcement agency for
2 use within such agency or given to the Kansas bureau of investigation for
3 law enforcement, testing, comparison or destruction by the Kansas bureau
4 of investigation forensic laboratory.

5 (c) The proceeds of any sale shall be distributed in the following
6 order of priority:

7 (1) For satisfaction of any court preserved security interest or lien, or
8 in the case of a violation, as defined by ~~subsection (h)~~ of K.S.A. 60-
9 4104(i), and amendments thereto, the proceeds shall be remitted to the
10 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
11 amendments thereto. Upon receipt of such remittance, the state treasurer
12 shall deposit the entire amount into the state treasury to the credit of the
13 medicaid fraud reimbursement fund;

14 (2) thereafter, for payment of all proper expenses of the proceedings
15 for forfeiture and disposition, including expenses of seizure, inventory,
16 appraisal, maintenance of custody, preservation of availability, advertising,
17 service of process, sale and court costs;

18 (3) reasonable attorney fees:

19 (A) If the plaintiff's attorney is a county or district attorney, an
20 assistant, or another governmental agency's attorney, fees shall not exceed
21 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in
22 an uncontested forfeiture nor 20% of the total proceeds, less the amounts
23 of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be
24 deposited in the county or city treasury and credited to the special
25 prosecutor's trust fund. Moneys in such fund shall not be considered a
26 source of revenue to meet normal operating expenditures, including salary
27 enhancement. Such fund shall be expended by the county or district
28 attorney, or other governmental agency's attorney through the normal
29 county or city appropriation system and shall be used for such additional
30 law enforcement and prosecutorial purposes as the county or district
31 attorney or other governmental agency's attorney deems appropriate,
32 including educational purposes. All moneys derived from past or pending
33 forfeitures shall be expended pursuant to this act. The board of county
34 commissioners shall provide adequate funding to the county or district
35 attorney's office to enable such office to enforce this act. Neither future
36 forfeitures nor the proceeds therefrom shall be used in planning or
37 adopting a county or district attorney's budget;

38 (B) if the plaintiff's attorney is the attorney general and the conduct
39 and offense giving rise to forfeiture is pursuant to ~~subsection (h)~~ of K.S.A.
40 60-4104(i), and amendments thereto, fees shall not exceed 15% of the total
41 proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested
42 forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)
43 (1) and (2) in a contested forfeiture. Such fees shall be remitted to the state

1 treasurer in accordance with the provisions of K.S.A. 75-4215, and
2 amendments thereto. Upon receipt of each such remittance, the state
3 treasurer shall deposit the entire amount in the state treasury to the credit
4 of the medicaid fraud prosecution revolving fund. Moneys paid into the
5 medicaid fraud prosecution revolving fund pursuant to this subsection
6 shall be appropriated to the attorney general for use by the attorney general
7 in the investigation and prosecution of medicaid fraud and abuse; or

8 (C) if the plaintiff's attorney is a private attorney, such reasonable fees
9 shall be negotiated by the employing law enforcement agency;

10 (4) repayment of law enforcement funds expended in purchasing of
11 contraband or controlled substances, subject to any interagency agreement.

12 (d) Any proceeds remaining shall be credited as follows, subject to
13 any interagency agreement:

14 (1) If the law enforcement agency is a state agency, the entire amount
15 shall be deposited in the state treasury and credited to such agency's state
16 forfeiture fund. There is hereby established in the state treasury the
17 following state funds: Kansas bureau of investigation state forfeiture fund,
18 Kansas attorney general's state medicaid fraud forfeiture fund, Kansas
19 highway patrol state forfeiture fund, Kansas department of corrections
20 state forfeiture fund and Kansas national guard counter drug state
21 forfeiture fund. Expenditures from the Kansas bureau of investigation state
22 forfeiture fund shall be made upon warrants of the director of accounts and
23 reports issued pursuant to vouchers approved by the attorney general or by
24 a person or persons designated by the attorney general. Expenditures from
25 the Kansas attorney general's state medicaid fraud forfeiture fund shall be
26 made upon warrants of the director of accounts and reports issued pursuant
27 to vouchers approved by the attorney general or by a person or persons
28 designated by the attorney general. Expenditures from the Kansas highway
29 patrol state forfeiture fund shall be made upon warrants of the director of
30 accounts and reports issued pursuant to vouchers approved by the
31 superintendent of the highway patrol or by a person or persons designated
32 by the superintendent. Expenditures from the Kansas department of
33 corrections state forfeiture fund shall be made upon warrants of the
34 director of accounts and reports issued pursuant to vouchers approved by
35 the secretary of the department of corrections or by a person or persons
36 designated by the secretary. Expenditures from the Kansas national guard
37 counter drug state forfeiture fund shall be made upon warrants of the
38 director of accounts and reports issued pursuant to vouchers approved by
39 the adjutant general of Kansas or by a person or persons designated by the
40 adjutant general. Each agency shall compile and submit a forfeiture fund
41 report to the legislature on or before February 1 of each year. Such report
42 shall include, but not be limited to: (A) The fund balance on December 1;
43 *and* (B) the deposits and expenditures for the previous 12-month period

1 ending December 1. Upon the effective date of this act, the director of
2 accounts and reports is directed to transfer each agency's balance in the
3 state special asset forfeiture fund to the agency's new, state forfeiture fund.
4 All liabilities of the state special asset forfeiture fund existing prior to such
5 date are hereby imposed on the Kansas bureau of investigation state
6 forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas
7 department of corrections state forfeiture fund. The state special asset
8 forfeiture fund is hereby abolished.

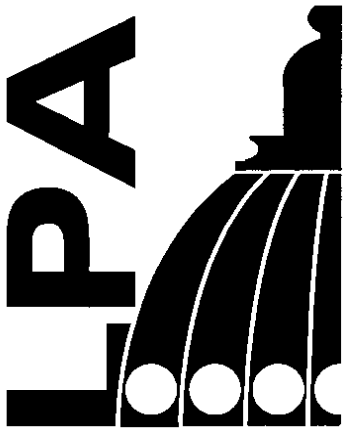
9 (2) If the law enforcement agency is a city or county agency, the
10 entire amount shall be deposited in such city or county treasury and
11 credited to a special law enforcement trust fund. Each agency shall
12 compile and submit annually a special law enforcement trust fund report to
13 the entity which has budgetary authority over such agency and such report
14 shall specify, for such period, the type and approximate value of the
15 forfeited property received, the amount of any forfeiture proceeds
16 received, and how any of those proceeds were expended.

17 (3) Moneys in the Kansas bureau of investigation state forfeiture
18 fund, Kansas highway patrol state forfeiture fund, Kansas department of
19 corrections state forfeiture fund, the special law enforcement trust funds
20 and the Kansas national guard counter drug state forfeiture fund shall not
21 be considered a source of revenue to meet normal operating expenses,
22 *including salaries, benefits or salary enhancements for permanent*
23 *employees*. Such funds shall be expended by the agencies or departments
24 through the normal city, county or state appropriation system and shall be
25 used for such special, additional law enforcement purposes as the law
26 enforcement agency head deems appropriate. Neither future forfeitures nor
27 the proceeds from such forfeitures shall be used in planning or adopting a
28 law enforcement agency's budget.

29 (4) Moneys in the Kansas attorney general's medicaid fraud forfeiture
30 fund shall defray costs of the attorney general in connection with the
31 duties of investigating and prosecuting medicaid fraud and abuse.

32 Sec. 2. K.S.A. 2016 Supp. 60-4117 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its
34 publication in the statute book.



Legislative Post Audit Performance Audit Report Highlights

Seized and Forfeited Property: Evaluating Compliance with State Law and How Proceeds Are Tracked, Used, and Reported

Report Highlights

July 2016 • R-16-009

Summary of Legislator Concerns

Legislators have expressed interest in knowing how Kansas compares to other states, and whether Kansas law enforcement agencies are following all requirements related to seized and forfeited property.

Background Information

The Kansas Standard Asset Seizure and Forfeiture Act allows law enforcement agencies to seize money or property used in certain crimes. Under the act, law enforcement agencies can seize an individual's property without charging or convicting the person of a crime. Instead, law enforcement agencies must have probable cause that the property was used in an offense.

By law, all seized property that is forfeited becomes the property of the law enforcement agency. Under the Forfeiture Act, a judge determines that ownership of seized property may be transferred to a law enforcement agency through a process known as civil asset forfeiture.

QUESTION 1: How Does Kansas's Property Seizure and Forfeiture Process Compare to Other States?

- We compared the seizure and forfeiture process in Kansas to Iowa, Nebraska, Missouri, New Mexico, and the federal government.
- Kansas is similar to the other states and the federal government in terms of what property can be seized by law enforcement agencies and under what conditions.
 - All five states and the federal government allow law enforcement agencies to seize property based on probable cause.
 - Like all four comparison states and the federal government, Kansas allows seizure of real and personal property including cash, guns, vehicles, land, and contraband.
- Requirements for forfeiting property, spending forfeiture proceeds, and reporting on forfeiture activity varied significantly.
 - State and federal laws vary on whether property can be forfeited without a criminal conviction.
 - Kansas, Iowa, and the federal government do not require an individual be convicted of a crime before their property can be forfeited in a civil forfeiture case.
 - By contrast, Missouri, Nebraska, and New Mexico require that an individual be convicted of a crime before their property can be forfeited in a civil forfeiture case.
 - States and the federal government vary in terms of how forfeiture proceeds can be used and who can spend them.
 - Kansas and Iowa allow law enforcement agencies to keep most forfeiture proceeds and to decide how to spend them.
 - In other states, most forfeiture proceeds are not kept by law enforcement and are used for other purposes.
 - The federal government allows federal law enforcement agencies to use forfeiture proceeds, but does not allow them to decide how to spend them.
 - Reporting requirements vary across all five states and the federal government.
 - All states and the federal government require agencies to report on forfeitures, though the reporting method varies.
 - Missouri, Nebraska, New Mexico, and the federal government require centralized reporting on forfeited property.
 - Additionally, Iowa, Missouri, and the federal government have laws that penalize agencies for noncompliance with forfeiture reporting requirements.

- In 2016, the Legislature considered two bills that would have changed forfeiture requirements in Kansas, but neither bill passed.
 - House Bill 2638 would have required criminal conviction for forfeiture and changed where state and local law enforcement agencies deposit forfeiture proceeds.
 - House Bill 2699 also would have changed where local law enforcement agencies deposit forfeiture proceeds.

QUESTION 2: Are Law Enforcement Agencies Following State Legal Requirements and Best Practices for Property Seizures and Forfeitures?

- We evaluated the following state and local law enforcement agencies' processes for property seizures and forfeitures under the state's forfeiture act: Kansas Bureau of Investigation, Kansas Highway Patrol, Coffeyville Police Department, Iola Police Department, Salina Police Department, and the Sedgwick County Sheriff's Office. We looked at their processes for safeguarding, liquidating, tracking, using, and reporting seized and forfeited property.
- Overall, the six law enforcement agencies we reviewed adequately safeguarded property, though there were a few exceptions.
 - All six agencies generally complied with major state laws and best practices for safeguarding property.
 - However, Coffeyville and Iola did not issue notice of seizure as required by state law, did not periodically review their seized property inventory, and did not adequately secure their vehicle impound lots.
 - Additionally, Salina's written inventory of seized items was not complete because it did not include vehicles.
- Although the six agencies we reviewed generally complied with state laws for liquidating forfeited property, several of the agencies were missing important controls surrounding this process.
 - Salina did not deposit all forfeiture funds directly into its forfeiture fund as required by state law.
 - At the time of our audit, the Kansas Highway Patrol had about \$218,000 in its forfeiture fund that had not yet been ordered forfeited by a court.
 - The four local law enforcement agencies we reviewed did not have a policy prohibiting their employees from purchasing forfeited property.
- Overall, the six agencies we examined lacked important controls for tracking forfeiture proceeds.
 - All six agencies described an adequate segregation of duties in which different people collected, deposited, and reconciled forfeiture proceeds.
 - However, none of the agencies conducted a periodic check to ensure all expected forfeiture proceeds were deposited or that all deposits were related to a forfeiture case.
 - Most law enforcement agencies also comingled forfeiture funds with drug-tax proceeds.
- Agencies appeared to have good processes for appropriately using forfeiture proceeds.
 - The six law enforcement agencies we reviewed spent forfeiture proceeds on a variety of items that appeared allowable under state law.
 - Most agencies obtained written approval of expenditures by the agency head, but we were unable to evaluate two agencies (Kansas Bureau of Investigation and Salina) that sometimes relied on verbal approvals.

Law enforcement agencies can keep, transfer, destroy, or sell property after a judge has ordered forfeiture. Law enforcement agencies can use forfeiture proceeds for nearly any law enforcement purpose except normal operating expenses. Because the Forfeiture Act does not define the term "normal operating expense," it gives agencies wide discretion to determine appropriate uses of those funds.

We compared the seizure and forfeiture process in Kansas to four states (Iowa, Nebraska, Missouri, and New Mexico) and the federal government. We selected Iowa, Nebraska, and Missouri because of their proximity to Kansas. We selected New Mexico because it has received national attention as having strong seizure and forfeiture laws.

We also looked at the seizure and forfeiture processes of two state and four local law enforcement agencies in Kansas. The amount of forfeiture proceeds received by the law enforcement agencies varied. Kansas Highway Patrol had the largest volume with about \$842,000 in deposits in 2015. Iola Police Department had the smallest volume with only \$4,100 in deposits in 2015.

Law enforcement agencies may also receive forfeited property under other federal or state laws outside the scope of this audit. For example, a Kansas law enforcement agency can receive forfeiture proceeds under federal law if there is a joint investigation with a federal agency, or if a federal agency adopts a state or local forfeiture case. Additionally, law enforcement agencies can receive forfeiture proceeds under the state's drug-tax laws (K.S.A. 79-5201 et seq.).

Our 2000 audit found law enforcement complied with most state laws, but did not appropriately handle or report forfeiture proceeds. The 2000 audit found all six agencies disposed of forfeited property and established a fund for forfeiture proceeds as required by state law. However, the audit also found that agencies had issues with depositing and accounting for forfeiture proceeds. Our 2000 audit also found that most local law enforcement agencies did not submit an annual report to their oversight authority as required by state law.

- State law enforcement agencies complied with reporting requirements in state law, but local agencies did not.
 - None of the four local law enforcement agencies we reviewed prepared an annual report because officials told us either they were not aware of the requirements or thought other information they compiled was sufficient.

Other Findings

- Agencies have broad discretion over how forfeiture proceeds can be used, which creates a risk agencies could begin to depend on them for operating funds.
 - State law allows law enforcement agencies to spend forfeiture proceeds on “special, additional law enforcement purposes,” but not on “normal operating expenses.”
 - Both the Kansas Highway Patrol and Salina spent forfeiture funds on what appeared to be normal operating expenses in 2015. However, in both cases officials told us the expenditures were for special and additional law enforcement purposes.
 - KHP spent approximately \$413,000 on employee salaries from December 1, 2012 through June 30, 2015. They told us they used forfeiture proceeds to pay the salaries (or portion of the salaries) only for individuals involved in the forfeiture process.
 - Salina officials told us they used forfeiture proceeds to pay for the expenses (cell phone bills) of their special drug task force. Because the drug task force is a special unit within the police department, officials determined these costs to be appropriate.
 - Allowing law enforcement agencies to use forfeiture proceeds for routine, reoccurring operating expenses significantly increases the likelihood agencies will become dependent on such proceeds in the future.
- Coffeyville’s arrangement with the Montgomery County Attorney to handle forfeiture cases creates a conflict of interest.
 - Law enforcement agencies may hire a private attorney to handle their forfeiture cases if a county or district attorney declines.
 - The Montgomery County attorney—who also operates a private law firm—declined taking Coffeyville’s forfeitures in his role as the county attorney, but instead agreed to take them in his alternative role as a private attorney.
 - In his role as a private attorney, the Montgomery County Attorney collected an estimated \$21,000 in legal fees from 2013 to 2015 that otherwise would have gone to the county attorney’s office.
 - This arrangement represents a conflict of interest we think would likely violate state ethics laws were the Montgomery County Attorney a state employee.
- Salina lacked important controls for money used for controlled drug buys.
 - Officers were sometimes allowed to check out large amounts of cash, which they kept in potentially unsecure locations.
 - Officers did not routinely return unused money.
 - Although officials told us they conducted periodic reconciliations of the money officers withdrew, our review of that process revealed some issues.
 - Salina’s weak or missing controls are particularly problematic because of the inherent risks associated with drug-buy money.
- None of the law enforcement agencies we reviewed had complete and written policies and procedures for seized and forfeited property.

SUMMARY OF RECOMMENDATIONS

Recommendations for Executive Action:

- We made numerous recommendations to each of the six agencies in our sample regarding the specific deficiencies we identified. Agency specific recommendations are included in Appendix B of the report.
- To avoid any potential conflicts of interest, the Montgomery County Attorney should either handle Coffeyville's forfeiture cases as the county attorney or make alternative arrangements (e.g. have the county counselor or a different private attorney handle Coffeyville's forfeiture cases).

Recommendations for Legislative Consideration:

- To address whether agencies should have the discretion to use forfeiture proceeds for ongoing and reoccurring operating expenses, the House and Senate Judiciary Committees should consider legislation to clarify K.S.A. 60-4117(d)(3).
- To address consistent problems with local law enforcement agencies not complying with the state legal requirement for an annual report, the House and Senate Judiciary Committees should consider introducing legislation to either require and enforce a more centralized reporting structure or consider eliminating the reporting requirement altogether.

AGENCY RESPONSE

- Kansas Bureau of Investigation, Kansas Highway Patrol, Coffeyville Police Department, Iola Police Department, and the Sedgwick County Sheriff's Office generally concurred with the report's findings and conclusions.
- Salina Police Department officials and the Montgomery County Attorney both disagreed with some of the report's findings, but we did not modify our findings or conclusions as a result of these concerns. Salina officials had concerns with our finding on drug-buy funds because the report does not describe expenditure reports they use to document drug buys. The Montgomery County Attorney had concerns with our finding on the conflict of interest he has created because the report does not describe a state law that addresses the role of the county counselor. The County Attorney's response did not make it clear whether he intends to implement the recommendation associated with this finding and our attempts to clarify this were unsuccessful. However, given his disagreement with the finding, it seems unlikely he will implement the recommendation.

HOW DO I REQUEST AN AUDIT?

By law, individual legislators, legislative committees, or the Governor may request an audit, but any audit work conducted by the division must be directed by the Legislative Post Audit Committee. Any legislator who would like to request an audit should contact the division directly at (785) 296-3792.

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