

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

DECEMBER 1, 2023

On April 27, 2023, Representative Stephen Owens and Representative Fred Patton requested that the Kansas Judicial Council study the topic of civil asset forfeiture. Specifically, they requested that the Judicial Council study and make recommendations on HB 2380, which was introduced in 2023. The Judicial Council accepted the study when it met on June 2, 2023 and assigned the study to the Civil Asset Forfeiture Advisory Committee.

COMMITTEE MEMBERSHIP

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

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

Brandon Barrett, Topeka; Assistant Director and General Counsel, Kansas Board of Indigents' Defense Services

Marc Bennett, Wichita; Sedgwick County District Attorney

Mike Fonkert, Lawrence; Deputy Director, Kansas Appleseed

John Goodyear, Topeka; General Counsel, League of Kansas Municipalities

Sen. David Haley, Kansas City; State Senator, District 4

Jay Hall, Topeka; Deputy Directory and General Counsel, Kansas Association of Counties

Christopher M. Joseph, Topeka; criminal defense attorney

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

Samuel G. MacRoberts, Overland Park; Litigation Director, Kansas Justice Institute

Tony Mattivi, Topeka; Director, Kansas Bureau of Investigation

Rep. Carl Maughan, Colwich; State Representative, District 90

Josh Ney, Oskaloosa; Jefferson County Attorney

Rep. Dan Osman, Overland Park; State Representative, District 48

Colin D. Wood, Caldwell; contract forfeiture attorney, Kansas Highway Patrol

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

BACKGROUND

This report marks the second time the Judicial Council has been asked to study and make recommendations on the topic of civil asset forfeiture. In 2017, the Judicial Council formed the Civil Asset Forfeiture Advisory Committee (Committee) to conduct a study requested by Representative Blaine Finch and Senator Rick Wilborn, who at that time were chairing the House and Senate Judiciary Committees. Civil asset forfeiture was the subject of a number of bills introduced in the 2017 legislative session and also had been the subject of a 2016 Legislative Post Audit Report. In its December 21, 2017 report, the Committee recommended amendments to the Kansas Standard Asset Forfeiture and Seizure Act (KSASFA),¹ that focused on two issues – leveling the playing field for forfeiture claimants and increasing reporting requirements for seizing agencies. The Committee’s proposed amendments were introduced in HB 2459 and passed by the Legislature in 2018. The new reporting requirements went into effect on July 1, 2019. Pursuant to the new reporting statute, the Kansas Bureau of Investigation (KBI) established the Kansas Asset Seizure and Forfeiture Repository.² All of the forfeiture data received since that date is available for review on the repository’s public-facing website.³

Six years have passed since the Committee’s last report was issued, and civil asset forfeiture remains a contentious issue, not only in Kansas, but across the nation. According to the Institute for Justice, 37 states and the District of Columbia have reformed their civil asset forfeiture laws since 2014. Rather than simply replicating changes made in other states with no reliable data showing that anecdotal stories of forfeiture abuse are happening in Kansas, the Committee in 2017 chose to recommend amendments that made it easier for property owners to access the system as well as strict new reporting requirements for seizing agencies. The Committee reasoned the new requirements would lead to the collection of data that would help inform future decisions about whether additional changes may be warranted. The Committee’s 2017 report also stated that if the reporting requirements were enacted, the Committee would be willing to reconvene in the future to reassess this topic once there was sufficient data available for analysis and review.

A number of bills seeking to reform civil asset forfeiture have been introduced since the reporting requirements went into effect on July 1, 2019, but none were passed. In 2023, HB 2380 was introduced in and referred to the House Judiciary Committee. The bill was requested by the Kansas Justice Institute and included proposed amendments to ten statutes in KSASFA. The bill was heard on February 15, 2023 with nearly equal numbers of proponents and opponents providing oral and written testimony. The bill was not worked in the House Judiciary Committee and was later referred to the House Corrections and Juvenile Justice Committee. Representative Stephen

¹ K.S.A. 60-4101 *et seq.*

² K.S.A. 60-4127.

³ Kansas Bureau of Investigation, *Kansas Asset Forfeiture Reporting*, <https://kasfr.kbi.ks.gov/>, last accessed November 27, 2023.

Owens, who chairs that committee, and Representative Fred Patton, who was chairing the House Judiciary Committee, jointly requested that the Judicial Council study and make recommendations on HB 2380 as introduced. The Judicial Council accepted the study and assigned it to the Committee on June 2, 2023.

METHOD OF STUDY

The Judicial Council was intentional in inviting both proponents and opponents of asset forfeiture reform to participate in the Civil Asset Forfeiture Advisory Committee formed in 2017. Due to members changing jobs or leaving the area, a number of positions on the Committee had to be filled for the Committee to reconvene and conduct the study requested in 2023. The Judicial Council again paid careful attention to the Committee's makeup when selecting new members, desiring to bring voices from all sides of the issue to the table to address this important topic.

The Civil Asset Forfeiture Advisory Committee held four all-day meetings and one Zoom conference during the summer and fall of 2023 to study and make recommendations on the reform measures contained in HB 2380. At the first meeting, Mr. Lee McGrath from the Institute for Justice gave an educational overview of the history of forfeiture law and recent state law reforms. Jessica Crowder, Program Consultant in the KBI's Asset Forfeiture Unit, presented a tutorial to the Committee on how to access asset forfeiture information on the KBI website.

In addition to the study request, which included a copy of HB 2380 and is attached to this report at page 48, the Committee reviewed the following materials:

- Minutes from the February 15, 2023 hearing on HB 2380 held by the House Judiciary Committee, and written testimony offered by proponent and opponent conferees at the hearing.
- Model legislation from the Institute for Justice, *Criminal Forfeiture Process Act*, January 31, 2023.
- Kansas Civil Asset Forfeiture data accessible through the Kansas Asset Seizure and Forfeiture Repository website.
- Greenberg, D., *Five Myths of Civil Forfeiture*, (2d ed. 2023) Competitive Enterprise Institute.
- Knepper, L., McDonald, J., Sanchez, K., & Pohl, E. S., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, (3rd ed. 2020) Institute for Justice.
- Wood, C. & Wood, G., *UNFAIRLY MALIGNED: The Myths Surrounding the Kansas Civil Asset Forfeiture Debate*, 86-MAR J. Kan. B. A. 44 (2017).
- *State v. \$2,435 in United States Currency*, 220 N.E.3d 542 (Ind. Sup. Ct. 2023).
- *Timbs v. Indiana*, 586 U.S. ___, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019).
- *Yamhill Cnty. v. Real Prop.*, 322 Or.App. 412, 526 P3d 765 (2023).

INTRODUCTION

The Committee reviewed data from the Kansas Asset Seizure and Forfeiture Repository at various points throughout the study. The following statistics were based on the most recent data available at the time of this report, covering the time period of July 1, 2019 to November 8, 2023.

Under current reporting procedures, the repository receives no information regarding the disposition of currency and property transferred for federal forfeiture. The 116 incident reports involving seizures of currency and property that was transferred for federal forfeiture were subtracted from the total incidents and total seizures to show the total seizures that were the subject of forfeiture cases filed in Kansas district courts and for which the disposition is known.

	<u>Total Seized</u>	<u>Transferred for Federal Forfeiture</u>	<u>Total Seized with State Disposition*</u>	<u>Total Forfeited in Kansas Courts</u>
Currency	\$17,588,625	\$5,621,721	\$11,966,904	\$10,861,121
Property	\$ 5,536,880	\$ 89,184	\$ 5,447,696	\$ 3,127,948
	\$23,125,505	\$5,710,905	\$17,414,600	\$13,989,069

Total Incidents Reported - 2,000
Transferred to Federal - 116
Incidents With State Dispositions - 1,884

Median Seizure Value (2000 Incidents) - \$3,116
Median Forfeiture Value (Currency) - \$2,473
Median Forfeiture Value (Property) - \$2,250

	<u>Total Returned to Owner</u>	<u>Recovery Rate</u>
Currency	\$ 1,472,851	12% (\$1,472,851 out of \$11,966,904)
Property	\$ 2,668,741	49% (\$2,668,741 out of \$5,447,696)
Overall	\$ 4,141,592	24% (\$4,141,592 out of \$17,414,600)

Number of Incidents Where Currency/Property was Returned or Partially Returned

499 Incidents out of 1,884 = 26%

Average Days to Recovery (From date of seizure to date of disposition)

249 Days

Default Rate - Number of Incidents With Disposition of "Forfeited - Uncontested/Default"

1330 Incidents out of 1,884 = 70%

*The total seized may not match up with the totals of what was forfeited/returned due to the possibility of settlement.

The Committee is not in agreement as to what the data shows. There are some members who believe the data shows abuse of the forfeiture power in Kansas, although the majority disagree. There was agreement that there is at least a perception among some members of the public that abuses are occurring, and that issue entered into many of the discussions. All Committee members agree that the data shows the default rate is high, and although there is not agreement about the reason for high defaults, this issue was at the forefront of many discussions throughout the study. The Committee also had many focused discussions on concerns about difficulties faced by claimants whose property was valued lower than the cost to hire an attorney.

The debate on civil asset forfeiture has been going on for many years in this country. The issues are many and varied, and the following summary of the arguments is a simplistic outline of what are complex positions. On one side of the debate are those who believe it is fundamentally unfair for the government to be able to take and keep a person's property without proving the person has done anything wrong. They believe there is not enough procedural due process to protect property rights and that there is often a profit motive that incentivises law enforcement to do more seizures. On the other side of the debate are those who strongly believe that civil asset forfeiture is a critical tool in law enforcement's efforts to disrupt criminal enterprises of all sizes by taking away property that is used in or is proceeds of criminal activity. There are also many people who fall somewhere in between these two positions.

The Committee was well-balanced, with members holding views across the spectrum. The difficulty with this topic is that the people on the ends of the spectrum have opinions that cannot be reconciled. One group believes civil asset forfeiture should end, and the other believes just as strongly that it is a law enforcement tool that is essential to public safety. The Committee worked diligently to find every possible area of agreement as it studied the reform measures in HB 2380.

The bill contained at least ten separate civil asset forfeiture reform concepts, and the Committee discussed all of them. The Committee recommends some, but not all of those reforms. In addition, the Committee recommends some original amendments that were not found in HB 2380.

This report will first discuss reforms recommended by the Committee, followed by discussion of reforms that were contained in HB 2380, but the Committee is not recommending at this time.

REFORM MEASURES RECOMMENDED BY COMMITTEE

The Committee has agreed on eight reform measures, some of which were in HB 2380 and some that originated with the Committee. These reform measures are presented below in the order in which they appear in the proposed legislation, which begins on page 15 of this report.

Deleting Certain Crimes From the List of Covered Offenses and Conduct

This recommendation was not in HB 2380 and originated during Committee discussion. The list of conduct and offenses giving rise to forfeiture is found in K.S.A. 60-4104, Section 1 of the proposed legislation. The Committee agreed unanimously to delete offenses involving controlled substances that apply primarily to a “user.” The current statute includes as offenses giving rise to forfeiture every statute in Chapter 21, Article 57, which is “crimes involving controlled substances.” The majority of all seizures in Kansas are related to offenses involving controlled substances, and there are arguments to be made that criminal enterprises of manufacturing and distributing those substances can be disrupted by seizing the proceeds needed to continue operating the business. However, those arguments are difficult to apply to the end user who is not part of the enterprise and whose criminal activity produces no profit. Deleting simple possession and similar offenses from the list in K.S.A. 60-4104(b) could have an impact on the number of small seizures that many Committee members found troubling.

Making Certain Property Ineligible for Forfeiture

Section 2 of HB 2380 contained language that established thresholds – \$1,000 for currency and \$2,500 for property – under which the currency or property would not be eligible for forfeiture. One of the issues the Committee was concerned about was the high default rate in asset forfeiture cases. The Institute of Justice has estimated that it would cost an average of \$3,000 to hire an attorney to handle a simple forfeiture case.⁴ The data shows that the median seizure value in Kansas is \$3,116. This means that in half of the 2,000 seizures that took place between July 1, 2019 and November 8, 2023, it would not make sense financially to contest the forfeiture. Many Committee members think that one way to impact the default rate would be to amend KSASFA to prohibit forfeiture of property valued below a certain dollar amount. In addition, if smaller amounts of currency or lower-valued property were ineligible for forfeiture, it could have an impact on the negative public perception relating to civil asset forfeiture.

Not all Committee members share this view. It is impossible to know why there are so many defaults in civil asset forfeiture. It could sometimes be related to the expense or difficulty of

⁴ Knepper, L., McDonald, J., Sanchez, K., & Pohl, E. S., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, at 23 (3rd ed. 2020) Institute for Justice, <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf>, last accessed Nov. 27, 2023.

fighting back, but it could also be that the person knows the property was associated with criminal activity and chooses to stay as far away as possible. There were Committee members who were concerned that making certain property ineligible for forfeiture would be detrimental to a law enforcement agency's ability to use forfeiture as a coordinated approach to interrupting criminal activity in their community. Local law enforcement agencies have found that even small forfeitures can have an impact on dealers who are distributing drugs directly to the users. Despite these differing views, a majority of the Committee agreed to recommend this amendment, which can be found in Section 2 of the proposed legislation in K.S.A. 60-4105. The Committee's proposal differs in three respects from the language in HB 2380.

- To clarify that multiple items seized are not valued separately to determine if the seizure is above or below the threshold, the Committee defines the value of property as the "aggregate value of seized property related to conduct or offenses giving rise to forfeiture if such conduct or offenses are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan."
- Firearms are excluded from the threshold determination and will always be subject to forfeiture.
- The threshold amounts have been left blank for the Legislature to determine.

Seizing Agency Must Return Property if Time Lines are Not Met

The Committee agreed with this provision, which was in HB 2380. The Committee's proposal can be found in Section 4 of the proposed legislation in K.S.A. 60-4107. The purpose of this section is to ensure that the seizing agency does not delay in moving the case forward. If the seizing agency hasn't met the shortened time lines to engage an attorney or otherwise move the case forward, the seized property must be returned. The Committee made minor amendments to the language proposed in HB 2380, such as clarifying that the property should be returned to the owner or interest holder, who may not be the person it was seized from. Also, the Committee clarified that returning the property under this section does not affect the seizing agency's ability to initiate or file a forfeiture case within the existing time limitations in K.S.A. 60-4109.

Prohibiting Pre-Forfeiture Waivers of Rights in Property

This provision was contained in HB 2380, and the Committee unanimously agreed to recommend adding the language. There have been reported incidents in other states of a practice

of improperly coercing people to sign away rights to property, usually currency.⁵ In these incidents, a law enforcement officer may tell a person stopped on the side of the road that if he will sign this document saying the cash is not his and signing away any right to contest the seizure in the future, he can be on his way. The purpose of this section is to prohibit obtaining that type of waiver of property rights before a forfeiture proceeding has been commenced. The Committee made minor amendments to the language in HB 2380, including clarifying that it is prohibiting a “written” waiver. This provision is found in the Committee’s proposed legislation in Section 4, K.S.A. 60-4107.

In HB 2380, the prohibition on waivers was placed in K.S.A. 60-4107(n), and the existing language in that subsection was stricken. The Committee disagrees with the deletion of that section, which prohibits conditioning settlements of civil forfeiture cases on any disposition of criminal charges. The Committee believes this type of interplay between civil and criminal settlements has ethical implications and that the section stricken in HB 2380 should be retained.

Early Probable Cause Hearing

One of the Committee’s recommendations in 2017, which was passed into law in 2018, was a requirement for 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. The Committee reasoned that law enforcement officers take the signing of affidavits seriously and would carefully evaluate the facts in an affidavit before affixing his or her signature to that document. The Committee has now taken that idea one step further by upgrading the description of “essential facts” to an affidavit describing the probable cause supporting forfeiture. The affidavit, which used to be provided only to the claimant, now must be filed with the court. The forfeiture case may not proceed until a judge has determined that there is probable cause to believe that the property is subject to forfeiture. Judicial review has always been required in forfeiture cases, but this amendment moves the review to the beginning of the case. The Committee also amended the language allowing the plaintiff’s attorney to file a lien for the forfeiture of property to prevent using a lien to circumvent the requirement of filing a probable cause affidavit. These amendments are found in Section 5 of the proposed legislation in K.S.A. 60-4109. Due to this change making a probable cause hearing mandatory, existing language which provided for a probable cause hearing upon request has been deleted. Those amendments are in Section 7 of the proposed legislation in K.S.A. 60-4112(c) and (d).

⁵ Alamdari, N. (2023, June 15) “Using loophole, Seward County seizes millions from motorists without convicting them of crimes,” Nebraska Public Media. <https://nebraskapublicmedia.org/en/news/news-articles/using-loophole-seward-county-seizes-millions-from-motorists-without-convicting-them-of-crimes/>, last accessed Nov. 27, 2023.

Proportionality Hearing May Be Requested at Any Time

The Committee unanimously recommends the language in Section 5 of HB 2380 providing that “at any time following seizure,” the person from whom property was seized may petition the court for a hearing to determine whether the seizure is constitutionally excessive. This section requires the plaintiff’s attorney to establish that the seizure is proportional to the seriousness of the offense giving rise to the forfeiture. In HB 2380, the burden of proof for this finding was beyond a reasonable doubt. The Committee could not reach consensus on that point, and the burden of proof in the Committee’s proposal is preponderance of the evidence. The new section also provides a list of factors for the court to consider in making the determination. This new language can be found in Section 7 of the proposed legislation in K.S.A. 60-4112.

There is an existing section in K.S.A. 60-4106(c) that requires the court, prior to final judgment in a forfeiture proceeding, to limit the scope of the 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 and also provides a list of factors for the court to consider. The current statute does not clarify if, when, or by whom the issue can be raised or who has the burden of proof, and so the additional details in the new language are helpful. Although the existing provision in K.S.A. 60-4106(c) was not stricken in HB 2380, the Committee found it to be in conflict with the new language in K.S.A. 60-4112 since there are two different lists of factors for the court to consider in determining the same issue. The Committee preferred the factors in the new section to the existing list. To harmonize the two sections, the Committee recommends deleting most of the existing section. As amended, the language in K.S.A. 60-4106(c) will now provide that if the court has not made a determination regarding proportionality earlier in the proceeding, the court must make that determination prior to final judgement using the new factors listed in K.S.A. 60-4112.

Automatic Stay of Discovery

The Committee recommends amending the stay in K.S.A. 60-4112(o) [now (p) in Section 7 of the proposed legislation] to make it an automatic stay of discovery in the civil forfeiture case during a related criminal proceeding alleging the same conduct. The stay, which only affects discovery against the person who is the defendant in the criminal matter, is currently available only on motion. This amendment would require the court to impose the stay automatically, but the court can lift the stay on good cause shown.

There is a related amendment in K.S.A. 60-4111(a) in Section 6 of the proposed legislation that requires the plaintiff’s attorney to file a notice of receipt when a claim is received unless the claim was already filed with the court. Claimants are not required to file claims with the court, only to mail them to the plaintiff’s attorney. This requirement will ensure the court is informed of claims

filed and can impose the automatic stay if a criminal case is pending. While the Committee thinks this stay will only affect a small number of forfeiture cases, it is nevertheless important. It is inherently unfair that the system forces a claimant to choose not to contest a forfeiture of seized property because it could jeopardize a pending criminal matter. The automatic stay of discovery in the civil case will protect that claimant's Fifth Amendment rights.

Fee-Shifting

The Committee agrees with one final concept included in HB 2380, which is fee-shifting. The Committee recommends a new section establishing that the seizing agency can be ordered to pay a prevailing claimant's attorney fees. KSASFA includes a provision that subjects claimants, under certain facts, to the possibility of being ordered to pay another claimant's and the seizing agency's reasonable costs and expenses. The Committee's proposed fee-shifting provision now puts that possibility in play for the seizing agency as well. Seizing agencies will need to take this into consideration in evaluating the strength of each case and determining whether pursuing the forfeiture action is appropriate. In addition, the possibility of recouping attorney fees may make it possible for claimants to find attorneys willing to take on smaller cases on a contingent fee basis.

The Committee considered proposed language that was based on the federal fee-shifting statute and applicable case law, but the majority preferred the language now contained in Section 8 of the proposed legislation in K.S.A. 60-4116. The new provision requires the court to order the seizing agency to pay the claimant's reasonable attorney fees and other litigation costs incurred if the court orders the return of at least half of the aggregate value of the claimant's interest in property or currency in which the claimant asserted an interest. Under the federal language, the seizing agency would be liable for reasonable fees and costs if the claimant "substantially prevails" on the merits.⁶ The Committee thought that phrase was not clear enough, and the Committee did not agree with some of the case law interpretations. However, the Committee did agree to incorporate one of the proposed federal-based subsections that applies to situations in which there are multiple claims to the same property.

The Committee also recommends an associated amendment to K.S.A. 60-4117(e)(2), found in Section 9 of the proposed legislation. This subsection sets forth the permissible uses of moneys in law enforcement agencies' forfeiture funds. The Committee agreed to add that a law enforcement agency may use forfeiture funds to pay attorney fees, litigation costs, and interest ordered by a court under the new fee-shifting provision. If there is money in the forfeiture fund to pay the court-ordered costs and fees, that would be preferable to using taxpayer monies in the city, county, or state's general fund and results in a more direct consequence to the seizing agency.

⁶ See 28 U.S.C. 2465.

By adding a fee-shifting provision that benefits prevailing claimants, seizing agencies will have more skin in the game. Fee-shifting could be a disincentive to bring questionable cases and could drive more settlements. It could also have an impact on the perception that the system allows seizing agencies to have free rein with no consequences.

REFORM MEASURES THE COMMITTEE DOES NOT RECOMMEND

The Committee is not recommending six of the reform measures contained in HB 2380. The Committee reached consensus on the issues of providing counsel to indigent claimants and prohibiting federal adoptions. A majority of the Committee was opposed to the remaining reform measures.

Providing Counsel to Indigent Claimants in Civil Asset Forfeiture Proceedings

The Committee does not recommend that a right to counsel be added to civil asset forfeiture proceedings under KSASFA. However, this is not because the Committee is opposed to the idea. Some Committee members feel very strongly that counsel should be provided. Others think access to counsel might have an impact on the high default rate, which could be caused in part by the difficulty in navigating the complex forfeiture system as a pro se litigant.

However, the Committee is concerned that including a right to counsel would create a requirement that cannot be met. There currently is a severe shortage of attorneys available to take appointments to provide representation to indigent people. The Kansas State Board of Indigent Defense Services (BIDS) is already at a crisis point in its ability to deliver needed criminal defense services.⁷ BIDS currently has vacant attorney positions it is struggling to fill statewide. Historically, the assigned private counsel program that BIDS administers would fill in the gaps in areas not served by a BIDS regional office or in areas where there are not enough BIDS attorneys, but those gaps are not being filled even in the largest counties. Among the counties that don't have enough privately appointed attorneys to accept BIDS cases are Johnson, Douglas, Shawnee, Sedgwick, and Riley.⁸ Smaller counties may have only a few private attorneys willing to serve on the appointments list. Those attorneys still willing to accept criminal appointments may have no interest in taking on civil asset forfeiture cases, an area of law in which they are likely to have little or no previous experience. The attorney shortage in rural counties is even more dire, with eighteen counties having two or fewer practicing attorneys.⁹

⁷ Mipro, R. (2023, Jan. 20), "Kansas public defense struggles to meet constitutional standards with lack of workers," The Lawrence Times. <https://lawrencekstimes.com/2023/01/20/ks-pd-struggling/>, last accessed Nov. 27, 2023.

⁸ *Supra* note 7.

⁹ *Supra* note 7.

Even if there were attorneys ready and willing to be appointed to represent indigent claimants in civil asset forfeiture proceedings, the Committee was unable to come up with a funding mechanism. The Committee discussed the possibility of using forfeiture proceeds to fund the right to counsel, but is doubtful this would be sufficient even if 100% of proceeds were earmarked for that purpose. The Committee also agreed that if the Legislature chose to fully fund a right to counsel in these cases, that might resolve a number of other collateral issues that have been raised relating to civil asset forfeiture.

Requiring a Criminal Conviction Before Forfeiture

The Committee does not recommend requiring a criminal conviction before civil asset forfeiture can commence. This is the position of a majority of the Committee, but there were members who believe the government should not be able to take a person's property without first convicting that person of a crime. If the purpose of civil asset forfeiture is to disrupt criminal activity and take away proceeds of crimes, it follows that the prerequisite should be to prove the person whose property is being taken away has committed a crime.

A majority of the Committee were concerned about this proposal. One concern is that instituting a requirement for a criminal conviction could create an incentive for prosecutors to charge people they might have otherwise declined to prosecute. There are also concerns about mixing the criminal and civil cases. Ethical issues arise when the cases are closely entwined and an attorney may be tempted to trade money for reduced charges or sentencing. Even if such a thing never happens, the optics are concerning. There are also legal reasons to keep the two systems separate. Civil asset forfeiture is based on the premise that it is an in rem action against the property, not the person. By blurring the lines with a criminal conviction prerequisite, the appearance begins to be closer to a punitive measure. If the process becomes punitive in nature, constitutional rights will apply. A majority of the Committee don't believe mixing the civil and criminal processes is the right solution.

Raising the Burden of Proof

The Committee was unable to reach agreement on raising the burden of proof in civil asset forfeiture cases. This reform was part of HB 2380, providing that the plaintiff's attorney has the initial burden of proving beyond a reasonable doubt that the interest in the property is subject to forfeiture. Some Committee members strongly believe that if a criminal conviction is not a prerequisite, but you are taking a person's property based on allegations of criminal activity, the burden of proof should be the same as is required in a criminal case. Raising the burden of proof also could help take away the perception of unfairness. Others pointed out that the burden of proof in civil asset forfeiture in the majority of states is preponderance of the evidence. Also, there

is no other civil matter that requires proof beyond a reasonable doubt. Making this change would again raise concern about mixing criminal and civil concepts. A motion to raise the burden of proof to beyond a reasonable doubt failed with 4 voting in favor and 9 opposed.

The Committee also considered raising the burden to clear and convincing, which is used in civil asset forfeiture in a number of states. Those in favor of this change believe raising the burden of proof could have an impact on filing decisions, with less forfeiture cases being filed than if the burden of proof remains low. Preponderance of the evidence is such a low standard that seizing agencies can meet it 100% of the time if there is no one making arguments on the other side. A motion to raise the burden of proof to clear and convincing failed, but it was very close, with 6 voting in favor and 7 opposed.

Right to a Jury Trial

Another reform contained in HB 2380 on which the Committee was unable to reach consensus was the right to a jury trial. Some Committee members strongly believe there is a right to a jury trial under the Kansas Constitution. Others were not necessarily opposed to the suggestion itself but think adding a statutory right to a jury trial is a policy question for the Legislature. The jury trial issue can cut both ways, and since the Committee was unable to establish a way to fund legal representation for claimants, there were concerns about both the added expense of a jury trial and the difficulty a pro se claimant would have in a jury trial with an attorney on the other side. In response to these concerns, a motion was made to recommend a right to a jury trial that only the claimant can invoke. The motion failed with 6 voting in favor and 8 opposed.

Transferring All Civil Asset Forfeiture Proceeds to the State General Fund

There were lively debates over the suggestion of sending all forfeiture proceeds to the state general fund (SGF). Some members are strongly opposed to allowing law enforcement to keep all forfeiture proceeds and believe it creates a financial incentive for law enforcement to pursue more forfeitures. The proceeds should go to a legislative body that is elected and has the legal power of the purse to appropriate the funds. Other members were opposed to changing the current process and also strongly opposed to the narrative that civil asset forfeitures are pursued with a profit motive. Law enforcement does not have unfettered use of forfeiture proceeds. There are clear guidelines in KSASFA regarding how the proceeds can be used. In addition, sending all proceeds to SGF would greatly impact local agencies and would not allow any agency to recoup the costs of forfeiture actions.

A motion to amend KSASFA to provide that all forfeiture proceeds go to SGF failed, with 4 in favor and 9 opposed. A motion to make no changes to the current process passed, with 9 in favor and 5 opposed. In between those two positions, the Committee suggested other possible

uses for all or part of the forfeiture proceeds, including earmarking a percentage of proceeds for drug courts and other specialty courts and earmarking a percentage of proceeds to improve and maintain the Kansas Asset Seizure and Forfeiture Repository. The Committee also suggests that the spending restrictions in K.S.A. 60-4117 need to be considered if the Legislature makes changes in this area, retaining the restrictions if appropriate or adding to them if a new use for the proceeds is approved.

Prohibiting Federal Adoptions of Seizures

The final reform the Committee discussed was contained in Section 4 of HB 2380 and prohibits law enforcement from requesting federal adoption of a seizure. The data shows that the seizures transferred for federal forfeiture include seizures of large amounts of cash. Seizures of this kind are more likely to be related to an interstate criminal enterprise. Sometimes federal law enforcement is already engaged in a related investigation, and the seizure is transferred to them. It is also possible that there is not an existing federal investigation but evidence suggests the criminal activity involves an interstate nexus. Investigating interstate criminal activity is very costly for Kansas law enforcement. If federal adoption is requested, federal resources are used to fund the investigation. Kansas law enforcement's objective is to find out where the money came from and where it was going, and asking for federal assistance in an interstate investigation makes sense.

There are some states that make heavy use of federal adoptions because their state forfeiture laws are poor or too restricting. The Committee does not believe that is the case in Kansas. In addition, there is an incentive to handle forfeitures in state court because the law enforcement agency doesn't receive as much proceeds back from a seizure that has been transferred for federal forfeiture. The Committee does not believe that any of the reforms recommended in this report would cause law enforcement to choose federal adoptions as a way of circumventing state law. However, federal adoptions may be made more attractive for that purpose if the Legislature makes policy choices that go beyond the reforms suggested in this report, such as adopting HB 2380 in full. In that case, any restrictions on federal adoptions should take into consideration whether it is in Kansas's best interest to completely eliminate the option of making legitimate transfers of cases to the federal system for investigation.

RECOMMENDATION

For all of the reasons stated, the Committee advises against the passage of HB 2380. The Committee does recommend a number of changes to KSASFA. Some of these changes were contained in HB 2380, and some are original. The recommended statutory amendments are set forth in the proposed legislation that begins on the next page.

HOUSE BILL NO. ____

AN ACT concerning seizure and forfeiture of property; relating to the Kansas standard asset seizure and forfeiture act; specifying conduct and offenses giving rise to forfeiture under the act; making certain property ineligible for forfeiture; requiring courts to make a finding that forfeiture is not excessive; restricting actions prior to commencement of forfeiture proceedings; requiring probable cause affidavit filing and review to commence proceedings; authorizing courts to order payment of attorney fees and costs for certain claimants; amending K.S.A. 2024 Supp. 60-4104, 60-4105, 60-4106, 60-4107, 60-4109, 60-4111, 60-4112, 60-4116 and 60-4117 and repealing the existing sections.

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

Section 1. K.S.A. 2024 Supp. 60-4104 is hereby amended to read as follows: 60-4104.

Conduct and offenses giving rise to forfeiture under this act, whether or not there is a prosecution or conviction related to the offense, are:

- (a) All offenses which statutorily and specifically authorize forfeiture;
- (b) violations involving controlled substances, as described in K.S.A. ~~21-5701 through 21-5717~~ 21-5703, 21-5705, 21-5707, 21-5708(b), 21-5709(a), (b)(1), (c) and (d), 21-5710, 21-5713(a), 21-5714 and 21-5716, and amendments thereto;
- (c) theft, as defined in K.S.A. 21-5801, and amendments thereto;
- (d) criminal discharge of a firearm, as defined in K.S.A. 21-6308(a)(1) and (a)(2), and amendments thereto;
- (e) gambling, as defined in K.S.A. 21-6404, and amendments thereto, and commercial gambling, as defined in K.S.A. 21-6406(a)(1), and amendments thereto;
- (f) counterfeiting, as defined in K.S.A. 21-5825, and amendments thereto;
- (g) unlawful possession or use of a scanning device or reencoder, as described in K.S.A. 21-6108, and amendments thereto;
- (h) medicaid fraud, as described in K.S.A. 21-5925 through 21-5934, and amendments

thereto;

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

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

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

(l) terrorism, as defined in K.S.A. 21-5421, and amendments thereto, illegal use of weapons of mass destruction, as defined in K.S.A. 21-5422, and amendments thereto, and furtherance of terrorism or illegal use of weapons of mass destruction, as described in K.S.A. 21-5423, and amendments thereto;

(m) unlawful conduct of dog fighting and unlawful possession of dog fighting paraphernalia, as defined in K.S.A. 21-6414(a) and (b), and amendments thereto;

(n) unlawful conduct of cockfighting and unlawful possession of cockfighting paraphernalia, as defined in K.S.A. 21-6417(a) and (b), and amendments thereto;

(o) selling sexual relations, as defined in K.S.A. 21-6419, and amendments thereto, promoting the sale of sexual relations, as defined in K.S.A. 21-6420, and amendments thereto, and buying sexual relations, as defined in K.S.A. 21-6421, and amendments thereto;

(p) human trafficking and aggravated human trafficking, as defined in K.S.A. 21-5426, and amendments thereto;

(q) violations of the banking code, as described in K.S.A. 9-2012, and amendments

thereto;

(r) mistreatment of a dependent adult, as defined in K.S.A. 21-5417, and amendments

thereto;

(s) giving a worthless check, as defined in K.S.A. 21-5821, and amendments thereto;

(t) forgery, as defined in K.S.A. 21-5823, and amendments thereto;

(u) making false information, as defined in K.S.A. 21-5824, and amendments thereto;

(v) criminal use of a financial card, as defined in K.S.A. 21-5828, and amendments

thereto;

(w) unlawful acts concerning computers, as described in K.S.A. 21-5839, and amendments thereto;

(x) identity theft and identity fraud, as defined in K.S.A. 21-6107(a) and (b), and amendments thereto;

(y) electronic solicitation, as defined in K.S.A. 21-5509, and amendments thereto;

(z) felony violations of fleeing or attempting to elude a police officer, as described in K.S.A. 8-1568, and amendments thereto;

(aa) commercial sexual exploitation of a child, as defined in K.S.A. 21-6422, and amendments thereto;

(bb) violations of the Kansas racketeer influenced and corrupt organization act, as described in K.S.A. 21-6329, and amendments thereto;

(cc) indecent solicitation of a child and aggravated indecent solicitation of a child, as defined in K.S.A. 21-5508, and amendments thereto;

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

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

Sec. 2. K.S.A. 2024 Supp. 60-4105 is hereby amended to read as follows: 60-4105. (a)
Except as provided in subsection (b), the following property is subject to forfeiture:

~~(a)~~(1) Property described in a statute authorizing forfeiture;
~~(b)~~(2) except as otherwise provided by law, all property, of every kind, including, but not limited to, cash and negotiable instruments and the whole of any lot or tract of land and any appurtenances or improvements to real property that is either:

~~(A)~~(A) Furnished or intended to be furnished by any person in an exchange that constitutes conduct giving rise to forfeiture; or

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

~~(3)~~(3) all proceeds of any conduct giving rise to forfeiture;

~~(4)~~(4) all property of every kind, including, but not limited to, cash and negotiable instruments derived from or realized through any proceeds which were obtained directly or indirectly from the commission of an offense listed in K.S.A. 60-4104, and amendments thereto;

~~(5)~~(5) all weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture;

~~(6)~~(6) ownership or interest in real property that is a homestead, to the extent the homestead was acquired with proceeds from conduct giving rise to forfeiture;

~~(7)~~(7) contraband, which shall be seized and summarily forfeited to the state without

regard to the procedures set forth in this act;

~~(8)~~(8) all controlled substances, raw materials, controlled substance analogs, counterfeit substances, or imitation controlled substances that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state; and

~~(9)~~(9) any items bearing a counterfeit mark.

(b) (1) Except as provided in paragraph (2), the following property shall not be subject to forfeiture:

(A) Cash or negotiable instruments in an amount of less than \$[amount]; and

(B) property of every kind other than cash or negotiable instruments that has a market value of less than \$[amount].

(2) The provisions of paragraph (1) shall not apply to any firearm as defined in K.S.A. 21-5111, and amendments thereto, and any property described in subsections (a)(5), (a)(7), (a)(8) and (a)(9).

(3) For the purposes of this subsection, the value of property means the aggregate value of seized property related to conduct or offenses giving rise to forfeiture if such conduct or offenses are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

Sec. 3. K.S.A. 2024 Supp. 60-4106 is hereby amended to read as follows: 60-4106. (a) Except as provided in this subsection, 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 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 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 the~~ 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~~ determine whether the proposed forfeiture is unconstitutionally excessive pursuant to K.S.A. 60-4112(g), and amendments thereto, if the court has not made such determination earlier in the proceeding as a result of a petition filed pursuant to K.S.A. 60-4112(g), and amendments thereto.

Sec. 4. K.S.A. 2024 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~~ whom possession or control of 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~~ whom possession of the 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~~ 14 days after 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.

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(h)(1) Upon receipt of a written request for forfeiture from a local law enforcement agency, the county or district attorney shall accept or decline the request within 14 days. ~~H~~

(2) Upon the expiration of the 14-day time limitation provided in paragraph (1) or upon notification that the county or district attorney declines such request, ~~or fails to answer whichever occurs first~~, the seizing agency ~~may~~ has 14 days to:

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

~~(2)~~(B) 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.

(3) Upon the expiration of the 14-day time limitation provided in paragraph (2), if a state law enforcement agency has not adopted the forfeiture or the seizing agency has not engaged an attorney to represent the agency, the property that was seized for forfeiture shall be returned within 30 days to the owner or interest holder or as provided for the same kind of property in K.S.A. 22-2512, and amendments thereto.

(i)(1) Upon receipt of a written request for forfeiture from a state law enforcement agency, the county or district attorney shall accept or decline the request within 14 days. ~~H~~

(2) Upon the expiration of the 14-day time limitation provided in paragraph (1) or upon notification that the county or district attorney declines such request, ~~or fails to answer whichever occurs first~~, the seizing agency ~~may~~ has 14 days to engage an assistant attorney general or other attorney approved by the attorney 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.

(3) Upon the expiration of the 14-day time limitation provided in paragraph (2), if the seizing agency has not engaged an attorney to represent the agency, the property that was seized for forfeiture shall be returned within 30 days to the owner or interest holder or as provided for the same kind of property in K.S.A. 22-2512, and amendments thereto.

(j) Nothing in subsection (h) or (i) shall affect the time limitations for initiating or filing a forfeiture proceeding pursuant to K.S.A. 60-4109, and amendments thereto.

(k) 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)~~(l) 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)~~(m) 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 if the county or district attorney approves of such transfer.

~~(m)~~(n) 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.

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

(p) When property is seized for forfeiture under this act, the seizing agency shall not request, induce or otherwise coerce a person who has at any time asserted rights as an owner or interest holder of such property to waive in writing such rights in the property until forfeiture proceedings are commenced pursuant to K.S.A. 60-4109, and amendments thereto.

Sec. 5. K.S.A. 2024 Supp. 60-4109 is hereby amended to read as follows: 60-4109. (a) (1) Forfeiture proceedings shall be commenced by filing: (A) A notice of pending forfeiture or a judicial forfeiture action; and (B) an affidavit describing the probable cause supporting forfeiture. After an affidavit is filed under this section, further proceedings shall be had only after a judge of the district court has determined from the affidavit that there is probable cause to believe that the property is subject to forfeiture pursuant to K.S.A. 60-4105, and amendments thereto.

~~(1)~~(2) 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)~~(3) 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)~~(4) 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 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)~~(5) Notice is effective 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. When notice of pending forfeiture is mailed to an owner or interest holder, the following shall be included with the notice: (A) The affidavit describing the ~~essential facts~~ probable cause supporting forfeiture ~~shall be included with the notice;~~ and (B) 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~~ commencement of a forfeiture proceeding as provided in subsection (a). The court shall not charge the plaintiff's attorney a filing fee. 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.

(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. 6. K.S.A. 2024 Supp. 60-4111 is hereby amended to read as follows: 60-4111. (a) (1) 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 60 days after the effective date of notice of pending forfeiture.

(2) The plaintiff's attorney shall file a notice of receipt with the court when a claim is received unless the claim was already filed with the court. Such filing shall include a copy of the claim and documents showing the date the claim was mailed and received.

(b) The claim shall be signed by the claimant under penalty of perjury, K.S.A. 21-5903,

and amendments thereto, and shall set forth 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) a detailed description of when and how the claimant obtained an interest in the property.

(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. 7. K.S.A. 2024 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 K.S.A. 60-~~

~~4114(e), and amendments thereto, the court, on an application filed by an owner 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. At any time prior to final judgment, an owner or interest holder may petition the court for determination or reconsideration of its prior determination that there is probable cause to believe that the property is subject to forfeiture.~~

~~(d) All applications filed within the 14-day period prescribed by subsection (e) 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 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)~~(e) 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 (e) to the custody of the applicant, as custodian for the court, or from a forfeiture lien pending the outcome of a judicial proceeding pursuant to this act.~~ 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.

~~(e)~~(f) A defendant convicted in any criminal proceeding is precluded from later denying the 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.

(g) (1) At any time following seizure pursuant to this act, the person from whom possession or control of the property was seized may petition the court to determine whether such forfeiture is unconstitutionally excessive.

(2) The plaintiff's attorney has the burden of establishing that the forfeiture is proportional to the seriousness of the offense giving rise to the forfeiture by a preponderance of the evidence.

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

(A) The seriousness of the offense;

(B) the extent to which the person from whom possession or control of the property was seized participated in the offense;

(C) the extent to which the property was used in committing the offense;

(D) the sentence imposed for committing the offense giving rise to forfeiture;

(E) the effect of the forfeiture on the livelihood of the person from whom possession or control of the property was seized; and

(F) the fair market value of the property compared to the property owner's net worth.

(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 totality of the circumstances shall determine if the property of a person is subject to forfeiture under this act. 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;

(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.

(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.

(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.

(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.

(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.

(o) ~~On motion,~~ The court shall automatically 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~~
The court may lift the automatic stay of discovery upon good cause shown.

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

(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.

Sec. 8. K.S.A. 2024 Supp. 60-4116 is hereby amended to read as follows: 60-4116. (a) If no proper claims are timely filed in an action in rem, or if no proper answer is timely filed in response to a complaint, the plaintiff's attorney may apply for an order of forfeiture and allocation of forfeited property pursuant to K.S.A. 60-4117, and amendments thereto. Upon a determination by the court that the seizing agency's written application established the court's jurisdiction, the giving of proper notice, and facts sufficient to show probable cause for forfeiture, the court shall order the property forfeited to the seizing agency.

(b) After final disposition of all claims timely filed in an action in rem, or after final judgment and disposition of all claims timely filed in an action in personam, the court shall enter an order that the seizing agency has clear title to the forfeited property interest. Title to the

forfeited property interest and such property's proceeds shall be deemed to have vested in the seizing agency on the commission of the conduct giving rise to forfeiture under this act.

(c) If, in the discretion of the plaintiff's attorney, such plaintiff's attorney has recognized in writing that an interest holder has an interest that is exempt from forfeiture, the court, on application of the plaintiff's attorney, may release or convey forfeited personal property to a regulated interest holder on all of the following conditions:

(1) The interest holder has an interest which was acquired in the regular course of business as an interest holder.

(2) The amount of the interest holder's encumbrance is readily determinable and the amount has been reasonably established by proof made available by the plaintiff's attorney to the court.

(3) The encumbrance held by the interest holder seeking possession is the only interest exempted from forfeiture and the order forfeiting the property to the seizing agency transferred all of the rights of the owner prior to forfeiture, including rights of redemption to the seizing agency.

(4) After the court's release or conveyance, the interest holder shall dispose of the property by a commercially reasonable public sale, and within 14 days of disposition shall tender to the seizing agency the amount received at disposition less the amount of the interest holder's encumbrance and reasonable expense incurred by the interest holder in connection with the sale or disposal.

(d) On order of the court forfeiting the subject property, the seizing agency may transfer good and sufficient title to any subsequent purchaser or transferee, unless satisfied and released earlier, subject to all mortgages, deeds of trust, financing statements or security agreements of

record prior to the forfeiture held by an interest holder and the title shall be recognized by all courts, by this state, and by all agencies of and any political subdivision. Likewise on entry of judgment in favor of a person claiming an interest in the property that is subject to proceedings to forfeit property under this act, the court shall enter an order that the property or interest in property shall be released or delivered promptly to that person free of liens and encumbrances under this act and the person's cost bond shall be discharged.

(e) Upon motion by the plaintiff's attorney, if it appears after a hearing there was reasonable cause for the seizure for forfeiture or for the filing of the notice of pending forfeiture or complaint, the court shall cause a finding to be entered that reasonable cause existed, or that any such action was taken under a reasonable good faith belief that it was proper, and the claimant is not entitled to costs or damages, and the person or seizing agency who made the seizure, and the plaintiff's attorney, are not liable to suit or judgment on account of the seizure, suit or prosecution. Nothing in this subsection shall affect whether a claimant is entitled to payment of attorney fees, litigation costs and interest pursuant to subsection (f).

(f) (1) The court ~~shall~~ may order a claimant who fails to establish that a substantial portion of the claimant's interest is exempt from forfeiture under K.S.A. 60-4105, and amendments thereto, to pay the reasonable costs and expenses of any claimant who established such claimant's interest is exempt from forfeiture under K.S.A. 60-4105, and amendments thereto, and to pay the reasonable costs and expenses of the seizing agency for the investigation and litigation of the matter, including reasonable attorney fees, in connection with that claimant.

(2) In any proceeding in which the court finds that the claimant has prevailed by ordering the return of at least half of the aggregate value of the claimant's interest in the property or currency in which the claimant asserted an interest, the court shall order the seizing agency to

pay:

(A) Reasonable attorney fees and other litigation costs incurred by the claimant;

(B) post judgment interest; and

(C) in cases involving currency, other negotiable instruments or the proceeds of an interlocutory sale, any interest actually paid from the date of seizure.

(g) If there are multiple claims to the same property, the seizing agency shall not be liable for attorney fees and costs associated with any claim if the seizing agency:

(1) Promptly recognizes such claim;

(2) promptly returns the interest of the claimant in the property to the claimant, if the property can be divided without difficulty and there are no competing claims to that portion of the property;

(3) does not cause the claimant to incur additional costs or fees; and

(4) prevails in obtaining forfeiture with respect to one or more of the other claims.

(h) If more than one law enforcement agency is substantially involved in effecting a forfeiture pursuant to this act, and no interagency agreement exists, the court shall equitably distribute the proceeds among such agencies.

~~(h)~~(i) Notwithstanding any other provision of law, upon the request of the intellectual property owner, all seized items bearing a counterfeit mark shall be released to the intellectual property owner for destruction or disposition. If the intellectual property owner does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the intellectual property owner consents to another disposition.

Sec. 9. K.S.A. 2024 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 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 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.

(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.

(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;

(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;

- 32 -

(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; and

(M) payment of attorney fees, litigation costs and interest ordered by a court pursuant to K.S.A. 60-4116, and amendments thereto.

(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. 10. K.S.A. 2024 Supp. 60-4104, 60-4105, 60-4106, 60-4107, 60-4109, 60-4111, 60-4112, 60-4116 and 60-4117 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

STATE CAPITOL
TOPEKA, KANSAS 66612
(785) 296-7500
stephen.owens@house.ks.gov



P.O. BOX 606
HESSTON, KANSAS 67062
(620) 869-9487

STEPHEN OWENS
74TH DISTRICT

April 27, 2023

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

Dear Nancy:

We are writing to request Judicial Council study of a topic that is the subject of a bill referred to the House Committee on Corrections and Juvenile Justice and was previously referred to the House Committee on Judiciary. Neither House Committee has worked the bill and would request the Judicial Council's Civil Asset Forfeiture Advisory Committee reconvene to study the topic, as there are now a few years of data available for analysis and review.

The bill raising the topic is **HB 2380 – Requiring a criminal conviction for civil asset forfeiture, remitting proceeds from civil asset forfeiture to the state general fund, increasing the burden of proof required to forfeit property, making certain property ineligible for forfeiture, providing persons involved in forfeiture proceedings representation by counsel and the ability to demand a jury trial and allowing a person to request a hearing on whether forfeiture is excessive.**

We would like to bring the civil asset forfeiture issue back to the Judicial Council now that there is data for 3.5 years – 6 months of 2019 and all of 2020, 2021, and 2022. The annual reports (2022 is not published yet) can be accessed on the KBI's Repository website at this address: <https://kasfr.kbi.ks.gov/res/p/Annual-Report/>. We would appreciate the Judicial Council's recommendations regarding the study of HB 2380 as introduced.

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

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Patton", with a stylized flourish at the end.

Representative Fred Patton
Chairman, House Committee on Judiciary

A handwritten signature in black ink, appearing to read "Stephen Owens", in a cursive style.

Representative Stephen Owens
Chairman, House Committee on Corrections and Juvenile Justice

Attachments: 2023 HB 2380

HOUSE BILL No. 2380

By Committee on Judiciary

2-9

1 AN ACT concerning seizure and forfeiture of property; relating to property
2 seized by law enforcement; requiring a conviction of an offense giving
3 rise to forfeiture under the Kansas standard asset seizure and forfeiture
4 act; remitting proceeds to the state general fund; increasing the burden
5 of proof required to forfeit property; making certain property ineligible
6 for forfeiture; providing persons involved in forfeiture proceedings
7 representation by counsel and the ability to demand a jury trial;
8 allowing a person to request a hearing on whether forfeiture is
9 excessive; amending K.S.A. 2022 Supp. 60-4104, 60-4105, 60-4106,
10 60-4107, 60-4109, 60-4112, 60-4113, 60-4114, 60-4117 and 60-4127
11 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2022 Supp. 60-4104 is hereby amended to read as
15 follows: 60-4104. ~~Conduct and~~ (a) *Except as provided in subsection (b),*
16 offenses giving rise to forfeiture under this act, ~~whether or not there is a~~
17 ~~prosecution or only after~~ a conviction related to the offense, are:

18 (a)(1) All offenses ~~which~~ that statutorily and specifically authorize
19 forfeiture;

20 (b)(2) violations involving controlled substances, as described in
21 K.S.A. 2022 Supp. 21-5701 through 21-5717, and amendments thereto;

22 (c)(3) theft, as defined in K.S.A. 2022 Supp. 21-5801, and
23 amendments thereto;

24 (d)(4) criminal discharge of a firearm, as defined in K.S.A. 2022
25 Supp. 21-6308(a)(1) and (a)(2), and amendments thereto;

26 (e)(5) gambling, as defined in K.S.A. 2022 Supp. 21-6404, and
27 amendments thereto, and commercial gambling, as defined in K.S.A. 2022
28 Supp. 21-6406(a)(1), and amendments thereto;

29 (f)(6) counterfeiting, as defined in K.S.A. 2022 Supp. 21-5825, and
30 amendments thereto;

31 (g)(7) unlawful possession or use of a scanning device or reencoder,
32 as described in K.S.A. 2022 Supp. 21-6108, and amendments thereto;

33 (h)(8) medicaid fraud, as described in K.S.A. 2022 Supp. 21-5925
34 through 21-5934, and amendments thereto;

35 (i) ~~an act or omission occurring outside this state, which would be a~~
36 ~~violation in the place of occurrence and would be described in this section~~

1 if the act occurred in this state, whether or not it is prosecuted in any state;

2 ~~(j) an act or omission committed in furtherance of any act or omission~~
 3 ~~described in this section including any inchoate or preparatory offense,~~
 4 ~~whether or not there is a prosecution or conviction related to the act or~~
 5 ~~omission;~~

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

9 ~~(h)(9)~~ terrorism, as defined in K.S.A. 2022 Supp. 21-5421, and
 10 amendments thereto, illegal use of weapons of mass destruction, as
 11 defined in K.S.A. 2022 Supp. 21-5422, and amendments thereto, and
 12 furtherance of terrorism or illegal use of weapons of mass destruction, as
 13 described in K.S.A. 2022 Supp. 21-5423, and amendments thereto;

14 ~~(m)(10)~~ unlawful conduct of dog fighting and unlawful possession of
 15 dog fighting paraphernalia, as defined in K.S.A. 2022 Supp. 21-6414(a)
 16 and (b), and amendments thereto;

17 ~~(n)(11)~~ unlawful conduct of cockfighting and unlawful possession of
 18 cockfighting paraphernalia, as defined in K.S.A. 2022 Supp. 21-6417(a)
 19 and (b), and amendments thereto;

20 ~~(o)(12)~~ selling sexual relations, as defined in K.S.A. 2022 Supp. 21-
 21 6419, and amendments thereto, promoting the sale of sexual relations, as
 22 defined in K.S.A. 2022 Supp. 21-6420, and amendments thereto, and
 23 buying sexual relations, as defined in K.S.A. 2022 Supp. 21-6421, and
 24 amendments thereto;

25 ~~(p)(13)~~ human trafficking and aggravated human trafficking, as
 26 defined in K.S.A. 2022 Supp. 21-5426, and amendments thereto;

27 ~~(q)(14)~~ violations of the banking code, as described in K.S.A. 9-2012,
 28 and amendments thereto;

29 ~~(r)(15)~~ mistreatment of a dependent adult, as defined in K.S.A. 2022
 30 Supp. 21-5417, and amendments thereto;

31 ~~(s)(16)~~ giving a worthless check, as defined in K.S.A. 2022 Supp. 21-
 32 5821, and amendments thereto;

33 ~~(t)(17)~~ forgery, as defined in K.S.A. 2022 Supp. 21-5823, and
 34 amendments thereto;

35 ~~(u)(18)~~ making false information, as defined in K.S.A. 2022 Supp.
 36 21-5824, and amendments thereto;

37 ~~(v)(19)~~ criminal use of a financial card, as defined in K.S.A. 2022
 38 Supp. 21-5828, and amendments thereto;

39 ~~(w)(20)~~ unlawful acts concerning computers, as described in K.S.A.
 40 2022 Supp. 21-5839, and amendments thereto;

41 ~~(x)(21)~~ identity theft and identity fraud, as defined in K.S.A. 2022
 42 Supp. 21-6107(a) and (b), and amendments thereto;

43 ~~(y)(22)~~ electronic solicitation, as defined in K.S.A. 2022 Supp. 21-

1 5509, and amendments thereto;
 2 ~~(z)~~(23) felony violations of fleeing or attempting to elude a police
 3 officer, as described in K.S.A. 8-1568, and amendments thereto;
 4 ~~(aa)~~(24) commercial sexual exploitation of a child, as defined in
 5 K.S.A. 2022 Supp. 21-6422, and amendments thereto;
 6 ~~(bb)~~(25) violations of the Kansas racketeer influenced and corrupt
 7 organization act, as described in K.S.A. 2022 Supp. 21-6329, and
 8 amendments thereto;
 9 ~~(ee)~~(26) indecent solicitation of a child and aggravated indecent
 10 solicitation of a child, as defined in K.S.A. 2022 Supp. 21-5508, and
 11 amendments thereto;
 12 ~~(dd)~~(27) sexual exploitation of a child, as defined in K.S.A. 2022
 13 Supp. 21-5510, and amendments thereto; and
 14 ~~(ee)~~(28) violation of a consumer protection order as defined in K.S.A.
 15 2022 Supp. 21-6423, and amendments thereto.
 16 (b) *A conviction for an offense giving rise to forfeiture shall not be*
 17 *required when property is forfeited pursuant to:*
 18 (1) *A plea agreement; or*
 19 (2) *an agreement for a grant of immunity or reduced punishment in*
 20 *exchange for testifying or assisting a law enforcement investigation or*
 21 *prosecution.*
 22 Sec. 2. K.S.A. 2022 Supp. 60-4105 is hereby amended to read as
 23 follows: 60-4105. (a) *Except as provided in subsection (b), the following*
 24 *property is subject to forfeiture:*
 25 ~~(a)~~(1) Property described in a statute authorizing forfeiture;
 26 ~~(b)~~(2) except as otherwise provided by law, all property, of every
 27 kind, including, but not limited to, cash and negotiable instruments and the
 28 whole of any lot or tract of land and any appurtenances or improvements
 29 to real property that is either:
 30 ~~(+)~~(A) Furnished or intended to be furnished by any person in an
 31 exchange that constitutes ~~conduct~~ *an offense* giving rise to forfeiture; or
 32 ~~(-)~~(B) used or intended to be used in any manner to facilitate ~~conduct~~
 33 *an offense* giving rise to forfeiture, including, but not limited to, any
 34 electronic device, computer, computer system, computer network or any
 35 software or data owned by the defendant which is used during the
 36 commission of an offense listed in K.S.A. 60-4104, and amendments
 37 thereto;
 38 ~~(e)~~(3) all proceeds of ~~any conduct~~ *an offense* giving rise to forfeiture;
 39 ~~(d)~~(4) all property of every kind, including, but not limited to, cash
 40 and negotiable instruments derived from or realized through any proceeds
 41 which were obtained directly or indirectly from the commission of an
 42 offense listed in K.S.A. 60-4104, and amendments thereto;
 43 ~~(e)~~(5) all weapons possessed, used, or available for use in any manner

- 1 to facilitate ~~conduct~~ *an offense* giving rise to forfeiture;
- 2 ~~(f)~~(6) ownership or interest in real property that is a homestead, to the
- 3 extent the homestead was acquired with proceeds from conduct giving rise
- 4 to forfeiture;
- 5 ~~(g)~~(7) contraband, which shall be seized and summarily forfeited to
- 6 the state without regard to the procedures set forth in this act;
- 7 ~~(h)~~(8) all controlled substances, raw materials, controlled substance
- 8 analogs, counterfeit substances; or imitation controlled substances that
- 9 have been manufactured, distributed, dispensed, possessed; or acquired in
- 10 violation of the laws of this state; and
- 11 ~~(i)~~(9) any items bearing a counterfeit mark.
- 12 **(b) *The following property shall not be subject to forfeiture:***
- 13 **(1) *Cash or negotiable instruments in an amount of less than \$1,000;***
- 14 **(2) *property of every kind other than cash or negotiable instruments***
- 15 ***that has a market value of less than \$2,500;***
- 16 **(3) *property owned, in whole or in part, by a person who is not***
- 17 ***convicted of an offense giving rise to forfeiture as defined in K.S.A. 60-***
- 18 ***4104, and amendments thereto.***
- 19 Sec. 3. K.S.A. 2022 Supp. 60-4106 is hereby amended to read as
- 20 follows: 60-4106. (a) All property, including all interests in property,
- 21 described in K.S.A. 60-4105, and amendments thereto, is subject to
- 22 forfeiture subject to all mortgages, deeds of trust, financing statements or
- 23 security agreements properly of record prior to the forfeiture held by an
- 24 interest holder except that property specifically exempted hereunder:
- 25 (1) No real property or conveyance, or an interest therein, may be
- 26 forfeited under this act unless the offense or conduct giving rise to
- 27 forfeiture constitutes a felony.
- 28 (2) No conveyance used by any person as a common carrier in the
- 29 transaction of business as a common carrier is subject to forfeiture under
- 30 this act unless the owner or other person in charge of the conveyance is a
- 31 consenting party or privy to ~~a violation of this act~~ *the offense giving rise to*
- 32 *forfeiture.*
- 33 (3) No property is subject to forfeiture under this act if the owner or
- 34 interest holder acquired the property before or during the ~~conduct~~
- 35 *commission of the offense* giving rise to the property's forfeiture, and such
- 36 owner or interest holder:
- 37 (A) Did not know and could not have reasonably known of the act or
- 38 omission or that it was likely to occur; or
- 39 (B) acted reasonably to prevent the ~~conduct~~ *offense* giving rise to
- 40 forfeiture.
- 41 (4) No property is subject to forfeiture if the owner or interest holder
- 42 acquired the property after the ~~conduct~~ *commission of the offense* giving
- 43 rise to the property's forfeiture, including acquisition of proceeds of

1 ~~conduct~~ *an offense* giving rise to forfeiture, and such owner or interest
2 holder:

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

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

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

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

16 (b) Notwithstanding subsection (a), property is not exempt from
17 forfeiture, even though the owner or interest holder lacked knowledge or
18 reason to know that the conduct giving rise to property's forfeiture had
19 occurred or was likely to occur, if the:

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

23 (2) owner or interest holder is ~~criminally responsible for the conduct~~
24 *convicted of the offense* giving rise to the property's forfeiture, ~~whether or~~
25 ~~not there is a prosecution or conviction~~; or

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

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

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

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

38 (3) the extent to which the property actually facilitated the ~~criminal~~
39 ~~conduct~~ *offense giving rise to forfeiture*;

40 (4) the nature and extent of the owner's knowledge of the role of
41 others in the ~~conduct~~ *offense* that allows forfeiture of the property and
42 efforts of the owner to prevent the ~~conduct~~ *such offense*; and

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

1 Sec. 4. K.S.A. 2022 Supp. 60-4107 is hereby amended to read as
2 follows: 60-4107. (a) Property may be seized for forfeiture by a law
3 enforcement officer upon process issued by the district court. The court
4 may issue a seizure warrant on an affidavit under oath demonstrating that
5 probable cause exists for the property's forfeiture or that the property has
6 been the subject of a previous final judgment of forfeiture in the courts of
7 any state or of the United States. The court may order that the property be
8 seized on such terms and conditions as are reasonable in the discretion of
9 the court. The order may be made on or in connection with a search
10 warrant. All real property is to be seized constructively or pursuant to a
11 pre-seizure adversarial judicial determination of probable cause, except
12 that this determination may be done ex parte when the attorney for the
13 state has demonstrated exigent circumstances to the court.

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

17 (c) Property may be seized constructively by:

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

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

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

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

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

1 property.

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

4 (g) When property is seized for forfeiture under this act, the seizing
5 agency shall, within ~~45~~ 14 days of such seizure, forward to the county or
6 district attorney in whose jurisdiction the seizure occurred, a written
7 request for forfeiture which shall include a statement of facts and
8 circumstances of the seizure, the estimated value of the property, the
9 owner and lienholder of the property, the amount of any lien, and a
10 summary of the facts relied on for forfeiture.

11 (h) (1) Upon receipt of a written request for forfeiture from a local
12 law enforcement agency, the county or district attorney shall accept or
13 decline the request within 14 days. If the county or district attorney
14 declines such request, or fails to answer, the seizing agency may, *within 14*
15 *days after the county or district attorney declines such request:*

16 ~~(A)~~ Request a state law enforcement agency that enforces this act
17 to adopt the forfeiture; or

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

22 (2) *If the county or district attorney declines such request, or fails to*
23 *answer, and the seizing agency does not request a state law enforcement*
24 *agency to adopt the forfeiture or engage an attorney to represent the*
25 *agency, the property that was seized for forfeiture shall be returned to the*
26 *person from whom possession or control of the property was seized within*
27 *30 days.*

28 (i) (1) Upon receipt of a written request for forfeiture from a state law
29 enforcement agency, the county or district attorney shall accept or decline
30 the request within 14 days. If the county or district attorney declines such
31 request, or fails to answer, the seizing agency may engage an assistant
32 attorney general or other attorney approved by the attorney general to
33 represent the agency in the forfeiture proceeding, but in no event shall the
34 attorney general approve an attorney with whom the attorney general has a
35 financial interest, either directly or indirectly.

36 (2) *If the county or district attorney declines such request, or fails to*
37 *answer, and the seizing agency does not request an assistant attorney*
38 *general or other attorney approved by the attorney general to represent*
39 *the agency, the property that was seized for forfeiture shall be returned to*
40 *the person from whom possession or control of the property was seized*
41 *within 30 days.*

42 (j) A county or district attorney or the attorney general shall not
43 request or receive any referral fee or personal financial benefit, either

1 directly or indirectly, in any proceeding conducted under this act.

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

5 ~~(l) Nothing in this act shall prevent a seizing agency from requesting
6 federal adoption of a seizure. It shall not be necessary to obtain any order
7 pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized
8 property to a federal agency if the county or district attorney approves of
9 such transfer. No law enforcement agency shall request federal adoption of
10 a seizure pursuant to this act.~~

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

21 ~~(n) Settlements under this act shall not be conditioned upon any
22 disposition of criminal charges. When property is seized for forfeiture
23 under this act, the seizing agency shall not request or induce any person
24 who asserts ownership or possession of or any lawful right to the property
25 to waive such interest in such property until forfeiture proceedings are
26 commenced pursuant to K.S.A. 60-4109, and amendments thereto.~~

27 Sec. 5. K.S.A. 2022 Supp. 60-4109 is hereby amended to read as
28 follows: 60-4109. (a) Forfeiture proceedings shall be commenced *only*
29 *after a conviction for the offense giving rise to forfeiture* by filing a notice
30 of pending forfeiture or a judicial forfeiture action:

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

41 (2) If, after notice of pending forfeiture, a claimant files a petition for
42 recognition of exemption pursuant to K.S.A. 60-4110, and amendments
43 thereto, the plaintiff's attorney may delay filing the judicial forfeiture

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

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

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

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

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

32 (4) Notice is effective pursuant to the code of civil procedure, except
33 that notice of pending forfeiture of real property is not effective until it is
34 recorded. Notice of pending forfeiture shall include a description of the
35 property, the date and place of seizure, the conduct giving rise to forfeiture
36 or the violation of law alleged and a summary of procedures and
37 procedural rights applicable to the forfeiture action. An affidavit describing
38 the essential facts supporting forfeiture shall be included with the notice.
39 Copies of judicial council forms for petitioning for recognition of an
40 exemption pursuant to K.S.A. 60-4110, and amendments thereto, and for
41 making a claim pursuant to K.S.A. 60-4111, and amendments thereto, shall
42 be provided with the notice.

43 (b) The plaintiff's attorney, without a filing fee, may file a lien for the

1 forfeiture of property upon the initiation of any civil or criminal
2 proceeding relating to conduct giving rise to forfeiture under this act or
3 upon seizure for forfeiture. Court costs may be assessed and, if assessed,
4 shall include the amount of the docket fee prescribed by K.S.A. 60-2001,
5 and amendments thereto, and any additional court costs accrued in the
6 action. A plaintiff's attorney may also file a forfeiture lien in this state in
7 connection with a proceeding or seizure for forfeiture in any other state
8 under a state or federal statute substantially similar to the relevant
9 provisions of this act. The filing constitutes notice to any person claiming
10 an interest in the seized property or in property owned by the named
11 person.

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

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

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

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

28 (3) The notice of lien creates, upon filing, a lien in favor of the lienor
29 as it relates to the seized property or the named person or related entities.
30 The lien secures the amount of potential liability for civil judgment, and if
31 applicable, the fair market value of seized property relating to all
32 proceedings under this act enforcing the lien. The notice of forfeiture lien
33 referred to in this subsection shall be filed in accordance with the
34 provisions of the laws of this state relating to the type of property that is
35 subject to the lien. The validity and priority of the forfeiture lien shall be
36 determined in accordance with applicable law pertaining to liens. The
37 lienor may amend or release, in whole or in part, a lien filed under this
38 subsection at any time by filing, without a filing fee, an amended lien in
39 accordance with this subsection which identifies the lien amended. The
40 lienor, as soon as practical after filing the lien, shall furnish to any person
41 named in the lien a notice of the filing of the lien. Failure to furnish notice
42 under this subsection shall not invalidate or otherwise affect the lien.

43 (4) Upon entry of judgment in the seizing agency's favor, the seizing

1 agency may proceed to execute on the lien as provided by law.

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

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

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

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

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

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

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

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

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

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

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

43 Sec. 6. K.S.A. 2022 Supp. 60-4112 is hereby amended to read as

1 follows: 60-4112. (a) A judicial forfeiture proceeding under this act is
2 subject to the provisions of this section.

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

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

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

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

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

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

43 (3) the interest in property to be released is not subject to any claim

1 other than the forfeiture.

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

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

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

17 (2) *The plaintiff's attorney has the burden of establishing that the*
 18 *forfeiture is proportional to the seriousness of the offense giving rise to the*
 19 *forfeiture beyond a reasonable doubt at a hearing conducted by the court*
 20 *without a jury. Such hearing may be a component of the associated trial*
 21 *and not a separate hearing.*

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

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

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

28 (C) *the extent to which the property was used in committing the*
 29 *offense;*

30 (D) *the sentence imposed for committing the offense giving rise to*
 31 *forfeiture;*

32 (E) *the punitive nature of the forfeiture; and*

33 (F) *the fair market value of the property compared to the property*
 34 *owner's net worth.*

35 (i) In any proceeding under this act, if a claim is based on any
 36 exemption provided for in this act, the burden of proving the existence of
 37 the exemption is on the claimant, and is not necessary for the seizing
 38 agency or plaintiff's attorney to negate the exemption in any application or
 39 complaint.

40 (j) In hearings and determinations pursuant to this section, the court
 41 may receive and consider, in making any determination of probable cause
 42 or reasonable cause, all evidence admissible in determining probable cause
 43 at a preliminary hearing or in the issuance of a search warrant, together

1 with inferences therefrom.

2 ~~(j)~~(k) The totality of the circumstances shall determine if the property
3 of a person is subject to forfeiture under this act. Factors that may be
4 considered include, but are not limited to, the following:

5 (1) The person has engaged in conduct giving rise to forfeiture;

6 (2) the property was acquired by the person during that period of the
7 conduct giving rise to forfeiture or within a reasonable time after the
8 period;

9 (3) there was no likely source for the property other than the conduct
10 giving rise to forfeiture; and

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

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

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

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

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

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

43 (p) *An owner or interest holder in property shall be entitled to the*

1 *assistance of counsel during proceedings conducted pursuant to this act.*

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

5 (r) *In any proceeding where an owner or interest holder in property*
6 *prevails by recovering at least half, by value, of the property, the court*
7 *shall order the seizing agency or prosecuting attorney to pay:*

8 (1) *Reasonable attorney fees and other litigation costs incurred by*
9 *the owner; and*

10 (2) *in cases involving money or other negotiable instruments or the*
11 *proceeds from a sale of property, interest at the rate established by K.S.A.*
12 *16-204, and amendments thereto, from the date of the seizure.*

13 (s) *An owner or interest holder in property shall have the right to*
14 *appeal an order of the district court in a proceeding pursuant to this act. If*
15 *it is determined that the owner or interest holder is not able to employ*
16 *counsel, the court shall appoint an attorney from the panel for indigents'*
17 *defense services or otherwise in accordance with the applicable system for*
18 *providing legal defense services for indigent persons prescribed by the*
19 *state board of indigents' defense services.*

20 ~~(t)~~(t) An action pursuant to this act shall be consolidated with any
21 other action or proceeding pursuant to this act or to such other foreclosure
22 or trustee sale proceedings relating to the same property on motion of the
23 plaintiff's attorney, and may be consolidated on motion of an owner or
24 interest holder.

25 Sec. 7. K.S.A. 2022 Supp. 60-4113 is hereby amended to read as
26 follows: 60-4113. (a) A judicial in rem forfeiture proceeding brought by
27 the plaintiff's attorney pursuant to a notice of pending forfeiture or verified
28 petition for forfeiture is also subject to the provisions of this section. If a
29 forfeiture is authorized by this act, it shall be ordered by the court in the in
30 rem action.

31 (b) An action in rem may be brought by the plaintiff's attorney in
32 addition to, or in lieu of, civil in personam forfeiture procedures. The
33 seizing agency may serve the complaint in the manner provided by K.S.A.
34 60-4109(a)(3), and amendments thereto, or as provided by the rules of
35 civil procedure.

36 (c) Only an owner of or an interest holder in the property who has
37 timely filed a proper claim may file an answer in an action in rem. For the
38 purposes of this section, an owner of or interest holder in property who has
39 filed a claim and answer shall be referred to as a claimant. *A claimant may*
40 *demand a jury trial pursuant to K.S.A. 60-238, and amendments thereto,*
41 *and shall be entitled to assistance of counsel. If it is determined that the*
42 *claimant is not able to employ counsel, the court shall appoint an attorney*
43 *from the panel for indigents' defense services or otherwise in accordance*

1 *with the applicable system for providing legal defense services for*
2 *indigent persons prescribed by the state board of indigents' defense*
3 *services.*

4 (d) The answer shall be signed by the claimant under penalty of
5 perjury, K.S.A. 2021 Supp. 21-5903, and amendments thereto, shall
6 otherwise be in accordance with the rules of civil procedure on answers
7 and shall also set forth the following:

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

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

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

13 (4) a detailed description of when and how the claimant obtained an
14 interest in the property.

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

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

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

24 ~~(h) The issue shall be determined by the court alone.~~ The plaintiff's
25 attorney shall have the initial burden of proving the interest in the property
26 is subject to forfeiture ~~by a preponderance of the evidence~~ *beyond a*
27 *reasonable doubt*. If the state proves the interest in the property is subject
28 to forfeiture, the claimant has the burden of showing by a preponderance
29 of the evidence that the claimant has an interest in the property which is
30 not subject to forfeiture.

31 (i) If the plaintiff's attorney fails to meet the burden of proof for
32 forfeiture, or a claimant establishes by a preponderance of the evidence
33 that the claimant has an interest that is exempt under the provisions of
34 K.S.A. 60-4106, and amendments thereto, the court shall order the interest
35 in the property returned or conveyed to the claimant. *The claimant shall*
36 *not be assessed a fee for storage or any other fee related to the property.*
37 The court shall order all other property forfeited to the seizing agency and
38 conduct further proceedings pursuant to K.S.A. 60-4116 and 60-4117, and
39 amendments thereto.

40 Sec. 8. K.S.A. 2022 Supp. 60-4114 is hereby amended to read as
41 follows: 60-4114. (a) (1) A judicial in personam forfeiture proceeding
42 brought by the plaintiff's attorney pursuant to an in personam civil action
43 alleging conduct giving rise to forfeiture is also subject to the provisions of

1 this section. If a forfeiture is authorized by this act, it shall be ordered by
2 the court in the in personam action. The action shall be in addition to or in
3 lieu of in rem forfeiture procedures.

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

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

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

13 (2) a provision of notice would jeopardize the availability of the
14 property for forfeiture.

15 (c) Notice of the issuance of a temporary restraining order and an
16 opportunity for a hearing shall be given to persons known to have an
17 interest in the property. *Such persons shall be entitled to assistance of*
18 *counsel. If it is determined that a person is not able to employ counsel, the*
19 *court shall appoint an attorney from the panel for indigents' defense*
20 *services or otherwise in accordance with the applicable system for*
21 *providing legal defense services for indigent persons prescribed by the*
22 *state board of indigents' defense services. A hearing shall be held at the*
23 *earliest possible date in accordance with the applicable civil rule and shall*
24 *be limited to the issues of whether:*

25 (1) There is a probability that the seizing agency will prevail on the
26 issue of forfeiture and that failure to enter the order could result in the
27 property being destroyed, conveyed, alienated, encumbered, further
28 encumbered, disposed of, purchased, received, removed from the
29 jurisdiction of the court, concealed, or otherwise made unavailable for
30 forfeiture; and

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

34 (d) On a determination of liability of a person for conduct giving rise
35 to forfeiture under this act, the court shall enter a judgment of forfeiture of
36 the property found to be subject to forfeiture described in the complaint
37 and shall also authorize the plaintiff's attorney or any law enforcement
38 officer to seize all property ordered forfeited which was not previously
39 seized or is not then under seizure. Following the entry of an order
40 declaring the property forfeited, the court, on application of the plaintiff's
41 attorney, may enter any appropriate order to protect the interest of the
42 seizing agency in the property ordered forfeited. *If no determination of*
43 *liability is made pursuant to this subsection, the property that was seized*

1 *shall be returned to the person known to have an interest in the property*
 2 *within 7 days. Such person shall not be assessed a fee for storage or any*
 3 *other fee related to the property.*

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

8 (f) An owner of or interest holder in property that has been forfeited
 9 and whose claim is not precluded may file a claim as described in K.S.A.
 10 60-4111, and amendments thereto, within 60 days after initial notice of
 11 pending forfeiture or after notice under subsection (e), whichever is earlier.
 12 *An owner of or interest holder in property may demand a jury trial*
 13 *pursuant to K.S.A. 60-238, and amendments thereto, and shall be entitled*
 14 *to assistance of counsel.* If the seizing agency does not recognize the
 15 claimed exemption, the plaintiff's attorney shall file a complaint and the
 16 court shall hold the hearing and determine the claim, without a jury, in the
 17 manner provided for in rem judicial forfeiture actions in K.S.A. 60-4113,
 18 and amendments thereto.

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

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

28 Sec. 9. K.S.A. 2022 Supp. 60-4117 is hereby amended to read as
 29 follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments
 30 thereto: (a) When property is forfeited under this act, the law enforcement
 31 agency may:

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

35 (2) *transfer the custody or ownership to any federal agency if the*
 36 *property was seized and forfeited pursuant to federal law;*

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

40 ~~(3)~~(4) sell property which is not required by law to be destroyed and
 41 which is not harmful to the public:

42 (A) All property, except real property, designated by the seizing
 43 agency to be sold shall be sold at public sale to the highest bidder for cash

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

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

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

15 ~~(4)~~(5) salvage the property, subject to any lien preserved by the court.

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

22 (c) *Any cash or negotiable instruments forfeited under this act and*
23 *the proceeds of any sale shall be distributed in the following order of*
24 *priority:*

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

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

36 ~~(3) reasonable attorney fees:~~

37 ~~(A) If the plaintiff's attorney is a county or district attorney, an~~
38 ~~assistant, or another governmental agency's attorney, fees shall not exceed~~
39 ~~15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in~~
40 ~~an uncontested forfeiture nor 20% of the total proceeds, less the amounts~~
41 ~~of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be~~
42 ~~deposited in the county or city treasury and credited to the special~~
43 ~~prosecutor's trust fund. Moneys in such fund shall not be considered a~~

1 source of revenue to meet normal operating expenditures, including salary
 2 enhancement. Such fund shall be expended by the county or district
 3 attorney, or other governmental agency's attorney through the normal
 4 county or city appropriation system and shall be used for such additional
 5 law enforcement and prosecutorial purposes as the county or district
 6 attorney or other governmental agency's attorney deems appropriate,
 7 including educational purposes. All moneys derived from past or pending
 8 forfeitures shall be expended pursuant to this act. The board of county
 9 commissioners shall provide adequate funding to the county or district
 10 attorney's office to enable such office to enforce this act. Neither future
 11 forfeitures nor the proceeds therefrom shall be used in planning or
 12 adopting a county or district attorney's budget;

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

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

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

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

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

1 made upon warrants of the director of accounts and reports issued pursuant
2 to vouchers approved by the attorney general or by a person or persons
3 designated by the attorney general. Expenditures from the Kansas highway
4 patrol state forfeiture fund shall be made upon warrants of the director of
5 accounts and reports issued pursuant to vouchers approved by the
6 superintendent of the highway patrol or by a person or persons designated
7 by the superintendent. Expenditures from the Kansas department of
8 corrections state forfeiture fund shall be made upon warrants of the
9 director of accounts and reports issued pursuant to vouchers approved by
10 the secretary of the department of corrections or by a person or persons
11 designated by the secretary. Expenditures from the Kansas national guard
12 counter drug state forfeiture fund shall be made upon warrants of the
13 director of accounts and reports issued pursuant to vouchers approved by
14 the adjutant general of Kansas or by a person or persons designated by the
15 adjutant general.

16 (2) If the law enforcement agency is a city or county agency, the
17 entire amount shall be deposited in such city or county treasury and
18 credited to a special law enforcement trust fund.

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

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

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

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

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

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

43 (E) the costs associated with the purchase of multi-use equipment and

- 1 operations used by both law enforcement and non-law enforcement
2 personnel;
- 3 (F) the costs associated with a contract for a specific service that
4 supports or enhances law enforcement;
- 5 (G) the costs associated with travel and transportation to perform or
6 in support of law enforcement duties and activities;
- 7 (H) the costs associated with the purchase of plaques and certificates
8 for law enforcement personnel in recognition of a law enforcement
9 achievement, activity or training;
- 10 (I) the costs associated with conducting awareness programs by law
11 enforcement agencies;
- 12 (J) the costs associated with paying a state or local law enforcement
13 agency's matching contribution or share in a state or federal grant program
14 for items other than salaries;
- 15 (K) cash transfers from one state or local law enforcement agency to
16 another in support of the law enforcement agency's goals or missions; and
- 17 (L) transfers from a state or local law enforcement agency to a state,
18 county or local governmental agency or community non-profit
19 organization in support of the law enforcement agency's goals or missions.
- 20 (3) Moneys in the funds described in subsection (c)(1) shall be
21 separated and accounted for in a manner that allows accurate tracking and
22 reporting of deposits and expenditures of the following categories of
23 money:
- 24 (A) Proceeds from forfeiture credited to the fund pursuant to this
25 section;
- 26 (B) proceeds from pending forfeiture actions under this act; and
- 27 (C) proceeds from forfeiture actions under federal law.
- 28 (f) 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 (g) (1) If the law enforcement agency is a state agency, such agency
32 shall compile and submit a forfeiture fund report to the legislature on or
33 before February 1 of each year. Such report shall include, but not be
34 limited to: (A) The fund balance on December 1; and (B) the deposits and
35 expenditures for the previous 12-month period ending December 1.
- 36 (2) If the law enforcement agency is a city or county agency, such
37 agency shall compile and submit annually a special law enforcement trust
38 fund report to the entity that has budgetary authority over such agency and
39 such report shall specify, for such period, the type and approximate value
40 of the forfeited property received, the amount of any forfeiture proceeds
41 received and how any of those proceeds were expended.
- 42 (3) The provisions of this subsection shall expire on July 1, 2019
43 *remitted to the state treasurer in accordance with the provisions of K.S.A.*

1 75-4215, and amendments thereto. Upon receipt of each such remittance,
 2 the state treasurer shall deposit the entire amount in the state treasury to
 3 the credit of the state general fund.

4 Sec. 10. K.S.A. 2022 Supp. 60-4127 is hereby amended to read as
 5 follows: 60-4127. (a) ~~On or before July 1, 2019,~~ The Kansas bureau of
 6 investigation shall establish the Kansas asset seizure and forfeiture
 7 repository. The repository shall gather information concerning each seizure
 8 for forfeiture made by a seizing agency pursuant to the Kansas standard
 9 asset seizure and forfeiture act including, but not limited to, the following:

- 10 (1) The name of the seizing agency or the name of the lead agency if
- 11 part of a multi-jurisdictional task force;
- 12 (2) the county where the seizure occurred;
- 13 (3) the date and time the seizure occurred;
- 14 (4) any applicable agency or district court case numbers for the
- 15 seizure;
- 16 (5) a description of the initiating law enforcement activity leading to
- 17 the seizure;
- 18 (6) a description of the specific location where the seizure occurred;
- 19 (7) ~~the conduct or~~ offense giving rise to the forfeiture;
- 20 (8) a description of the type of property seized and the estimated
- 21 value;
- 22 (9) a description of the type of contraband seized and the estimated
- 23 value;
- 24 (10) ~~whether the date~~ criminal charges were filed for an offense
- 25 related to the forfeiture ~~and, if so,~~ the court and case number information
- 26 for the criminal charges *and the date of conviction*;
- 27 (11) a description of the final disposition of the forfeiture action,
- 28 including a description of the disposition of any claim or exemption
- 29 asserted under this act;
- 30 (12) whether the forfeiture was transferred to the federal government
- 31 for disposition;
- 32 (13) the total cost of the forfeiture action, including attorney fees; and
- 33 (14) the total amount of proceeds from the forfeiture action,
- 34 specifying the amount ~~received by the seizing agency and the amount~~
- 35 ~~received by any other agency or person~~ *remitted to the treasurer for*
- 36 *deposit into the state general fund.*

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

41 (c) ~~On and after July 1, 2019,~~ Each seizing agency shall report
 42 information concerning each seizure for forfeiture to the Kansas asset
 43 seizure and forfeiture repository as required by this section and the rules

1 and regulations promulgated pursuant to this section. The prosecuting
2 attorney shall submit information concerning each forfeiture action to the
3 seizing agency within 30 days after the final disposition of the forfeiture.
4 The seizing agency shall submit the required information to the repository
5 within 60 days after the final disposition of the forfeiture.

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

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

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

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

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

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

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

25 (3) The report shall separate and account for:

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

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

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

32 (e) On March 1, 2020, and annually on March 1 thereafter, the
33 Kansas bureau of investigation shall determine whether each agency's
34 financial report matches the agency's seizing report. If the Kansas bureau
35 of investigation determines that an agency's financial report does not
36 substantially match that agency's seizing report or the agency has not
37 submitted a financial report, the Kansas bureau of investigation shall
38 notify such agency of the difference in reports. Such agency shall correct
39 the reporting error within 30 days. If the reporting error is not corrected
40 within 30 days, the Kansas bureau of investigation shall send such law
41 enforcement agency, and the county or district attorney for the county in
42 which such law enforcement agency is located, a certified letter notifying
43 such agency that it is out of compliance. Upon receipt of such letter, no

1 forfeiture proceedings shall be filed on property seized by such law
2 enforcement agency. When such law enforcement agency has achieved
3 compliance with the reporting requirements, the bureau shall send such
4 law enforcement agency, and the county or district attorney for the county
5 in which such law enforcement agency is located, a certified letter
6 notifying such agency that it is in compliance and forfeiture proceeding
7 filings may continue pursuant to this act. Annually, on or before April 15,
8 the Kansas bureau of investigation shall report to the legislature any law
9 enforcement agencies in the state that have failed to come into compliance
10 with the reporting requirements in subsection (d).

11 Sec. 11. K.S.A. 2022 Supp. 60-4104, 60-4105, 60-4106, 60-4107, 60-
12 4109, 60-4112, 60-4113, 60-4114, 60-4117 and 60-4127 are hereby
13 repealed.

14 Sec. 12. This act shall take effect and be in force from and after its
15 publication in the statute book.