

## 2021 Kansas Statutes

**60-4112. Judicial proceedings, generally.** (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(c), and amendments thereto, the court, on an application filed by an owner of or interest holder in the property within 14 days after notice of the property's seizure for forfeiture or lien, or actual knowledge of it, whichever is earlier, and after complying with the requirements for claims in K.S.A. 60-4109, and amendments thereto, after seven days' notice to the plaintiff's attorney, may issue an order to show cause to the seizing agency, for a hearing on the sole issue of whether probable cause for forfeiture of the property then exists. The hearing shall be held within 30 days of the order to show cause unless continued for good cause on motion of either party. If the court finds that there is no probable cause for forfeiture of the property, or if the seizing agency elects not to contest the issue, the property shall be released to the custody of the applicant, as custodian for the court, or from the lien pending the outcome of a judicial proceeding pursuant to this act. If the court finds that probable cause for the forfeiture of the property exists, the court shall not order the property released.

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

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

- (1) The person has not had an opportunity to participate in a previous adversarial judicial determination of probable cause;
- (2) the person has no access to other moneys adequate for the payment of criminal counsel; and
- (3) the interest in property to be released is not subject to any claim other than the forfeiture.

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

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

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

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

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

(j) The 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 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.

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

(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.

**History:** L. 1994, ch. 339, § 12; L. 2010, ch. 135, § 193; L. 2018, ch. 26, § 9; July 1.