

**REPORT OF THE JUDICIAL COUNCIL
CRIMINAL LAW ADVISORY COMMITTEE
ON K.S.A. 65-4142**

November 19, 2008

In June, 2008, Rep. Mike O'Neal, Chair of the House Judiciary Committee, requested that the Judicial Council study the suggestions contained in Shawnee County District Attorney Robert D. Hecht's letter dated 3-31-08 regarding K.S.A. 65-4142. D.A. Hecht had suggested that K.S.A. 65-4142 be amended in order to close the apparent gap in the law as set out by the recent Shawnee County District Court case, *State v. Jose Dominguez-Pena*, filed March 28, 2008. A copy of the letter from D.A. Hecht is attached. (See page 4)

COMMITTEE MEMBERSHIP

The members of the Committee taking part in this study are as follows:

1. **Stephen E. Robison, Chair**, Wichita; practicing attorney and member of the Judicial Council.
2. **James W. Clark**, Lawrence; attorney for the Health Care Stabilization Fund.
3. **Edward G. Collister**, Lawrence; practicing attorney.
4. **Jim D. Garner**, Coffeyville; Secretary, Kansas Department of Labor.
5. **Patrick M. Lewis**, Olathe; practicing attorney.
6. **Hon. Michael Malone**, Lawrence; District Judge in the 7th Judicial District.
7. **Steven L. Opat**, Junction City; Geary County Attorney.
8. **John M. Settle**, Larned; Pawnee County Attorney.
9. **Ann Swegle**, Wichita; Sedgwick County Deputy District Attorney.
10. **Loren L. Taylor**, Kansas City; Attorney and Police Trainer.
11. **Debra J. Wilson**, Topeka; Appellate Defender's Office.

BACKGROUND

In the *State v. Jose Dominguez-Pena* case, Mr. Dominguez-Pena was arrested after a drug dog alerted on his truck and officers subsequently found a large quantity of U.S. currency in a false compartment in the truck's trailer. The state charged Mr. Dominguez-Pena with possession of drug proceeds in violation of K.S.A. 65-4142. Mr. Dominguez-Pena filed a motion to dismiss the case arguing in essence that possessing drug proceeds was not illegal in Kansas unless the proceeds were derived from a violation of the Kansas Uniform Controlled Substance Act (UCSA). A copy of the Shawnee County District Court's memorandum decision and order on Mr. Dominguez-Pena's motion to dismiss is attached. (See page 6) K.S.A. 65-4142, in pertinent part, currently reads as follows:

“Unlawful acts involving proceeds derived from violations of the uniform controlled substances act; penalties. (a) It is unlawful for any person knowingly or intentionally to receive or acquire proceeds, or engage in transactions involving proceeds, known to be derived from any violation of the uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto. The provisions of this subsection do not apply to any transaction between an individual and that individual's counsel necessary to preserve that individual's right to representation, as guaranteed by section 10 of the bill of rights of the constitution of the state of Kansas and by the sixth amendment to the United States constitution. This exception does not create any presumption against or prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of the uniform controlled substances act and amendments thereto.

(b) It is unlawful for any person knowingly or intentionally to give, sell, transfer, trade, invest, conceal, transport or maintain an interest in or otherwise make available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of any violation of the uniform controlled substances act and amendments thereto.

(c) It is unlawful for any person knowingly or intentionally to direct, plan, organize, initiate, finance, manage, supervise or facilitate the transportation or transfer of proceeds known to be derived from any violation of the uniform controlled substances act and amendments thereto.

(d) It is unlawful for any person knowingly or intentionally to conduct a financial transaction involving proceeds derived from a violation of the uniform controlled substances act and amendments thereto when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds known to be derived from a violation of the uniform controlled substances act and amendments thereto or to avoid a transaction reporting requirement under state or federal law.” [Emphasis added]

The Court reviewed K.S.A. 65-4142 and acknowledged that there appears to be a gap in the law as a result of the statute requiring that the proceeds relate to a violation or an intended violation of the Kansas Uniform Controlled Substance Act. (See paragraph 2, page 13) The Court held that the State had failed to present sufficient evidence to establish probable cause to believe that Mr. Dominguez-Pena transported the alleged drug proceeds with either the intent to use it to commit a violation of the Kansas UCSA or with the knowledge that the money had been used to violate the Kansas UCSA. Therefore, Mr. Dominguez-Pena’s motion to dismiss was granted. (See page 14)

COMMITTEE’S CONCLUSION REGARDING K.S.A. 65-4142

After review of the statute in question, the *State v. Jose Dominguez-Pena* case and considerable discussion on the issue, the Criminal Law Advisory Committee is in agreement with the District Court’s opinion and interpretation of K.S.A. 65-4142 and recommends the attached amendment to the statute. (See page 3)

65-4142

Chapter 65.--PUBLIC HEALTH

Article 41.--CONTROLLED SUBSTANCES

1 **65-4142. Unlawful acts involving proceeds derived from violations of the uniform**
2 **controlled substances act; penalties.** (a) It is unlawful for any person knowingly or
3 intentionally to receive or acquire proceeds, or engage in transactions involving proceeds,
4 known to be derived from any violation of the uniform controlled substances act, K.S.A. 65-
5 4101 *et seq.* and amendments thereto, *or any substantially similar offense from another*
6 *jurisdiction.* The provisions of this subsection do not apply to any transaction between an
7 individual and that individual's counsel necessary to preserve that individual's right to
8 representation, as guaranteed by section 10 of the bill of rights of the constitution of the state
9 of Kansas and by the sixth amendment to the United States constitution. This exception does
10 not create any presumption against or prohibition of the right of the state to seek and obtain
11 forfeiture of any proceeds derived from a violation of the uniform controlled substances act
12 and amendments thereto.

13 (b) It is unlawful for any person knowingly or intentionally to give, sell, transfer, trade,
14 invest, conceal, transport or maintain an interest in or otherwise make available anything of
15 value which that person knows is intended to be used for the purpose of committing or
16 furthering the commission of any violation of the uniform controlled substances act and
17 amendments thereto, *or any substantially similar offense from another jurisdiction.*

18 (c) It is unlawful for any person knowingly or intentionally to direct, plan, organize,
19 initiate, finance, manage, supervise or facilitate the transportation or transfer of proceeds
20 known to be derived from any violation of the uniform controlled substances act and
21 amendments thereto, *or any substantially similar offense from another jurisdiction.*

22 (d) It is unlawful for any person knowingly or intentionally to conduct a financial
23 transaction involving proceeds derived from a violation of the uniform controlled substances
24 act and amendments thereto, *or any substantially similar offense from another jurisdiction,*
25 when the transaction is designed in whole or in part to conceal or disguise the nature, location,
26 source, ownership or control of the proceeds known to be derived from a violation of the
27 uniform controlled substances act and amendments thereto, *or any substantially similar*
28 *offense from another jurisdiction,* or to avoid a transaction reporting requirement under state
29 or federal law.

30 (e) (1) A person who violates this section, when the value of the proceeds is less than
31 \$5,000, is guilty of a drug severity level 4 felony.

32 (2) A person who violates this section, when the value of the proceeds is at least
33 \$5,000 but less than \$100,000, is guilty of a drug severity level 3 felony.

34 (3) A person who violates this section, when the value of the proceeds is at least
35 \$100,000 but less than \$500,000, is guilty of a drug severity level 2 felony.

36 (4) A person who violates this section, when the value of the proceeds is \$500,000 or
37 more, is guilty of a drug severity level 1 felony.

38 (f) This section shall be part of and supplemental to the uniform controlled substances
39 act, K.S.A. 65-4101 *et seq.* and amendments thereto.

40 **History:** L. 1992, ch. 298, § 84; L. 1993, ch. 291, § 251; L. 1996, ch. 257, § 1; July 1.