

Written testimony of Frank Aguilar of Sol's Jewelry and Pawn regarding
Kansas Senate Bill No.46 Session of 2019 concerning recovery of misappropriated property
provided to the Judiciary Committee.

While I believe the proposed Senate Bill No. 46 is well meaning, in such that it is attempting to streamline the return of alleged misappropriated property, I also believe asking officers to adjudicate property rights is a matter best left to the courts. (Wolfenbarger v. Williams)

This matter has been touched on in the past by the Kansas Attorney General in Opinion 89-111. In response to the Overland Park City Attorney, the Kansas Attorney general states "*in our judgement the due process rights of the pawnbroker must be respected, Wolfenbarger vs Williams*".

Officers may be correct in believing that the victim of a theft has a superior interest in the stolen/pawned property, however it is best for the courts to decide this issue, not peace officers.

A law enforcement officer who takes it upon themselves to return stolen property to the victim of a theft are ignoring the pawnbroker's rights and subjecting themselves to civil liability. (Wolfenbarger v. Williams)

If an officer takes it upon him or herself to "award" the property to the victim, the officer may not be able to claim even a "qualified immunity" (which he/she is normally entitled to when "reasonable" mistakes are made) should he or she later be sued by the pawnbroker. (Wolfenbarger v. Williams). In performing discretionary functions, governmental officials are normally shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory and constitutional rights of which a reasonable officer should have known. Given the pawnbroker's well established constitutionally protected due process rights as to the interests in the property, determining the right to ownership as between the true owner and the pawnbroker, peace officers cannot claim ignorance of the pawnbroker's rights to the pawned property. Therefore, a law enforcement officer's legal duty should be no more than to take the reportedly misappropriated property into evidence, allowing the owner and pawnbroker to resolve their respective possessory rights through the judgment of the court.

A law enforcement officer should never take sides in any dispute between those claiming the right to title and/or possession of the stolen property. The officer's only concern should be to make sure the property is available for any related criminal prosecution. After that, absent a court order, a neutral position and the status quo should be maintained by the officer, leaving the owner and pawnbroker to have the issue adjudicated in court.

The laws governing the rights, obligations and remedies of borrowers, victims, pawnbrokers and law enforcement officers relating to stolen, lost or embezzled property can be complex, consequently these matters are best left to the courts.

Therefore, it is my position that this proposed bill should not be passed as written and should, at a minimum, be tabled and submitted for review by the Office of the Attorney General.

Respectfully submitted by Frank Aguilar this 5th day of February 2019.