

February 11, 2022

Submitted to the House Judicial Committee, Hon. Fred Patton, Chair
Reference HB 2648

Submitted Written Testimony of Sheriff (Ret) of the Johnson County Sheriff's Office, Currie Myers, PhD, MBA in support of HB 2648.

"I pledge to uphold the Constitution of the United States of America and the Constitution of the State and to enforce the laws of the State and the United States. I will never abuse the authority vested in me and will honor and uphold the constitutional rights to liberty, equality, and justice afforded to all persons. So, help me God."

Law enforcement officers across the United States take this oath, or something similar when they pin on the badge. But we must truly understand the meaning of the oath. The first statement is the greatest statement in any oath of office. "I pledge to uphold the Constitution of the United States of America".

As a former sheriff of the Johnson County Sheriff's Office with 24 years' experience in law enforcement, including service as a KBI Special Agent and Kansas State Trooper, I fully understand that asset forfeiture is an important tool in crime reduction strategies, but it should never be used if the asset is not linked to criminal activity and a resulting conviction for those crimes accused.

Due Process Rights

The Fifth Amendment of the United States Constitution states, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."¹

Allowing law enforcement to seize property without full due process rights have caused a constitutional crisis in America. And moreover, a black eye for law enforcement agencies. How can we take an oath of office to protect the Constitution of the United States when we can also routinely violate a persons' Fifth Amendment Rights? Reforms are needed quickly with respect to civil asset forfeiture. While other reforms, such as raising the burden of proof on forfeiture proceedings would be beneficial, requiring a conviction before allowing the government to take someone's property, as found in HB 2648, are necessary due process protections.

Recent Legislative Changes/Proposals

In the past few years, most states (including Kansas) have made some alterations to their civil forfeiture laws to bring heightened transparency, greater due process protections, curbing federal involvement that allows for circumvention of state law, or elimination of the practice altogether. The Institute for Justice keeps an updated repository outlining recent and historical reforms to asset forfeiture laws across the country. Without going into specific bill details, below is a topline summary of how many states have modified their forfeiture laws in varying areas of reform:²

¹ "[U.S. Constitution - Fifth Amendment | Resources | Constitution Annotated | Congress.gov | Library of Congress](#)"

² "[Civil Forfeiture Reforms on the State Level.](#)" Institute for Justice.

- Three states (NC, NM, NE) have abolished the practice of civil forfeiture entirely.
- Fifteen states require a conviction in criminal court before a civil forfeiture proceeding can occur; most recently, Virginia in 2020.³
- Thirteen states require the government, rather than the property owner to have the burden of proof in a civil forfeiture proceeding.
- Since 2014, 25 states have increased forfeiture reporting requirements; most recently West Virginia⁴ and New Jersey in 2020.⁵
- Seven states and Washington DC have passed laws to prevent local officials and the federal government from circumventing state law through equitable sharing.

Forfeiture is Not a Crime-Fighting Tool

Contrary to claims that abolishing civil asset forfeiture would increase crime rates, an analysis across five different measures of crime found no evidence of any negative effect from New Mexico’s civil asset forfeiture law passed in 2015, which abolished civil asset forfeiture and eliminated financial incentives for law enforcement agencies⁶. And in another Institute for Justice study, their research found that forfeiture has no meaningful effect on crime fighting, but forfeiture activity does increase when local economies suffer.⁷ These results add to a growing body of research suggesting police agencies and local governments require line officers to pursue forfeiture less to fight crime than to raise revenue. Given this evidence and serious civil liberties concerns raised by forfeiture, reforms such as the ones found in HB 2468 are much needed in the state of Kansas.

Budget Reliance on Fines, Fees, and Forfeitures

Police agencies and local governments rely significantly on fines, fees, and property forfeitures from citizens to fund their budgets. Research suggests that police departments who collect higher shares of their revenue from fines, fees, and forfeitures solve crime at significantly lower rates.⁸ Civil forfeiture laws generally make it easy for governments to forfeit property and hard for the owners of that forfeited property to fight the civil forfeiture in court and generally has low standards of proof which is the evidentiary burden prosecutors must meet to connect the seized property to a crime. The costs of collections for fines and fees by those with outstanding unpaid tickets often offset any monetary benefits of the actual collection of fines and fees. In allowing agencies to self-fund outside the normal appropriations process and with little oversight, it undermines legislatures’ powers of the purse and invites questionable expenditures. State and local governments have a responsibility to back their police agencies so the relationships between their police and their community is respected and transparent. Not funding them adequately and using instead other “special revenue categories” counters the hard work law enforcement does every day to gain the public trust.

Thank you for the opportunity to provide testimony in support of HB 2648.

³ [HB 1522](#). Virginia Regular Session 2020.

⁴ [HB 4717](#). West Virginia Regular Session 2020.

⁵ [S 1963](#). New Jersey 2018-2019 Regular Session.

⁶ <https://ij.org/report/policing-for-profit-3/pfp3content/executive-summary/> Institute for Justice, Policing for Profit, December 2020.

⁷ <https://ij.org/report/fighting-crime-or-raising-revenue/> Institute for Justice, Fighting Crime or Raising Revenue, June 2019.

⁸ <https://reason.com/2019/06/12/asset-forfeiture-funding-has-little-impact-on-solving-crimes-says-new-study/> Reason Institute, June 2019