

CALVIN H. HAYDEN
SHERIFF



DOUGLAS G. BEDFORD
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Testimony to the House Committee on Judiciary in Opposition to HB2648

February 16, 2022

Chairman Patton, Vice Chair Ralph, Ranking Member Carmichael, and Members of the Committee:

The Johnson County Sheriff's Office opposes **HB2648 - Requiring a criminal conviction for civil asset forfeiture, remitting proceeds from civil asset forfeiture to the state general fund and removing provisions making motor vehicles with altered vehicle identification numbers contraband.**

Legislative Post Audit Report

In 2016, the LPA report "Seized and Forfeited Property: Evaluating Compliance with State Law and How Proceeds Are Tracked, Used, and Reported" compared Kansas' forfeiture process with those of four other states and the federal government. It also examined the seizure and forfeiture processes of two statewide and four local law enforcement agencies, finding that the agencies generally complied with major state laws and best practices.

HISTORY

Currently, in Kansas a forfeiture proceeding, follows strict guidelines. Kansas Statute provides that probable cause must exist that the property to be seized was used to further a criminal activity. Notice of seizure must be given within 30 days. The seizing law enforcement agency must file a seizure action through the District or County Attorney Office. The DA/CA can decide not to file such motion. If this is the case, the property is returned to the owner.

If the action is filed, then a court case proceeds in civil court with a judge presiding. Attorneys are present representing both the agency and the person who had property seized. A civil trial is conducted, and the judge decides if the property should be seized or returned to the owner.

In 2018, the Legislature amended the statute to provide when the county or district attorney approves another attorney to represent a local agency in the forfeiture proceeding, the county or district attorney is prohibited from approving an attorney with whom the county or district attorney has a direct or indirect financial interest. Similarly, for state agencies, the Attorney General is prohibited from approving an attorney with whom the Attorney General has a direct or indirect financial interest. Such county or district attorney and the Attorney General are prohibited from requesting or receiving any referral fee or personal financial benefit from any proceeding.

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Proceeds from the civil trial are used to satisfy certain security interests or liens, expenses of the proceedings, reasonable attorney fees, and repayment of certain law enforcement funds. If any funds are left over, they are to be used for an exclusive list of 12 special, additional law enforcement purposes. This money must be tracked with deposits and expenditures recorded. Additionally, the Legislature mandated a website, known as the [Kansas Asset Seizure and Forfeiture Repository](#) where information on seizures is recorded. The website is maintained by the KBI who also monitors compliance. Agencies not in compliance are not allowed to perform a forfeiture action.

These changes were a result of HB2459 in 2018. This bill was a product of the Kansas Judicial Council.

The Johnson County Sheriff's Office testified as a neutral conferee in 2018 on HB2459, the last bill to amend the civil asset forfeiture law. We supported changes that were made to the law in that bill for the most part.

We have several concerns with this bill which are listed below:

1. Asset forfeiture exists to build cases against those who commit crimes that cause widespread damage, in particular the distribution of illegal drugs and human trafficking. The removal of this tool will hamper law enforcement efforts to combat these crimes. Both crimes are prevalent in Kansas.
2. HB2459 provided a mechanism to make sure law enforcement followed asset forfeiture laws. We know of no abuses of the laws.
3. Asset forfeiture is a civil proceeding in court. No other civil proceeding requires a criminal conviction for it to proceed. In fact, the opposite is true. Many times, a person charged with a crime and acquitted faces civil action. A review of our cases on the Kansas Asset Seizure and Forfeiture Repository showed that every case we had also had a conviction with one exception. That person died before going to trial.
4. In past Legislative hearings on asset forfeiture, claims were made that law enforcement agencies conduct asset forfeiture actions to get money for their departments with no accountability. This is absolutely false. Law enforcement can only use the funds for specific purposes (KSA 60-4117). However, this bill would move the money to the state general fund with no restrictions on how the funds are used.

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Our understanding after the passage of HB2459 was that the website would be used to evaluate asset forfeiture procedures and uses of seized assets and funds. It has been our experience that approximately 75% of the funds have been used to reimburse investigation costs.

We do not support HB2468 but if the committee feels that further action needs to be taken, we agree with the Kansas Sheriff's Association that Kansas adopt the Federal Asset Forfeiture laws.

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