



**Testimony Before the Kansas House Judiciary Committee**  
**In Support of Senate Bill 458**  
**March 12, 2024**

My name is Greg Glod, and I am the Senior Fellow for Public Safety and Criminal Justice at Americans for Prosperity (AFP). I want to thank the House Judiciary Committee for allowing me to speak in support of SB 458, a bill that will 1) eliminate unnecessary and costly government red tape; 2) provide great protections for innocent property owners; and 3) allow law enforcement to effectively seize and forfeit property obtained (or used to obtain) through criminal acts.

While SB 458 will unlikely leave all or any interested parties completely satisfied, it was certainly not composed in haste or without their input deeply considered and often incorporated. Previous iterations of reform to asset forfeiture have been debated in both chambers for years now, while special joint committees have brought experts, law enforcement, impacted citizens, and others together with the goal drafting legislation that takes into account a wide range of perspectives, lessons from other states, and data.<sup>1</sup> In other words, the Kansans legislature has done their homework and AFP applauds this body and all the organizations and individuals who have stayed dedicated to how the Kansas government can currently take your property away without ever convicting or charging you with a crime.

During this thoughtful and extensive legislative endeavor, many of the problem areas with how the current forfeiture laws are constructed and implemented in practice were clear, including:<sup>2</sup>

- The vast majority of seizures involve minimal amounts of value. 62 percent of seizures are valued at \$5,000 or less;
- 79% of property owners in the Kansas Asset Seizure and Forfeiture Repository (KASFR) are still legally innocent, 90% of all seized property has been forfeited;
- For those who recovered their seized property, it took them an average of 413 days to do so; and
- For most people whose property has been seized by the government, the cost of recovering it is often greater than its value. Additionally, the low burden of proof needed for the government to take full ownership of the property (preponderance of the evidence, which is essentially 50.1% or greater) effectively places the burden on the property owner, rather than the other way around. This means even if you are legally innocent, it may not make financial sense to challenge the forfeiture and if you do, the low burden of proof makes success incredibly difficult.

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<sup>1</sup> I testified before the Special Committee on Civil Asset Forfeiture on December 6, 2023. Written testimony presented to the Special Committee is attached to this testimony as Appendix "A" and is incorporated herein and made a part hereof by reference as if set forth in full.

<sup>2</sup> For a more detailed look at forfeiture in Kansas, please refer to Appendix "A."

- Kansas law enforcement work with the federal government often to execute seizures and forfeitures where federal rules of forfeiture apply and 80 percent of the proceeds can be recouped by Kansas law enforcement.<sup>3</sup>

SB 458 identifies these problems and includes reforms to tackle them. The changes included in SB 458 have been implemented in many other jurisdictions across the country and have not hurt law enforcement's effectiveness of removing the fruits of ill-gotten gains away from criminals in those areas or have seen changes exacerbate the negative consequences to substance abuse, such as overdose.

Nebraska, for example, completely ended civil forfeiture in 2016. While many proponents of the status quo claim that current policies are critical to saving lives from the harmful and deadly effects of drugs such as fentanyl, the Husker State has the lowest overdose death rate in the country, while Kansas has a rate of death more than double of that.<sup>4</sup>

After speaking with countless lawmakers and stakeholders, it became clear that although there were differences in policy, all stakeholders wanted the same thing; allow police to effectively do their job and ensure innocent property owners don't have to fight bureaucracy with one hand tied behind their back.

I thank you for allowing me to take the time to discuss AFP's support for SB 458 and I'm happy to take any questions at the end of my oral testimony or as needed throughout the legislative process.

Sincerely,

***Greg Glod***

Fellow, Public Safety & Criminal Justice  
Americans for Prosperity  
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<sup>3</sup> For more information on why it is critical for SB 458 to maintain restrictions on federal "adoptive" forfeitures, please see Appendix B.

<sup>4</sup> See most current (2021) Data on Drug Overdose Mortality by State provided by the Centers for Disease Control and Prevention.

# **APPENDIX A**



**Testimony Before the Special Committee on Civil Asset Forfeiture, Kansas Legislature**

**Greg Glod, Senior Fellow for Public Safety & Criminal Justice, Americans for Prosperity**

**December 6, 2023**

My name is Greg Glod, and I am the Senior Fellow for Public Safety and Criminal Justice at Americans for Prosperity (AFP). I want to thank Chair Stephen Owens and the rest of the Special Committee on Civil Asset Forfeiture for allowing me to speak on an issue that has a profound impact on all Kansans. As one of the largest grassroots organizations in the country, AFP is driving long-term solutions to some of the country's biggest problems.

Our organization, and its thousands of activists across Kansas, are dedicated to breaking barriers that stand in the way of people realizing their full potential. We believe that to achieve these goals, our criminal justice system must prioritize its resources to maximize public safety, while ensuring citizen's Constitutional rights are respected. It is for these reasons that we support reforms to current civil asset forfeiture laws that will still allow law enforcement to ensure criminals are not able to utilize or profit from their ill-gotten gains, while protecting the property rights of all Kansans.

***Current Issues with Kansas Civil Forfeiture Law***

The philosophy behind forfeiture is one that AFP emphatically supports: ensuring those who break the law are separated from the property used and/or gained to commit that crime. However, the current law in Kansas does not afford necessary due process protections for innocent property owners to effectively defend themselves.

It's important to remember that the process is civil, meaning protections afforded citizens in a criminal proceeding are not provided in civil forfeitures. This includes a low burden of proof (preponderance of the evidence, which is essentially "more likely than not" rather than beyond a reasonable doubt), and innocent property owners must prove their property's innocence, rather than the government. This creates an unduly burdensome and expensive process for innocent owners to get their property back from the government. Most forfeitures end in a default, meaning the individual doesn't even contest the forfeiture.

Additionally, Kansas law enforcement is allowed to keep 100% of the proceeds of a forfeiture. When law enforcement agencies significantly [rely on these types of funding sources](#),<sup>5</sup> it leaves less time for more important functions such as preventing and solving violent crimes.

***Criminal Forfeiture Will Still Maintain Public Safety***

Since 2014, 36 states have reformed their forfeiture laws and have shown that these changes to civil forfeiture will not impact public safety. In 2015, New Mexico passed a law that eliminated civil

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<sup>5</sup> Myers, Currie. The Right and Wrong Way to Fund Police. Governing. July 23, 2021.

forfeiture, replaced it with civil forfeiture, and removed financial incentives for law enforcement agencies. [An analysis](#)<sup>6</sup> of this bill shows no negative impact on crime in the state.

Additionally, a [2021 study](#) from the Institute of Justice looked at five states (Arizona, Hawaii, Iowa, Michigan, and Minnesota) that often utilize civil forfeiture.<sup>7</sup> The report found that 1) increases in forfeiture revenue do not help police solve more crimes; 2) forfeiture proceeds do not decrease illegal drug use; and 3) forfeiture activity increases as unemployment increases.

### ***Current State of Play in Kansas***

In 2018, the Kansas legislature passed [K.S.A. 60-4127](#), requiring the Kansas Bureau of Investigation (KBI) to establish a platform for every local law enforcement agency in Kansas to report comprehensive information on every seizure and forfeiture in the state. Americans for Prosperity Foundation (AFPF) examined the data,<sup>8</sup> which includes incident reports on all “completed” forfeiture actions from July 1, 2019, to December 31, 2021. In May 2022, AFPF released a report based on this data and in August 2023, [updated the report](#) to include 2022 numbers.<sup>9</sup> The report found the following:

- Kansas law enforcement reported seizing \$25.3 million from people in the state.
- On average, law enforcement reports taking over \$17,000 per day in money and property from people in Kansas.
- KBI annual reports omit up to one-third of the total value of assets forfeited. This is because the report does not include the amount of property and cash gained from forfeiture proceedings where Kansas law enforcement hands over the property to federal authorities (known as “equitable sharing”) to initiate forfeiture proceedings. Under equitable sharing, local and state law enforcement can still keep up to 80% of the proceeds, even though federal authorities utilize their process, rather than the states. KBI data shows that the state forfeited \$12.7 million but does not include an additional \$5.4 million in seized assets sent to the federal government.
- Most seizures do not involve amounts that would disrupt organized crime operations. 62% of seizures have a total value of \$5,000 or less.
- While 79% of owners in the Kansas Asset Seizure and Forfeiture Repository (KASFR) are still legally innocent, 90% of all seized property has been forfeited.
- For those few fortunate people who were able to recover their seized property, it took them an average of 413 days to do so.
- For most people whose property has been seized by Kansas law enforcement, the cost of recovering their property is greater than the value of the property seized. The Institute for Justice estimates that it costs roughly \$3,000 to hire an attorney to challenge a simple state forfeiture case. Half of all seizures in the KASFR are for \$3,000 or less.

### ***Recommendations***

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<sup>6</sup> Institute for Justice. Policing for Profit: Third Edition. December 2020.

<sup>7</sup> Kelly, Brian. Does Forfeiture Work? Institute for Justice. February 2021.

<sup>8</sup> Kimbrell, Thomas. Asset Seizures in the Sunflower State: How Civil Asset Forfeiture Imperils People’s Rights in Kansas. Americans for Prosperity Foundation. May 2022.

<sup>9</sup> Kimbrell, Thomas. Asset Seizures in the Sunflower State: How Civil Asset Forfeiture Imperils People’s Rights in Kansas: 2022 Numbers Update. Americans for Prosperity Foundation. August 2023.

AFP recommends that the Kansas legislature pass policies that were included in 2023's HB 2380. This legislation will not take away law enforcement's ability to seize property connected with or involved in crime and will only require them to wait until after a criminal conviction has been secured to forfeit any property they have seized. It will also take steps to conform Kansas law with the recent U.S. Supreme Court ruling in *Timbs v. Indiana* where the Court unanimously ruled that the 8th Amendment's excessive fines clause applied to a state's use of fines and forfeitures. We believe these reforms are vital to protect innocent property owners and ensure law enforcement can focus on their core mission of preventing and solving violent crime. The legislature and local governments should fully fund our law enforcement agencies so that they do not feel compelled to act as tax collectors to keep our communities safe.

I thank you again for the opportunity to discuss civil forfeiture with this esteemed body and would be happy to answer any questions today or in the future.

Sincerely,

Greg Glod

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# **APPENDIX B**

## **Federal Adoption FAQ:**

### ***1. What is the Difference Between Adoption and Joint Task Forces?***

- a.*** Adoption- State or local law enforcement seize property without involvement of the federal government. The state or local agency then asks the federal to “adopt” the property and forfeit it under federal law. The state or local law enforcement agency then receives up to 80 percent of the proceeds.
- b.*** Joint Task Forces- A seizure occurs by a state or local law enforcement agency that is a part of either a federal task force or a joint investigation. These types of cooperatives determine shared goals and execution of plans in concert, rather than after the fact.

### ***2. Why are Adoptive Forfeitures Controversial?***

- a.*** Critics from across the political spectrum, have raised concerns about how the equitable sharing program:
  - i.*** Allows state and local law enforcement agencies to circumvent state due process protections (such as this bill). For example, SB 458 would discontinue the practice of allowing simple drug possession to be the underlying offense to trigger a forfeiture. It would also raise the standard of proof needed by the government to prove their forfeiture. If the adoption loophole in equitable sharing remains, the will of the Kansas legislature and its voters can be undermined by the federal government.
  - ii.*** While joint task forces require significant coordination and specific articulable goals of both federal and state/local law enforcement, adoptive forfeitures by their very nature have no previous coordination.
  - iii.*** Due to a lack of coordinated activities prior to adoptive forfeitures, adoptive forfeitures are more susceptible to a lack of transparency and oversight. For example, in 2019, the DOJ Inspector General’s Office audited only three out over 6,800 law enforcement agencies that participated in the equitable sharing program. In Kansas, data provided by the Kansas Bureau of Investigation on the amount of the assets received by law enforcement do not count at least \$5.4 million in assets given to the federal government to forfeit in 2022.

### ***3. How Often Are Adoptive Forfeitures Used?***

- a.*** Equitable Sharing of all types has decreased in the past decade. In 2015, the federal government stopped adoptive forfeitures due to bipartisan concerns over the practice. As a result, adoptions dropped to zero, but the practice was reinstated in 2017. Adoptions rose slightly after 2017 but are currently being utilized at their lowest rates in the past decade (other than when they were outlawed). Even at their peak, adoptions only accounted for 30% of equitable sharing cases and 17% of the total value forfeited under equitable sharing between 2000-2015.



#### 4. *What Have Other States Done?*

- a. [Several states](#) have passed laws to help close the equitable sharing loophole. For example, Pennsylvania has prohibited agencies from doing any federal adoption. For a summary of state reforms, see this report from Institute for Justice titled [How States Have Shrunk the Loophole](#).
- b. No evidence supports the notion that closing these loopholes negatively impacts public safety or hinders law enforcement's efforts.
  - i. Sources:
    1. [Fighting Crime or Raising Revenue? Institute for Justice, 2020](#).
    2. [Does Forfeiture Work? Evidence from the States. Institute for Justice, 2021](#).
    3. [Analysis of Adoption Reform in New Mexico; Eliminating Civil Forfeiture Does Not Increase Crime. Institute for Justice, 2020](#).

#### 5. **Additional Sources:**

- a. **2018 Study:** "By using data on federal equitable sharing payments to nearly 600 local law enforcement agencies between 2000 and 2012, we examine the relationship between the characteristics of state forfeiture laws and equitable sharing payments to local agencies. Our results indicate that agencies in states with state laws that are more restrictive or less rewarding to police collect more in federal equitable sharing. This finding supports the critics' argument that police behavior in regard to forfeiture activities is influenced by the financial rewards and burdens involved."
- b. [Equitable Sharing Payments of Cash and Sale Proceeds by Recipient Agency for Kansas FY 2023](#). Department of Justice.