

Report of the Special Committee on Civil Asset Forfeiture to the 2024 Kansas Legislature

CHAIRPERSON: Representative Stephen Owens

VICE-CHAIRPERSON: Senator Kellie Warren

OTHER MEMBERS: Senators Elaine Bowers, David Haley, Jeff Longbine, and Rick Wilborn; and Representatives Ford Carr, Bob Lewis, Carl Maughan, Dan Osman, and John Resman

STUDY TOPIC

The Committee is directed to:

- Review current statutes and recommend possible changes concerning civil asset forfeitures. Such study will include a review of a report submitted by the Judicial Council on this matter.

Special Committee on Civil Asset Forfeiture

REPORT

Conclusions and Recommendations

The Committee recommends the following reform measures related to the Kansas Standard Asset Seizure and Forfeiture Act be considered by the 2024 Legislature:

- Deleting offenses involving controlled substances that apply primarily to a “user” from the list of offenses giving rise to forfeiture;
- Requiring seizing agencies to return property if certain timelines are not met to engage an attorney or otherwise move the case forward;
- Prohibiting pre-forfeiture waivers of rights in property;
- Allowing a proportionality hearing to be requested at any time;
- Requiring a judge to determine whether there is probable cause supporting forfeiture as a preliminary matter;
- Requiring an automatic stay of discovery in the forfeiture proceeding during a criminal proceeding alleging the same conduct;
- Establishing that a seizing agency can be ordered to pay a prevailing claimant’s attorneys’ fees; and
- Requiring the State to prove property is subject to forfeiture by a “clear and convincing” standard.

The Committee also recommended the following items be further studied by a standing committee of the 2024 Legislature:

- Transfers and federal adoptions;
- The right to a jury trial in forfeiture proceedings;
- The right to counsel in forfeiture proceedings; and
- Where forfeiture proceeds should be directed.

Proposed Legislation: None.

BACKGROUND

The Legislative Coordinating Council authorized the Special Committee on Civil Asset Forfeiture (Committee) to review current statutes and recommend possible changes concerning civil asset forfeitures. The Committee was also directed to review the report submitted by the Civil Asset Forfeiture Advisory Committee of the Judicial Council on this matter. The Committee was authorized to meet for one day during the 2023 Interim Session.

COMMITTEE ACTIVITIES

The Committee met on December 6, 2023, and heard testimony from several stakeholders on the topic of civil asset forfeiture.

Presentation on Kansas Civil Asset Forfeiture Laws and HB 2380 Overview

An Assistant Revisor, Office of Revisor of Statutes, provided a brief overview of each section of law contained in the Kansas Standard Asset Seizure and Forfeiture Act, KSA 60-4101, *et seq.*

Overview of Recent Changes to Forfeiture Laws in Other States

The Director of Policy and Research, Council of State Governments (CSG) Midwest, presented information regarding recent forfeiture law changes in other states.

The Director stated new civil asset forfeiture laws have been passed in ten other CSG Midwest states in the past decade. He discussed unique aspects of each new law and also provided a summary of the general topics addressed by the enacted legislation, including the standard or burden of proof, innocent property owners, requirement of a conviction, reporting and record-keeping, and how forfeiture proceeds may be used.

Presentation on Kansas Asset Seizure and Forfeiture Repository Data

A Kansas Bureau of Investigation (KBI) Program Consultant discussed the agency's repository for civil asset information that was established by law enacted in 2018. The Consultant discussed the KBI website where law

enforcement agencies within the state report asset seizure and forfeiture information. She also discussed statistics for calendar year 2022 and compared those figures with prior years. Discussion occurred on topics such as agency compliance with reporting requirements, whether private counsel was used in judicial proceedings, and property values provided to the reporting system.

Presentation of Civil Asset Forfeiture Advisory Committee Report

The Chairperson of the Civil Asset Forfeiture Advisory Committee, Kansas Judicial Council, presented the Advisory Committee's report, which was approved without recommendation by the Judicial Council on December 1, 2023. The Chairperson stated the 2023 Advisory Committee is the second Advisory Committee appointed by the Judicial Council to study and make recommendations on the topic of civil asset forfeiture. He further noted HB 2459, enacted by the 2018 Legislature, contained recommendations made by the 2017 Advisory Committee.

The Chairperson explained the Advisory Committee met five times during the summer and fall of 2023, agreeing on eight reform measures. He stated some of the agreed-upon reforms are contained in HB 2380, and others originated from Advisory Committee discussion. The Chairperson explained each of these measures, and whether the measure was supported unanimously by Advisory Committee members. The Chairperson also explained six reform measures that were considered but not recommended by the majority of Advisory Committee members.

The Chairperson noted the Advisory Committee advises against the passage of HB 2380 and instead has written draft legislation incorporating the eight reform measures outlined in the Advisory Committee report.

Presentations from Proponents of Changing Kansas Forfeiture Laws

The Committee heard testimony from stakeholders who expressed support for changing current forfeiture laws.

A representative of the Kansas Justice Institute stated the process of civil asset forfeiture, as

currently allowed by Kansas statute, is fundamentally unfair, and reforms are needed to improve procedural due process rights of individuals affected by asset forfeiture.

A representative of Americans for Prosperity stated data does not show that the use of asset forfeiture does anything to reduce crime or improve public safety, and the current law in Kansas does not afford necessary due process protections for innocent property owners.

Neutral Comments on Changing Kansas Forfeiture Laws

The Director of the KBI stated his support for the recommendations made by the Civil Asset Forfeiture Advisory Committee, but warned against making additional changes to Kansas forfeiture laws that would interfere with the ability of law enforcement to use civil asset forfeiture as a tool in combating criminal activity, especially drug trafficking.

Opponents to Changing Kansas Forfeiture Laws

The Superintendent of the Kansas Highway Patrol noted that while the agency is opposed to HB 2380 as drafted, the agency is generally supportive of the Advisory Committee's recommendations, and provided a detailed response to recommendations related to making certain property ineligible for forfeiture and fee-shifting.

A representative of the Overland Park Police Department stated the Department would be opposed to any change that would affect the ability of law enforcement to seize assets and property used by criminals to commit crimes, and believes the current scheme of civil asset forfeiture affords adequate due process protections for those with a claim to the property seized.

A representative of the Kansas Association of Chiefs of Police expressed concerns about several provisions of HB 2380, but expressed support for removing simple possession from the list of crimes for which forfeiture proceedings may be initiated.

A representative of the Kansas Narcotics Association and the Kansas Peace Officers Association stated that while forfeiture is an

effective tool used by law enforcement in combating drug offenses, it is also used in response to many other crimes, such as human trafficking and sex crimes against children. The representative also expressed concern regarding the implications of shifting fees to seizing agencies in certain circumstances.

A representative of the Kansas Sheriffs' Association explained the Association is in support of some recommendations made by the Advisory Committee, such as exempting simple possession from the list of offenses giving rise to forfeiture and to exempting firearms from any minimum-value threshold. The representative stated additional discussion regarding value thresholds should occur.

Committee Discussion and Recommendations

The Committee first discussed four reform measures that had been unanimously supported by the Advisory Committee (deleting certain crimes from the list of covered offenses and conduct; seizing agency must return property if certain timelines are not met; prohibiting pre-forfeiture waivers of rights in property; and allowing a proportionality hearing to be requested at any time). These four measures were approved without objection.

The Committee then discussed four reform measures that were not unanimously supported by the Advisory Committee (requiring an early probable cause hearing; requiring an automatic stay of discovery; fee-shifting; and making certain property ineligible for forfeiture). Two measures, requiring an early probable cause hearing and requiring an automatic stay of discovery, were approved without objection. A voice vote was taken on the fee-shifting measure upon a member's objection; the recommendation was approved. Discussion on making certain property ineligible for forfeiture ensued, with the Committee ultimately deciding not to recommend this reform measure.

The Committee discussed five reform measures that were not recommended by the Advisory Committee: requiring the State to prove property is subject to forfeiture by a "clear and convincing" standard; transfers and federal adoptions of seizures; the right to a jury trial in

forfeiture proceedings; the right to counsel in forfeiture proceedings; and where forfeiture proceeds should be directed. The Committee voted to recommend raising the State's burden of proof, and recommended the remaining items be further studied by a standing committee in the 2024 Legislature.

CONCLUSIONS AND RECOMMENDATIONS

In summary, the Committee recommended the following reforms to the Kansas Standard Asset Seizure and Forfeiture Act be considered by the 2024 Legislature:

- Deleting offenses involving controlled substances that apply primarily to a “user” from the list of offenses giving rise to forfeiture;
- Requiring seizing agencies to return property if certain timelines are not met to engage an attorney or otherwise move the case forward;
- Prohibiting pre-forfeiture waivers of rights in property;
- Allowing a proportionality hearing to be requested at any time;
- Requiring a judge to determine whether there is probable cause supporting forfeiture as a preliminary matter;

- Requiring an automatic stay of discovery in the forfeiture proceeding during a criminal proceeding alleging the same conduct;
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- Requiring the State to prove property is subject to forfeiture by a “clear and convincing” standard.

The Committee also recommended the following items be further studied by a standing committee of the 2024 Legislature:

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- Where forfeiture proceeds should be directed.