

Civil Asset Forfeiture Bill Summary as Passed by the Legislature and Sent to the Governor for Consideration. Governor's Action Pending.

The civil asset forfeiture bill, SB458, was passed 120-0 in the House and 40-0 in the Senate. The bill, if signed by the Governor (she most likely will), creates major changes to the civil asset forfeiture laws. The full bill with the conference committee changes will not be published until it is sent to the Governor (probably within the next 10 days). The following is a summary of the changes. Until that is published, to see the final text you would have to start with the bill as passed by the House:

https://www.kslegislature.org/li/b2023_24/measures/documents/sb458_01_0000.pdf

and make the changes provided in the conference committee report:

https://www.kslegislature.org/li/b2023_24/measures/documents/ccr_2024_sb458_h_3975.

The changes are intended to place more burden on law enforcement and less burden on those claiming rights to the seized property. The alternative to these changes originally proposed was to make asset forfeiture subject to a criminal conviction, ending civil asset forfeiture in Kansas. The changes also do not change how the forfeited assets are distributed or remove any existing authorized uses for those funds, as was proposed last year.

The House proposed a bill following the recommendations of the Judicial Council Committee that studied the issue in 2023 and issued their report last December, and the recommendations of the Interim Committee on Civil Asset Forfeiture Report issued last December. The Senate wanted to add three things to what was recommended, two of which were added to the bill in conference committee: 1) Limitations on when law enforcement can request federal adoption of a civil asset forfeiture; and 2) A requirement for the KBI to forward more information from the agency annual reports to the Senate and House Judiciary Committees. The third Senate position was not included. That would have allowed a jury trial at the request of the defendant.

The following summarizes the changes:

Restrictions Placed On Federal Adoption Of A Forfeiture

- (1) A state or local law enforcement agency may request federal adoption of a seizure pursuant to this act or otherwise transfer or refer seized property to a federal agency only if:
 - (A) The seizure by the agency occurs pursuant to a joint task force with federal law enforcement authorities;
 - (B) the seizure by the agency occurs pursuant to a joint investigation with federal law enforcement authorities as part of an ongoing federal investigation;
 - (C) the agency makes such request in conjunction with a request for federal law enforcement authorities to adopt the criminal investigation relating to the seizure;
 - (D) the property seized by the agency is subsequently seized pursuant to a federal seizure warrant, obtained from a federal court to take custody of assets originally seized under state law;
 - (E) the property seized by the agency directly relates to a serious public safety concern; **OR** [Emphasis added.]
 - (F) the gross estimated value of the property seized by the agency is \$25,000 or more.

- (2) Subject to the requirements of paragraph (1), it shall not be necessary to obtain any order pursuant to K.S.A. 22-2512, and amendments thereto, to release any seized property to a federal agency if the county or district attorney approves of such transfer.

Note the six qualifying conditions are separated by an “or” so any one condition being met allows a federal adoption to be requested.

Reporting Requirements

The additional reporting requirements do not require law enforcement agencies to produce any report not required under current law. It just requires the KBI to send each agency’s annual forfeiture fund financial report (already required to be submitted to the KBI) to the Kansas Senate President, Kansas Speaker of the House of Representative, and the Senate and House Judiciary Committees.

Law Enforcement Procedure Changes

- The bill amends the list of drug crimes subject to forfeiture by removing offenses related to simple possession and possession of drug paraphernalia associated with personal use of controlled substances.
- The seizing agency is prevented from requesting, inducing, or otherwise coercing a person who asserted rights as an owner or interest holder of the property to waive, in writing, such property rights until forfeiture proceedings commence.
- Probable Cause Affidavit: A new requirement is created for an affidavit describing probable cause supporting forfeiture to be filed with the appropriate court in addition to the notice of pending forfeiture or judicial forfeiture action in order to commence forfeiture proceedings. The forfeiture can proceed only after a judge has determined there is probable cause to believe the property is subject to forfeiture under the Act.
- The written request for forfeiture must now be sent to the appropriate county or district attorney within 14 days of the seizure. (In current law it is 45 days.)
 - Upon the expiration of the 14-day time limitation, or upon notification the county or district attorney declines the request (whichever occurs first), a local seizing agency has 14 days to request a state law enforcement agency adopt the forfeiture or engage a private attorney to represent the local seizing agency in the forfeiture proceeding.
 - The same 14-day time limitation applies to a state seizing agency to engage an assistant attorney general, or other approved attorney, to represent the state seizing agency in the forfeiture proceeding.
 - If the seizing agency fails to meet this time limitation, the seizing agency is required to return the seized property to the owner or interest holder within 30 days in the same manner as provided by KSA 22-2512. [Note: KSA 22-2512 provides certain seized property, such as dangerous drugs or hazardous materials, must be destroyed or disposed of rather than returned.]
 - These changes do not affect other time limitations related to initiating or filing a forfeiture proceeding pursuant to continuing law.

Cost Shifting

- Allows (rather than requires as in current law) a court to order a claimant who fails to establish that a substantial portion of the claimant’s interest is exempt from forfeiture to

pay reasonable fees, expenses, and costs to any other claimant establishing an exemption and to the seizing agency in connection with that claimant.

- If the court orders 50% or more of the aggregate value of the items seized for forfeiture to be returned to the claimant, the court is required to order the seizing agency to pay:
 - Reasonable attorney fees;
 - This fee shifting will not apply when there are multiple claims to the same property if the seizing agency:
 - * Promptly recognizes the claim.
 - * Promptly returns the claimant’s interest in the property if it can be divided without difficulty and there are no competing claims to that portion of the property;
 - * Does not cause the claimant to incur additional costs or fees; and
 - * Prevails in obtaining forfeiture with respect to one or more of the other claims.
 - Post-judgement interest; and
 - Any interest actually paid from the date of seizure in cases involving currency, other negotiable instruments, or the proceeds of interlocutory sale.
- Any of the above costs assessed to the agency may be paid from forfeiture funds.

Prosecutor, Agency Attorney, or Court Procedure Changes

- After an owner or interest holder has filed a claim against property seized for forfeiture, the plaintiff’s attorney is required to file a notice of receipt of the claim with the court, unless the claim was already filed. The filing is required to include a copy of the claim and documents showing the date the claim was mailed and received.
- When notice of a pending forfeiture is mailed to an owner or interest holder, the notice must include the newly required probable cause affidavit filed by the seizing officer. Current law requires an affidavit describing essential facts supporting forfeiture be provided with the notice.
- A plaintiff’s attorney may file a lien only upon the commencement of a forfeiture proceeding. Current law provides a lien may be filed upon the initiation of any civil or criminal proceeding relating to conduct giving rise to forfeiture under the Act.
- The in rem proceedings require proof by clear and convincing evidence (in current law it is by the preponderance of evidence) that the interest in the property is subject to forfeiture.
- In place of current law allowing a probable cause hearing on request of an owner or interest holder of seized property, the bill enacts the following:
 - An owner or interest holder may petition the court for determination, or reconsideration of its prior determination, that there is probable cause to support forfeiture at any time prior to final judgment.
 - If the court finds that there is no probable cause for forfeiture, the court must order the release of the property to the custody of the applicant, as custodian for the court, or from a forfeiture lien pending the outcome of a judicial proceeding under the Act.
- A person whose property has been seized may petition the court to determine whether the forfeiture is unconstitutionally excessive. The plaintiff’s attorney has the burden of establishing that the forfeiture is proportional to the seriousness of the offense giving

rise to the forfeiture by clear and convincing evidence. In making this determination, the court could consider, but not be limited to:

- The seriousness of the offense;
 - The extent of participation in the offense by the person from whom the property was seized;
 - The extent to which the property was used in committing the offense;
 - The sentence imposed for committing the offense that gave rise to forfeiture;
 - The effect of the forfeiture on the livelihood of the person from whom property was seized; and
 - The fair market value of the property compared with the property owner's net worth.
- The court is required to automatically stay discovery against the person whose property was seized and against the seizing agency in the forfeiture proceeding during a related criminal proceeding alleging the same conduct. The court could lift the automatic stay of discovery with good cause shown. Current law provides the court require the stay only upon a motion.

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