



Proponent Testimony for SB 367 – Regarding property seized by law enforcement

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Committee Chairs and Members of the Judiciary Committee,

Thank you for the opportunity to present testimony today. My name is Aileen Berquist. I am the Community Engagement Manager and lobbyist for the ACLU of Kansas. We are a nonpartisan, non-profit organization that works to preserve and strengthen the civil rights and liberties of every person in our state.

The ACLU of Kansas supports the passage of SB 367, specifically the addition of language in Section 1(a):

- Requiring property to be returned to its rightful owner if no criminal charges are filed or prosecution is declined, and;
- Requiring the officer seizing the property to file a copy of the receipt with the magistrate who issued the search warrant.

These two provisions, if implemented consistently across jurisdictions, could go a long way toward protecting the rights of Kansans and preventing policing for profit.

Currently, individuals whose property is confiscated under Kansas civil asset forfeiture laws face an uphill battle in retrieving their property from law enforcement. You do not need to be arrested or convicted of a crime for law enforcement to seize and permanently keep your cash, cars, or even real estate. Worse, the burden of proof is not on the state, as in criminal cases where the prosecution must prove beyond a reasonable doubt that a person is guilty. In Kansas, when law enforcement seizes property based on a suspicion that the property was involved in the commission of a crime, the burden of proof is on the **property owner** in any civil proceeding to get that property back.¹

This process involves a complicated legal battle—one where property owners are not entitled to appointment of counsel, and often must represent themselves. Many opt not to fight the forfeiture and reluctantly give up their property, rather than rack up legal bills exceeding the property's value. And when a judge orders forfeiture, Kansas law enforcement agencies keep 100% of the proceeds of the property and have nearly unlimited discretion in determining how to use it—essentially setting up a system where agencies are funded by ill-gotten gains.² Requiring the return of property if no criminal charges are filed is an excellent step toward protecting people from being deprived of their property without due process.³

¹ KLRD, Civil Asset Forfeiture: http://www.kslegresearch.org/KLRD-web/Publications/JudiciaryCorrectionsJuvJustice/memo_genl_segun_civilassetforfeiture.pdf

² ACLU KS, Civil Asset Forfeiture Reform: https://www.aclukansas.org/sites/default/files/field_documents/civil_asset_forfeiture_reform_one-pager.pdf

³ ACLU KS, Know Your Rights: Civil Asset Forfeiture: https://www.aclukansas.org/sites/default/files/wysiwyg/kyr_civil_forfeiture.pdf

There have been promising moves toward transparency around civil asset forfeiture in Kansas with the passage of K.S.A. 60-4127 in 2018, requiring all Kansas law enforcement agencies to report asset seizure and forfeiture information to the Kansas Asset Seizure and Forfeiture Repository (KASFR). However, this information lacks consistent reporting across jurisdictions and thus, the content is not reliable.

Requiring the officer who seized the property to file a receipt with the owner as well as the court is one small step toward more consistent data collection. We ask that a system be implemented across jurisdictions for the consistent reporting of those receipts into the KASFR system.

Thank you for the opportunity to speak before you today. I am happy to stand for questions at the appropriate time.

Additional Resources

KLRD, *Civil Asset Forfeiture*, http://www.kslegresearch.org/KLRD-web/Publications/JudiciaryCorrectionsJuvJustice/memo_genl_segun_civilassetforfeiture.pdf

ACLU of Kansas, *Know Your Rights: Civil Asset Forfeiture*, https://www.aclukansas.org/sites/default/files/wysiwyg/kyr_civil_forfeiture.pdf

ACLU of Kansas, *Civil Asset Forfeiture Reform*, https://www.aclukansas.org/sites/default/files/field_documents/civil_asset_forfeiture_reform_on_e-pager.pdf

CATO at Liberty, *84% of Americans Oppose Civil Asset Forfeiture*, <https://www.cato.org/blog/84-americans-oppose-civil-asset-forfeiture>