

HB2459 Civil Asset Forfeiture Amendments (Updated 6/24/18) Effective July 1, 2018

[Link to the bill](#)

[Link to the Legislative Summary of the Bill](#)

Amended statutes available at: <http://www.kscofplaw.com/KSAs/Ch60Art41.htm>

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Data Collection for Forfeiture Actions (Section 1 of the bill)

The data collection provisions require reporting a list of data on the seizure of assets for forfeiture and the disposition of those cases to a central state repository managed by the KBI. The KBI must have the database for this in place no later than July 1, 2019, and must create regulations to implement database operation. The seizing agency must submit the data within 60-days of the final disposition of the forfeiture and the prosecutors are required to provide required data from the plaintiff and court actions to the law enforcement agency within 30-days of final disposition.

The collection of data is to begin July 1, 2019, and includes: (1) Name of the seizing agency or lead agency if part of a multi-jurisdictional task force; (2) the county where the seizure occurred; (3) date time of the seizure; (4) agency and court case numbers for the seizure; (5) Type of law enforcement activity leading to the seizure; (6) the location of the seizure; (7) the conduct or offense giving rise to the forfeiture; (8) a description of the type of property seized and the estimated value; (9) a description of the type of contraband seized and the estimated value; (10) whether criminal charges were filed for an offense related to the forfeiture including agency and court case numbers for those charges; (11) the final disposition of the forfeiture action, including the disposition of any claim or exemption asserted under this act; (12) whether the forfeiture was transferred to the federal government for disposition; (13) total cost of the forfeiture action, including attorney fees; and (14) total proceeds from the forfeiture action, including distribution of proceeds by the seizing agency to any other agency or person.

Fund Balance Reporting (Sections 1 & 12 of the bill)

For the 2018 calendar year the current requirement for an annual report to the governing body over the seizing agency remains. For CY 2019 and subsequent years, each agency is required to submit fund balances to the state database by February 1 of the following year including: (1) The agency's forfeiture fund balances on January 1 and December 31 of the preceding calendar year; and (2) the total amount of deposits; (3) a listing, by category, of expenditures from January 1 through December 31 of the preceding calendar year; and (4) amounts being held pending forfeiture case disposition. Those reports must provide separate data for state forfeitures and federal forfeitures. The KBI will monitor reporting and notify any agency they find not in compliance. The noncompliant agency must come within compliance within 30-days of notice. If the agency does not comply within the 30-days they will be forbidden to participate in any civil asset forfeiture action until they are in compliance. The KBI is required to report to the legislature no later than April 15 of each year listing any agency not in compliance.

Open Records Request for Data (Section 2 of the bill)

KSA 45-220 is amended by adding subsection (h) providing the KBI may fulfill requests for summary civil asset forfeiture data. However, any request for specific agency or case records must be made to the agency originating the data.

Property Subject to Seizure for Forfeiture (Section 4 of the bill)

KSA 60-4106 (a)(2) is amended to limit subjection to forfeiture of any conveyance to only those cases where it can be shown by the preponderance of evidence the owner or person in charge of the conveyance was either “a consenting party or privy to” the violation of the act. Prior law only required “it appears” such conditions exist.

Forfeiture of Items Located in Proximity to Controlled Substances (Section 9 of the bill)

KSA 60-4112 is amended by striking the existing subsection (s) which created a rebuttable presumption of intent to facilitate an act giving rise to forfeiture based on location near controlled substances at the time of seizure. The proximity to controlled substances is instead one of four factors in a non-exclusive list to consider as the totality of the circumstances in determination of the items being subject to forfeiture.

Expenditure of Funds (Section 12 of the bill)

KSA 60-4117 is amended to provide clearer direction on allowable use of forfeited funds. A list of acceptable expenditures is added in new subsection (e) which generally follow the federal guidelines. Allowed expenditures are: (A) Support of investigations and operations that further the law enforcement agency’s goals or missions; (B) training of investigators, prosecutors and sworn and nonsworn law enforcement personnel in any area that is necessary to perform official law enforcement duties; (C) costs associated with the purchase, lease, construction, expansion, improvement or operation of law enforcement or detention facilities used or managed by the recipient agency; (D) costs associated with the purchase, lease, maintenance or operation of law enforcement equipment for use by law enforcement personnel that supports law enforcement activities; (E) costs associated with the purchase of multi-use equipment and operations used by both law enforcement and non-law enforcement personnel; (F) costs associated with a contract for a specific service that supports or enhances law enforcement; (G) costs associated with travel and transportation to perform or in support of law enforcement duties and activities; (H) costs associated with the purchase of plaques and certificates for law enforcement personnel in recognition of a law enforcement achievement, activity or training; (I) costs associated with conducting awareness programs by law enforcement agencies; (J) costs associated with paying a state or local law enforcement agency’s matching contribution or share in a state or federal grant program for items other than salaries; (K) cash transfers from one state or local law enforcement agency to another in support of the law enforcement agency’s goals or missions; and (L) transfers from a state or local law enforcement agency to a state, county or local governmental agency or community non-profit organization in support of the law enforcement agency’s goals or missions.

Accounting of Funds (Section 12 of the bill)

KSA 60-4117 subsection (e)(3) is added requiring funds held by the law enforcement agencies be divided into the following categories: (A) Proceeds from state forfeiture; (B) proceeds from pending state forfeiture actions; and (C) proceeds from forfeiture actions under federal law. This was a recommendation from the Legislative Post Audit report.

Affidavit of Essential Facts (Section 6 of the bill)

KSA 60-4109 is amended to require an “affidavit describing the essential facts supporting forfeiture” to be included in the Notice of Pending Forfeiture. Existing law in KSA 60-4107 also provides for an “affidavit under oath demonstrating that probable cause exists for the property’s forfeiture. . .” This is similar to requirements for a charging or search warrant affidavit or affidavit on an arrest report. While not specified in statute, it is anticipated the seizing officer or officer determining forfeiture is appropriate for items already seized as evidence will be required to complete such affidavit after each decision to seek forfeiture.

Civil Forfeiture Plaintiff Attorney Process (Section 5 of the bill)

KSA 60-4107 subsection (h) provides the process for referral to a prosecutor by a local law enforcement agency and is amended to require a response within 14 days from the county or district attorney to the submitting law enforcement agency that they are either accepting or declining the forfeiture case. If declined or if they fail to respond within the 14 days, a seizing local agency may pursue the case through a state agency or with an attorney authorized by the county or district attorney.

KSA 60-4107 subsection (i) provides the process for referral to a prosecutor by a state law enforcement agency and is amended to require a response within 14 days from the county or district attorney to the submitting law enforcement agency that they are either accepting or declining the forfeiture case. If declined or if they fail to respond within the 14 days, a seizing state agency may pursue the case through a state Attorney General or with an attorney authorized by the Attorney General.

A county or district attorney or the attorney general shall not request or receive any referral fee or personal financial benefit, either directly or indirectly, in any proceeding conducted under this act. This is aimed at addressing a concern in the Legislative Post Audit report about referral of a case to an attorney outside the prosecutor’s office which results in the referring prosecutor receiving any financial gain, such as a referral to a private law firm they or a close relative has a financial interest in.

Notice of Pending Forfeiture (Sections 6 and 7 of the bill)

KSA 60-4109 subsections (3) and (4) are amended to clarify the service of the required notice of pending forfeiture from the plaintiff attorney will follow the service process under the Code of Civil Procedure and, if such service is not possible because the person to serve is not known or the attempt to serve by certified mail fails, notice may be made by publication in the official county newspaper.

Subsection (4) is also amended to require the notice to include an affidavit describing the essential facts supporting forfeiture; copies of judicial council forms for petitioning for recognition of an exemption pursuant to KSA 60-4110, and for making a claim pursuant to KSA 60-4111. An acknowledgement of the opportunity to file a petition for recognition of exemption is also required to be included by a change to KSA 60-4110 subsection (a).

Claim to Return Property by Owner or Interest Holder in the Property (Sections 7, 8, 10 & 11 of the bill)

KSA 60-4110 subsections (a) and (b) and KSA 60-4114 subsection (f) are also amended to change the time for a filing for recognition of exemption from 30-days to 60-days after the effective date of the notice of pending forfeiture.

KSA 60-4110 subsection (b) is also amended to change the time limit for the plaintiff attorney to notify the seizing agency and petitioner of exemption a written recognition of exemption and statement of nonexempt interests relating to any or all interests in the property from 120 days to 90 days.

KSA 60-4111 and KSA 60-4113 are amended to ease the burden on an owner or interest holder of the property to file claim without an attorney, and clarifying substantial compliance with the information requirements is legally sufficient. This provision will also result in the Judicial Council creating forms for such non-attorney filing.

A claimant must sign the claim document which is subject to perjury, and the requirement to claim be in affidavit form and subject to making a false writing is removed.

A provision is also added allowing for the claimant to assert a right against self-incrimination in a claim and directing the court on matters relating to such assertion.

Judicial Proceedings (Section 9 of the bill)

KSA 60-4112 subsection (e) is amended to change the limits of a criminal defendant to later deny certain facts from the criminal case from “allegations” to “elements” of the criminal offense for which they are convicted.

KSA 60-4112 subsection (j) and (k) are amended to direct the court to include the “totality of circumstances” in determining if property is subject to forfeiture replacing the current specific and limited list of factors. The proximity of items to be forfeited to contraband or instruments of a crime are moved to a list of factors to consider. That list is factors that may be considered, but does not restrict consideration to the list.

KSA 60-4112 subsection (p) which becomes subsection (o) in the amended law is changed to allow the motion to stay discovery in a criminal case to a motion from any party, not just on motion by the plaintiff.

Other Reference Documents

2016 Legislative Post Audit of Seized and Forfeited Property

[Full Report](#) [Highlights](#)

[Report of the Judicial Council Civil Asset Forfeiture Advisory Committee](#)

The author of this document is not an attorney and this is not legal advice. It is a summary of legislation passed in the 2018 Kansas legislative session and is based on explanations, observations, and studies of the bill and related documents.

Always follows your agency policies and utilize your agency protocol to refer to your local prosecutors and agency attorneys for legal interpretations.