



# Kansas Peace Officers Association

P.O. Box 2592, Wichita, KS 67201-2592

(316) 722-8433 • kpoa@kpoa.org • <https://kpoa.org>

*“Co-operation and Justice”*

## **Testimony to Committee on Judiciary Opposing HB2640 February 15, 2022**

Chairman Patton and Committee Members,

The Kansas Peace Officers Association (KPOA) is providing written testimony not supporting HB2640.

The purpose of civil and criminal forfeitures is for law enforcement agencies to utilize the ability to seize assets of ill-gotten gains from illegal criminal enterprises with the hope of disrupting the enterprise and better communities in Kansas. The current process to seize and/or forfeiture property can either be filed in the state court or the federal court, both of which have a similar process that takes place with judicial review just as any other criminal or civil procedure. In 2018, the Kansas legislature passed K.S.A. 60-4127 that requires all Kansas law enforcement agencies to report asset seizure and forfeiture information to the Kansas Asset Seizure and Forfeiture Repository (KASFR). The KASFR website allows the Kansas Bureau of Investigation (KBI) to collect and maintain the reports submitted by law enforcement agencies to provide a representation of asset seizures and forfeitures in the State of Kansas. It also provides a means for the information to be publicly available. The information submitted consists of completed forfeiture action(s), which are actions of any civil forfeiture case with completed court proceedings, as well as any case that may have been resolved by the law enforcement agency prior to or during court proceedings.

“Civil Forfeiture” general process remains in place, but is limited. HB2640, Sec. 25, pages 9-10; does not repeal civil forfeiture statutes, but only amends K.S.A. 60-4103 providing only civil forfeitures for higher dollar amounts (property seized with a value more than \$100,000...with all other property subject to criminal forfeiture). KPOA does not support or agree with the language for seizure and forfeiture as it relates to values more than \$100,000. Most law enforcement agencies are not seizing property in excess of \$100,000 and are more in the realm of under \$10,000. County and/or District Attorneys jurisdictions vary across Kansas and may have a threshold of \$500 or more.

“Abandoned Property” as detailed in HB2640, Sec. 2, page 1, lines 15-17. This does not include real property, but could create a waiver from criminal forfeiture if it is considered abandoned property when the owner “relinquishes all rights to control of such property”.

“Actual Knowledge” means direct and clear awareness of information, a fact or a condition, as defined in HB2640, Sec. 2, lines 19-20. This definition is inconsistent with “knew or should have known”. It appears to only apply to the criminal forfeitures. HB2640, page 7, line 7-8; “innocent owner had actual knowledge or reasonably should have known that the property was used in or derived directly from the crime giving rise to forfeiture”.

The wording used in HB2640 specifically “the crime” causes concern as proceeds for forfeiture are required to have a criminal case connection to “the crime”. The wording should be changed in its entirety throughout the bill. If the criminal case connection is plead down to lesser charge and does not have a direct connection to the proceeds the forfeiture may not be able to occur.

“Instrumentality” means property otherwise lawful to possess that is used in a crime giving rise to forfeiture, as defined in HB2640, Sec. 2, lines 31-35. The definition is specific to a finite list of “instrumentality” with no flexibility built in and appears to only apply to criminal forfeitures.

Waiving interest in property seized as it relates to HB2640, Sec. 9, page 3, lines 20-23; this prohibits a law enforcement officer from requesting, inducing, or requiring a person to waive a person’s interest in property for purposes of seizing. This request seems to prohibit even when asking for a waiver when a person denies ownership at time of seizure. In the first sentence (line 20-22), it does not specify it is talking about a written waiver. On a general traffic stop, there is conversation over general topics as law enforcement conduct the stop and obtain information. Is there anything wrong in asking a person if they own or have interest in the property they are driving, pulling, etc. and qualifying it with a statement from the person? This appears to only apply to criminal forfeitures.

Vehicle(s) seized as it relates to HB2640, Sec. 16(b)(6), page 5 line 42, page 6 line 3; the court can consider if by seizing or forfeiting the vehicle this creates a “hardship” for the defendant the vehicle could be returned. This does not detail anything if the defendant’s livelihood in criminal activity and by providing the vehicle back the court is assisting in furtherance of additional criminal acts. This appears to only apply to criminal forfeitures.

HB2640, Sec. 24, page 8, line 30 to page 9, line 14; only appears to apply to criminal forfeitures (court ordered) not civil in reference to distribution of proceeds.

In closing, Kansas does not have a set of rules that is backed by audits as the Federal Government. As it relates to the Federal Asset Forfeiture rules, the federal guidelines and rules are very firm and clear. KPOA would propose the State of Kansas adopt similar rules as the Federal Government.

Thank you for your consideration,

Ed Klumpp  
KPOA Legislative Liaison