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ASSET SEIZURES IN THE SUNFLOWER STATE:

How Civil Asset Forfeiture
Imperils People's Rights in Kansas

ABOUT AMERICANS FOR PROSPERITY FOUNDATION

Americans for Prosperity Foundation is a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.

ABOUT THE AUTHOR

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Executive Summary

In 2018, state lawmakers passed legislation that requires all Kansas law enforcement agencies to report asset seizure and forfeiture information to the Kansas Asset Seizure and Forfeiture Repository (“KASFR”). The legislature did this to bring transparency to civil asset forfeiture activities in the state. Americans for Prosperity Foundation (“AFPF”) examined the KASFR data, which includes incident reports on all “completed” forfeiture actions from July 1, 2019, to December 31, 2021.

AFPF’s analysis finds:

- Kansas law enforcement reported seizing \$21.3 million from people in the state;
- Since 2019, on average, law enforcement reports taking over \$13,000 per day in money and property from people in Kansas, most of whom have not been, and may never be, convicted of a crime;
- According to the KASFR, Kansas law enforcement has transferred \$5 million in seized assets to federal agencies for forfeiture, meaning the Kansas Bureau of Investigation annual reports omit up to one-third of the total value of money and property forfeited;
- 60% of the seizures have a total value of \$5,000 or less, meaning most seizures do not involve amounts that would disrupt organized crime operations;
- Owners of seized property in the KASFR have recouped just 8% of the value of their seized assets;
- For people who were able to recover their seized property, the average time from the date of seizure to the date of disposition is 419 days; and
- Half of all seizures in the KASFR database have a value of \$3,100 or less, which means, for most people whose property has been seized by Kansas law enforcement, the cost of recovering their property is greater than the value of the property seized.

Transparency is necessary for accountability. The KASFR data provides the public with a general picture of forfeiture activities in Kansas, but dark spots remain. Kansas civil asset forfeiture laws present law enforcement with a compelling profit motive to seize people’s money and property. Those same laws make it easy for law enforcement to take people’s property and overwhelmingly difficult for owners to recover it. Civil asset forfeiture imperils peoples’ rights to property and due process in Kansas. What is really the motivation for forfeitures in the Sunflower State: to promote public safety or generate revenue?

Americans for Prosperity Foundation (“AFPF”) analysis of new data reveals that over the last several years Kansas law enforcement agencies have seized over \$20 million in money and other property from people in the state. Although an overwhelming majority of the owners have not been convicted of a crime, virtually all the seized assets have been forfeited to law enforcement through a procedure known as civil asset forfeiture.

Kansas’ civil asset forfeiture laws allow law enforcement to seize and keep people’s money and property if law enforcement suspects it is connected to criminal activity, even if the owner is never charged with or convicted of a crime. And under Kansas forfeiture laws, one hundred percent of the proceeds from forfeiture go right back to those who seized the property—law enforcement. This arrangement creates a compelling profit incentive for Kansas state and local law enforcement agencies to seize people’s money and property.¹

In 2018, state lawmakers passed legislation that requires all Kansas law enforcement agencies to report asset seizure and forfeiture information to the [Kansas Asset Seizure and Forfeiture Repository](#) (“KASFR”), which is maintained by the Kansas Bureau of Investigation (“KBI”).² The legislature did this to finally bring transparency to civil asset forfeiture efforts in the state. However, as a [recent report](#) highlights, ambiguous requirements, reporting errors, and accounting discrepancies obscure the extent of forfeiture activities in Kansas.³

AFPF examined the KASFR data, which includes incident reports on all “completed” forfeiture actions from July 1, 2019, to December 31, 2021.⁴ For seizures with pending forfeiture proceedings, incident data is not available; however, the KBI data includes pending forfeiture fund balances, which AFPF also analyzed as part of this report.

The State is on the Take and The Gettin’ is Good

AFPF’s analysis of the [KASFR incident reports](#) finds Kansas law enforcement seized over \$16.3 million in money and property. The [2021 Pending Forfeiture Fund Report](#) shows pending forfeitures totaling just under \$5 million. Based on the average value of seizures in the KASFR database, AFPF estimates there are around 370 pending seizures.

In sum, the database includes \$21.3 million seized by Kansas law enforcement agencies. Since 2019, on average, **law enforcement is taking over \$13,000 per day** in money and property from people in Kansas, most of whom have not been, and may never be, convicted of a crime.

The KASFR data shows that only 22% of owners have been found guilty of a crime thus far. Another 37% of owners have yet to be charged with a crime. While 78% of owners in the KASFR are still legally innocent, the state has forfeited approximately 90% of the seized property.

\$21
MILLION
SEIZED



\$13M
CURRENCY



\$3M
VEHICLES



\$5M
PENDING

1. Lisa Knepper et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, at 92 (3rd ed. 2020), INSTITUTE FOR JUSTICE, <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf>

2. Kansas Bureau of Investigation, *Kansas Asset Forfeiture Reporting*, <https://kasfr.kbi.ks.gov/> (last visited Apr. 19, 2020).

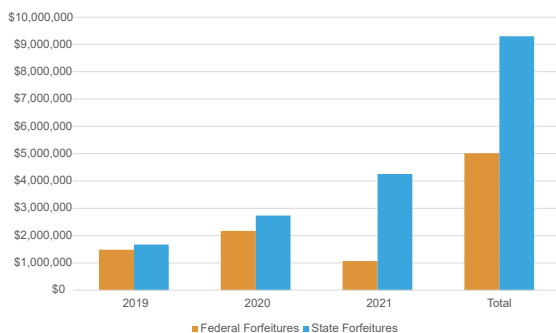
3. Duane Schrag, *Kansas law enforcement routinely produces error-filled reports on seized cash and property*, KANSAS REFLECTOR (Apr. 17, 2022), <https://kansasreflector.com/2022/04/17/kansas-law-enforcement-routinely-produces-error-filled-reports-on-seized-cash-and-property/>.

4. Incident reports are made when a forfeiture action is completed; thus, the date of some seizures predates the reporting period.

Federal Forfeitures Flout Transparency

The KBI's [annual reports](#) on civil asset forfeiture grossly under represent the total amounts of cash and property forfeited by the state. The Bureau's figures do not include assets Kansas law enforcement seizes and then hands over to federal agencies for federal forfeiture.⁵ Through a program known as equitable sharing, federal agencies return a percentage of the proceeds from federal forfeitures to Kansas law enforcement, which amounts to millions of dollars in unreported forfeitures annually.

Value of State and Federal Forfeitures Reported in KASFR



The KBI annual reports show the state has forfeited \$9.4 million through state proceedings. However, AFPP finds Kansas law enforcement has transferred \$5 million more in seized assets to federal agencies for forfeiture, meaning the **KBI reports leave out up to one-third of the total value of money and property forfeited.**

The KBI annual reports include total expenditures from Kansas law enforcement agencies' federal forfeiture funds. The KBI also makes available annual data on the federal forfeiture balances, including starting balance, ending balance, total deposits, and total expenditures. Presumably, the deposits into the state's federal forfeiture accounts would come from proceeds shared via the equitable sharing program. However, current reporting practices make it impossible for the public to know from which seizures the proceeds originated.⁶

Civil Asset Forfeiture Targets: Cartels or the Common People

Proponents of civil asset forfeiture argue it is a necessary and effective tool to fight large criminal enterprises, alleging that

seizing criminals' assets makes it harder for them to continue their illegal operations. In practice, though, most of the people caught up in Kansas' civil asset forfeiture regime are ordinary people, not members of criminal cartels.

60%
of seizures
have a
value of
\$5,000
or less

AFPP's analysis of the KASFR data reveals that 60% of the seizures have a total value of \$5,000 or less. One incident report is for a seizure of just \$70 in cash. The owner contested the seizure, but the state forfeited the cash to law enforcement despite declining to criminally prosecute the owner. Most seizures in Kansas do not involve values that would injure organized crime operations but that often amount to a significant loss for the average person—and many more are just petty takings.

Promoting Public Safety or Policing for Profit?

Some seizures are major scores. Last year, a Kansas county sheriff's office worked with the U.S. Drug Enforcement Administration ("DEA") [to seize \\$165,000](#) from an armored vehicle.⁷ The van was transporting the proceeds from legal medical marijuana sales made in Missouri to Colorado. The DEA surveilled the vehicle as it retrieved cash from legally operating dispensaries, then alerted a Kansas sheriff's deputy when the van re-entered Kansas. The sheriff's deputy stopped the vehicle and seized the cash without charging the driver with a crime or even issuing a traffic citation.⁸

Transcripts received pursuant to a Kansas Open Records Act request reveal that a Dickinson County sheriff's deputy teamed up with a DEA agent to systematically

5. See generally Dick M. Carpenter II, Ph.D. et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, at 25 (2nd ed. 2015), INSTITUTE FOR JUSTICE, <https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf>; Dept. of Justice and Dept. of Treasury, *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies* (July 2018), <https://www.justice.gov/criminal-afmls/file/794696/download>.

6. *Supra* note 3.

7. Jacob Sullum, *Kansas and California Cops Used Civil Forfeiture to Stage Armored Car Heists, Stealing Money Earned by Licensed Marijuana Businesses*, REASON (Jan. 18, 2022), <https://reason.com/2022/01/18/kansas-and-california-cops-used-civil-forfeiture-to-stage-armored-car-heists-stealing-money-earned-by-licensed-marijuana-businesses/>.

8. *Id.*

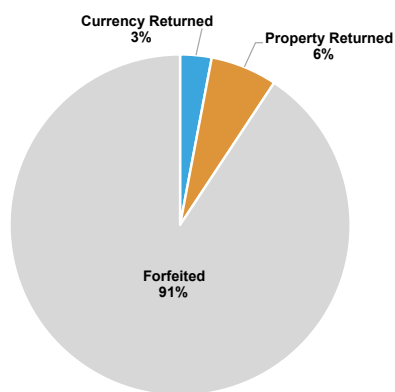
[target](#) the transport company’s vehicles.⁹ During a phone call, the two discussed entering all the company’s vehicle’s license plates into a database that would make them easily identifiable. “Smash them into submission,” the DEA agent exclaimed.¹⁰ **In this case, instead of fighting cartels, local law enforcement conspired with a federal agency to weaponize civil asset forfeiture and harm a legal small business.**

Indeed, recent studies find little evidence that civil asset forfeiture reduces crime.¹¹ For example, New Mexico passed laws to end civil forfeiture, redirect all criminal forfeiture proceeds to the state’s general fund, and place restrictions on the federal forfeiture equitable sharing program. An analysis conducted by the Institute of Justice five years later found the forfeiture reforms had no effect on New Mexico’s crime rates.¹² The findings undermine the argument that civil asset forfeiture prevents crime and promotes public safety.

Recovering Seized Property is Rare

Virtually all the assets seized by Kansas law enforcement are forfeited, meaning extraordinarily little of the seized property is ever returned to the owner. The KASFR shows Kansas law enforcement agencies have seized more than \$13 million in cash, of which the state has returned only 3% to the owner. Overall, owners of seized property in the KASFR have recouped just 9% of the value of their seized assets.

Percentage of Value of Seized Assets Returned to Owner July 1, 2019 - Jan. 31, 2021



Recovering seized property is difficult for several reasons. First, the owner must prove their property’s innocence.

9. Duane Schrag, *How a Kansas traffic stop led to a federal lawsuit over \$1.2M in seized marijuana profits*, KANSAS REFLECTOR (Feb. 6, 2022), <https://kansasreflector.com/2022/02/06/how-a-kansas-traffic-stop-led-to-a-federal-lawsuit-over-1-2m-in-seized-marijuana-profits/>.

10. *Id.*

11. See generally Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, 56 *Urban Affairs Review* 5 (Jan. 1, 2020), available at <https://journals.sagepub.com/doi/full/10.1177/1078087418791775>.

12. *Supra* note 1, at 32.

13. *Supra* note 1.

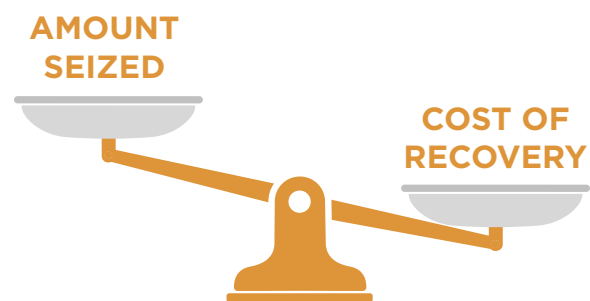
14. *Id.* at 20.

Additionally, the state faces a lower standard of proof. While prosecutors must prove criminal defendants’ guilt beyond a reasonable doubt, in forfeiture proceedings the state must show the seized property is connected to criminal activity only by a preponderance of the evidence. Kansas’ forfeiture laws make it easy for the state to seize people’s property and exceedingly difficult for owners to recover it.¹³

419
average
number of
DAYS
to recover
property

The time and costs of forfeiture proceedings also present significant barriers to recovering seized property. For those few owners who were fortunate enough to have their property returned, the average time from the date of seizure to the date of disposition is 419 days. It took one owner six years to recover their property through the court.

In many cases, the cost of recovering the property is greater than the value of the property seized. The Institute for Justice estimates the average cost to hire an attorney to fight a simple state forfeiture case is \$3,000.¹⁴ Half of all seizures in the KASFR database have a value of \$3,100 or less. Most people whose property has been seized by Kansas law enforcement are better off forfeiting what was taken.



Conclusion

Transparency is necessary for accountability, and the KASFR data provides the public, for the first time, with a general picture of forfeiture activities in Kansas. The KBI recently updated the data, adding hundreds of new incident reports from across the entire reporting period. AFPF's analysis of the data shows Kansas law enforcement is seizing thousands of dollars daily—millions annually—from people in Kansas. But most seizures involve relatively small amounts unlikely to disrupt criminal cartels.

Although the KASFR database sheds light on forfeiture activities in Kansas, dark spots remain. The Kansas Reflector reported on many glaring accounting discrepancies in the KASFR.¹⁵ AFPF finds the KBI reports omit around one-third of the total value of property forfeited in the database. The public lacks vital information about those federal forfeitures, such as how much of the proceeds from each seizure were shared with Kansas law enforcement.

Kansas civil asset forfeiture laws present law enforcement with a compelling profit motive to seize people's money and property. Those same laws make it easy for law enforcement to take people's property and overwhelmingly difficult for owners to recover it.¹⁶ While virtually all the assets seized by Kansas law enforcement are forfeited by the state, less than one-quarter of the owners have been convicted of a crime since reporting began.

Civil asset forfeiture endangers peoples' rights to property and due process in Kansas. Considered alongside recent studies indicating civil asset forfeiture is not an effective tool for fighting crime, Kansas forfeiture activities—including knocking over an armored vehicle transporting cash on the interstate—call into question the motivation for forfeitures: to promote public safety or generate revenue?

15. *Supra* note 3.

16. *Supra* note 1, at 23.

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