



# Legislative Post Audit Performance Audit Report Highlights

## Seized and Forfeited Property: Evaluating Compliance with State Law and How Proceeds Are Tracked, Used, and Reported

### Report Highlights

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#### **Summary of Legislator Concerns**

*Legislators have expressed interest in knowing how Kansas compares to other states, and whether Kansas law enforcement agencies are following all requirements related to seized and forfeited property.*

#### **Background Information**

*The Kansas Standard Asset Seizure and Forfeiture Act allows law enforcement agencies to seize money or property used in certain crimes. Under the act, law enforcement agencies can seize an individual's property without charging or convicting the person of a crime. Instead, law enforcement agencies must have probable cause that the property was used in an offense.*

*By law, all seized property that is forfeited becomes the property of the law enforcement agency. Under the Forfeiture Act, a judge determines that ownership of seized property may be transferred to a law enforcement agency through a process known as civil asset forfeiture.*

#### **QUESTION 1: How Does Kansas's Property Seizure and Forfeiture Process Compare to Other States?**

- We compared the seizure and forfeiture process in Kansas to Iowa, Nebraska, Missouri, New Mexico, and the federal government.
- Kansas is similar to the other states and the federal government in terms of what property can be seized by law enforcement agencies and under what conditions.
  - All five states and the federal government allow law enforcement agencies to seize property based on probable cause.
  - Like all four comparison states and the federal government, Kansas allows seizure of real and personal property including cash, guns, vehicles, land, and contraband.
- Requirements for forfeiting property, spending forfeiture proceeds, and reporting on forfeiture activity varied significantly.
  - State and federal laws vary on whether property can be forfeited without a criminal conviction.
    - Kansas, Iowa, and the federal government do not require an individual be convicted of a crime before their property can be forfeited in a civil forfeiture case.
    - By contrast, Missouri, Nebraska, and New Mexico require that an individual be convicted of a crime before their property can be forfeited in a civil forfeiture case.
  - States and the federal government vary in terms of how forfeiture proceeds can be used and who can spend them.
    - Kansas and Iowa allow law enforcement agencies to keep most forfeiture proceeds and to decide how to spend them.
    - In other states, most forfeiture proceeds are not kept by law enforcement and are used for other purposes.
    - The federal government allows federal law enforcement agencies to use forfeiture proceeds, but does not allow them to decide how to spend them.
  - Reporting requirements vary across all five states and the federal government.
    - All states and the federal government require agencies to report on forfeitures, though the reporting method varies.
    - Missouri, Nebraska, New Mexico, and the federal government require centralized reporting on forfeited property.
    - Additionally, Iowa, Missouri, and the federal government have laws that penalize agencies for noncompliance with forfeiture reporting requirements.

- In 2016, the Legislature considered two bills that would have changed forfeiture requirements in Kansas, but neither bill passed.
  - House Bill 2638 would have required criminal conviction for forfeiture and changed where state and local law enforcement agencies deposit forfeiture proceeds.
  - House Bill 2699 also would have changed where local law enforcement agencies deposit forfeiture proceeds.

## **QUESTION 2: Are Law Enforcement Agencies Following State Legal Requirements and Best Practices for Property Seizures and Forfeitures?**

- We evaluated the following state and local law enforcement agencies' processes for property seizures and forfeitures under the state's forfeiture act: Kansas Bureau of Investigation, Kansas Highway Patrol, Coffeyville Police Department, Iola Police Department, Salina Police Department, and the Sedgwick County Sheriff's Office. We looked at their processes for safeguarding, liquidating, tracking, using, and reporting seized and forfeited property.
- Overall, the six law enforcement agencies we reviewed adequately safeguarded property, though there were a few exceptions.
  - All six agencies generally complied with major state laws and best practices for safeguarding property.
  - However, Coffeyville and Iola did not issue notice of seizure as required by state law, did not periodically review their seized property inventory, and did not adequately secure their vehicle impound lots.
  - Additionally, Salina's written inventory of seized items was not complete because it did not include vehicles.
- Although the six agencies we reviewed generally complied with state laws for liquidating forfeited property, several of the agencies were missing important controls surrounding this process.
  - Salina did not deposit all forfeiture funds directly into its forfeiture fund as required by state law.
  - At the time of our audit, the Kansas Highway Patrol had about \$218,000 in its forfeiture fund that had not yet been ordered forfeited by a court.
  - The four local law enforcement agencies we reviewed did not have a policy prohibiting their employees from purchasing forfeited property.
- Overall, the six agencies we examined lacked important controls for tracking forfeiture proceeds.
  - All six agencies described an adequate segregation of duties in which different people collected, deposited, and reconciled forfeiture proceeds.
  - However, none of the agencies conducted a periodic check to ensure all expected forfeiture proceeds were deposited or that all deposits were related to a forfeiture case.
  - Most law enforcement agencies also comingled forfeiture funds with drug-tax proceeds.
- Agencies appeared to have good processes for appropriately using forfeiture proceeds.
  - The six law enforcement agencies we reviewed spent forfeiture proceeds on a variety of items that appeared allowable under state law.
  - Most agencies obtained written approval of expenditures by the agency head, but we were unable to evaluate two agencies (Kansas Bureau of Investigation and Salina) that sometimes relied on verbal approvals.

*Law enforcement agencies can keep, transfer, destroy, or sell property after a judge has ordered forfeiture. Law enforcement agencies can use forfeiture proceeds for nearly any law enforcement purpose except normal operating expenses. Because the Forfeiture Act does not define the term "normal operating expense," it gives agencies wide discretion to determine appropriate uses of those funds.*

*We compared the seizure and forfeiture process in Kansas to four states (Iowa, Nebraska, Missouri, and New Mexico) and the federal government. We selected Iowa, Nebraska, and Missouri because of their proximity to Kansas. We selected New Mexico because it has received national attention as having strong seizure and forfeiture laws.*

*We also looked at the seizure and forfeiture processes of two state and four local law enforcement agencies in Kansas. The amount of forfeiture proceeds received by the law enforcement agencies varied. Kansas Highway Patrol had the largest volume with about \$842,000 in deposits in 2015. Iola Police Department had the smallest volume with only \$4,100 in deposits in 2015.*

*Law enforcement agencies may also receive forfeited property under other federal or state laws outside the scope of this audit. For example, a Kansas law enforcement agency can receive forfeiture proceeds under federal law if there is a joint investigation with a federal agency, or if a federal agency adopts a state or local forfeiture case. Additionally, law enforcement agencies can receive forfeiture proceeds under the state's drug-tax laws (K.S.A. 79-5201 et seq.).*

*Our 2000 audit found law enforcement complied with most state laws, but did not appropriately handle or report forfeiture proceeds. The 2000 audit found all six agencies disposed of forfeited property and established a fund for forfeiture proceeds as required by state law. However, the audit also found that agencies had issues with depositing and accounting for forfeiture proceeds. Our 2000 audit also found that most local law enforcement agencies did not submit an annual report to their oversight authority as required by state law.*

- State law enforcement agencies complied with reporting requirements in state law, but local agencies did not.
  - None of the four local law enforcement agencies we reviewed prepared an annual report because officials told us either they were not aware of the requirements or thought other information they compiled was sufficient.

#### Other Findings

- Agencies have broad discretion over how forfeiture proceeds can be used, which creates a risk agencies could begin to depend on them for operating funds.
  - State law allows law enforcement agencies to spend forfeiture proceeds on “special, additional law enforcement purposes,” but not on “normal operating expenses.”
  - Both the Kansas Highway Patrol and Salina spent forfeiture funds on what appeared to be normal operating expenses in 2015. However, in both cases officials told us the expenditures were for special and additional law enforcement purposes.
    - KHP spent approximately \$413,000 on employee salaries from December 1, 2012 through June 30, 2015. They told us they used forfeiture proceeds to pay the salaries (or portion of the salaries) only for individuals involved in the forfeiture process.
    - Salina officials told us they used forfeiture proceeds to pay for the expenses (cell phone bills) of their special drug task force. Because the drug task force is a special unit within the police department, officials determined these costs to be appropriate.
  - Allowing law enforcement agencies to use forfeiture proceeds for routine, reoccurring operating expenses significantly increases the likelihood agencies will become dependent on such proceeds in the future.
- Coffeyville’s arrangement with the Montgomery County Attorney to handle forfeiture cases creates a conflict of interest.
  - Law enforcement agencies may hire a private attorney to handle their forfeiture cases if a county or district attorney declines.
  - The Montgomery County attorney—who also operates a private law firm—declined taking Coffeyville’s forfeitures in his role as the county attorney, but instead agreed to take them in his alternative role as a private attorney.
  - In his role as a private attorney, the Montgomery County Attorney collected an estimated \$21,000 in legal fees from 2013 to 2015 that otherwise would have gone to the county attorney’s office.
  - This arrangement represents a conflict of interest we think would likely violate state ethics laws were the Montgomery County Attorney a state employee.
- Salina lacked important controls for money used for controlled drug buys.
  - Officers were sometimes allowed to check out large amounts of cash, which they kept in potentially unsecure locations.
  - Officers did not routinely return unused money.
  - Although officials told us they conducted periodic reconciliations of the money officers withdrew, our review of that process revealed some issues.
  - Salina’s weak or missing controls are particularly problematic because of the inherent risks associated with drug-buy money.
- None of the law enforcement agencies we reviewed had complete and written policies and procedures for seized and forfeited property.

## SUMMARY OF RECOMMENDATIONS

### Recommendations for Executive Action:

- We made numerous recommendations to each of the six agencies in our sample regarding the specific deficiencies we identified. Agency specific recommendations are included in Appendix B of the report.
- To avoid any potential conflicts of interest, the Montgomery County Attorney should either handle Coffeyville's forfeiture cases as the county attorney or make alternative arrangements (e.g. have the county counselor or a different private attorney handle Coffeyville's forfeiture cases).

### Recommendations for Legislative Consideration:

- To address whether agencies should have the discretion to use forfeiture proceeds for ongoing and reoccurring operating expenses, the House and Senate Judiciary Committees should consider legislation to clarify K.S.A. 60-4117(d)(3).
- To address consistent problems with local law enforcement agencies not complying with the state legal requirement for an annual report, the House and Senate Judiciary Committees should consider introducing legislation to either require and enforce a more centralized reporting structure or consider eliminating the reporting requirement altogether.

## AGENCY RESPONSE

- Kansas Bureau of Investigation, Kansas Highway Patrol, Coffeyville Police Department, Iola Police Department, and the Sedgwick County Sheriff's Office generally concurred with the report's findings and conclusions.
- Salina Police Department officials and the Montgomery County Attorney both disagreed with some of the report's findings, but we did not modify our findings or conclusions as a result of these concerns. Salina officials had concerns with our finding on drug-buy funds because the report does not describe expenditure reports they use to document drug buys. The Montgomery County Attorney had concerns with our finding on the conflict of interest he has created because the report does not describe a state law that addresses the role of the county counselor. The County Attorney's response did not make it clear whether he intends to implement the recommendation associated with this finding and our attempts to clarify this were unsuccessful. However, given his disagreement with the finding, it seems unlikely he will implement the recommendation.

### HOW DO I REQUEST AN AUDIT?

By law, individual legislators, legislative committees, or the Governor may request an audit, but any audit work conducted by the division must be directed by the Legislative Post Audit Committee. Any legislator who would like to request an audit should contact the division directly at (785) 296-3792.

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