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Laura Kelly, Governor

Testimony in Opposition to Senate Bill 458

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February 8, 2024

The Kansas Highway Patrol (KHP) appreciates the opportunity to provide written testimony in opposition to Senate Bill 458, and we respectfully request the Committee consider our agency's position.

Several months ago, a Judicial Council subcommittee consisting of all stakeholders studied the changes now contained in Senate Bill 458 and House Bill 2606. That subcommittee has since reported to the Legislature reasonable recommendations based upon their expert discussions, debates, and compromises. However, Senate Bill 458 contains two provisions that were not recommended by the subcommittee and that the KHP opposes: (1) raising the State's burden of proof from "preponderance" to "clear and convincing" evidence; and, (2) prohibiting federal adoption of civil forfeiture cases.

Civil asset forfeiture is not a criminal proceeding - it proceeds much like a quiet title action and involves only a dispute over property. Both the United States Supreme Court and the Kansas Supreme Court have held for generations that civil asset forfeiture is a constitutional use of a state's police power to remove property from criminals, make crime less profitable, and to redirect offending property to a better societal use. Raising the State's burden of proof will certainly make those lawful efforts more difficult.

The clear and convincing evidence standard has historically been reserved for more serious, non-property conflicts such as a loss of parental rights or an involuntary mental commitment. The burden of proof in Kansas property disputes is, and has been, a preponderance of the evidence for all parties. Assuming that Senate Bill 458's goal is to level the playing field in civil forfeiture, then any rise in the burden of proof should apply to all parties in a forfeiture action. As currently written, Senate Bill 458 raises only the State's burden. Other parties in the action remain at a preponderance of the evidence. KHP agrees with the majority of the expert subcommittee members that raising the State's burden of proof will unnecessarily make the recovery of unlawful criminal profits more difficult.

Regarding the prohibition on federal adoption of state and local forfeiture cases: many state and local Kansas law enforcement agencies lack the investigative and litigation resources of the federal government. Many civil forfeiture cases involve multi-state and sometimes international investigations. Asset forfeiture law is a highly specialized area and unlike most state district court judges, federal judges routinely hear civil forfeiture cases. Federal prosecutors also have greater resources than most Kansas county or district attorneys, especially in the smaller counties where many civil forfeiture cases arise. Kansas prosecutors have little time now and very few have any forfeiture experience. Sending to them the highly litigated cases currently handled by the federal government would surely overwhelm those county attorneys. Under current law and procedure, county attorneys are offered first right of refusal on all Kansas civil forfeiture cases, and only when they decline are those cases referred to a federal partner for federal litigation. Prohibiting federal adoption is both unnecessary and damaging to law enforcement's ability to handle more complex and important investigations, particularly when states are insisting the federal government do more, not less, in crimes with a nexus to border security such as drug trafficking and money laundering.

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