



Testimony on House Bill 2380
House Judiciary Committee
Presented by
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Good afternoon, Chair, Ranking Member, and ladies and gentlemen of the committee. Thank you for taking the time to consider the viewpoints of the Kansas Highway Patrol as it relates to HB 2380 and the Report of the Judicial Council, Civil Asset Forfeiture Advisory Committee.

I appreciate the thoughtful consideration you've given to those appearing before you today and trust that your continued deliberation will result in a balanced outcome for all Kansans - Kansans who trust that their leadership will continue to make public safety and anti-crime efforts a priority.

I also want to echo the points made by KBI Director Tony Mattivi and underscore that his agency and mine are in lockstep in our resolve to keep Civil Asset Forfeiture alive and well - protecting the program while working double time to ensure its efficacy as both a crime deterrence and a remedy to repatriate ill-gotten gains.

On balance, I have little concern with embracing the recommendations made in the Report. Before I address the recommendations themselves, I want to briefly comment on remarks made on Page 5, in the Introduction. I quote, "...*there is at least a perception among some members of the public that abuses are occurring...*" In my view, this perception is not supported by the data collected for the last four years. In fact, this body should be proud of the fact that it has in recent history continued to prioritize the balance between effectively disincentivizing the profiteering from illegal enterprise and the constitutional and property rights of Kansans. We need to make sure, as policy makers and law enforcers, that everything we do achieved the goal of changing that public perception. In continuation of that priority, the Committee recommended eight reform measures that continue to strike that balance.

In the interests of time, I want to speak on two of those recommendations.

Recommendation #2, found on Page 6 of the report, is captioned, "*Making Certain Property Ineligible for Forfeiture*", and essentially leaves open the question of setting a threshold value before civil forfeiture is appropriate. The Committee stops short of setting that value but noted that the estimated legal costs of contesting a forfeiture in court is roughly the same (\$3,000), as the median value of the 2,000 seizures reported to the KBI data repository. What that seemingly

infers, simply, is that if the statute were to be amended to set a \$3,000 value threshold before forfeiture can commence, those undervalued assets are potentially returned to a criminal enterprise.

The point I'd like to underscore as you consider what that threshold may ultimately be is really a question you must all necessarily wrestle with yourselves: If those illicit proceeds are not forfeited to the government, where do they go? Drawing on my 21 years of experience at the Drug Enforcement Administration, I can tell you that a majority of these proceeds are ultimately funneled to three entities: The Sinaloa Cartel, the Cartel Jalisco New Generation (CJNG), or the Chinese Syndicate. Our neighboring government to the south is often influenced ("corrupted") by the power, persuasion, and money of Sinaloa or CJNG; and our geopolitical foe in the Far East is the Chinese Government. Every dollar derived from drug trafficking, sex trafficking, indentured servitude, and related money laundering schemes that this lowered threshold would return to those criminal enterprises is a dollar that we've allowed to fund the corrupt practices of Mexico and China, among others. Here's another take – if the average cost for a fentanyl-laced counterfeit pill is \$30, you're effectively exempting from forfeiture the profit from the first 100 pills sold. If an agency can link any amount of illicit proceed to a crime that serious, it should never be exempt.

Recommendation #8, found on Page 9 of the report, is captioned, "*Fee-Shifting*", and creates the possibility that the seizing agency can be ordered to pay the claimant's attorney fees. While I generally am neutral on this provision, I would ask that additional consideration be given to a recommendation submitted to the Committee by KHP's representative. This provision substantially mirrors the fee-shifting scheme in the federal civil asset forfeiture statute found at 28 USC 2465. Doing so provides clearer guidance to the courts not currently recommended in the revisor's draft; while also protecting agencies from exorbitant and unforeseen costs. Moreover, capping these fees in instances where the claimant prevails – a fee intended to disincentivize the filing of questionable cases - fails to recognize that often the difference in shifting a burden of proof from a preponderance of the evidence in favor of the seizing agency back to the claimant is razor thin and therefore excessive fees seem more punitive than remedial.

Finally, there were six measures proposed in HB 2380 that the Committee does NOT recommend for reasons that are clearly and concisely articulated. I strongly believe that the Committee reached the proper consensus in each and urge this body to find itself in concurrence - again, this review process has found equity and fairness in due process protections and in terms of tackling serious criminal justice problems facing us today, these measures NOT recommended would tip the scales in an untenable balance.

In conclusion, the Kansas Legislature and this committee have taken thoughtful steps to ensure that the balance between law enforcement and our citizens is protected and trustworthy - both in 2018 with the passage of HB 2459 and now, with the deliberations of the Judicial Council. I acknowledge their hard work and strongly urge the House Corrections and Juvenile Justice Committee seek outcomes consistent with the consensus reforms outlined in this report.

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