



Written Opposition Testimony on House Bill 2380
House Committee on Judiciary

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The Kansas Highway Patrol (KHP) appreciates the opportunity to provide written testimony in opposition of House Bill 2380, and we respectfully request the Committee consider our agency's concerns.

Civil asset forfeiture is a valuable tool that the KHP utilizes to disrupt criminal enterprises of every type and size. This includes illegitimate interstate businesses involved in everything from the movement of illicit drugs and drug proceeds to trafficking people for labor or sex. Like legitimate enterprises, those businesses involve individuals operating on both a large and small scale. Our law enforcement personnel are highly trained to thwart the efforts of those individuals using Kansas roadways to further illegal enterprises including narcotics trafficking, money laundering, and human trafficking, to name only a few. Because we recognize that someone engaged in a business cannot operate without capital or a means of transportation, seizure and judicial forfeiture of these items is an invaluable tool to interrupt and damage these criminal enterprises.

As a tool, it is important to use civil asset forfeiture properly, especially when it involves government seizure of property. The Kansas Standard Asset Seizure and Forfeiture Act was amended in 2018 and several safeguards were put in place to ensure Constitutional protections existed for persons from whom property was seized. While many of the practices required by the 2018 amendments were already in use by the Patrol, we refined our practices to ensure we met or exceeded the standards. Our average seizure over the past 7 years is just under \$10,000. And when there is a smaller seizure there is a direct nexus between the property and a wrongful act, such as a vehicle being used for a felony violation of the flee and elude statute. We perform extensive investigations and return otherwise forfeitable property when the seizure and forfeiture is less than the potential risk to the property interest of innocent owners.

This is something that we would not have the discretion to do under HB 2380. The bill would require us to hold property until the end of the criminal process so that it can be forfeited upon conviction. Thus, depriving someone of the use and benefit of their property that may otherwise be returned. Furthermore, the current act already requires that the seizure not disproportionately affect the owner or other interested party and additionally protects individuals from government sanctioned bribery by prohibiting plea agreements that permit the use of potentially forfeitable assets to deal with the underlying criminal charges. A plea agreement involving property is explicitly contemplated by HB 2380

by adding a new subsection (b) to K.S.A. 60-4104 which could result in a situation where a defendant is allowed to buy a better deal.

Of specific concern to the Patrol as a law enforcement agency, is the ability to shut down criminal enterprises which prey upon the vulnerable and spread illegal narcotics across the country but especially to our Kansas communities. Often, individuals who are transporting the funds intended for human trafficking or drugs, are not involved as anything other than the transport mechanism, as they are preyed upon and exploited by the criminal enterprise directing them. The criminals responsible for these offenses are therefore out of the reach of law enforcement. The seizure and judicially authorized forfeiture of the proceeds, or fruits or instrumentalities of these enterprises are another way for law enforcement to slow or stop these individuals and businesses from making a profit. Ideally, civil forfeiture is coupled with criminal prosecution, and the Patrol refers charges to the appropriate prosecuting entity with every seizure of property it makes.

HB 2380 also precludes referral to federal partners for forfeiture. Currently there are certain seizures that are related to ongoing investigations conducted by those partners, and therefore the seizure must be folded into those investigations and timed in such a way so as not to inhibit them and jeopardize future investigations. Furthermore, federal resources can be a benefit when seizures are clearly tied to larger national and multinational criminal organizations. Referring these seizures to federal agencies is a way to continue to interrupt criminal enterprises and keep Kansas based resources focused on our citizens.

Civil asset forfeiture allows law enforcement to interrupt criminal enterprises by removing the profit that criminals use to further their businesses. The current statutory scheme and associated case law has Constitutional protections in place requiring notice to all potential innocent owners, an easy to fill out form to submit a claim which allows claimants to invoke the protections of the 5th Amendment and is overseen by the Courts. Disproportionate forfeitures are not permitted, and the Court is required by current law to review the proportionality of the seizure prior to any forfeiture being granted to law enforcement.

We sincerely thank members of this Committee for their consideration of our testimony, and we ask that they oppose HB 2380.

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