



Kansas Association of Chiefs of Police

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Testimony to Committee on Judiciary Opponent Testimony on HB 2640

Chairman Patton and Committee Members,

The Kansas Association of Chiefs of Police is providing written testimony in opposition of HB2640.

The Kansas Asset Forfeiture Act was first enacted in 1994. From then to now it has come under attack many times. Most often when there is an alleged abuse in another part of the country where their state law is not as robust as Kansas' laws concerning forfeiture

Once we get past the myths associated with the forfeiture debate we can look at facts here in Kansas. For the past 3 years, agencies have had to report forfeitures to the Kansas Asset Seizure and Forfeiture database. Compliance is high. And reports of real abuse of the process as it currently is, are low. Those complaints of abuse primarily come from people and groups who just what the process to be different.

The Kansas Civil Forfeiture has robust constitutional due process protections. All can be found in K.S.A. 60-4107 – 60-4113. There are eighteen specific protections for claimants that involve probable cause hearings, constitutional notice, dismissal of improper forfeitures, and others.

There is also a concern that property owners be convicted of a crime before a seizure can take place. The reasons this is impractical are myriad. The death of a defendant, the defendant flees the country, the defendant flees the jurisdiction and changes their identity, etc.

Here are some of our concerns with HB2640.

In New Sec. 2 on Page 2, lines 3-4. When dealing with criminal forfeitures the definition of "Proceeds" only includes things received from sale of property or contraband, appears to exclude by omission human trafficking proceeds. This is objectionable on many levels.

In New Sec. 5 (b) (2), Page 2 lines 39-41 and Sec. 12 (b). Page 3, line 38- page 4 line 5. There is confusion when it says that notice under paragraph (1) shall be made by personal service. If personal service is not made after reasonable attempts, notice may be made by publication. Does this apply to Civil as well as Criminal Forfeitures?

In New Sec. 7, Sec 7. Page 3, lines 6-11 and New Sec 12 on Page 3. These two sections also conflict with each other. In New Sec. 7, the officer is directed to give a receipt for property to the involved party. In New Sec. 12, the receipt shall be personally served by the prosecuting attorney. This makes the point where the time limit to file a claim uncertain.

In New Section 8, Sec 6(a) (2) & (3); Page 3, lines 14-16. We are concerned about the dollar value of a seizure being addressed in the bill language. Often times a criminal is doing street level sales and may have less than \$200 of illegally gotten gains from the sale of illicit drugs. Even though it is a relatively small amount, it is what they use to buy more product to distribute in our neighborhoods. It should be subject to seizure and forfeiture.

Additionally, criminals use “junk” cars to transport drugs or commit crimes and then have “good” cars that they drive when they are not engaged in their criminal enterprise. We believe the \$2000 value for vehicles would allow for criminals to keep vehicles they will continue to use to conduct their illegal behavior.

In New Sec. 15 (b) (1), page 5 lines 14-16; Sec 19 (c), page 7, lines 31-32. Property is allowed to be used to plea bargain in a criminal case. So, it is the opinion of the KACP that the defendant should not be able to bargain with ill-gotten gains to with a prosecutor in criminal forfeiture proceedings. It would also be objectionable in a civil forfeiture proceeding.

In New Sec. 22 (b), page 8, on lines 14-22, the bill says that if a non-defendant is later in the forfeiture process found to have at least 50% interest in the property the court is required to assess legal fees and other costs to be paid by the seizing agency and prosecutor. What about good faith?

In Sec. 25, Sec 25 on Page 9, lines 15-19. Makes the seizure of property over \$100,000 a civil forfeiture. Neither Sec. 1 nor Sec. 25 speak to the property value of exactly \$100,000.

There are additional problematic issues with HB2640 that should remove it from the legislature’s consideration.

Thank you for your consideration.

Chief Darrell Atteberry
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Legislative Committee Chair