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Testimony to the House Committee on Judiciary in Opposition to HB2640

February 16, 2022

Chairman Patton, Vice Chair Ralph, Ranking Member Carmichael, and Members of the Committee:

The Johnson County Sheriff's Office opposes **HB2640 - Creating a new process for criminal forfeiture of property with a value of less than \$100,000 that is used in the commission of certain crimes or is proceeds derived from certain crimes.**

Legislative Post Audit Report

In 2016, the LPA report "Seized and Forfeited Property: Evaluating Compliance with State Law and How Proceeds Are Tracked, Used, and Reported" compared Kansas' forfeiture process with those of four other states and the federal government. It also examined the seizure and forfeiture processes of two statewide and four local law enforcement agencies, finding that the agencies generally complied with major state laws and best practices.

HISTORY

Currently, in Kansas a forfeiture proceeding, follows strict guidelines. Kansas Statute provides that probable cause must exist that the property to be seized was used to further a criminal activity. Notice of seizure must be given within 30 days. The seizing law enforcement agency must file a seizure action through the District or County Attorney Office. The DA/CA can decide not to file such motion. If this is the case, the property is returned to the owner.

If the action is filed, then a court case proceeds in civil court with a judge presiding. Attorneys are present representing both the agency and the person who had property seized. A civil trial is conducted, and the judge decides if the property should be seized or returned to the owner.

In 2018, the Legislature amended the statute to provide when the county or district attorney approves another attorney to represent a local agency in the forfeiture proceeding, the county or district attorney is prohibited from approving an attorney with whom the county or district attorney has a direct or indirect financial interest. Similarly, for state agencies, the Attorney General is prohibited from approving an attorney with whom the Attorney General has a direct or indirect financial interest. Such county or district attorney and the Attorney General are prohibited from requesting or receiving any referral fee or personal financial benefit from any proceeding.

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Proceeds from the civil trial are used to satisfy certain security interests or liens, expenses of the proceedings, reasonable attorney fees, and repayment of certain law enforcement funds. If any funds are left over, they are to be used for an exclusive list of 12 special, additional law enforcement purposes. This money must be tracked with deposits and expenditures recorded. Additionally, the Legislature mandated a website, known as the [Kansas Asset Seizure and Forfeiture Repository](#) where information on seizures is recorded. The website is maintained by the KBI who also monitors compliance. Agencies not in compliance are not allowed to perform a forfeiture action.

These changes were a result of HB2459 in 2018. This bill was a product of the Kansas Judicial Council.

Our objections to this bill are as follows:

- There is no mechanism for a law enforcement agency to recover costs related to the investigation. Recovering costs saves taxpayers money. Without such a mechanism the cost for investigations could increase.
- The bill allows state agencies to participate in joint task forces with the federal government. There is no mention of local law enforcement agencies. Most of the task forces are comprised of local law enforcement and not state agencies. Is the intent of the bill to prohibit local law enforcement agencies from participating?
- Many seizures that occur, particularly when working as a task with the federal government, fall under the federal seizure laws. Those laws prohibit federal forfeitures from going to the general fund.

We have seen no indications of any systemic issues or violations of the current law that warrant the changes this bill proposes.

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