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Before the Senate Committee on the Judiciary
SB 458 Opponent Testimony
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Chairperson Warren, Vice Chair Wilborn, and Members of the Committee:

Thank you for the opportunity to provide testimony on Senate Bill 458 before this committee. I believe you all know that I would not seek out changes to the Kansas Standard Asset Seizure and Forfeiture Act (the Act). Nevertheless, I have submitted testimony in support of HB 2026, which codifies thoughtful and significant changes to the Act that were recommended by the Advisory Committee on Asset Forfeiture (the Committee). Unfortunately, this bill goes beyond what was recommended by the Committee and I oppose those additional provisions. Asset forfeiture is a useful and effective tool in removing the financial incentive and the means of trafficking narcotics and people. Most of the changes that Senate Bill 458 makes to the Act do an excellent job of balancing law enforcement's need for such a tool and the desire of all of us to protect the due process rights of any potential claimants. However; removing the ability of agencies to request federal adoption and granting the right to claimants for a jury trial tip the balance and could conceivably do more harm than good.

Allowing a jury trial in civil asset forfeiture cases is a change that the Committee thoughtfully considered, but ultimately rejected. From a practical standpoint, allowing a jury trial in asset forfeiture cases has the potential to prolong the process and require that agencies hold onto property longer without a resolution one way or another. Because dockets are still congested post-COVID, a jury trial is often scheduled six to twelve months out. These trials take longer in the courtroom because of the need to select and seat a jury and use valuable resources that could be directed at trying the criminal cases of violent offenders or those who sell Fentanyl and other deadly substances in our community. Since jury trials must be scheduled further out, seized property will likely remain in the custody of law enforcement for significantly longer while waiting for a resolution to the case. Furthermore, a jury trial is more costly for a claimant who hires counsel, as most attorneys charge more for a trial than other types of case work. All of this disadvantages a potential claimant and puts strain on an already overloaded judiciary.

The Committee also thoughtfully considered – but ultimately rejected – the idea of prohibiting a local agency to request federal adoption. The majority of the nearly 400 law enforcement agencies across Kansas have fewer than 20 full-time sworn officers and many, like the Hamilton County Sheriff’s Office, have closer to 5. Being able to request federal adoption frees up these precious resources to continue to protect the citizens they serve while still interrupting criminal enterprises via asset forfeiture. The Federal Bureau of Investigation and the United States Attorneys Office have more resources than any law enforcement agency in Kansas. They are able to handle these cases when local agencies may not. Removing the ability to even ask for federal adoption puts these communities in the difficult position of having to choose to expend resources keeping proceeds out of the hands of criminals or responding to the calls for service in their community.

The other changes in Senate Bill 458 include removing simple possession from the list of covered offenses, requiring a judge to approve a probable cause affidavit before a forfeiture case can be filed, and allowing claimants who successfully recover more than half of the property they allege is exempt from forfeiture to recoup attorney’s fees and costs of litigation. These significant changes protect innocent owners, while still allowing law enforcement to use this highly effective tool. The provisions of this bill that go beyond the Committee recommendations add cost, lengthen the process, and could keep property out of the hands of innocent claimants longer.

I urge you against adopting SB 458 as submitted. However, if the Senate Committee on the Judiciary were to eliminate the provisions of this bill that go beyond the recommendations of the Advisory Committee on Asset Forfeiture, I would then urge adoption of the legislation.

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