



Kansas Bureau of Investigation

Kirk Thompson
Director

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Testimony of Kyle Smith,
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In Support of HB 2028
Before the Senate Judiciary Committee
March 13, 2013

Chairman King and Members of the Committee,

On behalf of Attorney General Derek Schmidt and KBI Director Kirk Thompson, I appear in support of HB 2028, a bill to maximize the effectiveness of our asset forfeiture laws. Asset forfeiture can be an effective civil tool against criminal activity that complements criminal prosecution. Twenty years ago I had the privilege to serve as the chair of a task force appointed by then Attorney General Bob Stephan to review our laws on asset seizure and forfeiture. The result was the Kansas Standard Asset Seizure and Forfeiture Act (KSASFA) adopted in 1993. I am again heading up a task force to review possible improvements in our system and HB 2028 is a small preliminary fix to one problem while we review the entire act, with an eye towards a more thorough bill next session.

First and foremost, asset forfeiture removes from the offender the tools and instrumentalities from his criminal activity, thus making it more difficult for him to continue to commit crimes.

Second, profits from criminal activity can be seized which makes it particularly effective against crimes that are financially motivated.

Third, forfeiture sends a strong message to others who might be lured or tempted to try such criminal behavior. Ill gotten gains can seem tempting to kids on the street, but there is a wonderful counter measure when the kids see the cops driving the car that the drug dealer was driving last month.

Fourth, financial investigations are complex and expensive and the ability to finance such investigations and prosecutions by forfeiting the criminals' own proceeds and assets can be an effective incentive for law enforcement agencies to commit strained resources to such complex criminal activity.

HB 2028 makes a simple change to address a problem with our current law which allows some criminal to keep the property they use to commit the crimes and even the profits. Filing a civil suit under the Kansas Standard Asset Seizure and Forfeiture Act is quite different than prosecuting cases under the criminal code. Discovery is different, the standard of proof changes and the rules of civil procedure are much different than those for criminal cases. A law enforcement agency that has seized property in the course of an investigation goes to their local prosecutor, who has to decide both if there is sufficient proof and if the effort involved is worth the property involved. Since many prosecutors are not familiar with the different rules there is some reluctance to go after smaller cases that would not justify the learning curve and effort

required. Again there are many reasons to pursue forfeiture, and the proceeds available to law enforcement is probably the least important, but it sometimes overshadows the other reasons.

If a prosecutor declines to file, the law enforcement agency can request adoption by the KBI and Attorney General's Office, or, with the approval of the county or district attorney, hire local private counsel to handle the forfeiture.

However, the Attorney General's Office has many of the same financial constraints as do local prosecutors, which are made worse at the prospect of substantial travel and per diem costs, which render many forfeitures untenable. Private counsel are even less likely to be knowledgeable about forfeiture proceedings than prosecutors, but even if an option private counsel will normally require contingency fees of around 50%, which makes the cases difficult to justify for the agency, particularly in smaller cases. The AG and local prosecutors are limited to no more than 20% for fees.

The bottom line is that drug dealers and other criminals all too often are allowed to keep the profits and tools of the trade merely because the cost of a civil forfeiture case outweighs the merits for taking the property. What is worse is that most forfeiture cases are not contested, so if the case was pursued, it would be successful.

HB 2028 makes a small procedural change in that it provides that in cases handled by the Attorney General's Office, Shawnee County is added as a possible venue. In appropriate cases, this will allow the Attorney General's Office, which has a specially trained attorney to handle forfeitures, to offer that legal service to law enforcement agencies across Kansas, without eating up all the proceeds in travel expenses. The amendment allows for a party to move to change venue somewhere else but it at least gives us the option to handle some of these cases in a practical and expedient manner.

I would be happy to stand for questions.