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February 17, 2017

Nancy Strouse, Executive Director  
Kansas Judicial Council  
301 SW 10<sup>th</sup> Avenue  
Topeka, Kansas 66612

Dear Nancy:

We are writing to request Judicial Council study of the topic of civil asset seizure and forfeiture, which was the subject of a recent Legislative Post Audit (LPA) study and report, as well as five bills referred to the House Committee on Judiciary and three bills referred to the Senate Committee on Judiciary during the 2017 Session.

Both Committees heard presentations from LPA staff regarding their study and report. The House Committee held two days of hearings on the House bills and heard testimony from numerous conferees. Given the information presented by LPA and the conferees on the House bills, we believe that a more in-depth consideration of the issues raised by the LPA study and the legislation referred to both Committees would be helpful before the Committees take further action on any of the legislation.

The bills referred to and heard by the House Committee are:

**HB 2001, by the Legislative Post Audit Committee, eliminating the reporting requirements for law enforcement agencies concerning civil asset seizures and forfeitures (identical to SB 1);**

**HB 2003, by the Legislative Post Audit Committee, restriction on county or district attorney (identical to SB 3);**

**HB 2004, by the Legislative Post Audit Committee, clarifying and limiting discretion for expenditure of proceeds from civil forfeiture (identical to SB 4);**

**HB 2018, by Representative Finney, requiring conviction before forfeiture of assets; and**

**HB 2116, by House Committee on Corrections and Juvenile Justice, amendments to the Kansas Standard Asset Seizure and Forfeiture Act.**

The bills referred to the Senate Committee are:

**SB 1, by the Legislative Post Audit Committee, eliminating the reporting requirements for law enforcement agencies concerning civil asset seizures and forfeitures (identical to HB 2001);**

**SB 3, by the Legislative Post Audit Committee, restriction on county or district attorney (identical to HB 2003);**

**SB 4, by the Legislative Post Audit Committee, clarifying and limiting discretion for expenditure of proceeds from civil forfeiture (identical to HB 2004).**

These bills contain a variety of proposed changes in policy related to civil asset seizure and forfeiture (including some that would require a choice between alternative approaches contained in different bills), including reporting requirements, central collection of reports, representation of an agency by a private attorney, use of forfeiture proceeds, whether conviction is required for forfeiture, what underlying crimes are subject to forfeiture, what property is subject to forfeiture, and the procedural requirements for forfeiture proceedings.


We would appreciate the Judicial Council's consideration of and recommendations regarding the language and policy proposals contained in these bills and related issues, including:

- Should accountability and reporting requirements be changed;
- Should there be a centralized reporting system and, if so, who should administer the system;
- Is there an improved way to handle proceeds that would increase transparency and avoid the appearance of impropriety;
- Should a conviction be required for forfeiture;
- Are current due process protections regarding civil asset seizure and forfeiture both constitutional and adequate;
- Should counsel be appointed in forfeiture cases for those claimants who cannot afford their own, or are there other measures that could be taken to ensure a claimant gets an opportunity for a fair hearing, such as awarding attorney's fees if successful;
- Is the recommended Legislative Post Audit change to the law regarding private attorneys in HB 2003 and SB 3 sufficient to address that potential conflict of interest issue; and
- In making changes to the state forfeiture law, would additional legislation be needed to address or restrict agency participation in equitable sharing in proceeds from federal civil asset forfeiture to ensure that any state forfeiture changes enacted are not avoidable by merely shifting participation from state to federal programs, and would such legislation raise issues under federal preemption principles.
- Any other recommendations for improving the efficacy, public confidence, and constitutionality of the Kansas civil asset forfeiture system.

Please let us know if we can provide any further information or answer any questions regarding this request.

Thank you.

Sincerely,



Representative Blaine Finch  
Chairman, House Committee on Judiciary



Senator Rick Wilborn  
Chairman, Senate Committee on Judiciary