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To: Senate Judiciary Committee

**From: Thomas R. Stanton
Deputy Reno County District Attorney**

Re: SB 378

Date: March 7, 2018

Hon. Chairman Wilborn and Members of the Committee:

Thank you for the opportunity to submit testimony regarding SB 378, which proposes a statute designed to better define the crime of counterfeiting in Kansas to allow local investigation and prosecution of crimes involving the counterfeiting of counterfeit U.S. currency, and the distribution of that counterfeit currency.

My name is Tom Stanton, and I am the Deputy Reno County District Attorney. I am here today as the party responsible for the promulgation of this proposed statute. I am also a Past President of the Kansas County and District Attorney's Association, and I am here on behalf of the KCDA.

I have been a prosecutor in Kansas for 27 years, and during that time I have repeatedly run into situations in which persons present counterfeit U.S. currency to local businesses. While there are certainly federal statutes prohibiting this criminal activity, the limited resources of the federal government do not allow for the prosecution of these crimes unless the value of the currency exceeds a very high threshold. Very few of these local crimes reach that threshold, but the financial loss resulting from the activity is very costly to local businesses.

The crimes we see in Kansas range from the production of counterfeit currency, to the distribution of counterfeit currency, to the possession of equipment used to facilitate the criminal activity. The activity is sometimes fairly simple. I have seen cases in which a perpetrator will take a one-dollar bill, and "wash" the bill using chemicals to remove the ink from the bill. This results in a blank bill that retains the quality of currency paper. The

perpetrator then copies the image of a larger denomination bill onto the blank currency paper, and passes it off to a business as a \$5, \$10 or \$20 bill. I have also seen persons who use fairly sophisticated computer programs to print currency on heavy bond paper that they hope will fool a merchant who might be too busy to notice the bills are counterfeit. In some cases, the counterfeit bills are extremely difficult to detect.

Prosecutors throughout the state do prosecute these cases, mostly under either K.S.A. 21-5823 (Forgery) or K.S.A. 21-5824 (Making a False Information). However, neither of these statutes was designed for the act of counterfeiting, and neither precisely fit that crime. The counterfeiting statute we currently have (K.S.A. 21-5825) covers the counterfeiting of memorabilia and, more precisely, counterfeiting identification markings. It does not address crimes involving counterfeit U.S. currency.

The statute presented in SB 378 provides a more precise vehicle for prosecuting criminal acts involving the counterfeiting and distributing of U.S. currency. Additionally, since the crimes are already largely prosecuted under the statutes indicated above, the bed impact would be negligible.

The proposed statute defines three types of criminal activity regarding crimes associated with counterfeiting. Section (a)(1) describes the "making, forging or altering of any note, obligation or security of the United States" as criminal acts. This activity involves the actual process of counterfeiting such as those described above. Section (a)(2) describes "distributing, or possessing with the intent to distribute, any obligation or security of the United States knowing such obligation or security has been so made, forged or altered" as criminal acts. Section (a)(3) criminalizes the possession of "any paper, ink, printer, press, currency plate or other item with the intent to produce any counterfeit note, currency, obligation or security of the United States."

Penalties for violation of Sections (a)(1) and (a)(2) of the statute are dependent on the value of the counterfeit currency manufactured or possessed for distribution: a level 7 nonperson felony for value in excess of \$25,000, and a level 8 nonperson felony for value under \$25,000. A violation under Section (a)(3) is a level 9 non-person felony.

I was asked to promulgate this statute by Gregory Tiano of the United States Secret Service, and Dean Harcrow, a former detective of the Hutchinson Police Department. The request was made because of the inadequacies of the language of the currently used statutes to properly identify, and define the counterfeiting of currency. I worked with Agent Tiano, as well as with prosecutors in the United States Attorney's Office and the Sedgwick County Attorney's Office in the structuring of this legislation.

I have vetted the statute with Ed Klumpp. He has advised me that the Kansas Association of Chiefs of Police, the Kansas Sheriff's Association, and the Kansas Peace Officers Association will all support this legislation.

There may be concern on the part of the Committee as to whether this is an area of law pre-empted by the federal counterfeiting statutes. My research has revealed that several states, including Virginia and West Virginia, have counterfeiting statutes that allow the prosecution of counterfeiting crimes regarding currency used for commerce. Minnesota has a statute very similar to the statute proposed by SB 378. See Minn. Stat. Ann. § 609.632 (West). Therefore, while it is clear state prosecutors would be required to yield to federal prosecutors if the federal government wished to prosecute a specific case, there is nothing prohibiting Kansas prosecutors from prosecuting counterfeiting crimes pursuant to this proposed statute.

I have been authorized by the KCDA to express the support of that organization for the passage of this legislation. This legislation would allow Kansas prosecutors to charge and prosecute counterfeiting crimes within the state that would ordinarily not be prosecuted by federal authorities. The legislation defines specific criminal activity for investigators to rely upon when investigating a counterfeiting case. SB 378 also allows the courts of Kansas to more easily determine that a crime has been committed, without having to try to fit the alleged criminal activity under statutes that do not adequately cover the crime or crimes committed. The legislation also puts the citizens of Kansas on notice that counterfeiting currency is a crime for which they could be prosecuted in the district courts of Kansas. Finally, this legislation allows law enforcement and prosecutors to seek justice for businesses throughout Kansas which fall prey to counterfeiters.

I respectfully request that this Committee consider SB 378, and recommend this legislation for passage.

Respectfully submitted,



Thomas R. Stanton
Deputy Reno County District Attorney