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HB 2606 Proponent Testimony
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Chairperson Humphries, Vice Chair Maughan, and Members of the Committee:

Thank you for the opportunity to provide testimony on House Bill 2606 before this committee. While I believe you all know I would not seek out changes to the Kansas Standard Asset Seizure and Forfeiture Act (the Act), I support the thoughtful and complete work of the Judicial Counsel's Special Advisory Committee that led to the creation of this bill. Asset forfeiture is a useful and effective tool in removing the financial incentive and often the means of trafficking narcotics and people. The changes that House Bill 2606 make to the Act balance 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.

There are three substantive changes House Bill 2606 makes to the Act whose impact I do not think I can overstate. While the bill does alter other aspects of the Act, these three are the trifecta of important due process safeguards the advisory committee suggested with unanimous or near unanimous voice. The first is removing simple possession crimes from the list of covered offenses that allow forfeiture. This places the target of this highly effective tool solely where it belongs: on those who are engaged in the distribution of dangerous narcotics, not on those struggling with an addiction. Secondly, this bill requires officers who seek forfeiture of property to swear out a probable cause affidavit and have it approved by a judge prior to allowing the civil case to go forward. This affidavit, much like the one officers must complete to charge someone with a crime, provides judicial review and oversight earlier in the process. The third significant change to the Act is the fee shifting provision. This allows a claimant who recovers more than half of the property they claim is exempt from forfeiture to collect reasonable attorney's fees. Currently, the Act requires that if a seizing agency wins and asks the Court for attorney's fees, the Court *must* award them to the agency. Now, the Court *may* award fees to the seizing agency if it wins, but *must* award attorney's fees to the Claimant when they prevail. With the factors listed for the Court to consider when making the award to a successful claimant, this bill requires seizing agencies to carefully evaluate the costs of these actions by ensuring that they will be required to compensate a successful claimant.

The last change in House Bill 2606 I want to address is raising the burden of proof for law enforcement agencies from preponderance of the evidence, an admittedly low civil standard, to clear and convincing evidence. While lower than the criminal standard of beyond a reasonable doubt, this standard requires that law enforcement prove the property is subject more probably than not. This change to the burden of proof was not one with which all members of the Advisory Committee agreed, but everyone agreed that a higher standard would benefit potential claimants and help ensure that this powerful tool is used properly.

I believe the current asset forfeiture act is sufficient to protect the due process rights of individuals and provide law enforcement an invaluable tool in combating crime in Kansas. However, the substantive changes in House Bill 2606 strengthen those protections while still allowing law enforcement to dismantle criminal enterprises, both large and small, targeting the financial incentives for trafficking as well as the means to move the often deadly contraband that is their livelihood.

I encourage you to adopt House Bill 2606 as drafted.

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