

Neutral Testimony on House Bill 2606

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The Kansas Highway Patrol (KHP) appreciates the opportunity to provide written testimony surrounding House Bill 2606, and we respectfully request the Committee consider our agency's commentary.

Several months ago, a Judicial Council subcommittee consisting of all stakeholders studied the changes now contained in House Bill 2606 and Senate Bill 458. That subcommittee has since reported to the Legislature reasonable recommendations based upon their expert discussions, debates, and compromises.

However, House Bill 2606 contains one provision that the subcommittee did not recommend, and in fact a majority of the subcommittee had rejected: raising the State's burden of proof from the current "preponderance of evidence" to "clear and convincing" evidence. Civil asset forfeiture is not a criminal proceeding - it proceeds much like a quiet title action, and involves only a dispute over property. Both the United States Supreme Court and the Kansas Supreme Court have held for generations that civil asset forfeiture is a constitutional use of a state's police power to remove property from criminals, make crime less profitable, and to redirect offending property to a better societal use. Raising the State's burden of proof will certainly make those lawful efforts more difficult.

The clear and convincing evidence standard has historically been reserved for more serious, non-property conflicts such as a loss of parental rights or an involuntary mental commitment. The burden of proof in Kansas property disputes is, and has been, a preponderance of the evidence for all parties. Assuming that House Bill 2606's goal is to level the playing field in civil forfeiture, then any rise in the burden of proof should apply to all parties in a forfeiture action. As currently written, House Bill 2606 raises only the State's burden. Other parties in the action remain at preponderance of the evidence.

KHP agrees with the majority of the expert subcommittee members that raising the State's burden of proof will unnecessarily make the recovery of unlawful criminal profits more difficult.

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