



# Kansas Bureau of Investigation

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Before the House Committee on the Judiciary  
Tony Mattivi, Director  
SB 458 (Opposition)  
Kansas Bureau of Investigation  
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Chairperson Humphries, Vice Chair Lewis, and Members of the Committee:

Thank you for the opportunity to provide opposition testimony on Senate Bill 458 before this committee. I believe you all know that I would not seek out changes to the Kansas Standard Asset Seizure and Forfeiture Act (the Act). Nevertheless, I have submitted testimony in support of HB 2606, which codifies thoughtful and significant changes to the Act that were recommended by the Advisory Committee on Asset Forfeiture and the Special Committee on Civil Asset Forfeiture (the committees). Unfortunately, SB 458 goes beyond what was recommended by the committees and I oppose those additional provisions.

Asset forfeiture is a useful and effective tool in removing the financial incentive and the means of trafficking narcotics and people (along with other organized criminal activity). Most of the changes that Senate Bill 458 makes to the Act do an excellent job of balancing 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. However; removing the ability of agencies to request federal adoption and granting the right to claimants for a jury trial tip that balance and could conceivably do more harm than good.

In December of 2023, the Special Committee on Civil Asset Forfeiture met, reviewed the report prepared by the Judicial Counsel's Advisory Committee on Asset Forfeiture and heard testimony from proponents and opponents of civil asset forfeiture. Based on the Advisory Committee's report, and testimony the Special Committee heard in December, the Committee outlined eight changes to the Kansas Civil Asset Seizure and Forfeiture Act in their report. Aside from those eight recommended changes, the Special Committee's report recommended further study on four additional topics by a standing committee. Those four changes were: transfers and federal adoptions, the right to a jury trial in forfeiture proceedings, the right to counsel and where forfeiture proceeds should be directed. Two different committees studied this matter and both came to the same conclusion about what changes needed to be made to civil asset forfeiture in Kansas. Senate Bill 458 upsets the measured and balanced approach to change embodied by those two committees'

reports by including changes that they could neither agree on nor believed were ripe to be made without further study.

From a practical standpoint, allowing a jury trial in asset forfeiture cases has the potential to prolong the process and require that agencies hold onto property longer without a resolution one way or another. As dockets are still congested post-COVID, a jury trial is often scheduled six to twelve months out. These trials take longer in the courtroom because of the need to select and seat a jury as well as using valuable resources that could be used trying the criminal cases of violent offenders, those who sell Fentanyl, or who prey on our communities by selling other deadly substances. Since jury trials must be scheduled further out, seized property will likely remain in the custody of law enforcement for significantly longer periods while waiting for a resolution to the case. Furthermore, a jury trial is more costly for a claimant who hires counsel, as most attorneys charge more for a trial than other types of case work. All of this disadvantages a potential claimant and puts strain on an already overloaded judiciary.

The advisory committee also thoughtfully considered – but ultimately rejected – the idea of prohibiting a local agency from requesting federal adoption, while the special committee stated that this change needed further study. The majority of the nearly 400 law enforcement agencies across Kansas have fewer than 20 full-time sworn officers and many, like the Hamilton County Sheriff's Office, have closer to 5. Being able to request federal adoption frees up these precious resources to continue to protect the citizens they serve while still interrupting criminal enterprises via asset forfeiture. The Federal Bureau of Investigation and the United States Attorneys Office have more resources than any law enforcement agency in Kansas. They are able to handle these cases when local agencies may not. While not all cases for which a local agency requests adoption are accepted by the federal government, removing the ability to even ask for adoption puts these communities in the difficult position of having to choose to expend resources keeping proceeds out of the hands of criminals or responding to the calls for service in their community.

Moreover, I am strongly opposed to any legislation that prohibits, or even inhibits, cooperation between law enforcement agencies. I've said many times, particularly when talking about the fight against fentanyl, that law enforcement is stronger together than when operating in isolation. Our federal partners are critically important to the KBI's ability (and the ability of all Kansas law enforcement agencies) to fight crime in Kansas – whether drug trafficking, violent crime, or human trafficking. Prohibiting a state or local law enforcement agency from asking for help from a federal partner limits the effectiveness of that agency.

The other changes in Senate Bill 458 include removing simple possession from the list of covered offenses, requiring a judge to approve a probable cause affidavit before a forfeiture case can be filed, and allowing claimants who successfully recover more than half of the property they allege is exempt from forfeiture to recoup attorney's fees and costs of litigation. These significant changes are those contemplated and approved by both the advisory and special committee and they

protect innocent owners, while still allowing law enforcement to use this highly effective tool. The provisions of this bill that go beyond the committees' foundational eight recommendations add cost, lengthen the process, and could keep property out of the hands of innocent claimants longer.

I do not recommend the adoption of SB 458 as submitted. If the bill were amended to mirror the recommendations of the Advisory Committee on Asset Forfeiture and the Special Committee on Asset Forfeiture, as well as HB 2606, I would then urge adoption of the legislation.

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