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**Testimony to the House Committee on Judiciary
Opposing SB458
March 12, 2024**

Chair Humphries and Committee Members:

This testimony is on behalf of the Kansas Sheriffs Association, Kansas Association of Chiefs of Police, and Kansas Peace Officers Association in opposition to SB 458.

Our associations oppose the additional amendments proposed in SB458 that were not recommended by the Judicial Council Committee. We appreciate the work of the Judicial Council Committee and the House Judiciary Committee's consideration of following it, understanding that much of the results of the Judicial Council Committee's work was a give and take process.

Our opposition to SB458 lies with two provisions of the bill. Neither are present in HB2690, which follows the Judicial Council Committee recommendations. Those issues are 1) the prohibition of transfer of any forfeiture case to a federal agency; and 2) the option of jury trial. A third difference between SB458 and HB2690 is the amendments to the reporting requirement included in SB458 on page 26 lines 35-43. We do not oppose these reporting process amendments.

Transfer of Federal Forfeiture Cases to Federal Agencies

We oppose the amendments to KSA 60-4107 found in SB458 on page 7 lines 12-17 and amendments to KSA 60-4117 found on page 20 lines 19-23. We ask this committee to retain current language in both KSA 60-4107 subsection (m) and KSA 60-4117 subsection (a).

It is rare that Kansas law enforcement will transfer a forfeiture case to a federal law enforcement agency unless the criminal investigation resulting in the seizure for forfeiture is transferred to a federal agency. Those transfers most often occur when the case is connected to an ongoing federal investigation, or the investigation reveals a nexus to an interstate or international criminal activity. Further, if the nexus to an interstate or international crime operation is not known at the time of the seizure for forfeiture, federal agencies will rarely accept the case unless the entire case, including civil asset forfeiture proceedings, are transferred to the federal agency and there is a federal nexus to the involved crime. Occasionally, when a crime involves a repeat offender, prosecutors agree to transfer a criminal case to a federal agency due to higher sentencing provisions under federal law. It is our opinion, if this provision becomes law, it will interfere with the transfer of some criminal cases to federal agencies for expansion of the investigation.

Investigation of an interstate or international criminal enterprise is beyond the financial capabilities of local agencies. It also presents legal challenges when federal investigative authority of local law enforcement officers is not present.

There is no incentive for a local agency to refer a civil asset forfeiture case to a federal agency without an associated criminal investigation to transfer with it. A forfeiture case handled by the federal agency will result in less of the forfeited proceeds coming back to the local agency. There is also no incentive for local law enforcement to seek federal forfeiture to exempt the forfeiture action from the state reporting requirements, as federal forfeitures are also reportable to the KBI as you can see on page 23, lines 41-43 and page 24 line 16 of the bill.

The Judicial Council Committee considered this issue and did not recommend this change. The following is from their final report:¹

Prohibiting Federal Adoptions of Seizures

The final reform the Committee discussed was contained in Section 4 of HB 2380 and prohibits law enforcement from requesting federal adoption of a seizure. The data shows that the seizures transferred for federal forfeiture include seizures of large amounts of cash. Seizures of this kind are more likely to be related to an interstate criminal enterprise. Sometimes federal law enforcement is already engaged in a related investigation, and the seizure is transferred to them. It is also possible that there is not an existing federal investigation but evidence suggests the criminal activity involves an interstate nexus. Investigating interstate criminal activity is very costly for Kansas law enforcement. If federal adoption is requested, federal resources are used to fund the investigation. Kansas law enforcement's objective is to find out where the money came from and where it was going, and asking for federal assistance in an interstate investigation makes sense.

There are some states that make heavy use of federal adoptions because their state forfeiture laws are poor or too restricting. The Committee does not believe that is the case in Kansas. In addition, there is an incentive to handle forfeitures in state court because the law enforcement agency doesn't receive as much proceeds back from a seizure that has been transferred for federal forfeiture. The Committee does not believe that any of the reforms recommended in this report would cause law enforcement to choose federal adoptions as a way of circumventing state law. However, federal adoptions may be made more attractive for that purpose if the Legislature makes policy choices that go beyond the reforms suggested in this report, such as adopting HB 2380 in full. In that case, any restrictions on federal adoptions should take into consideration whether it is in Kansas's best interest to completely eliminate the option of making legitimate transfers of cases to the federal system for investigation.

Jury Trials

We also oppose the jury trial options found in SB458 in amendments to KSA 60-4113 found on page 15 lines 32-33; and amendments to KSA 60-4114 found on page 17, lines 32-33. We base that on two perspectives.

¹ [REPORT OF THE JUDICIAL COUNCIL CIVIL ASSET FORFEITURE ADVISORY COMMITTEE, December 1, 2023](#), page 14.

From a law enforcement perspective, the attorney fee transfer provisions in the Judicial Council recommendation was a difficult provision for law enforcement. The attorney fee cost transfer as presented in the bill is not based on any finding of maliciousness or failure to establish proper grounds for a civil forfeiture case. It is based solely on whether at least 50% of the seized assets are ultimately forfeited by the court. By adding the jury trial option, there is further risk a jury could just simply not agree with the forfeiture by a split decision resulting in the forfeiture not being granted even with solid legal grounds for seeking the forfeiture were present. We believe the combination of jury trial and mandated fee shifting, not based on bad faith, can be problematic.

From the perspective of the Judicial Council Committee, they also considered the jury trial option and did not recommend it. The following is from their final report:²

Right to a Jury Trial

Another reform contained in HB 2380 on which the Committee was unable to reach consensus was the right to a jury trial. Some Committee members strongly believe there is a right to a jury trial under the Kansas Constitution. Others were not necessarily opposed to the suggestion itself but think adding a statutory right to a jury trial is a policy question for the Legislature. The jury trial issue can cut both ways, and since the Committee was unable to establish a way to fund legal representation for claimants, there were concerns about both the added expense of a jury trial and the difficulty a pro se claimant would have in a jury trial with an attorney on the other side. In response to these concerns, a motion was made to recommend a right to a jury trial that only the claimant can invoke. The motion failed with 6 voting in favor and 8 opposed.

We encourage the Committee to remove the amendments relating to the transfer of forfeiture cases to federal agencies and relating to an option for jury trial from SB458.

Sheriff Jeff Easter, Sedgwick County
Legislative Committee Chair
Kansas Sheriffs Association

² [REPORT OF THE JUDICIAL COUNCIL CIVIL ASSET FORFEITURE ADVISORY COMMITTEE, December 1, 2023](#), page 13.