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**House Committee on Judiciary
Testimony in Opposition to SB 458
March 12, 2024**

Representative Humphries and Members of the Committee:

It is often said that politics is the art of compromise. And when it comes to reforming our asset forfeiture laws, that compromise has been long in coming. Civil asset forfeiture has had regular attention from the legislature since 2017. Some changes were made in 2018, mostly relating to reporting, but there has continued to be pressure for more extensive reforms since then. Unfortunately, those past bills have been repeatedly bogged down as proponents and opponents withdrew to their castles, pulled up their drawbridges, and shot arrows at each other.

The two committees that looked at the issue during the past few months, however, raised our hopes that a durable compromise could be reached. The work of the interim committees (one from the Judicial Council and one from the legislature) was hard and presumably tiring for those who participated. But the reports of those committees (which are largely the same in their recommendations) provide a solid footing on which to fix some of our asset forfeiture laws and help protect them from abuse. That is why the Office of the Attorney General and many in the law enforcement community support the reform bill that passed out of the Kansas House of Representatives, HB 2606. The House bill adopts the recommendations of the interim committees and adds an additional reform that the Attorney General and others worked to build consensus on over the past couple months: raising the evidentiary standard to “clear and convincing evidence.”

This is oversimplifying things, but the debate over asset-forfeiture reform has often boiled down to law enforcement and prosecutors on one side and civil libertarians and defense attorneys on the other.

But the Attorney General stands in a unique position with regard to this split. On the one hand, he oversees one of the state’s largest law-enforcement agencies (the KBI) and has a stable of prosecutors on his payroll. But, on the other hand, this Attorney General—perhaps more than any other in recent memory—is acutely aware that the state and federal constitutions place limits on government and exist to protect citizens rights. And, as an elected official, he is sworn to preserve and defend those limits and rights. That’s why he established a Special Litigation and

Constitutional Issues Division that litigates specifically to keep the government within its proper bounds. It's why he reinvigorated the office's review of regulations to include a stringent analysis of regulatory takings. And it's why he's taken a host of other steps to keep individual rights and limited, constitutional government at the forefront of the office's mission.

This dual role, we believe, gives the Office of the Attorney General unique credibility on both sides of this debate. And that is why we have been working behind the scenes to create and preserve a durable compromise on asset forfeiture reform—ensuring reform proponents that we will support real and consequential changes to our statutes, but also greasing the skids with law enforcement by making sure any changes do not make asset forfeiture practically impossible in those situations where it is truly needed. Tony Mattivi, the Attorney General's KBI director, has been instrumental in crafting such a compromise, and the AG thanks Director Mattivi specifically for his tireless work on this issue.

To be clear, the Attorney General strongly supports asset forfeiture reform. He recognizes that while forfeiture is an important tool in the law enforcement toolkit, it is easily abused and requires vigorous oversight to ensure it is used properly. Indeed, one of the first things this administration did upon taking office was to clamp down on asset forfeiture authorizations. We give each new forfeiture case the most stringent review they've ever received at the AG level, and no Special Assistant Attorney General for any state agency is allowed to file a civil asset forfeiture case in any state court without my sign-off. In the last year, we've stopped thousands of dollars in unwarranted forfeiture allegations from moving forward. And that is why the Attorney General supports the necessary reforms in HB 2606.

But the bill before this committee threatens to derail that compromise and send everyone back to their corners. It would discard the work of the last seven years and make it harder to achieve a durable compromise on this issue.

SB 458 adds two items to the compromise outlined above and embodied in HB 2606: first, it requires jury trials in all forfeiture cases, and second, it prohibits referring forfeiture cases to federal authorities. I understand the KBI's testimony will address in more detail why these proposals are not good, so I will just add that, as a former federal prosecutor myself, the ban on federal referral in particular makes very little sense. Many (perhaps most) federal forfeitures are criminal forfeitures—i.e., they require a criminal conviction and are ordered as part of the sentence in a criminal case. Requiring a criminal conviction has allegedly been a goal of many of the reform proponents; prohibiting federal referral works counter to that goal.

But, setting aside the merits of these ideas in general, the Attorney General's main point of opposition is that, with a durable compromise at hand, it would be foolish to walk away from it. Much of the difficulty in getting law enforcement on board with any reforms was a feeling that the proponents were not trustworthy partners and that their main goal was to get rid of asset forfeiture entirely, and any compromise would merely encourage them to take a bigger bite the next time. And after the long, hard work of the interim committees and the additional discussions and coalition-building since that time, SB 458 seems to justify those fears. If this bill is allowed to advance and the compromise represented by the interim committee reports is discarded, it will not only imperil reform of our civil asset forfeiture laws but also make worthwhile compromises

more difficult in the future. Consequently, the Attorney General opposes SB 458 and urges this committee to instead get behind HB 2606 when it eventually makes its way over.

Respectfully Submitted,

Daniel E. Burrows

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Office of the Kansas Attorney General