

February 16, 2022

The Honorable Fred Patton, Chairperson
House Committee on Judiciary
Statehouse, Room 582-N
Topeka, Kansas 66612

Dear Representative Patton:

SUBJECT: Fiscal Note for HB 2640 by Representative Osman

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2640 is respectfully submitted to your committee.

HB 2640 would create the Criminal Forfeiture Act and would outline a process for the criminal forfeiture of property with a value of less than \$100,000 that was used in the commission of certain crimes or is a proceed derived from certain crimes. The bill would specify that a court that has jurisdiction over a criminal case giving rise to forfeiture would also have jurisdiction over the related forfeiture proceeding. In addition, a court could issue an ex parte order to attach, seize, or secure personal property subject to forfeiture. A court order would be required to seize real property and a court would have to issue a notice to the owner of the property and conduct a probable cause hearing to determine whether seizure is allowed.

The bill would stipulate that no property rights would exist for stolen property or contraband. Stolen property would be required to be returned to the lawful owner and contraband would be required to be destroyed. If property is seized, the bill would require the law enforcement officer to give an itemized receipt to the person from whom the property was seized, which would constitute notice of the seizure. If the person is not present, the officer would be required to leave the receipt in a place where the property was found, if reasonably possible.

The bill outlines property that would not be subject to seizure, including money less than \$200 and a motor vehicle with a market value of less than \$2,000. The bill also specifies when property can and cannot be forfeited, certain property interests that would prohibit seizure and forfeiture, and procedures to return property for violations of the bill. Law enforcement officers would be prohibited from requesting a person waive their interest in property for the purposes of seizure or forfeiture and would make any such documents void and inadmissible in court. The bill also specifies how the prosecution could use forfeiture proceedings in plea agreements and other legal interests and creates a process where owners of forfeited property could file appeals. The bill also outlines procedures for determining ownership, holding various hearings, and disposition of seized and forfeited assets.

The Kansas Highway Patrol indicates that enactment of the bill could decrease revenues to the agency from forfeitures. The agency receives an average of \$848,970 each year from state forfeitures and indicates enactment of the bill would reduce opportunities to utilize forfeitures,

which could reduce revenues. The agency reports it has annual expenditures averaging \$437,240 from state forfeiture funds, which it states would have to shift to another funding source if the bill would result in decreased revenue. However, a precise fiscal effect cannot be determined because any potential reduction in revenue cannot be estimated.

The Board of Indigents' Defense Services indicates that enactment of the bill would increase expenditures of the agency by approximately \$400,000 from the State General Fund beginning in FY 2023 for assigned counsel and consultation services with outside civil asset forfeiture specialist attorneys or in expenditures to hire and train additional public defenders to specialize in such cases.

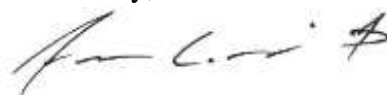
The Office of Judicial Administration indicates that enactment of the bill would increase expenditures because it would increase the workload of the judicial branch. The Office indicates that the bill's provisions would require judges and non-judicial staff to process and research new petitions, conduct court hearings within a certain timeframe, consider certain information and evidence before rendering a decision, issue court orders, process any appeals, and complete follow up work after court orders are issued. The bill could result in the collection of additional docket fees in cases filed under the provisions of the bill. However, a fiscal effect cannot be determined because the additional workload required by the bill cannot be estimated.

The Kansas Bureau of Investigation indicates it cannot estimate a fiscal effect. However, the Bureau notes that over the past five years, it has had a total of 28 federal forfeitures and 11 state forfeitures. Of those 39 forfeitures, one was larger than \$100,000.

The Office of the Attorney General indicates it does not pursue or receive any funding using state forfeiture and enactment of the bill would have no fiscal effect. Any fiscal effect associated with HB 2640 is not reflected in *The FY 2023 Governor's Budget Report*.

The Kansas Association of Counties indicates enactment of the bill could increase revenues to counties because the forfeiture process could result in additional court filing fees and other revenues related to the relocation of seized and forfeited assets. However, a fiscal effect cannot be determined because the frequency of forfeiture proceedings cannot be estimated.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Paul Weisgerber, KBI
Sherry Macke, Highway Patrol
Willie Prescott, Office of the Attorney General
Randy Bowman, Corrections
Vicki Jacobsen, Judiciary
Heather Cessna, Indigents Defense Services
Jay Hall, Association of Counties