

**COMMITTEE TESTIMONY COVER LETTER**

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BILL #: HB 2380

Date of Testimony: 2/15/23  
Person & Title for individual Testifying Mike Orled

If written testimony is on behalf of, please indicate.

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Please check one: Proponent  Opponent \_\_\_\_\_ Neutral \_\_\_\_\_

Please check one: Speaking  Written Only \_\_\_\_\_

Please check one: In person at committee  Virtually via Webex \_\_\_\_\_

Testimony before House Judiciary Committee  
HB 2380 – Civil Asset Forfeiture Reform  
Mike O’Neal on behalf of Kansas Policy Institute  
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Feb. 15, 2023

In-Person testimony in SUPPORT

Mr. Chairman and members of the Committee

Thank you for the opportunity to appear before the Committee today in support of HB 2380, especially, since the Chiefs Super Bowl parade is today!

We also appreciate that you were kind enough to hold hearings on this topic last session, where we were able to brief the Committee on the need for civil asset forfeiture reform. This session, we urge the Committee to take action. It is time.

In the years since civil asset forfeiture was first enacted, the landscape has changed quite dramatically. What was meant to provide law enforcement additional tools to crack down on the really bad actors, engaged in large-scale criminal activity, has devolved into mainly small-time seizures affecting individuals who have either never been charged with a crime, or are charged with a crime where the value of the cash or property seized is wholly disproportionate to the severity of the alleged crime. Many innocent owners get caught up in the process and defaults are common due to lack of representation and the inability to afford to contest forfeiture proceedings. It affects minorities disproportionately. SB 2380 is an effort to reform the process, preserving law enforcement’s right to forfeit cash and property in appropriate cases, while protecting the rights of those whose property is seized.

One of the most dramatic changes in the law of civil asset forfeiture has been the U.S. Supreme Court decision in *Timbs v. Indiana*, 586 U.S. \_\_\_, 139 S. Ct. 682 (2019). Timbs had pled to a count of dealing a controlled substance, and he was ordered to pay fees and costs of \$1203. His used Land Rover, worth \$40,000 was seized and the State moved to have the vehicle forfeited, as Timbs had been driving it when stopped and found to have a controlled substance in his possession. The value of the vehicle was 4 times the amount of the maximum fine that could have been assessed against him.

The case eventually landed in the United States Supreme Court, where the court dealt with the applicability of the excessive fines clause of the Constitution’s Eighth Amendment to state and local governments in the context of asset forfeiture. The Court, Justice Ginsburg writing the

opinion, unanimously ruled that the Eighth Amendment's prohibition of excessive fines is an incorporated protection applicable to the states under the Fourteenth Amendment. *Timbs* got his vehicle back after remand and additional protracted litigation. Note that Sec. 9 of the Bill of Rights in the Kansas Constitution is our state version of the excessive fines and penalties prohibition. Thanks to *Timbs*, we know it now applies to Kansas forfeitures.

In Kansas, under current law, a conviction is not required for a forfeiture to take place. For a forfeiture law to protect the rights of citizens, while affording law enforcement the tool of forfeiture, this must change. A conviction should be a pre-requisite to forfeiture.

Another change in the landscape that you will hear about shortly, is the growing body of law granting parties the right to a jury trial when property is sought to be taken by force of law. Further, there is mounting concern over the practice of "policing for profit", whereby seizing agencies have a financial incentive to seize under circumstances where the law allows them to keep the property or proceeds.

Make no mistake, I have the utmost respect for our law enforcement community. I taught future LEO's in the Police Science & Corrections program at Hutchinson Community College for 8 years, and as Chairman of this Committee for a total of 16 years I attended many graduations at the Law Enforcement Training Center. The original civil asset forfeiture statute was passed on my watch. We are here to preserve the public benefit of asset forfeiture while providing protections for that same public.

I will defer to Sam MacRoberts with Kansas Policy Institute and Jonathan Lueth with American for Prosperity to go into more detail with the law and statistics on asset forfeiture in Kansas. And yes, it's a problem in Kansas too. I'll highlight the changes to current law that are included in SB 2380 for your consideration.

1. The bill requires that property subject to seizure may only be forfeited after conviction.
2. A conviction would not be required if the forfeiture is pursuant to a plea agreement or an agreement for immunity or reduced sentence in exchange for testimony or other assistance to the prosecution or law enforcement.
3. Property with a cash value of less than \$2500 and cash or negotiable instruments of less than \$1000 would not be subject to forfeiture. Perhaps it should be higher.
4. Timelines for prosecutors to act is shortened to allow for earlier return of property in appropriate cases.
5. The bill ends the practice of federal "adoptions" of state forfeiture cases but preserves cases involving joint state/federal law enforcement task forces.

6. Attempts to induce owners to waive their rights are prohibited.
7. Sets up a procedure for an owner to contest forfeitures as being unconstitutionally excessive and establishes proportionality guidelines.
8. Adds a guarantee to the right to counsel to protect against defaults by owners due to the inability to afford a defense.
9. Successful owners would have the right to recover costs and attorney fees and be free from the assessment of storage fees. Interest would be recoverable for cash returned.
10. Owners would be granted the right to appeal.
11. Defendant owners, innocent owners and interest holders would have the right to jury trial.
12. The burden of proof on the prosecution would be elevated to beyond a reasonable doubt to mirror the burden for a conviction.
13. Forfeited property could be transferred to an agency of the federal government only if the property was forfeited under federal law.
14. Forfeited cash and proceeds from forfeited property would go to the State rather than the seizing agency.

We respect the roles law enforcement and prosecutors play in Kansas and we agree that asset forfeiture has a place in law enforcement, subject to there being protections in place to protect Kansas citizens who find themselves the subject of seizures of cash or property. SB 2380 is not an effort to repeal this tool, but, rather, to reform and balance the process. History and experience since the law of asset forfeiture was first enacted justifies this reform effort.

I'd be happy to stand for questions.