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ASSOCIATION

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Dear Senator:

I wanted to take this opportunity to discuss the amount of evidence needed to seize and forfeit property under Oklahoma law. For asset forfeitures related to drug offenses, there are two burdens of proof that come into play—***probable cause*** and ***preponderance of the evidence***. Let me explain.

Under current Oklahoma law, a law enforcement officer cannot seize property unless there is probable cause to believe the property has been or will be used to violate drug laws.

Let me offer some context for the ***probable cause*** standard:

- This is the same burden of proof *required by the Constitution* to arrest and send someone to jail for committing a crime.
- This is the same burden of proof *required by the Constitution* to search someone's house or car or personal effects.
- This is a *higher* burden of proof than that necessary to remove abuse or neglected children from their homes. In other words, children may be removed from their homes on less evidence than what is required to seize and forfeit drug assets.
- This is the same level of proof that must exist before an officer is justified in the use of deadly force under certain circumstances.

So as you can see, the "probable cause" burden of proof is not insignificant. It was established by the Constitution, and it is firmly entrenched within our criminal justice system in particular.

After law enforcement has seized property based upon probable cause and a forfeiture action has been filed by the District Attorney, the burden of proof then goes up to preponderance of the evidence. In other words, once property is seized, it is not forfeited to the State unless and until the prosecutor proves to a judge or a jury by a preponderance of the evidence that the property has been or will be used to violate drug laws.

Let me offer some context for the ***preponderance of the evidence*** standard:

- This is the nearly universal standard in civil cases—state or federal.
- This is the same burden of proof necessary to send felons who violate the terms of their probation to prison.
- This is the same burden of proof necessary to send parolees back to prison for violating the conditions of their paroles.

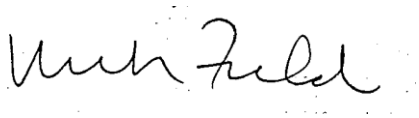
Finally, unlike any other type of civil proceeding of which I am aware, even when the other side fails to answer or to make any legal claim to the seized property, a court may not order a default judgment of forfeiture unless the prosecution proves its case, even though there is no party on the other side. This additional safeguard prevents the prosecution from filing meritless cases and then benefitting from the fear or failure of the claimant to file an answer or otherwise contest the forfeiture.

The burden of proof always rests with the State. Contrary to some of the common talking points used by proponents of asset forfeiture reform, the State must always produce evidence to meet its burden of proof. If it does not, then the property is returned.

I hope this information helps clarify the question of how much evidence must exist before law enforcement may seize drug assets and before a judge may forfeit these seized assets to the State.

Feel free to contact me if you have any questions. Thank you for your service to our State.

Sincerely,



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