



TESTIMONY OF
VIGNESH GANAPATHY
POLICY DIRECTOR, AMERICAN CIVIL LIBERTIES UNION OF KANSAS

IN SUPPORT OF HB 2459
KANSAS HOUSE COMMITTEE ON JUDICIARY

JANUARY 24-25, 2018

Thank you, Chair Finch, and members of the Judiciary Committee for affording us the opportunity to provide testimony on HB 2459.

The American Civil Liberties Union (ACLU) of Kansas is a non-partisan, non-political membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas. We work to preserve and strengthen our constitutional rights and freedoms through policy advocacy, litigation, and education. We proudly serve over 30,000 supporters in Kansas and represent more than 1.6 million supporters nationwide.

The ACLU of Kansas supports HB 2459. This bill would amend existing law to better protect the rights of Kansans whose property is forfeited, as well as require any agency seizing property for forfeiture to submit reports to the Kansas bureau of investigation documenting information about the property. National experts have called our current system “some of the worst civil forfeiture laws in the country,” because of the ease with which law enforcement can forfeit property, without fair process or transparency.ⁱ Though this bill does not address many of our concerns, it represents a critical first step in remedying this injustice. Specifically, the ACLU of Kansas supports HB 2459 because:

- **Current law lacks even basic transparency requirements, leaving the public in the dark.** Forfeiture was originally presented as a way to cripple large-scale criminal enterprises by diverting their resources. But today, aided by deeply flawed state laws, law enforcement agencies use forfeiture to benefit their bottom lines, making seizures motivated by profit rather than crime-fighting.ⁱⁱ Under current law, agencies are not required to track or report property seized under civil asset forfeiture. And while other states have tracked millions of dollars in forfeited vehicles, currency and other property, Kansas has lagged far behind. Across the United States since 2001, we know that state and local police have made more than 61,000 seizures of cash and property worth over \$2.5 billion dollars by partnering with the federal government through the Department of Justice’s equitable sharing program. The DOJ Asset Forfeiture Fund topped \$4.5 billion in 2014. Far greater than these billions, however, is the price that people pay when their homes, businesses, cars, cash, and other property have been seized. However, because there is no statutory requirement for prosecutors in Kansas to track or report their seizures, there is no meaningful way for the public to know what is being seized, the value of the property, and how that property is being used by law enforcement. Obtaining an accurate picture of all forfeiture activity in our state would require submitting a Kansas Open Records Act request to every law

enforcement agency or budgetary authority in the state and then compiling those records. This bill would create a central repository that catalogs the description of seized property; information concerning any criminal action related to the seizure; the final disposition of seized property, including whether the property was returned to the owner, kept by the government, sold, or destroyed; the value of property, including the amount of money the government received from seizure; and how the proceeds were used by law enforcement. Poor public reporting about law enforcement's use of civil forfeiture makes it difficult, if not impossible, for lawmakers and the public to hold agencies accountable. Therefore any meaningful reform must start with this reporting bill.

- **Civil asset forfeiture threatens the constitutional rights of all Kansans.** Because Kansas law enforcement agencies keep 100 percent of all forfeiture proceeds and there is an enormous and troubling incentive to make liberal use of civil asset forfeiture. This incentive encourages the pursuit of property over the pursuit of justice. Data specifically for Kansas is not available, but a national study found that in more than 80 percent of asset forfeiture cases, the owner of the property is never charged with a crime, yet the government can and usually does keep the seized property. Numerous cases came to light in 2016 and 2017 involving motorists, mostly people of color, who were stopped and had their property entered into forfeiture proceedings before they were even criminally charged.ⁱⁱⁱ Contesting civil asset forfeiture proceedings is expensive and difficult. There is no right to counsel in these cases, so individuals are left to fight these actions without any guidance, unless they can afford to hire a private attorney. Navigating court systems and knowing what paperwork needs to be filed and where is a daunting task for anybody. Furthermore, unlike a criminal case, civil asset forfeiture only requires a preponderance of the evidence rather than the stricter “beyond a reasonable doubt” standard of proof. This reality stacks an unfair deck against people whose property has been seized. Faced with daunting hurdles, many owners never make it to court and these owners’ cases are generally decided in favor of law enforcement by default. While this bill makes some modest adjustments to presumptions that had favored law enforcement agencies and gives courts greater flexibility in hearing these cases, further changes will be necessary to protect the rights of Kansans.
- **Future legislatures should review the reports in the Kansas asset seizure and forfeiture repository, and work to address these issues.** Forfeiture is entirely appropriate in cases where an individual has committed a serious crime. However, current Kansas law does not balance that need with the rights of the innocent or ample protection for due process under the law. Beyond minimal reporting requirements, we encourage the Committee to consider more dramatic reforms—especially (1) requiring conviction on a criminal charge before forfeiture, (2) providing greater procedural protections throughout the process, and (3) redirecting forfeiture proceeds to the general fund, rather than allowing law enforcement agencies to directly benefit from them. *This can be done:* other states restrict the instances in which civil asset forfeiture is permitted and impose higher standards of proof required to uphold the seizure.^{iv} The ACLU of Kansas has worked with members of this committee to introduce legislation requiring a criminal conviction before property can be forfeited, as is required in Minnesota and Montana.^v In addition, New Mexico^{vi} and Nebraska^{vii} have ended civil asset forfeiture entirely, while Florida recently enacted a law that requires at least an arrest before seizure. **Twelve other states—including Alaska, Idaho, and Tennessee**—are moving strongly in the direction of reforming the process by requiring criminal convictions, or replacing civil forfeiture with criminal forfeiture. The reason is simple: civil asset forfeiture gives police and prosecutors the troubling ability to self-fund, financing operations entirely beyond the democratic controls embodied by local governments, and the legislature. It is telling that law enforcement agencies prefer civil to criminal forfeiture, which would give property owners adequate notice and a fairer process.^{viii} Nothing in this bill addresses civil forfeiture abuses, so further work must be done.

- **The public strongly supports much more dramatic overhaul of the civil asset forfeiture process.** This committee has heard bills considering reforms in the past, and many have wide support among Kansans. A public opinion poll conducted by the Docking Institute at Ft. Hays State University found that 69% of Kansas voters strongly support requiring a criminal conviction prior to asset seizure, 12% somewhat support the change, 4% somewhat oppose the reform, and just 10% strongly oppose it.^{ix} **Over 80% of Kansans support requiring a criminal conviction prior to asset forfeiture—even when they are told that law enforcement officials say the status quo is necessary to take away the tools used by criminals.** Few issues facing this state have such a broad consensus.

While abolishing civil asset forfeiture is the only way to eradicate these unjust practices, HB 2459 shines a light on abuses and sets Kansas on the right path toward accountability. Therefore, we urge this committee to support HB 2459.

ⁱ See Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2015), <http://www.ij.org/report/policing-for-profit>.

ⁱⁱ American Civil Liberties Union, *Asset Forfeiture Abuse*, <https://www.aclu.org/issues/criminal-law-reform/reforming-police-practices/asset-forfeiture-abuse>.

ⁱⁱⁱ Katie Moore, *Accusations of asset seizure pattern by Kansas Highway Patrol raise concerns*, Topeka Capital-Journal (Jan. 2, 2017), <http://www.cjonline.com/news/crime-courts/2017-01-02/accusations-asset-seizure-pattern-kansas-highway-patrol-raise-concerns>.

^{iv} See Footnote 1, *supra*.

^v Jason Snead, *An Overview of Recent State-Level Forfeiture Reforms*, The Heritage Foundation (Aug. 23, 2016), <https://www.heritage.org/crime-and-justice/report/overview-recent-state-level-forfeiture-reforms>.

^{vi} See Footnote 1, *supra*.

^{vii} Nick Sibilla, *Nebraska Just Abolished Civil Forfeiture, Now Requires A Criminal Conviction To Take Property*, FORBES.COM (Apr. 20, 2016), <http://www.forbes.com/sites/instituteforjustice/2016/04/20/nebraska-just-abolished-civil-forfeiture-now-requires-a-criminal-conviction-to-take-property/#4eb58cb3159e>.

^{viii} Cause of Action Institute, *Criminal Forfeiture Protects Property Owners More Than Civil Forfeiture* (Jun. 8, 2017), <https://causeofaction.org/criminal-forfeiture-protects-property-owners-civil-forfeiture/>.

^{ix} DeAnn Smith, *Poll Finds Support Among Kansas Voters for Criminal Justice Reform*, The Gardner News (Oct. 9, 2016), <http://gardnernews.com/poll-finds-support-among-kansas-voters-for-criminal-justice-reform/>.