



TESTIMONY OF  
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BOARD MEMBER, AMERICAN CIVIL LIBERTIES UNION OF KANSAS  
  
**IN OPPOSITION TO HB 2001**  
KANSAS HOUSE JUDICIARY COMMITTEE  
  
JANUARY 24, 2017

Thank you, Chairman Finch, and members of the committee for affording us this opportunity to provide testimony on HB 2001. 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 10,000 supporters in Kansas and represent more than 1 million supporters nationwide.

The ACLU of Kansas **strongly opposes HB 2001**, which would eliminate what little transparency and accountability currently exists in the state's system of civil asset forfeiture. The bill wholly eliminates the requirement that law enforcement agencies provide an annual report on the assets that they seize through civil forfeiture.

Kansas's laws on civil asset forfeiture have been called among the "worst in the nation" by the Institute for Justice, a non-partisan, free market-oriented think tank. Citizens can be stripped of their property rights based only on a suspicion by law enforcement that they may have been involved in a crime. The individual whose property is seized and forfeited need not even be charged with a crime, much less convicted of one. In Kansas and across the country, there are many stories of people whose property was taken from them because someone, somewhere regarded their behavior as suspicious—when, in fact, they were innocent of any crime. As such, the civil asset forfeiture statutes are in desperate need of fundamental reform. However, the bill before the committee today does nothing to address any of the substantive concerns that Kansans have about civil asset forfeiture. Instead, the bill eliminates one of the few positive features of the existing statute.

The ACLU of Kansas strongly opposes HB 2001 because:

- **The bill obliterates the already-insufficient transparency in the civil asset forfeiture process.** Current law requires law enforcement agencies to prepare an annual report on assets seized and forfeited. The reporting requirements are minimal, requiring only a reporting of the type and approximate value of the forfeited property received, the amount of forfeiture proceeds received, and how those proceeds were expended. Reporting is at an aggregate level, such that it is frequently impossible to determine the average value of forfeited assets. Claims are often made that forfeiture is a necessary tool for the disruption of large-scale criminal enterprises. However, the reporting does not allow the public to determine, for example, the average amount of currency seized or forfeited. That would be relevant to the public's ability to determine whether forfeiture is actually primarily used to disrupt large-scale criminal activity. However, HB 2001 entirely passes over the real issue with Kansas's reporting requirements. Rather than strengthening the requirements to make better information more accessible to the public, the bill simply eliminates *all* semblance of transparency and accountability. At a time when the public and the Legislature

itself are emphasizing the need for more transparency and accountability, it would be highly unusual to dispense with *all* reporting on actions taken by public servants. Although the current reporting structure is of limited utility, it is an improvement over the requirements of some other states and is far superior to no reporting, accountability, or transparency at all.

When citizens can be stripped of their property rights based on suspicion alone—without ever being charged or convicted of a crime—it ought not to be too much to ask of law enforcement agencies that they provide a short annual accounting of their forfeiture activities.

- **The bill rewards agencies that have ignored state statute.** In 2016, a legislative post audit was conducted on the civil asset forfeiture process in Kansas. That audit uncovered irregularities, ethical lapses, and implementation errors. Among the problems discovered by the audit was that many law enforcement agencies were not complying with the requirement to file an annual report on forfeiture, despite the fact that they have been directed to do so by the Legislature and despite the fact that the requirement is codified in state statute. By eliminating the already-minimal reporting requirement altogether, HB 2001 effectively rewards those agencies that have not complied with the rules and ignored the statute.
- **A better solution to non-compliance with state law would be to impose consequences for failure to report.** HB 2001 sees the problem of non-compliance with state statute, and comes to the unorthodox conclusion that the solution is simply to do away with the law. When the law is designed to promote important public interests like transparency, accountability, and justice and when the workload involved in compliance is so minimal, such a solution is ill-advised. A much better solution would be to impose real consequences on agencies that fail to comply. Current law makes reporting mandatory, but levies no sanctions on agencies that do not comply. Establishing even a small penalty for agencies that do not report would likely result in dramatic increases in reporting compliance. Doing so would also advance Kansans' interests in achieving higher levels of government transparency and accountability.
- **The public strongly supports much more dramatic overhaul of the civil asset forfeiture process.** The current law on civil asset forfeiture is in need of dramatic reform. 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. Instead of tinkering with minimal reporting requirements, we encourage the Committee to consider more dramatic reforms—especially requiring conviction on a criminal charge before forfeiture, providing greater procedural protections throughout the process, and redirecting forfeiture proceeds to the general fund, rather than allowing law enforcement agencies to directly benefit from them. Bills that would make these reforms will be heard by this committee on January 24, 2017. It is also important to note that reforms of this kind are strongly supported by the public. 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. **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.**

For all these reasons, we urge the committee to **oppose HB 2001.**