



TESTIMONY OF
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IN SUPPORT OF HB 2018
KANSAS HOUSE JUDICIARY COMMITTEE

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Thank you, Chairman Finch, and members of the committee for affording us this opportunity to provide testimony on HB 2018. 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 supports HB 2018**, which would require that an individual be convicted of a crime before being stripped of his/her property rights through asset forfeiture.

Civil asset forfeiture provides law enforcement with the power to take property from someone who has not been convicted of, or even charged with, a crime. Often, these seizures take place without an arrest or a hearing and result in innocent citizens being deprived of their property without due process of law. Under current civil asset forfeiture laws, property owners bear the burden and the costs of demonstrating their property's "innocence," rather than the government bearing the burden of demonstrating wrongdoing. People subject to civil asset forfeiture are not entitled to a lawyer because the property is the defendant in these proceedings.

Although civil asset forfeiture laws vary widely by state, 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. 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. In other cases, property has been seized that does not even belong to the person accused of committing a crime. For example, a parent who loans a car to a child who commits a crime while driving it—without the knowledge or participation of the parent—have frequently had that property taken from them.

Law enforcement is permitted to keep the assets it seizes. Across the United States since 2001, 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.

The civil asset forfeiture statutes are in desperate need of fundamental reform. The ACLU of Kansas strongly supports HB 2018 because:

- **It would strengthen protections for property rights and the rights of the innocent.** Under current law, the burden of proof strongly favors the government and not property owners. The

government needs only meet a very low evidentiary standard to show that someone's property—and, importantly, not the individual him- or her-self—is related to some presumed criminal conduct before the property is forfeited. The standard of proof is much, much lower than the standard required to prove that a person has committed a crime. This provides Kansans with almost no legal protection from abuse of the law, or protection for the right to due process. As a result, innocent people can often be swept up in civil asset forfeiture proceedings and have their property rights attacked.

- **Very few asset forfeiture cases are tied to criminal cases.** Asset forfeiture is an entirely appropriate tool for disrupting criminal activity. Unfortunately, however, the evidence shows that only a small minority of forfeiture cases are actually tied to a criminal case. 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.
- **Kansas should join the fast-growing cohort of states that have reformed the asset forfeiture process.** There is a growing recognition that civil asset forfeiture laws are badly broken, give too much power to government, and are incompatible with protections for property rights and due process. In the last several years, **Nebraska, Montana, New Mexico, and Minnesota** have effectively banned civil 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 bill would not impede law enforcement's ability to disrupt criminal activity.** Forfeiture can be an appropriate tool for disrupting criminal activity, provided that proper protections for property and individual rights are in place. Under HB 2018, law enforcement would still be able to seize and dispose of property tied to criminal activity. However, law enforcement would first have to prove that the person who owns the property *actually* committed a crime. That is not an excessive or unreasonable standard, and it still permits law enforcement to use the tool in circumstances where it is appropriate.
- **Kansans strongly support requiring a criminal conviction prior to asset seizure and forfeiture.** A public opinion poll conducted by the Docking Institute at Ft. Hays State University found that 69% of Kansas voters strongly support the very change made by this bill, requiring a criminal conviction prior to asset seizure. Another 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 **support HB 2018.**