



**Proponent Testimony for HB 2640 – civil forfeiture**  
**Testimony of Aileen Berquist**  
**Community Engagement Manager, American Civil Liberties Union of Kansas**  
**House Committee on Judiciary**  
**Wednesday, February 16<sup>th</sup> at 3:30 PM**  
**Written Testimony**

Committee Chairs and Members of the Judiciary Committee,

Thank you for the opportunity to present testimony today. My name is Aileen Berquist. I am the Community Engagement Manager and lobbyist for the ACLU of Kansas. We are a nonpartisan, non-profit organization that works to preserve and strengthen the civil rights and liberties of every person in Kansas.

In recent years, organizations spanning the political spectrum have spoken against current civil asset forfeiture laws. These laws have been called many things: highway robbery. Policing for profit. An unconstitutional attack on the basic rights of citizens. HB 2640 addresses critical points of needed change. The ACLU of Kansas supports several key reforms contained in this bill, including:

- Forfeiture of property would require a conviction of a crime.
- The bill creates a process for property owners to petition the court for return of their property on the grounds that the seizure was unconstitutionally excessive.
- Forfeiture proceedings are moved from civil jurisdiction to the jurisdiction of the court hearing the criminal case that gave rise to the forfeiture.

The ACLU of Kansas believes that these changes in HB 2640 will better protect the rights of property owners and limit occurrences of civil asset forfeiture.

Current civil asset forfeiture laws in Kansas violate basic due process rights. Kansas law allows law enforcement agencies to seize property based solely on a suspicion that it was involved in criminal activity—no conviction necessary<sup>1</sup>. By changing the law to limit asset forfeiture to cases of criminal conviction, this bill will limit instances where innocent property owners are faced with an expensive, arduous court battle to regain rights to their property. Under the current law, many people opt not to fight the forfeiture and reluctantly give up their property, rather than rack up legal bills exceeding the property's value.

In the same vein, establishing a process for individuals to petition for the return of their property is a step in the right direction. However, placing the burden of proof on the **person whose property was seized** is a continuation of the existing unjust system. Currently, if a property owner takes the matter to court, the burden of proof is not on the state, as in criminal cases where the prosecution must prove beyond a reasonable doubt that a person is guilty. In Kansas, when law enforcement seizes property based on a suspicion that the property was involved in the commission of a crime, the burden of proof is on the property owner in any civil proceeding to get that property back. We believe the burden of proof should be on the state to show that the forfeiture of property was justified.

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<sup>1</sup> [https://www.aclukansas.org/sites/default/files/field\\_documents/civil\\_asset\\_forfeiture\\_reform\\_one-pager.pdf](https://www.aclukansas.org/sites/default/files/field_documents/civil_asset_forfeiture_reform_one-pager.pdf)

Finally, we strongly support the inclusion of language transferring jurisdiction of forfeiture proceedings from civil courts to the court hearing the criminal case giving rise to forfeiture. As stated above, individuals whose property is seized under current civil asset forfeiture laws do not have the same legal protections as individuals charged in criminal court. Moving the jurisdiction of forfeiture actions to the criminal case itself will ensure that defendants of forfeiture cases have the constitutional protections that are not afforded by civil court proceedings, including the right to due process, and the presumption of innocence. For indigent defendants, especially, this is key, allowing them the use of a public defender for their entire case **including forfeiture**—not requiring them to find another attorney to take up a civil case, something an indigent defendant has already shown they cannot afford.

Although the ACLU of Kansas strongly supports the above provisions, we stand opposed to the limiting of these rights to property with a value of less than \$100,000. All people deserve due process under the law—whether their property is valued at \$1,200<sup>2</sup> or \$120,000.

The ACLU of Kansas supports the passage of this bill with the removal of the \$100,000 threshold. We also hope that this committee will consider additional provisions to strengthen the bill:

- Require the **automatic** return of property if no criminal charges are filed; prosecution is declined; the charges are dismissed; or the person is acquitted. The current bill language creates a process that requires innocent property owners to petition the court to have their property returned, which puts an undue burden on the property owner.
- Raise the burden of proof for forfeiture from a “preponderance of the evidence” to a “clear and convincing” standard.
- End the financial incentive for law enforcement agencies to seize innocent property, by requiring all seized assets be distributed to the state general fund rather than a law enforcement specific fund.
- Prohibit forfeiture of property belonging to third parties.

We have attached resources to this testimony for your review. Thank you for the opportunity to provide testimony.

### **Additional Resources**

[https://www.aclukansas.org/sites/default/files/field\\_documents/civil\\_asset\\_forfeiture\\_reform\\_on\\_e-pager.pdf](https://www.aclukansas.org/sites/default/files/field_documents/civil_asset_forfeiture_reform_on_e-pager.pdf)

[https://www.aclukansas.org/sites/default/files/field\\_documents/civil\\_asset\\_forfeiture\\_final.pdf](https://www.aclukansas.org/sites/default/files/field_documents/civil_asset_forfeiture_final.pdf)

<https://www.aclu.org/issues/criminal-law-reform/reforming-police/asset-forfeiture-abuse>

<https://ij.org/report/policing-for-profit-3/>

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<sup>2</sup> <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf>