AMERICAN CIVIL LIBERTIES UNION of KANSAS

TESTIMONY OF
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IN **OPPOSITION** TO **HB 2639**
KANSAS HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE

FEBRUARY 16, 2016

- WRITTEN TESTIMONY ONLY -

Thank you, Chairman Rubin, and members of the Committee on Corrections and Juvenile Justice for affording us the opportunity to provide testimony on HB 2639.

The American Civil Liberties Union (ACLU) of Kansas, a membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas, **is concerned about certain provisions contained within HB 2639**. HB 2639 would use licensed crisis recovery centers for emergency observation and treatment of persons with mental illness, substance abuse disorders, and co-occurring conditions. The bill would create an alternative to the immediate jailing and imprisonment of individuals with mental health or substance abuse disorders, but goes too far in infringing on the right to due process.

- **The Kansas prison population continues to climb to all-time highs, and individuals with mental or behavioral health conditions constitute a disproportionately large share of the prison population.** In Kansas, the size of the prison population has ***quadrupled*** since the 1970s – to roughly 10,000 – even though crime in the state has fallen steadily during the same period. This rapid rate of growth is partly due to an increase in the number of individuals with mental or behavioral health conditions. These conditions can contribute to them committing offenses that result in jail or prison. By some estimates, over 40% of the Kansas prison population has a mental or behavioral health disorder. In those cases, the individual and the community would be better addressed through treatment and services, not imprisonment. In those cases, neither the offender nor the community is well-served through incarceration.

- **HB 2639 creates an alternative for individuals with mental illnesses or substance abuse disorders.** HB 2639 is commendable for attempting to craft an alternative. It would permit individuals who may have a mental or behavioral health condition to be held for observation and treatment, through action by a law enforcement officer. This holding, observation, and treatment period may result in an individual receiving needed service and prevent the commission of an offense. Under current law, law enforcement officers may not have any alternative but to wait for an individual experiencing a mental health crises to commit an offense and then detain and charge the individual with a crime. The alternative that HB 2639 creates may result in fewer individuals with mental or behavioral health issues going to jail or prison.

- **Despite good intentions, HB 2639 goes too far in infringing on the right to due process.** In particular, the bill provides for a 72 hour detention period before an individual thought to be experiencing a mental health crisis must either be committed or released. However, HB 2639 allows for that reasonable 72 hour period to be doubled, if a weekend or holiday should intervene. Detaining Kansans for six days without the benefit of a hearing or the other rights of due process is excessive and unreasonable. The good intentions of the bill are not a sufficient reason to deny the right of due process, which belongs to every person in Kansas. The overly long and unreasonable detention period could also invite abuse, with people being improperly detained. Law enforcement agencies will have to be particularly mindful and vigilant that the tool is not used to initiate pretextual detentions that lack probable cause. Those sorts of pretextual or improper detentions may leave law enforcement agencies vulnerable to legal challenge.

- **HB 2639 would be significantly improved if the holding period were capped at 72 hours, without exceptions.** Although such a firm cap may be inconvenient for some agencies, inconvenience is not and should not be a recognized reason for curtailing the right to due process.