



TESTIMONY OF
DR. MICAH W. KUBIC
EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION OF KANSAS
IN SUPPORT OF HB 2681
KANSAS HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE
FEBRUARY 17, 2016

Thank you, Chairman Rubin, and members of the Committee on Corrections and Juvenile Justice for affording us the opportunity to provide testimony on HB 2681.

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, **strongly supports HB 2681**. HB 2681 would require that eligible defendants be offered an opportunity to apply for diversion, as well as a written explanation from prosecutors when the application is denied.

The Kansas prison population continues to climb to all-time highs.

- **The Kansas prison population continues to climb to all-time highs even as crime falls to all-time lows.** Across the United States, the prison population has seen dramatic growth over the last forty years. The United States is now the world's largest jailer, with 4% of the global population and nearly a quarter of the global 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.
- **Diversion is an important tool in reducing the prison population while still protecting community safety.** Local prosecutors have broad discretion in their use of diversion, a tool that allows individuals to avoid criminal charges if they follow a prescribed program. Diversion is appropriate for those with minimal criminal records, who would be charged with non-violent drug offenses, or who have mitigating circumstances like mental illness. In those cases, public safety, community interests, and cost containment are best served through diversion.
- **HB 2681 will encourage prosecutors to use diversion more widely.** Local prosecutors have full authority to decide when diversion will best serve the interests of justice, safety, and the needs of the individual defendant. As a result, the use of diversion varies widely by county in Kansas. Some local prosecutors use it frequently, while others use it sparingly. HB 2681 continues to vest the sole power for granting diversion to local prosecutors, but also makes it clear that diversion is an appropriate tool that should be used more widely. By providing defendants with a written explanation for the outcome

of their diversion request, it will also demystify the process and allow the public to determine whether diversion is being used appropriately.

- **If diversion is used more widely, the prison population will decline and taxpayers will see cost savings.** With fewer individuals being charged with crimes that can result in incarceration, fewer Kansans will be sentenced to prison. This will help address the significant overcrowding found in the state's penal system, and will help to control skyrocketing costs.