



TESTIMONY OF  
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**IN SUPPORT OF HB 2116**  
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 2116. 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 2116**, which would require that an individual be convicted of a crime before being stripped of his/her property rights through asset forfeiture, makes changes to forfeiture procedures to better protect individual rights, enhances the reporting requirements related to forfeiture, and directs forfeiture proceeds to elementary and secondary education.

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 2116 because:

- **It would strengthen protections for property rights.** 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. By requiring a felony conviction, HB 2116 protects individuals and their property rights.
- **It amends existing procedural steps to better protect the rights of innocent owners and to ensure proportionality.** HB 2116 differs from another bill in front of the committee (HB 2018) in that it introduces additional procedural steps to better protect individual rights. This includes a hearing to determine whether forfeiture is unconstitutionally excessive compared to the crime allegedly committed, as well as the opportunity to have the property returned. For innocent owners, even the temporary loss of property—such as a car—can have devastating long-term impacts.
- **Eliminating the appearance that forfeitures may be “profit-driven” is an important step.** Forfeiture is often criticized because law enforcement agencies keep the proceeds. Even in those cases where forfeiture is entirely appropriate, the financial implications can cast a shadow over the entire the proceedings and diminish community trust in law enforcement. As a result, several states, including neighboring **Missouri**, have eliminated even the appearance of a “profit” motive by redirecting proceeds to the state general fund or to support public education. This bill follows the same path.
- **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 2116, 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. In addition, it is important to note that, under the bill, law enforcement can still *seize* property where they have probable cause to believe it is tied to criminal activity. This allows for immediate disruption of criminal activity. However, the bill also ensures that property owners have an opportunity to seek the return of that property after seizure but prior to actual forfeiture (that is, *permanent* loss of control over the property and its retention by or disposal of by law enforcement).
- **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 2116.**