



NEUTRAL TESTIMONY on HB 2026 – Creating a drug abuse treatment program for people on diversion and allowing county and district attorneys to enter into agreements with chief judges and community corrections for supervision.

Testimony of: Kendall Seal, Director of Advocacy, American Civil Liberties Union of Kansas

Senate Judiciary – February 10, 2021

Chairwoman Warren and Members of this Committee,

Thank you for the opportunity to present testimony. My name is Kendall Seal, and I am the Director of Advocacy for the ACLU of Kansas. We are a nonpartisan, non-profit organization that works to preserve and strengthen the constitutional liberties and rights of all Kansans. We agree with the goal of HB 2026, but as currently drafted, it maintains the status quo at a high cost to all Kansans. We offer the following suggestions for this Committee's consideration.

First, the diversion costs are a barrier to successful program completion. Weekly or monthly urinalysis fees can be the difference between paying rent and securing transportation to get to work. These fees disproportionately impact people of color, which reinforces the structural racism within the criminal justice system. We strongly recommend eliminating the fines and fees associated with diversion for divertees. This will contribute to successful rehabilitation and create a more just criminal legal system.

Second, this bill is too narrow in scope because it only includes level 5 drug offenses on the drug-sentencing grid. People in possession of amounts that would be comparatively low elsewhere could, in Kansas, be categorized far differently, and with severe implications. Most importantly, these people should not lose access to treatment. We recommend that, until the Sentencing Grid is updated, eligibility is expanded to provide greater flexibility and avail more Kansans of treatment options.

Finally, this bill has no prosecutorial oversight mechanisms nor an avenue for robust transparency. At a minimum, we recommend the inclusion of an annual report on diversion programs be shared with this Committee. Including this provision will strengthen faith in the criminal justice system. We would support HB 2026 affirmatively with these adjustments.

As a broader matter, we note that drug possession for personal use is at its core a public health issue, not a criminal justice one. At a time when Kansas's criminal justice system is being evaluated for much-needed reform, we urge this body to seize the opportunity to remove the stigma of criminality from personal drug use. This is particularly important given the racial inequities present in the state system, where people of color are 33.6% of drug arrests, but they represent only 23.9% of the state's population. For Black Kansans, the racial inequity is even starker. They represent 5.6% of the state's population, yet they account for 18.9% of the drug arrests. Offering the option for safe, non-stigmatized treatment as needed would reduce the prison population, cut criminal justice costs, and create a better pathway for Kansans in need of support.

Thank you again for your consideration. I am happy to answer questions or be of additional help to this Committee as you consider changes to HB 2026 and action on the broader issues at stake.