

To: House Judiciary Committee

From: John Goodyear, General Counsel

Date: February 15, 2023

RE: Testimony in Opposition to HB 2380

We want to thank Chairman Patton and the members of the Committee for affording the League of Kansas Municipalities the opportunity to provide opposition testimony to HB 2380.

One of the primary directives that we have charged governments with is to act in a way that protects and preserves the health, safety, and welfare of the public. Law enforcement entities act under this charge when they take actions meant to reduce crime in our communities. One of the tools used by law enforcement is the Kansas standard asset seizure and forfeiture act. The goal of asset forfeiture is to reduce the ability of criminal actors to profit from illegal activity. HB 2380 will serve to hamstring this act and will allow criminals to retain the fruits of their criminal enterprise.

There are many instances in which a criminal conviction will not be possible. For example: where the defendant dies; where the defendant is a fugitive that cannot be found and brought before the court; or where the property is found with a courier and the owner of the property cannot be determined. HB 2380 would require seized property likely to have been used in criminal activity to be returned.

Further, requiring criminal conviction prior to forfeiture will dramatically increase the length of storage time for many seized assets. It can take months, or even years for cases to go to trial. If law enforcement agencies are required to hold this property until a conviction occurs, the increased storage time necessitated by the HB 2380 will result in increased costs. HB 2380 would direct the proceeds from disposition of forfeited assets to the state general fund without regard to the costs to the law enforcement entities that seize and store the materials. This has the effect of creating a substantial unfunded mandate to all law enforcement agencies in the state.

Another reason for the opposition of our members is the confusion that the bill would cause by blurring the lines between a criminal and civil proceeding. So far as I can tell, the asset forfeiture

proceeding is still intended to be a civil one, but that distinction is confused by the increased standard of proof required by the bill. HB 2380 would require the state to prove that seized property is subject to forfeiture beyond a reasonable doubt. The typical standard for civil proceedings is one of a preponderance of the evidence, or put simply, whether it is more likely that the item is subject to forfeiture under Kansas law than that it is not. The bill also expands the rights held by claimants in these proceedings to include a right to appointed counsel and the right to a jury trial upon request.

The bill as drafted presents a number of material changes to the asset forfeiture procedure that was revamped by this Legislature as recently as 2018. In doing so, the bill often creates more questions than answers. The League is opposed to HB 2380 and would ask that the Committee not recommend it favorably.