

To: House Federal and State Affairs

From: John Goodyear, Staff Attorney

Date: February 1, 2021

RE: Neutral Testimony on HB 2088 – Written Only

I want to thank Chairman Barker and the members of the Committee for affording the League of Kansas Municipalities the opportunity to provide neutral testimony today regarding HB 2088.

HB 2088 creates an additional requirement for law enforcement agencies when investigating reports of child neglect and abuse. The bill would require that law enforcement agencies, as part of any and all investigations, make a visual observation of the child. Our concern is not with the idea of this bill, but rather its breadth.

This bill would mandate what generally is already standard procedure for law enforcement entities - observing the child as part of their response to a report of child neglect or abuse. This is obviously a good thing. Our member cities and the officers that serve their citizens want to do everything they can to keep children safe. That said, depending on the situation, there are any number of methods that an agency may use in order to ascertain the safety of the child. A universal mandate that these observations be made by the agency in all investigations may be unworkable in practice.

The primary concern that we have heard from law enforcement is what would happen if an agency were unable to make visual observation of the child through no fault of the agency. For example, there are cases where, after a report is filed, the child is no longer in the state. Under this bill, the removal of the child from the state would not end the mandate for the agency to carry out observation. The agency would still be required to make their own observation or violate the statute. The same would be true where the law enforcement agency is brought in later in the investigation or where another professional service has already observed the child. In this case, it would not matter if the Secretary for Children and Families' office had already made observation or if the child was under observation of another professional service. The agency would be required to conduct their own observation instead of being able to utilize the work already accomplished.

The League is concerned with the civil liability that could result if observation is mandated by law because there will inevitably be times that an agency will be unable to make an observation. For this reason, we would urge the committee to consider keeping observation of a child as a discretionary function of law enforcement agencies; encouraging the practice in lieu of requiring it in all cases.