



# CITY OF TOPEKA

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To: Committee on Judiciary

From: Amanda L. Stanley, City Attorney on behalf of the City of Topeka

Date: February 15, 2023

Re: Written Opposition Testimony HB 2380

I would like to thank Chairman Patton and the Committee for allowing the City of Topeka the opportunity to provide opposition testimony to HB 2380.

The City of Topeka believes it is the duty of government to reduce crime and provide for the health and safety of the public. One of the tools used by the Topeka Police Department (TPD) is the Kansas Standard Asset Seizure and Forfeiture Act (Act). HB 2380 has many components that will weaken the use of this tool.

Our first concern revolves around requiring criminal conviction before forfeiture. This would result in leaving the proceeds of criminal activity in the hands of the criminals. There are many instances where a criminal conviction will not be possible, and HB 2380 would result in the assets of those involved in criminal activity being returned to the criminal to further their illicit activity. The due process available to those who have legitimate interests in the assets subject to forfeiture provides ample protection. A law enforcement officer must provide an affidavit to a district court, demonstrating that sufficient probable cause exists to believe the property was used in facilitating or committing one of the crimes covered by the Act, or the property is proceeds from one of the crimes covered by the Act. The requirement of a conviction leaves many unanswered questions. Is all that is needed is a conviction? What if that conviction is under appeal? The appeals process could continue for years and require the City to hold the funds for an indefinite amount of time. It is unclear if the conviction must be directly related to the offense giving rise to forfeiture. For example, often during the course of a plea, the state will agree to dismiss some charges in exchange for a guilty plea on a separate charge. Will the prosecutor have to be familiar with the potential for the forfeiture and include it in the plea? This seems to mix criminal and civil law. While as a City we can see the policy arguments for a criminal conviction, if that is the policy will of the legislature, we would ask that the bill be sent to the Judicial Council to sort through all these various issues before a wholesale change is adopted. It seems like asset forfeiture needs to be civil or criminal but not a mix of both.

Next, HB 2380 proposes to require remittance of proceeds from forfeiture to the state general fund with the purpose of eliminating the profit motive for law enforcement agencies. We have significant concerns on how this will interfere with narcotic investigations and hamper our ability to significantly intervene in the fentanyl crisis. In our agency, we are able to eliminate the profit motive without state intervention. In Topeka, the officers on the street seizing the assets are completely separate from the administration that makes decisions on how the forfeiture assets are to be used. The TPD guidelines primarily only allow for cash seizure and forfeiture; TPD does not seize vehicles and very rarely other property. Forfeiture proceeds are used exclusively to purchase equipment and other needs for the department that would otherwise not be available such as rental cars for narcotic undercover buys and drug abuse education. Recently, TPD acquired equipment that is used to scan unopened packages for fentanyl. This is crucial for safety as fentanyl can easily be aerosoled and is very dangerous. The department always participates and passes DOJ audits on use of forfeited funds. Crime fighting is very expensive, and it seems imbalanced to not allow the law enforcement agency doing the work to invest the proceeds back into the community in order to continue law enforcement efforts.

Another component of this bill that would further weaken law enforcement's use of this tool is not allowing forfeiture to be applicable for cash or negotiable instruments in amounts less than \$1,000. This has the potential to greatly hinder narcotics investigations, as low level drug dealers are often dealing with amounts less than \$1,000. Even small amounts of money remaining in the hands of criminals can further criminal activity and contribute to the community's delinquency and dependence on drugs. In Topeka, by policy, we do not seize under \$2,000 unless the officer receives special permission with additional oversight. We would recommend the bill be amended to contain something similar for those cases where the seizure of under \$1,000 is clearly related to the criminal enterprise.

Finally, as proposed in HB 2380, eliminating the provision to allow a seizing agency from requesting federal adoption of a seizure further limits the ability of local law enforcement to work with federal partners as efficiently and effectively as current processes allow.

Based on the above reasons, the City of Topeka respectfully requests the Committee not pass HB 2380 out of Committee. While the City of Topeka is not completely opposed to some components in the bill, we would request that this bill goes to Judicial Council for a year of review. Please do not make the job of law enforcement even more challenging by removing the essential components of this useful tool.