



CITY OF TOPEKA

Legal Department
215 SE 7th Street, Room 353
Topeka, KS66603

Amanda Stanley, City Attorney
Tel:(785) 368-3883
www.topeka.org

To: House Committee on Judiciary
From: Amanda L. Stanley, City Attorney on behalf of the City of Topeka
Date: February 13, 2023
Re: Written Opposition Testimony HB 2606

I would like to thank Chairwoman Humphries and the Committee for allowing the City of Topeka the opportunity to provide opposition testimony to HB 2606.

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 2606 has many components that will weaken the use of this tool.

We recognize this tool makes some uncomfortable. It should always be questioned and examined when property is seized by the Government; however, it is also a reality that criminal enterprises such as drug cartels and gangs can often only be weakened by the seizing money and property used in furtherance of the crimes and not simply by convictions of low level members. Our current asset forfeiture law has ample due process protections and the proposed changes in HB 2606 provide even more. It should be a balancing act to ensure due process for the individual without crippling a necessary criminal justice tool to the advantage of the criminal. While we do not particularly care for the raising of the burden of proof from preponderance of the evidence to clear and convincing, it is workable. However, there are other components of HB 2606 that go too far in the changes.

We have two primary concerns with the legislation (1) HB 2606 dramatically shortens the timelines for requests for forfeiture to be made to the District Attorney and for the District Attorney to make a decision on the case. District Attorneys and police departments are swamped. This is a very tight turnaround with no discretion to ask for additional time. It seems like poor policy to go from 45 days to 14 days; and (2) we are opposed to the one way attorney fee shifting in this bill. At a minimum, a judge should have discretion to award attorney fees if a claimant prevails. It should not be mandatory for the judge to be required to award if the claimant prevails and prohibited in any reason from awarding attorney fees if the seizing agency prevails. There are many reasons a case can be lost, especially if a jury is involved, it is not in line with civil law as a whole, and we would oppose this idea of fee shifting in its entirety. The seizing agency generally does not control the case. The district attorney generally does. Why should it be ordered to pay attorney fees on a case it has no control over once filed? What if the case is lost some other reason outside the seizing agency's control when it was a legitimate seizure?

Based on the above reasons, the City of Topeka respectfully requests the Committee not pass HB 2606 out of Committee. While the City of Topeka is not completely opposed to some components in the bill, the proposal goes too far. Please do not make the job of law enforcement even more challenging.