



CITY OF TOPEKA

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To: Senate Committee on Judiciary
From: Amanda L. Stanley, City Attorney on behalf of the City of Topeka
Date: February 13, 2023
Re: Written Opposition Testimony SB 458

I would like to thank Chairwoman Warren and the Committee for allowing the City of Topeka the opportunity to provide opposition testimony to SB 458.

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). SB 458 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 SB 458 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. SB 458 goes too far in its changes.

We have three primary concerns with the legislation (1) a jury trial should not be required for a forfeiture. A trial to the court provides ample due process and will be more efficient; (2) 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. We have numerous federal partnerships and taskforces. If the seizure is more appropriate at the federal level, the State of Kansas should not intervene without knowing the facts of each case. If the proponents do not like federal law, they should change it at the federal level rather than using SB 458 as a hatchet to try to eliminate its use; and finally (3) we are opposed to the one way fee shifting in this bill. At a minimum a judge should have discretion to award attorney fees if a claimant prevails but it should not be mandatory. 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 SB 458 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.