

To: House Judiciary

From: Amanda Stanley, General Counsel

Date: February 13, 2021

RE: Opposition Testimony on HB 2376 – Written Only

I want to thank Chairman Patton and the members of the Committee for affording the League of Kansas Municipalities the opportunity to provide testimony today in opposition to HB 2376.

The idea behind this legislation is a good one. The League supports measures calculated to preserve the health and safety of all Kansans. However, these measures must be drafted in a way that is workable and enforceable. HB 2376 as currently written presents concern as to the legality of what the legislation would require from law enforcement officials.

The changes made to K.S.A. 22-2307(b)(1) would require law enforcement officials to make an arrest if they have probable cause to believe that an individual has violated a protective order. Violation of a protective order can either be a misdemeanor or felony depending on the particular facts and circumstances (See K.S.A. 21-5924). Misdemeanors and felonies are treated differently in the legal system and have differing requirements regarding arrest (found elsewhere in statute) By treating felony and misdemeanor offenses exactly the same here, HB 2376 has a real potential to cause confusion, and depending on the school of thought to which you subscribe, may be a violation of the offender's statutory and constitutional rights.

Additionally, the League is concerned by the modifications made to policy requirements in section (6) of the statute. Here, the bill requires the adoption of a policy that will include procedures to keep the suspect away from the scene if the officer determines that it is necessary to preserve the safety of all persons involved. As written, this is incredibly broad. The term scene is not defined, so it is unclear how far an officer would need to remove a suspect or how far to establish a perimeter. Further, it appears that there is no discretion for the officer to consider better options. There are going to be times where the suspect has a property right to the place where officers have been called and the victim does not. In this situation, law enforcement agencies would be required to adopt policies that could deprive an individual of access to their own property.

As drafted, HB 2376 presents several statutory and constitutional concerns. Until those are addressed, The League is opposed to this bill, and would request that the Committee not recommend it favorably for passage.