

To: Senate Judiciary Committee

From: John Goodyear, General Counsel

Date: March 23, 2023

RE: Neutral Testimony on SB 317 – Written Only

I want to thank Chairwoman Warren and the members of the Committee for affording the League of Kansas Municipalities the opportunity to provide neutral testimony on SB 317.

The League recognizes the laudable goals of this legislation. As drafted, SB 317 will afford greater opportunities to victims of childhood sexual abuse to recover damages. By increasing the time threshold in which survivors can file claims, the state will ensure that more Kansans have access to recovery. That said, the League does have some concerns with the bill as drafted.

SB 317 is drafted in such a way that government entities will be held to account for actions taken by employees acting outside the scope of their employment if they take place on public, recreational-use property (See K.S.A. 75-6104(15) amended on page 9). Of course, any action taken by a public employee that constitutes a crime covered by this bill would be an act outside one's scope of employment, but this new exception to the exception for liability may be drafted too broadly. Perhaps it makes sense to extend some liability where a government entity failed to exercise reasonable discretion and put a child at risk, but it probably should not extend simply because the location where the crime occurred was public property. In other words, a city should not be held liable simply because a bad actor chose to commit their crime on city property. In its current form, SB 317 would subject public entities to a place-based liability without regard to proximate cause or cause in fact.

SB 317 also removes the \$500,000 liability cap on damages available against government entities when the claim arises out of childhood sexual abuse. A real consequence to removing these caps will be the resulting response by insurance providers. Anytime a liability cap is removed, the result is higher insurance costs – even if no criminal behavior resulting in liability occurs. This has been the case in other states where caps have been removed. Providers will respond to the uncertainty caused by eliminating liability caps. Some providers will determine that the risk is more than they can bear and

will leave the market. Providers choosing to continue offering insurance to government entities will raise rates to accommodate the additional risk they take on and to take advantage of reduced market competition.

We are grateful to the Committee for allowing the League to submit testimony on this bill. We would ask that the Committee consider revisiting liability caps and the changes made to liability exemption (15) on page 9 before making recommendation to the full Senate.