

To: Senate Committee on Judiciary
From: Nathan Eberline, Executive Director
Date: February 14, 2024
RE: Testimony Opposing Senate Bill 458 (Civil Asset Forfeiture)

Thank you to Chairwoman Warren and the members of this Committee for providing an opportunity to testify on Senate Bill 458, a bill that would change our state's approach to civil-asset forfeiture. The League's General Counsel, John Goodyear, participated in the Judicial Council's Special Committee on Civil Asset Forfeiture, but there are multiple policy proposals that do not align with our cities' guidance on public policy. While there are some changes that have merit, we cannot support SSB 458 in its current form.

We would like to recognize the work of the Judicial Council and note the changes that are unlikely to cause difficulties for our cities. The policy proposals include:

- Removal of drug possession from the offenses subject to forfeiture. This is a sensible change given that the goal of forfeiture is to halt criminal operations. If quantities are low enough that the alleged crime is simple possession, then we are not seizing the fruits or instruments of a criminal enterprise.
- Requiring a finding that forfeiture was not excessive. This process is to ensure compliance with U.S. Supreme Court decisions. We have been following this standard, but the proposed bill provides clarifying language.
- Preventing inducement by the seizing agency when a person has asserted ownership rights after property seizure. This change came at the recommendation of the participating prosecutors to ensure professional-ethics standards, and the League defers to their guidance.
- Adding a probable-cause affidavit and hearing. This threshold seems relatively low. While we do not endorse this change, we understand the reason for the proposal.
- Changing the property-return timeline if the public agency does not engage with an attorney or transfer the forfeiture within 14 days. The 14-day threshold remains the same as current law, but now the agency must return seized property within 30 days.

Despite these changes, there are some glaring concerns in the current bill. These changes include:

- Increasing the standard of proof. By moving to the clear-and-convincing standard instead of a preponderance-of-the-evidence standard, the legislature is considering a standard that is not used anywhere else in a civil proceeding. This change is a departure from the Judicial Council report, and we think it will be a needless source of confusion.
- Changes to Attorney Fees. The change in SB 458 would require payment of attorney fees if the court finds that at least half of the aggregate value of property must be returned. This approach is one our cities do not support.
- Eliminating partnership with federal agencies. By barring the seizing agency from requesting federal adoption of the seizure, this bill would hinder cooperative efforts between law enforcement, which runs counter to efficient and effective government.
- Adding a jury-trial request. Giving the defendant a right to request a jury trial is the most expensive and time-consuming element of SB 458. This change overlooks the due-process standards that are already in place.

As stated above, we are mindful of the work that went into the Judicial Council’s efforts on this bill. Yet our members have too many concerns to support SB 458. We encourage the Senate Judiciary Committee to similarly oppose this bill. If there is additional information we can offer on behalf of the cities, I am happy to provide what I can.

Respectfully,

Nathan Eberline

League of Kansas Municipalities

913-660-8862

neberline@lkm.org