

To: House Committee on Judiciary
From: Spencer Duncan, Government Affairs Director
Date: March 12, 2024
RE: SB 458 - Civil Asset Forfeiture
In Opposition - Verbal Testimony

Thank you to Chairwoman and members of the Committee for an opportunity to provide testimony.

SB 458 changes the 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 changes that have merit, we cannot support SB 458 in its current form. We are supportive of the House version of this legislation.

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

- Removal of drug possession from the offenses subject to forfeiture. This is a sensible change given the goal of forfeiture is to halt criminal operations. If quantities are low enough that the alleged crime is simple possession, 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 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 concerns about the current bill. These 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 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.

We are mindful of the work that went into the Judicial Council's efforts. Yet our members have too many concerns to support SB 458. Many of our concerns are addressed in the House version of this legislation. We encourage the House Judiciary Committee to 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,

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