

To: House Committee on Correction and Juvenile Justice
From: Nathan Eberline, Executive Director
Date: March 6, 2024
RE: SB 318 – Audio/Video Evidence Review by City Attorneys and Fingerprinting
In Opposition – Verbal Testimony

Introduction

The League of Kansas Municipalities had no opposition to the original intent of SB 318, which dealt exclusively with fingerprinting requirements for municipal courts. But the bill was amended on the Senate floor to include provisions relating to new evidentiary-review requirements by city attorneys of audio and video submissions by defendants. This change occurred without an opportunity to provide feedback, and the result creates undue burdens on city attorneys, while offering no tangible benefits to defendants. We ask you to either remove the Senate floor amendment from the bill or not pass SB 318 out of committee.

Policy Arguments Against SB 318

1. *Upends Current Process* – There is a well-established process for submitting and reviewing evidence in a case. This process has been, and is constantly, reviewed by state and federal courts, and has long been upheld as fair and just. SB 318 subsequently adds an unnecessary step—in time and expense.
2. *Creates Conflicts* – SB 318 places a duty upon the prosecution to do the review and analysis work of a defense attorney. While defense counsel can, and should, submit relevant evidence to a prosecutor and court as they see fit, making a requirement that a prosecutor must review anything and everything submitted creates an unreasonable burden. The current discovery process has checks and balances between all sides to avoid conflicts and create transparency, with judicial review and oversight. SB 318 blurs these lines and creates possible conflicts of interest.
3. *Complicates Pro Se Litigant Cases* – A pro se litigant is an individual who represents themselves in a court action. This is not uncommon in municipal courts. If adopted, SB 318 would allow a pro se litigant to submit hours of video or audio, from any source they feel is

relevant to a case. This could include internet content, such as TikTok and YouTube videos, without regard to their validity or sourcing. Under SB 318, prosecutors would be required to view all submissions regardless of their actual relevance. This not only creates a process that allows unfettered “evidence” to be submitted but could lead to delays in court proceedings as city attorneys must now spend time watching and listening to all submissions.

4. *What Becomes Public Record?* – SB 318 raises concerns about what could now become public record in a court proceeding that previously was not intended to be public. As SB 318 alters the evidentiary process, is anything a defendant now requests be reviewed prior to the process now open to public record before a judge decides? This could include personal information, body cam footage, and other sensitive information. As the amended language did not have review, these questions remain unanswered as to the unintended consequences.

Conclusion

Altering processes for evidence review requires thoughtful vetting and discussion, which the amended language did not receive. Sometimes changes intended to help unintentionally create more harm than good. The League is concerned that the amended changes to SB 318 create new burdens on city attorneys and the courts while creating delays and complications for defendants. The League opposes, and we urge you to do the same.

If there is additional information we can provide, please let me know. We will help however we can.

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