



Committee: Committee on Finance
Hearing Date/Time: Thursday, March 3, 2016, 2:00 p.m.
Place: Conference Room 308
Re: Testimony of the ACLU of Hawaii in Support of H.B.1559, H.D.1, Relating to Property Forfeiture

Dear Chair Luke and Members of the Committee on Finance:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 1559, H.D.1, which seeks to prohibit civil asset forfeiture except in cases where the property owner has been convicted of the underlying covered offense.

Hawaii’s current civil asset forfeiture law is based on the legal fiction that property can be “guilty,” and allows law enforcement to profit from seized property where there has been no conviction for the underlying offense. As such, the government can seize (and profit from) property under current civil forfeiture law without any criminal conviction. Although this practice is often justified as a way to cripple large-scale criminal operations, it has been used to create revenue for law enforcement with little restriction or accountability. This practice harms property owners, who, due to inadequate state law, often cannot afford to challenge invalid forfeitures. It comes as no surprise that Hawaii’s civil asset forfeiture law is regarded among the worst in the nation, receiving a grade of D- by the Institute for Justice. See <http://ij.org/pfp-state-pages/pfp-Hawaii/>.

The ACLU supports this measure, but respectfully recommends that this Committee amend H.B. 1559 H.D.1 to include additional reforms such as (1) allowing the recovery of attorneys’ fees for successful claimants challenging forfeiture, (2) allocating all forfeiture proceeds to the general fund (thus reducing police departments’/prosecutors’ financial incentives to seize property), and (3) requiring the government to bear the burden of proof in all forfeiture proceedings.

Thank you for the opportunity to testify.

Sincerely,

Mandy Finlay
Advocacy Coordinator
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

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Dedicated to safe, responsible, humane and effective drug policies since 1993

TO: House Committee on Finance
FROM: Carl Bergquist, Executive Director
HEARING DATE: 3 March 2016, 2PM
RE: HB1559 HD1, Relating to Property Forfeiture, **STRONG SUPPORT**

Dear Chair Luke and Vice Chair Nishimoto:

The Drug Policy Forum of Hawai'i (DPFHI) **strongly supports** this measure to begin a thorough reform of Hawaii's outdated civil asset forfeiture law. The law itself is a relic of the 1980s War on Drugs, and its current language consigns Hawaii to the very bottom of a nationwide ranking of similar laws. In short, it allows for the use of an upside down civil process to seize people's assets after using the low "preponderance of the evidence" standard to establish a connection to an alleged crime. Requiring a conviction related to the property seizure, as HB1559 HD1 does, brings a modicum of justice into the process.

In its brand new report on civil asset forfeiture, the Institute for Justice gives a Hawai'i a near failing grade of "D-". In fact, we have slipped from a "D" in 2010 to a "D-" in 2016 by not keeping up with the nationwide trend at both the state and federal levels to reform asset forfeiture. The reasons for this grade are a) the aforementioned low standard of proof to seize property, b) the fact that the property owner (who often has no attorney) then bears the Kafkaesque burden of proving the property's "innocence" in cases with names like Carlisle v. One (1) Boat (Hawai'i Supreme Court 2008), and c) because of the strong incentive when 100% of all profit from seizures is shared among the arresting agency, the prosecuting attorney and the Attorney General.

It is thus abundantly clear that the issues with the civil asset forfeiture law go beyond what this bill addresses. For one, the burden of proof remains on the property owner to show that he/she did not have knowledge or consent to the conduct justified to seize the assets. In many cases that can prove an extremely tall, if not impossible task. For language regarding how to address the concerns of "policing for profit", look to Section 1 of SB2466. Mahalo for the opportunity to testify.

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THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai'i

March 3, 2016

RE: H.B. 1559, H.D 1; RELATING TO PROPERTY FORFEITURE.

Chair Luke, Vice-Chair Nishimoto and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to H.B. 1559, H.D. 1.

This measure would prohibit civil asset forfeiture by reason of the commission of a covered offense, to the extent of the property owner's interest, unless the covered offense is a felony for which the property owner has been convicted.

Current forfeiture laws are used to immediately and effectively disrupt the infrastructure of criminal activity and protect the community. In particular, the manufacturing, packaging, distribution, and sale of illegal drugs can be immediately thwarted by seizing the materials, tools, equipment, cash, vehicles, etc. of these enterprises. The changes proposed by H.B. 1559, H.D. 1, would significantly compromise law enforcement's ability to deter this illegal conduct and in turn the safety of our neighborhoods.

Concerns about "innocent owners" being deprived of their property or "policing for profit" are unfounded. Hawaii's forfeiture laws provide more than adequate protection of property owner's rights and numerous safeguards are already codified in the statute. We are confident that property is being seized and forfeited fairly and equitably and the abuse present in other jurisdictions does not exist here.

Before any drastic changes such as those proposed in H.B. 1559, H.D. 1, are made to Hawaii's well-conceived forfeiture laws, further discussion and review should take place, at a minimum, to study its impact on law enforcement and the safety of the public. One such measure

is before the Legislature, S.B. 2149, S.D. 2, which requires the Department of the Attorney General to establish a working group to review and discuss Hawaii's forfeiture laws and make recommendations to improve these laws, including identifying any areas of concern or abuse.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 1559, H.D. 1. Thank for you the opportunity to testify on this matter.