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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION OF HOUSE BILL 1559

A BILL FOR AN ACT RELATING TO PROPERTY
FORFEITURE

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Tuesday, February 9, 2016, 2:00 PM
State Capitol, Conference Room 325

Honorable Chair Rhoads, Vice-Chair San Buenaventura, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in strong opposition of House Bill No. 1559.

This measure prohibits 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.

Hawai'i's Asset Forfeiture Program is used to undermine the economic infrastructure of criminal enterprises. Criminal enterprises generate a profit from the sale of their "product" or "services" through criminal activity. Asset forfeiture can immediately remove the tools, equipment, cash flow, profit, and, sometimes, the product itself, from the criminals and the criminal organization, rendering the criminal organization powerless to operate.

We believe that the changes suggested in HB 1559 are premature, as there needs to be further discussions on the ramifications of reducing law enforcement's ability to deter these criminal enterprises.

There is a pending measure before the Legislature, SB 2149, 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. SB 2149 will ensure that asset forfeiture is used for its intended purposes, rather than to create an incentive for law enforcement agencies to generate revenue through forfeiture.

This working group would examine and evaluate Hawai'i's forfeiture laws by the determining the effectiveness and efficiency of such laws. The working group would also examine the different forfeiture laws of other jurisdictions, and identify any possible areas for abuse or concerns, including any impediments that innocent owners of forfeited property face

when petitioning for remission or mitigation. This working group would submit a written report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2017.

The Office of the Prosecuting Attorney, County of Hawai‘i, along with the Hawai‘i County Police Department, believes that the current asset forfeiture program is not being abused and we remain committed to the cause of ensuring that any property forfeited is within the interests of justice. By allowing the working group to be established, the legislature would have all of the tools and information needed to make an informed decision on the future of Hawai‘i’s Asset Forfeiture Program.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai‘i STRONGLY OPPOSES the passage of House Bill No. 1559. Thank you for the opportunity to testify on this matter.

Respectfully,

Mitchell D. Roth
Prosecuting Attorney
County of Hawai‘i

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kauai, State of Hawaii

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Victim/Witness Program 808-241-1898 or 800-668-5734

State Capitol, Room 305
Hawaii Legislature
Honolulu, Hawaii
VIA FACSIMILE (800) 535-3859
(2 pages to follow)

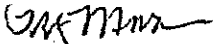
February 8, 2016

Dear Sir or Madam:

RE: testimony in OPPOSITION to HB 1559
Hearing: February 9, 2016, at 2:00 p.m.

Please find attached two (2) pages of testimony in opposition to House Bill No. 1559, scheduled for hearing tomorrow afternoon.

Thank you,


Tracy Murakami
Deputy Prosecuting Attorney

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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TESTIMONY IN OPPOSITION TO HOUSE-BILL 1559

**A BILL FOR AN ACT RELATING TO PROPERTY
FORFEITURE**

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Tuesday, February 9, 2016, 2:00 PM

State Capitol, Conference Room 325

Honorable Chair Rhoads, Vice-Chair San Buenaventura, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Kaua'i, submits the following testimony in strong opposition to House Bill No. 1559.

This measure would prohibit civil asset forfeiture, unless the property sought to be forfeited was involved in the commission of a covered offense which is a felony, and for which all property owners have been convicted.

Hawai'i's Asset Forfeiture Program, contained in Chapter 712A, Hawaii Revised Statutes, adopted by the Hawaii Legislature in 1988, is used to take out of circulation the tools of certain criminal activity. Typically, vehicles, cash, etc. involved in the commission any "covered offense" – a crime concerning methamphetamine, certain other drugs in specific quantities, money laundering, and other crimes specifically identified in HRS Chapter 712A, are sought to be forfeited by the County Prosecutors.

In contrast to the hurdles faced by law enforcement in securing criminal convictions against all potential owners, when there are multiple owners of property – vehicles, backpacks containing cash, etc., the focus of a civil forfeiture action is on the illegal use of the property. Property used in violation of HRS Chapter 712A can be forfeited civilly without obtaining a conviction

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against all owners, where law enforcement establishes probable cause that all co-owners had knowledge that the property would be used in violation of Chapter 712A, and consented to such use. In other words, when a husband and wife own a vehicle from which the husband is selling methamphetamine, the wife knows he is doing so, and she does not mind, given the drug sales' resulting boost to the family lifestyle, under the current version of Chapter 712A, the vehicle can be forfeited civilly. In contrast, under the provisions of House Bill No. 1559, requiring a felony conviction for all property owners, the vehicle could not be forfeited unless the husband and wife are both dealing drugs from the vehicle. Moreover, the provisions of HB No. 1559 allow the husband to continue using the vehicle to distribute methamphetamine, as long as the wife remains a registered owner to said vehicle.

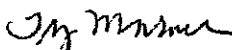
The Kaua'i Prosecutor's Office believes the fundamental changes presented in HB No. 1559 are premature, as there needs to be further discussions on the ramifications to law enforcement from such a fundamental change to the Hawaii Asset Forfeiture program.

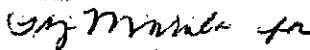
There is a pending measure before the Legislature, SB 2149, which requires the Department of the Attorney General to establish a working group to review and discuss Hawaii's forfeiture laws and make recommendations to improve these laws. SB 2149 will ensure that asset forfeiture is still being used for its intended purposes, to remove the tools and means of select criminal activity. This working group would submit a written report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2017.

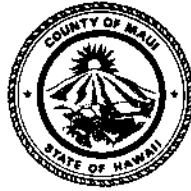
The Kaua'i Prosecutor's Office believes that the Hawaii law enforcement entities are not abusing the asset forfeiture laws; and will continue to ensure that any property forfeited furthers the interests of justice. By allowing the working group to be established, the legislature would have all the information needed to make an informed decision on the future of Hawaii's Asset Forfeiture Program.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Kaua'i, **STRONGLY OPPOSES** the passage of House Bill No. 1559.

Thank you for your consideration,


Tracy Murakami
Deputy Prosecuting Attorney


Justin F. Kollar
Prosecuting Attorney



LATE

DEPARTMENT OF THE PROSECUTING ATTORNEY
COUNTY OF MAUI
150 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD. K. MINATOYA
Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
HB 1559 - RELATING TO PROPERTY FORFEITURE

February 9, 2016

The Honorable Karl Rhoads
Chair
The Honorable Joy A. San Buenaventura
Vice Chair
and Members
House Committee on Judiciary

Honorable Chair Rhoads, Vice Chair San Buenaventura and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, STRONGLY OPPOSES HB 1559 - Relating to Property Forfeiture. This bill seeks to preclude civil asset forfeiture actions by reason of a covered offense named in Hawaii Revised Statutes §712A-4, to the extent of the property owner's interest, unless the listed covered offense is a felony criminal offense for which the property owner has been convicted.

HB 1559 does not address all relevant and possible issues. The asset forfeiture program is an administrative or civil matter, and does not relate to criminal proceedings by its very nature. The purposes for the asset forfeiture program are to take away the means and profit of criminal activity, and to serve as a deterrent, and is not the criminal process itself.

Additionally, this bill does not provide for acquittals that will be appealed by a prosecuting attorney in the intermediate and supreme courts, abandoned property or proceeds seized in criminal activity where an actual owner can be determined, or possible dismissals of criminal cases based on court rule technicalities. It also fails to consider cases where the property owner has fled the jurisdiction and cannot be located or extradited.

Finally, we believe that the bill will create internal conflicts in Chapter 712A. The bill does not conform other provisions in Chapter 712A, and will create conflicts in the interpretation of laws.

Further analysis and discussion is the best recourse, as provided in SB 2149, which will allow the establishment of a working group to review the current law and its intended purpose, evaluate Hawaii forfeiture laws compared to other jurisdictions, and to provide recommendations based on educated review. We believe that the best vehicle to address any concerns about Chapter 712A is SB 2149.

We are confident that further analysis of the Hawaii Asset Forfeiture Program will demonstrate that our law enforcement community is committed to protecting innocent owners and depriving criminals of property and assets that are acquired during criminal activity.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, STRONGLY OPPOSES the passage of this bill. We ask that the committee HOLD HB 1559.

Thank you very much for the opportunity to provide testimony on this bill.

LATE

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai`i

February 9, 2016

RE: H.B. 1559; RELATING TO PROPERTY FORFEITURE.

Chair Rhoads, Vice-Chair Buenaventura and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to H.B. 1559.

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 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 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

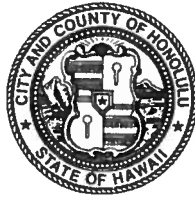
the Legislature, S.B. 2149, which requires the Department of the Attorney General to establish a working group to review and discuss Hawaii's forfeiture laws and make recommendations to improve these laws, including identifying any areas of concern or abuse.

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

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



LOUIS M. KEALOHA
CHIEF

MARIE A. McCAULEY
CARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE CK-TA

February 9, 2016

The Honorable Karl Rhoads
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 1559, Relating to Property Forfeiture

I am Calvin Tong, Major of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Bill No. 1559, Relating to Property Forfeiture.

The Honolulu Police Department opposes this bill and its changes to the Hawaii Revised Statutes Section 712A-5. We support Senate Bill No. 2149, Relating to Forfeiture. We would like to see that a working group be formed to evaluate and recommend any changes to the current forfeiture laws.

The Honolulu Police Department urges you to oppose House Bill No. 1559, Relating to Property Forfeiture.


Thank you for the opportunity to testify.

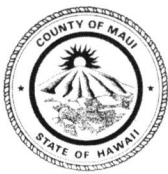
APPROVED:



Louis M. Kealoha
Chief of Police

Sincerely,


Calvin Tong, Major
Narcotics/Vice Division



POLICE DEPARTMENT

COUNTY OF MAUI



ALAN M. ARAKAWA
MAYOR

TIVOLI S. FAAUMU
CHIEF OF POLICE

OUR REFERENCE
YOUR REFERENCE

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DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

February 8, 2016



The Honorable Karl Rhoads, Chair
And Members of the Committee on Judiciary
House of Representatives
State Capitol
Honolulu, HI 96813

RE: House Bill No. 1559, RELATING TO PROPERTY FORFEITURE

Dear Chair Rhoads and Members of the Committee:

The Maui Police Department strongly opposes the current draft of H.B. No. 1559.

This bill would prohibit civil asset forfeiture proceedings without a conviction of all property owners prior to forfeiting property involved in the commission of a covered felony offense.

Hawaii's Asset Forfeiture Program, contained in Chapter 712A, Hawaii Revised Statutes, adopted by the Hawaii Legislature in 1988, is used to take out of circulation the tools of certain criminal activity. Typically, they were vehicles, cash, etc. involved in the commission of any "covered offense" — a crime concerning methamphetamine, certain other drugs in specific quantities, money laundering, and other crime specifically identified in HRS Chapter 712A. The vehicles, cash, etc. are sought to be forfeited by the County Prosecutors.

The changes in the current draft of this measure will hamper efforts to derail the economic infrastructure of criminal organizations. The criminal organizations utilize their profits from sales of their "product" to purchase more "product," tools and equipment to encourage growth within their organizations. With the present Hawaii Asset Forfeiture Program, we are currently able to render the criminal organizations that take advantage of our citizens powerless to operate without finances or equipment.

The Maui Police Department believes the changes presented in H.B. No. 1559 needs to be further discussed without making a premature decision. They are without thought on the ramifications to law enforcement from such a fundamental change to the Hawaii Asset Forfeiture Program.

The Honorable Karl Rhoads, Chair
And Members of the Committee on Judiciary
February 8, 2016
Page 2

There is a pending measure before the Legislature, S.B. No. 2149, 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. S.B. 2149 will ensure that asset forfeiture is still being used for its intended purposes, to remove the tools and means of select criminal activity. This working group would submit a written report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the Regular Session of 2017.

The Maui Police Department believes that the Hawaii law enforcement entities are not abusing the asset forfeiture laws and will continue to ensure that any property forfeited furthers the interests of justice. By allowing the working group to be established, the legislature would have all the information needed to make an informed decision on the future of Hawaii's Asset Forfeiture Program.

The Maui Police Department asks that you oppose H.B. No. 1559.

Thank you for the opportunity to testify.

Sincerely,



TIVOLI S. FA'UMU
Chief of Police



LATE

Committee: Committee on Judiciary
Hearing Date/Time: Tuesday, February 9, 2016, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Support of H.B.1559, Relating to Property Forfeiture

Dear Chair Rhoads and Members of the Committee on Judiciary:

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

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 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,

A handwritten signature in black ink that reads "Mandy Finlay". The signature is written in a cursive, flowing style.

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.

American Civil Liberties Union of Hawaii
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www.acluhawaii.org



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

TO: House Committee on Judiciary
FROM: Carl Bergquist, Executive Director
HEARING DATE: 9 February 2016, 2PM
RE: HB1559, Relating to Property Forfeiture, **STRONG SUPPORT**

Dear Chair Rhoads and Vice Chair San Buenaventura:

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 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.



**THE HUMANE SOCIETY
OF THE UNITED STATES**

LATE

February 9, 2016, 2pm

To: Honorable Chair Rhoads, Vice-Chair San Buenaventura and Judiciary Committee Members

From: Inga Gibson, Hawaii State Director, The Humane Society of the United States-Humane Society International, PO Box 89131, Honolulu, HI 96830, igibson@humanesociety.org

RE: Comments and Proposed Amendment to HB1559; Civil Asset Forfeiture

Thank you for your consideration of this testimony. We take no position on this bill however, should the Committee decide to pass out this measure we respectfully ask for the below amendment to ensure that this section shall not apply to the forfeiture of an animal prior to criminal proceedings per Hawaii Revised Statute 711-1109.2 which states, (6) *Forfeiture of a pet animal or equine animal under this section shall not be subject to the provisions of chapter 712A.*

Although animals are legally considered property they cannot be treated the same as inanimate objects that may be seized or forfeited as part of a criminal investigation. Further, there is an existing bonding procedure within Hawaii Revised Statute 711-1109.2 that provides for due process and allows a defendant to post a bond for the care of their animal pending criminal investigation.

Again, should the Committee decide to pass out this measure we appreciate your consideration of the below amendment to create a new section stating; **(f) This section shall not apply to the forfeiture of an animal prior to disposition of criminal charges per Hawaii Revised Statute 711-1109.2**

SECTION 1. Section 712A-5, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Except that:

(a) Real property, or an interest therein, may be forfeited under the provisions of this chapter only in cases in which the covered offense is chargeable as a felony offense under state law;

(b) No property shall be forfeited under this chapter to the extent of an interest of an owner~~[, by]~~:

(i) By reason of the commission of any covered offense unless:

(A) The covered offense is chargeable as a felony offense under state law; and

(B) The owner has been convicted of the covered offense by a verdict or plea, including a no contest plea or a deferred acceptance of guilty plea or no contest plea; or

(ii) By reason of any act or omission established by that owner to have been committed or omitted without the knowledge and consent of that owner;

(c) No conveyance used by any person as a common carrier in the transaction of a business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(d) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent; and

(e) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission."

(f) This section shall not apply to the forfeiture of an animal prior to disposition of criminal charges per Hawaii Revised Statute 711-1109.2

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.



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Robin Tijoe

February 9, 2016
2:00 PM
Conference Room 325

To: House Committee on Judiciary
Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice Chair

From: Grassroot Institute of Hawaii
President Keli'i Akina, Ph.D.

RE: HB 1559 -- RELATING TO PROPERTY FORFEITURE
Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on HB 1559, which 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.

Last year, the Institute for Justice gave Hawaii a score of D- for its civil asset forfeiture laws.¹ This was found by comparing standards of proof, the burden on innocent owners, the profit incentive, and reporting requirements. Part of the reason for Hawaii's low ranking was because of the poor protections for innocent third-party property owners, and the low bar to forfeit, with no conviction required.

On average, law enforcement agencies in Hawaii seize \$1.2 million worth of property per year. In total, \$17,244,129 has been seized since the year 2000 in Hawaii.

If police suspect property was involved in a crime, they can take it, sell it, and direct the proceeds towards their budgets. They need not prove anyone committed a crime, or even

¹ <http://ij.org/pfp-state-pages/pfp-hawaii/>

arrest anyone to take property away. This gives police departments an incentive to take property because in Hawaii, 100% of the forfeiture proceeds go directly to law enforcement.

Bill HB 1559 attempts to fix this by requiring a conviction before property can be taken through civil asset forfeiture. Law enforcement agencies would still be able to prosecute criminals and forfeit their possessions – but the rights of innocent property owners would be protected.

However, this may not fix the problem completely, as there are two points to consider.

First, civil asset forfeiture proceeds in Hawaii would continue to go towards law enforcement agencies. A better solution may be to place forfeiture revenue in a neutral fund, like the state's general fund.

Second, the bill does not protect Hawaii from the Federal forfeiture law. A study by the Institute for Justice² has shown that when states make forfeiture harder and less profitable, state and local law enforcement agencies tend to hand over forfeiture prosecutions to the federal government, which return up to 80% of the proceeds to local law enforcement.

Although these points are important to consider, HB 1559 does provide a commendable first step towards securing and protecting the property rights of innocent Hawaii's citizens.

Thank you for the opportunity to submit our comments.

Sincerely,
Keli'i Akina, Ph.D.
President, Grassroot Institute of Hawaii

² <http://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf>

LATE



I am Michael S Zola, a practicing attorney in the State of Hawaii for the past 35 years, a graduate of Columbia Law and a former law clerk to a federal judge.

Recently, within the past 2 years, I represented a man in Hilo facing criminal charges after a fight. After the fight ended he drove off on his Harley Davidson motorcycle. Minutes later he was apprehended by police and his motorcycle confiscated as evidence. Months later while the criminal case was still pending, my client was personally served with an administrative asset forfeiture action of the motorcycle on the questionable grounds that the motorcycle was used as an "instrument of the crime". He assumed I also received a copy from the county prosecutors office since I was his attorney of record in the criminal case from the same prosecutors office, but I was not.

By the time I learned of it, the time to answer had passed. The prosecutor refused to stipulate to extend the time to allow me to file my challenge to the forfeiture on the merits of the "instrument of the crime" allegation. When I moved for permission to file an answer to the Deputy Attorney General acting as the administrative judge, she also denied the motion and instead entered a default judgment ordering the motorcycle forfeited. I immediately requested reconsideration and the right to appeal. Reconsideration was denied and I was advised that by statute, specifically HRS Section 712A-10(11), "There shall be no appeal from the attorney general's decision or order of forfeiture or remission or mitigation." No right to appeal!

No right to appeal. The very notion is an affront to fundamental fairness and my training and experience as a student and practitioner of due process of law and the State and Federal Constitutions. That a young attorney working in the Office of the State Attorney General could be allowed the unreviewable last word on a citizens right to property is simply unacceptable, repugnant and likely to have resulted in multiple miscarriages of justice as, in my opinion, it did in my case. If my client could afford the cost of an appeal, I would have recommended that he do so even though the appeal would likely cost the same as, or more than, the value of the motorcycle.

Before the Hawaii Supreme Court has the opportunity to strike down this statute as a violation of fundamental principles of due process of law, the legislature should comprehensively review and revise this statutory scheme in all the ways it is susceptible to being employed to violate our vulnerable citizens' private property rights.

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