



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

S.B. NO. 2149, S.D. 2, RELATING TO FORFEITURE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, March 18, 2016 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Steve Bumanglag, Deputy Attorney General, or
Michael Vincent, Deputy Attorney General

Chairs Rhoads and Luke and Members of the Committee:

The Department of the Attorney General (“Department”) supports this bill. The purpose of this bill is to establish a working group to review and discuss Hawaii’s asset forfeiture laws and make recommendations to improve these laws to ensure that the asset forfeiture program and its funds are used for their intended purpose. The Department is aware that there are a number of bills that have been introduced this legislative session calling for substantive and procedural changes which, if enacted, may create legal inconsistencies in existing forfeiture laws, present logistical challenges, and increase the costs of the program.

We respectfully recommend that a working group tasked to review, study, and analyze Hawaii’s forfeiture laws and make recommendations for change is more efficient than making individual changes that could present multiple legal challenges.

We respectfully request that you pass this measure.

MITCHELL D. ROTH
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE
HILO, HAWAII 96720
PH: (808) 961-0466
FAX: (808) 961-8908
(808) 934-3403
(808) 934-3503

WEST HAWAII UNIT
81-980 HALEKĪ ST, SUITE 150
KEALAKEKUA, HAWAII 96750
PH: (808) 322-2552
FAX: (808) 322-6584

OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 2149, SD2

A BILL FOR AN ACT RELATING TO FORFEITURE

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Friday, March 18, 2016, 2:00 PM
State Capitol, Conference Room 325

Honorable Chair Rhoads, Honorable 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 support of Senate Bill No. 2149, SD2.

This measure requires the Department of the Attorney General to establish a working group to review and discuss Hawai'i's forfeiture laws and make recommendations to improve these laws.

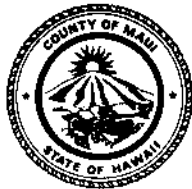
Hawai'i's Asset Forfeiture Program is used to undermine the economic infrastructure of criminal enterprises. Criminal enterprises generate a profit from the sale of their "product" or "services" through criminal activity. Asset forfeiture can remove the tools, equipment, cash flow, profit, and, sometimes,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

SB 2149, SD2 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. The working group would 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.

We believe that Hawai'i County 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 Hawai'i's Asset Forfeiture Program.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill No. 2149, SD2. Thank you for the opportunity to testify on this matter.

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Prosecuting Attorney
ROBERT D. RIVERA
First Deputy Prosecuting Attorney

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
SB 2149, SD 2 - RELATING TO FORFEITURE

March 18, 2016

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

Chair Rhoads, Vice Chair San Buenaventura and Members of the Committees:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS SB 2149, SD 2 - Relating to Forfeiture. SB 2149, SD 2 will require 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.

With news stories from mainland states concerning potential asset forfeiture abuse, concerns are raised by lawmakers nationwide. Although proponents for an overhaul of asset forfeiture laws in Hawaii cannot identify any cases of abuse of the forfeiture process, SB 2149, SD 2 provides a smart and effective means to review the current forfeiture laws. This will avoid ineffective and inefficient piecemeal reactionary legislation.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill. We ask that the committees PASS SB 2149, SD 2 as an HD 1 correcting the effective date.

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

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 Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766

808-241-1888 ~ FAX 808-241-1758

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

State Capitol, Conference Room 325
Hawaii Legislature
Honolulu, Hawaii
VIA FACSIMILE (800) 535-3859
(1 page to follow)

March 16, 2016

Dear Sir or Madam:

RE: testimony in SUPPORT of SB 2149, SD 2
Hearing: March 18, 2016, at 2:00 p.m.

Please find attached one page of testimony in support Senate Bill No. 2149, SD 2, scheduled for hearing Friday afternoon before the House Judiciary Committee.

Thank you,

Handwritten signature of Tracy Murakami in black ink.

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 SUPPORT OF SENATE BILL 2149, SD 2

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

HOUSE COMMITTEE ON JUDICIARY

The Honorable Karl Rhoads, Chair

Friday, March 18, 2016, 2:00 PM

State Capitol, Conference Room 325

Honorable Chair Rhoads, Vice-Chair San Buenaventura, and Members of the House Committee on Judiciary, the Office of the Prosecuting Attorney, County of Kaua'i, submits the following testimony in SUPPORT OF Senate Bill No. 2149, SD 2.

This measure would establish a working group to review Hawaii's forfeiture laws and make recommendations to the legislature to improve these laws. This bill is superior to the other bills introduced this session proposing amendments to Hawaii's forfeiture laws because it provides for comprehensive review of Chapter 712A, the asset forfeiture chapter. Without such review, any amendments are at great risk of creating internal inconsistencies within the chapter, resulting in confusion among practitioners, lay persons, and the judiciary.

Therefore, the Department of the Prosecuting Attorney, County of Kaua'i, SUPPORTS the passage of Senate Bill 2149, and requests that the committee pass SB 2149, SD 2.

Thank you for your consideration,

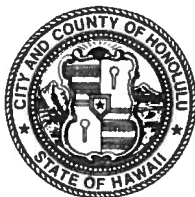
Tracy Murakami
Tracy Murakami
Deputy Prosecuting Attorney

Justin F. Kollar
Justin F. Kollar
Prosecuting Attorney

An Equal Opportunity Employer

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org



KIRK CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

MARIE A. McCAULEY
GARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE CT-TA

March 18, 2016

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

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 2149, S.D. 2, Relating to 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 supports Senate Bill No. 2149, S.D. 2, Relating to Forfeiture.

The purpose of this bill is to establish a working group to review and discuss Hawaii's forfeiture laws and make recommendations to improve these laws.

The formation of such a working group would provide an oversight into the forfeiture process. It would reassure the general public that property being seized and forfeited under the forfeiture laws are fair.

The Honolulu Police Department urges you to support Senate Bill No. 2149, S.D. 2, Relating to Forfeiture.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Louis M. Kealoha
Chief of Police


Calvin Tong, Major
Narcotics/Vice Division



Committee: Committee on Judiciary
Hearing Date/Time: Friday, March 18, 2016, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in Support of S.B. 2149, S.D.2, Relating to 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 S.B. 2149, S.D.2, requiring the Department of the Attorney General to establish a working group to review and discuss Hawaii’s asset forfeiture laws and make recommendations to improve these laws.

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/>. Although civil asset forfeiture is often justified as a way to cripple large-scale criminal operations, stories have recently emerged that it is being used to create revenue for law enforcement with little restriction or accountability. Establishing a working group to address abusive practices is a step in the right direction.

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.

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
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: 18 March 2016, 2PM
RE: SB2149 SD2, Relating to Forfeiture, **SUPPORT**

Dear Chair Rhoads, Vice Chair San Buenaventura and Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) continues to believe that the current civil asset forfeiture tool is in and of itself fundamentally unjust. It is hard to characterize a program that relies on the seizing of a person's property without any related conviction, turns the burden of proof onto that property owner to prove that the property is innocent and funnels these assets into the coffers of self-interested parties (the arresting agency, the prosecutors and the Attorney General) in any other way. The working group proposed by SB2149 would look at all this, and provide some qualitative and quantitative data to help educate the public and government regarding how best to reform the program. As we such, we are in support of this measure, but stress that it must be viewed as **a complement not a substitute to HB1559 HD2.**

HB1559 HD1 was voted out of this House Committee on Judiciary on 9 February with one "no" vote, and it was approved by the full House on 8 March as HB1559 HD2, again with just one lone "no" vote. It proposes crucial improvements, notably requiring a conviction related to any seized assets before they can be forfeited, to the current forfeiture statute. There is no reason to delay this basic notion of due process, innocent until proven guilty, until the working group concludes, or begins, its work. Indeed, the working group will have more legitimacy if the root reforms contained in HB1559 are made prior to its convening.

We are also pleased that in SD2 of SB2149 the three additional working group members (DPFHI, ACLU of Hawai'i and the Office of the Public Defender) remain on the roster despite the wishes of the Office of the Prosecutor to remove both the Office of the Public Defender and our organization. We strongly believe that the three of us would bring balance and perspective as well as exactly the type of knowledge, e.g. regarding other jurisdictions, which the working group will be charged to gather and assess.

Finally, **our state law is actually worse than stated in the findings of the bill. The cited Institute for Justice actually has a new 2015 study of all states, and Hawai'i has gone from a "D" in 2010 (as stated in the findings) to a "D-" (D minus) in 2015.** This is a clear sign that Hawai'i is falling behind the rest of the country in reforming civil asset forfeiture. I would suggest updating that finding, and respectfully request that the committee pass this measure to, alongside HB1559 HD2, begin the much-needed process of reform.

Mahalo for the opportunity to testify.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2016 3:06 PM
To: JUDtestimony
Cc: dylanarm@hawaii.edu
Subject: *Submitted testimony for SB2149 on Mar 18, 2016 14:00PM*

SB2149

Submitted on: 3/16/2016
Testimony for JUD on Mar 18, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

LATE

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515



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 Hawaiʻi**

March 18, 2016

RE: S.B. 2149, S.D. 2; RELATING TO FORFEITURE.

Chair Rhoads, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney, City and County of Honolulu (“Department”), hereby submits testimony in support of S.B. 2149, S.D. 2, with amendments.

The purpose of S.B. 2149, S.D. 2, is to form a working group to examine the current effectiveness and efficiency of Hawaiʻi’s asset forfeiture laws, and make recommendations to ensure that our forfeiture laws are used for their intended purpose. As the basis for forming this working group, S.B. 2149, S.D. 2, cites to a 2010 report published by an organization in Virginia, which raised concerns about the use of asset forfeiture laws nationwide.

Asset forfeiture is a highly specialized mechanism that is completely grounded in civil law, but closely connected to criminal law. It is only used in a very limited number of cases, and generally serves to remove the products and/or proceeds of crime from the community (in those limited cases), while also depriving owners of such products and/or proceeds if they knew that the products/proceeds were so connected to criminal activity.

Hawaiʻi’s asset forfeiture laws carefully balance due process with judicial economy and efficiency, providing a quick mechanism for owners to contest forfeiture—even if they do not have what would amount to a “legal defense” in criminal court—and taking the ultimate decision out of the hands of prosecutors or police. If the Legislature has concerns about the state of Hawaiʻi’s forfeiture laws, the Department is willing to participate in a working group to assess the efficacy of these laws, including its impact on law enforcement and public safety. However, to make any changes to Hawaiʻi’s asset forfeiture laws without thorough and careful consideration—and proper vetting—could have a significantly negative impact on our court system and/or defeat the important purposes served by having these laws in the first place.

With regards to the proposed makeup of the working group, we do not believe it would be appropriate to include a representative from the Office of the Public Defender, as asset forfeiture is a civil—not criminal—procedure, and thus the Office of the Public Defender is not involved in these types of proceedings. Similarly, or perhaps even moreso, there does not appear to be any relevance or standing for Drug Policy Forum of Hawaii to be part of the working group, despite their apparent interest. As such, we would ask that those two positions be removed.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 2149, S.D. 2, with the requested amendments noted. Thank for you the opportunity to testify on this bill.