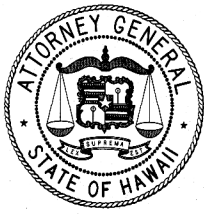




SB2149

Measure Title:	RELATING TO FORFEITURE.
Report Title:	Forfeiture; Working Group; Department of the Attorney General
Description:	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.
Companion:	
Package:	None
Current Referral:	PSM, JDL/WAM
Introducer(s):	GABBARD, BAKER, CHUN OAKLAND, KEITH-AGARAN, NISHIHARA, Galuteria, Kim, Shimabukuro, Slom, L. Thielen



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

DATE: Thursday, February 11, 2016 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Gary Senaga or Michael S. Vincent, Deputy Attorneys General

Chairs Nishihara and Espero and Members of the Committee:

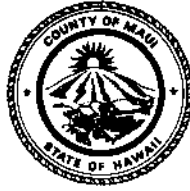
The Department of the Attorney General (“Department”) supports this bill. The purpose of this Bill is to establish a working group to review and discuss Hawaii’s asset forfeiture laws and make recommendations to improve these laws to ensure that the asset forfeiture program and its funds are used for its intended purpose, rather than as an incentive for law enforcement agencies to generate revenue. 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 and present logistical challenges and increase the costs of the program.

Examples of the bills that have been introduced include: expanding the program to allow forfeiture for the commission of petty misdemeanors (S.B. No. 632); creating a forfeiture special fund with allocation by the Legislature and requiring forfeiture to occur only upon the criminal conviction of the owner (S.B. No. 2466); changing the burden of proof to clear and convincing evidence and requiring the State to show that the owner consented to the use of that property with knowledge that it would be used for criminal purpose, and the recovery of attorneys’ fees and costs (S.B. No. 2635).

A working group tasked to review, study, and analyze Hawaii’s forfeiture laws and make recommendations for change is more efficient than to make individual changes that could present legal problems to all involved.

We respectfully request that you pass this measure.

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Acting Prosecuting Attorney

ROBERT D. RIVERA
Acting First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY
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CONTACT: RICHARD. K. MINATOYA
Deputy Prosecuting Attorney
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY
ON
SB 2149 - RELATING TO FORFEITURE

February 11, 2016

The Honorable Clarence K. Nishihara
Chair
The Honorable Will Espero
Vice Chair
and Members
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Chair Nishihara, Vice Chair Espero and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS SB 2149 - Relating to Forfeiture. SB 2149 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 proves 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 committee PASS SB 2149.

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

MITCHELL D. ROTH
PROSECUTING ATTORNEY

DALE A. ROSS
FIRST DEPUTY
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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF SENATE BILL 2149

A BILL FOR AN ACT RELATING TO FORFEITURE

COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Sen. Clarence K. Nishihara, Chair
Sen. Will Espero, Vice Chair

Thursday, February 11, 2016, 1:15 PM
State Capitol, Conference Room 229

Honorable Chair, Nishihara, Honorable Vice-Chair Espero, and members of the Committee on Public Safety, Intergovernmental and Military Affairs, the Office of the Prosecuting Attorney, County of Hawai‘i submits the following testimony in support of Senate Bill No. 2149.

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 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 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. Thank you for 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 11, 2016

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety, Intergovernmental,
and Military Affairs
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

SUBJECT: Senate Bill No. 2149, 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, 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.

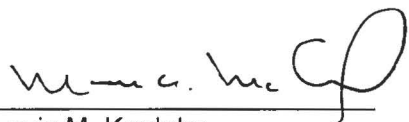
The formation of such a working group would provide an oversight into the forfeiture process. It would reassure the general public that property being seized and forfeited under the forfeiture laws are fair.

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

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


Louis M. Kealoha
Chief of Police


Calvin Tong, Major
Narcotics/Vice Division



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

TO: Senate Committees on Public Safety, Intergovernmental, and Military Affairs
FROM: Carl Bergquist, Executive Director
HEARING DATE: 11 February 2016, 1:15PM
RE: SB2149, Relating to Forfeiture, **OPPOSITION**

Dear Chairs Nishihara & Vice Chair Espero, Committee Members:

The Drug Policy Forum of Hawai'i (DPFHI) **opposes** this measure to create a working group to assess the state of Hawaii's civil asset forfeiture law. This working group is unnecessary for one simple reason: the civil asset forfeiture tool is in and of itself wrong. We do not need a working group to determine what we already know is unjust: seizing a person's assets and property without any related conviction, turning the burden of proof onto that property owner to prove that the property is innocent, and lastly, funneling these assets into the coffers of the arresting agency, the prosecutors and the Attorney General.

With that kind of incentive, why would any of those benefitting wish to reform civil asset forfeiture? This "policing for profit" then undermines any impetus to reform the two due process problems. Some may claim that Hawai'i has yet to experience abuse of the kind that has been seen on the mainland. But whether or not that has occurred in a high profile case or two in our state, it should be clear to any and all that this process is fundamentally anathema to our system of justice.

We ask instead the Committee hear SB2466 that proposes the kind of reform that has bipartisan support in other states and at the federal level. In addition, we ask that you follow HB1559 that was voted out of Committee on Judiciary on 9 February. When then AG Holder limited asset forfeiture sharing with local and state police in January 2015, he did so to prevent abuse. He did not propose a carve out for Hawaii due to good behavior. **Our state law is actually worse than stated in the findings of the bill, the cited Institute for Justice has a 2015 study of all states, and Hawaii has gone from a "D" to a "D-" – do we really need to wait for a "F"?** A working group only serves to delay the reform of our civil asset forfeiture state law, reform that would be in the same spirit as Holder's.

Mahalo for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [PSMTestimony](#)
Cc: marilynwick@pobox.com
Subject: Submitted testimony for SB2149 on Feb 11, 2016 13:15PM
Date: Wednesday, February 10, 2016 3:30:43 PM

SB2149

Submitted on: 2/10/2016

Testimony for PSM on Feb 11, 2016 13:15PM in Conference Room CR229

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Mick	Individual	Support	No

Comments: A working group is good, but reforming our law now would be far better. The whole process places the burden on the accused to prove their innocence, rather than on the government to prove guilt.

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.

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