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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

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**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL AND MILITARY AFFAIRS
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai'i**

February 11, 2016

RE: S.B. 2149; RELATING TO FORFEITURE

Chair Nishihara, Vice-Chair Espero, and members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs, the Department of the Prosecuting Attorney, City and County of Honolulu (“Department”), hereby submits testimony in support of S.B. 2149.

The purpose of S.B. 2149 is to form a working group to examine the current effectiveness and efficiency of Hawai'i'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 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 their owners of such products and/or proceeds if they knew that the products/proceeds were so connected to criminal activity.

Hawai'i'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 Hawaii'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 Hawai'i'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. That said, because asset forfeiture is a civil—not criminal—procedure, we do not believe it is fitting

for the working group to include a representative from the Hawai'i Access to Justice Commission.

For all of the foregoing reasons—and with the exception of including the Hawai'i Access to Justice Commission on this civil matter—the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of S.B. 2149. Thank for you the opportunity to testify on this bill.