



Hawaii's voice for sensible, compassionate, and just drug policy

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Tuesday, February 24, 2015
9:00 am

Conference Room 016
State Capitol
415 South Beretania Street

Executive Director Rafael Kennedy in strong opposition to SB632 - Relating to Asset Forfeiture

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the committee,

The Drug Policy Forum of Hawaii strongly opposes this bill. Hawaii already has a problem with asset forfeiture, and this bill would compound that problem dramatically. As it stands, the Institute for Justice rated Hawaii's asset forfeiture law with a D minus, among the worst in the country, because it allows law enforcement to keep 100% of the profits of seized property, and it places the burden of proof upon property owners, instead of law enforcement.¹ This bill would take what is already a predatory and unfair law, and magnify its power to an almost comical extent.

This bill would allow law enforcement to seize assets in response to petty misdemeanors. To be clear, that category includes such offenses as trespassing, excessive speeding, driving without a license, and staying in a park after closing hours, in addition to simple possession of drugs. These laws will clearly disproportionately affect the homeless, and drug users, already vulnerable populations, in ways that are beneficial to no one in

¹ "The Institute for Justice." *The Institute for Justice*. Accessed February 23, 2015.
<http://www.ij.org/hawaii-earns-acanadacana-in-acanapolicing-for-profitacana-report>.

society. We are making great and promising strides on “housing first” policies which understand that helping people out of poverty and addiction is best accomplished by first giving them the shelter, support, and basic necessities that they need in order to succeed. This bill would do the opposite, causing even the most minor violations of the law to result in draconian penalties. Please defer this bill.

Mahalo for your time and consideration,

Rafael Kennedy
Executive Director,
Drug Policy Forum of Hawaii

The Drug Policy Forum of Hawaii works to educate policymakers and the public about effective ways of addressing drug issues in Hawai‘i with sensible and humane policies that reduce harm, expand treatment options, and adopt evidence-based practices while optimizing the use of scarce resources.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY and LABOR

Chair: Sen. Gil Keith-Agaran

Vice Chair: Sen. Maile Shimabukuro

Tuesday, February 23, 2015

9:00 a.m.

Room 016

OPPOSITION TO SB 632 - MISDEMEANOR ASSET FORFEITURE

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee!

My name is Kat Brady and I am the Coordinator Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered always mindful that 6,000 Hawai'i individuals are living behind bars, including 1,800 men who are serving their sentences abroad, thousands of miles from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 632 authorizes the forfeiture of any property used or taken in any violation of laws or rules that results in a petty misdemeanor.

Community Alliance on Prisons strongly opposes SB 632. If ever there was an incentive for corruption, this bill is it!

An article published on January 16, 2015¹ reported:

In a nutshell, civil forfeiture is the practice of confiscating items from people, ranging from cash, cars, even homes based on no criminal conviction or charges, merely suspicion.

This practice first became widespread for use against pirates, as a way to take possession of contraband goods despite the fact that the ships' owners in many cases were located thousands of miles away and couldn't easily be prosecuted. As is often the case, what starts out reasonable becomes a gigantic organized crime ring of criminality, particularly in a society where the rule of law no longer exists for the "elite," yet anything goes when it comes to pillaging the average citizen.

¹ Did "Stealing From Americans" Just Stop? AG Holder Moves To End Civil Asset Forfeiture, by Tyler Durden on 01/16/2015 . <http://www.zerohedge.com/news/2015-01-16/did-stealing-americans-just-stop-ag-holder-moves-end-civil-asset-forfeiture>

One of the major reasons these programs have become so abused is that the police departments themselves are able to keep much of the confiscated money. So they actually have a perverse incentive to steal. As might be expected, a program that is often touted as being effective against going after major drug kingpins, actually targets the poor and disenfranchised more than anything else.

The Washington Post included an interactive map² with a story published in October 2014 to show asset forfeiture state-by-state since 2008:

Hawaii State Total: \$4,582,580

Police agencies report their spending in broad categories and include few details on specific purchases. Local officials decide how to categorize their spending. They most often choose the category "Other."

A helpful website³ that grades the states gave Hawai'i's asset forfeiture a dismal grade and describes it as: *"Hawaii's civil asset forfeiture laws are in need of serious reform. The state may forfeit your property by showing by a preponderance of the evidence that the property was used in a crime. Unfortunately, if you are an innocent owner and believe your property was wrongly seized, you bear the burden of proof. Law enforcement has a strong incentive to seize property, as they receive 100 percent of the funds raised through civil forfeiture."*

Grades*	Forfeiture Law Grade	State Law Evasion Grade	Final Grade
Hawaii	D-	C	D

Forfeitures as Reported to LEMAS (Drug-related only)		
	Total Assets Forfeited	Assets Forfeited per Law Enforcement Agency
1993	\$4,091,284	\$1,007,199
1997	\$1,616,491	\$236,675
2000	\$2,067,879	\$515,824
2003	\$2,557,282	\$618,159

² **Spending seized assets**, By Alberto Cuadra, Ted Mellnik and Shelly Tan, Washington Post, Published: October 11, 2014 <http://www.washingtonpost.com/wp-srv/special/investigative/asset-seizures/>

³ Policing for Profit, <http://www.ij.org/part-ii-grading-the-states-2>

Equitable Sharing Proceeds from the Assets Forfeiture Fund

Proceeds Returned to State

FY 2000	\$1,207,271
FY 2001	\$607,098
FY 2002	\$2,052,050
FY 2003	\$2,038,594
FY 2004	\$1,802,294
FY 2005	\$1,657,680
FY 2006	\$3,345,770
FY 2007	\$2,808,610
FY 2008	\$1,626,211
Total	\$17,145,578
Average per Year	\$1,905,064

Freedom of Information Data

Reports of forfeitures by seizing agency

	Currency	Vehicles	Other	Total
2001	\$450,945	\$536,040	\$207,033	\$1,194,018
2002	\$645,537	\$487,147	\$876,188	\$2,008,872
2003	\$1,044,944	\$575,675	\$286,000	\$1,906,619
2004	\$737,668	\$457,792	\$461,625	\$1,657,085
2005	\$414,395	\$332,230	\$316,627	\$1,063,252
2006	\$698,035	\$460,855	\$334,709	\$1,493,599
2007	\$636,598	\$468,290	\$300,396	\$1,405,284
Total	\$4,628,122	\$3,318,029	\$2,252,578	\$10,728,729
Average per Year	\$661,160	\$474,004	\$397,511	\$1,532,676

Reuters reports that U.S. Attorney General Eric Holder said today that **State and local police in the United States will no longer be able to use federal laws to justify seizing property without evidence of a crime.**⁴

Community Alliance on Prisons respectfully asks the committee to HOLD this measure that we see as another attack on some of the most vulnerable people in our community - the houseless, the mentally ill and those struggling to make ends meet.

Mahalo for this opportunity to testify.

⁴ See FN 1

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB632 on Feb 24, 2015 09:00AM*
Date: Sunday, February 22, 2015 2:31:35 AM

SB632

Submitted on: 2/22/2015

Testimony for JDL on Feb 24, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Hairgrove	Individual	Oppose	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.

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for SB632 on Feb 24, 2015 09:00AM
Date: Sunday, February 22, 2015 9:29:00 AM

SB632

Submitted on: 2/22/2015

Testimony for JDL on Feb 24, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	Individual	Oppose	No

Comments: Oppose taking personal property unless we are going to start with corrupt politicians and corporate bribery. www.WeAreOne.cc

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for SB632 on Feb 24, 2015 09:00AM
Date: Sunday, February 22, 2015 6:43:16 AM

SB632

Submitted on: 2/22/2015

Testimony for JDL on Feb 24, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Overbay	Individual	Oppose	No

Comments: The forfeiture of any property used or taken in any violation of laws or rules that results in a petty misdemeanor is excessive punishment. it's ridiculous!

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This appears to be a bill aimed at the homeless (shame on you!). The bill represents overreach on the part of the legislature.

It may be of interest to the committee that Department of Justice has recently limited the rights of state and community police to seize the personal property of those arrested: “Attorney General Eric Holder is barring local and state police from using federal law to seize cash, cars and other property without proof that a crime occurred. The Post's Robert O'Harrow Jr. explains the most sweeping check on police power to confiscate personal property since the seizures began three decades ago.”

http://www.washingtonpost.com/investigations/holder-ends-seized-asset-sharing-process-that-split-billions-with-local-state-police/2015/01/16/0e7ca058-99d4-11e4-bcfb-059ec7a93ddc_story.html