



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

---

**ON THE FOLLOWING MEASURE:**

H.B. NO. 748, H.D. 1, RELATING TO PROPERTY FORFEITURE.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Thursday, February 21, 2019 **TIME:** 1:30 p.m.

**LOCATION:** State Capitol, Room 308

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Gary K. Senaga or Michael S. Vincent, Deputy Attorney General

---

Chair Luke and Members of the Committee:

The Department of the Attorney General (“the Department”) provides comments on H.B. No. 748, H.D. 1. The bill proposes changes to the asset forfeiture program by requiring a felony conviction prior to the forfeiture of any property and removing the distribution of property and money from state and local governments and the criminal forfeiture fund to the Hawaii law enforcement assisted diversion program and the state general fund. The bill, however, keeps intact the Department’s responsibilities for receiving forfeited property, selling or destroying the forfeited property, compromising or paying valid claims and making other dispositions authorized by law.

The Department notes that the bill is unclear as to how or when the Department’s costs and expenses will be paid. These expenses were previously paid by funds deposited in the criminal forfeiture fund.

In section 3 of the bill, section 712A-16(2), Hawaii Revised Statutes, is amended to provide that money and sale proceeds, “after payment of administrative expenses and sale” shall be distributed half to the Hawaii law enforcement assisted diversion program and half to the State general fund. The Department is concerned that the repeal of section 712A-16(2)(a) – (c) would gut the revolving criminal forfeiture funds established under section 712A – 16(4), which is used among other things, for payments of expenses necessary to run the forfeiture program. We recommend that this measure be held. Thank you for the opportunity to testify.

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committee on  
FINANCE**

**Thursday, February 21, 2019  
1:30 PM  
State Capitol, Conference Room 308**

**In consideration of  
HOUSE BILL 748, HOUSE DRAFT 1  
RELATING TO PROPERTY FORFEITURE**

House Bill 748, House Draft 1 proposes to 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. Prohibits the forfeiture of an animal prior to the disposition of criminal charges. It also requires the Attorney General to distribute one half of all forfeited property and the sale proceeds thereof to the Hawaii law enforcement assisted diversion program, with the remaining half to be distributed to the state general fund. **The Department of Land and Natural Resources (Department) opposes this measure and offers the following comments.**

Asset forfeiture is a powerful enforcement tool used by the Department and the Division of Conservation and Resources Enforcement (DOCARE). Forfeiture provides additional teeth to the regulations enforced by DOCARE and without it, the deterrent effect of enforcement will be diminished. A vast majority of the rules enforced by DOCARE are misdemeanor or lesser level offenses. By restricting civil asset forfeiture to felony offenses, this measure would effectively eliminate it from DOCARE's enforcement toolbox.

Thank you for the opportunity to comment on this measure.

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

DWIGHT K. NADAMOTO  
ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE SYLVIA LUKE, CHAIR**  
**HOUSE COMMITTEE ON FINANCE**  
**Thirtieth State Legislature**  
**Regular Session of 2019**  
**State of Hawai`i**

February 21, 2019

**RE: H.B. 748, H.D. 1; RELATING TO PROPERTY FORFEITURE.**

Chair Luke, Vice-Chair Cullen and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to H.B. 748, H.D. 1.

Essentially, this measure would prohibit civil asset forfeiture by reason of the commission of a covered offense, unless the State proves various matters “beyond a reasonable doubt” (a standard of proof often used in criminal law). Rather than forcing such a far-reaching and premature overhaul of Hawaii’s well-conceived program, the Department strongly encourages the Legislature to consider the recommendations of the State Auditor, published June 2018 (available online at [files.hawaii.gov/auditor/Reports/2018/18-09.pdf](http://files.hawaii.gov/auditor/Reports/2018/18-09.pdf)), which are currently in the process of being implemented.

Current forfeiture laws are used to immediately and effectively disrupt the infrastructure of criminal activity and protect the community. This is a civil legal process that operates independently from any related criminal cases, much like civil lawsuits and criminal charges proceed independently from each other in other circumstances. Via asset forfeiture, the manufacturing, packaging, distribution, and sale of illegal drugs can be immediately thwarted by seizing the materials, tools, equipment, cash, vehicles, and other items related to these enterprises. The changes proposed by H.B. 748, H.D. 1 would significantly compromise law enforcement’s ability to deter this illegal conduct, and in turn the safety of our neighborhoods, by conflating the relevant civil and criminal standards and proceedings and upending a generally well-conceived and well-established program.

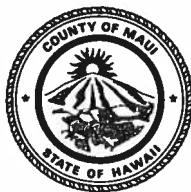
Concerns about “innocent owners” being deprived of their property or “policing for profit” are unfounded. Hawaii’s forfeiture laws provide for the protection of property owners’ rights, and numerous safeguards are already codified in the statute. We are confident that property is being seized and forfeited fairly and equitably and the abuse present in other jurisdictions simply does not exist here.

Before any drastic changes, such as those proposed in H.B. 748, H.D. 1, are made to Hawaii’s 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. In 2016, the Legislature considered a bill (S.B. 2149) to require that the Department of the Attorney General 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. While we firmly believe that Hawaii’s asset forfeiture program is generally well-conceived and well-operated, we understand that “nothing is perfect,” and are open to being part of a process to evaluate all areas of the program.

Also in 2016, the Legislature passed H.C.R. 4 (2016), requesting that the Hawaii State Auditor conduct a study of Hawaii’s asset forfeiture program. After an in-depth study, the Auditor issued a report in June 2018, recommending that formal rules and procedures be promulgated by the Attorney General, to ensure uniform procedures for all parties and increased transparency for the public. Notably, the Auditor opined that the program’s dismissal rates seem high—14% statewide—and the program may actually be overstating the reported seized property values (due to possibly double-counting refiled cases). In recent months, the Attorney General has circulated draft rules, which are currently being reviewed by stakeholders for further discussion and finalization, so a potential working group could also evaluate the implementation and efficacy of these rules.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 748, H.D. 1. Thank for you the opportunity to testify on this matter.

MICHAEL P. VICTORINO  
Mayor



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

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

CONTACT: PETER A. HANANO  
Deputy Prosecuting Attorney  
Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY  
ON  
HB 748, HD1 - RELATING TO  
PROPERTY FORFEITURE

February 20, 2019

The Honorable Sylvia Luke  
Chair  
The Honorable Ty J.K. Cullen  
Vice Chair  
and Members of the Committee on Finance

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, is in **STRONG OPPOSITION** to HB 748, HD1, Relating to Property Forfeiture.

First of all, we agree with the Honolulu Prosecutor's testimony that "concerns about 'innocent owners' being deprived of their property or 'policing for profit' are unfounded." There are no facts to support this finding. Further, we concur that Hawaii's forfeiture laws currently provide adequate due process safeguards for property owners who wish to challenge the forfeiture action. For example, HRS § 712A-10 contains specific provisions regarding notice requirements, and includes procedures available to individuals wishing to contest the forfeiture action.

Second, requiring a "conviction" as a prerequisite to a forfeiture action is problematic because not all cases result in a conviction(s). For instance, drug court participant's cases/charges are dismissed upon successful completion of the drug court program. Similarly, as part of the plea negotiation process, cases/charges are routinely dismissed pursuant to a plea agreement. Under the current measure, no forfeiture action would be permitted in these types of cases.

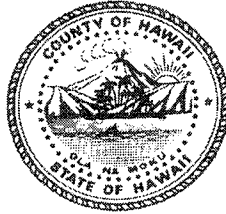
Third and final, we agree with the testimony submitted by the Department of the Attorney General regarding the proposed distribution of forfeiture proceeds. Under this measure, none of the proceeds will go towards the administration of the asset forfeiture program; however, the Department will still retain the responsibility of administering the program. Additionally, the law enforcement agencies who conducted the criminal investigation and/or initiated the forfeiture action will receive no reasonable compensation for their efforts.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, opposes the passage of this bill. We ask that HB 748, HD1 be HELD IN COMMITTEE.

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

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 HALEKI ST, SUITE 150  
KEALAKEKUA, HAWAII 96750  
PH: (808) 322-2552  
FAX: (808) 322-6584

## OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN OPPOSITION TO HOUSE BILL 748, HD1

A BILL FOR AN ACT RELATING TO PROPERTY  
FOREITURE

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair  
Rep. Ty J.K. Cullen, Vice Chair

Thursday, February 21, 2019, 1:30 p.m.  
State Capitol, Conference Room 308

Honorable Chair Luke, Honorable Vice Chair Cullen, and Members of the Committee on Finance, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in **STRONG OPPOSITION** to House Bill 748, HD1.

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, prohibits forfeiture of an animal prior to disposition of criminal charges, and directs half of the proceeds to the Hawai'i law enforcement assisted diversion program and the remaining half to the state general revenue fund.

The vast majority of our asset forfeiture cases result directly from narcotics trafficking. According to the CDC, in 2017 over 70,000 people died as a result of drug overdose. The Hawai'i's Asset Forfeiture Program is one of the most successful ways to undermine the economic infrastructure of drug traffickers and other 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.

The Audit of the Department of The Attorney General's Asset Forfeiture Program: A Report to the Governor and the Legislature of the State of Hawai'i was published in June 2018. The Department of the Attorney General has taken numerous steps to address and implement the findings and recommendation of that audit.

We believe the changes suggested in HB 748, HD1 would create a more time consuming, expensive and difficult process, which would weaken the deterrent effect of our current asset forfeiture laws. There needs to be further discussion on the ramifications of reducing law enforcement's ability to deter these criminal enterprises, as well as time to allow for the adoption

of the updated Administrative Rules – and the clarity and conformity they will bring – likely resulting in improved outcomes.

National pushback against asset forfeiture is largely arising in reaction to mainland states and communities where asset forfeiture has been shown to be used in a discriminatory manner – this has not been shown to be a problem here in Hawai'i.

The Office of the Prosecuting Attorney, County of Hawai'i 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 interest of justice.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai'i, **STRONGLY OPPOSES** the passage of House Bill No. 748, HD 1. Thank you for the opportunity to testify on this matter.



**Justin F. Kollar**  
Prosecuting Attorney

**Jennifer S. Winn**  
First Deputy



**Rebecca A. Vogt Like**  
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

---

February 19, 2019

RE: **H.B. No. 748, H.D. 1, Relating to Property Forfeiture**

Dear Chair Luke, Vice-Chair Cullen, and members of the House Committee on Finance:

The County of Kauai, Office of the Prosecuting Attorney **opposes** this measure.

Generally speaking, the various components of this bill will make it substantially more cumbersome for the County law enforcement agencies to bring asset forfeiture cases. If asset forfeiture cases are not initiated by the County agencies, the State asset forfeiture program will essentially cease to exist.

Under this bill, a forfeiture case cannot be brought until after the owner has been convicted of a felony "covered offense." The bill does not address the common situation where a defendant appeals a conviction to an appellate court. In our experience, appeals of convictions in Hawaii take 2-5 years for disposal. Thus, forfeiture cases could not be initiated until many years after the criminal incident has occurred. It's common knowledge that personal property devalues as it ages (vehicles, electronics equipment, for example). This provision will also require that property is stored for substantial periods of time. The County agencies will not likely want to store property for years, before a forfeiture case is even initiated. This waiting period will make it more time-consuming and expensive (increased storage fees) for the County agencies to initiate asset forfeiture cases. In contrast, under current practice, generally, Kauai asset forfeiture cases are initiated within a year of the occurrence of the criminal incident.

Also, under this bill, the payment structure for completed cases will give no proceeds to the County police departments and prosecutors' offices,

eliminating their respective 25% shares. With this financial incentive eliminated, it's not hard to anticipate these agencies de-prioritizing forfeiture cases, choosing to spend precious human resources on other matters. Again, if these agencies do not bring forfeiture cases, the State asset forfeiture program will essentially cease to exist.

We strongly suggest that before these fundamental changes are adopted, a multi-agency task force convene to identify the possible effects of these proposed changes. Again, the County agencies could in response, largely choose not to initiate asset forfeiture cases.

Based on the foregoing, the County of Kauai Office of the Prosecuting Attorney opposes H.B. No. 748, H.D. 1. Thank you for this opportunity to provide testimony.

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

SUSAN BALLARD  
CHIEF

JOHN D. McCARTHY  
JONATHON GREMS  
DEPUTY CHIEFS

OUR REFERENCE CT-TA

February 21, 2019

The Honorable Sylvia Luke, Chair  
and Members  
Committee on Finance  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 308  
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

SUBJECT: House Bill No. 748, H.D. 1, Relating to Property Forfeiture

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

The HPD opposes House Bill No. 748, H.D. 1, Relating to Property Forfeiture.

This bill eliminates the investigating local law enforcement agency from the proceeds of the forfeited property. The HPD relies on the proceeds from forfeiture property to fund unbudgeted equipment, training, and investigative expenses. Cutting these funds would have a direct impact on the services we provide to the community.

In keeping with our commitment to serving and protecting our community with aloha, the HPD urges you to oppose House Bill No. 748, H.D. 1, Relating to Property Forfeiture.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
Susan Ballard  
Chief of Police

  
Calvin Tong, Major  
Narcotics/Vice Division

Harry Kim  
Mayor



Paul K. Ferreira  
Police Chief

Kenneth Bugado Jr.  
Deputy Police Chief

## County of Hawai'i

### POLICE DEPARTMENT

349 Kapi'olani Street • Hilo, Hawai'i 96720-3998  
(808) 935-3311 • Fax (808) 961-2389

February 19, 2019

Representative Sylvia Luke  
Chairperson and Committee Members  
Committee on Finance  
415 South Beretania Street, Room 308  
Honolulu, Hawai'i 96813

#### **RE: HOUSE BILL 748 HD1 RELATING TO FORFEITURE**

Dear Representative Luke:

The Hawai'i Police Department **opposes House Bill 748 HD1**, with its purpose to 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.

Our concerns start from the onset of this proposed legislation with the opening sentence, "The legislature finds that civil asset forfeiture frequently leaves innocent citizens deprived of personal property without having ever been charged or convicted of any crime. This amounts to government sponsored theft." That preceding statement is devoid of any supporting evidence; in fact, there has been no presentation of facts supporting misuse/abuse of the Forfeiture program. Beyond that point, the forfeiture laws are used to ensure those items used to further criminal activity and/or the ill-gotten gains of such activity become items for seizure in accordance with prescribed civil procedures. These prescribed civil procedures are accompanied by attendant ownership rights of appeal.

The changes as proposed by this legislation would significantly compromise law enforcement's ability to combat those who profit from illegal activity through victimization of the community at large. Many of our forfeiture cases are the result of felony drug offenses that cater to those individuals who are involved in fatal traffic collisions, drug overdose deaths, as well as thefts, burglaries, robberies and other crimes in order to afford purchase of illicit narcotics.

It is for these reasons, we urge this committee **to not support this legislation**.

Thank you for allowing the Hawai'i Police Department to provide comments relating to House Bill 748 HD1.

Sincerely,

PAUL K. FERREIRA  
POLICE CHIEF

**HB-748-HD-1**

Submitted on: 2/20/2019 10:18:39 AM

Testimony for FIN on 2/21/2019 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dylan P. Armstrong	Oahu County Democrats	Support	No

Comments:

Aloha Chair Luke, and Members of the Finance Committee,

I write in support of this measure, House Bill 1424 HD1.

Opening up our State Capitol more formally to its thousands of yearly visitors with a Visitor Center is the right thing for the public and for democracy.

Additionally such a Visitor Center would direct needless traffic away from the operations of the legislative and executive offices that are trying to conduct their business.

Furthermore, such a Visitor Center could provide revenue for the aging State Capitol building, which deeply wants for repair and renovation.

Thank you for your consideration.

Respectfully,

**Dylan P. Armstrong**

Vice Chair, Oahu County Committee, Oahu County Democrats

Lead Member for Finance & Ways and Means, Oahu County Committee on Legislative Priorities

**HB-748-HD-1**

Submitted on: 2/16/2019 4:35:21 PM

Testimony for FIN on 2/21/2019 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Golojuch Jr	LGBT Caucus of the Democratic Party of Hawaii	Support	Yes

Comments:

Aloha Representatives,

The LGBT Caucus of the Democratic Party of Hawaii supports the passage of HB 748 HD 1.

Mahalo for your consideration and for the opportunity to testify.

Mahalo,

Michael Golojuch, Jr.

Chair

LGBT Caucus of the Democratic Party of Hawaii

## TESTIMONY IN SUPPORT OF HB 748, HD 1

TO: House Committee on Judiciary

FROM: Nikos Leverenz  
Grants, Development & Policy Manager

DATE: February 21, 2019 (1:30 PM)

---

Chair Luke, Vice-Chair Cullen, and Members of the Committee:

Hawai'i Health & Harm Reduction Center (HHRC) **supports** HB 748, HD 1, which would reform this state's asset forfeiture laws to protect the rights of innocent property owners against undue and often unsubstantiated executive actions against them.

Last year, [the Hawaii State Auditor found serious shortcomings in the practice of asset forfeiture over the past three decades](#) up to the present day, including the absence of administrative rules from the state Attorney General describing procedures and practice requirements. As such, "the program cannot fully account for the property it has obtained by forfeiture, is unable to adequately manage its funds, and cannot review or reconcile its forfeiture case data to ensure accurate reporting of information to the Legislature and the general public."

HHRC works with many individuals who are impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those relating to substance use and underlying mental health conditions. Under Hawaii's current law governing asset forfeiture innocent property owners who do not have the economic means to post bond and hire an attorney to secure their property are effectively left without legal recourse.

We support vigorous transparency provisions that note each incidence of forfeiture, including the value of the property, the seizing agency, and the dates of seizure and forfeiture. Annual independent audits could also help ensure that this legislature and the public have the confidence that the Attorney General and county officials are operating within prescribed statutory boundaries.

While we are grateful for the intent to find a new potential funding source for law enforcement assisted diversion (LEAD), all forfeiture proceeds should be directed to the general fund without restriction so that the legislature is able to respond to its budgetary priorities in a given year. As the audit notes, the Attorney General and county officials have been poor stewards of forfeiture funds, ignoring the statutory requirement that 20 percent of funds from the Criminal Forfeiture Fund be dedicated to drug abuse education, prevention, and rehabilitation programs.

Importantly, we also support an amendment to this bill that would preclude federal adoption of asset forfeiture cases so that county officials are not able to circumvent reforms forwarded by this legislature. California's legislature included this crucial provision in their asset forfeiture reform two years ago.

Thank you for the opportunity to testify on this measure.



**HB-748-HD-1**

Submitted on: 2/19/2019 10:18:14 AM

Testimony for FIN on 2/21/2019 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Valerie Barnes	Individual	Support	No

Comments:

This is a very important bill to protect innocent residents from having their property stolen. Please vote in favor.



Hawai'i

**LATE**

Committee: House Committee on Finance  
Hearing Date/Time: Thursday, February 21, 2019, 1:30 p.m.  
Place: Conference Room 308  
Re: Testimony of the ACLU of Hawai'i in Support of H.B. 748, H.D. 1, Relating to Property Forfeiture

Dear Chair Luke, Vice Chair Cullen and Members of the Committee on Finance

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes in support of, with one suggested amendment to, H.B. 748, H.D. 1, which would reform Hawai'i's civil asset forfeiture law by prohibiting forfeiture except in cases where the property owner has been convicted of a covered felony offense, and by reducing the profit incentive to seize property by directing half of all forfeiture proceeds to the general fund. In order to completely eliminate the profit incentive to seize property, however, we respectfully request that the Committee amend this bill to direct 100 percent of proceeds to the general fund, rather than tying forfeiture proceeds to a particular program.

**Hawai'i's current civil asset forfeiture law is based on the legal fiction that property can be guilty.** Civil asset forfeiture is a civil action initiated by the government against a piece of property on the basis that the property was used in the commission of a covered criminal offense. Due to the way that the current law is written, government can seize (and profit from) property without obtaining a criminal conviction in connection with the property. Although this practice is often justified as a way to incapacitate large-scale criminal operations, it has been used to create revenue for law enforcement with little restriction or accountability. Critics often call this practice "policing for profit," because, under Hawai'i's law, the seizing agency (usually a county police department) keeps 25 percent of the profits from forfeited property; the prosecuting attorney's office keeps another 25 percent, and the remaining 50 percent goes into the criminal forfeiture fund, which finances the asset forfeiture division within the Department of the Attorney General, the agency charged with adjudicating the vast majority of forfeiture cases (rather than the courts). At every step of the process, there exists a clear profit motive to a) seize property, and b) ensure that seized property is successfully forfeited and auctioned by the state.

**Hawai'i's law enforcement is abusing the current system.** The Hawai'i State Auditor conducted a study of civil asset forfeiture in Hawai'i, which was published in June 2018.<sup>1</sup> The report found that in fiscal year 2015, "**property was forfeited without a corresponding criminal charge in 26 percent of the asset forfeiture cases.**" This means that during this period, in over one quarter of all

---

<sup>1</sup> State of Hawai'i, Office of the Auditor, *Audit of the Department of the Attorney General's Asset Forfeiture Program, Report No. 18-09* (June 2018).

American Civil Liberties Union of Hawai'i  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluHawai'i.org](mailto:office@acluHawai'i.org)  
[www.acluHawai'i.org](http://www.acluHawai'i.org)

civil property forfeiture cases, not only was there no conviction, but *there were not even criminal charges filed*.<sup>2</sup>

It comes as no surprise that Hawai‘i’s civil asset forfeiture law is regarded among the worst in the nation, receiving a grade of D- by the Institute for Justice.<sup>3</sup> A low standard of proof and a lack of administrative rules governing forfeitures means that property can be seized when it has only a tenuous connection to the alleged underlying offense, and property may be forfeited even when there have been **no criminal charges filed. This is often a substantial burden on the property owner**, who may lose their job or home because the state seized their means of transportation or money needed to pay rent. While the law contains a provision intended to protect innocent property owners, this provision is inadequate and the burden placed on property owners seeking to challenge a forfeiture makes it nearly impossible in most cases for innocent people to recover their property.

This legislation is necessary to rectify the harms caused by our current system and to prevent its continued abuse. **This bill still allows property to be seized — but not forfeited — prior to conviction, which achieves the purported objective of stopping criminal operations.** To more completely eliminate the profit motive that law enforcement may have to target innocent property owners, we respectfully request that the measure be amended to direct *all* proceeds to the general fund.

For the above reasons, we urge the Committee to support this measure. Thank you for the opportunity to testify.

Sincerely,



Mandy Fernandes  
Policy Director  
ACLU of Hawai‘i

*The mission of the ACLU of Hawai‘i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai‘i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai‘i 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 Hawai‘i has been serving Hawai‘i for 50 years.*

---

<sup>2</sup> This creates a possible scenario in which the prosecutor’s office petitions the Department of the Attorney General to forfeit property on the basis that the property was used in the commission of a criminal offense *without ever even alleging* that an actual person committed the offense that is at the center of the forfeiture.

<sup>3</sup> Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture*, 2nd Edition (November 2015) available at <https://ij.org/report/policing-for-profit>.

**LATE**

## COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / [kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



### COMMITTEE ON JUDICIARY

Rep. Sylvia Luke, Chair

Rep. Ty Cullen, Vice Chair

Thursday, February 21, 2019

12:30 pm

Room 308

### SUPPORT FOR HB 748 HD1 – ASSET FORFEITURE

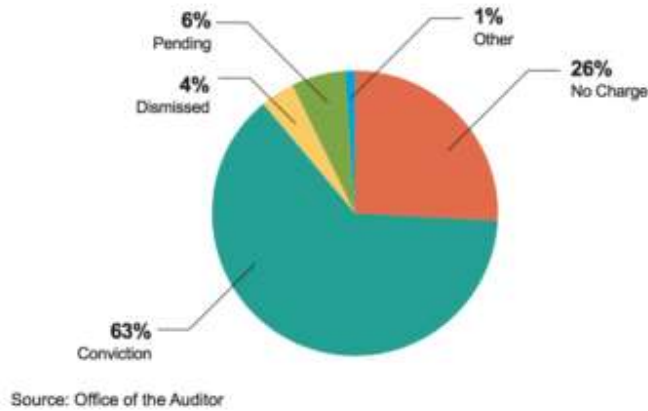
Aloha Chair Luke, Vice Chair Cullen and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,400 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

In the interest of justice, Community Alliance on Prisons supports HB 748 HD1!

Yesterday, February 20, 2019, in an opinion delivered by Justice Ruth Bader Ginsberg, the US Supreme Court ruled that the Eighth Amendment's ban on excessive fines applies to the states. The decision is a victory for an Indiana man whose luxury SUV was seized after he pleaded guilty to selling heroin. It is also a blow to state and local governments, for whom fines and forfeitures have become an important source of funds.

The question presented: **Is the Eighth Amendment's Excessive Fines Clause an "incorporated" protection applicable to the States under the Fourteenth Amendment's Due Process Clause?** *Like the Eighth Amendment's proscriptions of "cruel and unusual punishment" and "[e]xcessive bail," the protection against excessive fines guards against abuses of government's punitive or criminal law-enforcement authority. This safeguard, we hold, is "fundamental to our scheme of ordered liberty," with "dee[p] root[s] in [our] history and tradition."* *McDonald v. Chicago*, 561 U. S. 742, 767 (2010) (internal quotation marks omitted; emphasis deleted). *The Excessive Fines Clause is therefore incorporated by the Due Process Clause of the Fourteenth Amendment.*



**In Hawai'i, property was forfeited without a corresponding criminal charge in 26 percent of the asset forfeiture cases closed during FY2015.**

1

The scathing Hawai'i auditor's report concluded: *"Hawai'i's asset forfeiture program is controversial, attracting criticism from lawmakers, the public, and the media. The statute gives the Attorney General broad power to take personal property from individuals without judicial oversight based on a relatively low standard of proof. Given the high profile of the program and the power bestowed on the Attorney General to administer it, it is crucial that the department manage the program with the highest degree of transparency and accountability. We found that is not the case. The department has failed to adopt administrative rules as required by statute, establish formal Report No. 18-09 / June 2018 17 management policies and procedures, and implement strong internal controls."*

Community Alliance on Prisons urges the committee to pass this important reform.

Mahalo for this opportunity to testify.

---

<sup>1</sup> Audit of the Department of the Attorney General's Asset Forfeiture Program, A Report to the Governor and the Legislature of the State of Hawai'i, Report No. 18-09, June 2018.  
<http://files.hawaii.gov/auditor/Reports/2018/18-09.pdf>

**HB-748-HD-1**

Submitted on: 2/21/2019 7:02:46 AM

Testimony for FIN on 2/21/2019 1:30:00 PM



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Wendy Arbeit	Individual	Support	No

Comments:

I support HB 748 because it corrects the wrong the State has perpetuated on its citizens for years by seizing property of people not convicted, not even charged, but only accused of a crime. And the use of these items and their proceeds not accounted for.

Please support this measure. it's long overdue.

Wendy Arbeit

Makiki, O'ahu

**HB-748-HD-1**

Submitted on: 2/21/2019 1:24:08 PM

Testimony for FIN on 2/21/2019 1:30:00 PM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mariner Revell	Individual	Support	No

Comments:

I strongly support this bill! This bill will bring fairness back to asset forfeiture issues in Hawaii.